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CLIENT ALERT MEMORANDUM

To: All Sheriffs & Chiefs of Police

From: James R. Touchstone, Esq.

INVENTORY SEARCH OF TRUCK PARKED ILLEGALLY BY DRIVER WITHOUT VALID LICENSE ON PRIVATE PROPERTY WAS NOT FOURTH AMENDMENT VIOLATION WHERE VEHICLE WAS IMPOUNDED FOR VALID COMMUNITY CARETAKING PURPOSE

In *United States v. Anderson*,¹ the Ninth Circuit Court of Appeals concluded that a District Court did not err in concluding that the government established that a valid community caretaking purpose existed for impounding and inventorying defendant’s truck before an inventory search was conducted. The Court determined that sheriff’s deputies had an objectively reasonable belief that defendant’s truck, which he had parked in a private driveway, was parked illegally.

Background

At approximately 2:00 a.m., San Bernardino County Sheriff’s Department (“SBCSD”) Deputy Daniel Peterson noticed the license plate on Jonathan Anderson’s truck was partially obscured in violation of Vehicle

Code section 5201, so the deputy initiated a traffic stop. According to Deputy Peterson, after he activated his lights, Anderson abruptly turned onto a dead-end street and accelerated to the end of the road. Deputy Peterson called for backup. About 30 to 45 seconds after Deputy Peterson initiated the stop, Anderson pulled into the driveway of a home and got out of his truck. Deputy Peterson believed that Anderson was attempting to flee and confronted him at gunpoint. Anderson complied with the deputy’s direction to turn around, put his hands up, and kneel down. Shortly thereafter, Deputy Kyle Schuler arrived and handcuffed Anderson. Anderson told the deputies that he was parked in the driveway of “a friend” and that his license was expired. Dispatch informed the deputies that Anderson had an expired license and was a career criminal.

¹ 2022 Cal. App. LEXIS 1032 (4th Dist. Dec. 16, 2022).

The parties disputed what happened next. According to Anderson, Deputy Peterson began searching his truck within seconds of learning that he was a career criminal. The deputies claimed that the search did not happen immediately. The deputies told Anderson that they were going to tow his truck because he did not have a valid license and that they needed to conduct an inventory search. After detaining Anderson in the back of a patrol car, the deputies testified that before they started the search, Deputy Schuler spoke to the owner of the home where Anderson parked to confirm whether he knew Anderson. Anderson claimed that the deputies did not talk to the homeowner until after they completed the inventory search. It was undisputed that the homeowner did not know Anderson and wanted Anderson's truck removed from his driveway. During the inventory search, Deputy Peterson found a loaded handgun under the driver's seat and arrested Anderson for being a felon in possession of a firearm. Approximately seven minutes elapsed from when Deputy Peterson noticed Anderson's obscured license plate to when he called in the gun to dispatch. After the inventory search, Anderson's truck was towed.

Anderson moved to suppress the handgun, arguing that the deputies violated the Fourth Amendment because the inventory search was invalid. He claimed in part that the deputies lacked a valid "community caretaking purpose" when they conducted the search. The District Court denied his motion, and Anderson entered a conditional guilty plea retaining his right to appeal the suppression decision. The District Court sentenced Anderson to a prison term

followed by three years' supervised release. Anderson appealed the denial of his suppression motion.²

Discussion

The Ninth Circuit Court of Appeals initially explained that the Fourth Amendment protects the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures" and provides that "no Warrants shall issue, but upon probable cause." U.S. Const. amend. IV. One "well-defined exception to the warrant requirement" is the inventory search. *Illinois v. Lafayette*, 462 U.S. 640, 643 (1983); *Colorado v. Bertine*, 479 U.S. 367, 371 (1987). This exception arises under the community caretaking exception to the warrant requirement for seizure of property. *See United States v. Cervantes*, 703 F.3d 1135, 1140-41 (9th Cir. 2012). "Under the community caretaking exception, 'police officers may impound vehicles that jeopardize public safety and the efficient movement of vehicular traffic.'" *Id.* at 1141 (quoting *Miranda v. City of Cornelius*, 429 F.3d 858, 864 (9th Cir. 2005) (internal quotation marks omitted)). "[I]mpoundment serves some 'community caretaking'" purpose if a vehicle is "parked illegally, pose[s] a safety hazard, or [i]s vulnerable to vandalism or theft." *Id.* (internal citation omitted).

The Court stated that for purposes of the Fourth Amendment's reasonableness test, the issue is whether the inventory search is

² Anderson also appealed one of the conditions of his supervised release. The Ninth Circuit in this decision vacated the appealed condition and remanded for the District Court to find a more appropriate condition.

pretextual, not whether it fails to achieve full compliance with the administrative procedures. “[R]easonable police regulations relating to inventory procedures administered in good faith satisfy the Fourth Amendment,” even if the police implementation of standardized inventorying procedure is “somewhat slipshod.” *Bertine*, 479 U.S. at 369, 374.

The Court explained that once the government has established that the vehicle in question was impounded for a valid community caretaking purpose, an inventory search does not violate an individual’s Fourth Amendment rights if: (1) it is conducted pursuant to a standard policy (even if compliance with the policy is less than perfect); and (2) it is performed in good faith (meaning it is not conducted solely for the purpose of obtaining evidence of a crime). When the inventory search meets these criteria, the government’s legitimate interests outweigh the intrusion on the individual’s privacy interests.

The Ninth Circuit affirmed the District Court’s order denying Anderson’s motion to suppress. The Ninth Circuit held that the District Court did not err in concluding that the government established that a valid community caretaking purpose existed for impounding and inventorying Anderson’s truck before the search was conducted. The Court of Appeals explained that the deputies had an objectively reasonable belief that Anderson’s truck, which he had parked in a private driveway, was parked illegally. The Ninth Circuit noted that the District Court found that the homeowner wanted the car off the property and that there was no one available to move Anderson’s truck because

Anderson did not have a valid license, he had no passengers with him, and he told the deputies he was not from the area where he was stopped. The Circuit Court determined that the District Court did not clearly err in finding that the deputies spoke to the homeowner before conducting the search. Because this finding was entitled to deference, no remand was required.

The Ninth Circuit disagreed with Anderson’s assertion that the deputies’ inventory search was invalid because they failed to comply with the SBCSD’s standardized inventory search procedures. The Court explained that the inventory search was conducted pursuant to a standard policy, and was performed in good faith, not solely for the purpose of obtaining evidence of a crime; therefore, the government’s interest in protection of property and protection of the police outweighed Anderson’s expectation of privacy in the contents of his car, and the search was reasonable for Fourth Amendment purposes.

Dissenting in part, Judge Lee agreed that the inventory search was lawful, but would remand to the District Court the issue of whether the officers spoke with the homeowner to verify that Anderson’s car was unlawfully parked outside his house *before* searching Anderson’s car, given conflicting testimony and the District Court’s inaccurate characterization of the record.

Dissenting in part, Judge Forrest agreed that a valid community-caretaking purpose existed to impound the truck and conduct an inventory search but disagreed that the deputies conducted a valid inventory search.

She stated that the Fourth Amendment is violated where, as here, officers are required to prepare a full inventory of the property found during a search of an impounded vehicle and they inventory only that property found that has evidentiary value such that the administrative purposes animating the inventory-search exception are subverted, and there otherwise is no indication that administrative purposes motivated the “inventory” search.

HOW THIS AFFECTS YOUR AGENCY

Agencies may take note of the Ninth Circuit’s initial discussion of the parameters of the community caretaking exception. The Court explained that “the reasonableness of the impoundment depend[s] on whether the impoundment fits within the authority of police to seize and remove from the streets vehicles impeding traffic or threatening public safety and convenience.” *Cervantes, supra*, 703 F.3d at 141 (internal quotation marks omitted). “An officer cannot reasonably order an impoundment in situations where the location of the vehicle does not create any need for the police to protect the vehicle or to avoid a hazard to other drivers.” *Miranda, supra*, 429 F.3d at 866 (citation omitted). The Court noted that one such location is where a vehicle is parked in its owner’s driveway, even though the owner drove without a valid driver’s license. The Court added that there is no valid community caretaking purpose justifying impoundment where a vehicle is legally parked in a residential neighborhood and there is no evidence that it would be susceptible to theft or vandalism. *See Cervantes*, 703 F.3d at 1141-42; *United*

States v. Caseres, 533 F.3d 1064, 1075 (9th Cir. 2008).

As always, if you want to discuss any of this in greater detail, do not hesitate to contact James Touchstone at jrt@jones-mayer.com or by telephone at (714) 446-1400.

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