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ONE MINUTE BRIEF

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NUMBER: 2019-22 **DATE:** 10-08-19 **BY:** Devallis Rutledge **TOPIC:** Vehicle Inventory

ISSUE: When and where may law enforcement officers seize contraband or the fruits, instrumentalities or evidence of crime discovered during a vehicle inventory?

Police may sometimes **remove** a vehicle to a storage yard when, for example, it is obstructing traffic, illegally parked, or damaged and inoperable following a crash. This is a lawful seizure of the vehicle, for a valid “**community-caretaking**” purpose. *South Dakota v. Opperman* (1976) 428 US 364, 368; VC § 22651.

Also, police sometimes **impound** a vehicle when, for example, it was used as the instrumentality of a crime (such as hit-and-run or drive-by shooting), or is being unlawfully operated. Such **investigative** and **regulatory** impounds are also lawful seizures. *Benis v. Michigan* (1996) 516 US 442, 453; VC §§ 14602, 14607, 22655.5.

In either case—removal or impoundment—police generally **inventory** the contents of the vehicle for “*the protection of the owner’s property while it remains in police custody, the protection of the police against claims or disputes over lost or stolen property, and the protection of the police from potential danger.*” *Opperman, supra*, 428 US at 369. Any contraband or evidence discovered during a lawful inventory can be lawfully seized under the “**plain view**” doctrine. *Harris v. US* (1968) 390 US 234, 236.

- Because an inventory is an administrative procedure rather than an investigative search, neither probable cause nor a search warrant is required. *Opperman, supra*, 428 US at 370, fn.5. However, an officer’s **subjective motive** for removing/impounding and inventorying a vehicle is relevant to establishing that neither the removal/impound nor the inventory was a pretext for investigative search. *People v. Torres* (2010) 188 Cal.App.4th 775, 787-88.

- As an administrative procedure, the inventory cannot be at the sole discretion of individual officers but must be conducted according to **standard procedures** adopted by the department, specifying the circumstances under which vehicles are to be removed or impounded and inventoried. *Colorado v. Bertine* (1987) 479 US 367, 374. If **closed** or **locked compartments** and **containers** are to be opened and inventoried, that procedure must also be specified in the standard policy. *Florida v. Wells* (1990) 495 US 1, 4.

- An inventory can be conducted at the tow yard, or in the field while awaiting a tow truck. *People v. Burch* (1986) 188 Cal.App.3d 172, 189.

- The reasonable **scope** of an inventory does not include removing automotive parts. *People v. Zabala* (2018) 19 Cal.App.5th 335, 341 (dashboard console).

- Importantly, officers must **follow through** with their inventory, even if they come upon contraband or evidence of criminality in the course of the inventory. Departmental policy must be “*designed to produce an inventory.*” *Ibid*; emphasis added. Suppression of evidence has been affirmed where officers began an inventory and then abandoned it once evidence was found. *People v. Williams* (1999) 20 Cal.4th 119, 138. (After officers found drugs, “*why did they fail to complete the inventory? ... [D]id their need to inventory defendant’s truck mysteriously evaporate?*”) Officers following a standardized procedure should **complete** a CHP 180 or similar form.

- During a suppression hearing, prosecutors justifying a plain-view seizure during a vehicle inventory (or arguing for “inevitable discovery” during an inevitable inventory) should ensure that the officer’s testimony establishes (1) the officer’s justifiable **reasons** for removing/impounding/inventorying the defendant’s vehicle; (2) that this was done according to the department’s **standard policy**; (3) that the standard policy specifies (if it does) that all **compartments** and **containers** will be opened and inventoried, whether open or closed, locked or unlocked; and (4) that an inventory was in fact **completed**.

BOTTOM LINE: To justify plain-view seizures of contraband or evidence discovered during a vehicle inventory, police reports and testimony must show that the inventory was conducted and completed according to the agency’s standard procedures.

This information was current as of publication date. It is not intended as legal advice. It is recommended that readers check for subsequent developments, and consult legal advisors to ensure currency after publication. Local policies and procedures regarding application should be observed.