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TRAINING BULLETIN

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Vehicle Searches During an Impound, 9th Circuit Case

When police officers attempted to stop Nahach Garay for a traffic violation he refused to pull over instead leading the officers on a high-speed chase. The chase ended when Garay crashed his car into a ditch and attempted to flee on foot. The officers arrested Garay and discovered thousands of dollars of cash and certain quantities of four different illegal drugs on his person.

While waiting for a tow truck to arrive, officers searched Garay's car and found two loaded rifles, ammunition, and two cell phones, one of which was claimed by the passenger. The officers filled out a Vehicle Report on which they listed the two firearms but did not list any other property. Later, the officers booked the rifles, ammunition, and cell phones as evidence.

The officers obtained a warrant to search Garay's cell phone from a state court judge. In his affidavit, an officer described the high-speed chase, the drugs and cash found on Garay's person and the officer's knowledge, based on his training and experience, that individuals who possess firearms take pictures of them and communicate via text messages to further their criminal activity.

After the case was referred for federal prosecution, the government obtained a warrant to search Garay's cell phone from a federal magistrate. In her affidavit, a federal law enforcement officer stated that in her experience, as well as on the "collective experiences" of law enforcement agents that felons prohibited from possessing guns use mobile phones to coordinate buying and selling guns.

Garay's phone contained photographs that tied Garay to one of the firearms that was recovered from his car.

The government charged Garay with being a felon in possession of a firearm. Garay filed a motion to suppress the warrantless seizure of his cell phone.

First, Garay argued that the warrantless seizure of his phone was unreasonable because the officers used their authority to inventory the car's contents as a pretext to rummage for criminal evidence. Garay claimed the officers' failure to list the property found in his car on an inventory sheet, as required by department policy, supported his position.

Under the Fourth Amendment and relevant case law, it is well established that, once a vehicle has been impounded or towed, police officers are permitted to inventory the car's contents. However, to comply with the Fourth Amendment's reasonableness requirement, inventory searches "must not be used as a ruse for a general rummaging in order to discover incriminating evidence."

First, the court held that the failure to complete the inventory sheet, as required by department policy, did not automatically invalidate the inventory search. The court recognized that the officer who searched Garay's car complied with the department's inventory search policy in all material respects, for example: the officer obtained the tow truck driver's signature and noted the date and time of the driver's arrival; he obtained a file number for the inventory; and he checked a box on the relevant inventory form indicating that items of value were in the car before identifying and booking the items recovered for the car as "evidence / property." The court concluded that the officer's failure to complete the inventory sheet was not a material deviation from the department's inventory policy. The court supported its position by noting that the First, Fourth, Fifth, and Eleventh Circuits have expressly recognized that the failure to complete an inventory form does not automatically invalidate an inventory search. In addition, the court found that the Second, Seventh, Eighth, and Ninth Circuits have upheld inventory searches despite other comparable "administrative errors." In all of these cases, the courts found that administrative errors do not automatically invalidate inventory searches. Instead, there must be something to suggest that the police used an inventory search "in an after-the-fact attempt to justify a simple investigatory search for incriminating evidence."

Second, the court held that there was no evidence to suggest that the officers used the inventory search as a pretext to "rummage for evidence." The court found that the contents of Garay's wrecked car had to be removed and safeguarded before the car was towed from the crash site, which is the essence of an inventory search. In addition, because the site was also a crime scene, the items in the car were "sensibly" treated as evidence. Although the circumstances leading up to the search would have caused the officers to believe that Garay's car contained evidence of criminal activity, that expectation did not invalidate an otherwise reasonable inventory search. As a result, the court held that Garay's cell phone was lawfully seized as part of a valid inventory search.

Garay further argued that the affidavits supporting the search of the contents of his cell phone were inadequate. Specifically, Garay claimed that the affiants' beliefs on the basis of their training and experience "that that individuals who possess firearms take pictures of them and communicate via text messages to further their criminal activity," without explaining this training and experience in detail, should not have been considered by the judges who issued the warrants.

The court disagreed. The court commented that it has long held that affiants seeking a warrant may state conclusions based on training and experience without having to detail that experience. The court added that the circumstances leading up to the search of the car, including the chase, Garay's arrest, and the seizure of cash and drugs from Garay, coupled with the affiants' training and experience, provided probable cause to believe that criminal evidence might be found on Garay's cell phone.

United States v. Garay, 2019 U.S. App. LEXIS 27908 (9th Cir. CA September 17, 2019)