

ANCHORAGE POLICE DEPARTMENT



BUREAU BULLETIN



LEGAL BULLETIN NO. 8

January 27, 1978

INVENTORY SEARCH OF LAWFULLY IMPOUNDED VEHICLE

Reference: South Dakota
v.
Opperman

South Dakota v. Opperman
49 L.Ed 2d 1000 (1976)
U.S. Supreme Court, 1976

FACTS:

OPPERMAN had parked his vehicle in violation of local parking ordinances. Two citations were issued and the vehicle was subsequently impounded. At the impound lot, officers were able to see a watch and other personal effects inside. The doors were unlocked and a "standard inventory" was made of the contents. Officers discovered marijuana inside the glove compartment. The vehicle and its contents (except the marijuana) were later released to OPPERMAN. OPPERMAN was arrested and convicted for the possession of marijuana. He appealed to the State Supreme Court; the conviction was overturned on Fourth Amendment grounds. The state attorney appealed to the U.S. Supreme Court.

ISSUE:

Can the police make routine inventory searches of impounded vehicles and use items seized pursuant to the search (without a warrant or probable cause) against the defendant?

HELD: Yes

REASONING:

1. Expectation of privacy in a vehicle, due to its mobility, cannot reasonably be expected by the defendant.
2. Standard police inventory searches are allowed for three basic reasons:
 - A. The protection of the owner's property while it remains in police custody.
 - B. The protection of the police against claims or disputes over lost or stolen property.
 - C. Protection of the police from potential danger.
3. If the "inventory search" is not a pretext to search without a warrant, the intrusion is constitutionally permissible.

4. It was not unreasonable to look into the glove compartment inasmuch as it is a customary place for documents of ownership as well as temporary storage of valuables.

5. The vehicle itself was lawfully impounded.

NOTES:

The police department had a policy to conduct an inventory search on all impounded vehicles and did not make the search as a ruse to conduct a search for the marijuana.

In a similar case (Cady v. Dombrowski, 413 U.S. 433, 1973) a search of a trunk for a weapon was held permissible. The defendant had been involved in an automobile accident and was arrested for being under the influence of intoxicants. The arresting officer learned that the defendant was a police officer from another area and looked for his gun. The car was towed from the scene of the accident to a storage lot of a gas station and was searched. The gun was found in the trunk and later used at the defendant's murder trial. The search was upheld because it was "incident to the caretaking function of the local police to protect the community's safety". The gun might have been available to vandals had it been left in the car.

In both of these cases, the Supreme Court recognized that "standard procedures" were being followed. These types of searches are routinely done on all impounded vehicles. The officers did not expect to find evidence (marijuana in OPPERMAN's vehicle and the gun in Cady's) to be used against them at a criminal trial. In Cady, the officer who found the gun was not even aware of the murder.

This type of search cannot be used by the police to conduct an exploratory search of a vehicle hoping to discover fruits of a crime or evidence. If you know evidence of a crime or contraband are in the car you should apply for a search warrant before you make the inventory search. The car must have been legally impounded and the search made pursuant to standard procedures. Criminal evidence must have been inadvertently discovered.

This issue has not been answered by our State Supreme Court as yet.

The authority to search impounded vehicles is found under "Regulations 13 AAC 02.375" issued by the Commissioner of Public Safety under Alaska Statute 28.05.030. It states:

"INVENTORY OF IMPOUNDED VEHICLE. A police officer who impounds a vehicle for any reason provided by statute, ordinance or regulation shall conduct a complete inventory of the property in the vehicle at the time of impoundment or as soon after as practicable. The inventory shall be reduced to writing and a receipt for the property shall be signed by the person to whom the vehicle is released at the time of the release."

We have no idea what the State Supreme Court will say about this regulation; but, at this time, it is a law directed at all police officers.

Anchorage Police Department Procedural Instruction 305.15 directs the officer to also include serial numbers of any items of value located within the vehicle.