



DPS TRAINING BULLETIN



LEGAL BULLETIN NO. 377

March 21, 2016

Reference: Malik Ahmad Taha
V
State of Alaska

Alaska Court of Appeals
Opinion No. 2489
February 5, 2016

ANCHORAGE IMPOUNDMENT ORDINANCE IS NOT JUSTIFIED UNDER 'COMMUNITY CARETAKER' RATIONALE AND VIOLATES ARTICLE 1, SECTION 14 OF THE ALASKA CONSTITUTION

FACTS:

Anchorage police observed a car driving erratically on a public street. The vehicle was stopped in a parking lot, and the driver, TAHA, was arrested for driving under the influence. After he was told that he was under arrest, TAHA informed the officer that his father could come to the scene to retrieve the car. The officer informed TAHA that his father would not be allowed to retrieve the car. TAHA also asked the officer if the sober passenger might drive the car. The officer told TAHA he had no choice but to impound the vehicle, stating: "Legally I have to do that." TAHA was handcuffed and placed in the back seat of the officer's patrol car.

A second police officer arrived at the scene. When this officer learned TAHA was being arrested for driving under the influence, he began searching TAHA's vehicle. The officer later described this search as an "inventory" of the car's contents in preparation for its impoundment.

Section 09.28.026 of The Anchorage Municipal Code gives police officers the authority, at their discretion and without a court order, to impound the motor vehicle of any person who is arrested for, or charged with, any of the following 6 offenses:

- (1)** Soliciting for prostitution;
- (2)** driving while under the influence;
- (3)** refusing to submit to a breath test
- (4)** driving with a suspended or revoked license;
- (5)** driving with having vehicle insurance; or
- (6)** driving while not carrying proof of vehicle insurance in one's possession.

The initial search of TAHA's vehicle resulted in the seizure of drug paraphernalia. Officers then obtained a warrant to search the entire car. The second search (with the warrant) resulted in the seizure of a quantity of methamphetamine.

TAHA was charged drug-related offenses as well as weapons misconduct because he had a firearm in his vehicle while intoxicated.

TAHA moved to suppress the evidence on the grounds that the impoundment and subsequent search of his vehicle violated both the U.S. (Fourth Amendment) and Alaska (Article I Section 14) constitutions.

ISSUE:

Did the seizure, and subsequent search of the vehicle, violate either the Fourth Amendment to the United States Constitution or Article I Section 14 of the Alaska Constitution?

HELD:

Yes. Vehicle impoundments authorized by AMC 09.28.026 are not linked to any community care taker rationale.

REASONING:

1. In a 1976 case, South Dakota v Opperman (see bulletin no. 8) the U.S. Supreme Court ruled that the inventory of impounded vehicles pursuant to police department policy did not violate the Fourth Amendment.
2. Because the Anchorage ordinance (AMC 09.28.026) authorizes the impoundment of vehicles without regard to whether the vehicle poses any public danger or inconvenience at the time it is seized, the ordinance cannot be justified under a “community caretaker” rationale.
3. These impoundments are not governed by any regulation or formal policy that establishes standardized, objectively ascertainable criteria for impoundment based on valid community caretaker concerns.

NOTES:

The Court of Appeals sent this case back to superior court to see if the search might be justified (other than inventory caretaker) under other rationales. For instance, the state may argue that the search was justified as “incident to arrest” to search for evidence of the crime charged. Or they may offer other justifications.

However, also review State v Edward Daniel (see bulletin no.19) where the Alaska Supreme Court ruled that the complete inventory of impounded vehicle is a warrantless search and violates Alaska’s Constitution.

NOTE TO SUBSERIBERS TO THE ALASKA LEGAL BRIEFS MANUAL:

File Legal Bulletin no. 377 numerically under Section R of the manual.