LAW ENFORCEMENT DIGEST
December 2022

COVERING CASES PUBLISHED IN DECEMBER 2022

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Cases in the Law Enforcement Digest are briefly summarized, with emphasis placed on how the rulings may affect Washington law enforcement officers or influence future investigations and charges. Each month's Law Enforcement Digest covers court rulings issued by some or all of the following courts:

- **Washington Courts of Appeals**. The Washington Court of Appeals is the intermediate level appellate court for the state of Washington. The court is divided into three divisions. Division I is based in Seattle, Division II is based in Tacoma, and Division III is based in Spokane.
- **Washington State Supreme Court**. The Washington Supreme Court is the highest court in the judiciary of the U.S. state of Washington. The court is composed of a chief justice and eight justices. Members of the court are elected to six-year terms.
- **Federal Ninth Circuit Court of Appeals.** Headquartered in San Francisco, California, the United States Court of Appeals for the Ninth Circuit (in case citations, 9th Cir.) is a federal court of appeals that has appellate jurisdiction over the district courts in the western states, including Washington, Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada and Oregon.
- **United States Supreme Court:** The Supreme Court of the United States is the highest court in the federal judiciary of the United States of America.

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WASHINGTON LEGAL UPDATES

The following training publications are authored by Washington State legal experts and available for additional caselaw review:

- Legal Update for WA Law Enforcement authored by retired Assistant Attorney General, John Wasberg
- **Caselaw Update** - WA Association of Prosecuting Attorneys [2018-2021] | [2022]

QUESTIONS?

- Please contact your training officer if you want this training assigned to you.
- If you have questions/issues relating to using the ACADIS portal, please review the FAQ site.
- Send Technical Questions to lms@cjtc.wa.gov or use our Support Portal.
- Author: Linda J. Hiemer, JD| Program Administration Manager Legal Education Consultant/ Trainer

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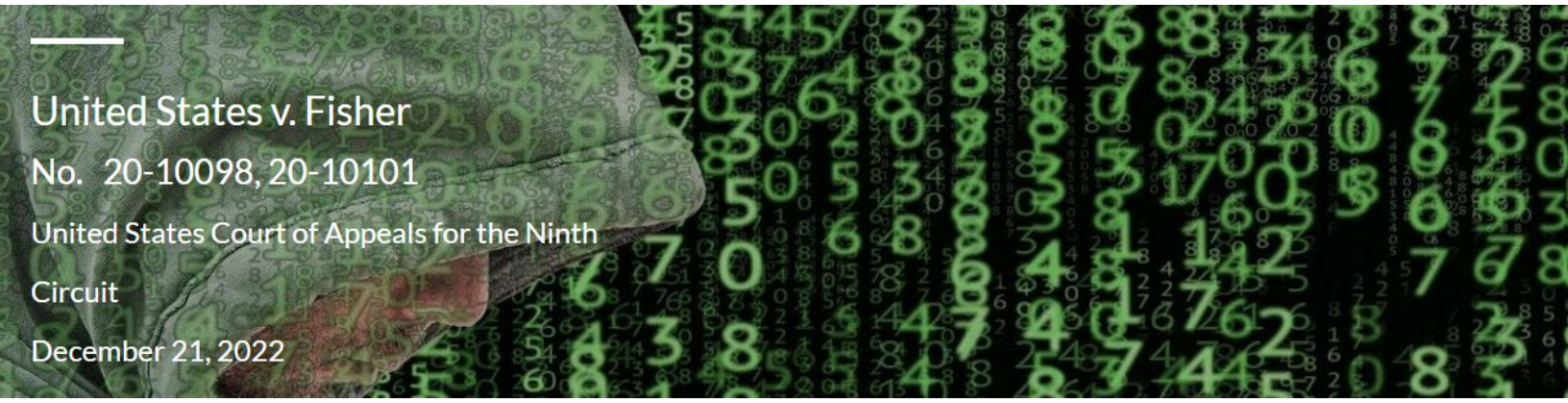

United States v. Fisher

No. 20-10098, 20-10101

United States Court of Appeals for the Ninth Circuit

December 21, 2022

TOPICS:

1. ABANDONMENT
2. AFFIDAVITS

Factual Background

On April 27, 2016, social media site Tumblr sent a report to the National Center for Missing and Exploited Children (NCMEC), which caused NCMEC to generate a CyberTipline Report (CyberTip) documenting the incident. The CyberTip identified the incident as "Child Pornography" (possession, manufacture, and distribution), based on eight video and image files uploaded to a Tumblr user's blog. The incident time was recorded as April 19, 2016, at 2:14 p.m. UTC.

Tumblr identified the "user or person being reported," as "mcw," and logged the profile's URL and email address. The user IP address was 50.118.198.254 (Computer 254), but Tumblr also identified a second IP address, 24.253.48.163 (Computer 163), which accounted for four of the last five most recent logins, as of the incident time. The physical location of Computer 254 resolved to a server hosting company in the San Jose, California area. Computer 163 resolved to Cox Communications, an internet service provider (ISP), in Las Vegas, Nevada.

Additional information provided by NCMEC identified an associated CyberTip appearing to contain supplemental IP information for the reported Tumblr profile associated with IP address 24.253.48.163 and the previously identified email address. Accordingly, the CyberTip concluded that based on IP 24.253.48.163, the matter should be forwarded to the Nevada Internet Crimes Against Children (ICAC) Task Force.

Detective Miller of the Las Vegas Metropolitan Police Department's (LVMPD) ICAC investigated the NCMEC CyberTipline Report. The LVMPD served an administrative subpoena on Cox Communications commanding the company to produce customer records for Computer 163 as of the Incident Date. On June 14, 2016, Cox communications responded to the administrative subpoena, identifying Justin Fisher at an address on Burkehaven Avenue in Las Vegas as the customer associated with Computer 163.

On July 1, 2016, Detective Miller sought and obtained a search warrant on Tumblr. The affidavit identified the following digital data that was sought to be seized:

> All Tumblr account information for the following user on/or between the dates of April 19, 2016, through July 01, 2016:

IP Address: 50.118.198.254 and 24.253.48.163
Date of Incident: April 19, 2016, at 2:14 p.m.
Email Address: mcw*****@gmail.com
Profile URL: https://mcw.tumblr.com

On September 16, 2016, Tumblr responded with a flash-drive of files collected from https://mcw.tumblr.com and a list of recent logins. The LVMPD identified over 40 additional images of child sexual assault material (CSAM) and 200-plus age-difficult child erotica images from the Tumblr blog. The only login listed for the "mcw" account from April 19, 2016 onward was from Computer 163 on April 19, 2016 10:40 a.m., a few hours before Tumblr generated the NCMEC report.

The 2016 Search

On November 16, 2016, Detective Miller sought and obtained a search warrant for Joshua Fisher's residence. Detective Miller's affidavit in support of the search warrant stated that there was, "probable cause to believe that certain property hereinafter described will be found at [the Burkehaven Avenue address].

Miller stated in the synopsis section that:

> "On or about April 27, 2016, the [NCMEC] received a report for Tumblr reference [sic] a possible transmission of [CSAM]. Tumblr reported a user; "mcw", screen/user name of "mcw", and an IP address of 24.253.48.163 uploaded 8 [CSAM] images on their Tumblr account. Affiant viewed said image [sic] of [CSAM] and deemed 2 images to be [CSAM] in nature.
>
> A search warrant was served on Tumblr reference [sic] above account which resulted in numerous other images/videos of [CSAM] being discovered.
>
> The investigation conducted by Affiant has traced this [CSAM] computer activity of [CSAM] to [the Burkehaven Avenue address], where Affiant expects to find computer/digital evidence of these crimes."

The "Probable Cause Offering" section of the affidavit described the sequence of relevant events and described the July 1, 2016, search warrant, and Tumblr's response, as follows:

"On July 01, 2016, a search warrant was served on Tumblr for all account information regarding Tumblr account: mcw*****@gmail.com, IP address 24.253.48.163, user name: mcw.

On September 16, 2016, Tumblr responded to said search warrant with numerous other images/videos of [CSAM]. Affiant viewed these images/videos and deemed over 40 of them to be [CSAM]."

A justice of the peace for Clark County, Nevada, determined that the affidavit presented sufficient evidence for a finding of probable cause and issued the search warrant.

On November 21, 2016, the search warrant was executed on Justin Fisher's Burkehaven Avenue residence. Various digital devices were seized from the premises. Joshua Fisher approached the residence on foot while the search was ongoing and stated that he, "worked out of the residence where the search warrant was

being executed." He turned over a cell phone to the NVMPD ICAC team. NVMPD obtained a warrant to search the phone on November 23, 2016.

Forensic analysis of the devices obtained from the Defendants resulted in the recovery of evidence of [CSAM] offenses. This led to multiple counts against each defendant and the defendants were arrested.

Before trial, Justin and Joshua Fisher moved to suppress "all tangible evidence, and the fruits thereof," obtained from the November 21, 2016, search warrant. They asserted their entitlement to an evidentiary hearing by alleging the intentional and/or reckless omissions and misstatements – which they claimed were material to a finding of probable cause – in Detective Miller's affidavit. Upon review of Detective Miller's affidavit in support of the November 21, 2016 search warrant, the U.S. Magistrate judge found that there were false statements and omissions contained in the affidavit and concluded that an evidentiary hearing was warranted to determine "whether the false statements and omissions in Detective Miller's affidavit were intentional or recklessly made, and, if so, whether the balance of the information in the affidavit still support[ed] a finding of probable cause."

After the evidentiary hearing, the Magistrate Judge issued his Findings and Recommendation. The Magistrate Judge determined that Miller's affidavit contained an "untrue and misleading" statement that "Tumblr reported a user; 'mcw', screen/user name of "mcw", and IP address of 24.253.18.163 uploaded 8 [CSAM] images on their Tumblr account. The Judge believed that this statement conveyed as a fact "that Tumblr had affirmatively made such statement to NCMEC," when the statement "was actually Detective Miller's conclusion based on his analysis of the [CyberTip] and the information that Tumblr provided in response to the search warrant. However, the Judge determined that:

> *"Detective Miller's statement would not have been problematic if he had clearly identified it as his opinion or conclusion* and had included in the affidavit all of the relevant facts that the issuing judge would need to independently determine whether there was probable cause to believe that images of [CSAM] had been uploaded from IP address 24.253.48.163. (emphasis added).

The Magistrate pointed to omissions they perceived in the affidavit, including login dates for Computer 163, the April 18, 2016, login from Computer 254, or "the information in Tumblr's response to the search warrant that someone using IP Address 24.253.48.163 logged into the Tumblr account on April 19, 2016, at 10:40 a.m., which occurred only a few hours before the incident Time reported in the CyberTip.

However, once the Magistrate Judge considered how Miller's affidavit would have been supplemented and/or corrected to reflect all the relevant and material information, they concluded that there would still have been probable cause to believe that [CSAM] was uploaded to Tumblr from IP address 24.253.48.163 on or around April 19, 2016, when Tumblr discovered the uploading of the files.

When the district court reviewed the Magistrate's decision on the Defendants' Motion to Suppress, it agreed with the Magistrate Judge's recommendation that the Motion be denied. However, the court did modify the Magistrate Judge's Findings and Recommendations in part. During this process, the district judge considered modifications to the findings recommended by the defendants. The district court declined to adopt the defendant's proposed modifications because they were aimed at modifying the affidavit's representations as to which IP addresses made the upload of incriminating files.

The district court concluded that the defendant's proposed changes were inaccurate, incomplete, and immaterial to the probable cause determination. The district court concluded that:

"Miller's subsequent investigation – especially the Tumblr response to the search warrant – confirmed that IP address 24.253.48.163 was tied to the incident and uploaded the images… Considered in its entirety, the affidavit was not misleading. Det. Miller summarized the chain of his investigation, including the results of the search warrants and subpoena he obtained. That investigation supported probable cause to issue the search warrant for the Burkehaven house."

The district court identified changes that might be made if it found the affidavit misleading but determined that **no such supplement would undermine the sufficiency of probable cause in the affidavit**. The court concluded that the affidavit still supported a finding of probable cause because of the other information obtained from the Tumblr search warrant and Cox Communication subpoena that linked the [CSAM] images to IP address 24.253.48.163. The district court pointed to two facts in its conclusion: First, that the only IP address logged in at the incident time was 24.253.48.163. And, second, Tumblr provided the flash drive of additional files (including forty that were CSAM), that were uploaded after the incident time.

The district court denied the Defendants' Motion to Suppress.

The 2018 Search

On September 15, 2018, Justin Fisher was in custody. He sold the Burkehaven Avenue Residence to new owners. On July 9, 2018, the new homeowner contacted the Las Vegas, Nevada FBI office. They informed the FBI that they had learned from their neighbors that the Burkehaven Avenue Residence had been searched in connection with the previous owner's criminal activity.

On July 12, 2018, Detective Miller reached out to the new homeowner and informed them of certain telephone conversations between the Defendants. The conversations involved the Defendants discussing the location of personal property apparently concealed in the Burkehaven Avenue Residence. The Defendants had asked their brother "E" to search the Burkehaven Avenue Residence to recover the property, but E was unsuccessful.

The new homeowner gave Miller consent to search the upstairs crawl space/attic. Concealed between the insulation and the wood framing, Miller located a black cell phone and two portable solid state drives (SSD). The FBI sought and obtained a warrant to search the recovered devices. The search was executed and revealed that the brothers had compiled and curated evidence of their sexual exploitation of children and compiled it onto the three devices found in the attic.

On November 7, 2018, Defendants moved to suppress the evidence obtained during the 2018 search, arguing that the evidence was the "fruit of the poisonous tree" because it was a direct result of the 2016 search, which they were also contending was unlawful. The Government argued that the Defendants had abandoned the personal property at issue and lacked standing to seek suppression.

The Magistrate Judge concluded that after conducting a totality of the circumstances abandonment analysis, that the Defendants' second Motion to Suppress should be denied for lack of standing. The judge's reasoning was based on the Defendants' communications with their brother E. Justin instructed E to remove the items from the house before it was sold, and Joshua inquired "as to whether he had found and removed

the items." When E was unsuccessful in recovering any items, **the Defendants made no further effort to recover the items after the house was sold and was in possession of a new owner** with whom Defendants had no relationship.

Additionally, **nine months had passed between the sale and the new owner's contact with the FBI and Detective Miller**. The Magistrate Judge found it reasonable to infer that the defendants made the decision to abandon the items rather than risk detection of further incriminating evidence by trying to recover them. This was sufficient for the judge to find abandonment "by a preponderance of the evidence" and recommend denial of Defendants' second Motion to Suppress for lack of standing.

On review, the district court adopted the Magistrate Judge's Findings and Recommendation in its entirety. The district court concluded that Defendants' concealment of items prior to the sale of the Burkehaven Avenue Residence made no difference as to the abandonment determination because "no efforts were made to retrieve the items after the house was sold in September of 2017 until the items were seized by the Government in July 2018." The district court ruled that Defendants "abandoned the items after the house was sold," and the subsequent search and seizure of the personal property they concealed there did not violate their Fourth Amendment rights.

Analysis of the Court

The Ninth Circuit Court of Appeals (the Court) reviewed the district court's denial of both Motions to Suppress. It noted that it reviews a district court's factual findings for clear error and that it may affirm the denial of a motion to suppress on any basis fairly supported by the record. The Court gives great deference to an issuing judge's finding that probable cause supports a warrant and reviews such findings for clear error.

The Fourth Amendment dictates that "no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. **The task of an issuing magistrate is simply to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before them, there is a fair probability that contraband or evidence of a crime will be found in a particular place.** Evidence obtained during the execution of a warrant that lacks probable cause should generally be suppressed under the exclusionary rule.

The 2016 Search

With regard to the 2016 search of the Burkehaven Avenue Residence, the Defendants argued that probable cause did not exist to support the search warrant because the affidavit "only established probable cause through knowing and intentional deception, or at best, recklessness to the truth or falsity of the information."

The Defendants asserted that "Detective Miller misstated the contents of the CyberTipline Report, drew conclusions unsupported by the Report, and ignored factors exculpatory to [Defendants]." Specifically, Defendants asserted that the affidavit misquoted the Report by identifying the guilty party as "user mcw screen/username of "mcw" and an IP address of 24.253.163 (sic), which uploaded 8 [CSAM] images on their Tumblr account," when the sub-heading of the CyberTip labeled the guilty device as the computer with IP address 50.118.198.254.

Defendants argued that "this is a mindful, purposeful substitution of one party (Computer 163) for another party (Computer 254), or, at the very least, a reckless disregard to the truth or falsity that Computer 163 was identified as culpable." The defendants believed this to be a key material omission made by Detective Miller by "failing to disclose that the last reported IP address login prior to the incident was from IP address 50.118.198.254, mis(leading) the issuing judge."

The Court did not find this argument persuasive. It noted that probable cause exists if it would be reasonable to seek the evidence in the place indicated by the affidavit. **Reasonableness is determined by an examination of the totality of the circumstances in a common-sense manner.** And, while it is true that the Court accords deference to the issuing judge's determination of probable cause, that does not preclude the Court from looking into the knowing or reckless falsity of an affidavit on which that determination was based.

But the defendants failed to point to any misstatements or omissions in Detective Millers affidavit that would undermine the reasonableness of the ultimate probable cause determination. The defendants misstated the record by asserting that IP 50.118.198.254 was the only relevant IP address. It was apparent from the CyberTip that the defendant's computer (Computer 163), was also identified as associated with the suspect Tumblr account. In fact, the report stated that based on the IP 24.253.48.163, the matter should be forwarded to the Nevada ICAC. Moreover, Detective Miller did not omit any mention of Computer 254. Rather, he emphasized the relevance of the defendant's computer.

Moreover, when Detective Miller prepared his affidavit, he had already received a response to the July 1, 2016 search warrant served on Tumblr which showed that the most recent login to the "mcw" account was from the defendant's computer. The Tumblr warrant requested all account information on or between April 19, 2016 (the incident date) and July 1, 2016. The defendants did not address the results of this warrant, which supported the issuing judge's probable cause determination and the district court's denial of the first Motion to Suppress. Defendants ignored the fact that Miller's affidavit referenced the response from Tumblr indicating that the defendant's computer was logged in hours before the incident time and that additional files (later determined to be CSAM) were uploaded to the blog.

The Court noted that it could be inferred by the district court that the additional files were uploaded on or after April 19, 2016, when the defendants' computer was the last logged in IP address.

The Court reasoned that this was not a case where the warrant rested merely on the affirmance or belief without disclosure of supporting facts or circumstances. Detective Miller's affidavit conveyed his fact-based understanding of the most relevant IP address identified by Tumblr and NCMEC – Computer 163, or the defendant's computer. The Court could not conclude that the issuing judge lacked a substantial basis for concluding that probable cause existed. Instead, it believed that Miller's affidavit, relying on the CyberTip, the results of the Cox Communications subpoena, and the Tumblr search warrant established a "fair probability that… evidence of a crime will be found in a particular place" – the Burkehaven Avenue Residence. The defendants could point to no facts that would alter the central basis of the underlying probable cause determination.

Finding no material false statements or omissions, there was no basis to find that the district court erred in its fact finding or that the issuing judge was materially misled when reaching its probable cause determination. The Court affirmed the district court's denial of Defendants' first motion to suppress

The 2018 Search

The Court next considered the denial of Defendants' second Motion to Suppress. It noted that to establish standing to challenge an illegal search and seek suppression of evidence unlawfully obtained, **a defendant must show that they personally had a property interest protected by the Fourth Amendment that was interfered with, or a reasonable expectation of privacy that was invaded by the search. Where a defendant depends on a reasonable expectation of privacy, two elements must be met: (1) that they had an actual (subjective) expectation of privacy, and (2) that their subjective expectation is objectively reasonable, meaning that it is an expectation that society is prepared to recognize as reasonable.**

The Court noted that **people who voluntarily abandon property lack standing to complain of its search or seizure. Abandonment is a factual determination that is a question of intent.** This means that the factfinder's inquiry should focus on whether, through words, acts, or other objective indications, a person has relinquished a reasonable expectation of privacy in the property at the time of the search and seizure.

The Court found that the district court did not clearly err by finding abandonment of the devices left in the attic of the Burkehaven Avenue Residence. The district court had found that one or both of the defendants had, at some point prior to detention, concealed the recovered devices in the attic of the residence. The district court determined that at some point after, their intentions with respect to the devices changed because no efforts were made to retrieve the items after the house was sold in September of 2017 until the items were seized by the Government in July of 2018.

The defendants argued that they did not intend to abandon the property because they had manifested a desire and concern to safeguard the items and keep them secure from accidental exposure or an intentional search. The effort to secret the items from prying and even searching eyes indicated their value to the owner. Defendants further argued that they had an ongoing interest in the devices even though they had no physical control over them. They were only not in physical possession of the devices (and their home) because of their arrest and incarceration.

The Court found this argument unpersuasive. It noted that it is well-established that **property may be abandoned even when the defendant only abandons property in response to, or in anticipation of, law enforcement action**. It referenced past cases where contraband was found to be abandoned property when it was thrown from a truck during a pursuit by law enforcement or left on a plane after being asked to deplane by officers.

In this case, the district court found that the defendants' acts and other objective indications supported the view that the defendants had decided to abandon the devices in the attic, and thus relinquished any reasonable expectation of privacy in them. Specifically, the Magistrate Judge pointed to **the lapse of more than nine months between the sale of the residence and the eventual search**. It didn't matter that the defendants concealed the devices and attempted to recover them by asking for their brother's help. The Court repeated that if one who has abandoned property from all outward appearances in fact has retained a subjective expectation of privacy, then a search of the property is nevertheless valid if that expectation is intrinsically unreasonable or not otherwise entitled to protection.

The record showed that the Defendants' failure to ensure that E recovered the devices before the home was sold, and their subsequent failure to take any additional action, was sufficient to support a finding of abandonment, even if the defendants only stopped trying to recover them because they feared detection by law enforcement.

The Court, therefore, held that the district court did not clearly err by finding that the defendants abandoned the devices seized in the 2018 search of the Burkehaven Avenue Residence. The defendants abandoned the devices and lost any reasonable expectation of privacy in them. Therefore, they lacked standing to seek suppression of their contents.

The Court affirmed the district court's denial of the Defendant's second Motion to Suppress.

Training Takeaway

The task of a magistrate judge issuing a search warrant is simply to make a practical, common sense decision whether, given all the circumstances set forth in the affidavit before them, there is a fair probability that contraband or evidence of a crime will be found in a particular place.

Evidence obtained during the execution of a search warrant that lacks probable cause should generally be suppressed under the exclusionary rule. The standard that defendants must meet to show that an affidavit supporting a search warrant is materially misleading is by a preponderance of the evidence, not the same standard for a finding of probable cause. As a general matter, probable cause to support a search warrant exists if it would be reasonable to seek evidence in the place indicated in the affidavit.

The reasonableness of a search is determined by an examination of the totality of the circumstances in a common-sense manner. The deference accorded to an issuing judge's determination of probable cause to support a search warrant does not preclude an inquiry into the knowing or reckless falsity of the affidavit on which that determination was based.

In this case, the police detective's identification of the internet protocol (IP) address that a social media company had identified as having uploaded child exploitation images in the search warrant affidavit was not a material misstatement or omission that undermined the reasonableness of the probable cause determination, even though the company had also identified a computer with a different IP address as a guilty device. The company identified the defendant's computer as associated with the suspect account, and the detective did not omit any mention of the other computer. The company indicated that the IP address referenced in the affidavit was the one that had most recently uploaded the child sexual exploitation material.

To establish standing to challenge an illegal search and seek the suppression of evidence unlawfully obtained, a defendant must show that they personally had a property interest protected by the Fourth Amendment that was interfered with, or a reasonable expectation of privacy that was invaded by the search. Where a defendant depends on their reasonable expectation of privacy, two elements must be met to establish standing to challenge a search's legality and seek suppression of the unlawfully obtained evidence. **(1) That they had an actual subjective expectation of privacy, and (2) that their subjective expectation is objectively reasonable. That is, that it is an expectation that society is prepared to recognize as reasonable.**

People who voluntarily abandon property lack standing to complain of its search or seizure. The abandonment of property is a factual determination that is a question of intent. The fact finder's inquiry should focus on whether, through words, acts, or other objective indications, a person has relinquished their reasonable expectation of privacy in property at the time of the search or seizure. Property may be abandoned for Fourth Amendment purposes even when a defendant only abandons property in response to, or in anticipation of, law enforcement action.

Even if a person has retained a subjective expectation of privacy, but from all outward appearances they have abandoned the property, then a search of the property is nevertheless valid if that expectation is intrinsically unreasonable or not otherwise entitled to protection.

In this case, the District court did not clearly err by finding that the defendants had abandoned the electronic devices in the walls of their former residence's attic, and thus that the defendants lacked standing to challenge the search of the devices, even though (1) the defendants had initially tried to recover the devices with their brother's help, (2) they were not in physical possession of the devices only because of their arrest and subsequent incarceration, and (3) they ceased their efforts only because they feared detection by law enforcement because the defendants had sold their residence nine months before the search and had made no effort to recover the devices since the sale.

EXTERNAL LINK: View the Court Document

Washington v. Gregory
No. 38743-7-III
Washington State Court of Appeals
Division Three
December 22, 2022

TOPICS:

1. DEFERRED PROSECUTION FOR DUI
2. DUI

Factual Background

On March 6, 2020, Appellant Laron Gregory spent the day fishing on the Grand Ronde River. Other fishermen were on the river that day, including Conner Campbell, who was fishing with his father, and Brian Cramer, who was fishing with a group of friends. That evening, many of the fisherman gathered in the parking lot to talk about their day over some beers. Around 6:30 p.m., Mr. Campbell and Mr. Cramer left for the night. Appellant Gregory was still in the parking lot.

Mr. Campbell was camping for the night about 1.5 miles down the road. Well after dark, Gregory knocked on the door of Mr. Campbell's trailer. Gregory was soaking wet and drunk. He said that he had driven his truck into the river and asked Mr. Campbell to help pull it out. Campbell did not think he could help, and Gregory left on foot. Sometime later, the Campbells were concerned about Mr. Gregory's safety and they drove down the road looking for him. They also contacted a relative who reported the crash to law enforcement. Asotin County Deputy Sheriff Nathan Conley was not able to arrive at the remote location until around 9:20 p.m.

Mr. Cramer reported that a couple of hours after dark, Mr. Gregory was dropped off at his campsite. Gregory was heavily intoxicated and wet, and he asked Cramer for help pulling his truck out of the river. Cramer and his friends gave Mr. Gregory dry clothes, blankets, food, and water. Mr. Gregory initially sat with Mr. Cramer and his friends around a fire, but after falling forward toward the fire, the group moved Mr. Gregory to the bed of a pickup truck where Gregory laid down. Cramer later saw emergency lights in the distance and called 911 to report the location of Gregory and inform the authorities that he was safe.

Deputy Conley reviewed the scene of the accident and arrived at the Cramer's property around 9:30 p.m. Mr. Gregory was in the back of the truck, breathing but unresponsive. Deputy Conley roused him with a sternum rub. Upon awaking, Mr. Gregory's eyelids were heavy, his eyes bloodshot, and his pupils were tightly constricted. Gregory told the deputy that he had been drinking before the accident but that he was fine to drive. He reported that he became intoxicated after driving into the river.

Deputy Conley accompanied Mr. Gregory to the hospital to take a blood sample, which was drawn at about 11:00 p.m. The Washington State Patrol toxicology laboratory tested Mr. Gregory's blood and reported that

his blood alcohol concentration (BAC) was 0.29 grams per 100 milliliters and his blood THC concentration was 3.0 nanograms per milliliter.

The State charged Mr. Gregory with felony DUI under RCW 46.61.502(6) and alleged that he had a BAC of 0.08 or higher within two hours of driving, and that he had three or more prior offenses within 10 years. Mr. Gregory waived his right to a jury trial, electing for a bench trial.

At trial, Mr. Campbell and Mr. Cramer testified to the facts outlined above. Deputy Conley testified to his training and experience in DUI investigations. He stated that, "After your body metabolizes alcohol it will begin to leave your system, i.e., leave your blood, and… the… alcohol content will go down, decrease." He explained,

> "As soon as you – swallow any alcohol content… your body begins to naturally metabolize it – at a certain rate, depending on how fast you consume it, it's going to… I won't say "spike," but – reach a – climax of metabolization. And then after so long it will begin to… leave your system, whether it be the air in your lungs or the blood in your body, the alcohol content will eventually decrease, because your body's – excreting it, it's getting rid of it."

The State also offered three certified Idaho judgments: a 2012 order withholding judgment for DUI, a 2014 judgment for DUI, and a 2016 judgment for DUI. The 2012 order indicated that Mr. Gregory pleaded guilty to DUI, agreed to pay court costs, agreed to attend alcohol drug and information school, and agreed to other conditions. The order stated that failure to abide by the agreement would result in the imposition of a sentence and that compliance with the agreement would result in dismissal of the DUI charge.

Mr. Gregory testified that he smoked marijuana the morning before fishing and described drinking three or four beers throughout the afternoon. He testified that he was not under the influence of alcohol when he left the parking lot and that he drove into the river within two minutes of leaving.

Mr. Gregory testified that he began drinking after the crash while still in the truck. He could not explain why he did not go look for help, he just thought drinking seemed like *"the thing to do at the time."* He testified that he had a half-gallon bottle of gin in the truck, and he drank quite a bit of it over the course of 20 to 30 minutes.

In closing, Gregory argued that the 2012 order withholding judgment was not a prior offense for felony DUI. The State countered that the Washington statute included multiple definitions of a "prior offense" and that the withheld judgment was included.

The Court found Mr. Gregory guilty of felony driving while under the influence and held that his withheld judgment was a prior offense. The court told Mr. Gregory that it, "wasn't really believable that you'd want to sit out in the cold in the water, wet, in your vehicle for about 30 minutes in March, after dark." In the court's written findings of fact, the court found that Mr. Gregory drove the truck into the river at 8:00 p.m. or shortly before. It found his testimony that he sat in the truck after crashing not credible. Instead, it found he drank a large amount of alcohol and became impaired before leaving the parking lot.

The court sentenced Mr. Gregory to 13 months imprisonment followed by 12 months of community custody.

Mr. Gregory timely appealed.

Analysis of the Court

On appeal, Gregory's argument was that there was insufficient evidence to sustain his conviction. The Appeals Court (Court) noted that when an appellant challenges the sufficiency of the evidence, it considers "whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found guilt beyond a reasonable doubt." The Court draws all reasonable inferences in favor of the State against the defendant. A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom. Following a bench trial, the appellate review is limited to determining whether substantial evidence supports the findings of fact and whether those facts support the conclusions of law. Finally, unchallenged findings of fact are treated as true, on appeal.

Gregory's argument relied on his own testimony that he became intoxicated after crashing into the river. The Court noted that his argument ignored the fact that the Court views the evidence and inferences in the light most favorable to the State. Gregory's argument also ignored the fact that the trial court found his testimony on that issue not credible. Therefore, the Court had to assess the sufficiency of the evidence challenge premised on the unchallenged finding that Gregory drank before he drove his truck into the river.

Under RCW 46.61.502(1)(a), the State can prove that a defendant was driving under the influence by showing he had a BAC of 0.08 or higher within two hours of driving. The trial court found that Mr. Gregory had been drinking heavily before he began driving, and that he drove the truck into the river around 8:00 p.m. At 11:00 p.m., or three hours after driving, Mr. Gregory's BAC was 0.29, much higher than the legal limit. Moreover, the Deputy testified, without objection, that once a person drinks alcohol their body begins metabolizing it and the alcohol concentration eventually decreases.

The Court held that, based on this evidence, the trial court could have found beyond a reasonable doubt that Gregory's BAC was 0.08 or higher shortly before 10:00 p.m., which was within two hours of driving.

The Court also considered whether Mr. Gregory's 2012 order withholding judgment was a prior offense under RCW 46.61.5055(14)(a)(xvi). The Court noted that under that subsection, a prior offense includes a deferred prosecution granted in another state for DUI if the out-of-state deferred prosecution is equivalent to a deferred prosecution under RCW. 10.05. The trial court found that the Idaho withheld judgment was equivalent to a deferred prosecution under our state law.

The Court noted that there were many similarities between an Idaho deferred prosecution and a deferred prosecution in Washington: (1) they both involve participation in a dependency program, (2) they both result in a near certain conviction if the defendant does not comply with the order (3) and they both result in dismissal of the underlying charge if the defendant does comply with the order. The Court concluded that the Idaho withheld judgment was equivalent to a deferred prosecution under RCW 10.05 and constituted a prior offense under RCW 46.61.5055(14)(a)(xvi).

The Court of Appeals affirmed Mr. Gregory's conviction.

Training Takeaway

When an appellant challenges the sufficiency of the evidence used to secure their conviction, the Court considers whether, after viewing the evidence in light most favorable to the State, any rational trier of fact could have found guilt beyond a reasonable doubt.

After a conviction, the Court draws all reasonable inferences in favor of the State and against the defendant. And, a claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom.

Following a bench trial, appellate review is limited to determining whether substantial evidence supports the findings of fact and, if so, whether the findings support the conclusions of law.

Finally, unchallenged findings of fact are relied upon as true.

> Under **RCW 46.61.502(1)(a)**, the State can prove a defendant was driving under the influence by showing that they had an alcohol concentration of 0.08 or higher within two hours of driving.
>
> Under **RCW. 46.61.5055(14)(a)(xvi)**, a prior offense includes a deferred prosecution granted in another state for DUI if the out-of-state deferred prosecution is equivalent to a deferred prosecution under chapter 10.05 RCW, including the requirement that the defendant participate in a dependency treatment program.

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United States v. Anderson
No. 20-50345
United States Court of Appeals for the Ninth Circuit
December 29, 2022

TOPICS:

1. **Impoundment**
2. **Inventory Searches**

Factual Background

At around 2:00 a.m., San Bernadino County Sheriff's Department (SBCSD) Deputy Daniel Peterson noticed a truck with a partially obscured license plate, in violation of California Vehicle Code § 5201. Deputy Peterson initiated a traffic stop. After activating his lights, the truck abruptly turned onto a dead-end street and accelerated to the end of the road. Deputy Peterson called for backup and alerted dispatch that the truck was slow to stop. About 30-45 seconds after the deputy initiated the stop, the truck pulled into the driveway of a home and Appellant Anderson got out.

Deputy Peterson believed that Anderson was attempting to flee and confronted him by gunpoint. Deputy Peterson instructed Anderson to turn around, put his hands up, and kneel down. Anderson complied with the request and repeatedly asked why he had been pulled over. Moments later, Deputy Kyle Schuler arrived and handcuffed Anderson. Anderson told the deputies that he did not see Deputy Peterson's overhead lights and that he was not from the area. Peterson radioed dispatch at 2:05 a.m. and was informed that Anderson had an expired license and was a career criminal.

The following events were in dispute. Anderson asserted that Deputy Peterson began searching his truck immediately upon learning that Anderson was a criminal. The deputies claim that they did not search the truck, only that Deputy Peterson picked up Anderson's keys from where he had thrown them. Anderson is heard on Deputy Peterson's belt recording saying, *"You can't search my truck… why can you search my truck?"* 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. Anderson requested to have a friend come get the truck, but the deputies refused.

The deputies testified that they detained Anderson in the back of a patrol car and that before the search, Deputy Schuler spoke with the owner of the home where Anderson had parked. The homeowner confirmed that they 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. The entire incident, from the time Anderson activated his overhead lights to when he called in the gun to dispatch, lasted about seven minutes.

The SBCSD Manual provides a standard administrative procedure for an inventory search and Deputy Schuler stayed at the scene while Anderson was transported to jail and completed the manual's requirements. According to the manual, when a deputy stores or impounds a vehicle, the deputy "shall complete two CHP 180 Forms," which include, "an inventory of any personal property contained within the vehicle," and "the signature, date, and time of the arrival of the tow truck driver." The deputy must also "ensure that the report is immediately completed and processed."

Deputy Schuler complied with these requirements and completed most of the information required by the CHP form, including checking off boxes to show the presence of two radios and a firearm in the car. However, Deputy Schuler did not document other personal property in the car, which included two pairs of sunglasses, a watch, a box of tools, and a bottle of cologne. Schuler also filled out the portion of the CHP form that indicated existing damage to the truck. Deputy Schuler included the tow truck driver's signature and time of arrival on the form. The form was submitted for processing that same day. Additionally, the deputies took photographs of property found inside the truck, including a speaker, iPhone cord, and tools. Finally, the deputies completed a police report that documented the presence of a compact disc, gun, holster, and ammunition in the vehicle.

Anderson was charged with a single count of felon in possession of a firearm and ammunition in violation of 18 U.S.C. § 922(g)(1). Anderson moved to suppress evidence of the firearm, arguing that the inventory search was unconstitutional. Anderson claimed that the deputies "lacked a valid community caretaking purpose" when they conducted the search and that the deputies violated California law when they impounded his truck. Finally, Anderson also argued that, even if there was a valid community caretaking purpose, the search was invalid because the deputies did not follow the SBCSD procedures in conducting the search and they had an impermissible investigatory motive.

At the suppression hearing, the district court held that the search was proper and denied Anderson's motion. The district court found that Anderson did not have a valid driver's license and that the homeowner did not know Anderson or want the truck on his property. With respect to the existence of a valid community caretaking purpose for impounding the truck, the district court noted that the key question was whether or not the deputies searched the car before or after they talked to the homeowner and learned that he did not know Anderson. The homeowner and the deputies testified, and the district court noted that there were a lot of discrepancies and inconsistencies in the testimony. However, based on the credibility of the witnesses and what was speculation versus what was evidence, the court found that the record established that the deputies did talk to the homeowner before they searched the truck. The district court did not address the questions of whether the deputies complied with California law or SBCSD policy, or whether they had an impermissible motive for the search.

Anderson entered a conditional guilty plea and reserved his right to appeal the suppression order. He was sentenced to 77 months of prison and three years' supervised release. The district court imposed other conditions as part of Anderson's supervised release that will not be discussed here.

Analysis of the Court

The United States Court of Appeals for the Ninth Circuit (the Court) heard Anderson's appeal. It noted that it reviews a district court's rulings on motions to suppress starting at the beginning. It reviews the district court's underlying factual findings for clear error. A factual finding is clearly erroneous when it is "illogical,

implausible, or without support in the record." And, where "testimony is taken, the district court's credibility determinations are given special deference."

The Court noted 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." The Fourth Amendment's "essential purpose" is "to impose a standard of reasonableness upon the exercise of discretion by government officials, including law enforcement, in order to safeguard the privacy and security of individuals against arbitrary invasions.

As a general rule, the government must obtain a warrant based on probable cause in order to conduct a search, but there are exceptions to this requirement. **One "well-defined exception to the warrant requirement" is the inventory search.** This exception arises under the community caretaking exception to the warrant requirement for the seizure of property. **Under the community caretaking exception, police officers may impound vehicles that jeopardize public safety and the efficient movement of vehicle traffic.**

The reasonableness of the impoundment of a vehicle depends on whether the impoundment fits within the authority of police to seize and remove from the streets vehicles that impede traffic or threaten public safety and convenience. An impoundment will serve some community caretaking purpose if a vehicle is "parked illegally, poses a safety hazard, or is vulnerable to vandalism or theft." In the past, the Court noted, **a community caretaking purpose was found to exist where vehicles block parking lot spaces in a manner that could impede emergency services to a building and neither the driver nor any passenger is legally able to move it. Impoundment has also been justified where a vehicle is parked in the middle of the street, left in a public parking lot without anyone to retrieve it, or totaled lying in a ditch.**

However, law enforcement may not 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. For example, it is not reasonable to impound a vehicle that is parked in its owner's driveway, even though the owner may have driven without a valid driver's license. Nor is there a valid community caretaking purpose justifying impoundment where a vehicle is legally parked in a residential neighborhood and there is no evidence that it is vulnerable to theft or vandalism.

Once a vehicle has been legally impounded, the police may conduct an inventory search so long as it conforms to the standard procedures of the local police department. An inventory search of a vehicle is reasonable because **the government's legitimate interests in conducting the search outweigh the individual's privacy interests in the contents of their car. Weighed against the lowered expectation of privacy a person has in their impounded vehicle, the government has a legitimate interest in the protection of the owner's property while it remains in police custody, the protection of police against claims or disputes over lost or stolen property, and the protection of the police from potential danger.**

The Court noted that inventory searches are non-criminal in nature. Thus, they do not need to be justified by probable cause. The probable cause approach is unhelpful when the analysis centers upon the reasonableness of routine administrative caretaking functions. That being said, the Court may impose safeguards on a warrantless search to assure that the individual's reasonable expectation of privacy is not subject to the discretion of the official in the field. **The individual's privacy interest is protected by routine administrative procedures that limit law enforcement's discretion in conducting the search.** But even where law

enforcement has some discretion in conducting an inventory search, the search remains reasonable as long as that discretion is exercised according to standard criteria and on the basis of something other than suspicion of evidence of criminal activity.

That being said, **a search that materially deviates from established procedure may raise the inference that it was merely an excuse to rummage for evidence.** Therefore, for the purpose of the Fourth Amendment's reasonableness test, the issue is whether the inventory search is pretextual – not whether it failed to achieve full compliance with the administrative procedures. **Reasonable police regulations relating to inventory procedures administered in good faith satisfy the Fourth Amendment, even if the implementation of the standardized inventory procedure is somewhat slipshod.** Administrative errors should not, on their own, invalidate inventory searches. There must be something else to suggest that the police raised the inventory search banner in an after-the-fact attempt to justify a simple investigatory search for incriminating evidence.

Additionally, a reasonable inventory search is not invalid just because the police have a mixed motive for the search. When the inventory search would have occurred in the absence of a motive to search for evidence of a crime, the mere presence of a criminal investigatory motive or dual motive – one valid and one invalid – does not render an inventory search invalid. **As long as law enforcement does not act in bad faith or for the sole purpose of an investigation, an inventory search is valid.**

This means that once the government has established that a 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 not perfect); and (2) it is performed in good faith (meaning the search is not conducted for the sole purpose of finding evidence of a crime).**

In this case, the Court first addressed whether the government impounded the vehicle pursuant to a valid community caretaking purpose. It noted that California law authorizes impoundment of a vehicle where the driver does not have a valid driver's license (see **RCW 46.55.113(2)(h)** for Washington's version of this statute). However, this alone is not enough to establish a community caretaking purpose. **The deputies needed an objectively reasonable belief that Anderson's truck was parked illegally, posed a safety hazard, or was vulnerable to vandalism or theft.**

Here, Anderson parked his truck in a private driveway and the homeowner wanted it off his property because they did not know Anderson. Moreover, there was no one available to move Anderson's truck. Anderson did not have a driver's license and could not move it, he had no passengers, and he told the deputies that he was not from the area where he was stopped (thus it was unlikely that he knew someone nearby that could move the truck).

Anderson argued that even though his truck could not stay where it was parked, the deputies did not know that before they searched the vehicle. He asserted that the evidence of the belt recording and timestamps from the dispatch log demonstrated that the deputies did not talk to the homeowner before they began searching the truck. The Court disagreed with that characterization. It noted that the district court found the deputies testimony that they had spoken to the homeowner before searching the truck credible, and that the Court gives special deference to a district court's credibility determinations. The Court could not conclude that it was illogical or implausible for the district court to conclude that the deputies talked to the homeowner and

located the firearm in the span of two minutes and ten seconds. This was because the conversation with the homeowner occurred on his front porch near Anderson's truck, and the firearm was found under the driver's seat – not some obscure or hard-to-reach location.

Anderson also disputed that the deputies had a valid community caretaking purpose because he told the deputies that he had a friend that could move the truck, for him. But an officer is not required to consider the existence of alternative and less intrusive means when a vehicle must be moved to avoid the creation of a hazard or the continued unlawful operation of the vehicle. The friend was not present, and Anderson already lied by claiming that a friend lived in the house where he parked. Moreover, the deputies had learned of Anderson's significant criminal history. The Court held that, under these circumstances, it was not unreasonable for deputies to impound the vehicle rather than allow Anderson to call an unknown person at 2:00 a.m. to come move the truck.

Finally, Anderson argued that the impoundment was unreasonable because California law permits impoundment only "if a vehicle is illegally parked so as to block the entrance to a private driveway and it is impractical to move the vehicle from in front of the driveway to another point on the highway. But the Court noted that California law also provides that if a driver is unable to produce a valid driver's license on demand of a peace officer, a vehicle "shall be impounded regardless of ownership." Here, Anderson had an expired license, so deputies were not required by state law to determine whether it was impractical to move his truck before impounding it.

The Court concluded 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.

Anderson also argued that the deputies' inventory search was invalid because they failed to comply with the SBCSD's standardized inventory search procedures. However, the Court disagreed, concluding that the inventory search of Anderson's truck was conducted pursuant to a standard policy and was performed in good faith – not solely for the purpose of obtaining evidence of a crime. The deputies completed each of the four steps of their responsibilities when impounding vehicles as set out in the SBCSD manual. While the deputies did not fill out the form completely or perfectly, they substantially complied with the procedures in the SBCSD Manual.

Anderson needed to show something else, something to suggest that the police raised the inventory-search banner in an after-the-fact attempt to justify a simple investigatory search for incriminating evidence. Anderson offered no additional evidence (beyond the deficiency in preparing a full inventory) that the deputies' inventory search was merely an excuse for rummaging for evidence.

Accordingly, the Court held that the mere deficiency in complying with the SBCSD Manual was insufficient to establish that the search was pretextual and that the deputies' sole motive was to search for evidence of a crime.

Anderson's appeal was denied.

Training Takeaway

The Fourth Amendment's essential purpose is to impose a standard of reasonableness upon the exercise of discretion by government officials, including law enforcement agents, in order to safeguard the privacy and security of individuals against arbitrary invasions. The Fourth Amendment's reasonableness standard is not capable of precise definition or mechanical application, and each case must be decided on its own facts.

As a general rule, the government must obtain a warrant based on probable cause in order to conduct a search, but there are exceptions to this requirement. **One well-defined exception is the inventory search, which arises under the community caretaking exception to the warrant requirement for seizure of property. Under the community caretaking exception to the warrant requirement for the seizure of property, police officers may impound vehicles that jeopardize public safety and the efficient movement of vehicular traffic.**

The reasonableness of the impoundment of a vehicle under the community caretaking exception to the warrant requirement for the seizure of property depends on whether the impoundment fits within the authority of the police to seize and remove from the streets vehicles impeding traffic or threatening public safety and convenience. **The impoundment of a vehicle serves some community caretaking purpose, under the community caretaking exception to the warrant requirement for the seizure of property, if (1) a vehicle is parked illegally, (2) it poses a safety hazard, or (3) is vulnerable to vandalism or theft.**

Moreover, a community caretaking purpose exists, so as to justify impounding a vehicle under the community caretaking exception to the warrant requirement for the seizure of property, **where a vehicle is blocking parking lot spaces in a manner that could impede emergency services to a building and neither the driver nor any passenger is legally able to move it.** Additionally, **the impoundment of a vehicle is justified under the community caretaking exception to the warrant requirement for the seizure of property where a vehicle is parked in the middle of the street, left in a public parking lot without anyone to retrieve it, or totaled and lying in a ditch.**

An officer cannot reasonably order the impoundment of a vehicle where a vehicle is parked in its owner's driveway, even though the owner drove without a valid driver's license. Furthermore, there is no valid community caretaking purpose justifying the impoundment of a vehicle, pursuant to the community caretaking exception to the warrant requirement for the seizure of property, where a vehicle is legally parked in a residential neighborhood and there is no evidence that it would be susceptible to theft or vandalism.

Once a vehicle has been legally impounded, the police may conduct an inventory search, as long as it conforms to the standard procedures of the local police department. An inventory search of a vehicle is reasonable under the Fourth Amendment because the government's legitimate interest in conducting such a search outweigh the individual's privacy interests in the contents of their car. **Because inventory searches of impounded vehicles are non-criminal in nature, they do not need to be justified by probable cause, which is usually related to criminal investigations and not routine, noncriminal procedures.**

In the context of an inventory search of an individual's impounded vehicle, the individual's privacy interest is protected by routine administrative procedures that limit an officer's discretion in conducting the search. Even if officers have some discretion in conducting an inventory search of an impounded vehicle, the search

remains reasonable so long as the discretion is exercised according to standard criteria and on the basis of something other than suspicion of evidence of criminal activity.

While inventory procedures do not define constitutional rights, they do assist courts in determining whether an inventory search of an impounded vehicle is legitimate, as opposed to pretextual, **because a search that materially deviates from established procedures may raise the inference that it was merely an excuse to rummage for evidence.** For the purposes of the Fourth Amendment's reasonableness test, the issue with respect to an inventory search of an impounded vehicle is whether the inventory search is pretextual, not whether it fails to achieve full compliance with the administrative procedures.

Reasonable police regulations relating to inventory procedures for conducting an inventory search of an impounded vehicle administered in good faith satisfy the Fourth Amendment, even if the police implementation of standardized inventorying procedure is somewhat careless. The failure to complete an inventory form or other comparable administrative errors does not invalidate an inventory search of an impounded vehicle if there is no evidence that the officers were rummaging for evidence. And an otherwise reasonable inventory search of an impounded vehicle is not invalid merely because the police had a mixed motive for the search.

When an inventory search of an impounded vehicle would have occurred in the absence of a motive to search for evidence of a crime, the mere presence of a criminal investigatory motive or dual motive, one valid and one impermissible, does not render an inventory search invalid. So long as the police did not act in bad faith or for the sole purpose of investigation, an inventory search of an impounded vehicle is valid.

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.

In this case, the deputies had an objectively reasonable belief that the defendant's truck was parked illegally, posed a safety hazard, or was vulnerable to vandalism or theft, and thus they had a valid community caretaking purpose under the Fourth Amendment for impounding and inventorying the defendant's truck following the traffic stop. This is because the defendant parked his truck in a private driveway of a home, the homeowner did not know the defendant and wanted the truck off their property. There was no one available to move the truck because the defendant did not have a valid driver's license, had no passengers with him, and he told the deputies he was not from the area where he was stopped and his friend (who purportedly could have retrieved his truck), was not present. Finally, California law authorized impoundment of a vehicle where a driver does not have a valid driver's license.

In Washington, such authorization is found under RCW 46.55.113(2)(h) which states that a police officer may take custody of a vehicle, at their own discretion, and provide for its prompt removal to a place of safety… upon determining that a person is operating a motor vehicle without a valid and, if required, a specially endorsed driver's license or with a license that has been expired for ninety days or more. However, simply not having a valid driver's license does not establish a valid community caretaking purpose that satisfied the Fourth Amendment. **Officers must have an objectively reasonable belief that the vehicle is**

parked illegally, poses a safety hazard, or is vulnerable to vandalism or theft.

In this case, the Court of Appeals found that the District court did not clearly err in finding that the deputies spoke to the owner of the home, who stated he did not want the defendant's truck to remain in his driveway, before conducting an inventory search. In support of the court's conclusion that deputies had a valid community caretaking purpose under the Fourth Amendment for impounding and inventorying the truck, it was not illogical or implausible for the trial court to reject the owner's time estimates at the suppression hearing and to give more credit to the deputies' accounts that they talked to the owner and located the firearm in the truck in just over two minutes, as the conversation with the owner occurred on his front porch near the truck and the firearm was found under the driver's seat.

The deputies' inventory search of the defendant's validly impounded truck was conducted pursuant to a standard policy and was performed in good faith, not solely for the purpose of obtaining evidence of a crime. Thus, the search was reasonable for Fourth Amendment purposes, even though the deputies did not fill out the standard inventory search form completely or perfectly. The deputies substantially complied with the procedures in the sheriff's department's manual by completing each of the four steps of their responsibilities when impounding vehicles, and while they did not list every piece of property in the truck, they also took photographs of property found inside it and completed a police report documenting what they found.

Under the Fourth Amendment's reasonableness standard, the question with respect to the validity of an inventory search of an impounded vehicle is not how an officer or deputy's performance compares with officers in other cases, **but the extent to which noncompliance raises the inference that the officer's sole motive was to obtain evidence of a crime.** Where an inventory search of an impounded vehicle is conducted pursuant to a standard procedure, and there is no evidence that the inventory search was conducted solely for the purpose of finding evidence of a crime, the search does not violate the Fourth Amendment.

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Law Enforcement Digest – December 2022

TOPICS

1. Abandonment
2. Affidavits
3. Deferred Prosecution for DUI
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6. Inventory Searches

CASES & REFERENCES

1. United States v. Fisher 20-10098, 20-10101 (December 21, 2022)
2. Washington v. Gregory 38743-7-III (December 22, 2022)
    a. RCW 46.61.502
    b. RCW 46.61.5055
    c. RCW. 10.05
3. United States v. Anderson 20-50345 (December 29, 2022)
    a. RCW 46.55.113

WA Legal Updates

For further reading, the following training publications are authored by Washington State legal experts and available for additional caselaw review:

- Legal Update for WA Law Enforcement authored by retired Assistant Attorney General, John Wasberg
- **Caselaw Update** by WA Association of Prosecuting Attorneys [2018-2021] | [2022-present]