



## SAN DIEGO COUNTY SHERIFF'S DEPARTMENT

# *LEGAL AFFAIRS*

# *UPDATE*

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### **A suspicionless inventory search does not permit officers to search or to seize items simply because they believe the items "might" be of evidentiary value.**

Mark Johnson had an outstanding warrant for his arrest. Officers stopped him at an intersection and boxed in his car. Johnson parked in the lane of traffic, disrupting the flow of passing cars. Johnson was arrested on the outstanding warrant. Because Johnson's car was blocking traffic and he could not provide contact information for the car's owner, the officers ordered it be towed and impounded. Prior to the tow, the officers conducted an inventory search of the car per department policy. The search revealed a stun gun, flashlight, glass pipe with white residue, jacket, two cellphones, a backpack and a duffel bag all of which the officers seized pending further investigation and placed into evidence. Based on suspicion of criminal activity, the officers subsequently obtained a warrant to search the backpack and cell phones. The search revealed a safe with two bags of methamphetamine, drug-packaging materials, syringes, a digital scale, and text messages regarding drug trafficking. Johnson was indicted federally for possession with intent to distribute. The district court denied Johnson's motion to suppress the evidence found in the car. Johnson appealed the decision and the Ninth Circuit reversed the denial.

According to the Ninth Circuit, "... a suspicionless inventory search does not permit officers to search or to seize items simply because they believe the items might be of evidentiary value." The purpose of an inventory search "must be unrelated to criminal investigation; it must function instead to secure and to protect an arrestee's property (and likewise to protect the police department against fraudulent claims of lost or stolen property)."

Generally, evidence located in compliance with a valid inventory search may be admitted against a criminal defendant. However, the actual motivations of law enforcement officers do matter when conducting administrative searches without individualized suspicion – such as drunk driving checkpoints or vehicular inventory searches. As such, "[a]n administrative search may be invalid where the officer's 'subjective purpose was to find evidence of crime.'" The mere "presence of a criminal investigatory motive," or a "dual motive – one valid, and one impermissible," however, does not render a stop or search invalid. Instead, a court will look to whether the challenged search would have occurred in the absence of an impermissible reason.

Here, the Ninth Circuit found that Johnson prevailed on his argument that the officers used the administrative inventory process not to identify and safeguard his possessions, but merely as a pretext to gather evidence of crime. According to the Ninth Circuit, "the officers themselves *explicitly admitted* that they seized items from the car in an effort to search for evidence of criminal activity." The arrest report, search warrant affidavit, incomplete property receipt, and prosecution's arguments all emphasized that the property was seized for evidentiary purposes instead of being inventoried and secured for safe keeping.

Since the search and seizure of the items was not justified under the inventory search doctrine, and the government did not offer any other justification for seizure, the Ninth Circuit concluded that the motion to suppress evidence in the car should be granted.

### **WHAT THIS MEANS:**

**The motive for an inventory search must be to secure and to protect an arrestee's property.**