



Roll Call Reporter

LEGAL UPDATE FOR MARYLAND LAW ENFORCEMENT OFFICERS

October 2017

Inventory Searches, Investigatory Motive, and Standard Departmental Procedure

Question: If an inventory list of a vehicle's contents omits some of the items found, is the inventory search invalidated?

Answer: No. An inventory list does not need to include the itemization of every object found in the vehicle. Generally, items of value are listed by the searching officer with non-valuable items captured as "catch-alls." The important thing is that the inventorying of the vehicle be performed pursuant to standard departmental procedure.

Case: *State of Maryland v. Daniel A. Paynter*
Court of Special Appeals of Maryland
Decided September 28, 2017

The Traffic Stop, the Inventory Search, and the Inventory List

On December 13, 2016, City of Laurel Police Officer Donald Rohsner was on routine traffic duty, using radar to look for speeding violations in the 800 block of Talbot Avenue in Laurel. He observed a white 2014 Chevrolet Impala traveling at a speed of 50 in a clearly marked 30 miles per hour zone. He initiated a traffic stop of the vehicle and notified police dispatch of the stop. The driver identified himself as Daniel A. Paynter. Officer Rohsner ran Paynter's information through the Police

Department's communication system and was informed that Paynter's driver's license was "suspended." When the officer checked the vehicle's registration status, he learned that the tags were suspended through MVA and that there was a "pick-up" order on them. The "pick-up" order meant that the officer had to remove the tags, secure them, and turn them over to MVA. During the stop, Officer Rohsner received a dispatch that Paynter was "10-0," meaning that he was possibly armed. For that reason, Officer Nicolas Cahill was sent to the scene.

Based on the information given to Officer Rohsner, the officers impounded the vehicle and conducted an inventory search. During the inventory, the officers searched the glove compartment, central console area, and trunk. They found a blue iPhone in the center console, seven Mac computers in the trunk, and 51 grams of marijuana in the car. Officer Rohsner's body camera, which was activated during the inventory search, also showed three pairs of tennis shoes, a spare tire, a jack, and jumper cables in the car. These items, however, were not listed as part of the inventory form (the "tow report form").

The Charges, The Motion to Suppress, and the Ruling of the Circuit Court

Paynter was indicted for possession of marijuana with the intent to distribute and related offenses. He moved to have the physical evidence suppressed.

At the hearing, the officers testified concerning their department's written established procedure with respect to inventories, and the department's seven-page policy was admitted into evidence. The officers explained that the purpose of an inventory search was to document items found in the vehicle, especially items of value. During inventories, the officers testified that they routinely search glove compartments, central console areas, and trunks, areas where items of value might be found. Items of value are not removed when they are found; they remain in the vehicle during its impoundment. During the hearing, the prosecutor also admitted the vehicle tow report form into evidence.

Paynter's lawyer argued to the court that, because the items recorded on Officer Rohsner's body camera were not listed on the vehicle tow report, the inventory was flawed and incomplete, and thus violated the Fourth Amendment. Surprisingly, the circuit judge embraced Paynter's argument and granted the motion to suppress. The State appealed.

The Appeal and the Decision of the Court of Special Appeals

In no uncertain terms, the Court of Special Appeals reversed the ruling of the circuit court. The court first turned to the pivotal Supreme Court decision in *South Dakota v. Opperman* (1976), in which the court upheld the validity of an inventory "search." The Supreme Court recognized that taking inventory of an impounded vehicle protects the owner's property while the vehicle is in police custody, protects police against claims or disputes over lost or stolen property, and protects police from potential dangers that may be in the vehicle. These "caretaking" functions make an inventory "search" more of a community caretaking procedure as opposed to an investigative search for evidence. Further, the Supreme Court held that there are only two requirements for an inventory search: (1) the police must be lawfully entitled to impound or otherwise exert custody over the vehicle; and (2) the inventorying must be conducted pursuant to standard police procedure. Nothing in the cases

prohibits the exercise of police discretion in inventorying a vehicle, so long as that discretion is exercised according to the department's standard procedure.

In this case, the officers had ample legal justification to impound Paynter's vehicle. Further, their testimony at the suppression hearing and the departmental policies admitted into evidence established that the inventorying process was carried out pursuant to standard departmental procedure. The omission of non-valuable items from the tow list had no bearing on the validity of the inventory search. Accordingly, the evidence recovered from the car should not have been suppressed. Paynter would have to stand trial for the crimes charged.

Note: When it comes to inventory searches, the Fourth Amendment prohibits police officers from disguising warrantless, investigative searches as inventory searches. This does not mean that an officer can have no expectation of finding criminal evidence during an inventory search. Even an investigative motive will not disqualify an inventory search that is performed under standardized procedures for legitimate custodial purposes. Finally, as to locked or closed containers in vehicles to be inventoried, they can be searched *if such searches are authorized by departmental policy and sufficient guidelines are provided*. All officers must be intimately familiar with their department's inventory search policies and procedures.

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