

U.S. v. Torres

(9th Cir. 2016) __ F.3d __ [2016 WL 3770517]

Issues

(1) Did officers have sufficient reason to impound a vehicle and conduct an inventory search? (2) Was the search excessive in its scope?

Facts

Las Vegas Metropolitan Police (LVMP) officers were dispatched to a suspected domestic violence incident inside a moving vehicle. The reporting person was an anonymous 911 caller who reported seeing a man driving a vehicle while pulling the hair of a female passenger. The caller said the driver had just pulled into the parking lot of a certain apartment complex and the caller provided a description of the car.

The first officer on the scene saw a car matching that description in the parking lot, and it was parked in a manner that would have impeded emergency vehicles from entering the complex and was also blocking two vehicles that were parked in stalls. A man was sitting on the driver's side of the front seat, and a woman was sitting on the passenger's side. The officer walked up to the driver's side and spoke with the man, later identified as Jimmy Torres. The officer smelled alcohol on Torres' breath and subsequently arrested him after he failed two field sobriety tests. The officer was advised that Torres was a convicted felon.

For the following reasons, the officer decided to impound the vehicle: (1) Torres was going to jail, (2) his car was blocking emergency vehicles and other parked cars, (3) the passenger did not have a driver's license, and (4) neither occupant lived in the apartment complex. LVMP regulations required that officers conduct a vehicle inventory search of all impounded vehicles including the engine, battery, and radiator. Accordingly, the officer searched the car's engine compartment, unlatched the air filter, and discovered a semi-automatic handgun. After Torres' motion to suppress the handgun was suppressed, he pled guilty to federal weapons charges.

Discussion

The impound and search: The requirements for impounding and searching a vehicle are fairly standard. First, it must have been reasonably necessary to tow the vehicle under the circumstances, and (2) the search must have been conducted in accordance with standard procedures.

THE IMPOUND: LVMP regulations require that officers impound a vehicle if, among other things, (1) the registered owner is not in the vehicle and cannot respond within 30 minutes or so, and (2) there is no licensed driver in the car and it is parked illegally. These requirements were met because neither Torres nor his passenger were the registered owner of the vehicle, the passenger did not have a valid license, and the vehicle was not legally parked. In addition, the car's registration had lapsed, the car's California registration had also lapsed, and, said the court, "the evidence suggests that there was no information available to the officers on the scene that clearly identified [the passenger] as the registered owner." Accordingly, the court ruled the impound was lawful.

THE SEARCH: The court summarily ruled that the search was lawful because it is settled that “[o]nce a vehicle has been legally impounded, the police may conduct an inventory search without a warrant.”

SCOPE OF THE SEARCH: It is also settled that officers may search any part of the vehicle that they department regulations required or permitted them to search. As the California Supreme Court explained, “the record must at least indicate that police were following some ‘standardized criteria’ or ‘established routine’ when they elected to open the containers.”¹ Per LVMP regulations, officers are required to search, among other things, “all containers.” Although an air filter is not a common container, the court ruled search was reasonable in its scope because the departmental policy “plainly contemplates that inventory searches of impounded vehicles will encompass closed spaces.” Furthermore, the court ruled that the search of the air filter was lawful because the officers testified that “their standard practice when inspecting the engine cabin is to search the air filter compartment” and because the “air filter compartment was obviously large enough to hold a firearm.”

Accordingly, the court ruled that impoundment and search were lawful because they were conducted in accordance with LVMP policy and the officers’ own established routine.² POV

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¹ *People v. Williams* (1999) 20 Cal.4th 119, 127.

² See *Florida v. Wells* (1990) 495 U.S. 1, 4 [search must be conducted in accordance with “standardized criteria or established routine”].