

Anoka County Attorney Training Update

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April 11, 2016



“When towing and impounding a stopped motor vehicle, as long as I follow my department’s standardized policy, anything found during an inventory search before that vehicle is towed is admissible. Correct?”

Not necessarily.

Inventory Searches of Vehicles – Reasonableness Required

An inventory search of a vehicle prior to the tow and impoundment is a well-defined exception to the warrant requirement. Following standard department procedure when conducting a tow and impoundment of a vehicle is one of the requirements of a valid inventory search.¹ However, just following standard procedure may not be sufficient. The actions of the police must also be reasonable under the circumstances.



The police, in the interests of public safety, have the authority to remove and impound from the streets vehicles that are impeding traffic or threatening public safety and convenience. Additionally, the police may impound a vehicle to protect the vehicle from theft and to protect the police from claims against law enforcement for damage or loss.



In *State v. Rohde*², the Minnesota Supreme Court examined what was “reasonable” when impounding a vehicle. Rohde was the driver of a vehicle that was stopped on a residential street for a signaling violation. Rohde’s driver’s license had been revoked and the police learned the vehicle was not insured. Rohde was not placed under arrest for the driving offenses, but she was secured in a squad car. Rohde was allowed to contact a parent about making arrangements for a ride from the scene. Pursuant to a department policy requiring the impoundment of uninsured vehicles stopped on a public road, the police arranged for the towing and impoundment of Rohde’s vehicle. An inventory search of the vehicle was conducted prior to the tow. Two small bags

¹ *South Dakota v. Opperman*, 428 U.S. 364, 369, 96 S. Ct. 3092, 49 L.Ed. 2d 1000 (1976); *State v. Volkman*, 675 N.W.2d 377 (Minn. 2004).

² *State v. Rohde*, 852 N.W.2d 260 (Minn. 2014).

of methamphetamine and two glass pipes were found in a purse in the vehicle during the inventory search. The defendant was charged with Controlled Substance Crime in the Fifth Degree and Possession of Drug Paraphernalia. Rohde was convicted of both counts and challenged the search of her vehicle.



When making their decision, the Minnesota Supreme Court focused on the reasonableness of the impoundment of the vehicle as it was clear the police had followed their department's standardized inventory procedure.

In the Rohde case, the Court found the impoundment of the vehicle to be unreasonable. As to the interests of public safety, the Court noted that following the stop, Rohde's vehicle was legally parked on a residential street. It was not interfering with traffic and it was not blocking access to property. Since the vehicle was not posing a threat to public safety, the impoundment could not be justified on the basis of public safety and convenience.

But, the police may also may impound a vehicle to protect the vehicle from theft and to protect the police from claims against law enforcement for damage or loss. In the Rohde case, since Rohde was not arrested and was to remain at the scene with her vehicle, she never relinquished control of her vehicle. As a result, Rohde was responsible for whatever happened to the vehicle, not the police. It was never necessary for the police to take control of the vehicle; thus, the police had no interest in protecting the vehicle from theft or other claims.

Even though the officers may have followed their department's impoundment and tow policy to the letter, their actions did not justify the impoundment of the vehicle and the subsequent search was found to be illegal.



QUESTION:

Rohde was allowed to contact a parent and arrange for a ride from the scene. Are officers required to offer stopped drivers the opportunity to make their own arrangements for the care and custody of a stopped vehicle?



ANSWER:

No. The police are required to allow a driver to make reasonable alternative arrangements for the care and custody of a vehicle when the driver is able to make those arrangements, **but only if the driver first makes a specific request to do so.** The police are under no obligation to make the offer.³

³ *State v. Gauster*, 752 N.W.2d 496, 508 (Minn. 2008).

Question:

If Rohde had been arrested and she did not make arrangements for someone else to take care of the vehicle, the result in this case might have been different. Could have Rohde been arrested for misdemeanor driving after revocation or misdemeanor no insurance?

Answer:

For misdemeanor offenses, the defendant must be released and issued a citation unless it reasonably appears: (1) the person must be detained to prevent bodily injury to that person or another; (2) further criminal conduct will occur; or (3) a substantial likelihood exists that the person will not respond to a citation.⁴

Under these facts, unless the defendant had a substantial track record of not responding to citations or she made statements about not appearing in court, there appears to be no basis for an arrest for either misdemeanor offense.

Practice Tip

When towing a vehicle, include in your report the reason why the vehicle is being towed. The parked vehicle was a safety hazard, impeding traffic, blocking access to property, etc. Or, if none of these apply, note if there were any arrangements for the care and control of the vehicle.



⁴ Minn. R. Crim. P. 6.01, Subd. 1(a)(1)-(3); *State v. Brown*, 345 N.W.2d 233, 237 (Minn. 1984).

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