California Peace Officers' Association

1455 Response Road, Suite 190, Sacramento, CA 95815
(916) 263-0541 Fax: (916) 263-6090
E-mail: cpoa@cpoa.org | web site: www.cpoa.org

CASE ALERT MEMORANDUM

JANUARY 19, 2006

Prepared by the firm of

JONES & MAYER

3777 North Harbor Boulevard
Fullerton, CA 92835
(714) 446-1400 Fax: (714) 446-1448

CLIENT ALERT MEMORANDUM

To: *All Police Chiefs & Sheriffs*

From: *Martin J. Mayer*

IMPOUNDING VEHICLES REVISITED

The Ninth Circuit U. S. Court of Appeals recently ruled, in the case of Miranda v. City of Cornelius, 429 F.3d 858, that impounding vehicles, when the only charge is driving without a license, was unconstitutional if there is no justification under the "community caretaker" doctrine (see Jones & Mayer Client Alert Memorandum Vol. 21 No. 1). The Court held that a city ordinance, authorized by a state statute, which allowed an officer to tow a vehicle merely because the driver was unlicensed, was an unreasonable seizure absent a showing that the vehicle was a threat to public safety. The Court stated that "a seizure conducted without a warrant is per se unreasonable under the Fourth Amendment - subject only to a few specifically established and well delineated exceptions."

Citing to a United States Supreme Court decision, Atwater v. City of Lago Vista, 532 U.S. 318 (2001), the Ninth Circuit stated that one of the exceptions is when an officer is making a warrantless arrest because the officer had probable cause to believe that the arrested person violated a criminal statute. However, although the law in California, Vehicle Code section 12500, makes driving without a license a misdemeanor (although it can be prosecuted as an infraction, as well), Vehicle Code section 12801.5 prohibits the arrest of a motorist over the age of 16, "...solely on the belief that the person is an unlicensed driver." Bingham v. City of Manhattan Beach, 329 F.3d 723 (2003). As such, the justification for seizing the vehicle, based on a lawful arrest, would not be present if the driver was over the age of 16, unless the exception of the "community caretaker doctrine" was present.

As stated in the Miranda case, the Oregon statute allowed the impounding of a vehicle when one was cited merely for being an unlicensed driver, even though the violation was an infraction and not a crime. Nonetheless, the Court ruled that it was an unjustified seizure, explaining that "a driver's arrest, or citation for a non-criminal traffic violation as was in this case, is not relevant except insofar as it affects the driver's ability to remove the vehicle from a location at which it jeopardizes the public safety or is at a risk of loss. But no such public safety concern is implicated by the facts of this case involving a vehicle parked in the driveway of an owner who has a valid license."

"The police's authority to search and seize property when acting in its role as 'community caretaker' has a different source than its authority to search and seize property to investigate criminal activity. The reasonableness of a seizure under the 'caretaker' function differs from the bright-line rule concerning probable cause in the criminal context."

The Court goes on to state that, "(i)n their 'community caretaker' function, police officers may impound vehicles that 'jeopardize public safety and the efficient movement of vehicular traffic'." Although detaining a vehicle following a traffic stop is justified, "...the impoundment of a legally parked vehicle is not necessary to enforce traffic regulations and requires some additional justification, as is typically demonstrated by the community caretaking purpose." Just because impounding the vehicle is done pursuant to the authority of a local or state law, "...does not, in and of itself, determine the reasonableness of the seizure under the Fourth Amendment...."

The Court also rejected the argument that impounding the vehicle deterred the driver "...from repeating this illegal activity in the future." Citing to Bennis v. Michigan, 516 U.S. 442 (1996), the Court stated that "(w)hile the Supreme Court has accepted a deterrence rationale for civil forfeitures of vehicles that were used for criminal activity, the deterrence rationale is incompatible with the principles of the community caretaking doctrine." Unlike in civil forfeitures, where the seizure of property penalizes someone who has been convicted of a crime, the purpose of the community caretaking function is to remove vehicles that are presently impeding traffic or creating a hazard.

The Bennis case would appear to reinforce the authority to impound a vehicle when a driver is cited under Vehicle Code section 14602, since that person has already been convicted of a crime and is driving on a suspended or revoked licensed - which is very different, in the Court's view, than merely driving without a current, valid, license.

HOW THIS AFFECTS YOUR AGENCY:

This decision does appear to impact upon an officer's authority to have a vehicle towed, if the only charge against the driver is driving without a license; the vehicle is not creating a hazard; and/or a duly licensed driver can safely move it from the location. However, it does not interfere with impounding a car following the arrest of a person for driving on a suspended and/or revoked license.

Miranda v. City of Cornelius did not address California's Vehicle Code, but it seems likely that litigation would arise, as a result of the decision, if vehicles are impounded when the only charge is driving without a license and the impound cannot be justified under the "community caretaking" doctrine.

Furthermore, because this case has created significant concerns for law enforcement in California, it is more imperative than ever that each agency receive advice and guidance from its own legal counsel on how to proceed.

Should you wish to discuss this matter in greater detail, please feel free to contact me at 714-446-1400 or e-mail at mjm@jones-mayer.com.