IACP National Law Enforcement Policy Center

Motor Vehicle Inventories

Concepts and Issues Paper

February 1995

I. INTRODUCTION

A. Purpose of Document

This paper is designed to accompany the Model Motor Vehicle Inventory Policy established by the IACP National Law Enforcement Policy Center. This paper provides essential background material and supporting documentation to provide greater understanding of the developmental philosophy and implementation requirements of the model policy. This material will be of value to law enforcement executives in their efforts to tailor the model to the requirements and circumstances of their communities and their law enforcement agencies.

B. Background

A motor vehicle inventory is a procedure whereby vehicles that have been seized or impounded may be examined to determine their contents. In a vehicle inventory, all areas of a vehicle such as the passenger compartment, glove compartment and trunk are inspected and a list made of all personal property found therein. If circumstances justify, property found within the vehicle may be removed to another location for safekeeping or, if the inventory discloses contraband or other criminal evidence, such items may be seized and retained for use in connection with a subsequent criminal investigation.

A motor vehicle inventory must be carried out pursuant to established departmental policy. Inventories are performed for the purpose of protection rather than for the purpose of gathering evidence. Therefore, no probable cause or search warrant is required.

It should be emphasized that a motor vehicle inventory is an *administrative* measure. Inventories are not "searches" as the common reference to these procedures indicate. They are merely "police care taking procedures designed to secure and protect vehicles and their contents within police custody."[1] As will be noted, this distinction is very important, and failure to understand or observe it can have serious consequences. Thus, an inventory is not conducted for the purpose of discovering evidence. Rather, it is a routine procedure performed for the purpose of:

- Determining whether there is any personal property in the vehicle that needs to be protected from loss or damage while the car is impounded;
- Protecting the department against claims that property was lost, stolen, or damaged while the vehicle was in departmental custody; and
- Protecting departmental personnel (and the public) against injury or damage due to toxic, explosive, flammable, or otherwise hazardous substances that may be contained in the vehicle.[2]

Although it has been recognized that inventories involve some intrusion into the privacy of the individual, the courts have concluded that the legitimate governmental interests involved outweigh the privacy considerations.[3] Because the purpose of the inventory is administrative in nature, and because the inventory is not conducted to further a criminal investigation, the inventory may be conducted without a warrant and without probable cause to believe that contraband or other evidence will be found in the vehicle.[4] Conversely, the inventory must not be "a pretext concealing an investigatory police motive."[5] If the true motive behind the inventory is investigatory, that is, if the inventory is conducted for the purpose of discovering criminal evidence, it will be invalid as an unreasonable search under the Fourth Amendment. For the foregoing reasons, the term "inventory" rather than the phrase "inventory search" is preferred, since technically the inventory is not a search within the meaning of the Fourth Amendement, but rather an administrative procedure designed to serve the non-investigative purposes set forth above.

II. PROCEDURES

A. Legal Authority to Conduct an Inventory

The legal authority of the police to conduct an inventory of an impounded vehicle is usually traced to the decisions of the U.S. Supreme Court in *Harris v. United States*[6] *and Cooper v.California.*[7] These cases empowered police officers to inventory the contents of vehicles impounded by their departments.

A publication of the IACP National Law Enforcement Policy Center
515 N. Washington St., Alexandria, VA 22314-2357

The court held in *Harris* v. *United States* that the authority to inventory depends upon two basic requirements. First the vehicle must be lawfully in police custody at the time of the inventory, and second, officers conducting the inventory must be acting pursuant to an established duty to protect the property found within the vehicle.[8] The authority to inventory a vehicle's contents exists only if the vehicle has been seized or impounded before the inventory occurs. If the vehicle has not been impounded, no inventory may be conducted.[9] The Supreme Court has said that if the vehicle has not been impounded, but has merely been removed from the streets by police as a convenience to the owner, officers may not conduct an inventory, and the vehicle may not be examined without a warrant.[10]

Thus, before a valid inventory may be conducted, the vehicle must actually have been seized or impounded under some provision of state law or local ordinance. Note that it does not suffice that the police have the right to impound the vehicle; they must actually have impounded it before the inventory begins. Otherwise, the inventory is invalid.[11] Note further, however, that the act of seizure or impoundment may occur before the vehicle is actually moved to the impoundment lot. Thus, the vehicle may be "seized" or "impounded" even though it is still sitting on the street. Therefore, a valid inventory may be conducted even though the vehicle has not yet been removed from the point of seizure.[12] In summary, before an inventory can be conducted, the vehicle must actually have been seized or impounded, and the seizure or impoundment must have been in compliance with the law. If the vehicle was seized unlawfully, or if the inventory was conducted prior to the seizure, any subsequent inventory is itself unlawful, and any evidence discovered during the inventory will be inadmis-sible.[13]

B. Departmental Policy Requirement

To be valid, an inventory must be conducted pursuant to "standardized criteria,"[14] and, more specifically, guidelines set forth in an established departmental policy. ***A department's failure to have an established policy regarding inventories will render any evidence discovered during any inventory by that department's personnel inadmissible in a court of law.***[15] Requiring an established inventory policy mandates that the inventory policy be written. In some instances, unwritten inventory policies have been found sufficient.[16] But, unless the policy is in writing, it will be very difficult, if not impossible, to convince most courts that the department's policy was truly "established" and that its provisions were sufficiently standardized to meet the requirements of the Supreme Court. *Inventory policies must be in writing.* In addition, officers conducting an inventory must *follow* the procedures set forth in the established policy. Deviation from departmental guidelines may invalidate the inventory.[17]

C. Scope of the Inventory

A lawful inventory may extend to all areas of the vehicle in which personal property or hazardous materials might reasonably be found. Thus, the passenger compartment, the glove compartment, and the trunk may all be examined.[18] An inventory may not extend to areas of the vehicle that cannot reasonably be expected to contain items of personal property. This is a corollary of the "elephant in a match box" rule that applies to evidentiary searches and seizures. Thus, for example, it was held that it was improper for the officer to extend the inventory to include an examination of the space inside a vehicle's door panel. The court noted that this extension of the examination was not standard police inventory procedure and did not serve to protect the contents of the car.[19]

The issue of whether containers can be opened during an inventory has been a point of confusion among many law enforcement agencies. According to findings in *Bertine,* the very scope of an agency policy can limit the breadth of container examinations. That is, the failure of a policy to specify that a container search is permissble will make evidence obtained in a container search during inventory inadmissable. Under that ruling, some police agencies were left with the impression that their policy had to dictate that either all containers be opened or that no containers be opened. However, in the later *Wells* ruling the U.S. Supreme Court held that reasonable discretion in motor vehicle inventory policies is permissible with respect to container searches.[16] "There is no reason" noted the court, "to insist that [inventory searches] be conducted in a totally mechanical 'all or nothing' fashion." The court reemphasized that regulations for the opening of containers found during inventories are essential to limit officer discretion.

In conclusion however, the court noted that "while policies of opening all containers or of opening no containers are unquestionably permissible, it would be equally permissible, for example, to allow the opening of closed containers whose contents officers determine they are unable to ascertain from examining the containers' exteriors. The allowance of the exercise of judgment based on concerns related to the purposes of an inventory search does not violate the Fourth Amendment."

In the *Wells* case above, highway patrol officers made an arrest of the subject for driving under the influence and had impounded the suspect's vehicle. At the impoundment facility, under troopers' direction, employees forced open a locked suitcase found in the trunk and discovered a garbage bag containing marijuana. The U.S. Supreme Court upheld suppression of this evidence but only because the highway patrol policy on motor vehicle inventories did not address the issue of opening closed containers.

In short, closed and/or locked containers discovered during a vehicle inventory may be opened and their contents inventoried as a part of the overall inventory procedure, *provided that the department's inventory policy specifically provides for the opening of such containers.* If the department's policy does not authorize the opening of closed or locked containers during an inventory, these containers may not be opened without a search warrant or exigent circumstances.[20]

Although the department's inventory policy can authorize the opening of containers, the policy may nevertheless give the officer discretion to open or not to open such containers. The existence of such discretion will not render the inventory of the containers invalid.[21] The policy may give officers "latitude to determine whether a particular container should or should not be opened in light of the nature of the search and the characteristics of the container itself."[22]

As long as the inventory is conducted in accordance with established departmental policy, and is not undertaken solely for investigative purposes, and provided further that the departmental inventory policy expressly authorizes the opening of containers, the fact that the officer may have some subjective suspicion that a particular container holds criminal evidence is irrelevant.[23]

Nevertheless, the model policy has taken a more conservative position on this matter by directing that, in the absence of a key or lock combination with which to gain entry, closed and locked containers should not be forced open. As an alternative to forced entry, such containers may be logged on the inventory report as locked containers with undetermined contents and efforts made to properly secure them. However, forced entry should remain an option particularly where circumstances indicate that contents could present a safety hazard or when highly valuable contents must be removed for safekeeping.

D. Discovery of Criminal Evidence During an Inventory

If criminal evidence is discovered during the course of a valid inventory, the evidence may be admissible in a subsequent criminal proceeding.[24] The fact that the inventory was conducted without a warrant and without probable cause is irrelevant, and the exclusionary rule of *Mapp v. Ohio*[25] *is* inapplicable, because inventories are an administrative procedure, not searches governed by the requirements of the Fourth Amendment. And, under the "plain view" doctrine, evidence discovered during a lawful administrative procedure is admissible in a court of law. [26]

Contraband or other evidence discovered during an inventory is admissible in a subsequent criminal action only if the inventory procedure was itself valid. If the requirements for a valid inventory have not been met, the evidence will be inadmissible. The inventory procedure may not be used as a pretext for an impermissible investigatory search.[27] If the inventory is pretextual, that is, if it is conducted not for administrative reasons but for the sole purpose of discovering criminal evidence, it will be invalid. As the Supreme Court of the United States has put it, "an inventory search must not be a ruse for a general rummaging in order to discover incriminating evidence."[28] Such "general rummaging" is not an inventory at all, but an unreasonable search prohibited by the Fourth Amendment. Any evidence discovered during a pretextual inventory will be inadmissible in a court of law.

Inventories will be upheld even though the officer conducting the inventory was looking for a specific item, provided that the motive for the inventory is protecting persons and property and not a pretext for discovering criminal evidence.[29] Notice, however, that the inventory is a sham, and therefore invalid, only if the *sole* motive is investigatory. If the inventory is being conducted for administrative purposes in accordance with departmental policy, the fact that the officers suspected that the vehicle was involved in criminal activity, and/or that evidence of a crime might be present in a vehicle, will not taint the inventory procedure.

Again, however, the inventory will remain untainted despite the presence of particularized suspicion of criminal activity or the presence of criminal evidence only if the inventory is conducted under standardized departmental criteria, and only if it is not performed solely for the purpose of discovering criminal evidence.[30]

E. When is Impoundment Justified?

There are numerous circumstances under which vehicles may be lawfully impounded, and state law varies on this point. Usually, the impoundment follows the arrest of the driver for some offense. For example, in the leading case of *Colorado v. Bertine,*[31] the defendant's car was impounded after the defendant had been stopped and arrested for driving under the influence.

Some of the earlier Supreme Court cases suggest that removing the vehicle as a convenience after an arrest for a minor violation may not suffice to justify an inventory.[32] However, more recent cases indicate that even a minor violation will justify impoundment. In *South Dakota v. Opperman*[33] the Supreme Court stated that "in the interests of public safety and as part of what the Court has called community care taking functions automobiles are frequently taken into police custody. Vehicle accidents present one such occasion."[34] The Supreme Court further observed in *Opperman* that police "will also frequently remove and impound automobiles that violate parking ordinances and that thereby jeopardize both the public safety and the efficient movement of vehicular traffic."[35] The Supreme Court has also said that the authority of police to seize and remove from the streets any vehicles impeding traffic or otherwise threatening public safety and convenience is "unchallenged."[36]

Lower federal courts have made similar pronouncements. For example, in *United States v. Rodriguez-Morales,*[37] the court observed that impoundment is justified "when a motor vehicle is left without a licensed driver in the course of a lawful highway stop. Seizure for forfeiture purposes also justifies an inventory."[38] It appears that in all of these situations impoundment is a proper basis for a subsequent inventory.

Some agencies, where practical and feasible, provide vehicle owners or operators with the opportunity to remove valuables from a vehicle prior to impoundment or to have the vehicle removed to another location in lieu of impoundment. However, it is not incumbent upon agencies that they provide these options even if it is possible for them to do so. The U.S. Supreme Court in *Bertine* reaffirmed its earlier finding that the "reasonableness of any particular governmental activity does not necessarily or invariably turn on the existence of alternative 'less intrusive' means." The Court concluded that "police are not required to provide defendants with an opportunity to make alternative arrangements for the safekeeping of their property."

In the Court's view, if the vehicle has been lawfully impounded in accordance with an established departmental policy, the fact that other methods of securing the vehicle were available will not invalidate either the impoundment or the inventory. Even though in hindsight a court might determine that there were other, less intrusive methods of accomplishing the purpose, the inventory is valid as long as the officers acted in accordance with "reasonable police

regulations relating to inventory procedures administered in good faith . . ,"[39]

Although many impoundments follow a vehicle stop, the fact that the vehicle is legally parked at the time that the officers arrive does not, by itself, preclude impoundment if other grounds exist.[40]

In addition, the seized vehicle does not necessarily have to be removed to the impoundment lot before the inventory is performed. Officers may conduct the inventory at the point of seizure, such as on the street or beside the highway.[41] However, this is true only if the vehicle has first been taken into police custody. The vehicle must be "seized" even though it has not been moved. Furthermore, *an on-the-spot inventory will be valid only if departmental policy specifically permits inventories to be conducted at the point of* seizure.[42]

F. Discretion to Impound and Inventory

As noted earlier, in order for an inventory to be valid, and in order for evidence found during an inventory to be admissible, the department must have an established inventory policy. Some lower courts have taken the position that, to be valid, an inventory policy must require officers to impound the vehicle in question.[43] Such a rule would leave nothing to the discretion of the officer. However, the Supreme Court of the United States has made it clear that an inventory policy may give officers discretion without invalidating the policy.[44] Thus, the policy may (and indeed should) give the officer discretion as to whether or not to impound a vehicle.[45]

Officers may also be given discretion as to whether or not to search the vehicle at the point of seizure.[46] And, as noted earlier, the policy may give the officer discretion as to whether or not to open containers found in the vehicle.[47]

However, the officer's discretion in these matters should not be unlimited. If the policy provides no guidelines upon which the officer may base the decision to impound or not to impound, to inventory or not to inventory, or to open containers or not to open containers, the policy is invalid.[48] Therefore, the policy should set forth criteria upon which the officer may base these decisions.

As long as there is an established departmental policy that provides guidelines sufficient to prevent officers from having unbridled discretion as to when and how to conduct an inventory, the policy--and the inventory--should be upheld.[49]

Endnotes

[1] *Colorado* v. *Bertine,* 469 U.S. 367, 372 (1987).

[2] *In South Dakota* v. *Opperman,* 428 U.S. 364 (1976), the U.S. Supreme Court stated that the inventory concept was developed "in response to three distinct needs: (1) the protection of the owner's property ...(2) the protection of the police against claims or disputes over lost or stolen property . . . and (3) the protection of the police from potential danger." 428 U.S. 364, 369. This formulation has been followed by many lower courts. *See e.g. United States* v. *Wanless,* 882 F.2d 1459 (9th Cir. 1989); *United States* v. *Maier,* 691 F.2d 421 (8th Cir. 1982). In *Illinois* v. *Lafayette,* 462 U.S. 640 (1983), the Supreme Court further justified the conduct of an inventory on the grounds that inventories may help to prevent improper police practices, such as the careless handling or theft of property, and facilitate the safekeeping of dangerous instrumentalities. The Court also noted that in the case of inventories of the effects of an arrestee, the inventory may facilitate identification of the person arrested.

[3] *South Dakota* v. *Opperman,* 428 U.S. 364 (1976); *Illinois* v. *Lafayette,* 462 U.S. 640 (1983); *United Statcs* v. *Velarde,* 903 F.2d 1163 (7th Cir. 1990).

[4] *South Dakota* v. *Opperman,* 428 U.S. 364 (1976).

[5] *South Dakota* v. *Opperman,* 428 U.S. 364, 376 (1976).

[6] *Harris* v. *United States,* 390 U.S. 234 (1968).

[7] *Cooper* v. *California,* 386 U.S. 58 (1967).

[8] *Harris* v. *United* States, 390 U.S. 234 (1968).

[9] *See e.g. United States* v. *Jenkins,* 876 F.2d 1085 (2d Cir. 1989).

[10] *Dyke* v. *Taylor Implement Mfg. Corp.,* 391 U.S. 216 (1968); *Preston* v. *United States,* 376 U.S. 364 (1964).

[11] *New Jersey* v. *Hill,* 557 A.2d 322 (N.J. Sup. Ct. 1989).

[12] *Colorado* v. *Bertine,* 479 U.S. 367 (1987).

[13] *South Dakota* v. *Opperman,* 428 U.S. 364 (1976); *Harris* v. *United States,* 390 U.S. 234 (1968); *Cooper* v. *California,* 386 U.S. 58 (1967). *See New Jersey* v. *Hill* 557 A.2d 322 (N.J. Sup. Ct.1989).

[14] *Illinois* v. *Lafayette,* 462 U.S. 640 (1983).

[15] *Florida* v. *Wells,* 495 U.S. 1(1990). Many lower courts have made statements to the same effect. *See, e.g. United States* v. *Wanless,* 882 F.2d 1459 (9th Cir. 1989).

[16] *See e.g., United States* v. *Mancera-Londono,* (oral DEA policy regarding inventory of seized rental vehicles was "sufficiently standardized" to be acceptable).

[17] *See United States* v. *Williams,* 936 F.2d 1243 (11th Cir. 1991); *United States* v. *Johnson,* 936 F.2d 1082 (9th Cir. 1991).

[18] *See e.g. United States* v. *Johnson,* 815 F.2d 309 (5th Cir. 1987) (inventory of vehicle trunk).

[19] *United States* v. *Lugo,* 978 F.2d 631 (10th Cir. 1992)

[20] *See Colorado* v. *Bertine,* 479 U.S. 367 (1987) (officer opened knapsack found in seized vehicle); *Florida* v. *Wells,* 495 U.S. 1 (1990). In *Wells* the officer conducting the inventory opened a locked suitcase and discovered marijuana inside. The evidence was suppressed because the department lacked an established inventory policy. The Supreme Court indicated that had such a policy been in existence, the opening of the locked suitcase would have been proper and the evidence admissible. *See also United States* v. *Gallo,* 927 F.2d 815 (5th Cir. 1991) (departmental policy must regulate the opening of containers to prevent "general rummaging" by officers during inventory searches).

[21] *Colorado* v. *Bertine,* 479 U.S 367 (1987).

[22] *Florida* v. *Wells,* 495 U.S. 1 (1990).

[23] *United States* v. *Trullo,* 790 F.2d 205 (1st Cir. 1986).

[24] *See e.g., Harris* v. *United States,* 390 U.S. 234 (1968); *Colorado* v. *Bertine,* 479 U.S. 367 (1987).

[25] *Mapp* v. *Ohio,* 376 U.S. 643 (1961).

[26] The "plain view" doctrine permits the seizure of contraband or other items of evidence which are discovered by an officer during the course of some other police activity. In order for the plain view doctrine to apply, the officer must have a lawful right to be where the items may be viewed, and the evidentiary nature of the items must be immediately apparent to the officer at first sight. At one time is was held that plain view applied only if the evidence was inadvertently discovered. *See Coolidge* v. *New Hampshire,* 403 U.S. 443 (1971). However, this is no longer the law, and the fact that the officer suspected that evidence might be found in plain view will not invalidate the seizure. *See Florida* v. *Wells,* 495 U.S. 1 (1990); *Horton* v. *California,* 496 U.S. 128 (1990).

[27] *South Dakota* v. *Opperman,* 428 U.S. 364 (1976); *United States* v. *Laing,* 708 F.2d 1568 (11th Cir. 1983). *See also United States* v. *Johnson,* 820 F.2d 1065 (9th Cir. 1987).

[28] *Florida* v. *Wells,* 495 U.S. 1, 4 (1990).

[29] *See Cady* v. *Dombrowski,* 413 U.S. 433 (1973) (off-duty police officer was arrested for drunken driving; another officer opened the vehicle's trunk to secure the arrested officer's gun).

[30]*Florida* v. *Wells,* 495 U.S. I (1940); *Horton* v. *California,* 496 U.S. 128 (1990); *Cady* v. *Dombrowski,* 413 U.S. 433 (1973).
[31]*Colorado* v. *Bertine,* 479 U.S. 367 (1987).
[32]*Dyke* v. *Taylor Implement Mfg. Corp.,* 391 U.S. 216 (1968); *Preston* v. *United States,* 376 U.S. 364 (1964).
[33] South *Dakota* v. *Opperman,* 428 U.S. 364 (1976).
[34] South *Dakota* v. *Opperman,* 428 U.S. 364 368-69 (1976).
[35] *South Dakota* v. *Opperman,* 428 U.S. 364, 368-69 (1976).
[36] *South Dakota* v. *Opperman,* 428 U.S. 364 (1976).
[37] *United States* v. *Rodriguez-Morales,* 929 F.2d 780 (1st Cir. 1991).
[38]*United States* v. *Walker,* 900 F.2d 1201 (8th Cir. 1990).
[39]*Colorado* v. *Bertine,* 479 U.S. 367 (1987). *See Illinois* v. *Lafayette,* 462 U.S. 640 (1983).
[40]*United States* v. *Kornegay,* 885 F.2d 713 (10th Cir. 1989).
[41]*Colorado* v. *Bertine,* 479 U.S. 367 (1987).
[42]*Colorado* v. *Bertine,* 479 U.S. 367 (1987).
[43]*See Florida* v. *Wells,* 539 So.2d 464 (1989).
[44]*Colorado* v. *Bertine,* 479 U.S. 367 (1987); *Florida* v. *Wells,* 495 U.S. 1 (1990). *See United States* v. *Spencer,* 884 F.2d 360 (8th Cir. 1989).
[45]The policy should not give the officer *unlimited* discretion, however, guidelines should be provided.
[46]*Colorado* v. *Bertine,* 479 U.S. 367 (1987); *Florida* v. *Wells,* 495 U.S. 1 (1990).
[47]*Florida* v. *Wells,* 495 U.S. 1(1990).
[48]*See United States* v. *Salmon,* 944 F.2d 1106 (3rd Cir. 1991).
[49]*See Florida* v. *Wells,* 495 U.S. 1 (1990), in which the Supreme Court invalidated the inventory because the department's total lack of any inventory policy gave the officers "uncanalized discretion" in conducting inventories.

This project was supported by Grant No. 93-DD-CX-K009 awarded by the Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice. The Assistant Attorney General, Office of Justice Programs, coordinates the activities of the following program offices and bureaus: the Bureau of Justice Assistance, the Bureau of Justice Statistics, National Institute of Justice, Office of Juvenile Justice and Delinquency Prevention, and the Office of Victims of Crime. Points of view or opinions in this document are those of the author and do not represent the official position or policies of the United States Department of Justice, or the International Association of Chiefs of Police.