TRAINING BULLETIN

OAKLAND POLICE

Effective Date:
4 Nov 09

Index Number: III-E.7
Alpha Index: Tows Incident to Arrest

Evaluation Coordinator: Traffic Section Commander
Automatic Revision Cycle: 3 Years

"Department Training Bulletins shall be used to advise members of current police techniques and procedures and shall constitute official policy."

VEHICLE TOWS INCIDENT TO ARREST

In the case of People v. Williams, the defendant was arrested on an outstanding warrant and his vehicle was impounded under authority 22651(h)(1) CVC. Prior to towing the vehicle (incident to arrest) the officer conducted an inventory search of the vehicle and found a loaded handgun in a bag in the backseat. Upon review by the appellate court, William's conviction for the gun was overturned because the officer impounded his vehicle without regards to it being legally parked, among other vehicles legally parked upon the roadway. The court noted for the consideration of impounding a vehicle incident to arrest, officers must articulate that the impoundment must serve as a "community caretaking function."

Community Caretaking Function is defined as "an officer's duty to prevent a vehicle from creating a hazard to other drivers or being a target for vandalism or theft."

The impounding officer must consider the following:

- Is the vehicle more or less likely than "any other vehicle on the roadway" to be a target of vandalism or theft? <u>or</u>

- Is it parked in the roadway in a manner that would obstruct the normal flow of traffic?

Officers may consider their knowledge of the area where the stop was conducted to determine the elements of a community care taking function. The vehicle itself may lead the officer to impound the vehicle. The following can be considered:

- Is the officer aware of more thefts of that vehicle type in the area or burglaries of vehicles in that area?

- Is it the type of vehicle that would lend itself to vandalism or theft?

- Is it a gang member's vehicle in a rival gang member's area?

Justifying the impoundment solely because of a "high crime area" would be insufficient.

If the impounding officer believes the impoundment is justified under these circumstances, he/she <u>shall</u> document the circumstances and justification in the appropriate Offense Report. The documentation of any evidence discovered during the vehicle inventory will support the admissibility of the evidence into court. In the event the arrest does not generate an Offense Report, the officer <u>shall</u> document the circumstances and justification on the Stored Vehicle Report (TF-971).

Proper Application

Officer Jones stops a motorist for failing to stop at a stop sign. The motorist comes to a stop with his car double parked, adjacent to cars parked at the curb. Officer Jones subsequently arrests the driver for DUI. Officer Jones notes that there are no available parking spaces in the area. Officer Jones determines that because of the vehicle's position, it is a hazard to traffic and impounds the vehicle under authority 22651(h)(1) CVC.

Officer Peters stops a delivery truck on E 9th St. at 33rd Ave. Officer Peters arrests the driver for a felony warrant and there are no other occupants in the truck. The owner of the truck is in Modesto and can not respond to take possession of his truck. Officer Peters observes that there are several other delivery trucks in the area and all have graffiti painted on them. Officer Peters observes that the truck he stopped is new and unmarked. Because of the likelihood that the truck he stopped would be vandalized, Officer Peters impounds the vehicle under authority 22651(h)(1) CVC.

Improper Application

Officer Smith stops a motorist for having a head light out. The motorist stops his car at the curb. Officer Smith arrests the driver for possession of cocaine. There are no other occupants in the vehicle and the car is parked legally. Because the driver is a "problem person" on Officer Smith's beat, he elects to impound the vehicle under authority 22651(h)(1) CVC to punish him.

Officer Brown stops a motorist for running a red light. The motorist stops his car in his assigned parking space at the apartment building where he lives. Officer Brown arrests the driver for an outstanding Domestic Violence warrant. Officer Brown thinks that there might be narcotics in the vehicle but has no legal justification to search the vehicle. Officer Brown elects to impound the vehicle under authority 22651(h)(1) CVC in order to conduct an inventory search.

Related Laws and Decisions

CVC § 22651. Circumstances Permitting Removal

Any peace officer may remove a vehicle located within the territorial limits in which the officer or employee may act, under any of the following circumstances:

(h)(1) When an officer arrests any person driving or in control of a vehicle for an alleged offense and the officer is, by this code or other law, required or permitted to take, and does take, the person into custody.

South Dakota v. Opperman (1976)

As part of their "community caretaking functions", police officers may constitutionally impound vehicles that "jeopardize . . . public safety and the efficient movement of vehicular traffic."

Miranda v. City of Cornelius (2005)

Whether "impoundment is warranted under this community caretaking doctrine depends on the location of the vehicle and the police officers' duty to prevent it from creating a hazard to other drivers or being a target for vandalism or theft."

People v. Aguilar (1991)

When an inventory search is conducted based on a decision to impound a vehicle, we "focus <u>on the purpose of the impound</u> rather than the purpose of the inventory," since an inventory search conducted pursuant to an unreasonable impound is itself unreasonable.

People v. Williams (2006)

No community caretaking function was served by impounding appellant's car. The car was legally parked at the curb in front of appellant's home. The possibility that the vehicle would be stolen, broken into, or vandalized was no greater than if (the officer) had not stopped and arrested appellant as he returned home. In this regard, it is significant that other cars were parked on the street and that it was a residential area.