



Roll Call Training Bulletin

Produced by: Sgt Chris Prince
Prepared by: Mark Scurria

Brian Louie, Interim Chief of Police
Volume 51

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30 Day Impound Tows per 14602.6

- On June 21, 2017, the Ninth Circuit Court of Appeals issued an opinion in Brewster v. Beck holding that the 30-day impound of a vehicle seized pursuant to Vehicle Code section 14602.6(a)(1) violated the Fourth Amendment. The panel reversed the District Court's dismissal of a class action brought under 42 U.S.C. § 1983 alleging that Los Angeles police officers violated plaintiff's Fourth Amendment rights when they impounded her vehicle for 30 days pursuant to California Vehicle Code section 14602.6(a)(1). (<http://cdn.ca9.uscourts.gov/datastore/opinions/2017/06/21/15-55479.pdf>)
- The Court initially observed that Section 14602.6(a)(1) of the California Vehicle Code authorized police to seize a vehicle when the driver's license has been suspended. "A vehicle so impounded shall be impounded for 30 days." Within two business days of impoundment, the agency that seizes the vehicle must notify the vehicle's owner and provide an "opportunity for a storage hearing to determine the validity of, or consider any mitigating circumstances attendant to, the storage." Section 14602.6(a)(2), (b). The Court noted that the LAPD's "Impound Policy" mirrored Section 14602.6.
- The Court then turned its attention to its analysis of Brewster's constitutional claim, namely that the 30-day impound of her vehicle constituted a "seizure" under the Fourth Amendment. The Court stated that the Fourth Amendment protects against unreasonable searches and seizures. U.S. Const. amend. IV. A seizure is a "meaningful interference with an individual's possessory interests in [his] property." Soldal v. Cook County, 506 U.S. 56, 61 (1992) (internal quotation marks and citation omitted).
- The Court commented 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." United States v. Hawkins, 249 F.3d 867, 872 (9th Cir. 2001) (internal quotation marks and citation omitted).
- The Court observed that parties agreed that the LAPD could impound—and, therefore, seize—Brewster's vehicle pursuant to Section 14602.6(a)(1) under the community caretaking exception to the Fourth Amendment. See United States v. Cervantes, 703 F.3d 1135, 1141 (9th Cir. 2012) (discussing the community caretaking exception). But this exception is available only to "impound vehicles that jeopardize public safety and the efficient movement of vehicular traffic." Id. The Court stated that the exigency that justified the initial seizure of Brewster's vanished once her vehicle arrived in impound and Brewster showed up with proof of ownership and a valid driver's license. The Court stated that the question it must consider was whether the Fourth Amendment required further authorization for the LAPD to hold the vehicle for 30 days. In answering this question, the Court initially noted that, "[a] seizure is justified under the Fourth Amendment only to the extent that the government's justification holds force. Thereafter, the government must cease the seizure or secure a new justification."
- The Court stated that there were no cases on point in the Ninth Circuit, but noted that Judge Henderson of the Northern District of California had addressed the matter "in a thorough and well-reasoned



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opinion,” which the Court found persuasive. See Sandoval v. County of Sonoma, 72 F. Supp. 3d 997 (N.D. Cal. 2014).

- The Court stated that, “[b]ecause a 30-day impound is a ‘meaningful interference with an individual's possessory interests in [his] property,’ Soldal, 506 U.S. at 61 (internal quotation marks and citation omitted), the Fourth Amendment is implicated when a vehicle is impounded under Section 14602.6(a).” The Court remarked that the District Court found that such a seizure did not present a Fourth Amendment problem because “the state has an important interest in . . . keeping unlicensed drivers from driving illegally.” In dismissing this conclusion by the District Court, the Court observed that Fourth Amendment was implicated by a delay in returning the property, whether the property was seized for a criminal investigation, to protect the public, or to punish the individual. Sandoval, 72 F. Supp. 3d at 1004.
- The Court stated that the Fourth Amendment did not become irrelevant once an initial seizure had run its course. The Court noted that, “[a] seizure is justified under the Fourth Amendment only to the extent that the government's justification holds force. Thereafter, the government must cease the seizure or secure a new justification. Appellees [the LAPD] have provided no justification here.”
- The Court disagreed with a Seventh Circuit decision holding the contrary. See Lee v. City of Chicago, 330 F.3d 456 (7th Cir. 2003). In Lee, the City of Chicago seized Lee's vehicle for evidentiary purposes but failed to return it after it was no longer needed. As in this case, the parties agreed that the initial seizure of the vehicle was reasonable. However, Lee argued that “the continued possession of the property by the government became a meaningful interference with his possessory interest and, thus, must be interpreted as a Fourth Amendment seizure.” Id. The Seventh Circuit disagreed, holding that “[o]nce an individual has been meaningfully dispossessed, the seizure of the property is complete, and once justified by probable cause, that seizure is reasonable.” Id. at 466. Reasoning that “Lee's car was seized when it was impounded,” the Seventh Circuit concluded that the City's continued possession of the vehicle “neither continued the initial seizure nor began another.” Id.
- The Ninth Circuit expressly rejected this reasoning, holding that, “The 30-day impound of Brewster's vehicle constituted a seizure that required compliance with the Fourth Amendment.” The Court summarily dismissed the argument that its decision “frustrate[d] the state legislature's intent to impose a penalty on unlicensed drivers.” In doing so, the Court stated that, “We have no occasion to decide whether this objective is lawful.” Finally, the Court observed that, “The police could impound a vehicle under section 22651(p), which authorizes impoundment when the driver doesn't have a valid license. See Cal. Veh. Code § 22651(p). Section 22651(p) doesn't have a mandatory 30-day hold period, thus avoiding the Fourth Amendment problem presented by section 14602.6(a).”

How does this affect SPD?

- In discussions with the City Attorney's Office (CAO), it has been determined that the initial seizure of a vehicle (pursuant to 14602.6(a)(1) VC) is valid with one exception. If the registered owner (R/O) has a **valid license**, and is **physically present** during police contact, officers should release the vehicle to the R/O unless articulable circumstances exist that would prevent officers from doing so.



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- Such circumstances could include impairment of the R/O, or a reasonable expectation that the unlicensed driver would immediately regain control of the vehicle.

- Remember that this exception to 30-day impounds **only applies to the R/O**. Officers should not release the vehicle to other licensed passengers in the vehicle that are not the R/O.

- The Tow Hearing Unit will handle administrative changes that were introduced by this case law. Officers should continue to seize vehicles from suspended drivers under 14602.6 VC unless the above-mentioned circumstances with the R/O exist.

- **If you have further questions, contact the Tow Hearing Unit 808-0595 or Sgt. Prince 808-6069**