

Law Enforcement Liability

Courts Say “Go” and “No Go” to Vehicle Tows Under the Community Caretaking Rationale

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Editor’s Note: If your city or town is a CIRSA member, CIRSA will, as a service to its members, make available the assistance of a CIRSA defense attorney to review and comment on draft updates to your policies covering the topics addressed in this article and provide related risk management consultation. CIRSA will provide up to three hours of attorney time to your entity for this assistance, at no member expense. This service is not a substitute for legal and other advice from your entity’s city or town attorney, police legal advisor, and law enforcement professionals. If your entity would like to obtain this CIRSA assistance, please call or e-mail Sam Light, CIRSA General Counsel, at 720-605-8002 or saml@cirsa.org.

If you’re a peace officer employed by a CIRSA member, you can readily imagine this scenario: You arrest the driver of a vehicle on a warrant – you impound the vehicle for safekeeping – you perform an inventory search – you find illegal drugs and weapons and charge the defendant – and the evidence is admissible in court because the impoundment was constitutional under the community caretaking rationale.¹

Easy enough, right? In fact, if you’re a veteran officer, you’ve probably experienced this or similar scenarios several times in your career. After all, vehicle impoundments are a common occurrence...and can be a potential source of liability. And one other thing: If you’ve been following court decisions on law enforcement activities, you’ve noticed there has been a slew of appellate court decisions in recent months on the constitutionality of impounding vehicles under the “community caretaking” rationale.

This liability alert is to summarize the recent cases and walk you through the factors the courts used to determine if an impoundment using the community caretaker rationale is constitutional. It explains how the courts in these recent cases have narrowed the use of the community caretaking rationale, which in turn has broadened your entity’s risk exposure. While this liability alert is not intended as or a substitute for specific training on your entity’s own vehicle impoundment policies, it is designed to aid your review of your current policies in light of the recent court decisions.

U.S. v. Chavez, 985 F.3d 1234 (10th Cir., January 20, 2021)

This year’s series of controlling decisions on the community caretaking rationale starts with *U.S. v. Chavez*, a 10th Circuit Court of Appeals decision addressing the seizure of a firearm from a car lawfully parked at the end of a private road.

Facts of the case. On January 8, 2018, shortly after midnight, New Mexico Deputy Sheriff Castaneda observed a car run a stop sign. After a short pursuit, the driver fled the vehicle, leaving the engine running with a dog inside. The vehicle was abandoned on private property at the end of a dirt road within a few feet of a trailer.

It appeared the vehicle had not been placed in the park position, so a second deputy entered the vehicle to put in park. While inside, the deputy noticed a handgun in plain view.

Eventually the suspect, Manuel Chavez, was located. Without first mirandizing him, the deputy asked Chavez if he was a felon, to which the suspect responded, "Yes, sir." A name check revealed Chavez was driving with a suspended license and was a convicted felon. The deputies decided to impound the vehicle and, while performing an inventory search, a female appeared from the nearby trailer and claimed ownership of the car. Deputies asked her about the handgun, and she denied owning it or knowing about it. Deputies then released the car to her, but seized the handgun for safekeeping, arguing they could not risk it falling into untrained or malicious hands.

Ruling. The state argued that, because Chavez fled the vehicle, it had been abandoned and therefore the search and seizure was proper under the community caretaking rationale. The 10th Circuit rejected this argument noting that Chavez left the vehicle at the end of a long private dirt road, just outside his trailer, with the doors shut and his dog still inside.

The state next argued the deputies discovered the gun in plain view, and the 10th Circuit agreed. The court held that the plain view doctrine applied to the discovery of the gun but there was no evidence the gun was involved in a crime or that it was illegal for Chavez to own the gun. The court further ruled that the statement from Chavez that he was a convicted felon was inadmissible because he was not properly mirandized before making the statement. Therefore, while the discovery of the handgun was not an illegal search, there was no justification for the deputies to seize the weapon.

The court further held that, for the inventory search and seizure of the firearm to be constitutional, the search would need to be made pursuant to standard police procedures and for the purpose of protecting the car and its contents. It found the inventory search violated the Sheriff's policy, and because of where it was parked, it was unnecessary to protect the car and its contents since there was no risk to public safety. Thus, the court concluded the community caretaking rationale did not justify the inventory search and seizure of the handgun, which it ruled to be unconstitutional.

People v. Thomas, 488 P.3d 1191 (Colo. App. February 25, 2021)

In February 2021, the Colorado Court of Appeals then considered, as a matter of first impression for the Colorado courts, whether the community caretaking rationale would allow an officer to impound a suspect's vehicle when no one else was present to take custody of the vehicle.

Facts of the case. Around midnight on the date of Kyle Thomas' arrest, Arvada Police Officer Valdez saw a vehicle roll through a stop sign and fail to signal a turn. Officer Valdez stopped the vehicle and Thomas, the driver and sole occupant of the vehicle, provided identification and registration but could not produce proof of current insurance. Officer Valdez found an outstanding warrant for Thomas. Officer Valdez arrested him and, per policy, towed Thomas's vehicle, even though Thomas requested to call his wife—who was a few blocks away—to retrieve the vehicle. During an inventory search, Officer Valdez found a handgun, methamphetamine, a knife, and a blackjack.

Ruling. The Colorado Court of Appeals, citing People v. Allen, 450 P.3d 724 (Colo. 2019), stated the first thing to look at is whether the Arvada Police Department (APD) had a standardized impoundment policy and, if so, whether Officer Valdez followed it. After determining APD did have a standardized impoundment policy, the court noted Officer Valdez acted in conformance with the policy.

The court next analyzed whether, looking at the totality of the circumstances, impounding the vehicle furthered some community caretaking purpose. In doing so, the court noted examples of a valid community caretaking function included if the vehicle was impeding traffic, threatening public safety or convenience, or if necessary to protect the vehicle and its contents against vandalism or theft.

However, with respect to Thomas's vehicle, the court concluded it was legally parked in a residential area. It further noted that the vehicle was not shown to be obstructing traffic, dangerous or disabled, blocking a driveway, or otherwise a threat to public safety or convenience, or at risk of vandalism or theft. Given this evidence, the court concluded that impounding the vehicle did not further any community caretaking purpose and was therefore unconstitutional.

U.S. v. Venezia, 995 F.3d 1170 (10th Cir., May 3, 2021)

In May the 10th Circuit again considered a vehicle impoundment from private property, this time reviewing in detail the Circuit's current test for determining the constitutionality of an impoundment when a vehicle is not impeding traffic or impairing public safety.

Facts of the case. Around 9 p.m. on January 2, 2019, agents from the Lakewood Police Department (LPD) were on routine patrol when they observed a vehicle fail to signal a turn. The vehicle was registered to Luis Cuello; however, the driver and sole occupant was Hunter Venezia. At the time the agents approached, the vehicle was in a motel parking lot where it was not obstructing traffic and did not pose an imminent threat to public safety. Agents noted the motel and its parking lot were in a high crime area.

Venezia did not have a driver's license, car insurance, or any vehicle registration, title or bill of sale, and he was not a guest of the motel. He did, however, have a misdemeanor warrant for his arrest. When asked if he knew Cuello, Venezia stated he did not recognize the name and that he purchased the vehicle from a person named Dustin Estep. Agents unsuccessfully attempted to contact Cuello by telephone. Agents arrested Venezia and impounded the vehicle over Venezia's objection. Agents did not ask anyone working at the motel for permission to leave the vehicle in the motel parking lot. An inventory search of the vehicle revealed drugs, drug paraphernalia, a gun holster, and ammunition.

Ruling. The 10th Circuit applied and explained its following two-prong analysis, from [U.S. v. Sanders](#), 796 F.3d 1241 (10th Cir. 2015), to determine the impoundment was unconstitutional:

- First, did LPD have standardized criteria to guide its impoundment, and did the agents act within that policy? In this case, the court found this prong was satisfied as the LPD had a standardized impoundment policy and the agents acted within that policy.
- Second, was the impoundment justified under the community caretaking rationale? Here, the court considered five factors:
 - ✓ Is the vehicle on public or private property? Venezia's vehicle was on private property and therefore this weighed against impoundment as public safety and convenience are less likely to be at risk when the vehicle is on private property.
 - ✓ Was the private property owner consulted regarding the vehicle? The motel owner was not consulted as to whether the vehicle could remain on his property, therefore it weighed against impoundment.

- ✓ Were there alternatives to impoundment? The court noted the vehicle was not abandoned and the agents could've asked the motel owner if he would allow the vehicle to remain on his property, therefore it weighed against impoundment.
- ✓ Is the vehicle implicated in a crime? The vehicle was not implicated in a crime, therefore it weighed against impoundment.
- ✓ Did the owner and/or driver give consent to impound? Since agents could not determine if Venezia owned the vehicle, his consent or lack thereof was not relevant to the impoundment decision and therefore it weighed for impoundment.

U.S. v. Woodard, 5 F.4th 1148 (10th Cir., July 26, 2021)

In July the 10th Circuit yet again considered the community caretaker rationale, this time within the context of an incident that highlights the critical importance of making impoundment decisions in accordance with departmental policies and procedures.

Facts of the case. Tulsa police officers received information that Evan Woodard was involved in drug use. After confirming that Woodard had a misdemeanor warrant for his arrest, officers located him and pulled his vehicle over in a convenience store parking lot, which was private property. Woodard was arrested on the warrant and asked police officers if he could call someone to pick up his car. Officers told him he could not and decided to impound the vehicle. During an inventory search of the vehicle, officers found drugs, a digital scale, and a firearm. Woodard did not have a driver's license and was not asked for proof of insurance or proof of ownership of the vehicle.

Ruling. The 10th Circuit used the same analysis as in Venezia (taken from Sanders) to determine the impoundment was unconstitutional:

- First, regarding the standardized criteria prong, the court found the TPD did have a standardized impoundment policy; however, the officers did not act within the policy. Specifically, the TPD policy at issue allowed for impoundment from private property when a traffic stop followed an offense committed on the public way. But that was not the case here—Woodard had not committed any offense on the public way.
- While the court's ruling on the first prong was enough to doom the impoundment, the court also considered whether it was justified under the community caretaking rationale. The court again considered the five factors:
 - ✓ Is the vehicle on public or private property? Woodard's vehicle was on private property and therefore it weighed against impoundment as public safety and convenience are less likely to be at risk when the vehicle is on private property.
 - ✓ Was the private property owner consulted regarding the vehicle? The convenience store manager was not consulted as to whether the vehicle could remain on his property, therefore it weighed against impoundment.
 - ✓ Were there alternatives to impoundment? Officers denied Woodard's request to call someone to pick up the vehicle, therefore it weighed against impoundment.

- ✓ Is the vehicle implicated in a crime? The vehicle was not implicated in a crime, therefore it weighed against impoundment.
- ✓ Did the owner and/or driver give consent to impound? Woodard did not consent to the impoundment, therefore it weighed against impoundment.

U.S. v. Kendall, No. 19-1465 (10th Cir. September 28, 2021)

And finally—at least for now—the 10th Circuit in September yet again considered the community caretaker rationale, this time finding the impoundment constitutional.

Facts of the case. Around 7:00 p.m. on January 31, 2017, a Wheat Ridge Police Department (WRPD) officer observed a Honda on the roadway with only one working taillight. The officer activated his emergency lights and attempted to pull over the Honda; however, the Honda’s driver, identified as Aaron Kendall, slowed to approximately ten miles per hour and continued to drive another eight blocks before stopping on the side of a public road. During this slow motion pursuit, two officers observed Kendall moving around in an erratic way inside the Honda. A check of the Honda’s license plates revealed the plates were registered to a different vehicle, leading the officers to believe the vehicle might have been stolen.

Upon contact with Kendall, officers learned he did not have a valid driver’s license or proof of insurance. Kendall stated he was in the process of buying the Honda from the registered owner. However, officers called the registered owner twice but got no answer. Kendall stated he did not have insurance for the vehicle, but later claimed his wife had it. Officers tried calling Kendall’s wife to confirm, but she did not answer. Officers decided to issue Kendall a summons for the motor vehicle violation and tow the vehicle because Kendall did not have a valid driver’s license, did not have proof of insurance, and because the vehicle had a missing taillight.

During an inventory search of the vehicle, officers located a counterfeit \$20 bill, methamphetamine, heroin, and a handgun. While the vehicle was being loaded onto the tow truck, the registered owner returned the officers’ calls and confirmed the vehicle was not stolen and that Kendall was in the process of buying it from her. When officers told her it was being towed, she did not attempt to stop the towing or offer to come and retrieve the vehicle.

Ruling. The 10th Circuit used the same analysis as in Venezia and Woodard (taken from Sanders) to determine the impoundment was constitutional:

- First, the court noted the WRPD did have a standardized impoundment policy; however, because the vehicle was parked on a public highway, the first prong of the Sanders test is inapplicable as it is specific to private property impoundments.
- The court then turned to the five factors to consider when invoking the community caretaking rationale to justify impoundment:
 - ✓ Is the vehicle on public or private property? Kendall’s vehicle was on public property and therefore it weighed for impoundment.
 - ✓ Was the private property owner consulted regarding the vehicle? Not applicable.

- ✓ Were the alternatives to impoundment? The court noted that Kendall lacked a valid driver's license, the officers could not initially confirm whether Kendall had a legitimate connection to the vehicle, the vehicle lacked adequate taillights, the vehicle was not insured, and the vehicle was parked on the public street – all of which weighed for impoundment.
- ✓ Is the vehicle implicated in a crime? The vehicle was not implicated in a crime, therefore it weighed against impoundment.
- ✓ Did the owner and/or driver give consent to impound? It is implied that Kendall did not consent to the impoundment. However, when the registered owner called officers, she did not object to the impoundment, therefore it weighed for impoundment.

What Does This Recent Series of Decisions Mean for Your Law Enforcement Agency?

All the recent decisions discussed above establish controlling law for Colorado law enforcement agencies. With these cases, the appellate courts have made it clear they will highly scrutinize vehicle impoundments undertaken pursuant to the community caretaking rationale, especially those involving vehicles legally parked on private property. To protect your agency from claims of unconstitutional impoundments:

- Ensure your department has a standardized policy that conforms to the law and is readily available to all sworn personnel. Ensure your policy and training adequately addresses factors relevant to application of the community caretaking doctrine.
- If an impoundment pursuant to the community caretaking rationale is performed, make sure the officer writes a detailed report documenting the reasons the impound was necessary. The report should also document steps and considerations undertaken incident to the impoundment decision.
- Review how the courts applied the factors in the above cases and determine if training is necessary for your agency's officers. Irrespective of whether any policy or training changes are needed, these recent cases will serve as a useful resource in discussing application of the community caretaking doctrine to specific scenarios your officers may face.

Fourth Amendment claims related to police operations are nothing new. And as you know police operations are often the subject of litigation and close judicial scrutiny. Where claims arise, CIRSA members and their officers have law enforcement liability coverage providing certain protections against claims, including claimed Fourth Amendment violations arising from vehicle impoundments. But risks of liability around these issues can be significant, and can have significant impacts on departments, the officers involved, and on public funds.

To reduce your risks of liability related to vehicle impoundments under the community caretaking rationale, we suggest reviewing the recent cases summarized above and updating your policies and procedures if and as needed.

¹ The community-caretaking rationale provides an exception to the warrant requirement in recognition of the fact that some police encounters are "wholly unrelated to the desire to prosecute for crime," and that "police officers are not only permitted, but expected, to exercise what the Supreme Court has termed 'community caretaking functions.'" While the exception cannot be used as an investigatory tool, it can in appropriate circumstances justify seizing personal property—including automobiles. *United States v. Chavez*, 985 P.3d at 1243 (internal citations and quotations omitted).