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# Seizure, Search of Mobile Phone Post High-Speed Chase

By **DLG Learning Center**

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**DAIGLE LAW GROUP**

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The subject of today's article – vehicle inventory searches – is a subject area we have covered before. However, the question we look at in this case, *United States vs. Garay*<sup>[1]</sup>, is whether the cell phone seized during the inventory should be suppressed because it was not properly listed on the inventory form. More importantly, we actually have a 9<sup>th</sup> Circuit Court of Appeals case where the appellate court sided with the officers and affirmed the conviction!

## FACTS

San Bernardino County deputies attempted to pull over Nahach Garay for a motor vehicle violation when he took off and led officers on a high-speed chase. The chase ended when Garay crashed into a ditch and attempted to flee on foot. Garay was apprehended and found to have a large quantity of cash and drugs in his pockets. The defendant was arrested, and officers made arrangements for the car to be towed. As part of the towing process and pursuant to department directives, the officers conducted an inventory search of the vehicle. During the inventory, officers secured two rifles, ammunition and two cell phones. The officers listed the rifles on the "Vehicle Report" (inventory form) but booked the ammunition and cell phones as "evidence". The phones were not included on the inventory form.

The deputies then applied for a search warrant to search the contents of the defendant's phone. The officer supported probable cause by describing the circumstances leading up to the discovery of the phone and stating that "based on my training and experience, individuals who possess firearms take pictures of themselves and communicate through text messages to further their criminal activity". The deputies later sought a federal search warrant using similar language.

Pictures on the cell phone showed Garay in possession of the weapons found in the car and he was subsequently charged with federal firearms charges. Prior to trial Garay sought to have the cell phone and photos suppressed claiming that the cell phone was illegally seized, and the search warrant lacked sufficient probable cause. The trial court denied the motion and this appeal followed.

## 9th Circuit Findings

The appellate court first tackled the issue concerning the inventory search, finding that the phone was properly seized as part of a properly-conducted inventory search. The court said that it and other

circuits have long- held that failure to fully complete the inventory list or committing other “administrative” errors would not invalidate seizing the cell phone. Quoting language from the 8<sup>th</sup> Circuit, the court stated “*There must be something else; something to suggest the police raised ‘the inventory-search banner in an after-the-fact attempt to justify a simple investigatory search for incriminating evidence.’*” Furthermore, the fact that officers may legitimately believe that they may find incriminating evidence during the inventory search does not, by itself, invalidate the search.

The court then determined whether the state and federal search warrants were supported by probable cause. The search warrant affidavits documented the high- speed pursuit, Garay’s attempt to flee, the cash and drugs found on Garay following his arrest and the loaded guns, ammunition and cell phones found inside the car. To further illustrate probable cause, the affiant stated that, based on his training and experience, he is aware that suspects often take pictures of themselves holding their firearms and “will often communicate by text” concerning their criminal activities.

Garay claimed that the affiant’s statement that his beliefs were based on his “training and experience” did not meet probable cause standards unless the officer specifically listed the training and experience that the officer relied on. In other words, Garay argues the officer must list each detail of his training and experience such as specific cases the officer worked on and specific training attended by the officer. The court disagreed, finding that a magistrate may consider an officer’s training and experience without requiring the affiant to specifically detail that experience. Furthermore, the court concluded that the affiant had provided all of the facts leading up to the seizure of the cell phone. Coupling those facts with the officer’s training and experience “provide a reasonable basis to infer that evidence tying Garay to the suspected criminal activity could be found on his cell phone”.

## **WRAP UP**

Clearly, the court gives officers some wiggle room here and it is clear that minor administrative mistakes during an inventory search will not invalidate the search. That said, officers should be sure to follow their agency directives concerning inventory searches and enter all seized items on the appropriate forms. More importantly, the inventory search is not a short cut to seize incriminating evidence. The only purpose for the inventory is to protect the vehicle owner and officers from claims of theft or damage.

1. United States v. Garay, \_\_\_ F.3d \_\_\_, 2019 WL 4419679 (9th Cir. Sept. 17, 2019) [↑](#)