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THE INVENTORY SEARCH OF AN IMPOUNDED VEHICLE

The Problem

When an arrest is made of a subject who is in control of an automobile, the arrestee's vehicle is usually impounded. Nearly all police agencies issue specific directions to their officers to search these vehicles as part of the impounding process. The officers are instructed to make a complete list of any personal property found in the vehicle and a detailed account of parts missing, damage to the vehicle, and special accessories attached to the vehicle. Most agencies require the officer to remove all valuable property found in the automobile and secure this property inside the pound office or with a specified custodian of personal property. Several agencies, however, do not require a removal of items from the vehicle and demand only that a detailed list of the vehicle's contents be made. Frequently incriminating evidence is found as a result of these inventory searches, and the evidence is used against the arrestee at his trial for the charge he was originally arrested for, or in a separate prosecution resulting from the seizure of the contraband or new evidence.

Until recently, the United States Supreme Court had not been faced with the question of the admissibility of this evidence. The states were left on their own to decide the proper use of evidence until the United States Supreme Court ruled that the fourth amendment is applicable to the state through the fourteenth amendment.

The majority of lower courts that have met the issue squarely have ruled such searches "reasonable" within the meaning of the fourth amendment, justifying the inventory as a necessary procedure for the self-protection of the police. If this evidence is ruled admissible the prosecution is thus permitted to use evidence procured by means of an arguably exploratory search that in many instances would not be admissible even if seized while conducting a search pursuant to a search warrant. In several instances, then, the prosecution has gained a better advantage because the police have failed to obtain a warrant. The courts speak of department policy and routine inspections in formulating justification for these searches, but the Constitution does not sanction otherwise unreasonable searches on the sole ground of their frequency. The conditioned

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expectation of having one's vehicle searched does not render the search any less objectionable.  

On the one hand, then, the police claim the right to self-protection; and on the other, the citizen claims his right to freedom from unreasonable searches and seizures.

The federal Constitution guarantees "the right of the people to be secure in their persons, houses, papers, and effects." This right undoubtedly extends to one's automobile, but the courts have long recognized that the reasonableness of the searches of homes and automobiles will not be measured by the same yardstick.

The Supreme Court has sanctioned two general exceptions to the requirement of a warrant for the search of an automobile: search incident to arrest and search based on probable cause when circumstances show that the vehicle could be removed from the jurisdiction before a warrant could be obtained. Once a vehicle is impounded, however, these traditional exceptions to the warrant requirement disappear. Criminal prosecutors now urge that the impounding process itself gives rise to yet another exception to the warrant requirement: an inventory search allowed for the self-protection of the police.

THE BACKGROUND: SUPREME COURT DECISIONS

In recent years the Supreme Court has been faced with several cases which question the right of the police to conduct a search of the arrestee's vehicle after he has been taken into custody. The decision of the Supreme Court, in Preston v. United States, greatly restricted the admissibility of evidence found in post-arrest vehicle searches. In Preston, the defendant was arrested for vagrancy while sitting in his car. After incarcerating the defendant, the police conducted a warrantless search of the prisoner's vehicle which had been towed to a garage. Preston was convicted of conspiracy to rob a federally insured bank largely on evidence found in the search of the car. A timely motion to suppress the evidence had been denied at trial and upon appeal the Supreme Court reversed. The

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6 "The entry cannot be justified merely because it was made pursuant to a police regulation. The police cannot legalize unconstitutional searches simply by promulgating and acting pursuant to regulations, no matter how reasonable they may be." Harris v. United States, 370 F.2d 477 (D.C. Cir. 1966), aff'd, 390 U.S. 234 (1968).

7 U.S. Const. amend IV.

8 Brinegar v. United States, 338 U.S. 160 (1949); Carroll v. United States, 267 U.S. 132 (1925); United States v. Stoffey, 279 F.2d 924 (7th Cir. 1960); People v. Brown, 38 Ill. 2d 353, 231 N.E.2d 577 (1967).


prosecution argued that the search and seizure was justified as incident to a lawful arrest. The Court held the exigencies normally present when a warrantless vehicle search is permitted were not present here. The officer's safety was no longer imperiled and the danger that evidence may be destroyed or removed from the jurisdiction was no longer present as the vehicle was already in police custody. Since the reasons permitting a warrantless search were no longer present, the Court reasoned, neither was the right to search without a warrant. The search was held "too remote in time or place to have been made as incidental to arrest."

Preston was distinguished in Cooper v. California, where the police searched petitioner's impounded vehicle a week after he was arrested on narcotics charges. Pending forfeiture proceedings, the car had been impounded as evidence pursuant to a statutory provision for the seizure and forfeiture of vehicles used in violation of the narcotics laws. The Court placed great emphasis on the "reason for the nature of the custody," holding the circumstances did constitutionally justify the search. In Preston, the Court noted, the arresting officers took the arrestee's car to the station simply because they did not want to leave it on the street, but here the police were required by law to seize and hold the vehicle pending forfeiture proceedings. The Court held that the police, having to retain the car in their garage for such a length of time, had a right to search the car for their self-protection. Mr. Justice Douglas, dissenting, thought the case was on all fours with Preston, as in each instance the search was of a car validly held by the police. Justice Douglas reasoned that if the custody of the car was relevant at all, such custody militated against the reasonableness of the search, since the danger that the vehicle would be moved out of the jurisdiction no longer existed. This dissenting opinion, unfortunately, did not attempt to cope with the self-protection problem facing the police if the right to search an impounded vehicle were denied.

13 Id. at 367. Note that the prosecution did not attempt to justify the search on the inventory theory.
15 376 U.S. at 368.
16 Id. at 368.
17 386 U.S. 58 (1967).
18 Cal. Health and Safety Code §11611 provides that any officer making an arrest for a narcotics violation shall seize and deliver to the State Division of Narcotic Enforcement any vehicle used to store, conceal, transport, sell or facilitate the possession of narcotics, and such vehicle is to be held as evidence until a forfeiture has been declared or a release ordered.
19 386 U.S. at 61.
20 "An arresting officer took his [Preston's] car to the station rather than just leaving it on the street. It was not suggested that this was done other than for Preston's convenience or that the police had any right to impound the car and keep it from Preston or whomever he might send for it." Id. at 61 (emphasis added).
21 Id at 61-62.
22 Id. at 64-65.
23 Id. at 64, citing Preston v. United States, 376 U.S. 364 at 368 (1964).
In *Harris v. United States*, the Supreme Court was again confronted with the constitutionality of an inventory search. While entering his automobile, the petitioner was arrested on robbery charges. The vehicle was towed to the precinct lot as evidence because the vehicle had been observed at the scene of a robbery.

At trial the arresting officer testified that while the vehicle was in the precinct lot he went out to the auto to complete an inventory search and to roll up the windows because it was raining. The officer opened the left side door, completed his inventory of the vehicle, and rolled up the windows on the left side. When the officer opened the right side door for the sole purpose of rolling up the windows, he saw an automobile registration card in the name of the robbery victim on the metal stripping over which the door closed. This card was introduced at trial and on appeal the Supreme Court ruled that the card was properly admitted in evidence. The discovery of the card was held not the result of a search of the car, as the inventory had ended and the officer found the evidence while taking measures to protect the vehicle while it was in police custody.

After avoiding the issue of the constitutionality of the inventory search, the Court affirmed the lower court on the basis of the "plain view" doctrine. Justice Douglas, in a concurring opinion, seized the opportunity to resurrect *Preston* and pointed out that *Harris* does not overrule *Preston* because the police here were engaged in the performance of their duty to protect the car, and not engaged in an inventory or other search of the car when they came across the incriminating evidence.

In *Chimel v. California*, the Court, in passing on the search of arrestee's home incident to his arrest, held the permissible scope of such a search is strictly limited to the subject's person and to the area within his immediate control. Following this decision, alert defense attorneys attempted to use this holding to attack the validity of vehicle searches. Shortly after the *Chimel* decision, however, in *Chambers v. Maroney*, the United States Supreme Court

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25 *Id.* at 234-235. Note that no mention of forfeiture was made; the vehicle was impounded for evidence.
26 *Id.* at 236.
27 "The sole question for our consideration is whether the officer discovered the registration card by means of an illegal search. We hold that he did not. The admissibility of evidence found as a result of a search under the police regulation is not presented by this case." *Id.* at 236.
28 Objects falling in the plain view of an officer who has a right to be in the position to have that view are subject to seizure and may be introduced in evidence. See, e.g., *Ker v. California*, 374 U.S. 23 at 42-43 (1963). See also: *United States v. Lee*, 274 U.S. 559 (1927); *Hester v. United States*, 265 U.S. 57 (1924).
29 Justice Douglas, in his dissenting opinion in *Cooper*, supra n.22, thought that *Preston* had been overruled. See also *People v. Webb*, 66 Cal. 2d 107, 56 Cal. Rptr. 902, 424 P.2d 342 (1967) (concurring opinion).
30 390 U.S. at 237.
31 395 U.S. 752 (1969). The challenged evidence was found after an intensive forty-five minute search of Chimel's home.
32 399 U.S. 42 (1970). Petitioners here had been arrested on robbery charges. Their vehicle
once again distinguished between vehicle and residence searches. The Court clearly noted that the Chimel decision was not intended to apply to situations involving vehicle searches made pursuant to an arrest where the searching officers had probable cause to believe that a vehicle contained evidence of crime. Similarly, several inventory search decisions of the lower courts have distinguished Chimel, holding that the inventory procedure is not a constitutionally prohibited state action as it is neither a search incident to arrest, nor a search justified by the existence of probable cause. Indeed, the inventory search is a unique concept in law, not to be analyzed through the use of traditional constitutional tools.

THE NATURE OF THE CUSTODY

Because the search conducted in Cooper was not explicitly sanctioned as a reasonable inventory search, the lower courts have struggled with the Preston and Cooper holdings when confronted with inventory searches conducted under distinguishable factual situations. In Cooper the Supreme Court distinguished Preston by pointing out that Cooper’s vehicle was impounded pursuant to a state forfeiture statute. This distinction was relied on in Dervy v. Cupp where the court held that Cooper is applicable only to searches of vehicles impounded pursuant to forfeiture statutes. However, the existence of a forfeiture statute does not seem to be the controlling factor in the Cooper decision. Cooper’s vehicle was impounded pursuant to a forfeiture statute but no statute authorized the search of seized vehicles. The search, not the seizure, was questioned in Cooper.

Other decisions have strictly interpreted Cooper and have held that warrantless searches of automobiles in police custody are reasonable only if the search is closely related to the reason for the arrest and to the reason that the automobile is being held in custody. These decisions would seem to require probable cause as a prerequisite to a warrantless search and thus invalidate the true inventory search. The majority of courts that have passed on the issue, however, have extended the Cooper rationale to all vehicles validly impounded. If the Supreme Court in Cooper based its decision on the impounding agency’s need for self-protection, then the extension of Cooper to all impounded vehicles had been taken into the station lot where it was later searched and the robbery proceeds were found concealed in a compartment under the dashboard.

35 “[T]he question is not whether the search was authorized by state law. The question is rather whether the search was reasonable under the Fourth Amendment. Just as a search authorized by state law may be an unreasonable one under that amendment, so may a search not expressly authorized by state law be justified as a constitutionally reasonable one.” Cooper v. California, 386 U.S. 58 at 61 (1967); accord, State v. Montague, 73 Wash. 2d 381, 438 P.2d 571 (1968); People v. Prochanu, 251 Cal. App. 2d 22, 59 Cal. Rptr. 265 (1967).
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seems logical: once a vehicle is taken into custody the need for self-protection is present regardless of the nature of the custody.38

A more urgent problem facing the courts is the distinction between valid and invalid police custody of impounded vehicles. Before the inventory search can be justified the police must have at least assumed legal custody of the vehicle.39 Several state statutes authorize the impounding of a vehicle when the vehicle is parked where it is hazardous or obstructing to other traffic.40 Many statutes provide for the impounding of a vehicle when the driver is injured, intoxicated, or otherwise incapacitated to the extent he is unable to care for the vehicle.41 Under the reasoning expounded in Cooper, however, the mere existence of a statute authorizing the impounding should not be conclusive of the constitutionality of the impounding.42

Searches of vehicles impounded for “safekeeping” have been attacked as unconstitutional where the vehicle is in no way connected to the crime for which the occupant is arrested.43 In Virgil v. Superior Court, County of Placer,44 the court, in the face of Cooper, held that an inventory search of defendant’s vehicle violated the petitioner’s fourth and fourteenth amendment rights. In disapproving an earlier decision,45 the court found that custodial possession is not an inevitable concomitant of an arrest of the driver:

We hold that the Constitution does not permit an otherwise unauthorized search of a car simply because police have statutory authority to arrest and take an accused before a magistrate plus the right to cause the automobile to be removed from the highway.46

Here the court did not appear to question the right of police to take an inventory of a vehicle if the vehicle has been properly impounded.47 The court pointed

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39 If the vehicle is not subject to impounding, the search must be justified on other grounds. See, e.g., Carroll v. United States, 267 U.S. 132 (1925); Arwine v. Bannan, 346 F.2d 458 (6th Cir. 1965), cert. denied, 382 U.S. 882 (1965).
41 See, e.g., Cal. Vehicle Code § 22651 (g).
42 Supra n.35.
44 Id.
45 People v. Garcia, 214 Cal. App. 2d 681, 29 Cal. Rptr. 609 (1963) was expressly disapproved, 268 Cal. App. 2d at 132, 73 Cal. Rptr. at 796.
46 268 Cal. App. 2d at 132, 73 Cal. Rptr. at 796. But see People v. Andrews, 6 Cal. App. 3d 428, 85 Cal. Rptr. 908 (1970), where the court explained the meaning of the Virgil decision: “[The right to impound] arises from some legal or factual necessity for its removal by the police, e.g., the arrest must result in the car being unattended.” Id. at 437, 85 Cal. Rptr. at 914. The court then went on to hold: “With the right of the police to impound an automobile a concomitant right to inventory the contents arises.” Id. at 437, 85 Cal. Rptr. at 914.
47 “Although there are cases . . . which authorize under proper circumstances the taking of an automobile into custody, after its removal from the highway, and also the taking of an inventory of its contents, the facts above do not describe such a situation.” 268 Cal. App. 2d at 131, 73 Cal. Rptr. at 795.
out that petitioner was accompanied by two other occupants of the vehicle, who, with the consent of the arrestee, could have been given possession of the vehicle, thus avoiding the need for an impounding.\footnote{There was no mention whether petitioner requested that his vehicle be turned over to his friends, but the court held: "the conclusion is inescapable that had Virgil been given the opportunity to make the decision—which was his to make—police custodial care of the car would not have been required." Id. at 133, 73 Cal. Rptr. at 797.}

Although *Virgil* has been distinguished on its particular facts in subsequent California decisions,\footnote{People v. Andrews, 6 Cal. App. 3d 428, 85 Cal. Rptr. 908 (1970); People v. James, 1 Cal. App. 3d 643, 81 Cal. Rptr. 845 (1969); People v. Superior Court, County of Sacramento, 275 Cal. App. 2d 631, 80 Cal. Rptr. 209 (1969).} even the California courts, the leading advocates of the inventory theory, seem unwilling to extend the right to impound to all situations where an arrestee controls a vehicle. An arrestee is not permitted, however, to demand that his vehicle be left properly secured and parked at the scene of his arrest.\footnote{People v. Gil, 248 Cal. App. 2d 189, 56 Cal. Rptr. 88 (1967).} In *Patrick v. Commonwealth*,\footnote{199 Ky. 83, 250 S.W. 507 (1923).} the petitioner was arrested for intoxication while he was standing next to his automobile. The court here found that the arresting officer had not only the right, but the duty to take charge of the automobile, and at least to see that it was removed to a place of safety.\footnote{Id. at 86, 250 S.W. at 509.} Even when the arrestee requested that the vehicle be left in a parking lot where he was arrested so that a friend could pick it up, a California court held that the impounding and inventory search were legal.\footnote{People v. Gil, supra n.50,} The police thus are given the right to impound an arrestee's vehicle for safekeeping, under the theory of protection of the arrestee and his property, and later to use the property seized from the vehicle as evidence against the arrestee.

If the impounding is to be justified on grounds of safekeeping, surely in those instances where the vehicle is legally parked and the driver is not intoxicated or otherwise mentally incapacitated, the arrestee should have the right to choose whether or not he wishes the safekeeping protection.

If the prisoner requests that his vehicle be left securely locked and properly parked at the scene of his arrest, he has assumed the risk of loss or damage and cannot later be heard to complain of the failure of the police to protect his property. At the very least, the arrestee should be given a reasonable opportunity to turn the vehicle over to a friend or hire a private towing service to remove the vehicle from the scene of arrest. If the police have the right to impound an arrestee's vehicle for safekeeping when the arrestee has chosen to assume the risk of loss or damage, why could the police not similarly impound the vehicle parked next to arrestee's? Both unattended vehicles are equally subject to theft and pilferings by those skilled artisans of crime who require only seconds to attain their goals. In both cases, the vehicle owners chose to leave their vehicles unattended and therefore to assume the corresponding risks involved.

48 There was no mention whether petitioner requested that his vehicle be turned over to his friends, but the court held: "the conclusion is inescapable that had Virgil been given the opportunity to make the decision—which was his to make—police custodial care of the car would not have been required." Id. at 133, 73 Cal. Rptr. at 797.


51 199 Ky. 83, 250 S.W. 507 (1923).

52 Id. at 86, 250 S.W. at 509.

53 People v. Gil, supra n.50,
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The Scope and Nature of the Search

The right to search seems to have been justified on ambiguous grounds in Cooper. The Court did not determine whether the search was justified because the search was conducted while the police had lawful custody of the vehicle or because the police may search a vehicle on grounds of self-protection once they have obtained lawful custody of the vehicle. If mere custody by police gives them the right to search, then the purpose for which the search was actually conducted would be irrelevant.54

In Cooper, the search was apparently conducted, not with the intent of self-protection, but with the hope of discovering contraband.55 An inventory taken a week after the impounding would be of minimal value as a self-protection procedure if the arrestee later claimed that valuables were missing from the auto.56 The Cooper decision seems to imply that the Supreme Court is willing to sanction various types of searches of vehicles held for evidence or forfeiture. However, searches for any other purpose than a true inventory seem unjustified when a vehicle has been impounded for safekeeping. The impounding of a vehicle for safekeeping creates a mere bailment57 and no constitutional justification exists for giving the police as bailees any greater rights in the bailed article than a civilian bailee would have.

If the vehicle examination is to be justified solely as an inventory conducted for the purposes of self-protection, then the examination should be shown to have been conducted in such manner as would be consistent with the alleged purpose. In Williams v. United States,58 for example, where postal inspectors searched the arrestee's car after its impounding by local police, the court held that since the postal inspectors did not have custody of the vehicle they had no right to make a search as their self-protection was not in question.

If the alleged purpose of an inventory is self-protection, how should this purpose affect the permissible scope of the search? In State v. Olsen,59 the

54 No mention was made at trial of the reason for the search. It is obvious upon review of the trial record, however, that the agent searched Cooper's vehicle with the hope of discovering incriminating evidence.

55 Several decisions have taken the position that since the police have lawful custody of the vehicle they are also in lawful possession of the vehicle's contents, and therefore the removal of the articles from the vehicle does not constitute an illegal search. See, e.g., People v. Ortiz, 147 Cal. App. 2d 248, 305 P.2d 145 (1953); People v. Jeiffries, 31 Ill. 2d 597, 203 N.E.2d 396 (1964).

56 The items not listed on an inventory sheet could have been stolen from the vehicle during the week preceding the inventory. For a discussion of the practical value of the inventory as a self-protection device, see Szewajkowski, supra n.38, at 407-408.

57 People v. Andrews, 6 Cal. App. 3d 428, 85 Cal. Rptr. 908 (1970); People v. Roth, 261 Cal. App. 2d 430 at 436, 68 Cal. Rptr. 49 at 53 (1968); and see 7 Cal. Jur. 2d, Bailments § 31, at 408-411, generally relating to the responsibility of such a bailee.

58 382 F.2d 48 (5th Cir. 1967).

59 43 Wash. 2d 726, 263 P.2d 824 (1953). Petitioner here was arrested for traffic violations and the challenged evidence was found while the vehicle contents were being checked for safekeeping.
Washington Supreme Court held that articles found wedged between the car radiator and front grill and on a ledge under the dashboard were admissible under the inventory theory. In a later decision, however, a California court refused to sanction the search of an impounded vehicle which included breaking into the vehicle's trunk with a crow-bar.\textsuperscript{60} If the intent of the search is to find valuables of the arrestee, the prosecution will argue, the search must be exhaustive and include those places where one would ordinarily hide articles of great value, in the most inconspicuous places possible.\textsuperscript{61} As a practical matter, unless such conduct is judicially discouraged, the police officer will conduct the most extensive searches of the vehicles of people who are the least likely to own inventory-worthy valuables.\textsuperscript{62}

In \textit{People v. Andrews},\textsuperscript{63} a California court, in a well-written opinion, addressed itself to the proper scope of an inventory search:

The inventory must be reasonably related to its purpose which is the protection of the car owner from loss, and the police or other custodian from liability or unjust claim. It extends to open areas of the vehicle, including such areas under seats, and other places where property is ordinarily kept, e.g., glove compartments and trunks. It does not permit a search of hidden places, certainly not the removal of car parts in an effort to locate contraband or other property. The owner having no legitimate claim for protection of property so hidden, the police could have no legitimate interest in seeking it out.\textsuperscript{64} The courts are becoming increasingly aware that a blanket justification of inventory searches may lead to police abuse. If the courts determine that an arrest or the impounding of a vehicle was a mere subterfuge to justify the search of the vehicle, the fruits of the inventory search will be excluded from evidence.\textsuperscript{65}

If the search is justified as an inventory,\textsuperscript{66} it cannot be exploratory in character.\textsuperscript{67} In \textit{Heffley v. State},\textsuperscript{68} the court recognized that distinguishing in-

\textsuperscript{60} People v. Garrison, 189 Cal. App. 2d 549, 11 Cal. Rptr. 398 (1961).
\textsuperscript{61} See Szwajkowski, \textit{supra} note 38, at 407.
\textsuperscript{62} The aggressive police officer will give the indigent arrestee's vehicle the fine-tooth-comb treatment in the hope of uncovering evidence of crime, where the same officer will subject the vehicle of a more affluent-appearing arrestee to only a cursory search conducted with the genuine intent of securing articles for safekeeping. This unequal treatment is part of police common sense, as the street-wise officer reasons that the probability that the arrestee will be involved in criminal activity is greater if that arrestee is a member of a lower economic class.
\textsuperscript{64} \textit{Id.} at 437, 85 Cal. Rptr. at 914 (emphasis supplied).
\textsuperscript{66} Note, however, that if probable cause exists to believe that evidence will be found in the vehicle, a warrantless search may be allowed under the forfeiture theory of Cooper v. California, 386 U.S. 58 (1967), or under the probable cause theory expounded in Chambers v. Maroney, 395 U.S. 752 (1970).
\textsuperscript{68} 83 Nev. 100, 423 P.2d 666 (1967).
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Inventory from exploration may prove to be ambitious and unprecise, but held that this difficulty must be faced and that each case must be determined upon its own facts and circumstances.

Perhaps the best judicial justification of the inventory procedure is offered in those opinions that treat an inventory as a cataloguing and not a search. In *State v. Wallen,* for example, the court found that,

[T]he taking of the inventory, a reasonable precaution, did not constitute an unreasonable search any more than in any other case where the police stumble onto evidence of crime in the pursuance of their duty. There is no basis for the contention that the police made a search of any kind.

**CONCLUSION**

When the United States Supreme Court faces the issue of admissibility of evidence under the inventory theory, it will have three alternatives:

1. The police will be prohibited from searching impounded vehicles under the guise of inventory. A search warrant will be required before the impounded vehicle can be searched. This alternative is unlikely in light of the trend of recent decisions dispensing with the requirement of search warrants for automobiles. This view also completely ignores the police need for self-protection clearly recognized by the Supreme Court in *Cooper.*

2. The police will be permitted to conduct an inventory search but the evidence obtained will be inadmissible against the arrestee. This view would protect the police against unfounded claims of theft and also would protect the defendant against the use of illegally seized evidence. This alternative would be a practical solution to the problem but unfortunately it cannot be rationalized within our constitutional framework, since this alternative ignores the basic right sought to be protected. The purpose of the fourth amendment is to secure to everyone the right to privacy, not to protect the accused from conviction. The exclusionary rules of evidence are only the practical means adopted to discourage unreasonable searches. Once the police are allowed to search without a warrant or probable cause, the right which the constitution protects has

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71 *Id.* at 47, 173 N.W.2d at 374. The court distinguished the facts from *Preston* "[T]he search here was not conducted to produce evidence of crime." *Id.* at 48, 173 N.W.2d at 375.


already been invaded. If that invasion is constitutional under the fourth amendment, no rational reason exists for excluding the evidence from trial.\textsuperscript{74}

3. The third alterative is simply to adopt the view that the inventory is not an "unreasonable search" within the meaning of the fourth amendment. Using this approach, the police would be entitled to conduct a reasonable inventory of the vehicle and use any evidence found against the defendant. This view recognizes the need for self-protection of the police, and affords the police a better opportunity to secure the arrestee's valuables. A proper application of this third approach would require the state to show that the vehicle's occupant was not arrested as a subterfuge for searching the auto, that a demonstrable need existed for impounding the vehicle, and that the search was actually conducted under circumstances indicative of a true examination for purposes of self-protection.

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\textsuperscript{74} See Szwajkowski, \textit{supra} n.38 at 407 & n.63.