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### Jesse Calvin Gilbert v. State of Nevada, 140 Nev. Adv. Op. 33 (May 9, 2024)

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*Jesse Calvin Gilbert v. State of Nevada*, 140 Nev. Adv. Op. 33 (May 9, 2024)<sup>1</sup>

A WARRANTLESS INVENTORY SEARCH CAN BE CONSTITUTIONAL DESPITE  
PROCEDURAL DEVIATIONS IF IT IS A REASONABLE UNDER THE TOTALITY OF  
THE CIRCUMSTANCES, REGARDLESS OF ANY INVESTIGATORY MOTIVE.

### **Summary**

An investigatory motive does not invalidate an inventory search if the search would have occurred in the same manner absent the motive, and the circumstances were not fabricated as a pretext. Accordingly, the Supreme Court of Nevada affirmed the district court's decision denying Appellant's motion to suppress, finding the inventory search reasonable under the totality of the circumstances.

### **Background**

Deputy Nollan of Churchill County Sheriff's Office in the early morning hours observed two vehicles meet briefly in a parking lot and then depart. Deputy Nollan followed one vehicle and initiated a traffic stop due to a non-functioning license plate light. The driver, Jesse Calvin Gilbert, stopped in a private residential driveway. Deputy Nollan confirmed with dispatch that Gilbert has a suspended license and an active arrest warrant. Following Gilbert's arrest, Deputy Nollan decided to search the vehicle before it was towed.

The search was captured on Deputy Nollan's body camera and revealed a handgun under the driver's seat, a glass pipe, and suspected methamphetamine. Deputy Nollan, did not list the items in his inventory sheet, but in his report. Despite Deputy Nollan's failure to produce a complete inventory sheet and clear motivation to search the car, Gilbert was charged with being an ex-felon in possession of a firearm. Gilbert moved to suppress the evidence, arguing that the search was a pretext for finding incriminating evidence.

The district court denied Gilbert's motion to suppress, determining that the inventory search was reasonable under the totality of the circumstances, despite Deputy Nollan's investigatory motives and incomplete inventory documentation. Gilbert entered a conditional no-contest plea to preserve his right to appeal the suppression motion's denial.

### **Discussion**

The issue is whether the inventory search conducted by Deputy Nollan was valid and reasonable under the Fourth Amendment. Gilbert argued that the search was a pretext for an investigatory search and thus unconstitutional. A de novo standard of review was applied, examining the legal conclusions regarding the search's validity and reasonableness.

The Nevada and United States Constitutions prohibit unreasonable searches and seizures, with warrantless searches being per se unreasonable except for certain exceptions, including inventory searches.<sup>2</sup> The purpose of inventory searches is to protect the owner's property, guard against claims of lost or damaged property, and ensure officer safety.<sup>3</sup>

An inventory search is constitutionally valid if conducted according to standardized procedures and in good faith, producing a true inventory of items found.<sup>4</sup> However, the strict

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<sup>1</sup> By Ciara Clark.

<sup>2</sup> *State v. Lloyd*, 129 Nev. 739, 743, 312 P.3d 467, 469 (2013).

<sup>3</sup> *Colorado v. Bertine*, 479 U.S. 367, 372-73 (1987).

<sup>4</sup> *Weintraub v. State*, 110 Nev. 287, 288, 871 P.2d 339, 340 (1994).

adherence to procedures is not mandatory for the search to be reasonable, as established in *State v. Nye*. The failure to follow procedures precisely does not invalidate the search if it is reasonable under the totality of the circumstances.<sup>5</sup>

***While the search did not comply with the Churchill County Sheriff's Office Policy 3.415 procedure, it was reasonable under all the circumstances***

Inventory searches are generally constitutional if they adhere to standardized procedures, as these procedures prevent searches from being a pretext for finding incriminating evidence.<sup>6</sup> An inventory search can still be reasonable and thus constitutional even if it does not strictly follow standardized procedures.<sup>7</sup> Measuring reasonableness occurs under the totality of the circumstances.

The Court outlined factors to assess the reasonableness of such searches: (1) the extent of deviation from standardized procedures, (2) whether the scope of the search aligns with the justifications for inventory searches, and (3) whether the inventory produced served its intended purposes.<sup>8</sup>

***The investigatory motive to search a vehicle does not alone make the search unconstitutional***

An investigatory motive does not necessarily render an inventory search unconstitutional if the search would have occurred regardless of such a motive. Impermissible pretext arises when a search occurs only because police manipulate circumstances to justify it.<sup>9</sup> Dual motives do not invalidate inventory searches as long as they comply with standardized procedures and are reasonable under the totality of the circumstances.<sup>10</sup>

Here, Deputy Nollan had a legitimate reason to stop Gilbert's vehicle due to a non-functioning license plate light and lawfully arrested him on an outstanding warrant. With the car parked on private property without permission and inoperable at night, Deputy Nollan was required to tow it under department policies. Thus, the inventory search would have occurred regardless of his investigatory motives.

***Deputy Nollan's deviation from Churchill County Sheriff's Office Policy 3.415 is concerning***

Gilbert argued that the failure to follow department policy rendered the search unconstitutional. Deputy Nollan complied with Churchill County Sheriff's Office Policy 3.410 by towing the vehicle after arresting Gilbert, but he failed to adhere to Policy 3.415, which requires a detailed written description of all of the personal property in the vehicle. This deviation was concerning as it compromised the thoroughness required by the policy. The policy mandates a complete inventory of the vehicle's condition and contents, which Deputy Nollan did not fully accomplish.

While Deputy Nollan's deviation from the policy was concerning, his efforts were largely in good faith, resulting in a nearly complete inventory list. This factor weighed against the

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<sup>5</sup> *State v. Nye*, 136 Nev. 421, at 425 n. 3, 468 P.3d at 372 (2020).

<sup>6</sup> *Jim v. State*, 137 Nev. 557, 560, 495 P.3d 478, 481 (2021).

<sup>7</sup> *Supra* note 5.

<sup>8</sup> *Jim*, 137 Nev. at 561, 495 P.3d at 481.

<sup>9</sup> 3 Wayne R. LaFaye, *Search and Seizure* 926 (6th ed. 2020).

<sup>10</sup> *United States v. Bowhay*, 992 F.2d 229 (9th Cir. 1993).

reasonableness of the search but not significantly, allowing the search to be deemed reasonable under the totality of the circumstances.

***The search performed did not exceed the scope expected of an inventory search***

The scope of a search must align with the purpose of inventory searches: to protect the owner's property, shield police from liability, and ensure officer safety. The search Deputy Nollan conducted lasted approximately 15 minutes and included areas commonly inspected during an inventory, such as car door pockets, the floor, the seats, under the seats, the center console, and the trunk.

All of the areas searched are standard locations for an inventory search and that the discovery of the handgun under the seat and drugs in the console would be expected. The scope of Deputy Nollan's search was appropriate for an inventory search, supporting the reasonableness of the search under the totality of the circumstances.

***The search served the underlying purpose of the inventory search exception to the warrant requirement***

Despite the incomplete inventory sheet, the search served the primary purpose of the inventory search.<sup>11</sup> The entire search was recorded on Deputy Nollan's body camera which provided clear audio and video documentation. The evidence showed that Deputy Nollan handled virtually every item in the car which compensated for the incomplete inventory sheet.

The district court's detailed analysis of the search and the independent review confirmed its reasonableness. Although the incomplete inventory sheet was noted as a concern, it did not outweigh the overall effectiveness and reasonableness demonstrated by the body camera footage. Therefore, the inventory search was deemed reasonable, and the district court's decision to deny the motion to suppress is upheld.

**Conclusion**

The search was deemed reasonable, and the district court's denial of Gilbert's motion to suppress was upheld. The judgment of conviction was affirmed. A warrantless inventory search may still be constitutional even if it does not fully adhere to departmental policies, provided it is reasonable under the totality of the circumstances. An investigatory motive does not automatically invalidate an inventory search if the search would have occurred in the same manner regardless of such a motive. To determine the reasonableness of the search, courts must evaluate (1) the extent of deviation from standardized procedures, (2) whether the scope of the search aligns with the purposes of inventory searches, and (3) whether the inventory served its intended purposes.

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<sup>11</sup> Colorado v. Bertine, 479 U.S. 367, 372-73 (1987).