TIBA TEXAS INDEPENDENT BAR ASSOCIATION

Post Office Box 783
Austin, Texas 78767
Tel. 512-354-7823
Fax: 512-532-6282

Web Site: www.texindbar.org

Vol. 18, No. 45, November 22, 2010

Case Name: Sean Patrick Moskey v. The State of Texas

- OFFENSE: Possession of Marihuana
- COUNTY: Harris
- C/A CASE No. 01-09-0532-CR
- DATE OF OPINION: November 10, 2010
- DISPOSITION: Conviction Affirmed OPINION: Keyes, J.
- TRIAL COURT: CCL 9; Hon. Analia Wilkerson
- LAWYERS: Jon Jaworski (Defense); April Silva (State)

31.021 Search & Seizure / Warrantless Searches / Inventory: Appellant was stopped by a deputy sheriff for an expired vehicle registration and was arrested pursuant to two open warrants. The vehicle also had an expired inspection sticker and Appellant could produce no proof of insurance. A sheriff's department policy requires that, when no one is available for release of a vehicle after an arrest, the vehicle must be towed and the officers must conduct an inventory search to document any valuable items located in the vehicle before the officers impound the car. If the glove compartment is unlocked, the searching officer will open the compartment and document the contents. During the inventory, one deputy opened the unlocked glove compartment and found a bag containing marihuana. Appellant filed a motion to suppress evidence, claiming that the State did not prove that the arresting officers conducted a valid inventory search according to departmental procedures.

Holding: A police officer's inventory of the contents of an automobile is permissible under the Fourth Amendment if conducted pursuant to a lawful impoundment of the vehicle. In conducting an inventory search, the police may permissibly search locked and unlocked containers, including glove compartments. The State bears the burden of establishing that the police conducted a lawful inventory search. The State need not prove that the impoundment and subsequent inventory was the least intrusive means of securing the vehicle and keeping it safe, nor must the State prove that the officers independently investigated possible alternative to impoundment. The State satisfies its burden by demonstrating that (1) an inventory policy exists and (2) the officers followed the policy. In this case, the trial court reasonably could have determined that the inventory search of Appellant's vehicle was conducted in accordance with standardized police procedures. Although the deputies did not determine whether there was anyone who could pick up the vehicle, the expired registration, inspection sticker, and lack of proof of insurance rendered the car unable to be legally driven from the scene.