Vehicle Searches

"*The law of search and seizure with respect to automobiles is intolerably confusing.*"[1]

Back in the 1960s and 1970s, the law pertaining to vehicle searches was not only "intolerably confusing," it was virtually incomprehensible. One writer aptly described it as "a highly sophisticated set of rules, qualified by all sorts of ifs, ands, and buts, literally impossible of application by the officer in the field."[2] The cause of this turmoil was the courts' inability to resolve the recurring conflict between the privacy rights of vehicle occupants and the needs of law enforcement. So, instead of devising rules that could be easily understood and applied, they contrived a hodgepodge of fact-specific regulations that succeeded only in providing bewildering questions for police promotional exams.

But that changed in the early 1980s thanks to a pair of decisions by the United States Supreme Court. The first was *New York* v. *Belton,*[3] a 1981 case in which the Court simplified the rules pertaining to vehicle searches incident to an arrest. Having learned that officers were having trouble determining what places and things they could search when they arrested an occupant, the Court concluded that they needed a straightforward rule. So it provided one: Officers would be permitted to search everything in the passenger compartment.

One year later in *U.S.* v. *Ross,*[4] the Court overhauled the rules covering vehicle searches based on probable cause, ruling that officers who have probable cause to search a vehicle may search it without a warrant, even if they had time to obtain one.

Thanks to *Belton* and *Ross*, things ran smoothly for almost 30 years. But then, out of the blue on the morning of April 21, 2009, a bare majority of the United States Supreme Court announced it had decided to abandon *Belton's* "bright line" rule and replace it with one of the most inane edicts in the history of American jurisprudence. The case was *Arizona* v. *Gant,*[5] and the five justices in the majority convinced themselves that the *Belton* Court "really" meant to say that officers may search vehicles incident to the arrest of an occupant only if, (1) the officers had not handcuffed the arrestee, and (2) they had placed him in a position from which he could have freely attacked them from behind if he was so inclined. But because officers do not ordinarily set themselves up to be blindsided by arrestees, the number of cases in which these requirements will be met is expected to be zero. And so, although the justices lacked the veracity to overturn *Belton,* as a practical matter that is what they did.

The situation is not, however, as bleak as some have predicted. That's because there are several other legal grounds for conducting warrantless vehicle searches, none of which was eroded by *Gant*. Furthermore, these other searches should, in most cases, provide officers with the legal authority to conduct searches that are just as broad as those permitted under *Belton*. But because officers and prosecutors relied so heavily on *Belton* in the past, they may need to become reacquainted with these other searches, especially their requirements and scope. So let's get started.

Probable Cause Searches

We begin with the brightest of all the bright-line rules in police work: Pursuant to the "automobile exception" to the warrant requirement, officers who have probable cause to believe that evidence of a crime is currently inside a certain vehicle may search for it without a warrant.[6] This means they may conduct the search even if they had plenty of time to obtain a warrant, and even if the vehicle had already been towed and was sitting securely in a police garage or impound yard.[7]

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[1] *Robbins* v. *California* (1981) 453 U.S. 420, 430 [conc. opn. of Powell, J.]. Edited.
[2] LaFave, "Case-By-Case Adjudication versus Standardized Procedures: The Robinson Dilemma," 1974 S.Ct.Rev. 127, 141.
[3] (1981) 453 U.S. 454.
[4] (1982) 456 U.S. 798.
[5] (2009) __ U.S. __ [2009 WL 1045962].
[6] See *United States* v. *Ross* (1982) 456 U.S. 798, 809; *People* v. *Carpenter* (1997) 15 Cal.4th 312, 365.
[7] See *Pennsylvania* v. *Labron* (1996) 518 U.S. 938, 940 ["unforeseen circumstances" are not required]; *Maryland* v. *Dyson* (1999) 527 U.S. 465, 467 ["[T]he automobile exception does not have a separate exigency requirement."].

Before going further, it should be noted that, because of *Belton's* demise, probable cause searches will undoubtedly become much more important to officers and prosecutors. For one thing, while probable cause to arrest no longer automatically justifies a vehicle search, it often provides officers with probable cause to look in the vehicle for the fruits and instrumentalities of the crime. In addition, probable cause searches are permitted regardless of where the suspect happened to be when the search began.

What, then, are the requirements for conducting probable cause searches? There are four:

(1) **Vehicle**: The thing that was searched must have been a "vehicle." As used here, the term is defined broadly to include cars, vans, SUVs, boats, motorcycles, even bicycles.[8] It also includes motor homes unless they were being used as residences and were not mobile; e.g., on blocks.[9] Note that a vehicle may be searched even though, at the time of the search, it was not readily mobile because of a traffic collision, mechanical failure, fire; or because it was in police custody.[10]

(2) **Public place**: The vehicle must have been located in a public place or on private property that officers could access without violating the suspect's reasonable expectation of privacy. For example, officers may ordinarily search a vehicle that is parked in the suspect's driveway because people can seldom expect privacy in driveways.[11] On the other hand, they would need a warrant to enter the suspect's enclosed garage to conduct the search.

(3) **Probable cause**: Officers must have had probable cause to believe there was evidence in the vehicle. This subject is discussed next.

(4) **Scope**: Officers must have restricted the search to places and things in which the evidence may reasonably have been found. This subject is discussed after probable cause.

Probable cause

Probable cause to search a vehicle exists if there is a "fair probability" that evidence is located inside.[12] In many cases, probable cause develops suddenly when officers, after stopping the vehicle, see the evidence in plain view.

DRUGS IN PLAIN VIEW: The most common justification for searching vehicles is that officers saw drugs or drug paraphernalia in the passenger compartment. When this happens, officers may enter the vehicle and seize the evidence.[13] As discussed later, in most cases they may also search for more.

DRUG CONTAINER IN PLAIN VIEW: Probable cause to search a container in the passenger compartment commonly exists if the container was something that is used almost exclusively for storing drugs, such as bindles and tied balloons.[14] As noted in *People* v. *Holt*, "Courts have recognized certain containers as distinctive drug carrying devices which may be seized upon observation: heroin balloons, paper bindles and marijuana smelling brick-shaped packages."[15]

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[8] See *California* v. *Carney* (1985) 471 U.S. 386 [motor home]; *People* v. *Block* (1985) 173 Cal.App.3d 506, 510 [Winnebago]; *People* v. *Allen* (2000) 78 Cal.App.4th 445 [bicycle]; *U.S.* v. *Albers* (9th Cir. 1998) 136 F.3d 670 [houseboat].

[9] See *California* v. *Carney* (1985) 471 U.S. 386, 394, fn3.

[10] See *Michigan* v. *Thomas* (1982) 458 U.S. 259, 261 ["[T]he justification to conduct such a warrantless search does not vanish once the car has been immobilized; nor does it depend upon a reviewing court's assessment of the likelihood in each particular case that the car would have been driven away"]; *People* v. *Overland* (1988) 203 Cal.App.3d 1114, 1118 ["Application of [the automobile exception] is not contingent upon whether the particular automobile could actually be moved at the time of the search."].

[11] See *Cardwell* v. *Lewis* (1974) 417 U.S. 583, 591 [vehicle located in public parking lot]; *People* v. *Robinson* (1989) 209 Cal.App.3d 1047, 1052 [car parked on the street]; *People* v. *Zichwic* (2001) 94 Cal.App.4th 944, 953 [vehicle in apartment carport]; *U.S.* v. *Humphries* (9th Cir. 1980) 636 F.2d 1172, 1179 [driveway]; *U.S.* v. *Hatfield* (10th Cir. 2003) 333 F.3d 1189, 1194 [driveway].

[12] See *Illinois* v. *Gates* (1983) 462 U.S. 213, 238.

[13] See *Wyoming* v. *Houghton* (1999) 526 U.S. 295, 300 [because officers saw a hypodermic syringe in the driver's shirt pocket, they reasonably believed there were drugs in the vehicle].

[14] See *Texas* v. *Brown* (1983) 460 U.S. 730, 743 ["[T]he distinctive character of the balloon itself spoke volumes as to its contents"]; *People* v. *Chapman* (1990) 224 Cal.App.3d 253, 257 ["Probable cause to believe a container holds contraband may be adequately afforded by its shape, design, and the manner in which it is carried."]; *People* v. *Nonnette* (1990) 221 Cal.App.3d 659, 666 [bundle of tiny baggies of the type used for drugs].

[15] (1989) 212 Cal.App.3d 1200, 1205.

DRUG ODOR (Plain smell): Probable cause to search a vehicle for drugs may be based on a distinctive odor that is commonly associated with certain drugs such as marijuana, PCP, and methamphetamine.[16] Thus, the Court of Appeal noted that "[o]dors may constitute probable cause" if the officer is "qualified to know the odor, and it is one sufficiently distinctive to identify a forbidden substance."[17]

Such probable cause may also be based on an alert by a trained police dog.[18] Thus, in *United States* v. *Vasquez* the court noted, "Once [the dog] alerted to the vehicle's front and rear bumpers, the officers had probable cause to search the car and its contents."[19]

DRUG SALES: Probable cause to arrest an occupant for drug sales will ordinarily provide officers with probable cause to search the vehicle for things that are closely associated with trafficking, such as drugs, pay and owe records, packaging paraphernalia, and weapons.[20]

FIREARMS IN PLAIN VIEW: The presence of a firearm in plain view would constitute probable cause to enter the vehicle to determine if it was loaded and thus constituted a violation of Penal Code § 12031. (As we will discuss later, there is also a special exception to the warrant requirement for the seizure of any weapon in a detainee's vehicle.)

OPEN CONTAINER IN PLAIN VIEW: Officers who see an open container of an alcoholic beverage in a vehicle may enter the vehicle and seize it.[21] Similarly, an odor of alcohol will ordinarily provide officers with probable cause to believe there are open containers in the passenger compartment.[22]

DRIVER UNDER THE INFLUENCE: If officers have probable cause to believe that an occupant is under the influence of alcohol or drugs, they will ordinarily have probable cause to believe there is alcohol or drugs in the vehicle.[23]

BURGLAR TOOLS IN PLAIN VIEW: The presence of burglar tools may establish probable cause to search for more tools or loot, especially if officers were aware of other circumstances that indicated the occupant was a burglar.[24]

STOLEN PROPERTY IN PLAIN VIEW: Grounds to search a vehicle may be based on probable cause to believe that property in plain view was stolen. Such probable cause may be based on circumstantial evidence such as obliterated serial numbers; clipped wires, pry marks or other signs of forced removal; the presence of store tags or antishoplifting devices that are usually removed when goods are sold;[25] a large number of items that was inconsistent with personal use, especially if the property was of a type that is commonly stolen (e.g., TVs, CDs, cell phones, jewelry);[26] the suspect made conflicting or dubious explanations concerning his possession of the property;[27] the claimed purchase price was suspiciously low.[28]

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[16] See *United States* v. *Johns* (1985) 469 U.S. 478, 482 ["After the officers came closer and detected the distinct odor of marijuana, they had probable cause to believe that the vehicles contained contraband."]; *People* v. *Weaver* (1983) 143 Cal.App.3d 926, 931 ["[The odor of PCP was] quite sufficient to justify the warrantless search of the package area"]; *U.S.* v. *Lopez* (10th Cir. 1985) 777 F.2d 543, 551 ["ether-like substance" which the officers associated with the transport of "bulk cocaine"].

[17] *People* v. *Benjamin* (1999) 77 Cal.App.4th 264, 273.

[18] See *Florida* v. *Royer* (1983) 460 U.S. 491, 505-6 ["The courts are not strangers to the use of trained dogs to detect the presence of controlled substances in luggage"]; *U.S.* v. *$404,905* (8th Cir. 1999) 182 F.3d 643, 647 ["Once Fanta alerted on the exterior of Alexander's trailer, [the officer] had probable cause to search the trailer's interior without a warrant."]; *U.S.* v. *Garcia* (9th Cir. 2000) 205 F.3d 1182, 1187 ["Because the dog alerted to both the trunk area and the glove box, probable cause existed"].

[19] (10th Cir. 2009) 555 F.3d 923, 927.

[20] *People* v. *Glaser* (1995) 11 Cal.4th 354, 367 ["In the narcotics business, firearms are as much 'tools of the trade' as are most commonly recognized articles of narcotics paraphernalia"].

[21] See Veh. Code §§ 23222-23226; *People* v. *Suennen* (1980) 114 Cal.App.3d 192, 202 [open beer can in passenger compartment].

[22] See *People* v. *Molina* (1994) 25 Cal.App.4th 1038, 1042 [with "odor of fresh beer" the officers "were entitled to search the passenger compartment, including any containers therein, for open containers of alcohol"].

[23] See *People* v. *Guy* (1980) 107 Cal.App.3d 593, 598 ["Armed with the belief defendant was intoxicated, [the officer] had the right to conduct a reasonable search for intoxicants in the *interior* of defendant's car."]; *People* v. *Decker* (1986) 176 Cal.App.3d 1247, 1250 ["[B]ased on the obvious intoxicated state of appellant, the lack of the smell of an alcoholic beverage on her breath and the drink found in the van, [the officer] had probable cause to search Ms. Decker's car for drugs."].

[24] See *People* v. *Suennen* (1980) 114 Cal.App.3d 192, 203.

[25] See *People* v. *Gorak* (1987) 196 Cal.App.3d 1032, 1039; *In re Curtis T.* (1989) 214 Cal.App.3d 1391, 1398.

[26] See *People* v. *Martin* (1973) 9 Cal.3d 687, 696; *People* v. *Wolder* (1970) 4 Cal.App.3d 984, 994.

[27] See *In re Richard T.* (1978) 79 Cal.App.3d 382, 388.

[28] See *People* v. *Deutschman* (1972) 23 Cal.App.3d 559, 562.

"WHERE THERE'S SOME, THERE'S PROBABLY MORE": When officers find drugs, weapons, or some other type of contraband in a vehicle, they will ordinarily have probable cause to search the passenger compartment and trunk for more of the same. The theory here is that criminals seldom put all of their illegal stuff in one place. As the Court of Appeal observed in a marijuana case, "[E]ven if defendant makes only personal use of the marijuana found in his day planner, he might stash additional quantities for future use in other parts of the vehicle, including the trunk."[29]

For example, the courts have ruled that the discovery of the following items in plain view justified a search for more: two pieces of rock cocaine,[30] a "small amount" of cocaine,[31] marijuana,[32] an open can of beer,[33] a firearm,[34] stolen property.[35]

SEARCH FOR FRUITS AND INSTRUMENTALITIES: As noted earlier, officers who have probable cause to arrest an occupant of a vehicle will often have probable cause to search it for the fruits and instrumentalities of the crime, or the types of fruits and instrumentalities that are commonly associated with such crimes. This is especially true if the crime occurred fairly recently.

For example, if officers had probable cause to believe that the occupants had just committed an armed robbery, they would ordinarily have probable cause to search for the gun and whatever was taken in the holdup.[36] While probable cause may not exist for "old" robberies, searches have been upheld when they occurred hours and sometimes days later.[37]

Thus, in *People* v. *Weston* the court ruled that officers had probable cause to search the getaway car used in an armed robbery that had occurred four days earlier, saying:

> Because of the relative recency of the crime, and the connection of defendant and his car with it, the officers possessed sufficient information at the time they arrested defendant to create a strong suspicion in their minds that the Cadillac might currently contain evidence of the crime—a gun or stolen property.[38]

The same theory applies to recent burglaries. For example, if officers have probable cause to believe that the occupants had recently comitted a burglary, it is likely that they would also have probable cause to search the vehicle for burglar tools and stolen property. Similarly, in *People* v. *Suennen* the court ruled that officers who saw burglar tools and a

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[29] *People* v. *Dey* (2000) 84 Cal.App.4th 1318, 1322.
[30] See *People* v. *Hunt* (1990) 225 Cal.App.3d 498, 509.
[31] See *People* v. *Sandoval* (1985) 164 Cal.App.3d 958, 965.
[32] *People* v. *Hunter* (2005) 133 Cal.App.4th 371; *People* v. *Brocks* (1981) 124 Cal.App.3d 959, 963 ["It requires no perspicacious intellect to reason the person smoking one marijuana cigarette may well want another and will carry sufficient marijuana to satisfy his appetite of the moment."].
[33] See *People* v. *Chapman* (1990) 224 Cal.App.3d 253, 256 ["after observing the open container of alcohol, the officers had the right to search the vehicle for additional containers of alcohol"]; *People* v. *DeCosse* (1986) 183 Cal.App.3d 404, 411 ["And the [open container] clearly established probable cause for search of the vehicle for other contraband"].
[34] See *People* v. *Benites* (1992) 9 Cal.App.4th 309, 328 [upon seeing a loaded shotgun, the officer had "probable cause to search the rest of the van"]; *People* v. *Nicholson* (1989) 207 Cal.App.3d 707, 712 [search of containers OK after officer "observed an illegal shotgun in the trunk" and learned "there was an illegal handgun under the front seat"].
[35] See *People* v. *Evans* (1973) 34 Cal.App.3d 175, 180 [upon finding $21,000 in cash in the suspect's car, and suspecting it might be loot from a robbery, officers could search for more].
[36] See *Chambers* v. *Maroney* (1970) 399 U.S. 42, 47 ["there was probable cause to search the car for guns and stolen money" taken in a robbery that had just occurred]; *People* v. *Chavers* (1983) 33 Cal.3d 462, 467 [probable cause existed because "the officers had probable cause to believe that seizable items, including the fruits of the robbery" were concealed in the car]; *People* v. *Stafford* (1973) 29 Cal.App.3d 940, 948 [after stopping the car used in a supermarket robbery that had just occurred, the officers "had probable cause to search for the stolen property [and weapons]"]; *People* v. *Varela* (1985) 172 Cal.App.3d 757, 762 ["[T]he officers had probable cause to believe that seizable items, including fruits of the robbery" were in the vehicle used in the robbery earlier that day].
[37] See *People* v. *Gee* (1982) 130 Cal.App.3d 174, 182 ["[T]he officers had reason to believe that appellant's car had been used as the getaway vehicle from the Taylor robbery [about eight hours earlier."]; *People* v. *Le* (1985) 169 Cal.App.3d 186, 190 [although the robberies had not just occurred, the defendant had, "a few hours before," attempted to get an appraisal on some of the stolen property]; *U.S.* v. *Lawson* (D.C. Cir. 2005) 410 F.3d 735, 741 ["The vehicle matched a physical description of the getaway car in the Bank of America robbery [three days earlier]."].
[38] (1981) 114 Cal.App.3d 763, 775.

handgun in a car they had stopped for a traffic violation had probable cause to search a pillowcase in the vehicle because they were aware that a series of pillowcase burglaries had recently been committed in the area. Said the court, "The presence of burglar tools in the vehicle in the possession of passenger, along with the pillowcase, the weapon, and [the officer's] knowledge of prior pillowcase burglaries, furnished the latter with sufficient facts to entertain a strong suspicion that the fruits of a burglary would be found in the pillowcase."[39]

VEHICLE IS A CRIME SCENE: If a murder, rape, kidnapping, or other violent crime occurred inside a vehicle, officers will usually have probable cause to believe that relevant trace or scientific evidence is located somewhere in the vehicle; e.g., DNA, blood, semen, hair, fibers, human tissue, powder burns, and fingerprints.[40] Similarly, if the vehicle was the instrument that was used to commit the crime (e.g., hit-and-run), officers will often have probable cause to take paint scrapings and search the exterior for such things as tire tread, blood, hair, and parts of the victim's clothing.[41]

SEARCH FOR INDICIA: Finally, if the identity of the owner or driver of the vehicle is relevant in a criminal investigation, officers may ordinarily search for indicia of ownership—such as registration, ID, bills, credit card receipts, letters—because such items are often found in vehicles.[42]

What may be searched

Here's another bright-line rule: If officers have probable cause to search a vehicle for evidence, they may search any place or thing in which the evidence could reasonably be found.[43] In the words of the United States Supreme Court:

> When a legitimate search is underway, and when its purpose and its limits have been precisely defined, nice distinctions between glove compartments, upholstered seats, trunks, and wrapped packages in the case of a vehicle, must give way to the interest in the prompt and efficient completion of the task at hand.[44]

Although the scope of a search based on probable cause is broad, there are some limitations and one twist.

PASSENGER COMPARTMENT: In most cases, officers may search throughout the passenger compartment, including the glove box, the console, the recesses of the seats, under the seats, and under the floor mats.[45]

CONTAINERS: Officers may search containers in the passenger compartment so long as they were large enough to hold any of the sought-after evidence.[46] This is true even if officers knew that the container belonged to someone other than the suspect.[47]

On the other hand, a container could not be searched if, because of its size, bulk, or weight, it was apparent that none of the evidence would be found inside. For example, in *People* v. *Chapman* the court ruled that

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[39] (1980) 114 Cal.App.3d 192, 203.

[40] See *People* v. *Panah* (2006) 35 Cal.4th 395, 469 ["apparent bloodstains in the car"]; *People* v. *Superior Court (Nasmeh)* (2007) 151 Cal.App.4th 85, 101 ["[B]ased on his training and experience, Officer Wahl suspected that valuable trace evidence might be found in Nasmeh's vehicle"].

[41] See *Cardwell* v. *Lewis* (1974) 417 U.S. 583, 592; *People* v. *Wolf* (1978) 78 Cal.App.3d 735, 741; *People* v. *Robinson* (1989) 209 Cal.App.3d 1047, 1055 [paint samples of vehicle].

[42] See *People* v. *Rogers* (1986) 187 Cal.App.3d 1001, 1009 ["[C]ommon experience tells us that houses and vehicles ordinarily contain evidence establishing the identities of those occupying or using them."]; *People* v. *Remiro* (1979) 89 Cal.App.3d 809, 830 [officers reasonably believed that the van contained "evidence helpful in the apprehension" of occupant who fled].

[43] See *California* v. *Acevedo* (1991) 500 U.S. 565, 570 [officers may search the "compartments and containers within the automobile so long as the search is supported by probable cause"]; *Wyoming* v. *Houghton* (1999) 526 U.S. 295, 302 ["When there is probable cause to search for contraband in a car, it is reasonable for police officers to examine packages and containers without a showing of individualized probable cause for each one."].

[44] *United States* v. *Ross* (1982) 456 U.S. 798, 821-22. Edited.

[45] See *People* v. *Weston* (1981) 114 Cal.App.3d 764 [jewelry found in recesses of the seats]; *People* v. *Kraft* (2000) 23 Cal.4th 978, 1043 [under the floor mats]; *People* v. *Chavers* (1983) 33 Cal.3d 462, 470 [glove box]; *People* v. *Odom* (1980) 108 Cal.App.3d 100, 106 [under the seats]; *People* v. *Franklin* (1985) 171 Cal.App.3d 627, 634 [under the seats].

[46] See *People* v. *Hart* (1999) 74 Cal.App.4th 479, 487 ["[I]t is well established that containers in a vehicle are searchable if the vehicle is searchable"]; *People* v. *Decker* (1986) 176 Cal.App.3d 1247, 1251 [search of purse]; *People* v. *Schunk* (1991) 235 Cal.App.3d 1334, 1342 [search of "small duffel bag"]; *People* v. *Carrillo* (1995) 37 Cal.App.4th 1662 [search of bag and pouch in trunk].

[47] See *Wyoming* v. *Houghton* (1999) 526 U.S. 295, 307 ["We hold that police officers with probable cause to search a car may inspect passengers' belongings found in the car that are capable of concealing the object of the search."].

officers with probable cause to search for open containers could not search a woman's compact or a grocery bag because neither appeared to contain heavy bottles or cans.[48]

COMPUTERS: It is unsettled whether officers may search computers located in the vehicle.[49] Until the issue is resolved, officers should play it safe and seek a warrant or consent.

TRUNK: The trunk is searchable.[50] Note that it used to be the rule in California that officers could not search the trunk based on the discovery of a small amount of drugs in the passenger compartment (e.g., a single joint, a rock of cocaine, or the odor of burnt marijuana) as this would indicate the drugs were for personal use only.[51] But because this rule is based on the kind of "nice distinction" that the Supreme Court has prohibited, it has been abrogated.[52]

PASSENGERS: Officers may not search the clothing of passengers unless there was independent reason to believe the evidence was located there.[53]

"BLACK BOXES": By statute, information stored in an Event Data Recorder (a.k.a. "Black box" or "Sensing and Diagnostic Module") may be downloaded or otherwise retrieved only by means of, (1) a search warrant or other court order, or (2) the registered owner's consent.[54] It is apparent, however, that the box could be seized pending issuance of a warrant.

LIMITED PROBABLE CAUSE: Here is the twist: If officers know that the evidence is located *only* in a certain area or container, they may search *that* area or open *that* container but not elsewhere. For example, if they were tracking a container of drugs, and if they saw someone put it inside a taxi, they would have probable cause to enter the taxi and search the container, but they could not ordinarily search anywhere else for the drugs.[55]

Note, however, that if indicia of ownership would constitute evidence (and it usually is), officers may search those areas in the vehicle in which indicia may be found, such as the glove box.

Intensity of the search

Officers may conduct a reasonably thorough or "probing" search of all compartments and containers in the vehicle.[56] For example, if they have probable cause to believe that evidence is located in a gas tank or a secret compartment, they may do whatever is reasonably necessary to examine those spaces.[57] Furthermore, if reasonably necessary, they may damage the vehicle or its contents; e.g., take paint samples.[58]

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[48] (1990) 224 Cal.App.3d 253, 259. ALSO SEE *United States* v. *Ross* (1982) 456 U.S. 798, 824 ["Just as probable cause to believe that a stolen lawnmower may be found in a garage will not support a warrant to search an upstairs bedroom, probable cause to believe that undocumented aliens are being transported in a van will not justify a warrantless search of a suitcase."]; *People* v. *Chavers* (1983) 33 Cal.3d 462, 470 ["Probable cause to search for a stolen television set would not justify a search of the glove compartment."].

[49] See *U.S.* v. *Burgess* (10th Cir. 2009) __ F.3d __ [2009 WL 2436674] ["[O]ne might speculate whether the Supreme Court would treat laptop computers, hard drives, flash drives or even cell phones as it has a briefcase or give those types of devices preferred status because of their unique ability to hold vast amounts of diverse personal information."].

[50] See *United States* v. *Ross* (1982) 456 U.S. 798, 821-22; *People* v. *Hunter* (2005) 133 Cal.App.4th 371.

[51] See *People* v. *Wimberly* (1976) 16 Cal.3d 557, 572-73; *People* v. *Gregg* (1974) 43 Cal.App.3d 137, 142.

[52] See *People* v. *Dey* (2000) 84 Cal.App.4th 1318, 1321-22 ["The holdings of *Gregg* and *Wimberly* have never been expressly repudiated. However, in light of *Ross* . . . we do not think these holdings have continued validity"]; *People* v. *Hunter* (2005) 133 Cal.App.4th 371, 379 ["On *Wimberly's* validity, we agree with *Dey's* rejection of both it and [*Gregg*]."].

[53] See *People* v. *Temple* (1995) 36 Cal.App.4th 1219, 1227 ["Temple's pockets were part of his person and therefore were not 'containers' within the scope of the vehicle search."]; *U.S.* v. *Soyland* (9th Cir. 1993) 3 F.3d 1312, 1314 ["There was not a sufficient link between Soyland [a passenger] and the odor of methamphetamine or the marijuana cigarettes, and his mere presence did not give rise to probable cause to arrest and search him."].

[54] Veh. Code § 9951(c).

[55] See *California* v. *Acevedo* (1991) 500 U.S. 565; *United States* v. *Ross* (1982) 456 U.S. 798, 824 ["Probable cause to believe that a container placed in the trunk of a taxi contains contraband or evidence does not justify a search of the entire cab."].

[56] *California* v. *Acevedo* (1991) 500 U.S. 565, 570. ALSO SEE *United States* v. *Ross* (1982) 456 U.S. 798, 820 ["[c]ontraband goods rarely are strewn across the trunk or floor of a car"].

[57] See *U.S.* v. *Flores-Montano* (2004) 541 U.S. 149 [removal of gas tank without causing damage was OK during border search].

[58] See *United States* v. *Ross* (1982) 456 U.S. 798, 818 [noting that in *Carroll* v. *United States* (1924) 267 U.S. 132 the Court ruled that prohibition agents did not violate the Fourth Amendment by ripping open the upholstery of Carroll's car because they had probable cause to believe contraband was hidden under the upholstery]; *United States* v. *Ramirez* (1998) 523 U.S. 65, 71 ["Excessive or unnecessary destruction of property in the course of a search may violate the Fourth Amendment"]; *Cardwell* v. *Lewis* (1974) 417 U.S. 583 [paint samples]; *People* v. *Robinson* (1989) 209 Cal.App.3d 1047, 1055 [scraping paint samples].

Search after impound

Officers who have probable cause to search a vehicle may search it where it was found or they may impound it and search later.[59] As the court pointed out in *People* v. *Decker*, "When there is probable cause to search at the scene, there is still probable cause later back at the police station."[60]

Searching a vehicle at a police or impound garage may, of course, be necessary or desirable if officers anticipate a lengthy search, or if the search may require tools or lighting.[61] But even in the absence of such a necessity, officers are not required to obtain a warrant merely because the vehicle has been impounded. As the Supreme Court observed, "[T]he justification to conduct such a warrantless search does not vanish once the car has been immobilized."[62] The same is true if officers seized containers from the vehicle; i.e., if they have probable cause to search the containers, they may take them to the station and search them there.[63]

How long may officers keep a seized vehicle or container without a warrant? The Supreme Court has not ruled on the issue, saying only that officers may not retain the car or container "indefinitely" without court authorization.[64] In one case, however, it had no problem with a search of containers that occurred three days after they were seized.[65]

Get a warrant?

Although a warrant is not required to search a vehicle when there is probable cause, officers should consider applying for one if they are unsure whether probable cause exists and if they have time to do so. Under these circumstances, they can present the facts to a judge who will make the determination. Furthermore, if the judge issues the warrant, it will usually be upheld under the Good Faith Rule.

Inventory Searches

Inventory searches are different. Unlike the other vehicle searches, they are "totally divorced from the detection, investigation, or acquisition of evidence."[66] Instead, they are classified as "community caretaking" searches because their objective is to serve the following societal interests: (1) protection of the vehicle and its contents by removing them to a safer location; (2) protection of officers and their agencies from false claims that property in the vehicle was lost, stolen, or damaged by providing an inventory of the vehicle's contents; and (3) protection of officers and others from harm if the vehicle happened to contain a dangerous device or substance.[67]

Despite their obvious benefits, vehicle inventory searches are subject to certain restrictions that help ensure that they are not used improperly as a pretext

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[59] See *California* v. *Acevedo* (1991) 500 U.S. 565, 570 ["[I]f the police have probable cause to justify a warrantless seizure of an automobile on a public roadway, they may conduct either an immediate or a delayed search"]; *Chambers* v. *Maroney* (1970) 399 U.S. 42, 52 [vehicle may be searched "on the spot when it was stopped" or "at the station house"]; *Texas* v. *White* (1975) 423 U.S. 67, 68 ["the probable-cause factor that developed at the scene still obtained at the station house"]; *U.S.* v. *Ross* (1982) 456 U.S. 798, 807, fn.9 ["[I]f an immediate search on the scene could be conducted, but not one at the station if the vehicle is impounded, police often simply would search the vehicle on the street—at no advantage to the occupants, yet possibly at certain cost to the police."].

[60] (1986) 176 Cal.App.3d 1247, 1251.

[61] See *People* v. *Laursen* (1972) 8 Cal.3d 192, 202 ["The officers did not possess the proper tools to open the trunk and complete their search at the time and place where the vehicle was discovered"]; *People* v. *Superior Court (Nasmeh)* (2007) 151 Cal.App.4th 85, 98 ["The vehicle can be taken to a crime laboratory for the time reasonably needed to undertake and complete the search."].

[62] *Michigan* v. *Thomas* (1982) 458 U.S. 259, 261.

[63] See *United States* v. *Johns* (1985) 469 U.S. 478, 487, 484.

[64] *United States* v. *Johns* (1985) 469 U.S. 478, 487.

[65] *United States* v. *Johns* (1985) 469 U.S. 478, 487 ["[T]he warrantless search three days after the packages were placed in the DEA warehouse was reasonable"]. ALSO SEE *People* v. *Superior Court (Nasmeh)* (2007) 151 Cal.App.4th 85, 102 [10-day delay OK because of the "serious nature of the possible crimes and the complexity of the investigation"]; *U.S.* v. *Gastiaburo* (4th Cir. 1994) 16 F.3d 582, 587 ["Not a single published federal case speaks of a temporal limit to the automobile exception."].

[66] *Cady* v. *Dombrowski* (1973) 413 U.S. 433, 441.

[67] See *Colorado* v. *Bertine* (1987) 479 U.S. 367, 373 ["Knowledge of the precise nature of the property helped guard against claims of theft, vandalism, or negligence. Such knowledge also helped to avert any danger to police or others that may have been posed by the property."]; *Whren* v. *United States* (1996) 517 U.S. 806, 811, fn1 [purpose of inventory search is "to ensure that it is harmless, to secure valuable items such as might be kept in a towed car), and to protect against false claims of loss or damage."]; *Cooper* v. *California* (1967) 386 U.S. 58, 61-62 ["It would be unreasonable to hold that the police, having to retain the car in their custody for such a length of time, had no right, even for their own protection, to search it."].

to look around for incriminating evidence. Specifically, the Supreme Court has ruled that officers may conduct inventory searches only if the following circumstances existed:

(1) **Towing reasonably necessary**: The officers' decision to tow the vehicle must have been reasonable under the circumstances.

(2) **Standard search procedures**: The search must have been conducted in accordance with departmental policy or standard procedure.

While these requirements might seem straightforward, there is an unusual amount of confusion in this area of the law. As we will discuss, this is mainly because some courts have mistakenly merged the two issues by ruling that both the towing and the searching must have been conducted in accordance with some "standard" procedure.[68]

The decision to tow

Because an inventory search can be conducted only if officers have taken legal custody or control of the vehicle (albeit temporarily),[69] the first requirement is that towing must have been reasonably necessary. This does not mean that towing must have been imperative. It need only be justifiable. As the court explained in *U.S.* v. *Rodriguez-Morales*, "Framed precisely, the critical question in cases such as this is not whether the police needed to impound the vehicle in some absolute sense, but whether the decision to impound and the method chosen for implementing that decision were, under all the circumstances, within the realm of reason."[70]

Accordingly, if an officer's decision to tow was reasonable, it is immaterial that there might have been a less intrusive means of protecting the vehicle or its contents; e.g., by locking the vehicle and leaving it at the scene.[71] As the court pointed out in *People* v. *Williams*, "[A] police officer is not required to adopt the least intrusive course of action in deciding whether to impound and search a car."[72]

As noted, some courts have mistakenly ruled that, even though towing was reasonably necessary, it was unlawful if the officers' departments did not have a "standard" towing policy or if the officers did not follow it.[73] But, as the court pointed out in *People* v. *Burch*, "It is the inventorying practice and not the impounding practice that, if routinely followed and supported by proper noninvestigatory purposes, renders the inventory search reasonable."[74]

Furthermore, it would be impractical to require that officers or their departments devise "standard" procedures that cover the myriad circumstances that may necessitate towing. As the First Circuit observed:

> Virtually by definition, the need for police to function as community caretakers arises fortuitously, when unexpected circumstances present some transient hazard which must be dealt with on the spot. The police cannot sensibly be expected to have developed, in advance, standard protocols running the entire gamut of possible eventualities. Rather, they must be free to follow sound police procedure, that is, to choose freely among the available options, so long as the option chosen is within the universe of reasonable choices.[75]

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[68] See *U.S.* v. *Duguay* (7th Cir. 1996) 93 F.3d 346, 351 [court noted that "the parties have commingled the issues in their briefs, the decision to impound (the 'seizure') is properly analyzed as distinct from the decision to inventory (the 'search')."].

[69] See *U.S.* v. *Smith* (6th Cir. 2007) 510 F.3d 641, 651 ["A warrantless inventory search may only be conducted if police have lawfully taken custody of the vehicle."]. ALSO SEE *People* v. *Andrews* (1970) 6 Cal.App.3d 428, 433 ["[U]pon police impoundment of an automobile, the police undoubtedly become an involuntary bailee of the property and responsible for the vehicle and its contents."].

[70] (1st Cir. 1991) 929 F.2d 780, 786. Edited.

[71] See *Illinois* v. *Lafayette* (1983) 462 U.S. 640, 647 ["The reasonableness of any particular governmental activity does not necessarily or inevitably turn on the existence of an alternative 'less intrusive' means."]; *People* v. *Benites* (1992) 9 Cal.App.4th 309, 327 [court rejects the argument "that impoundment was not necessary to ensure the security of the van since the doors could have been locked"].

[72] (2006) 145 Cal.App.4th 756, 761.

[73] See, for example, *People* v. *Salcero* (1992) 6 Cal.App.4th 720, 723 ["In choosing to impound and inventory the vehicle the police must exercise their discretion according to standard criteria"].

[74] (1986) 188 Cal.App.3d 172, 180. ALSO SEE *U.S.* v. *Smith* (3d Cir. 2008) 522 F.3d 305, 312 [decision to impound contrary to standard procedure or even in the absence of a standardized procedure "should not be a per se violation of the Fourth Amendment"].

[75] *U.S.* v. *Rodriguez-Morales* (1st Cir. 1991) 929 F.2d 780, 787. ALSO SEE *U.S.* v. *Coccia* (1st Cir. 2006) 446 F.3d 233, 239 ["standard protocols have limited utility in circumscribing police discretion in the impoundment context because of the numerous and varied circumstances in which impoundment decisions are made"].

Officers and prosecutors may, however, attempt to buttress their showing that towing was reasonable by presenting evidence that it was based on a standard policy or practice, or by pointing out that it was authorized by one of the Vehicle Code sections that list the situations in which towing is permitted.[76] Still, if towing was unreasonable under the circumstances, the search will not be upheld merely because it was "authorized." As the Ninth Circuit observed in *Miranda* v. *City of Cornelius*, "[T]he decision to impound pursuant to the authority of a city ordinance and state statute does not, in and of itself, determine the reasonableness of the seizure under the Fourth Amendment."[77]

While it would be impractical to provide a comprehensive list of those situations in which the decision to tow a vehicle would be considered reasonable, as we will now discuss, the courts have addressed most of the situations that officers regularly encounter.

TRAFFIC HAZARD: It is obviously reasonable to tow a vehicle that constitutes a traffic hazard. As the Supreme Court noted, "The authority of police to seize and remove from the streets vehicles impeding traffic or threatening public safety and convenience is beyond challenge."[78] In fact, the Vehicle Code specifically authorizes towing for this purpose.[79]

DRIVER ARRESTED: The Vehicle Code also authorizes towing when officers have arrested the driver, owner, or other person in control of the vehicle.[80] This does not mean, however, that officers may routinely tow the vehicles driven by arrestees. Instead, as noted earlier, towing is permitted only if it was reasonably necessary under the circumstances.[81] For example, towing would be unnecessary if a passenger in the arrestee's vehicle was properly licensed, and the arrestee had given him permission to take the car. As the court explained in *United States* v. *Duguay*:

> The policy of impounding the car without regard to whether the defendant can provide for its removal is patently unreasonable if the ostensible purpose for impoundment is for the "caretaking" of the streets. While it is eminently sensible not to release an automobile to the compatriots of a suspected criminal in the course of a criminal investigation, if the purpose of impoundment is not investigative, we do not see what purpose denying possession of the car to a passenger, a girlfriend, or a family member could possibly serve.[82]

Towing may also be unreasonable if the car was legally parked in a safe place and was adequately secured. For example, in *United States* v. *Caseres* an officer decided to tow a car that the defendant had been driving shortly before he was arrested for 148 P.C. During an inventory search of the vehicle, the officer found a handgun, but the court suppressed it because the car "was legally parked at the curb of a residential street two houses away from Caseres's home. The possibility that the vehicle would be stolen, broken into, or vandalized was no greater than if the police had not arrested Caseres as he returned home."[83]

On the other hand, towing would ordinarily be reasonable if the vehicle was away from the arrestee's home, especially if it was in a high-crime area where there existed a real threat of theft or vandalism. As the Ninth Circuit explained, "Whether an impoundment is warranted under this community caretaking

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[76] See *People* v. *Burch* (1986) 188 Cal.App.3d 172, 180 ["The officer testified it was his regular procedure upon citing a driver for a violation of Vehicle Code section 14601 to have the car towed so as to prevent the driver from simply getting back into his vehicle and driving away."]; *People* v. *Benites* (1992) 9 Cal.App.4th 309, 327-28 ["[T]he deputies are clearly given parameters under which to exercise their discretion pursuant to [Veh. Code § 22651(p)]."].

[77] (9th Cir. 2005) 429 F.3d 858, 864.

[78] *South Dakota* v. *Opperman* (1976) 428 U.S. 364, 368-69.

[79] See Veh. Code §§ 22651-22711.

[80] Veh. Code § 22651(h)(1).

[81] See *Miranda* v. *City of Cornelius* (9th Cir. 2005) 429 F.3d 858, 864 ["A driver's arrest is not relevant except insofar as it affects the driver's ability to remove the vehicle from a location at which it jeopardizes the public safety or is at risk of loss." Edited.].

[82] (7th Cir. 1996) 93 F.3d 346, 353. Edited.

[83] (9th Cir. 2008) 533 F.3d 1064, 1075. ALSO SEE *People* v. *Williams* (2006) 145 Cal.App.4th 756, 762 ["the car was legally parked in front of appellant's residence"]; *Miranda* v. *City of Cornelius* (9th Cir. 2005) 429 F.3d 858, 864 [the car was "parked in the driveway of an owner who has a valid license."]; *U.S.* v. *Pappas* (10th Cir. 1984) 735 F.2d 1232, 1234 ["[T]he car was parked on private property and there was no need for the impound and inventory search."].

doctrine depends on the location of the vehicle and the police officers' duty to prevent it from creating a hazard to other drivers *or being a target for vandalism or theft."*[84]

Even if the area was not plagued with crime, a vehicle could certainly become a target for vandalism or theft if it was left in an isolated area. For example, in *People* v. *Benites* a Tuolumne County sheriff's deputy had just cited the defendant for driving on a suspended license when he decided to impound the car mainly because it was parked off the highway in a "dark, lonely and isolated" area located approximately three miles from the nearest town. Said the court, "The impoundment decision was reasonable under the circumstances."[85]

Similarly, in *People* v. *Scigliano* the court ruled that Anaheim police officers reasonably believed that the towing of a Corvette was necessary because the owner, Scigliano, had been arrested, the car was parked on the street, and it had no windshield. Although Scigliano argued that these circumstances did not justify towing, the court disagreed, pointing out, "We have no doubt Scigliano would sing a different tune had the officer simply abandoned the unsecured Corvette and the property within disappeared before Scigliano could return to retrieve it."[86]

Finally, towing an arrestee's vehicle would, of course, be unreasonable if the only justification was "standard procedure." For example, in *People* v. *Williams* an officer testified that he decided to impound the defendant's car because he "almost always" towed the vehicles of the drivers he had arrested. In ruling that this was not a sufficient justification for the impound, the court noted that the officer "simply did not establish that impounding appellant's car served any community caretaking function."[87]

CITATION FOR NO LICENSE: The Vehicle Code permits officers to tow a vehicle when the driver was cited for driving without a license or driving on a license that had been suspended or revoked.[88] The purpose is to prevent the driver from taking off after the officers left.[89] As the court noted in *Miranda* v. *City of Cornelius*, "An impoundment may be proper under the community caretaking doctrine if the driver's violation of a vehicle regulation prevents the driver from lawfully operating the vehicle."[90]

The question arises: May officers tow the vehicle if the cited driver told the officers that he wanted a licensed passenger to drive it? Unfortunately, the question has not yet been addressed by the courts. As noted earlier, if the driver had been *arrested*, officers must ordinarily permit a willing passenger to take the vehicle because there is usually no logical reason to tow it under those circumstances.

It would seem, however, that the situation would be different if an unlicensed driver would be cited and released. That's because it is possible—maybe even probable given the driver's exhibited defiance of the law—that he will reassume control of the vehicle after the officers had left, or after his friend had driven for a few blocks. Some indirect authority for towing under these circumstances is found in *People* v. *Burch* where, after citing the driver for driving on a suspended license, the officer impounded the car "to prevent the cited driver from simply getting back into the vehicle and driving away." The court didn't seem to have any trouble with this justification, but it eventually upheld the search on other grounds.[91]

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[84] *Miranda* v. *City of Cornelius* (9th Cir. 2005) 429 F.3d 858, 864. Emphasis added. ALSO SEE *People* v. *Scigliano* (1987) 196 Cal.App.3d 26, 29 ["the police have a duty to protect a vehicle, like any other personal property which is in the possession of an arrestee"]; *U.S.* v. *Coccia* (1st Cir. 2006) 446 F.3d 233 [towing OK where car was parked in the driveway of arrestee's psychiatrist's office]; *U.S.* v. *Staller* (5th Cir. 1980) 616 F.2d 1284, 1289-90 [impoundment OK where car was parked in mall lot, nobody to assume responsibility].

[85] (1992) 9 Cal.App.4th 309, 326.

[86] (1987) 196 Cal.App.3d 26, 30. ALSO SEE *People* v. *Green* (1996) 46 Cal.App.4th 367, 373 ["[T]here was no other person with a valid license present"]; *People* v. *Webster* (1991) 54 Cal.3d 411, 432.

[87] (2006) 145 Cal.App.4th 756, 763.

[88] Veh. Code § 22651(p).

[89] See *People* v. *Auer* (1991) 1 Cal.App.4th 1664, 1669 ["The obvious purpose of subdivision (p) of section 22651 is to prevent the offender who is cited on a public street for driving without a valid license from reoffending when the officer has completed the citation process and departed."]; *People* v. *Green* (1996) 46 Cal.App.4th 367, 373 [arrest for 12500 VC and "there was no other person with a valid license present to take control of the automobile while defendant was taken to jail"]; *People* v. *Salcero* (1992) 6 Cal.App.4th 720, 723 ["The officer could properly impound the car when he discovered defendant had no driver's license."].

[90] (9th Cir. 2005) 429 F.3d 858, 865.

[91] (1986) 188 Cal.App.3d 172, 180.

EXPIRED REGISTRATION: Another Vehicle Code section authorizes towing if, (1) the vehicle was on the street or in a public parking facility; and (2) the registration had expired over six months earlier, or the registration sticker or license plate was issued for another vehicle or was forged. The Vehicle Code also prohibits the release of these vehicles until the owner provides proof of current registration and a valid driver's license.[92]

PROTECTING THE VEHICLE: Even if the Vehicle Code does not expressly authorize towing under the circumstances, towing is permitted if reasonably necessary to protect the vehicle or its contents from theft or damage. As the court noted in *People* v. *Scigliano*, "The Vehicle Code is not the only source of authority to impound a vehicle. Indeed, the police have a duty to protect a vehicle, like any other personal property which is in the possession of an arrestee."[93]

For example, in *United States* v. *Coccia*[94] a psychiatrist notified the FBI that one of her patients, Coccia, said that "he might plan a bombing or disperse anthrax," and that he was capable of such things "based on his military experience." Coccia also told her that people "would read about his actions in the papers; that he would go after President Bush." When Coccia arrived for his next appointment, FBI agents detained him after the psychiatrist issued a commitment order on grounds that he was a danger to himself or others.

Because Coccia had driven to the doctor's office, and because his car was "jam-packed" with personal property, the agents decided to impound and search it. Among other things, they discovered an assault rifle, approximately 1300 rounds of ammunition, and over $160,000 in cash. After Coccia was charged with unlawful possession of a firearm, he filed a motion to suppress the evidence on grounds that the impound was unlawful since the FBI had no standard procedure for impounding the vehicles of people who are mentally ill. It didn't matter, said the court, because the search was reasonably necessary as "Coccia would be indisposed for an indeterminate, and potentially lengthy, period."

Search pursuant to standard procedures

The second requirement for conducting a vehicle inventory search is that the scope and intensity of the search must have been circumscribed by means of "standardized criteria or established routine."[95] Keep in mind that the standardization requirement pertains only to the methodology of the search, not the decision to conduct it. This is because, as discussed earlier, the courts recognize that the preparation of an inventory is reasonable whenever a vehicle will be towed,[96] even if it will be held in a secure location.[97] Thus, the Ninth Circuit noted "it is undisputed that once a vehicle has been impounded, the police may conduct an inventory search."[98]

The question arises: If inventory searches are inherently reasonable, why is it necessary to prove they were conducted pursuant to standard procedures? The Second Circuit provided a good explanation in *U.S.* v. *Lopez*:

> A standardized policy is needed to ensure that inventory searches do not become a ruse for a general rummaging in order to discover incriminating evidence. . . . [W]hen a police department adopts a standardized policy governing the search of the contents of impounded vehicles, the owners and occupants of those vehicles are protected against the risk that officers will use selective discretion, searching only when they suspect criminal activity and then seeking to justify the searches as conducted for inventory purposes.[99]

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[92] Veh. Code § 22651(o). ALSO SEE *U.S.* v. *McCartney* (E.D. Cal. 2008) 550 F.Supp.2d 1215, 1225.
[93] (1987) 196 Cal.App.3d 26, 29.
[94] (1st Cir. 2006) 446 F3 233, 240.
[95] *Florida* v. *Wells* (1990) 495 U.S. 1, 4. ALSO SEE *Colorado* v. *Bertine* (1987) 479 U.S. 367, 374, fn.6 ["Our decisions have always adhered to the requirement that inventories be conducted according to standardized criteria."]; *People* v. *Green* (1996) 46 Cal.App.4th 367, 374 ["The search should be carried out pursuant to standardized procedures, as this would tend to ensure that the intrusion would be limited in scope to the extent necessary to carry out the caretaking function."].
[96] See *People* v. *Benites* (1992) 9 Cal.App.4th 309, 328 [inventory searches of towed vehicles are "inevitable"]; *U.S.* v. *Lopez* (2nd Cir. 2008) 547 F.3d 364, 369 ["It is well recognized in Supreme Court precedent that, when law enforcement officials take a vehicle into custody, they may search the vehicle and make an inventory of its contents."].
[97] See *Colorado* v. *Bertine* (1987) 479 U.S. 367, 373 [storage facility security "does not completely eliminate the need for inventorying"].
[98] *U.S.* v. *Wanless* (9th Cir. 1989) 882 F.2d 1459, 1463.
[99] (2nd Cir. 2008) 547 F.3d 364, 371.

Similarly, the United States Supreme Court explained that standard procedures are necessary to ensure that the search is "designed to produce an inventory," and because officers "must not be allowed so much latitude that inventory searches are turned into a purposeful and general means of discovering evidence of a crime"[100]

As we will now discuss, a standardized inventory policy may be written or unwritten.

WRITTEN POLICIES: If a department has a written policy covering the scope of inventory searches, prosecutors can ordinarily satisfy the "standardization" requirement by introducing a copy of the policy into evidence after laying the necessary foundation by, for example, having the searching officer identify it.

What must the policy encompass? Although it must specify the general scope of inventory searches, it need not set forth precisely what places and things officers may and may not search.[101] Nor must it require a listing of every object in the vehicle,[102] or restrict the search to an inspection of things in plain view.[103]

Instead, it is sufficient that the policy authorizes a search of places and things in which property is likely to be found, and that it requires that officers list anything of value that is discovered in such places.[104] Thus, a policy may require or authorize officers to look inside glove boxes, inside consoles, inside trunks, under the seats, and under loose carpeting.[105] It may also authorize a visual inspection of the engine compartment.[106]

Note that the policy may authorize a search of motorcycles[107] and any property that officers turn over to a third party, such as a friend of the suspect[108] or a rental car company.[109] And it may require or permit officers to read documents and look through notebooks and other multi-page documents to "ensure that there was nothing of value hidden between the pages."[110] Officers may not, of course, be permitted to damage or destroy parts of the car.[111]

What about opening closed containers? Here, as the Supreme Court noted, flexibility is also allowed:

> A police officer may be allowed sufficient latitude to determine whether a particular container should or should not be opened in light of the nature of the search and characteristics of the container itself. Thus, while policies of opening all containers or of opening no containers are unquestionably permissible, it would be equally permissible, for example, to allow the opening of closed containers whose contents officers determine they are unable to ascertain from examining the containers' exteriors.[112]

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[100] *Florida* v. *Wells* (1990) 495 U.S. 1, 4.

[101] See *U.S.* v. *Lopez* (2nd Cir. 2008) 547 F.3d 364, 371 ["[W]e do not think [*Florida* v. *Wells*] meant that every detail of search procedure must be governed by a standardized policy."].

[102] See *U.S.* v. *Lopez* (2nd Cir. 2008) 547 F.3d 364, 371 ["It should serve no useful purpose to require separate itemization of each object found, regardless of its value, as a precondition to accepting a search as an inventory search."].

[103] See *U.S.* v. *Edwards* (5th Cir. 1978) 577 F.2d 883, 894, fn. 23 ["We reject the defendant's contention that the police may only inventory items found in plain view within the cabin of the automobile."].

[104] See *U.S.* v. *Andrews* (5th Cir. 1994) 22 F.3d 1328, 1336 ["[I]nventory policies must be adopted which sufficiently limit the discretion of law enforcement officers to prevent inventory searches from becoming evidentiary searches."].

[105] See *South Dakota* v. *Opperman* (1976) 428 U.S. 364, 376, fn.10 [OK to open unlocked glove compartment to which vandals would have had ready and unobstructed access once inside the car"]; *U.S.* v. *Edwards* (5th Cir. 1978) 577 F.2d 882, 893, 894 [officers "may ordinarily inspect the glove compartment, the trunk, on top of the seats as well as under the front seats, and the floor of the automobiles"]; *U.S.* v. *Johnson* (5th Cir. 1987) 815 F.2d 309, 314 [OK to search trunk].

[106] See *U.S.* v. *Pappas* (8th Cir. 2006) 452 F.3d 767, 772; *U.S.* v. *Lumpkin* (6th Cir. 1998) 159 F.3d 983, 987-88.

[107] See *People* v. *Needham* (2000) 79 Cal.App.4th 260, 267 ["We see no reason to treat motorcycles differently from cars"].

[108] See *People* v. *Needham* (2000) 79 Cal.App.4th 260, 267 [policy properly required the search of "bags and other containers before turning them over to the person claiming them because of the possibility that the property may contain a concealed weapon"]; *U.S.* v. *Tackett* (6th Cir. 2007) 486 F.3d 230, 233 [the officer "stated that he would not release personal effects to anyone but a relative or spouse, and even if he did pass a bag to someone, he would inventory it to 'cover myself and the sheriff's department"].

[109] See *U.S.* v. *Mancera-Londono* (9th Cir. 1990) 912 F.2d 373, 376; *U.S.* v. *Petty* (8th Cir. 2004) 367 F.3d 1009, 1012.

[110] *U.S.* v. *Khoury* (11th Cir. 1990) 901 F.2d 948, 959. ALSO SEE *U.S.* v. *Andrews* (5th Cir. 1994) 22 F.3d 1328, 1335 ["Cash, credit cards, negotiable instruments, and any number of other items could be hidden between the pages of a notebook, and could give rise to a claim against the city if lost."]; *People* v. *Hovey* (1988) 44 Cal.3d 543, 571 [OK to read "car receipt"].

[111] See *U.S.* v. *Edwards* (5th Cir. 1978) 577 F.2d 883, 893; *U.S.* v. *Lugo* (10th Cir. 1992) 978 F.2d 631, 636.

[112] *Florida* v. *Wells* (1990) 495 U.S. 1, 4.

CHP 180 FORM: In lieu of a written policy, many law enforcement agencies in California satisfy the "standardization" requirement by mandating that their officers complete a CHP 180 form which the California Highway Patrol provides to all officers in California. This form requires, among other things, that officers list all "property" in the vehicle, including radios, tape decks, firearms, tools, and ignition keys. It also requires a listing of all damage to the vehicle.[113]

UNWRITTEN POLICY: In the absence of a written departmental policy, it is sufficient that there existed an unwritten departmental policy or standard procedure so long as it sufficiently restricted the scope of the search.[114] As the court explained in *U.S.* v. *Tackett*, "Whether a police department maintains a written policy is not determinative, where testimony establishes the existence and contours of the policy."[115] Similarly, the California Supreme Court pointed out that the Fourth Amendment "does not require a *written* policy governing closed containers . . . but the record must at least indicate that police were following some 'standardized criteria' or 'established routine' when they elected to open the containers."[116]

For example, in *People* v. *Steeley* an officer in Modesto testified that his department's unwritten policy required that he "inventory the contents of a vehicle prior to towing to make sure when the tow truck is towing the car, to make sure what property is in the vehicle in case it shows up missing from the tow yard. We have a record of what had left the scene so to speak." In upholding the officer's search, the court observed, "Inventory searches of the type conducted in this case are recognized across the nation as standard caretaking functions of the police."[117]

Similarly, in *U.S.* v. *Kornegay* the court noted that, although the record "reflects no written regulations" requiring the opening of closed containers, the FBI agent "established that it is the customary and standard practice when a vehicle is impounded. [The record] reflects that the opening of the bank bag and the separate cataloguing of its contents was standard practice and was reasonable."[118]

Proving that a search was conducted pursuant to an unwritten standard procedure is usually not difficult. In most cases, prosecutors will simply ask the officer a few foundational questions, such as the following which were taken from a Fifth Circuit case:

DA: What was your purpose of doing the inventory search?

Ofr: Policy of Moss Point Police Department, when you arrest someone out of their vehicle, you tow it and do an inventory search of their personal belongings and items left in the vehicle for the protection of the city.

DA: Is that standard operating procedures?

Ofr: Yes, ma'am.

DA: And is the policy of the police department to do that in every case?

Ofr: Yes, ma'am.

DA: And you said it was to protect the City of Moss Point or the police department. What do you mean by that?

Ofr: Well, so the person that's arrested doesn't come back and say, well, I had a five thousand dollar stereo, or five hundred dollars and now it's missing.[119]

Note that if officers are conducting a standardized search, it is immaterial that they suspected there was evidence inside or were otherwise on the lookout for it. As the Eleventh Circuit explained, "[A] legitimate non-pretextual inventory search is not made unlawful simply because the investigating officer remains vigilant for evidence during his inventory search."[120]

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[113] See *People* v. *Williams* (1999) 20 Cal.4th 119, 123 ["The purpose of the CHP 180 form and the inventory is, among other things, to preserve a record of the physical condition of the vehicle and its contents when police take possession of it."].

[114] See *People* v. *Needham* (2000) 79 Cal.App.4th 260, 266; *People* v. *Williams* (1999) 20 Cal.4th 119, 127; *People* v. *Steeley* (1989) 210 Cal.App.3d 887, 891; *U.S.* v. *Duguay* (7th Cir. 1996) 93 F.3d 346, 351 ["a well-honed department routine may be sufficient."].

[115] (6th Cir. 2007) 486 F.3d 230, 233.

[116] *People* v. *Williams* (1999) 20 Cal.4th 119, 127. ALSO SEE *U.S.* v. *Lopez* (2nd Cir. 2008) 547 F.3d 364, 370 [standard NYPD towing was established through an officer's testimony that, "You have to do a total inventory of a vehicle. Everything has to come out."].

[117] (1989) 210 Cal.App.3d 887, 892.

[118] (10th Cir. 1989) 885 F.2d 713, 717.

[119] *U.S.* v. *Andrews* (5th Cir. 1994) 22 F.3d 1328, 1335.

[120] *U.S.* v. *Khoury* (11th Cir. 1990) 901 F.2d 948, 959. ALSO SEE *U.S.* v. *Lopez* (2nd Cir. (2008) 547 F.3d 364, 372 ["[O]fficers will inevitably be motivated in part by criminal investigative objectives. Such motivation, however, cannot reasonably disqualify an inventory search that is performed under standardized procedures for legitimate custodial purposes."].

Protective Searches

When officers detain a suspect in or near his car, a gun or other weapon in the vehicle can be almost as dangerous to them as a weapon in the detainee's waistband. But when the Supreme Court authorized pat searches of armed or dangerous suspects in 1968, it didn't say anything about searching their cars.[121] It took 15 years for that issue to reach the Court and, when it did, the Court corrected the problem. Specifically, it ruled that officers may conduct a vehicle protective search—also known as a "vehicle pat down"—if the following circumstances existed:

(1) **Lawful detention**: An occupant of the vehicle was lawfully detained.
(2) **Weapon inside**: Officers reasonably believed there was a weapon in the vehicle.
(3) **Potential access**: The detainee had not yet been subjected to a "full custodial arrest."

Although the Court indicated that the detainee must also have had the ability to "gain immediate control" of the weapon,[122] elsewhere it said this requirement would be met if a "full custodial arrest has not been effected" because, until then, he might break away or be permitted to reenter the car for some reason; e.g., to obtain ID.[123]

Types of weapons

There are two types of weapons that may satisfy the "weapon inside" requirement: (1) conventional, and (2) virtual.

CONVENTIONAL WEAPONS: Conventional weapons consist mainly of guns and other things that are generally constructed for the purpose of causing injury or death; e.g., firearms, knives, brass knuckles, saps, billy clubs, and nunchucks. Plainly, the presence of a conventional weapon inside a vehicle will satisfy the requirement that the vehicle contains a "weapon." This is true even if it was a "legal" weapon.

For example, in *People* v. *Lafitte*[124] Orange County sheriff's deputies stopped Lafitte at about 10:15 P.M. for driving with a broken headlight. While one of the deputies was talking to him, the other shined a flashlight inside the car and saw a knife on the door of the glove box. The deputy seized the knife and then conducted a protective search of the passenger compartment for additional weapons. During the search, he found a handgun in a trash bag that was hanging from an ashtray next to the steering wheel. Although it is not illegal to have such a knife inside a vehicle, and although Lafitte had been cooperative throughout the detention, the California Court of Appeal ruled that the search was justified because "the discovery of the weapon" provided "a reasonable basis for the officer's suspicion."

VIRTUAL WEAPONS: In contrast to conventional weapons, virtual weapons are instruments that, although they can readily be used as weapons, are mainly used for other purposes; e.g., baseball bats, hammers, screwdrivers, crowbars, box cutters. Unfortunately, the courts have not yet determined whether the presence of a virtual weapon will justify a protective vehicle search. As the Court of Appeal observed in *Lafitte*, "Just how far this rule extends is unclear. [A] baseball bat or hammer can be a lethal weapon; does this mean a policeman could reasonably suspect a person is dangerous because these items are observed in his or her car?"[125]

While the court did not need to answer the question, it seems likely that the presence of a virtual weapon in a vehicle would justify a protective search if, based on the nature of the instrument, its location, or other circumstances, it reasonably appeared that the detainee intended to use it as a weapon. Thus, it might be reasonable to conclude that a baseball bat was serving as a weapon if it was positioned between bucket seats.

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[121] See *Terry* v. *Ohio* (1968) 392 U.S. 1

[122] *Michigan* v. *Long* (1983) 463 U.S. 1032, 1049.

[123] *Michigan* v. *Long* (1983) 463 U.S. 1032, 1051-52. ALSO SEE *U.S.* v. *Graham* (6th Cir. 2007) 483 F.3d 431, 440 [although the detainee was "cuffed and secured in the back of the cruiser," the protective vehicle search was permitted because he "was merely detained, but not under arrest."]. **NOTE**: Defense attorneys may cite *Arizona* v. *Gant* (2009) __ U.S. __ as authority for prohibiting protective vehicle searches unless the detainee had access to the passenger compartment when the search occurred. But *Gant's* requirement of access should not be imported into the field of protective searches because, as the Court observed in *Long*, officers who have detained a suspect do not have as much control over detainees as they do over arrestees; e.g., the officer "remains particularly vulnerable in part because a full custodial arrest has not been effected" At p. 1051.

[124] (1989) 211 Cal.App.3d 1429.

[125] *People* v. *Lafitte* (1989) 211 Cal.App.3d 1429, 1433, fn.5.

An object might also be deemed a virtual weapon if the detainee's explanation of its purpose was inherently suspicious. For example, in *People* v. *Avila*[126] an officer in San Bernardino County detained the defendant who was sitting inside a pickup. As the officer looked inside, he saw a "long black metal object" behind the seat. The officer testified it looked like a "Mag" flashlight and was located approximately eight inches from Avila's left hand. When the officer asked what it was, Avila responded—without looking at it—that he didn't know. Although the issue in *Avila* was whether the subsequent pat search of the defendant was lawful, it was apparent that the court had determined that the officer reasonably believed that the metallic object was being used as a weapon based on its location and Avila's suspicious response when asked what it was.

Circumstantial evidence of weapon

Even if officers did not see a conventional or virtual weapon in the vehicle, they may reasonably believe that one was there based on circumstantial evidence, such as a furtive gesture. For instance, in *People* v. *King*[127] two San Diego police officers on patrol at about 10 P.M. stopped King for driving with expired registration. As one of the officers was walking up to the driver's window, he saw King "reach under the driver's seat," at which point he heard the sound of "metal on metal." The officer testified that, based on these circumstances, he "feared for the safety of his partner and himself," especially because "there was increased gang activity in the area." After ordering King out, the officer looked under the seat and found a .25-caliber semiautomatic handgun.

In ruling that the officer reasonably believed there was a weapon in the car, the court said, "[I]n addition to King's movement, we have the contemporaneous sound of metal on metal and the officer's fear created by the increased level of gang activity in the area."

Search procedure

Officers who are conducting a protective search of a vehicle may, of course, seize any weapons in plain view. But they may also search elsewhere in the passenger compartment for additional weapons even if there was no direct or circumstantial evidence that additional weapons were present.

For example, in *Michigan* v. *Long*[128] sheriff's deputies who had detained a suspected drunk driver spotted a large hunting knife on the floorboard of his car. When they also saw an object protruding from under the armrest, they entered the car, lifted the armrest, and seized the object, which was a pouch containing marijuana. In ruling the search was lawful, the Supreme Court said the officers "did not act unreasonably in taking preventive measures to ensure that there were no other weapons within [the driver's] immediate grasp."

Two other things should be noted about the scope of protective vehicle searches: (1) the scope of the search is limited to the passenger compartment, and (2) the search must be restricted to areas to which the detainee "would generally have immediate control, and that could contain a weapon."[129] Thus, while officers could search the glove box and console, and look under the seats and the armrest, they could probably not search a container that was not large enough to hold a conventional weapon.

ID and Registration Searches

For various reasons, officers may need to inspect or obtain documents that establish the identity of the registered owner, driver, or other occupant of a vehicle. Usually it's the driver, and the documents are needed to confirm his identity because he may be cited for a traffic violation.[130] Although officers will usually permit the driver to retrieve the documents, there are situations in which it is reasonably neces-

[126] (1997) 58 Cal.App.4th 1069. ALSO SEE *U.S.* v. *Nash* (7th Cir. 1989) 876 F.2d 1359, 1361 ["A reasonable interpretation of this furtive gesture was that the defendant was hiding a gun"].
[127] (1989) 216 Cal.App.3d 1237.
[128] (1983) 463 U.S. 1032. ALSO SEE *People* v. *Molina* (1994) 25 Cal.App.4th 1038, 1042 ["Once the officers discovered the knives, they had reason to believe that their safety was in danger and, accordingly, were entitled to search the [passenger] compartment and any containers therein for weapons."].
[129] *Michigan* v. *Long* (1983) 463 U.S. 1032, 1050.
[130] See Veh. Code §§ 4462, 12951 ["The driver of a motor vehicle shall present the registration or identification card or other evidence of registration of any or all vehicles under his or her immediate control for examination upon demand of any peace officer" who has been lawfully stopped for a traffic violation]; *In re Arturo D.* (2002) 27 Cal.4th 60, 78 ["When the officer prepared to cite Arturo for a Vehicle Code violation, he had both a right and an obligation to ascertain the driver's true identity"].

sary for the officers to do this. So, because there is always probable cause to believe that vehicles contain such documents, the courts permit warrantless searches for them if the following circumstances existed:

(1) **Legal right to examine**: Officers must have had a legal right to obtain such information.
(2) **Reasonable for officer to search**: Officers must have reasonably believed it would have been impossible, impractical, or dangerous for them to permit the driver or other occupant to conduct the search.

The following are some common reasons for not permitting drivers to search: there were indications that the car was stolen or that the occupants were involved in some other illegal activity and thus presented a threat; the driver was not the owner of the vehicle and was unable to produce registration; the driver fled; the car was abandoned; the driver's search for the documents was unsuccessful.[131]

For example, in *People* v. *Webster* the court ruled that a California Highway Patrol officer had sufficient grounds to search for ID because, while the driver said the car belonged to one of his passengers, the passengers all claimed they were hitchhikers. After noting that the officer "had every reason to believe that the occupants, who disclaimed ownership, would not be able to find or produce the registration on their own," the court ruled that, "[i]n this uncertain situation, [the officer] was amply entitled to inspect the Chrysler's registration to ascertain its owner before deciding whether to release or impound the vehicle."[132]

Similarly, in *People* v. *Faddler*[133] a Sacramento County sheriff's deputy signaled the driver of a car to stop after seeing him driving erratically and because one of the passengers was "leaning out of a window and shouting and waving what appeared to be a whiskey bottle." The time was about 2 A.M. The deputy ordered the three occupants to exit after noticing that the passenger with the whiskey bottle was "boisterous and mouthy" and appeared to be drunk. When the deputy asked the driver for ID, he said it was in the glove box, at which point he started to walk back to the car to retrieve it. But the deputy stopped him and retrieved it himself and, while doing so, found drugs in plain view. The court ruled the deputy was justified in conducting the search himself citing the "lateness of the hour, the presence of three men in the vehicle, the nature of the suspected violation and the conduct of the defendants."

In another case from Sacramento County, *People* v. *Hart*,[134] sheriff's deputies were dispatched to check on a "suspicious" van parked in a residential area. The time was about 1:30 A.M. When they arrived, they noticed that the van was parked partly on the sidewalk. They also saw a man and a woman on a bed in the back of the van, so they asked what they were doing. At first neither responded, but the woman, Kristel Hart, eventually said that she and her friend were on a "rendezvous." When asked for ID, Hart "looked around on the floor" but said she couldn't find it. So the deputy ordered the pair to exit and conducted his own search for the ID. He found it, next to some marijuana and methamphetamine.

After noting that the deputy had a right to identify the driver because of the parking violation, the court ruled it was reasonable for him to conduct the search himself because he "did not need to permit [Hart] to rummage further in the vehicle or her purse, with the attendant risk that a weapon would be pulled, in light of the hour, defendant's refusal to acknowledge the reason for her presence upon the officer's original inquiry, and her belated disclosure of a rationale only after the officer stated his intent to search the vehicle."

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[131] See *People* v. *Vermouth* (1971) 20 Cal.App.3d 746, 752 ["When the driver was unable to produce the registration certificate and said the car belonged to someone else, it was reasonable and proper for the officers to look in the car for the certificate."]; *People* v. *Turner* (1994) 8 Cal.4th 137, 182 ["Here, the Chrysler was abandoned, and the person observed to have been a passenger disclaimed any knowledge, let alone ownership, of the vehicle. He also had been identified as a parolee, and it was the middle of the night."]; *People* v. *Hart* (1999) 74 Cal.App.4th 479, 488 ["[W]e must answer two questions: Was it permissible to require identification from the defendant? And, if so, could he obtain the identification from the van, himself, rather than allowing the defendant to retrieve it?"]; *People* v. *Remiro* (1979) 89 Cal.App.3d 809, 830 [officers reasonably believed that the van contained "evidence helpful in the apprehension of Remiro who was at large and known to be armed and dangerous"].

[132] (1991) 54 Cal.3d 411, 431.

[133] (1982) 132 Cal.App.3d 607.

[134] (1999) 74 Cal.App.4th 479.

SEARCH PROCEDURE: After ordering everyone to exit,[135] officers may search the entire passenger compartment (but not the trunk[136]) so long as they confine the search to places and things in which ID "may reasonably be found."[137] This includes the glove box, above the visor, and under the seats.[138]

For example, in *In re Arturo D.*,[139] a Suisun City police officer stopped Arturo for speeding. Although Arturo verbally identified himself, he "provided no documentary evidence as to his identity, proof of insurance, or vehicle registration." So the officer ordered him and his two passengers to exit, and then "blindly felt" under the driver's seat. Finding nothing, he "repositioned himself behind the driver's seat, bent down, and looked under the seat," where he saw drugs. On appeal, Arturo claimed the search was unlawful because ID is not usually found under car seats. Granted it's not a "usual" place to find ID, but the court pointed out that "persons trying to hide their identity will often put their wallets underneath the seat."

Other Searches

SEARCHES INCIDENT TO ARREST (*Belton* searches): As noted earlier, officers used to be permitted to search the passenger compartments of vehicles for weapons and evidence whenever they made a custodial arrest of an occupant. But earlier this year in *Arizona* v. *Gant*, the Supreme Court ruled that *Belton* searches would be permitted only if, at the time the search was conducted, the arrestee was not handcuffed and had immediate access to the interior.[140] As a practical matter, this virtually eliminates *Belton* as justification for a search because officers seldom—if ever—turn their backs on unsecured arrestees while searching their vehicles.

Note that the Eighth Circuit recently ruled that officers may conduct a *Belton* search if unarrested passengers in the vehicle had access to the passenger compartment at the time of the search, and if the officers had reasonable suspicion to detain them.[141] There will be many more cases in which courts try to make sense of *Gant*.

REASONABLE SUSPICION SEARCHES: Also in *Gant*, the Court ruled that if officers have arrested an occupant of a vehicle for a crime in which there are usually fruits or instrumentalities (e.g., robbery, burglary, drug possession, trafficking), but they lack probable cause to believe that such evidence is inside the vehicle, they may nevertheless search for it in the passenger compartment if they had reasonable suspicion to believe it was there.[142] The differences between these searches and searches based on the automobile exception are, (1) probable cause is not required, (2) the evidence for which reasonable suspicion exists must pertain to the *same* crime for which the suspect was arrested, and (3) the search must be limited to the passenger compartment. This is another area of the law that the courts will certainly be exploring.

INSTRUMENTALITY SEARCHES: If a vehicle is in a public place, and if officers have probable cause to believe it was an instrumentality of a crime, they may examine it as they could any other piece of evidence. What's an "instrumentality?" Although the term is vague, in most cases it is a vehicle in which a violent crime was committed, or a vehicle that was the means by which a crime was committed; e.g., hit-and-run. On the other hand, a vehicle is not an instrumentality if it had only an ancillary role in the commission of the crime; e.g., a getaway car, a car used to transport drugs.[143]

The scope of an instrumentality search is fairly broad, as officers may search for any evidence that is associated with the crime for which probable cause exists. The following are some examples:

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[135] See *People* v. *Webster* (1991) 54 Cal.3d 411, 431 [OK to remove occupants].
[136] See *In re Arturo D.* (2002) 27 Cal.4th 60, 86, fn.25.
[137] See *In re Arturo D.* (2002) 27 Cal.4th 60, 78, fn.19.
[138] See *In re Arturo D.* (2002) 27 Cal.4th 60, 81 [under the seat]; *People* v. *Turner* (1994) 8 Cal.4th 137, 182 [glove box]; *People* v. *Martin* (1972) 23 Cal.App.3d 444, 447 ["on the sun visors"]; *People* v. *Chavers* (1983) 33 Cal.3d 462, 470 [glove box].
[139] (2002) 27 Cal.4th 60.
[140] (2009) __ U.S. __ [2009 WL 1045962].
[141] *U.S.* v. *Davis* (8th Cir. 2009) __ F.3d __ [2009 WL 1885254].
[142] See *Arizona* v. *Gant* (2009) __U.S.__ [2009 WL 1045962] ["[C]ircumstances unique to the vehicle context justify a search incident to a lawful arrest when it is reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle."]; *U.S.* v. *Barnum* (8th Cir. 2009) 564 F.3d 964 [arrest for possession of crack pipe, search of passenger compartment permitted under *Gant*].
[143] See *People* v. *Minjares* (1979) 24 Cal.3d 410, 422; *People* v. *Gee* (1982) 130 Cal.App.3d 174, 182-83.

MURDER: A murder was committed inside the car (examine blood, fiber, paint samples).[144]

MURDER: The vehicle was used to run over the victim (examine tire tread, blood, flesh).[145]

KIDNAPPING: Kidnap victim was transported in the car (examine fingerprints, compare tire tread and wheel span).[146]

RAPE IN VEHICLE (test for semen).[147]

HIT AND RUN (examine trim).[148]

Note, however, that it is seldom necessary to rely on the instrumentality exception nowadays because a vehicle that was an instrumentality in a crime can almost always be subjected to an intensive search under the automobile exception; i.e., a search based on probable cause.[149]

SEARCH BY AUTO THEFT INVESTIGATORS: Per Vehicle Code § 2805, auto theft investigators may search a vehicle to determine the registered owner if it was located "in any public garage, repair shop, terminal, parking lot, new or used car lot, automobile dismantler's lot, vehicle shredding facility, vehicle leasing or rental lot, vehicle equipment rental yard, vehicle salvage pool, or other similar establishment." Although the statute also says that investigators may search vehicles located "on a highway," this part of the statute may be unconstitutional as it would permit a search of any stopped or parked vehicle without a warrant and without good cause.[150]

VIN SEARCHES: Regardless of whether there were grounds to do so, officers may look through the windshield to inspect the VIN plate located on the dashboard if the car was located in a public place.[151] If the vehicle was stopped for a traffic violation, and if the VIN plate was covered, officers may enter the vehicle, remove the covering, and check the VIN number.[152]

CONSENT SEARCHES: The rules for conducting consent searches of vehicles are the same as those for any other type of consent search. There are, however, three issues that often arise in vehicle cases. First, the consent must have been given by a person who reasonably appeared to have had joint access or control over the vehicle.[153] Second, officers may search any place or thing in the vehicle they reasonably believed the consenting person authorized them to search.[154] For example, officers who have obtained unrestricted consent may usually search all personal property inside the vehicle unless they were aware that the property belonged to someone else.[155] Third, officers may assume that the consenting person understood that the search would be thorough,[156] but not destructive.[157]

EXIGENT CIRCUMSTANCES: Officers may enter and search a vehicle if reasonably necessary to protect lives from imminent danger or property from imminent damage; e.g., child locked in vehicle, sick or injured person inside, gun or dangerous chemical inside.[158] It may also be necessary to enter a vehicle that has been burglarized or is otherwise insecure for the purpose of locking it or searching for registration that will enable officers to notify the owner.

PAROLE AND PROBATION SEARCHES: Finally, search conditions for all parolees and most probationers authorize warrantless searches for property under their control, which would include vehicles they owned or were driving. POV

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[144] See *People* v. *Griffin* (1988) 46 Cal.3d 1011, 1025; *People* v. *Teale* (1969) 70 Cal.2d 497.
[145] See *People* v. *Robinson* (1974) 41 Cal.App.3d 658, 675-75.
[146] See *North* v. *Superior Court* (1972) 8 Cal.3d 301; *People* v. *Braun* (1973) 29 Cal.App.3d 949, 970.
[147] See *People* v. *Bittaker* (1989) 48 Cal.3d 1046, 1076-77.
[148] See *People* v. *Wolf* (1978) 78 Cal.App.3d 735, 741; *People* v. *Rice* (1981) 126 Cal.App.3d 477, 487.
[149] See *People* v. *Gee* (1982) 130 Cal.App.3d 174, 182.
[150] See *In re Arturo D.* (2002) 27 Cal.4th 60, 69, fn.5 [legislative history of the statute suggests that it was designed to permit auto theft investigators to inspect vehicles "located in garages, repair shops, and automobile dismantlers' lots, etc."].
[151] See *People* v. *Lindsey* (1986) 182 Cal.App.3d 772, 779.
[152] See *New York* v. *Class* (1986) 475 U.S. 106.
[153] See *Illinois* v. *Rodriguez* (1990) 497 U.S. 177, 179.
[154] See *Florida* v. *Jimeno* (1991) 500 U.S. 248, 251.
[155] See *U.S.* v. *Harris* (11th Cir. 2008) 526 F.3d 1334.
[156] See *Florida* v. *Jimeno* (1991) 500 U.S. 248, 251-52; *People* v. *Crenshaw* (1992) 9 Cal.App.4th 1403, 1415.
[157] See *People* v. *Crenshaw* (1992) 9 Cal.App.4th 1403, 1415.
[158] See *Cady* v. *Dombrowski* (1973) 413 U.S. 433, 448.