

LOCKED CONTAINERS - AN OVERVIEW

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Law enforcement students often ask the question “can I search a locked container?” A better question to ask may be “when can I search a locked container?” The fact that a container is locked may not increase the possessor-owner’s expectation of privacy but does limit the law enforcement officer’s access to the secured area. The ability to search a locked container will depend on the justification the law enforcement officer has for intruding into the area. The purpose of this article is to examine the different legal avenues a law enforcement officer can use to search locked containers.

WITH A WARRANT

The Supreme Court has expressed a strong preference that law enforcement officers obtain a search warrant before conducting a search of any kind. Searching a locked container is no different.¹ The confusion that surrounds the decision to search a locked container begins when the officer is considering a warrantless search of that container.

The Supreme Court has authorized warrantless searches in several circumstances. Automobile searches, searching those lawfully arrested, *Terry* frisks, inventories and consensual searches are some areas the Supreme Court has permitted government intrusion without a warrant. Under what circumstances may a law enforcement officer intrude into a

locked container without prior judicial approval? Let us examine these warrant exceptions one at a time.

THE FRISK

In *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868 (1968), the Supreme Court justified the frisk. A frisk allows the law enforcement officer to pat the outer clothing of persons that the officer has reason to suspect are armed and dangerous. The justification for the frisk is to allow to officer to take “steps to assure himself that the person with whom he is dealing is not armed with a weapon that could unexpectedly and fatally be used against him.” In a subsequent decision, the Supreme Court expanded the frisk to include those areas within the immediate control of the suspect. *Michigan v. Long*, 463 U.S. 1032, 103 S.Ct. 3469 (1983).

While a law enforcement officer may frisk persons and the areas under their control pursuant to the *Terry* and *Long* decisions, this does not mean the officer can intrude into a locked container encountered during a frisk. The purpose of the frisk is to allow the officer to act if he has a reasonable “belief that his safety or that of others was in danger,” *Terry*, see id, at 27. In neutralizing the threat of physical harm the officer must also consider the privacy protections afforded the suspect. If the officer can preserve safety without intruding into a locked container, the law will insist on that alternative.

The government cannot successfully argue that a law enforcement officer must intrude into a locked container to prevent the immediate retrieval of a weapon. The time required by the suspect to unlock the container and retrieve a weapon would allow the officer adequate time to preserve his safety through other means. The purpose of

¹ *U.S. v. Chadwick*, 433 U.S. 1 (1977)

a frisk is to secure weapons that might become used by the suspect during a face-to-face encounter. Courts have been reluctant to extend this intrusion, based on something less than probable cause, to find items that the suspect may only get to through great difficulty. During a *Terry* stop, law enforcement officers are entitled to take measures designed to preserve their safety that does not require unnecessary intrusions. For instance, if the suspect is holding a locked container, the law enforcement officer would be justified in separating the suspect from the container. The action preserves the officer's safety yet requires no intrusion. If the suspect is standing near a locked container, such as the trunk of an automobile, the officer can reposition the suspect. Of course, the officer may always ask for the person's consent to open the container. When conducting a *Terry* frisk, the officer should look for alternative ways to protect him or herself against the contents of a locked container but he or she may not force open the container.

SEARCH INCIDENT TO ARREST

The Supreme Court has long held that searching the persons of those that law enforcement officers have arrested is reasonable. This search also includes the areas under their immediate control and is designed to secure weapons, means of escape and evidence. *Chimel v. California*, 395 U.S. 752 (1969). The scope of the search is limited to those areas in which the arrestee might gain possession of such items. Does this allow the officer to search the arrestee's locked container, such as a briefcase? While the Supreme Court has never directly held that such a search is reasonable, several circuit courts have interpreted Supreme Court cases to reach this conclusion.

In *New York v. Belton*, 453 U.S. 454 (1981), the Supreme Court set out the parameters for a lawful search of an automobile incident to arrest in which the arrested person was found. The Court held that the interior of the automobile, including containers found therein, are within the immediate control of the arrestee. Its definition of a container "includes closed or open glove compartments, consoles, or other receptacles located anywhere within the passenger compartment, as well as luggage, boxes, bags, clothing, and the like."

Several courts have interpreted this definition to include locked containers, such as luggage and glove boxes. In *U.S. v. Tavolacci*, 895 F.2d 1423 (D.C. Cir. 1990) the court applied the *Belton* rule in permitting an officer to open a locked bag that was in the immediate control of the arrestee. The court in *U.S. v. Gonzales*, 71 F.3d 819 (11th Cir. 1996), stated that the *Belton* rule allowed searches incident to arrest to include glove boxes, locked or unlocked. The 8th Circuit Court of Appeals, in *U.S. v. Valiant*, 873 F.2d 205 (8th Cir. 1989) stated that "(t)he search occurred incident to that arrest. Because the locked briefcase was a closed container within that vehicle, it lawfully could be searched."

Using these cases as a basis for interpretation, the courts appear to be heading in the direction of allowing any container found in the immediate control of the arrestee to be searched. Whether the arrestee could immediately reach the container to obtain a weapon, a means of escape, or destroy evidence, seems immaterial.

INVENTORY

The Supreme Court has recognized the need for law enforcement personnel to

inventory property for which they have taken into their custody.² The three reasons for permitting inventory searches are for the protection of the owner's property while it remains in government custody, the protection of the government officials from disputes over lost or stolen property, and the protection of government officials from danger. The purpose of the inventory search must be to meet one of these concerns and cannot be a pretext to search for evidence.³ If the government officials follow standard procedures related to the three reasons permitting inventory searches, these searches are reasonable within the meaning of the Fourth Amendment.

In *Florida v. Wells*, 495 U.S. (1990), the Supreme Court considered the issue of whether a law enforcement officer may force open a locked container to inventory its contents. The Court examined the discretion permitted an officer engaged in an inventory search. It held that discretion to open "closed" containers is acceptable if such discretion is based on standards related to preserving property or avoiding unnecessary danger. If the government has designed the standardized policy to maximizing the discovery of evidence of criminal activity, the policy is flawed. The Supreme Court allows an officer sufficient latitude in determining whether a particular container should be opened. If the agency produced a policy that allowed officers the leeway to inventory "closed" containers, such an intrusion would be permissible.

It is logical to assume that if the agency produced a standardized policy regarding locked containers, the same principle would allow the officer to inventory the contents of those containers. Many courts have considered the issue of

whether an officer may inventory the contents of the locked trunk of a vehicle. Without fail, if the officer is conducting the inventory pursuant to a standard agency policy to secure property or avoiding safety hazards, the inventory was permissible.⁴ In a case on point, *United States v. Como*, 53 F.3d 87 (5th Cir. 1995), the Fifth Circuit Court of Appeals considered an agency inventory policy that gave the officer the authority to inventory the contents of a locked container. In upholding the policy, the circuit court found the intent of the inventory policy was to protect property and therefore, the authority was a reasonable application of the inventory search principle.

MOBILE CONVEYANCE (CARROLL DOCTRINE)

In the monumental case of *Carroll v. United States*, 267 U.S. 132 (1925) the Supreme Court found that a warrantless search of an automobile was reasonable if it was based on probable cause. In *Carroll*, law enforcement officers ripped up the upholstery of the defendant's automobile after they developed probable cause that he was transporting bootleg alcohol. The Supreme Court held that this search was reasonable, even without a warrant, because of the inherent mobility associated with automobiles.

Today, the automobile exception to the Fourth Amendment's warrant requirement is well known. Yet does the exception allow law enforcement officers to open locked containers found while engaged in a lawful mobile conveyance search?

² *South Dakota v. Opperman*, 428 U.S. 364 (1976)

³ *Colorado v. Bertine*, 479 U.S. 367 (1987)

⁴ *United States v. Velarde*, 903 F.2d 1163 (7th Cir. 1990); *United States v. Duncan*, 763 F.2d 220 (6th Cir. 1985); *United States v. Como*, 53 F.3d 87 (5th Cir. 1995); *United States v. Martin*, 566 F.2d 1143 (10th Cir. 1977).

Based on the many cases decided since the *Carroll* decision, the answer is yes.

The *Carroll* case itself dealt with the destruction of the defendant's property. To find the evidence sought, the officers had to rip into the automobile's upholstery, which is even more intrusive than a search of a locked container. Nonetheless, the Supreme Court found the search to be reasonable within the meaning of the Fourth Amendment.

In *United States v. Ross*, 456 U.S. 798 (1982), the Supreme Court interpreted its prior holdings⁵ to mean that if the law enforcement officer had probable cause to conduct a warrantless search of a vehicle on the side of the road, the officer may also conduct an immediate and warrantless search of the contents of that vehicle. The officer would not need to secure the container and obtain a warrant. The Court also explained that if an officer is conducting a lawful *Carroll* search, he or she may conduct that search as if they had a search warrant issued by a magistrate. Obviously, a law enforcement officer could open a locked container with a search warrant if the container could hold the item sought.

The *Ross* Court said "(t)he scope of a warrantless search of an automobile thus is not defined by the nature of the container in which the contraband is secreted. Rather, it is defined by the object of the search and the places in which there is probable cause to believe that it may be found." This is also a clear indication that the Court would affirm a warrantless automobile search of a locked container found therein. Otherwise, the Supreme Court would not have drawn

attention to the fact that the nature of the container itself was irrelevant to the reasonableness of the search. In sum, the *Ross* majority opinion stated "(i)f probable cause justifies the search of a lawfully stopped vehicle, it justifies the search of every part of the vehicle and its contents that may conceal the object of the search (emphasis added)."

In *California v. Acevedo*, 500 U.S. 565 (1991), the Supreme Court reaffirmed its opinion in *Ross* by stating that if an officer has probable cause to conduct a warrantless search of an automobile, he or she may also conduct a warrantless search of any containers found therein that may contain the item sought. In reviewing its decision in *Carroll*, the Court reasoned that if the destruction of the interior of the automobile was reasonable, then looking inside a closed container was reasonable. Logically, opening a locked container would be no more unreasonable than destroying the interior of an automobile.

CONSENT

The government has the burden of establishing the voluntariness of consent. When a law enforcement officer conducts a search pursuant to a suspect's consent, the objective standard of reasonableness determines the parameters of that consent what would the consenter have understood the limits to the search were based on the exchange between the suspect and the law enforcement officer.⁶ As this question relates to a locked container, the law enforcement officer must establish that the suspect consented to a search of the locked container.

In *Florida v. Jimeno*, 500 U.S. 248 (1991) the Supreme Court held that the

⁵ The Supreme Court's primary focus was on the re-emphasis of its holding in *Chambers v. Maroney*, 399 U.S. 42 (1970).

⁶ *Illinois v. Rodriguez*, 497 U.S. 177 (1990)

Fourth Amendment is satisfied when it is objectively reasonable for the officer to believe that the scope of the suspect's consent permitted a particular container to be opened. Expressed language typically defines the scope of the consent search. The Court noted that it "is very likely unreasonable to think that a suspect, by consenting to the search of his trunk, has agreed to the breaking open of a locked briefcase within the trunk." However, if an officer can reasonably conclude that the suspect has granted consent to search a particular container, the search is reasonable within the meaning of the Fourth Amendment.

Without a direct exchange concerning a locked container, establishing consent to enter it is not easy. For instance, in *United States v. Strickland*, 902 F.2d 937 (11th Cir. 1990), the court had to consider whether a law enforcement officer was justified in slashing the suspect's spare tire found in his trunk after obtaining a general consent to search the auto's contents. The officer stated "I want you to understand that I would like to search the entire contents of your automobile . . . if you want to sit down, that's fine with me, to get out of the cold but I want you to understand that I would like to search the entire contents of your car." The suspect responded, "That's fine." Based on this exchange, the officer ordered the spare tire slashed open and evidence was found inside. The 11th Circuit did not find this search to be within the parameters set out in what the suspect understood the scope of the search to be. The court held that it is not reasonable to conclude that a person agreed to the destruction of their property by consenting to a search of its contents.

Believing that a person gives permission to destroy their property when they grant a general consent to search their

property is unreasonable. Therefore, when an officer obtains a general consent to search the suspect's property, he or she may not damage or destroy a locked container discovered through that search. Specific consent to open that container should be obtained from the suspect.

CONCLUSION

We have looked at several legal principles that may or may not allow government intrusion into locked containers. The central feature of this question is to understand why the officer is intruding into protected areas. The law enforcement officer should always remember that the courts will look upon any search conducted without a warrant with suspicion. Oftentimes, the law enforcement officer can dismiss these issues by simply obtaining a valid consent to conduct the search. When a warrant or consent is not obtainable there are few justifications for opening a locked container. These justifications are limited to containers encountered during a mobile conveyance (*Carroll*) search, an inventory search and those within an arrestee's immediate control. Otherwise, it is probably best to refrain from opening the locked container.