

# SEARCHING A VEHICLE WITHOUT A WARRANT

## The *Carroll* Doctrine

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The Federal Bureau of Investigations reports that 93 law enforcement officers were killed while engaged in traffic stops or pursuits during the period 1989 – 1998.<sup>1</sup> During 1998 alone, 9 law enforcement officers were killed and another 6,242 were assaulted during traffic stops or pursuits.<sup>2</sup> Fortunately, the Supreme Court has long recognized the very real dangers faced by law enforcement officers who confront suspects located in vehicles.<sup>3</sup> Further, the Court has noted that “for the purposes of the Fourth Amendment, there is a constitutional difference between houses and cars.”<sup>4</sup> This “constitutional difference” can result in the warrantless search of a vehicle being upheld under circumstances in which the search of a home would not.<sup>5</sup>

A vehicle may be searched without a warrant in a variety of situations. In the next few editions of the *Quarterly Review*,

I will discuss five of the most frequently encountered exceptions to the warrant requirement of the Fourth amendment, as those exceptions apply to searches of vehicles. In discussing each exception, the background, requirements, and scope of the search will be addressed. With regard to the scope of the search, the articles will focus on four specific areas: The passenger compartment of the vehicle; the trunk of the vehicle; unlocked containers located in the vehicle; and locked containers located in the vehicle. The first article in this series will deal with searching a vehicle pursuant to consent. Subsequent articles will deal with searching a vehicle incident to arrest; searching a vehicle under the mobile conveyance exception (*Carroll* Doctrine); searching a vehicle as part of the inventory process; and searching a vehicle during a lawful *Terry* stop.

## **BACKGROUND**

“It is well-settled that a valid search of a vehicle moving on a public highway may be had without a warrant, if probable cause for the search exists, i.e., facts sufficient to warrant a man of reasonable caution in the belief that an offense is being committed.”<sup>6</sup> This exception was first established by the Supreme Court in the 1925 case of *Carroll v. United States*,<sup>7</sup> and provides that, if a law enforcement officer has probable cause to believe that a vehicle has evidence of a crime or contraband located in it, a search of the vehicle may be conducted without first obtaining a warrant. There are two (2) separate and distinct rationales underlying this exception. First, the inherent mobility of

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<sup>1</sup> Federal Bureau of Investigation, *Uniform Crime Reports*, “Law Enforcement Officers Killed and Assaulted in 1998”, Table 19, Page 32

<sup>2</sup> *Id.* at Table 20, Page 33 and Table 40, Page 88

<sup>3</sup> See *Michigan v. Long*, 463 U.S. 1032, 1048 (1983)(Noting “danger presented to police officers in ‘traffic stops’ and automobile situations”); *Pennsylvania v. Mimms*, 434 U.S. 106, 110 (1977)(Decision rested, in part, on the “inordinate risk confronting an officer as he approaches a person seated in an automobile”); and *Adams v. Williams*, 407 U.S. 143, 148 n.3 (1972)(Citing a study indicating that “approximately 30% of police shootings occurred when a police officer approached a suspect seated in an automobile”)

<sup>4</sup> *Chambers v. Maroney*, 399 U.S. 42, 52 (1970)

<sup>5</sup> *Cardwell v. Lewis*, 417 U.S. 583, 589 (1974)

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<sup>6</sup> *Fernandez v. United States*, 321 F.2d 283, 286-287 (9<sup>th</sup> Cir. 1963)(citations omitted)

<sup>7</sup> 267 U.S. 132 (1925)

vehicles typically makes it impracticable to require a warrant to search, in that “the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant must be sought.”<sup>8</sup> As the Supreme Court has consistently observed, the inherent mobility of vehicles “creates circumstances of such exigency that, as a practical necessity, rigorous enforcement of the warrant requirement is impossible.”<sup>9</sup> For this reason, “searches of cars that are constantly movable may make the search of a car without a warrant a reasonable one although the result might be the opposite in a search of a home, a store, or other fixed piece of property.”<sup>10</sup> Second, an individual’s reduced expectation of privacy in a vehicle supports allowing a warrantless search based on probable cause.

Automobiles, unlike homes, are subjected to pervasive and continuing governmental regulation and controls, including periodic inspection and licensing requirements. As an everyday occurrence, police stop and examine vehicles when license plates or inspections stickers have expired, or if other violations, such as exhaust fumes or excessive noise, are noted, or if headlights or other safety equipment are not in proper working order.<sup>11</sup>

## **REQUIREMENTS**

There are two (2) requirements for a valid search under the mobile conveyance exception. First, there must be probable cause to believe that evidence of a crime or contraband is located in the vehicle to be searched. “Articulating precisely what ... ‘probable cause’ mean[s] is not possible.”<sup>12</sup> Suffice it to say, probable cause cannot be “readily, or even usefully, reduced to a neat set of legal rules.”<sup>13</sup> Instead, the Supreme Court has found probable cause to exist “where the known facts and circumstances are sufficient to warrant a man of reasonable prudence in the belief that contraband or evidence of a crime will be found.”<sup>14</sup> In essence, this simply means that before conducting a warrantless search of a vehicle, a law enforcement officer should have sufficient facts available to him so that if he attempted to obtain a warrant from a magistrate judge, he would be successful. As noted by the Supreme Court in *United States v. Ross*:<sup>15</sup> “[O]nly the prior approval of the magistrate is waived; the search otherwise [must be such] as the magistrate could authorize.”<sup>16</sup> Thus, a search of a vehicle based upon probable cause “is not unreasonable if based on facts that would justify the issuance of a warrant, even though a warrant had not actually been obtained.”<sup>17</sup> In determining whether probable cause exists, courts utilize a “totality of the circumstances” test.<sup>18</sup>

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<sup>8</sup> *Id.* at 153

<sup>9</sup> *Opperman*, 428 U.S. 364 at 267

<sup>10</sup> *Cooper v. California*, 386 U.S. 58, 59 (1967)(citation omitted)

<sup>11</sup> *Opperman*, 428 U.S. at 368

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<sup>12</sup> *Ornelas v. United States*, 517 U.S. 690, 695 (1996)

<sup>13</sup> *Id.* at 695-696

<sup>14</sup> *Id.* at 696

<sup>15</sup> *United States v. Ross*, 456 U.S. 798 (1982)

<sup>16</sup> *Id.* at 823

<sup>17</sup> *Id.* at 809

<sup>18</sup> *Illinois v. Gates*, 462 U.S. 213 230-231 (1983)

Establishing probable cause to search a vehicle may be accomplished in a variety of ways. For example, a law enforcement officer may be able to establish probable cause based on a tip provided to him by a reliable confidential informant.<sup>19</sup> Additionally, when a law enforcement officer personally observes evidence or contraband in plain view inside a vehicle, probable cause can arise. Additionally, the “plain smell” corollary to the plain view doctrine may allow a law enforcement officer to establish probable cause based upon his or her sense of smell. In *United States v. Miller*,<sup>20</sup> law enforcement officers used both plain view and plain smell observations to justify the warrantless search of the suspect’s vehicle. As stated by the Ninth Circuit:

The police officers who arrived at the Elm Street address detected a strong smell of phylacetic acid, known to be used in the manufacture of methamphetamine, emanating from Miller’s car. In addition, the officers observed a handgun in plain view on the front floor and laboratory equipment commonly used in the manufacture of methamphetamine on the backseat of Miller’s car. These plain view, plain smell observations ... gave the officers sufficient independent probable cause to search Miller’s car without a warrant.<sup>21</sup>

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<sup>19</sup> *Maryland v. Dyson*, 527 U.S. 465 (1999)

<sup>20</sup> 812 F.2d 1206 (9<sup>th</sup> Cir. 1987)

<sup>21</sup> *Id.* at 1208-1209. See also *United States v.*

The second requirement for a valid search under the mobile conveyance exception is that the vehicle be “readily mobile.” This does not mean that the vehicle be moving at the time it is encountered, only that the vehicle be capable of ready movement. Illustrative on this point is the Supreme Court’s decision in *California v. Carney*.<sup>22</sup> In *Carney*, law enforcement officers searched a motor home after establishing probable cause that marijuana was located inside. At the time of the search, the motor home was parked in a parking lot in downtown San Diego. Upon finding marijuana, the defendant was arrested and later pled *nolo contendere* to the charges against him. On appeal, the California Supreme Court overturned the defendant’s conviction, finding that the mobile conveyance exception did not apply in this case, in that “the expectations of privacy in a motor home are more like those in a dwelling than in an automobile because the primary function of motor homes is not to provide transportation but to ‘provide the occupant with living quarters.’”<sup>23</sup>

The Supreme Court, however, disagreed, finding the mobile conveyance exception applicable in this case. After reviewing the bases for the exception, the Court concluded:

When a vehicle is being used on the highways, or if it is readily capable of such use and is found stationary in a place not regularly used for residential

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*Harris*, 958 F.2d 1304 (5<sup>th</sup> Cir.), cert. denied, 506 U.S. 898 (1992)(plain smell) and *United States v. Anderson*, 468 F.2d 1280 (10<sup>th</sup> Cir. 1972)(plain smell)

<sup>22</sup> 471 U.S. 386 (1985)

<sup>23</sup> *Id.* at 389 (citation omitted)

purposes – temporary or otherwise – the two justifications for the vehicle exception come into play. First, the vehicle is obviously readily mobile by the turn of an ignition key, if not actually moving. Second, there is a reduced expectation of privacy stemming from its use as a licensed motor vehicle subject to a range of police regulation inapplicable to a fixed dwelling. At least in these circumstances, the overriding societal interests in effective law enforcement justify an immediate search before the vehicle and its occupants become unavailable.<sup>24</sup>

While the Supreme Court did not discuss the applicability of the mobile conveyance exception to a motor home that is “situated in a way or place that objectively indicates that it is being used as a residence,”<sup>25</sup> among the factors they deemed relevant included the location of the motor home; whether it was readily mobile or elevated on blocks; whether it was licensed; whether it was connected to utilities; and whether it had convenient access to a public road.

Two additional matters regarding the mobile conveyance exception deserve comment. First, there is no “exigency” required to conduct a warrantless vehicle search; all that is required is a mobile conveyance and probable cause. Thus, even if a law enforcement officer had the

opportunity to obtain a warrant and failed to do so, the search will still be valid if the two requirements discussed above were present. In *Maryland v. Dyson*,<sup>26</sup> a law enforcement officer received a tip from a reliable confidential informant that the defendant would be returning to Maryland later that day carrying drugs in a specific vehicle with a specific license plate number. This information gave the officer probable cause to search the vehicle. Approximately, 14 hours later, the defendant’s vehicle was stopped as it returned to Maryland. In upholding the search, the Supreme Court cited to their previous decisions in finding that “the automobile exception does not have a separate exigency requirement: ‘If a car is readily mobile and probable cause exists to believe it contains contraband, the Fourth Amendment ... permits the police to search the vehicle without more.’”<sup>27</sup>

Second, once a law enforcement officer has probable cause to search a readily mobile vehicle, the search may be conducted immediately or later at the police station. “There is no requirement that the warrantless search of a vehicle occur contemporaneously with its lawful seizure.”<sup>28</sup> In *United States v. Johns*,<sup>29</sup> the Supreme Court upheld the warrantless search of three packages that had been seized from a vehicle three days earlier, noting that “the justification to conduct such a warrantless search does not vanish once the car has been immobilized.”<sup>30</sup> Nonetheless, law enforcement officers must act “reasonably” and may not “indefinitely retain possession of a vehicle

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<sup>24</sup> *Id.* at 392-393 (footnote omitted)

<sup>25</sup> *Id.* at 394 n.3

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<sup>26</sup> 527 U.S. 465

<sup>27</sup> *Id.* at 466

<sup>28</sup> *United States v. Johns*, 469 U.S. 478, 484 (1985)(citations omitted)

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

and its contents before they complete a vehicle search.”<sup>31</sup>

### **SCOPE**

The scope of a search conducted pursuant to the mobile conveyance exception was laid out by the Supreme Court in *United States v. Ross*.<sup>32</sup> There, the Court stated:

We hold that the scope of the warrantless search authorized by [the mobile conveyance] exception is no broader and no narrower than a magistrate could legitimately authorize by warrant. If 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*.<sup>33</sup>

It should be remembered, however, that probable cause to search does not automatically entitle a law enforcement officer to search every part of a vehicle. For example, where there is probable cause to believe that a vehicle contains drugs, a search of the glove compartment would be permissible. Alternatively, if there is probable cause that the vehicle contains a large stolen television, a search of the glove compartment would be impermissible, in that the television could not be concealed in that location. Any mobile conveyance search is necessarily limited by what it is the officers are seeking in their search. In sum, if a search warrant could authorize the officers to

search in a particular location, such as the passenger compartment or trunk of the vehicle, the officers may search there without a warrant. A law enforcement officer may also search locked or unlocked containers located in the vehicle, if the object of the search could be concealed inside. The rule on containers appears to be relatively straightforward. Nonetheless, the issue of searching containers located in a vehicle merits additional discussion. As one commentator has observed:

The Supreme Court has faced profound difficulties when reviewing warrantless searches of closed containers found in autos. The Court has divided these cases into two groups. In the first group of cases, police possess probable cause to suspect that a closed container in a vehicle contains incriminating evidence, but lack probable cause to suspect that any other part of the auto holds such evidence. In the second group of cases, police have probable cause to search the entire auto and unexpectedly stumble upon a closed container.<sup>34</sup>

In the first group of cases, the Supreme Court’s decision in *California v. Acevedo*<sup>35</sup> is controlling. In *Acevedo*, the police had probable cause that a container

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<sup>31</sup> *Id.* at 487

<sup>32</sup> *Supra*, note 10

<sup>33</sup> *Id.* at 825 (emphasis added)

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<sup>34</sup> Steinberg, David E., *The Drive Toward Warrantless Auto Searches: Suggestions From a Backseat Driver*, 80 B.U.L.REV. 545, 550 (2000)(footnotes omitted)

<sup>35</sup> *California v. Acevedo*, 500 U.S. 565 (1991)

placed in the trunk of a vehicle contained marijuana. Believing they might lose the evidence if they sought a search warrant, the officers stopped the vehicle, opened the trunk, and searched the container (a paper bag). Marijuana was found inside the bag. In finding the search of the paper bag legal, the Supreme Court held that, when law enforcement officers have probable cause that a specific container placed inside a vehicle has evidence of a crime or contraband located inside of it, they may search the container, locked or unlocked, under the mobile conveyance exception. However, the probable cause relating to the container does not support a general search of the vehicle. If the officers wish to search the entire vehicle, they must have some other justification to do so, such as consent or a search incident to arrest. As stated by the Supreme Court:

In the case before us, the police had probable cause to believe that the paper bag in the automobile's trunk contained marijuana. That probable cause now allows a warrantless search of the paper bag. The facts ... reveal that the police did not have probable cause to believe that contraband was hidden in any other part of the automobile and a search of the entire vehicle would have been without probable cause and unreasonable under the Fourth Amendment.<sup>36</sup>

In the second group of cases, law enforcement officers have probable cause to search the entire vehicle and discover a closed container during their search.

When this occurs, the officers may search the container, whether locked or unlocked, if what they are seeking could be concealed inside of it. As noted by the Supreme Court in *Ross*, *supra*:

The scope of a warrantless search of an automobile ... is not defined by the nature of the container in which contraband is secreted. Rather, it is defined by the object of the search and the place in which there is probable cause to believe that it may be found.<sup>37</sup>

Further, the rule of *Ross* has been extended to include a passenger's belongings. In *Wyoming v. Houghton*,<sup>38</sup> the Supreme Court noted that "neither *Ross* nor the historical evidence it relied upon admits of a distinction among packages or containers based on ownership."<sup>39</sup> Accordingly, "police officers with probable cause to search a car may inspect passengers' belongings found in the car capable of concealing the object of the search."<sup>40</sup>

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<sup>37</sup> *Ross*, 456 U.S. at 824

<sup>38</sup> 526 U.S. 295 (1999)

<sup>39</sup> *Id.* at 302

<sup>40</sup> *Id.* at 307

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<sup>36</sup> *Id.* at 579