

THE SCOPE OF A SEARCH INCIDENT TO ARREST IN A VEHICLE THAT DOES NOT HAVE A TRADITIONAL “TRUNK”

Bryan R. Lemons
Branch Chief

INTRODUCTION

It has long been recognized that a search conducted incident to a lawful custodial arrest “is not only an exception to the warrant requirement of the Fourth Amendment, but is also a ‘reasonable’ search under that Amendment.”¹ In the 1969 case of *Chimel v. California*,² the Supreme Court outlined the permissible scope of a search incident to arrest, holding “[t]here is ample justification ... for a search of the arrestee’s person and the area ‘within his immediate control’ – construing that phrase to mean the area from within which he might gain possession of a weapon or destructible evidence.”³ Unfortunately, “[w]hile the *Chimel* case established that a search incident to arrest may not stray beyond the area *within the immediate control of the arrestee*,”⁴ defining exactly what was meant by that phrase was problematic, especially when dealing with vehicles. Twelve years after *Chimel* was decided, the Supreme Court addressed “the proper scope of a search of the interior of an automobile incident to a lawful custodial arrest of its occupants” in *New York v. Belton*.⁵

¹ *United States v. Robinson*, 414 U.S. 218, 235 (1973)

² 395 U.S. 752 (1969)

³ *Id.* at 762-763

⁴ *New York v. Belton*, 453 U.S. 454, 460 (1981)(emphasis added)

⁵ *Id.*

In *Belton*, the Supreme Court established the following bright-line rule for the scope of a search incident to arrest of an occupant of a vehicle: “When a policeman has made a lawful custodial arrest of the occupant of an automobile, he may, as a contemporaneous incident of that arrest, search the passenger compartment of that automobile.”⁶ Further, law enforcement officers “may also examine the contents of any containers found within the passenger compartment, for if the passenger compartment is within reach of the arrestee, so also will containers in it be within his reach.”⁷ A “container” was defined in *Belton* as “any object capable of holding another object. It thus 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.”⁸ While this definition did not expressly address “locked” containers, several subsequent federal cases can be interpreted as including locked containers within the scope of a lawful search incident to arrest.⁹ The “bright-line” rule formulated in *Belton*

⁶ *Id.* at 460

⁷ *Id.* (citation omitted)(footnote omitted)

⁸ *Id.* at 453 U.S. at 461 n4

⁹ See *Knowles v. Iowa*, 525 U.S. 113 (1998) (Law enforcement officers may “even conduct a full search of the passenger compartment, including any containers therein, pursuant to a custodial arrest”)(emphasis added); *United States v. Tavalacci*, 895 F.2d 1423, 1428 (D.C. Cir. 1990)(locked bag); *United States v. Gonzalez*, 71 F.3d 819, 825-26 (11th Cir. 1996)(*Belton* rule allowed searches of glove boxes, locked or unlocked); *United States v. Valiant*, 873 F.2d 205, 206 (8th Cir. 1989)(noting that, “because the locked briefcase was a closed container within that vehicle, it lawfully could be searched” incident to arrest of occupant); and *United States v. Woody*, 55 F.3d 1257, 1269-70 (7th Cir. 1995)(search of locked glove box reasonable during search incident to arrest)

was based on the “generalization that articles inside the relatively narrow compass of the passenger compartment of an automobile are in fact generally, even if not inevitably, within the area into which an arrestee might reach in order to grab a weapon or [evidence].”¹⁰ Based on this same rationale, the trunk of a vehicle is not considered to be within the immediate control of an arrestee and cannot be searched during a search incident to arrest.¹¹

THE SCOPE OF A SEARCH INCIDENT TO ARREST WHEN THE VEHICLE DOES NOT HAVE A TRUNK

While *Belton* appeared to answer any questions regarding the proper scope of a search incident to the arrest of the occupant of a vehicle, one question was not directly addressed: What about vehicles which do not have a “trunk?” What is the proper scope of a search incident to arrest when the arrestee is driving a van, a vehicle with a hatchback, a station wagon, or a sport-utility vehicle? None of these vehicles has a trunk (at least in the traditional sense), so determining the exact scope of the “passenger compartment” becomes more difficult. Here is how various courts have addressed this issue.

¹⁰ *Belton*, 453 U.S. at 460 (internal quotation marks and citation omitted).

¹¹ *Id.* at 461 n.4 (“Our holding encompasses only the interior of the passenger compartment of an automobile and does not encompass the trunk”). See also *United States v. Thompson*, 906 F.2d 1292, 1298 (8th Cir.), *cert. denied*, 498 U.S. 989 (1990); *United States v. Hernandez*, 901 F.2d 1217, 1220 (5th Cir. 1990); *United States v. Schechter*, 717 F.2d 864, 868 (3rd Cir. 1983); *United States v. Freire*, 710 F.2d 1515, 1521 (11th Cir. 1983), *cert. denied*, 465 U.S. 1023 (1984); and *United States v. Wright*, 932 F.2d 868, 878 (10th Cir. 1991)

VANS

The issue of where within a van law enforcement officers may conduct a search incident to arrest has been considered in only a few cases. The Tenth Circuit Court of Appeals has twice addressed the issue, first in *United States v. Lacey*¹² and then in *United States v. Green*.¹³ In both cases, the defendants were arrested while driving vans. In both cases, the court upheld full searches of the interiors of the vans as incident to the defendants’ arrests. In *Lacey*, the court held that “because the agents in [the] case effectuated a lawful arrest of Lacey, no warrant was required ... to contemporaneously search the passenger compartment of his van.”¹⁴ Likewise, in *Green*, the court ruled that, because the arrest of the defendant was lawful, “the arresting officers were entitled to search the passenger compartment of Green’s [van] incident to his arrest.”¹⁵

The issue of the proper scope of a search incident to arrest in a van was also addressed by a New York District Court in *United States v. Nunez*.¹⁶ Citing *Belton*, the court held that “the scope of the search, which included the entire interior of the van, was within permissible limits because the entire interior of the van was accessible to the occupants without their having to exit the vehicle.”¹⁷

¹² 86 F.3d 956 (10th Cir.), *cert. denied*, 519 U.S. 944 (1996)

¹³ 178 F.3d 1099 (10th Cir. 1999)

¹⁴ *Lacey*, 86 F.3d at 971

¹⁵ *Green*, 178 F.3d at 1107

¹⁶ 1999 U.S. Dist. LEXIS 6877 (S.D.N.Y. 1999)

¹⁷ *Id.* at *6

HATCHBACKS / STATION WAGONS

“A long line of cases ... has clearly established that police officers may search hatchback ... areas in vehicles without a ‘trunk’ (in the traditional sense) as constituting part of the passenger compartment for purposes of search incident to arrest.”¹⁸ Typical of these cases is *United States v. Doward*,¹⁹ where the defendant was stopped for making an illegal turn while driving a Ford Mustang. When the officers discovered there was an outstanding warrant for the defendant, he was arrested and the vehicle was searched. The hatchback, accessible from the back seat, contained two partially zipped suitcases. Searches of those suitcases uncovered handguns that were illegal for the defendant to possess based upon a previous felony conviction. On appeal, the defendant claimed the search was impermissible because the hatchback was “more akin to an automobile trunk, which *Belton* was careful to differentiate from the ‘passenger compartment.’”²⁰ The defendant also claimed that the hatchback “had large interior dimensions which would make it impossible to reach into the hatch area from his position in the front seat.”²¹ The First Circuit Court of Appeals rejected both arguments, concluding that “*Belton* unmistakably foreclose[d] ... inquiries on actual ‘reachability.’”²² According to the court, the only question that must be addressed in these situations is whether “the area to be searched is generally reachable without exiting the vehicle, without regard to the likelihood in the particular case that such a reaching

¹⁸ *United States v. Olguin-Rivera*, 168 F.3d 1203, 1205 (10th Cir. 1999)(footnote omitted)

¹⁹ 41 F.3d 789 (1st Cir. 1994), *cert. denied*, 514 U.S. 1074 (1995)

²⁰ *Id.* at 793-794 (citation omitted)

²¹ *Id.* at 794

²² *Id.*

was possible.”²³ In this case, the hatch area of the vehicle “unlike a trunk, generally is accessible from within the passenger compartment.”²⁴ For this reason, the search was permissible under *Belton*.

Other cases that have found the hatchback area to be part of the passenger compartment include *United States v. Russell*,²⁵ in which the District of Columbia Circuit Court of Appeals held that “a hatchback reachable without exiting the vehicle properly ranks as part of the interior or passenger compartment,”²⁶ and *United States v. Rojo-Alvarez*,²⁷ where the court found the search of a hatch area lawful under *Belton* because the hatch area was “within the defendant’s reach.”²⁸

Finally, in *United States v. Pino*,²⁹ the Sixth Circuit Court of Appeals dealt with the proper area of a search incident to arrest in a station wagon. Analogizing this situation to one in which a vehicle has a hatchback, the court found that “the rear section of a mid-sized station wagon” fell within the “passenger compartment” of the vehicle, because the area was “reachable without exiting the vehicle.”³⁰ Thus, the rear section of the wagon was subject to search under *Belton*.

SPORT UTILITY VEHICLES

In *United States v. Olguin-*

²³ *Id.* (internal quotation marks and citation omitted)

²⁴ *Id.*

²⁵ 670 F.2d 323 (D.C. Cir.), *cert. denied*, 457 U.S. 1108 (1982)

²⁶ *Id.* at 327

²⁷ 944 F.2d 959 (1st Cir. 1991)

²⁸ *Id.* at 970

²⁹ 855 F.2d 357 (6th Cir. 1988)

³⁰ *Id.* at 364

Rivera,³¹ the Tenth Circuit Court of Appeals addressed the scope of a search incident to arrest in a sport-utility vehicle (SUV). Specifically, the defendant was a passenger in an SUV being driven by another man. After being stopped for a possible traffic violation, the driver of the SUV was arrested for failing to produce a driver's license. The officers began searching the interior of the vehicle, which had a "built-in, vinyl cover pulled over the top."³² According to evidence presented at the suppression hearing:

the vinyl cover operated much like a rolling window shade that could be extended over the top of the cargo and then retracted when not in use. This particular cover was drawn from the front of the cargo area near the back of the passenger seat and latched at the back of the vehicle near the tailgate.³³

Two large bags were found after the tailgate was opened. The defendant admitted they were his and that marijuana was inside. The defendant was arrested and a search of the bags revealed 118 pounds of marijuana. The District Court suppressed the evidence found during the search of the covered area, holding the "rear compartment of the sport-utility vehicle created the 'functional equivalent of the trunk of an automobile,' and therefore caused the [officers] search to 'exceed the proper scope' of an automobile search incident to arrest."³⁴

On appeal, the Tenth Circuit Court of Appeals reversed.

Initially, the court reiterated the rule outlined in *Belton* that the trunk of an automobile is beyond the permissible scope of a search incident to arrest. However, the court noted a "long line of cases" dealing with vehicles without "trunks" that found those areas to be encompassed within the passenger compartment of the automobile. Finding the reasoning of those cases persuasive, the court held "the extension of the built-in, vinyl cover over the top of the cargo area simply [did] not make it tantamount to a trunk for search and seizure purposes."³⁵ The court's rationale was threefold. First, "trunks are inaccessible from the passenger compartment, whereas the cargo area in the vehicle in this case, whether covered or not, [was] still accessible to the vehicle's occupants."³⁶ Second, consistency in interpreting the Supreme Court's decision in *Belton* required finding the cargo area within the passenger compartment. *Belton* allows law enforcement officers to search containers found in the passenger compartment incident to arrest. "The search of a closed container within the passenger compartment is so closely analogous to looking under a covered area of the passenger compartment" that these areas must be treated "the same for purpose of search incident to arrest."³⁷ Finally, the need for a clear, "bright-line" standard was necessary, because "both law enforcement and private citizens benefit from clear rules in the context of search and seizure."³⁸ Based on these rationales, the court held "officers may search the

³¹ *Olguin-Rivera*, *supra* note 18

³² *Id.* at 1204

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.* at 1206

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

entire passenger compartment, including the interior cargo or luggage area, of sport-utility vehicles or similarly configured automobiles, whether covered or uncovered.”³⁹

Similarly, in *United States v. Henning*,⁴⁰ a full search of the interior of a Chevrolet Suburban was found to be Constitutional under *Belton*. According to the court, “where ... the vehicle contains no trunk, the entire inside of the vehicle constitutes the passenger compartment and may be lawfully searched.”⁴¹

CONCLUSION

When the occupant of a vehicle is arrested, law enforcement officers may conduct a search incident to arrest of the person, the passenger compartment of the vehicle, and all containers found within the passenger compartment. A vehicle’s trunk is beyond the permissible scope of a search incident to arrest. In vehicles that do not have a traditional “trunk,” the question of what constitutes the “passenger compartment” of a vehicle has been addressed in various contexts, including when the vehicle is a van, a hatchback, a station wagon, and a sport-utility vehicle. Courts have consistently defined the “passenger compartment” of a vehicle “as including all space reachable without exiting the vehicle, excluding areas that would require dismantling the vehicle.”⁴² Thus, a search of these areas

incident to the arrest of an occupant is permissible.

³⁹ *Id.* at 1207

⁴⁰ 906 F.2d 1392 (10th Cir. 1990), *cert. denied*, 498 U.S. 1069 (1991)

⁴¹ *United States v. Henning*, 906 F.2d 1392, 1396 (10th Cir. 1990), *cert. denied*, 498 U.S. 1069 (1991)

⁴² *Pino*, 855 F.2d at 364 (internal quotation marks and citation omitted); *see also Thompson*, 906 F.2d at 1298 (“‘Passenger compartment’ has been interpreted broadly by most courts following the

Supreme Court’s decision in *Belton* and generally includes whatever area is within a passenger’s reach.”)