SEARCH OF PERSONAL CONTAINERS INCIDENT TO A SEARCH WARRANT

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Scenario #1: You have a premises search warrant to search a business for documents. Through surveillance, you see the owner of the business carry a briefcase into the premises. Shortly thereafter, you serve the warrant and make entry. Inside, you find the owner's briefcase, search it, and find evidence inside.

Scenario #2: You have a premises search warrant to search a business for documents. You search the warrant and make entry. Inside, you encounter patrons and employees of the business. You also find various personal containers. You search a briefcase and find evidence. You also search a purse and find evidence.

Is the evidence seized in these scenarios admissible?

In other words, does the scope of a validly issued search warrant for a residence or business extend to containers found therein, when such containers (1) belong to a person associated with the premises, (2) belong to individuals who are not occupants of the premises, or (3) are merely found on the premises?

SEARCHES OF CONTAINERS GENERALLY

A properly issued search warrant authorizes the search of the described premises for the named items wherever they may reasonably be found. An exception to this general principle is that a premises warrant does not by itself justify the search of persons found on the premises if the persons are not named in the warrant.[1]

A warrant sufficiently describing the premises to be searched will justify a search of containers found therein and belonging to the occupant if the container might contain the described items.[2]

But what if the container belongs not to the occupant, but to some other person?

SEARCHES OF CONTAINERS BELONGING TO GUESTS OR EMPLOYEES

In the context of a lawful warrantless vehicle search, the scope of the search includes all containers therein, including the purse of a passenger.[3] However, in his dissent, Justice Breyer stated that it would make a legal difference if the purse were attached to the defendant's person.[4]

Although the Supreme Court has not addressed the constitutionality of searches of containers of social guests or of non-residents incident to the service of residential or business search warrants,[5] other courts have. The Federal Circuit Courts of Appeal are divided on the correct

rationale to apply in these situations. These courts have generally used two tests for determining the constitutionality of container searches: the "physical possession" test and the "relationship" test.

The "Physical Possession" Test

This is a rather straightforward test which examines the physical proximity of the container to the visitor. Personal possessions belonging to the visitor and deemed to be in the visitor's possession are an extension of the person and may not be searched.

In the **Seventh Circuit** case of *United States v. Teller,*[6] the police had an arrest warrant for the defendant's husband, and a narcotics search warrant for their residence. During the time of service of the search warrant, the defendant entered the home carrying a handbag. She walked into a bedroom where officers were searching, left the handbag on the corner of the bed, and left the room. Twenty minutes later, officers searched the bag and found narcotics. The Seventh Circuit upheld the search. The court held that defendant's purse was not an extension of her person when it was searched because it had been placed upon her bed and left in her bedroom while the arresting officers searched her bedroom. Thus, the court held that the purse was no more a part of her person that would have been a dress that she had worn into the room and then removed for deposit in a clothes closet. However, the court implied that if the handbag was actually on her person, it would not be subject to search pursuant to the search warrant.

In the **Eleventh Circuit** case of *United States v. Gonzalez,*[7] officers served a search warrant at the Sanchez home. The court upheld a search of a locked briefcase the police knew belonged to brother-in-law Gonzalez, deeming it sufficient that items named in the warrant, documents and currency would fit within such a container.

This approach has been criticized for being "both too broad and too narrow."[8] The rule provides blanket protection to those seeking to hide incriminating evidence because those individuals could avoid detection from lawful searches "through the simple act of stuffing it in one's purse or pockets." (Citations omitted). Similarly the approach is too constrictive because "it would leave vulnerable many personal effects, such as wallets, purses, cases, or overcoats, which are often set down upon chairs or counters, hung on racks, or checked for convenient storage." (Citations omitted).

The "Relationship" Test

The second approach to determine whether the individual's container may be searched pursuant to a premises search warrant focuses on the officer's knowledge or understanding of that individual's "relationship" to the premises searched at the time the officers executed the search warrant. Using this principle, the courts conclude that the usual occupant or owner of a premises being searched loses his or her privacy interests in the belongings located there. However, a "mere visitor" retains a legitimate expectation of privacy regardless of whether the visitor is currently holding or has temporarily put down the belongings.

In *Unites States v. Micheli*,[9] the **First Circuit** rejected the "physical possession" test. Secret

Service agents had obtained a search warrant for Micheli's business premises. During the search, his briefcase was searched. He claimed that his briefcase was not within the scope of the search warrant. While the reviewing court did not assume that whatever was found on the premises necessarily fell within the scope of the warrant, it did find that the briefcase was properly searched. Micheli was the co owner of the business, not a mere visitor. Thus, personal articles, such as his briefcase, were subject to search pursuant to the warrant. The court reasoned that the "appellant was not in the position of a mere visitor or passerby who suddenly found his belongings vulnerable to a search of the premises. He had a special relationship in the place, which meant that it could reasonably be expected that some of his personal belongings would be there."[10]

In *Micheli*, the focus of the court was on protecting citizens from unreasonable searches and seizures. This focus, the court said, is "hardly furthered by making its applicability hinge upon whether the individual happens to be holding or wearing his personal belongings after he chances into a place where a search is underway."[11]

In *United States v. McLaughlin*, the **Ninth Circuit** found that the agents had not exceeded the scope of the warrant in searching the briefcase of a co-owner of the business premises. The court distinguished co-owners from patrons stating, "Co-owners have control over premises not available to patrons, and their relationship to the location is more predictable and permanent."[12]

Arguably, *Micheli* and *McLaughlin* support searches of containers (e.g., purses) of employees where the containers are not within close proximity of employees at the time of the search. Of course, the containers searched must be likely repositories of the evidence sought.

In addition, some courts have indicated that agents have no duty to determine ownership of a container found on the premises.[13] However, if the officers know, or should know that the container belongs to a "mere visitor," it may not be searched unless the police have grounds to believe that they have been utilized as a hiding place.[14] Stated differently, " . . . this limitation on the police authority to execute the warrant by searching into personal effects comes into play only if the police 'knew or should have known' that the effects belong to a 'mere visitor.'"[15]

But, assuming the police do know the container belongs to a mere visitor, does it follow that the police may never search the container? Clearly not. Probable cause and exigent circumstances may justify the search. In *United States v. Young*,[16] just as the police arrived to serve a search warrant, a woman left the rear door of the premises with a "bulging purse" and headed toward the woods. The court upheld the search of the purse because of exigency and probable cause, based on the fact that she was the wife of the prime suspect and acted in a suspicious manner.

In the **Eleventh Circuit** case of *Hummel-Jones v. Strope*,[17] the court found that patrons of a business do not have a significant relationship to the premises to be subject to the search warrant.

SUMMARY

In **Scenario #1**, above, the search of the briefcase would clearly be lawful because it is on the premises subject of a search warrant, is a possible repository for the evidence sought, and the

briefcase's owner has a significant relationship to the premises.

As to **Scenario #2**, the outcome likely depends on which rationale the court follows.

Using the "**physical possession test**," if the containers are not in the actual possession of, or close physical proximity to, a patron or social visitor, they may be searched.

Using the "**relationship**" test, the containers may be searched if there is a relationship between them, or the owner, to the premises. If the containers are those of a "mere visitor" or "patron," they may not be searched unless the police have grounds to believe that they have been utilized as a hiding place.

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[1]*Ybarra v. Illinois, 444 U.S. 85 (1979)*
[2]*United States v. Ross, 456 U.S. 820 (1982)*
[3]*Wyoming v. Houghton, 526 U.S. 295 (1999)*
[4]*Id. at 308*
[5]*United States v. Vogl, 7 Fed. Appx. 861 (10th Cir. 2001)*
[6]*397 F.2d 494 (7th Cir. 1968), cert. denied 393 U.S. 937*
[7]*940F.2d 1413 (11th Cir. 1991)*
[8]*United States v. Vogl, 7 Fed. Appx. 810, (10th Cir.2001)*
[9]*487 F.2d 487 (1st Cir. 1973)*
[10]*Id. at 432*
[11] *Id. at 431*
[12] *851 F.2d 283 (9th Cir. 1992) at 287*
[13]*United States v. Kralic, 611 F.2d 343 (10th Cir. 1979)* (warrant for shotgun in car, proper to search suitcase in trunk where "nothing in the record shows that the officer knew, or had reason to know, who owned either the Buick or the suitcase.")
[14] *United States v. Johnson, 475 F.2d 977 (D.C. Cir. 1973)*
[15]LaFave, Third Edition, Section 4.10(b) (citation omitted)
[16]*909 F.2d 442 (11th Cir. 1990) cert. denied, 502 US. 825*
[17]*25 F.3d 647 (8th Cir. 1994)*