

Protective Car Searches

“[S]uspects may injure police officers and others by virtue of their access to weapons, even though they may not themselves be armed.”¹

When a person is detained in or near his car, a gun or other weapon located in the vehicle could be just as dangerous to the officers as a weapon in the detainee’s waistband. But when the United States Supreme Court authorized pat searches of armed or dangerous detainees in 1968,² it didn’t say anything about searching their cars.

It took 15 years for that issue to reach the Court. And when it did, the Court decided that officers may look inside the vehicle for weapons if they reasonably believed that one was located somewhere in the passenger compartment.³ The Court also ruled that officers may conduct a protective search even though the suspect had been handcuffed or was otherwise restrained.⁴

Although the justification for protective vehicle searches is essentially the same as the justification for pat searches (in fact, they are sometimes called vehicle “frisks”⁵), there are two additional legal issues that may arise: (1) What type of weapon will justify a search? (2) If the officer’s belief that a weapon is in the passenger compartment is based on circumstantial evidence, what circumstances are relevant?

Conventional weapons

Officers may, of course, conduct the search if they reasonably believe there is a conventional weapon, such as a gun or knife, in the vehicle. Furthermore, they may search even if the detainee or other occupant possessed the weapon lawfully.⁶

¹ *Michigan v. Long* (1983) 463 US 1032, 1048.

² *Terry v. Ohio* (1968) 392 US 1.

³ *Michigan v. Long* (1983) 463 U.S. 1032, 1049-51. **NOTE:** At one point in *Michigan v. Long* (1983) 463 U.S. 1032 the Court said that a protective vehicle search is permitted only if officers have reason to believe, (1) the detainee is dangerous, and (2) that he “may gain immediate control of weapons.” At p. 1049. At another point, it indicated the search is permissible “so long as [the officers] possess an articulable and objectively reasonable belief that the suspect is potentially dangerous.” At p. 1051. As a practical matter, there seems to be a single requirement that officers reasonably believe that a weapon is inside the passenger compartment. See, for example, *Michigan v. Long* (1983) 463 U.S. 1032; *People v. Lafitte* (1989) 211 Cal.App.3d 1429; *People v. Kraft* (2000) 23 Cal.4th 978, 1040 [“[T]he seizure of the knife clearly was proper so that defendant’s passenger would not be able to reach it and thereby jeopardize the officers’ safety.”]. As for the “may gain control” requirement, the Court in *Long* noted that a detainee will usually have the ability to gain control of a weapon until he is taken into custody because until then he may forcibly re-enter the car and grab the weapon. At pp. 1051-2.

⁴ *Michigan v. Long* (1983) 463 U.S. 1032, 1052. ALSO SEE *U.S. v. Graham* (6th Cir. 2007) 483 F.3d 431.

⁵ See *Maryland v. Buie* (1990) 494 U.S. 325, 332.

⁶ See *Michigan v. Long* (1983) 463 U.S. 1032, 1052 [“Assuming *arguendo* that Long possessed the knife lawfully, we have expressly rejected the view that the validity of a *Terry* search depends on whether the weapon is possessed in accordance with state law.”]; *People v. Perez* (1996) 51 Cal.App.4th 1168, 1178-9 [“The issue is not whether defendant had a right to have the gun; rather, it is the officers’ right to conduct a limited search for weapons.”].

For example, in *People v. Lafitte*⁷ sheriff's deputies in Orange County 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 spotted a knife on the door of the glove box. The deputies then seized the knife and conducted a protective search of the car for additional weapons. During the search, they found a handgun in a trash bag hanging from the ashtray next to the steering wheel.

Although the knife was described as a “legal” weapon, and although Lafitte had been cooperative throughout the detention, the court ruled the search was justified because, said the court, “[T]he discovery of the weapon is the crucial fact which provides a reasonable basis for the officer’s suspicion.”

Virtual weapons

What if officers see a virtual weapon in the vehicle? As noted in the accompanying article on pat searches, virtual weapons are objects that are capable of being used as weapons, although they are mainly used for other purposes; e.g., hammers, screw drivers, crowbars. Unfortunately, the courts have not yet determined whether the presence of a virtual weapon will justify a protective car search. As the Court of Appeal observed, “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?”⁸

Although the court had no answer to its question, it seems likely that the presence of a virtual weapon would justify a search if, based on the nature of the object, its location, or other circumstances, officers reasonably believed that it was being used as a weapon. For example, it might be reasonable to believe that a baseball bat was serving as a weapon if it was located between the bucket seats in a car.

As noted, in determining whether an object was being used as a weapon, officers may consider the various surrounding circumstances. For example, in *People v. Avila*⁹ an officer detained Avila who was sitting inside a pickup truck. As the officer looked inside the vehicle, he saw “a long black metal object” behind the seat. The officer testified that it was similar to a “Mag” flashlight, and that it was located approximately eight to ten inches from Avila’s left hand. When the officer asked him what it was, Avila responded—without looking at what the officer was talking about—that he didn’t know what it was.

Although the issue in *Avila* was whether the pat search of the defendant was lawful, it was apparent that the court determined that, based on the nature of the metal object, its location, and Avila’s strange response when asked what it was, that it was being used as a weapon.

One other thing: It is possible, but unsettled, that the presence of a virtual weapon would justify a protective search if officers reasonably believed that the detainee posed a danger to them; e.g., detainee was hostile or his behavior was unpredictable because it appeared he was under the influence of drugs or alcohol.¹⁰

⁷ (1989) 211 Cal.App.3d 1429.

⁸ *People v. Lafitte* (1989) 211 Cal.App.3d 1429, 1433.

⁹ (1997) 58 Cal.App.4th 1069.

¹⁰ **NOTE:** Although we could not find any cases directly on point, as we explained in the accompanying article on pat searches, the courts routinely permit officers to pat search detainees who appear overtly hostile.

Inferring the presence of a weapon

Even if officers do not actually see a weapon in the vehicle, they may reasonably believe that one is present based on circumstantial evidence.¹¹ For example, in *People v. King*¹², two San Diego police officers on patrol at about 10 P.M. stopped King for driving with for 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 he "feared for the safety of his partner and himself because there was increased gang activity in the area and the driver reached under the seat." After ordering King and the other occupants out, the officers looked under the seat and found a .25-caliber semiautomatic handgun.

In ruling that the search was a lawful protective search, the court said, "Here, in 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."

Note that if officers find a weapon in the vehicle, they may continue searching for additional weapons. As the Court of Appeal explained in *People v. Molina*, "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."¹³

Search procedure

Because the sole purpose of a protective vehicle search is to locate and secure weapons that could be used against them, officers may not search the trunk.¹⁴ Instead, they must limit the search to the passenger compartment and any containers in the passenger compartment that are large enough to hold a weapon.¹⁵

Furthermore, the search of the passenger compartment must be limited to places and things in which weapons may reasonably be found. For example, officers may look under the seats, in the glove box, and under the armrest. And, of course, officers who are conducting the search may seize any item they see if they have probable cause to believe it is evidence of a crime.¹⁶ POV

¹¹ See *People v. King* (1989) 216 Cal.App.3d 1237, 1240 ["In determining whether a weapon search was reasonable, we must view the search in light of all the facts surrounding the activity."].

¹² (1989) 216 Cal.App.3d 1237.

¹³ (1994) 25 Cal.App.4th 1038.

¹⁴ See *Michigan v. Long* (1983) 463 U.S. 1032, 1049 [Court limits its holding to "the search of the passenger compartment of an automobile"].

¹⁵ See *Michigan v. Long* (1983) 463 U.S. 1032, 1048-9 [search of pouch: Court noted the "trial court determined that the leather pouch containing marijuana could have contained a weapon." At p. 1050-1]; *People v. Molina* (1994) 25 Cal.App.4th 1038, 1043 [search of duffel bag and toiletries case]; *People v. Lafitte* (1989) 211 Cal.App.3d 1429, 1431; *People v. King* (1989) 216 Cal.App.3d 1237, 1239.

¹⁶ See *Michigan v. Long* (1983) 463 U.S. 1032, 1050 ["If, while conducting a legitimate *Terry* search of the interior of the automobile, the officer should, as here, discover contraband other than weapons, he clearly cannot be required to ignore the contraband, and the Fourth Amendment does not require its suppression in such circumstances."]; *Texas v. Brown* (1983) 460 U.S. 730, 739; *Arizona v. Hicks* (1987) 480 U.S. 321, 326.