# Recent Case Report

## U.S. v. McWeeney

(9th Cir. 2006) __ F.3d __

**ISSUES**

(1) Does consent to "look" in a car authorize a "search" of the vehicle? (2) Does consent to search a vehicle authorize a search of the trunk? (3) When a person consents to a search, do officers interfere with his right to delimit or withdraw consent when they command him not to watch?

**FACTS**

During a routine traffic stop, a Las Vegas police officer asked the occupants of the vehicle, McWeeney and Lopez, if they "minded" if he "looked" in the car to see if they had anything they were "not supposed to have." They consented, at which point they were asked to exit the car and "stand facing" the officer's patrol car. While looking in the trunk, a backup officer noticed that the carpet was loose, so he pulled it back and found a handgun.

At some point before the gun was found, the backup officer had noticed that one of the men had turned around and was watching him. The officer then instructed him to "face forward and stop looking back."

McWeeney was subsequently charged with being a felon in possession of a firearm.

**DISCUSSION**

McWeeney contended the gun should have been suppressed for three reasons: (1) consent to "look" inside a vehicle does not constitute consent to "search" it, (2) consent to search a vehicle does not authorize a search of the trunk, and (3) the search was unlawful because he was not permitted to watch.

The court quickly disposed of the first two arguments. First, it rejected McWeeney's contention that a person who gives officers consent to "look" inside something is merely giving them permission to conduct a "cursory scan"—not a "search." Said the court, "[A] request from a law enforcement agent to 'look,' in the proper context, is the same as a request to 'search.'"[1]

Second, the court pointed out that when a person consents to a search of a car for a certain object or a certain type of object, he impliedly authorizes a search of any place or

[1] Citing *U.S.* v. *Sparks* (9th Cir. 1996) 87 F.3d 276, 277; *U.S.* v. *Sierra-Hernandez* (9th Cir. 1978) 581 F.2d 760, 764.

thing in the vehicle in which such objects might be found.[2] As noted, Ramirez consented to a search for anything he was "not supposed to have" which, said the court, would reasonably be interpreted as a request to search for weapons and drugs. Thus, because weapons and drugs might be concealed in a car's trunk, the search was lawful.

The more difficult issue was the impact, if any, of the officer's refusal to permit the men to watch the search. The court noted that when a person consents to a search, he retains full control of the search, at least until the officers develop probable cause. Thus, the suspect has a right to narrow the scope of the search or even terminate it.

This does not mean, said that court, that the person has a constitutional right to watch the search. But it *does* mean that officers must not create a coercive environment in which the consenting person would have believed was no longer able to delimit or withdraw his consent. Said the court, "[I]f the officers did coerce McWeeney and Lopez into believing that they had no authority to withdraw their consent, the officers violated McWeeney and Lopez's Fourth Amendment rights and the search was illegal."

One of the three judges on the panel felt that the overall situation was plainly coercive, saying, "Any reasonable person would recognize that two punk kids ordered out of their car, by police officers, told to turn their backs while their car is searched are afraid to disobey authority."

The other two judges decided, however, that because the trial court had not ruled on the issue, it would be better to remand the case to determine whether the overall atmosphere of the incident—including the command to "face forward"—created an intimidating situation "in which the reasonable person would believe that he or she had no authority to limit or withdraw their consent." POV

[2] See *Florida* v. *Jimeno* (1991) 500 U.S. 248, 251 ["The scope of a search is generally defined by its expressed object."].