

# Vehicle Searches

*A group of friends and I are going on a road trip in a month and I was wondering what are some of the best methods you have come across to secure our drugs? Posted on Reddit.com.*

Most big- and small-time criminals have learned that the safest and most convenient place to hide their drugs, guns and other incriminating evidence is often inside their cars and trucks. This is mainly because motor vehicles are relatively secure, highly mobile and, as an added bonus, they are fully protected by the Fourth Amendment. As one website advised its criminal readership: “Forget your house—your car is your most private place.”<sup>1</sup>

In the past, vehicles were even more attractive to criminals because the courts were suppressing a lot of evidence discovered inside them. This was because the rules pertaining to vehicle searches had become so “intolerably confusing”<sup>2</sup> that officers often had to guess at whether they could search a vehicle, and could only speculate as to the permissible scope and intensity of these searches.

Who caused this important area of the law to fall into disorder? The prime suspects were members of the United States Supreme Court who had consistently failed to resolve the recurring conflict between the privacy rights of vehicle occupants and the needs of law enforcement.

But then one day in 1981, the Court issued an opinion named *New York v. Belton* in which it announced—or so we thought—that it was going to fix these problems.<sup>3</sup> After acknowledging that officers needed vehicle search rules that were “straightforward,” “easily applied,” and “predictably enforced,” it announced just such a rule: Whenever officers make a custodial arrest of the driver or any occupant of a vehicle, they may, as a matter of routine, conduct a full search of the passenger compartment and its contents.

Many criminals and their attorneys were, of course, disappointed that the Court would choose such a coherent rule when it could have devised one that kept everyone guessing. But *Belton* became the law, and suddenly the subject of vehicle searches was much easier to understand and apply in the field.

But then in 2009, the Court—for reasons that are still bewildering—overturned *Belton* and replaced it with precisely the type of rule that *Belton* was designed to eliminate: one that was “highly sophisticated,” “qualified by all sorts of ifs, ands, and buts,” and “literally impossible of application by the officer in the field.”<sup>4</sup> The case was *Arizona v. Gant*,<sup>5</sup> and it was such a shifty opinion that the five justices who signed it claimed they had not actually overturned *Belton* when, in fact, that was exactly what they had done, and it was exactly what they had intended to do. As Justice Alioto said in his dissenting opinion, “Although the Court refuses to acknowledge that it is overruling *Belton* there can be no doubt that it does so.”

Although *Gant* was a regrettable opinion, it was not as devastating as first predicted. While probable cause to arrest an occupant of a vehicle would no longer justify a warrantless search of it, prosecutors discovered that in many cases in which officers had probable cause to arrest an occupant, they also had probable cause to search the vehicle for evidence of the crime. And because the Supreme Court has consistently upheld the rule that probable cause to search a vehicle will, in and of itself, justify a warrantless search of it, the rules pertaining to vehicle searches has remained fairly stable.

In this article, we will discuss the various types of vehicle searches, starting with the one we have just been discussing. Although it is sometimes called “The Automobile Exception,” it is more commonly known simply as a “probable cause search.”

<sup>1</sup> <http://jalopnik.com>. April 17, 2013.

<sup>2</sup> See *Robbins v. California* (1981) 453 U.S. 420, 430 [conc. opn. of Powell, J.].

<sup>3</sup> (1981) 453 U.S. 454.

<sup>4</sup> *New York v. Belton* (1981) 453 U.S. 454, 458 [quoting from LaFave, “Case-By-Case Adjudication versus Standardized Procedures: The *Robinson* Dilemma,” (1974) S.Ct.Rev. 127, 141].

<sup>5</sup> (2009) 556 U.S. 332.

## Probable Cause Searches

The rule pertaining to probable cause searches is as straightforward as they come: *Officers may search a vehicle without a warrant if they have probable cause to search it.* Or, in the words of the Supreme Court, a warrantless vehicle search is legal if it was “based on facts that would justify the issuance of a warrant, even though a warrant has not actually been obtained.”<sup>6</sup>

Significantly, these searches are permitted even if officers had plenty of time to obtain a warrant,<sup>7</sup> or if there were no exigent circumstances that required an immediate search,<sup>8</sup> or even if the vehicle had already been towed and was sitting securely in a police garage or impound yard.<sup>9</sup> As the Supreme Court observed in *Michigan v. Thomas*, “[T]he justification to conduct such a warrantless search does not vanish once the car has been immobilized.”<sup>10</sup>

Although the existence of probable cause is the main requirement, as we will now explain, there are actually four of them:

- (1) **“VEHICLE”**: The thing that was searched must fall within the definition of a “vehicle” which, in the context of probable cause searches, includes cars, SUVs, vans, motorcycles, bicycles, and boats.<sup>11</sup> It also includes RVs and other motor homes except those that were being used solely as residences; e.g., on blocks.<sup>12</sup> Furthermore, a vehicle may be searched even though it was immobile as the result of a traffic accident, a mechanical failure, a fire or, as noted earlier, because the vehicle was in police custody.<sup>13</sup>

- (2) **PUBLIC PLACE**: A probable cause search of a vehicle is permitted only if the vehicle was located in a public place or on private property over which the suspect could not reasonably expect privacy. For example, a car parked in the suspect’s garage could not be searched without a warrant or consent. What about cars parked on private driveways? In the past, they could be searched because it was generally agreed that people could not reasonably expect privacy in a driveway which is, by necessity, readily accessible from the street. In 2013, however, the Supreme Court rejected this reasoning and ruled that any nonconsensual entry onto a private driveway would require a warrant or consent if the officers’ objective was to obtain information.<sup>14</sup> And because that is precisely the objective of conducting a vehicle search, an officer’s warrantless entry onto a driveway to search a car will ordinarily require a warrant.

- (3) **PROBABLE CAUSE**: See “Probable cause to search,” below.
- (4) **SCOPE OF SEARCH**: Officers must have restricted their search to places and things in which the evidence could reasonably be found. See “Scope and intensity of the search,” below.

### Probable cause to search

In the context of vehicle searches, probable cause exists if officers were aware of facts that established a “fair probability” that contraband or other evidence of a crime was currently located inside the vehicle.<sup>15</sup> This can be established by direct evidence

<sup>6</sup> *United States v. Ross* (1982) 456 U.S. 798, 809. Also see *People v. Carpenter* (1997) 15 Cal.4th 312, 365.

<sup>7</sup> See *People v. Superior Court (Valdez)* (1983) 35 Cal.3d 11, 16.

<sup>8</sup> See *Maryland v. Dyson* (1999) 527 U.S. 465, 467 [“the automobile exception does not have a separate exigency requirement”]; *Pennsylvania v. Labron* (1996) 518 U.S. 938, 940 [“unforeseen circumstances” are not required].

<sup>9</sup> See *California v. Acevedo* (1991) 500 U.S. 565, 570; *United States Johns* (1985) 469 U.S. 478, 486; *People v. Panah* (2005) 35 Cal.4th 395, 469.

<sup>10</sup> (1982) 458 U.S. 259, 261.

<sup>11</sup> See *California v. Carney* (1985) 471 U.S. 386, 392-93 [the “automobile exception” applies only “[w]hen a vehicle is being used on the highways, or if it is readily capable of such use”]; *People v. Needham* (2000) 79 Cal.App.4th 260, 267; *People v. Allen* (2000) 78 Cal.App.4th 445 [bicycle].

<sup>12</sup> See *California v. Carney* (1985) 471 U.S. 386, 394, fn.3; *People v. Black* (1985) 173 Cal.App.3d 506, 510 [Winnebago]; *U.S. v. Navas* (2nd Cir. 2010) 597 F.3d 492, 499 [trailer “with its legs dropped” was sufficiently mobile].

<sup>13</sup> See *California v. Carney* (1985) 471 U.S. 386, 391; *People v. Overland* (1988) 203 Cal.App.3d 1114, 1118.

<sup>14</sup> See *Florida v. Jardines* (2013) \_\_ US \_\_ [133 S.Ct. 1409, 1414].

<sup>15</sup> See *Illinois v. Gates* (1983) 462 U.S. 213, 238.

(e.g., officer sees the evidence inside) or circumstantial evidence, such as the following.

**PC TO ARREST > PC TO SEARCH:** As discussed earlier, officers are no longer permitted to search a vehicle merely because they have probable cause to arrest the driver or other occupant. However, if they have probable cause to arrest an occupant for a crime that occurred recently, they will often have probable cause to search the car for the fruits and instrumentalities of that crime. In the words of the Supreme Court, “[A]s will be true in many cases, the circumstances justifying the arrest are also those furnishing probable cause for the search.”<sup>16</sup> Here are two examples:

**GETAWAY CAR:** Probable cause to arrest an occupant of a car for a crime that occurred recently will ordinarily establish probable cause to search the vehicle for the fruits and instrumentalities of the crime. This often occurs when officers stop a car that had recently been used in a robbery or burglary, in which case they may have probable cause to search for weapons or tools that were used in the commission of the crime, stolen property, and clothing similar to that used by the perpetrator.<sup>17</sup>

**DRUG SALES:** Probable cause to arrest an occupant for drug sales will ordinarily provide probable cause to search for weapons and items that are commonly used to package and sell drugs.<sup>18</sup>

**THE VEHICLE IS AN “INSTRUMENTALITY”:** If officers have probable cause to believe that a vehicle, itself, was the means by which a crime was committed

(e.g., hit-and-run, vehicular manslaughter, kidnapping) they may search it under an exception to the warrant requirement known as the “instrumentality exception.”<sup>19</sup> As a practical matter, however, it is seldom necessary to rely on the instrumentality exception because, as discussed earlier, officers with probable cause to believe that a vehicle was an instrumentality of a crime will usually have probable cause to search it. Nevertheless, California courts continue to cite the instrumentality exception, especially in cases in which officers are looking for trace evidence such as DNA.<sup>20</sup>

**INFERENCE BASED ON CLOSE ASSOCIATION:** Probable cause to search for certain evidence in a vehicle may be based on the discovery of a thing or condition that is closely associated with such evidence. In other words, if items A and B are commonly found together, and if officers find A in the suspect’s possession, it may be reasonable to infer that he also possesses B. Thus, in discussing this principle, the court in *People v. Simpson* observed, “Illegal drugs and guns are a lot like sharks and remoras. And just as a diver who spots a remora is well-advised to be on the lookout for sharks, an officer investigating cocaine and marijuana sales would be foolish not to worry about weapons.”<sup>21</sup> Some other examples:

**DRUG CONTAINER > DRUGS:** Seeing a distinctive container that is commonly used to store drugs will ordinarily warrant a search of it; e.g., bindles, tied balloons.<sup>22</sup> But containers that are commonly used for a legitimate purpose will not satisfy this requirement; e.g., film canisters.<sup>23</sup>

<sup>16</sup> *Chambers v. Maroney* (1970) 399 U.S. 42, 47-48, fn.6. Also see *People v. Senkir* (1972) 26 Cal.App.3d 411, 421 [“reasonable inferences may be indulged as to the presence of articles known to be usually accessory to or employed in the commission of a specific crime”].

<sup>17</sup> See *Chambers v. Maroney* (1970) 399 U.S. 42, 47-48 [“there was probable cause to search the car for guns and stolen money”]; *People v. Chavers* (1983) 33 Cal.3d 462, 467; *People v. Varela* (1985) 172 Cal.App.3d 757, 762; *People v. Le* (1985) 169 Cal.App.3d 186, 190-91; *People v. Weston* (1981) 114 Cal.App.3d 764, 774-75.

<sup>18</sup> See *People v. Glaser* (1995) 11 Cal.4th 354, 367 [“In the narcotics business, firearms are as much ‘tools of the trade’ as are most commonly recognized articles of narcotics paraphernalia.” Quoting *Ybarra v. Illinois* (1979) 444 U.S. 86, 106 (dis. opn. of Rehnquist, J)]; *People v. Lee* (1987) 194 Cal.App.3d 975, 983 [“persons engaged in selling narcotics frequently carry firearms to protect themselves against would-be robbers”].

<sup>19</sup> See, for example, *People v. Teale* (1969) 70 Cal.2d 497, 511; *People v. Griffin* (1988) 46 Cal.3d 1011, 1024-25; *North v. Superior Court* (1972) 8 Cal.3d 301; *People v. Braun* (1973) 29 Cal.App.3d 949, 970; *People v. Bittaker* (1989) 48 Cal.3d 1046, 1076; *People v. Wolf* (1978) 78 Cal.App.3d 735, 741; *People v. Rice* (1981) 126 Cal.App.3d 477.

<sup>20</sup> See, for example, *People v. Bittaker* (1989) 48 Cal.3d 1046; *People v. Diaz* (2013) 213 Cal.App.4th 743.

<sup>21</sup> (1998) 65 Cal.App.4th 854, 862.

<sup>22</sup> See *Texas v. Brown* (1983) 460 U.S. 730, 743; *People v. Parra* (1973) 30 Cal.App.3d 729, 735.

<sup>23</sup> See *People v. Holt* (1989) 212 Cal.App.3d 1200, 1205; *People v. Valdez* (1987) 196 Cal.App.3d 799, 806-7 [film canister].

**DRUG PARAPHERNALIA > DRUGS:** The presence of drug use or sales paraphernalia in a vehicle may establish probable cause to search it for drugs.<sup>24</sup>

**ODOR OF DRUGS > DRUGS:** A distinctive odor of drugs from inside the vehicle may establish probable cause to search it for drugs.<sup>25</sup>

**K-9 ALERT > DRUGS:** A K-9's alert to the vehicle will ordinarily establish probable cause to search it for drugs.<sup>26</sup>

**DUI DRUGS > DRUGS:** If officers have probable cause to believe that the driver is under the influence of drugs, it is usually reasonable to infer he possesses drugs and paraphernalia.<sup>27</sup>

**ALCOHOL ODOR > OPEN CONTAINER:** Officers who smell fresh beer in a vehicle may infer there is an open container in the vehicle.<sup>28</sup>

**AMMUNITION > FIREARMS:** If officers see ammunition in the passenger compartment of a car, it is often reasonable to infer there is also a firearm inside.<sup>29</sup>

**BURGLAR TOOLS > STOLEN PROPERTY:** If officers saw burglar tools in a burglary suspect's vehicle shortly after a burglary occurred, it may be reasonable to infer that property stolen in the burglary will also be found in the vehicle.<sup>30</sup>

**SUSPICIOUS CIRCUMSTANCES:** Although probable cause to search a vehicle will seldom be based on a single suspicious circumstance, there are several

circumstances that will ordinarily convert reasonable suspicion to detain into probable cause to search.<sup>31</sup> Some examples:

**SECRET COMPARTMENT:** Officers who had stopped a suspected drug trafficker saw indications of a secret compartment in the vehicle.<sup>32</sup>

**SUSPICIOUS SPARE TIRE:** In one case, a court ruled that grounds to search existed when, after officers stopped a car because they reasonably believed it was being used to transport drugs, they found an unusually heavy spare tire with a "flopping" sound coming from the inside.<sup>33</sup>

**MASKING ODOR:** Another indication that a car is being used to transport drugs is the presence of multiple air fresheners.<sup>34</sup>

**STOLEN PROPERTY INDICATORS:** In the vehicle of a suspected burglar, robber, or fence, officers saw property with obliterated serial numbers, store tags or anti-shoplifting devices, clipped wires, pry marks or other signs of forced removal.<sup>35</sup> Another indication that property in a vehicle was stolen is that there was an unusually high quantity of it. This is especially significant if the property was of a type that is commonly stolen; e.g., TVs, cell phones, jewelry.<sup>36</sup>

**STOLEN CAR INDICATIONS:** Probable cause to believe that a car was stolen may be based in part—or sometimes entirely—on combinations of sus-

<sup>24</sup> See *Wyoming v. Houghton* (1999) 526 U.S. 295, 300 [because officers saw a hypodermic syringe in the driver's shirt pocket, they reasonably believed there were drugs in the vehicle].

<sup>25</sup> See *United States Johns* (1985) 469 U.S. 478, 482; *Robey v. Superior Court* (2013) 56 Cal.4th 1218, 1240 [plain smell "is well established by cases that have found the smell of contraband sufficient to establish probable cause necessary for police to obtain a search warrant"]; *People v. Waxler* (2014) 224 Cal.App.4th 712, 719.

<sup>26</sup> See *Illinois v. Caballes* (2005) 543 U.S. 405, 410; *Indianapolis v. Edmond* (2000) 531 U.S. 32, 40; *Florida v. Royer* (1983) 460 U.S. 491, 505-6 ["The courts are not strangers to the use of trained dogs to detect the presence of controlled substances in luggage"]; *People v. Stillwell* (2011) 197 Cal.App.4th 996, 1005-1006; *Estes v. Rowland* (1993) 14 Cal.App.4th 508, 529 ["[O]nce a dog alerts to the presence of narcotics the search [becomes] a probable cause search"].

<sup>27</sup> See *People v. Guy* (1980) 107 Cal.App.3d 593, 598; *People v. Gonzales* (1989) 216 Cal.App.3d 1185, 1189, 1191; *People v. Decker* (1986) 176 Cal.App.3d 1247, 1250.

<sup>28</sup> See *People v. Molina* (1994) 25 Cal.App.4th 1038, 1042; *People v. Evans* (1973) 34 Cal.App.3d 175; Veh. Code §§ 23222-23226.

<sup>29</sup> See *People v. DeCosse* (1986) 183 Cal.App.3d 404, 411; *U.S. v. Doward* (1st Cir. 1994) 41 F.3d 789, 793 [gun cleaning kit].

<sup>30</sup> See *People v. Suennen* (1980) 114 Cal.App.3d 192, 203.

<sup>31</sup> See *United States Sokolow* (1989) 490 U.S. 1, 9; *Safford Unified School District v. Redding* (2009) 557 U.S. 364, 371.

<sup>32</sup> See *People v. Crenshaw* (1992) 9 Cal.App.4th 1402, 1415; *U.S. v. Ewing* (9th Cir. 2011) 638 F.3d 1226, 1233, fn.6.

<sup>33</sup> See *U.S. v. Strickland* (11th Cir. 1990) 902 F.2d 937.

<sup>34</sup> See *People v. Russell* (2000) 81 Cal.App.4th 96, 103; *U.S. v. Anderson* (9th Cir. 1997) 114 F.3d 1059, 1066-67; *U.S. v. Leos-Quijada* (10th Cir. 1997) 107 F.3d 786.

<sup>35</sup> See *People v. Gorak* (1987) 196 Cal.App.3d 1032, 1039; *In re Curtis T.* (1989) 214 Cal.App.3d 1391, 1398.

<sup>36</sup> See *People v. Martin* (1973) 9 Cal.3d 687, 696; *People v. Williams* (1988) 198 Cal.App.3d 873, 890; *In re Curtis T.* (1989) 214 Cal.App.3d 1391 [large quantity of car stereo equipment on floor].

picious circumstances such as the following: failure to produce vehicle registration or driver's license; missing or improperly attached license plate, indications of VIN plate tampering, switched plates, side window broken out, evasive driving, failure to stop promptly when lit up, evidence of ignition tampering, use of makeshift ignition key, driver gave false or inconsistent statements about his ownership or possession of the car, driver did not know the name of the registered owner.<sup>37</sup>

**WHERE THERE'S SOME, THERE'S PROBABLY MORE:** When officers find contraband (e.g., stolen property, illegal weapons or drugs) in a vehicle, it is usually reasonable to believe there is more of it in the passenger compartment and the trunk. As the court said in *People v. Stafford*, "Being possessed of probable cause that the automobile contained stolen property and dangerous weapons, the officers were reasonably justified in continuing their search for other property that might have been stolen or other dangerous instrumentalities."<sup>38</sup>

### Scope and intensity of the search

If officers have probable cause to search a vehicle for evidence, they may search for it in the passenger compartment, the trunk, and all containers in which such evidence could reasonably be found.<sup>39</sup> As the

Supreme Court explained, when officers are conducting a probable cause vehicle search, "nice distinctions between . . . glove compartments, upholstered seats, trunks, and wrapped packages" must "give way to the interest in the prompt and efficient completion of the task at hand."<sup>40</sup> Thus, in upholding a search in *People v. Gallegos* the court observed, "The officers did not seek an elephant in a breadbox, but limited their search to areas that reasonably might have contained the [evidence]."<sup>41</sup> Officers are not, however, required to confine their search to places and things in which the listed evidence is *usually* or *commonly* found; what is required is a *reasonable possibility*.<sup>42</sup>

**SEARCHING OCCUPANTS:** Officers may not search the clothing worn by the occupants. Instead, a search is permitted only if officers had probable cause to believe that the evidence was located in the person's clothing.<sup>43</sup> Thus, in *U.S. v. Soyland* the Ninth Circuit said, "There was not a sufficient link between Soyland [a passenger] and the odor of methamphetamine or the marijuana cigarettes, and his mere presence did not give rise to probable cause to arrest and search him."<sup>44</sup>

**SEARCHING CELL PHONES:** As the result of California's Electronic Communications Privacy Act, a search warrant is required to search cell phones and other electronic communications devices that are located

<sup>37</sup> See *People v. James* (1969) 1 Cal.App.3d 645, 648-49; *People v. Webster* (1991) 54 Cal.3d 411, 430-1; *People v. Windham* (1987) 194 Cal.App.3d 1580, 1590; *In re Jonathan M.* (1981) 117 Cal.App.3d 530, 534.

<sup>38</sup> 29 Cal.App.3d 940, 948. Also see *People v. Hunt* (1990) 225 Cal.App.3d 498, 509; *People v. Evans* (1973) 34 Cal.App.3d 175, 180.

<sup>39</sup> See *Florida v. Jimeno* (1991) 500 U.S. 248, 251 ["The scope of a search is generally defined by its expressed object."]; *United States v. Ross* (1982) 456 U.S. 798, 821; *California v. Acevedo* (1991) 500 U.S. 565, 570 [officers may search the "compartments and containers within the automobile [if] supported by probable cause"]; *Maryland v. Garrison* (1987) 480 U.S. 79, 84-85 ["[P]robable cause to believe that undocumented aliens are being transported in a van will not justify a warrantless search of a suitcase."]; *Wyoming v. Houghton* (1999) 526 U.S. 295, 302; *People v. Chavers* (1983) 33 Cal.3d 462, 470 [glove box]; *People v. Hunter* (2005) 133 Cal.App.4th 371 [trunk].

<sup>40</sup> *United States v. Ross* (1982) 456 U.S. 798, 821-22.

<sup>41</sup> (2002) 96 Cal.App.4th 612, 626.

<sup>42</sup> See *People v. Kraft* (2000) 23 Cal.4th 978, 1043 [the officers "merely looked in a spot where the specified evidence of crime plausibly could be found, even if it was not a place where photographs normally are stored"]; *People v. Smith* (1994) 21 Cal.App.4th 942, 950 [drug dealers "usually attempt to secrete contraband where the police cannot find it"]; *In re Arturo D.* (2002) 27 Cal.4th 60, 78 ["an officer is entitled to conduct a nonpretextual warrantless search for such documents in those locations where such documentation reasonably may be expected to be found"].

<sup>43</sup> See *People v. Valdez* (1987) 196 Cal.App.3d 799, 806 ["the officer's entry into the individual's pocket can only be justified if the officer's sensorial perception, coupled with the other circumstances, was sufficient to establish probable cause to arrest the defendant for possession of narcotics before the entry into the pocket"]; *People v. Temple* (1995) 36 Cal.App.4th 1219, 1227.

<sup>44</sup> (9th Cir. 1993) 3 F.3d 1312, 1314.

in a vehicle; i.e., merely having probable cause is no longer sufficient.<sup>45</sup> However, if officers believe they have probable cause to search the phone, they may seize it and seek a warrant.<sup>46</sup> Furthermore, because a weapon might be disguised as a cell phone, officers may conduct a physical examination of its exterior and case.<sup>47</sup>

**PERMISSIBLE INTENSITY OF THE SEARCH:** Officers may conduct a “probing” or reasonably thorough search.<sup>48</sup> Causing damage to the vehicle is permissible only if reasonably necessary and only if the damage was not excessive; e.g., OK to take paint samples from hit-and-run vehicle.<sup>49</sup> Suggestion: If it will be necessary to damage the vehicle, seek a warrant if there is time.

## Reasonable Suspicion Searches

Although officers may no longer search a vehicle merely because they had probable cause to arrest an occupant, they may search it for evidence of that crime if, in addition to having probable cause to arrest, they reasonably believed that evidence pertaining to that crime was located inside the vehicle; i.e., probable cause to search is not required.<sup>50</sup> As the Supreme Court explained in *Arizona v. Gant*, “[C]ircumstances unique to the vehicle context justify a search incident to a lawful arrest when it is reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle.”<sup>51</sup> For ex-

ample, in applying this rule, the courts have noted the following:

- “When a driver is arrested for being under the influence of a controlled substance, the officers could reasonably believe that evidence relevant to that offense might be found in the vehicle.”<sup>52</sup>
- “Given the crime for which the officer had probable cause to arrest (illegal possession of a firearm), it is reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle,” such as ammunition or a holster.<sup>53</sup>
- “[T]he agents arrested Evans and Swanson for bank robbery and they had every reason to believe there was evidence of the offense in the green Cadillac.”<sup>54</sup>

As for the scope of the search, officers may search the entire passenger compartment and all containers inside it; i.e., they need not restrict the search to places and things in which the evidence might be found.<sup>55</sup> It appears they may also search the trunk.<sup>56</sup>

As noted earlier, however, pursuant to the California Electronic Communications Privacy Act, officers may not search cell phones or other communications devices without a warrant or consent.<sup>57</sup> Instead, as noted earlier, if they believe they have probable cause to search it, they may seize it and apply for a warrant.<sup>58</sup> They may also conduct a physical examination of the phone’s exterior and its case.<sup>59</sup>

<sup>45</sup> Pen. Code § 1546 et seq.

<sup>46</sup> See *Riley v. California* (2014) \_\_ U.S. \_\_ [134 S.Ct. 2473, 2486].

<sup>47</sup> See *Riley v. California* (2014) \_\_ U.S. \_\_ [134 S.Ct. 2473, 2485].

<sup>48</sup> See *California v. Acevedo* (1991) 500 U.S. 565, 570; *United States v. Ross* (1982) 456 U.S. 798, 820.

<sup>49</sup> See *United States v. Ramirez* (1998) 523 U.S. 65, 71; *People v. Robinson* (1989) 209 Cal.App.3d 1047, 1055.

<sup>50</sup> See *U.S. v. Edwards* (7th Cir. 2014) 769 F.3d 509, 514; *U.S. v. Vinton* (D.C. Cir. 2010) 594 F.3d 14, 25.

<sup>51</sup> (2009) 556 U.S. 332, 335.

<sup>52</sup> See *People v. Nottoli* (2011) 199 Cal.App.4th 532, 554.

<sup>53</sup> *People v. Osborne* (2009) 175 Cal.App.4th 1052, 1065. Also see *U.S. v. Johnson* (6th Cir. 2010) 627 F.3d 578, 584.

<sup>54</sup> *U.S. v. Smith* (7th Cir. 2012) 697 F.3d 625, 630.

<sup>55</sup> See *People v. Nottoli* (2011) 199 Cal.App.4th 531, 556.

<sup>56</sup> **NOTE:** The reason we think a search of the trunk is permitted is that a search based on reasonable suspicion is more akin to a probable cause search than a limited search incident to arrest. Therefore, the scope of the search should be substantially the same as the scope of probable cause searches which includes the trunk. See *United States v. Ross* (1982) 456 U.S. 798, 821[“nice distinctions . . . between glove compartments, upholstered seats, trunks, and wrapped packages, in the case of a vehicle, must give way to the interest in the prompt and efficient completion of the task at hand”].

<sup>57</sup> See Pen. Code § 1546 et seq.

<sup>58</sup> See *Riley v. California* (2014) \_\_ U.S. \_\_ [134 S.Ct. 2473, 2486].

<sup>59</sup> See *Riley v. California* (2014) \_\_ U.S. \_\_ [134 S.Ct. 2473, 2485].

## Vehicle Inventory Searches

Unlike “investigative” vehicle searches based on probable cause or reasonable suspicion, vehicle inventory searches are classified as “community caretaking” searches because their main purposes are to (1) provide a record of the property inside the vehicle so as to furnish the owner with an accounting; (2) protect officers and others from harm if the vehicle happened to contain a dangerous device or substance; and (3) protect officers, their departments, and ultimately the taxpayers from false claims that property in the vehicle was lost, stolen, or damaged.<sup>60</sup>

Despite their obvious benefits, vehicle inventory searches are subject to certain restrictions that help ensure that they are not used as a pretext to conduct an investigative search for evidence.<sup>61</sup> Specifically, officers may conduct a search only if:

- (1) **TOWING WAS REASONABLY NECESSARY:** The officer’s decision to impound or store the vehicle was reasonable under the circumstances.
- (2) **STANDARD SEARCH PROCEDURES:** The search was conducted in accordance with departmental policy or standard procedure.

### Towing reasonably necessary

Because an inventory search can be conducted only if officers need to take temporary custody or control of the vehicle, the first requirement is that

towing must have been reasonably necessary under the circumstances.<sup>62</sup> As the Court of Appeal explained, “[T]he ultimate determination is properly whether a decision to impound or remove a vehicle, pursuant to the community caretaking function, was reasonable under all the circumstances.”<sup>63</sup> This does not mean that towing must have been imperative. Instead, as the First Circuit explained, it must have been reasonable:

Framed precisely, the critical question is not whether the police needed to impound the vehicle in some absolute sense, but whether the decision to impound and the method chosen for implementing that decision were, under all the circumstances, within the realm of reason.<sup>64</sup>

**NO LEAST INTRUSIVE MEANS TEST:** In determining whether towing was reasonably necessary, it is immaterial that there might have been a less intrusive means of protecting the vehicle or its contents; e.g., by locking the vehicle and leaving it at the scene.<sup>65</sup> Instead, what matters is whether the decision was reasonable.<sup>66</sup> Furthermore, if towing was reasonably necessary, it is immaterial that the officers’ decision to tow was based in part on their suspicion that the vehicle contained evidence.<sup>67</sup>

**EXAMPLES OF REASONABLE NECESSITY:** While it would be impractical to provide a comprehensive list of those situations in which the decision to tow a vehicle would be considered “reasonable,” the following usually fall into that category:

<sup>60</sup> See *Whren v. United States* (1996) 517 U.S. 806, 811, fn.1; *Colorado v. Bertine* (1987) 479 U.S. 367, 373; *People v. Steeley* (1989) 210 Cal.App.3d 887, 892.

<sup>61</sup> See *U.S. v. Duguay* (7th Cir. 1996) 93 F.3d 346, 351 [“the decision to impound (the ‘seizure’) is properly analyzed as distinct from the decision to inventory (the ‘search’)”].

<sup>62</sup> See *People v. Andrews* (1970) 6 Cal.App.3d 428, 433 [“[U]pon police impoundment of an automobile, the police undoubtedly become an involuntary bailee of the property and responsible for the vehicle and its contents.”]; *U.S. v. Smith* (6th Cir. 2007) 510 F.3d 641, 651 [“A warrantless inventory search may only be conducted if police have lawfully taken custody of the vehicle.”].

<sup>63</sup> *People v. Shafrir* (2010) 183 Cal.App.4th 1238, 1247.

<sup>64</sup> *U.S. v. Rodriguez-Morales* (1st Cir. 1991) 929 F.2d 780, 786. Edited.

<sup>65</sup> See *City of Ontario v. Quon* (2010) 560 U.S. 746, 763; *Atwater v. City of Lago Vista* (2001) 532 U.S. 318, 350; *People v. Williams* (2006) 145 Cal.App.4th 756, 761.

<sup>66</sup> See *People v. Bell* (1996) 43 Cal.App.4th 754, 761, fn.1; *Gallegos v. City of Los Angeles* (9th Cir. 2002) 308 F.3d 987, 992.

<sup>67</sup> See *Colorado v. Bertine* (1987) 479 U.S. 367, 372 [“[T]here was no showing that the police, who were following standard procedures, acted in bad faith or for the sole purpose of investigation.” Emphasis added]; *People v. Torres* (2010) 188 Cal.App.4th 775, 792 [pretext tow was unreasonable because “the record shows a concededly investigatory motive and no community caretaking function”]; *U.S. v. Harris* (8th Cir. 2015) 795 F.3d 820, 822 [officers “may keep their eyes open for potentially incriminating items that they might discover in the course of an inventory search, as long as their sole purpose is not to investigate a crime”]; *U.S. v. Lopez* (2nd Cir. 2008) 547 F.3d 364, 372 [“officers will inevitably be motivated in part by criminal investigative objectives. Such motivation, however, cannot reasonably disqualify an inventory search that is performed under standardized procedures for legitimate custodial purposes.”]; *U.S. v. Coccia* (1st Cir. 2006) 446 F.3d 233, 240-41 [“A search or seizure undertaken pursuant to the community caretaking exception is not infirm merely because it may also have been motivated by a desire to investigate crime.”].

**TRAFFIC HAZARD:** The vehicle constituted a traffic hazard or obstruction.<sup>68</sup>

**ABANDONMENT:** The vehicle had been abandoned.<sup>69</sup>

**DRIVER INCAPACITATED:** The driver had become incapacitated by injuries or illness.<sup>70</sup>

**DRIVER ARRESTED + NECESSITY:** While the Vehicle Code authorizes towing when officers have arrested the driver or other person in control of the vehicle,<sup>71</sup> the courts permit towing only if it was reasonably necessary.<sup>72</sup> For example, towing would ordinarily be permitted if the vehicle was away from the arrestee's home, especially if it was located in an area with a significant threat of theft or vandalism, or if the car was in an isolated area, or if the car could not be secured.<sup>73</sup> Towing would not ordinarily be reasonable if the vehicle could have been parked and secured in a safe place.<sup>74</sup> Similarly, there would ordinarily be no need to tow a vehicle if the arrestee wanted a friend at the scene to take possession, and the friend was licensed and insured.<sup>75</sup>

**UNOCCUPIED CAR NEEDING PROTECTION:** Even if the Vehicle Code did not expressly authorize towing, officers may do so if towing was reasonably necessary to protect the vehicle or its contents from theft or damage.<sup>76</sup> If towing was necessary, it is immaterial that the vehicle was located on private property.<sup>77</sup>

**TOWING FORFEITED VEHICLE:** Officers may tow a vehicle that was subject to forfeiture.<sup>78</sup>

**EXPIRED REGISTRATION:** The Vehicle Code authorizes towing if (1) the vehicle was on the street or a public parking facility; and (2) the registration expired over six months earlier, or the registration sticker or license plate was issued for another vehicle or was forged.<sup>79</sup>

**SUSPENDED OR REVOKED DRIVER'S LICENSE:** The Vehicle Code states that officers may impound a vehicle if the driver was given a notice to appear for violating Vehicle Code sections 14601 or 12500.<sup>80</sup> But if the driver was cited for driving on a suspended or a revoked license there is some uncertainty as to whether officers may tow the vehicle if there was a licensed and insured passenger on the scene who was willing to drive. As noted earlier, if the driver had been *arrested*, officers must ordinarily permit such a passenger to take the vehicle because there is no apparent justification for towing when the driver is going to jail and cannot drive off after officers have left. The situation might be viewed differently, however, if the driver was going to be cited and released. This is because it is possible, (maybe even probable considering his demonstrated contempt for California's licensing statutes) that the driver will drive anyway after officers depart. Thus, in *People v. Burch*<sup>81</sup> the court upheld towing in such a situation because the officer testified he usually did so "to prevent the cited driver from simply getting back into the vehicle and driving away."

<sup>68</sup> See *Cady v. Dombrowski* (1973) 413 U.S. 433, 443 [the "vehicle was disabled as a result of the accident, and constituted a nuisance along the highway"]; Veh. Code §§ 22651(a)-(b); *Miranda v. City of Cornelius* (9th Cir. 2005) 429 F.3d 858, 864.

<sup>69</sup> Veh. Code § 22669.

<sup>70</sup> Veh. Code § 22651(g).

<sup>71</sup> Veh. Code § 22651(h)(1).

<sup>72</sup> See *U.S. v. Ruckes* (9th Cir. 2009) 586 F.3d 713.

<sup>73</sup> See *People v. Shafrir* (2010) 183 Cal.App.4th 1238, 1248; *People v. Scigliano* (1987) 196 Cal.App.3d 26, 30; *People v. Benites* (1992) 9 Cal.App.4th 309, 326; *Miranda v. City of Cornelius* (9th Cir. 2005) 429 F.3d 858, 864.

<sup>74</sup> See *People v. Williams* (2006) 145 Cal.App.4th 756, 762; *Miranda v. City of Cornelius* (9th Cir. 2005) 429 F.3d 858, 864 ["But no such public safety concern is implicated by the facts of this case involving a vehicle parked in the driveway of an owner who has a valid license"].

<sup>75</sup> See *U.S. v. Maddox* (9th Cir. 2010) 614 F.3d 1046, 1050; *U.S. v. Duguay* (7th Cir. 1996) 93 F.3d 346, 353.

<sup>76</sup> See *People v. Scigliano* (1987) 196 Cal.App.3d 26, 29.

<sup>77</sup> See *Halajian v. D&B Towing* (2012) 209 Cal.App.4th 1, 15; *People v. Scigliano* (1987) 196 Cal.App.3d 26, 29; *People v. Auer* (1991) 1 Cal.App.4th 1664, 1669.

<sup>78</sup> See *Florida v. White* (1999) 526 U.S. 559, 566; *Cooper v. California* (1967) 386 U.S. 58.

<sup>79</sup> Veh. Code § 22651(o)(1)(A); *People v. Suff* (2014) 58 Cal.4th 1013, 1056.

<sup>80</sup> Veh. Code § 22651(p).

<sup>81</sup> (1986) 188 Cal.App.3d 172, 180.



### Search procedures are reasonable

In addition to proving that the decision to tow was reasonable, officers must prove that the search was conducted in accordance with “standardized criteria or established routine.”<sup>82</sup> The purpose of this requirement is to help ensure that inventory searches are not conducted for the purpose of “general rummaging in order to discover incriminating evidence.”<sup>83</sup> As the Second Circuit observed in *U.S. v. Lopez*:

[W]hen a police department adopts a standardized policy governing the search of the contents of impounded vehicles, the owners and occupants of those vehicles are protected against the risk that officers will use selective discretion, searching only when they suspect criminal activity and then seeking to justify the searches as conducted for inventory purposes.<sup>84</sup>

This does not mean the criteria and routine must be set forth in elaborate specificity. As the First Circuit pointed out, this would be impractical:

Virtually by definition, the need for police to function as community caretakers arises fortuitously, when unexpected circumstances present some transient hazard which must be dealt with on the spot. The police cannot sensibly be expected to have developed, in advance, standard protocols running the entire gamut of

possible eventualities. Rather, they must be free to follow sound police procedure, that is, to choose freely among the available options, so long as the option chosen is within the universe of reasonable choices.<sup>85</sup>

Keep in mind that officers are not required to prove that, under the circumstances in each case, it was reasonable to conduct an inventory search of the vehicle. This is because, as discussed earlier, it is settled that inventory searches are always reasonable whenever a vehicle will be towed.<sup>86</sup> As the Ninth Circuit observed, “[I]t is undisputed that once a vehicle has been impounded, the police may conduct an inventory search.”<sup>87</sup>

As we will now explain, there are two ways in which officers and prosecutors can prove that a search was conducted in accordance with standardized policy.

**WRITTEN DEPARTMENTAL POLICY:** If a department has a written policy in which it defines the permissible scope and intensity of its inventory searches, prosecutors can satisfy the standardization requirement by introducing a copy of the policy into evidence after laying the necessary foundation by, for example, having the searching officer identify it. What should be included in such a policy? In most cases, the following will suffice:

<sup>82</sup> *Florida v. Wells* (1990) 495 U.S. 1, 4. Also see *Colorado v. Bertine* (1987) 479 U.S. 367, 374, fn.6 [“Our decisions have always adhered to the requirement that inventories be conducted according to standardized criteria.”]; *People v. Nottoli* (2011) 199 Cal.App.4th 531, 546 [“But there was no evidence that [turning on a cell phone] was taken in accordance with any standardized policy or practice”]; *People v. Williams* (1999) 20 Cal.4th 119, 127 [“[T]he record must at least indicate that police were following some ‘standardized criteria’ or ‘established routine’ when they elected to open the containers”]; *People v. Green* (1996) 46 Cal.App.4th 367, 374 [“The search should be carried out pursuant to standardized procedures, as this would tend to ensure that the intrusion would be limited in scope to the extent necessary to carry out the caretaking function.”].

<sup>83</sup> *Florida v. Wells* (1990) 495 U.S. 1, 4.

<sup>84</sup> (2nd Cir. 2008) 547 F.3d 364, 371. Also see *U.S. v. Marshall* (8th Cir. 1993) 986 F.2d 1171, 1176 [“When the police follow standardized inventory procedures that impact all impounded vehicles in a similar manner and sufficiently regulate the discretion of the officers conducting the search, the reasonableness requirement of the Fourth Amendment is satisfied.”]; *U.S. v. Khoury* (11th Cir. 1990) 901 F.2d 948, 958 [“An inventory search is not a surrogate for investigation, and the scope of an inventory search may not exceed that necessary to accomplish the ends of the inventory.”].

<sup>85</sup> *U.S. v. Rodriguez-Morales* (1st Cir. 1991) 929 F.2d 780, 787. Also see *U.S. v. Coccia* (1st Cir. 2006) 446 F.3d 233, 239 [“standard protocols have limited utility in circumscribing police discretion in the impoundment context because of the numerous and varied circumstances in which impoundment decisions are made.”].

<sup>86</sup> See *South Dakota v. Opperman* (1976) 428 U.S. 364, 369 [“When vehicles are impounded, local police departments generally follow a routine practice of securing and inventorying the automobiles’ contents.”]; *People v. Benites* (1992) 9 Cal.App.4th 309, 328 [inventory searches of towed vehicles are “inevitable”]; *U.S. v. Lopez* (2nd Cir. 2008) 547 F.3d 364, 369 [“It is well recognized in Supreme Court precedent that, when law enforcement officials take a vehicle into custody, they may search the vehicle and make an inventory of its contents.”].

<sup>87</sup> *U.S. v. Wanless* (9th Cir. 1989) 882 F.2d 1459, 1463.

**GENERAL SCOPE AND INTENSITY:** The policy need only specify the general areas and things in the vehicle that should be searched in order to locate and identify items that need to be included in the inventory,<sup>88</sup> such as the following: the passenger compartment, including the glove box, console, under the seats;<sup>89</sup> the trunk,<sup>90</sup> including under the spare tire;<sup>91</sup> all open and closed containers including containers that did not belong to the driver or owner of the vehicle;<sup>92</sup> and the engine compartment.<sup>93</sup> The policy may also authorize a search of motorcycles,<sup>94</sup> rental cars,<sup>95</sup> and any property that officers turn over to a third party, such as the driver's friend.<sup>96</sup> If the vehicle contains so much property that a listing of each item would take an excessive amount of time, the policy may permit officers to photograph the property instead.<sup>97</sup> The policy need not require a listing of every object in the vehicle.<sup>98</sup>

**OFFICER DISCRETION IS PERMITTED:** The policy may permit officers to exercise discretion in determining what to search, but officers must exercise their discretion based on community caretaking objectives—not investigative interests.<sup>99</sup> As the Supreme Court explained, “A police officer may be allowed sufficient latitude to determine whether a particular container should or should not be opened in light of the nature of the search and characteristics of the container itself.”<sup>100</sup>

**READING DOCUMENTS:** The policy may require or permit officers to read documents in the vehicle,<sup>101</sup> and to look through notebooks and other multi-page documents to “ensure that there was nothing of value hidden between the pages.”<sup>102</sup>

**NO DAMAGE:** The policy must not authorize officers to damage or destroy parts of the vehicle.<sup>103</sup>

**CHP 180 FORMS:** In lieu of a written policy as to the scope and intensity of the search, law enforcement agencies may satisfy the “standardization” requirement by mandating that their officers complete a CHP 180 form.<sup>104</sup> This form requires, among other things, that officers list all “property” in the vehicle, including radios, tape decks, firearms, tools, and ignition keys. It also requires a description of all damage to the vehicle.

**UNWRITTEN DEPARTMENTAL POLICY:** Although it is usually better to have a written policy, a department may verbally disseminate a policy that will meet the above requirements. As the court explained in *U.S. v. Tackett*, “Whether a police department maintains a written policy is not determinative, where testimony establishes the existence and contours of the policy.”<sup>105</sup> Similarly, the California Supreme Court pointed out that the Fourth Amendment “does not require a *written* policy governing closed containers but the record must at least indicate that police were following some ‘standardized criteria’ or ‘established routine.’”<sup>106</sup>

<sup>88</sup> See *U.S. v. Lopez* (2nd Cir. 2008) 547 F.3d 364, 371.

<sup>89</sup> See *South Dakota v. Opperman* (1976) 428 U.S. 364, 372-76; *U.S. v. Andrews* (5th Cir. 1994) 22 F.3d 1328, 1336.

<sup>90</sup> See *U.S. v. Johnson* (5th Cir. 1987) 815 F.2d 309, 314; *U.S. v. Tueller* (10th Cir. 2003) 349 F.3d 1239, 1244.

<sup>91</sup> See *U.S. v. Johnson* (5th Cir. 1987) 815 F.2d 309.

<sup>92</sup> See *Florida v. Wells* (1990) 495 U.S. 1, 4; *People v. Williams* (1999) 20 Cal.4th 119, 138.

<sup>93</sup> See *U.S. v. Pappas* (8th Cir. 2006) 452 F.3d 767, 772; *U.S. v. Lumpkin* (6th Cir. 1998) 159 F.3d 983, 987-88.

<sup>94</sup> See *People v. Needham* (2000) 79 Cal.App.4th 260, 267 [“We see no reason to treat motorcycles differently from cars”].

<sup>95</sup> See *U.S. v. Mancera-Londono* (9th Cir. 1990) 912 F.2d 373, 376; *U.S. v. Petty* (8th Cir. 2004) 367 F.3d 1009, 1012.

<sup>96</sup> See *People v. Needham* (2000) 79 Cal.App.4th 260, 267; *U.S. v. Tackett* (6th Cir. 2007) 486 F.3d 230, 233.

<sup>97</sup> See *U.S. v. Taylor* (8th Cir. 2011) 636 F.3d 461.

<sup>98</sup> See *U.S. v. Lopez* (2nd Cir. 2008) 547 F.3d 364, 371.

<sup>99</sup> See *Colorado v. Bertine* (1987) 479 U.S. 367, 375; *People v. Steeley* (1989) 210 Cal.App.3d 887, 892.

<sup>100</sup> *Florida v. Wells* (1990) 495 U.S. 1, 4.

<sup>101</sup> See *People v. Hovey* (1988) 44 Cal.3d 543, 571.

<sup>102</sup> *U.S. v. Khoury* (11th Cir. 1990) 901 F.2d 948, 959. Also see *U.S. v. Andrews* (5th Cir. 1994) 22 F.3d 1328, 1335.

<sup>103</sup> See *U.S. v. Edwards* (5th Cir. 1978) 577 F.2d 883, 893; *U.S. v. Lugo* (10th Cir. 1992) 978 F.2d 631, 636.

<sup>104</sup> See *People v. Williams* (1999) 20 Cal.4th 119, 123; *County of Los Angeles v. Barker* (2015) 242 Cal.App.4th 475, 478.

<sup>105</sup> (6th Cir. 2007) 486 F.3d 230, 233.

<sup>106</sup> *People v. Williams* (1999) 20 Cal.4th 119, 127 [Edited]. Also see *U.S. v. Lopez* (2nd Cir. 2008) 547 F.3d 364, 370 [standard NYPD towing policy was established through an officer's testimony that officers are required to “do a total inventory of a vehicle. Everything has to come out.”].

For example, in *People v. Green*<sup>107</sup> the Court of Appeal ruled that proof of a standardized policy was sufficient when the officer testified that she “considered the inventory search to be a natural consequence following the decision to impound defendant’s automobile. Although she did not use the magic words ‘standard procedure,’ her matter-of-fact response indicates that an inventory search following impound of the vehicle is standard department procedure.”

Here’s another example of an officer’s testimony that satisfied the standardization requirement:

**DA:** What was your purpose of doing the inventory search; why did you do it?

**Ofc:** Policy of Moss Point Police Department, when you arrest someone out of their vehicle, you tow it and do an inventory search of their personal belongings and items left in the vehicle for the protection of the city.

**DA:** Is that standard operating procedures?

**Ofc:** Yes, ma’am.

**DA:** And is the policy, whether written or unwritten, of the police department to do that in every case?

**Ofc:** Yes, ma’am.

**DA:** And you said it was to protect the City of Moss Point or the police department. What do you mean by that?

**Ofc:** Well, so the person that’s arrested doesn’t come back and say, well, I had a five thousand dollar stereo, or five hundred dollars and now it’s missing.”

In contrast, in *People v. Aguilar*<sup>108</sup> the Court of Appeal ruled that an inventory search was unlawful because the officer testified that “he impounded 90 percent of the time; he had not seen the [departmental] policy; and one of the reasons he impounded Aguilar’s car was to look in the trunk.” Said the court, “It is clear from [the officer’s] testimony that the arrest and the impound were for “an investigatory police motive.”

## Protective Vehicle Searches

When officers have detained or arrested an occupant of a vehicle, a weapon in the passenger compartment can be almost as dangerous to them as a weapon in his waistband. For this reason, officers may conduct a protective search of the vehicle if both of the following circumstances existed:

- (1) Officers reasonably believed there was a “weapon” inside the vehicle.
- (2) The detainee or arrestee had potential access to the passenger compartment.

If these circumstances existed, officers may seize any weapons in plain view,<sup>109</sup> and may also search the passenger compartment for additional weapons.<sup>110</sup> They may not, however, search the trunk unless they develop grounds to conduct a probable cause search of it.<sup>111</sup>

Keep in mind that, if these circumstances existed, officers will not be required to prove that the detainee also presented a danger to them. For example, in *People v. Lafitte*<sup>112</sup> sheriff’s deputies in

<sup>107</sup> (1996) 46 Cal.App.4th 367, 375. Also see *People v. Steely* (1989) 210 Cal.App.3d 887, 892 [officer testified that his department’s unwritten policy required that he “inventory the contents of a vehicle prior to towing to make sure what property is in the vehicle in case it shows up missing from the tow yard”].

<sup>108</sup> (1991) 228 Cal.App.3d 1049, 1052.

<sup>109</sup> 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.”]; *Adams v. Williams* (1972) 407 U.S. 143; *People v. Perez* (1996) 51 Cal.App.4th 1168, 1173 [as passenger stepped outside, a gun fell to the seat]; *People v. Molina* (1994) 25 Cal.App.4th 1038, 1042 [“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.”].

<sup>110</sup> See *Michigan v. Long* (1983) 463 U.S. 1032, 1049, 1051 [the officers “did not act unreasonably in taking preventive measures to ensure that there were no other weapons within Long’s immediate grasp.”]; *People v. Molina* (1994) 25 Cal.App.4th 1038, 1042 [“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.”]. Also see “Where there’s some, there’s usually more,” in the section “Probable Cause Searches,” above.

<sup>111</sup> See *Michigan v. Long* (1983) 463 U.S. 1032, 1049 [Court limits its holding to “the search of the passenger compartment of an automobile”].

<sup>112</sup> (1989) 211 Cal.App.3d 1429, 1433.

Orange County made a traffic stop on Lafitte at about 10:15 P.M. because one of his headlights was not working. While one of the deputies was explaining the situation to Lafitte, the other shined a flashlight inside the car and saw a knife on the open door of the glove box. The deputy seized the knife, then conducted a protective search of the passenger compartment for additional weapons. During the search, he found a handgun. Although it was not illegal to have such a knife in a vehicle, and although Lafitte had been cooperative throughout the detention, the court ruled that the search was justified because “the discovery of the weapon” provided “a reasonable basis for the officer’s suspicion.”

Officers are not, however, required to prove that, in addition to the presence of a weapon, the detainee appeared to present a danger to them. Still, it is a circumstance that should be cited because it would help prove that a protective vehicle search was necessary, just as it is a relevant circumstance in determining whether a pat search was necessary;<sup>113</sup> e.g., the detainee had a history of violence against officers, or he was hostile, or his behavior was unpredictable because it appeared he was under the influence of drugs or alcohol.<sup>114</sup>

### “Weapon” defined

There are two types of weapons that will justify a protective search: (1) a conventional weapon; and (2) an object that, based on circumstantial evidence, is being used as a weapon. In some cases, the presence of a weapon may also be inferred based on the suspect’s behavior.

**CONVENTIONAL WEAPONS:** An officer’s observation of any type of conventional weapon in plain view

(such as a firearm, knife, brass knuckles, nunchakus) will, of course, justify a protective vehicle search. This is true even if the weapon was possessed lawfully; e.g., a “legal” knife.<sup>115</sup>

**VIRTUAL WEAPONS:** A virtual weapon is essentially any object that reasonably appeared as if it was being used as a weapon, even though it was manufactured for another purpose. Examples include baseball bats, hammers, crow bars screwdrivers, and box cutters. How can the courts determine the intended use of an object? Like most things, it is based on the totality of circumstances, especially the location of object, its proximity to the suspect, and especially the ease with which it can cause physical harm to people.<sup>116</sup>

**BEHAVIOR INDICATING PRESENCE OF WEAPON:** Based on the law pertaining to pat searches, an officer’s belief that there was a weapon in the passenger compartment may be based on the suspect’s behavior and other circumstantial evidence.<sup>117</sup>

For example, in *People v. King*<sup>118</sup> two San Diego police officers stopped King for driving with expired registration. As one of them 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.” In court, the officer testified that, based on these circumstances, he “feared for the safety of his partner and himself,” especially because “there was increased gang activity in the area.” After ordering King to exit, the officer looked under the front seat and found a .25-caliber semiautomatic handgun. In ruling that the officer reasonably believed there was a weapon under the seat, the court said, “[I]n addition to King’s movement, we have the contemporaneous sound of metal on metal and the

<sup>113</sup> See *Michigan v. Long* (1983) 463 U.S. 1032, 1047-48 [the principles pertaining to pat searches were the basis for the Court’s recognition that protective vehicle searches may be reasonably necessary].

<sup>114</sup> See, for example, *Amacher v. Superior Court* (1969) 1 Cal.App.3d 150 [officer “had personally had words with petitioner when he stopped him for a traffic violation. He knew that petitioner had had numerous hostile run-ins with other officers, and that petitioner had little or no respect for law enforcement officers.”]; *In re Michael S.* (1983) 141 Cal.App.3d 814 [suspect “acted very nervous, started breathing very rapidly, hyperventilating, and became boisterous and angry and very antagonistic [and] clenched and unclenched his fists” and became “borderline combative.”]; *People v. Methy* (1991) 227 Cal.App.3d 349, 358 [detainee was carrying a pry bar].

<sup>115</sup> See *People v. Lafitte* (1989) 211 Cal.App.3d 1429.

<sup>116</sup> See *People v. Lafitte* (1989) 211 Cal.App.3d 1429 [knife atop an open glove box door]

<sup>117</sup> *Michigan v. Long* (1983) 463 U.S. 1032, 1049 [a protective vehicle search is permissible if the police officer “possesses a reasonable belief based on specific and articulable facts,” including “rational inferences” from those facts].

<sup>118</sup> (1989) 216 Cal.App.3d 1237.

officer's fear created by the increased level of gang activity in the area.”

### Potential access

If officers reasonably believed that a weapon was inside the vehicle, a protective search will be permitted only if the detainee or arrestee had not yet been subjected to a “full custodial arrest” and was therefore able to “gain immediate control” of the weapon. When that happens, said the Supreme Court, a protective vehicle search is permitted because “the officer remains particularly vulnerable” and the officer “must make a quick decision as to how to protect himself and others from possible danger.”<sup>119</sup>

It should be noted that defense attorneys have sometimes cited *Arizona v. Gant*<sup>120</sup> as authority for prohibiting protective vehicle searches unless the detainee or arrestee had *actual* access to the passenger compartment at the time the search occurred. But *Gant*'s requirement of actual access pertained to searches incident to arrest, and there is no logical reason that this requirement should be imported into the field of protective searches because officers do not ordinarily have as much control over detainees or those arrestees who not been subjected to a full custodial arrest.

### Searches for ID

There is a type of warrantless vehicle search that is similar to, but distinct from, probable cause searches: searches for identification and related documentation. It is, of course, settled that officers who have stopped a vehicle for a traffic violation may inspect the driver's license, vehicle registration,

rental forms, and proof of insurance.<sup>121</sup> Because they also have probable cause to believe that such documents will be found in the vehicle, it has been argued that officers who have made a traffic stop should themselves be able to conduct a search for the documents. The courts have, however, consistently rejected these arguments mainly because there will usually be no reason to prohibit the driver from doing so.

Officers may, however, search for such documentation if they reasonably believed it would have been impractical or dangerous for them to permit the driver or another occupant to conduct the search, or if officers reasonably believed the vehicle had been stolen or abandoned.<sup>122</sup> For example, the courts have upheld warrantless searches for documentation under the following circumstances:

- The driver was unable to produce a driver's license and said he did not know where the registration certificate was located because he did not own the vehicle.<sup>123</sup>
- The driver abandoned the car and the passenger (a parolee) said he didn't know the owner.<sup>124</sup>
- The driver said the car belonged to one of his passengers, but the passengers claimed they were hitchhikers.<sup>125</sup>
- An armed and dangerous driver fled from officers and they reasonably believed the vehicle contained evidence that would help them locate him.<sup>126</sup>
- The driver was stopped at 2 A.M. for driving erratically; there were two other men in the vehicle, one of whom had been hanging out a window and waving a whiskey bottle.<sup>127</sup>

<sup>119</sup> *Michigan v. Long* (1983) 463 US 1032, 1052.

<sup>120</sup> (2009) 556 U.S. 332. Also see *U.S. v. Scott* (8th Cir. 2016) \_\_ F.3d \_\_ [“we have rejected the notion that *Gant*'s requirements apply when no arrest has taken place”].

<sup>121</sup> See Veh. Code § 12951(b) [“The driver of a motor vehicle shall present the registration or identification card or other evidence of registration of any or all vehicles under his or her immediate control for examination upon demand of any peace officer” who has been lawfully stopped for a traffic violation.”]; *In re Arturo D.* (2002) 27 Cal.4th 60, 78 [“When the officer prepared to cite Arturo for a Vehicle Code violation, he had both a right and an obligation to ascertain the driver's true identity”].

<sup>122</sup> See *People v. Hart* (1999) 74 Cal.App.4th 479, 488.

<sup>123</sup> *People v. Martin* (1972) 23 Cal.App.3d 444, 447. Also see *People v. Vermouth* (1971) 20 Cal.App.3d 746, 752.

<sup>124</sup> *People v. Turner* (1994) 8 Cal.4th 137, 182.

<sup>125</sup> *People v. Webster* (1991) 54 Cal.3d 411, 431.

<sup>126</sup> *People v. Remiro* (1979) 89 Cal.App.3d 809, 830.

<sup>127</sup> *People v. Faddler* (1982) 132 Cal.App.3d 607, 610.

Two other things should be noted. First, before beginning the search, officers may order the occupants to exit.<sup>128</sup> Second, the search must be limited to places and things in which such documents may reasonably be found; e.g., the glove box, above the visor, under the seats.<sup>129</sup> But the search need not be limited to places in which such documents are “usually” or “traditionally” found.<sup>130</sup> Finally, in the absence of probable cause, officers may not search the trunk for ID.<sup>131</sup>

## Other Vehicle Searches

There are five other types of warrantless vehicle searches that, although they do not require much discussion, should be noted.

**CONSENT SEARCHES:** The owner of a vehicle, or a person who has the owner’s permission to drive it, may ordinarily consent to a search of both the vehicle and its contents.<sup>132</sup> There is, however, an exception: Officers may not search a container in the vehicle if it reasonably appeared that someone other than the consenting person had exclusive control or access to it.<sup>133</sup>

**PROBATION AND PAROLE SEARCHES:** Officers may ordinarily search the vehicle pursuant to the terms of probation or parole if they were aware that the owner or the driver was on parole or was on probation which contained a search clause authorizing vehicle searches or searches of property under the probationer’s control. In addition to searching property under the control of the probationer or parolee, officers may search property belonging to a passen-

ger if they reasonably believed the parolee could have stowed his belongings in the property when he became aware of “police activity.”<sup>134</sup>

**EXIGENT CIRCUMSTANCES:** Under the exigent circumstances exception to the warrant requirement, officers may forcibly enter a vehicle if it was reasonably necessary to protect a person from imminent harm, or protect property from imminent damage; e.g., child locked in vehicle, an occupant was sick or injured, gun or dangerous chemical was inside. It may also be necessary to enter a vehicle that has been burglarized or is otherwise insecure for the purpose of locking it or searching for registration that will enable officers to notify the owner.

**SEARCHES BY VEHICLE THEFT INVESTIGATORS:** Officers whose primary responsibility is to investigate vehicle theft may search unoccupied vehicles to determine the lawful owner if the vehicle was located “on a highway or in any public garage, repair shop, terminal, parking lot, new or used car lot, automobile dismantler’s lot, vehicle shredding facility, vehicle leasing or rental lot, vehicle equipment rental yard, vehicle salvage pool, or other similar establishment.”<sup>135</sup>

**VIN SEARCHES:** Regardless of whether there are grounds to do so, officers may look through the windshield of a vehicle to inspect the VIN plate located on the dash if the car is located in a public place. If the vehicle was stopped for a traffic violation, and if the VIN plate was covered, officers may enter the vehicle and remove the covering in order to record the VIN number.<sup>136</sup>

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<sup>128</sup> See *People v. Webster* (1991) 54 Cal.3d 411, 431.

<sup>129</sup> See *In re Arturo D.* (2002) 27 Cal.4th 60, 78, 81; *People v. Webster* (1991) 54 Cal.3d 411, 431; *People v. Turner* (1994) 8 Cal.4th 137, 182 [glove box]; *People v. Martin* (1972) 23 Cal.App.3d 444, 447 [“on the sun visors”].

<sup>130</sup> See *In re Arturo D.* (2002) 27 Cal.4th 60, 78 [search need not be limited to “traditional repositories”].

<sup>131</sup> See *In re Arturo D.* (2002) 27 Cal.4th 60, 86, fn.25 [trunk is not where ID documents reasonably would be expected to be found].

<sup>132</sup> See *People v. Clark* (1993) 5 Cal.4th 950, 979; *People v. Carvajal* (1988) 202 Cal.App.3d 487, 495-97.

<sup>133</sup> See *People v. Baker* (2008) 164 Cal.App.4th 1152, 1159-60 [“Although the officer testified that he did not know who the purse belonged to when he searched it, there was no reasonable basis to believe the purse belonged to anyone other than the sole female passenger.”]; *Raymond v. Superior Court* (1971) 19 Cal.App.3d 321, 326 [“[R]eliance upon the third party’s consent is not justified where it is clear that the property belongs to another.”]; *People v. Cruz* (1964) 61 Cal.2d 861, 866 [“The general consent given by Ann and Susan that the officers could ‘look around’ did not authorize [the officers] to open and search suitcases and boxes that he had been informed were the property of third persons.”].

<sup>134</sup> See *People v. Schmitz* (2012) 55 Cal.4th 909, 926.

<sup>135</sup> Veh. Code § 2805.

<sup>136</sup> See *New York v. Class* (1986) 475 U.S. 106; *People v. Lindsey* (1986) 182 Cal.App.3d 772, 779.