Warrantless Vehicle Searches in California

By Jay M. Bloom

In recent years there have been numerous cases discussing warrantless searches of vehicles. It is the purpose of this article to survey California law regarding warrantless searches of vehicles and to set forth the various theories which can be used to support such searches.

A. Warrantless Searches of A Vehicle Based Upon Probable Cause

1. General Theory

A warrantless search of a vehicle may be made on the ground there is probable cause to believe the vehicle contains contraband, fruits, or evidence of a crime and exigent circumstances exist. (*Carroll* v. *United States* (1925) 267 U.S. 132; *Chambers* v. *Maroney* (1970) 399 U.S. 42; *People* v. *McKinnon* (1972) 7 Cal.3d 899; *People* v. *Laursen* (1972) 8 Cal.3d 192, 201-202; *People* v. *Hill* (1974) 12 Cal.3d 731, 747-753; *Wimberly* v. *Superior Court* (1976) 16 Cal.3d 557, 562-563.)

The rationale for this rule is that there is no constitutional difference between allowing officers to immediately conduct a warrantless search of a vehicle once officers have probable cause to believe it contains contraband or evidence of a crime and requiring officers to merely seize and hold the vehicle until they obtain a search warrant from a magistrate. (*Chambers* v. *Maroney, supra,* at p. 52.)

2. Exigent Circumstances

In order to support a warrantless search of a vehicle based upon probable cause, exigent circumstances must exist. Exigent circumstances occur when a car stopped while moving along the highway could have been removed from the jurisdiction if officers had to obtain a search warrant before searching the vehicle. (*Chambers* v. *Maroney, supra; Coolidge* v. *New Hampshire* (1971) 403 U.S. 443, 458-464. See also *People* v. *Jochen* (1975) 46 Cal.App.3d 243.) They also arise when there is a danger the defendant or confederates may return to the automobile and remove it and officers do not have time to obtain a warrant. (*People* v. *Laursen, supra; People* v. *Dumas* (1973) 9 Cal.3d 871, 884-885. Likewise, exigent circumstances exist when officers did not have time to obtain a warrant before seizing the vehicle and it would be impractical or inconvenient for them to search the vehicle at a late hour along a remote highway. (*People* v. *Cook* (1975) 13 Cal.3d 663, 667-669; cf. *Coolidge* v. *New Hampshire, supra,* at 462; see also *Texas* v. *White* (1975) 423 U.S. 67, search of car valid although probable cause arose after car was stopped and police had it secured.)

3. Impound and Later Searches of a Vehicle

Once officers have probable cause to conduct a warrantless search and exigent circumstances exist, the officers need not search the vehicle at the place the vehicle was stopped. Instead, they may take the vehicle to the police station and search it there. (*Chambers* v. *Maroney, supra,* at p. 52.) Furthermore, they need not search the vehicle immediately, but may search it a few hours later or the next day. (*People* v. *Laursen, supra,* at pp. 201-202; *People* v. *Hill, supra,* at pp. 750-753.) Additionally, they may search it at the scene and again at the impound garage. (*People* v. *Hill, supra; People* v. *Laursen, supra.*) Moreover, they may even search the car at the station for evidence of a crime completely unrelated to the crime the car was initially searched for. (*People* v. *Hill, supra.*)

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The underlying rationale behind all these rules concerning impound searches is that once the police have probable cause to search a vehicle and exigent circumstances exist, the right to search is not limited by time, location of the search, reason for the search, or the number of searches which may be conducted.

4. Trunk Searches

Once it is evident officers have probable cause to conduct a warrantless search of a vehicle, the next question becomes what is the scope of such a search. Historically, the cases have never discussed what the scope of such a search may be, but have implicitly held police may search the entire vehicle once they have probable cause.

However, in *Wimberly* v. *Superior Court, supra,* 16 Cal.3d at p. 568, the Supreme Court noted probable cause to search the interior of the car does not automatically give officers probable cause to search the trunk. There must be some specific articulable facts which give reasonable cause to believe seizable items are, in fact, concealed in the trunk.

In *Wimberly* the question was whether the observation of er-

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ratic driving, marijuana seeds and odor, marijuana in a jacket, and paraphernalia for the use of marijuana in the interior of the car would support a search of the trunk. The Supreme Court held this evidence would not support a trunk search. The court reasoned the evidence only indicated the passengers of the car were casual users of marijuana. Thus, there was no probable cause to believe more marijuana was in the trunk. (See too *People* v. *Gregg* (1974) 43 Cal.App. 3d 137, traffic stop, marijuana debris in jacket in rear seat, marijuana seeds, and odor of burnt marijuana would not support trunk search.)

However, in *Wimberly* the court also indicated small amounts of marijuana indicative of personal use and *other suspicious circumstances* could support a trunk search. (See e.g., *People* v. *Hill, supra,* 12 Cal.3d at p. 748, contraband seen in interior of car after desperate attempt to avoid police supported trunk search; *People* v. *Cook, supra,* at pp. 668-670, trunk search permissible where odor of marijuana much stronger than that which could be attributed to the items found in the passenger area of the vehicle. See also *People* v. *Podesto* (1976) 62 Cal.App.3d 708, 719-720 (one-half baggie of marijuana on rear seat and floorboard and strong odor of marijuana emanating from back of car supported trunk search; *People* v. *Briggs* (1976) 62 Cal.App.3d 817, discovery of 60 grams of marijuana established probable cause for trunk search; *People* v. *Superior Court (Karpel)* (1976) 63 Cal. App.3d 990, 993, probable cause for trunk search where defendant seen putting item in trunk.)

Wimberly actually dealt only with whether evidence of a small amount of marijuana housed in the passenger area would also support a trunk search. The court intimated there may be situations where police could search the trunk even though they have no specific information seizable items are in the trunk. For example, if the vehicle as a whole were used to assist in the commission of a crime, a search of the trunk might be appropriate even though police have no specific information seizable items are in the trunk. (See *People* v. *Laursen, supra,* 8 8 Cal.3d at p. 201, fn. 8, cited with approval in *Wimberly* v. *Superior Court, supra,* at p. 569, search of trunk proper where vehicle used by robbers in aborted escape attempt. *People* v. *Dumas, supra.* 9 Cal.3d 871, cited with approval in *Wimberly* v. *Superior Court, supra,* at p. 570, search of trunk of vehicle proper where police had cause to believe some part of vehicle contained stolen bonds.)

Prudence, however, would dictate trunks of vehicles be searched only where the officer is aware of articulable facts which would establish probable cause to believe seizable items are in the trunk.

5. Locked Items Found in a Vehicle

Although no California cases have directly dealt with what may be done when closed objects are observed in a trunk of a vehicle, the recent decision of the United States Supreme Court in *United States* v. *Chadwick* (1977) 433 U.S. 1, seriously leaves open to question of the right of a police officer to seize and search closed items found in a vehicle.

In *Chadwick,* federal agents seized a locked footlocker which had been transported from San Diego to Boston by train. Although the agents knew about the item during the time it was in transit, no warrant was obtained. The Supreme Court found the search of the footlocker was improper. Although the essential holding of the case is that the search could not be justified as a search incident to an arrest, the court also held the footlocker could not be searched under the automobile exception to the warrant requirement. The court indicated once the footlocker had been seized, no one would be able to remove it from the custody of the police. Thus, there were no exigent circumstances and time to obtain a warrant to search the trunk.

Based on this case, a California court could hold any locked item found in a vehicle which is being searched could be seized and held by the police. Thus, there is no reason to believe it would leave the jurisdiction. Consequently, a search warrant would be required.

The issue of the propriety of a warrantless search of a locked item in a trunk is pending before the Court of Appeal, First Appellate District. (*People* v. *Minjares,* 1 Crim. 15834 (Alameda County 61376).)

B. Search Incident to Arrest

1. California Law

A search of a vehicle may also be supported on the ground the search was incident to an arrest. An arresting officer may search the arrestee's person to discover and remove weapons and to seize evidence which may be concealed or destroyed. Additionally, an officer may search the area within the immediate control of the person arrested for weapons or evidence which could be destroyed. (*Chimel* v. *California* (1969) 395 U.S. 752, 758.)

The California Supreme Court has held the *Chimel* rule applies to searches of vehicles incident to an arrest. (*People* v. *Superior Court (Kiefer)* (1970) 3 Cal.3d 807, 812-813.) However, the court strictly followed the *Chimel* rationale, and held a vehicle may only be searched incident to arrest where the officer is looking for instrumentalities, fruits, evidence, contraband, or weapons which could be used against the officer. Under this rationale, officers may not search a car incident to every arrest as some crimes are committed without any resulting evidence or fruits and do not involve contraband, or any danger to the officers.

For example, in *People* v. *Superior Court (Kiefer), supra,* at pp. 812-829, the court held police may not search a vehicle incident to an arrest for a traffic offense. The court reached this conclusion on the ground there is no reason to search a car for the instrumentality of the crime as the car itself was the instrument of the crime. Also, there was no evidence or fruits of such

a crime which would be found in the vehicle, nor could the officer reasonably expect to find contraband or weapons as a result of an arrest for a traffic offense.

The same rule also applies to nontraffic offenses which may be committed without any resulting evidence. For example, if a defendant were arrested near his car for loitering or being drunk in public, the car could not be searched as there would be no evidence or fruits of the crime in the car. (*People v. Superior Court (Kiefer), supra,* at p. 814; *Preston* v. *United States* (1964) 376 U.S. 364, 367.)

By contrast, officers may search a vehicle incident to an arrest for driving under the influence of alcohol or a narcotic as the presence of such substances in the vehicle is admissible as corroborating evidence of those crimes. (*People* v. *Superior Court (Kiefer), supra,* at p. 813, fn, 2; *People* v. *Robinson* (1965) 62 Cal.2d 889, 894; *People* v. *Fulk* (1974) 39 Cal.App.3d 851, 853-854.)

Officers may also search a vehicle incident to a traffic arrest or other arrests which normally have no fruits, instruments, or evidence, when they have additional probable cause to believe the vehicle contains contraband or weapons. (*People* v. *Superior Court (Kiefer), supra,* at pp. 817, 829.)

2. **The Federal Rule**

Although the California Supreme Court has strictly adhered to the *Chimel* standard in applying rules regarding searches incident to a valid arrest (see also *People* v. *Superior Court (Simon)* (1972) 7 Cal.3d 186, 201-206, full body search incident to traffic arrest improper since offense has no fruits, evidence or instrumentalities, and does not furnish probable cause to search for weapons or contraband; *People* v. *Norman* (1975) 14 Cal.3d 929, 934-938); the United States Supreme Court had decided not to follow that rationale as a basis for justifying a search incident to an arrest.

In *United States* v. *Robinson* (1973) 414 U.S. 218 and *Gustafson* v. *Florida* (1973) 414 U.S. 260, the Supreme Court held the authority to search incident to arrest does not depend on the probability weapons or evidence will be found in a specific arrest situation. Instead, the mere fact of a lawful arrest establishes the authority to search.

If this rule were followed in California, any arrest would justify an incident vehicle search since the right to search arises because of the arrest. However, the California Supreme Court has rejected this doctrine. Instead, it chose the more restrictive doctrine which has been followed in California because of its inherent power to impose a higher constitutional standard for searches and seizures under the California Constitution. (*People* v. *Brisendine* (1975) 13 Cal.3d 528, 548-552; *People* v. *Norman, supra,* at pp. 938-939.)

Therefore, the *Simon-Kiefer* rule still applies in this state.

3. **Scope of the Search Incident to Arrest**

A search of a vehicle incident to an arrest must be done at the place of the arrest and at the time of the arrest. A search long after the arrest at a place removed from the arrest cannot be justified as a search incident to an arrest. (*Preston* v. *United States, supra,* at pp. 367-368.)

Moreover, in searching a vehicle incident to an arrest, officers may only search the area where the defendant would reach for weapons or to destroy evidence. (*Chimel* v. *California, supra,* 395 U.S. at p. 759; *Wimberly* v. *Superior Court, supra,* 16 Cal.3d at p. 566, and fn. 2.)

Furthermore, once an arrestee is moved away from the vehicle, police lose the right to justify a search of a vehicle as one incident to an arrest. (*Mestas* v. *Superior Court* (1972) 7 Cal.3d 537, 541, fn. 2.)

C. **Consent**

A warrantless search of a vehicle may, of course, be justified by consent. (*People* v. *Michael* (1955) 45 Cal.2d 751, 753.) The standard rules governing consent would, of course, apply to a vehicle search.

D. **Plain Sight**

Any contraband or evidence of a crime in a car which falls into the plain sight of an officer lawfully standing outside the car may also be seized. (*Harris* v. *United States* (1968) 390 U.S. 234, 236; *People* v. *Hill, supra,* at p. 748.) Also the fact the officer uses a flashlight to illuminate the interior of the vehicle is of no constitutional significance. (*People* v. *Hill, supra; People* v. *Superior Court (Mata)* (1970) 3 Cal.App. 3d 636, 639.)

E. **Seizure of the Vehicle Itself as Evidence of a Crime**

As a corollary of the plain sight rule, police may seize an entire automobile and later examine it where the automobile is itself evidence or an instrumentality of a crime rather than a container for incriminating items. (*People* v. *Teale* (1969) 70 Cal.2d 497, 507-513; *North* v. *Superior Court* (1972) 8 Cal.3d 301, 305-308.) This rationale would apply where the vehicle was itself the scene of a murder or used for a kidnapping.

F. **Inventory Searches**

Unlike the federal system (*Harris* v. *United States, supra,* at p. 236; *Cady* v. *Dombrowski* (1973) 413 U.S. 433, 440-448), California does not permit police to search an entire vehicle on the ground they are merely making an inventory of the contents of an impounded vehicle. (*People* v. *Miller* (1972) 7 Cal.3d 219, 223-224; *Mozzetti* v. *Superior Court* (1971) 4 Cal.3d 699.) Police may only seize evidence falling into their plain sight following a lawful impound.

G. **Search For Registration**

When a vehicle is stopped, it is permissible for the officer to request the driver's license and the registration for the vehicle. If the driver is unable to produce the registration the officers may make a reasonable search for it. (*People* v. *Martin* (1972) 23 Cal.App.3d 444, 447; *People* v. *Vermouth* (1971) 20 Cal.App. 3d 746, 752; Veh. Code § 2805. But see *Jackson* v. *Superior Court* (1977) 74 Cal.App.3d 361, officer must inquire as to location of registration before entering vehicle to obtain it).

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