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LEGAL LOG

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To Search Or Not To Search -
Automobiles After Belton And Ross--
Part Two of a Two Part Article

Last month's edition of Legal Log addressed the issue of the search of an automobile incident to an occupant's arrest. This month's edition will discuss probable cause searches of automobiles after U.S. v. Ross (72 L. Ed. 2d 572, 1982).

Since the U. S. Supreme Court decided the case of Carroll v. U.S. in 1925 (267 U.S. 132) and created the so-called "vehicle exception" to the search warrant requirement, confusion has reigned supreme in law enforcement circles in trying to determine how that exception applies in any given situation.

The facts of Carroll give a good starting point for analysis:

On December 15, 1921, Federal Prohibition Agents were routinely patrolling a road between Grand Rapids and Detroit, Michigan, when they observed an automobile occupied by George Carroll and John Kiro traveling from the direction of Detroit toward Grand Rapids. Over a period of about two months the officers had developed information that had led them to believe that Carroll and Kiro were trafficking in illegal whiskey. Because they believed that the two men were, at that moment, transporting whiskey in the automobile, the officers stopped the vehicle and searched it, finding several bottles of whiskey inside. They then arrested Carroll and Kiro who were convicted for violation of the National Prohibition Act. The two men appealed their convictions, challenging the legality of the search.

In an effort to better disseminate information on legal matters that affect law enforcement officers, we are pleased to present to you the LEGAL LOG.

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It should be noted that the agents did not have a warrant to search the automobile; they did not have the voluntary consent of Carroll and Kiro to conduct the search; and the search was not incidental to an arrest, since no arrests occurred until after the search uncovered the illegal whiskey.

Nevertheless, the Supreme Court upheld the search and affirmed the convictions. In so doing, the Court acknowledged the general requirement that a warrant be obtained prior to conducting a search, but concluded that historically, the Fourth

Amendment had been construed as recognizing that:

"...there is a necessary difference between a search of a store, dwelling house, or other structure in respect of which a proper official warrant readily may be obtained, and a search of a ship, motor boat, wagon, or automobile...where it is not practicable to secure a warrant because the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant must be sought." Carroll at 153.

Considering the facts, the Court concluded that there was probable cause to believe that whiskey was in the car. Given the probable cause, the Court concluded that the mobility of the vehicle created an exigency rendering the securing of a search warrant impracticable, therefore justifying the warrantless search. In the words of the Court such a search is reasonable where:

(1) "...the search and seizure without a warrant are made upon probable cause..."; Carroll at 149, and

(2) "...it is not practicable to secure a warrant because the vehicle can be quickly moved..."; Carroll at 153.

The Supreme Court's decision in Carroll marks the beginning of the "Carroll Doctrine" or what is more frequently referred to today as the "vehicle exception" to the warrant requirement.

While most officers are familiar with the principle underlying this vehicle exception, difficulty arises in applying it. After Carroll the U. S. Supreme Court went through a series of cases in which it sought to clarify exactly when the rule set out in that case would apply. Unfortunately, major confusion arose as each new case was decided and law enforcement officers were left with no clear-cut rule as to when a warrantless probable cause search of a vehicle may be made. Finally in 1982,

the Court handed down U.S. v. Ross (72 L. Ed. 2d 572) and gave more specific guidance to officers who were involved in the everyday search of vehicles.

Ross involved a defendant who was stopped in his automobile by Washington, D. C. detectives after they received information from a reliable informant that Ross was selling drugs from the trunk of his automobile. After Ross was arrested one of the officers opened the trunk of the automobile and found a closed paper bag containing several clear plastic bags filled with heroin. Later, at police headquarters a more thorough search was conducted and a large amount of cash was found in a leather pouch. The cash and the heroin were used to convict Ross of Possession of Heroin with intention to distribute.

Ross appealed claiming that the search of the closed paper bag and the leather pouch required the police to obtain a warrant. The U. S. Supreme Court disagreed.

Defining the issue as the extent to which law enforcement officers may search an automobile under the vehicle exception, the Court stated:

"We hold that the scope of the warrantless search authorized by that exception is no broader and no narrower than a magistrate could legitimately authorize by warrant. If probable cause justifies the search of a lawfully stopped vehicle, it justifies the search of every part of the vehicle and its occupants that may conceal the object of the search." Ross at 594. (emphasis added).

With respect to separate containers located inside a vehicle, the Court noted that a person's privacy interests in a container would necessarily give way to a magistrate's warrant. Likewise, a person's privacy interests in a vehicle and its contents "must yield to the authority of a search, which--in light of Carroll-- does

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not itself require prior approval of a magistrate."

Whether the container is a paper bag or a suitcase, locked or unlocked, makes no difference so long as the item sought could reasonably be located inside. As the Court explained:

"The scope of a warrantless search of an automobile thus is not defined by the nature of the container.... Rather it is defined by the object of the search and the places in which there is probable cause to believe that it may be found." Ross at 593.

After Ross, the Carroll Doctrine may be summarized as follows:

(1) A vehicle exception search does not in any way depend upon the existence of an arrest but does depend upon probable cause to believe that evidence, or contraband are present within the vehicle; (2) the scope of the search is the same as under a warrant, and can therefore extend to any portion of the vehicle in which seizable items can reasonably be located, including the trunk; (3) the vehicle search, once begun, may extend into separate containers regardless of their nature or condition, if the seizable evidence could be located inside; and finally, (4) the vehicle exception search does not have to be conducted immediately after a vehicle is seized but may be delayed for a reasonable period as circumstances dictate.

There are undoubtedly many cases where arrests of vehicle occupants have occurred, either immediately or within a short period of time after the stop and there is probable cause to believe evidence is located inside the vehicle. In such cases both the Carroll Doctrine (i.e. probable cause or "vehicle exception" search) and the "search incident to arrest" doctrine of Belton (cf. February 1985 Legal Log issue) come into

play and officers are free to apply them in such a way as to effect the widest search consistent with the law.

Officers should note that probable cause may be established in a number of ways: from an officer's personal observation or that of another officer, from a reliable informant or an anonymous informant. In any case, if probable cause is established to believe that evidence or contraband is located in the vehicle then, regardless of whether the occupants of the vehicle are under arrest, or not under arrest, the officer may search the vehicle just as fully as if the officer had a warrant for the search.

In establishing probable cause under the Carroll Doctrine officers should consider the "totality of circumstances" as set out in Illinois v. Gates (103 S. Ct. 2317, 1983--see June 1984 "Legal Log"), especially where anonymous informants are involved in providing information upon which an officer wishes to search.

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