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A Law Enforcement Primer on Vehicle Searches

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I. INTRODUCTION

The Federal Bureau of Investigation ("FBI") receives over 50,000 fingerprint cards every weekday.[1] Some of the people whose fingerprints were obtained were undoubtedly arrested as a result of a traffic stop. Such arrests were likely concomitant with a vehicle search. Significantly, items of evidence may be located during a vehicle search. Thus, it is critically important that law enforcement officers follow proper legal procedure when conducting such searches.

Vehicle searches often result in the finding of contraband or evidence of some crime. If such search results are suppressed, the likelihood of a successful prosecution is severely diminished. Defense attorneys who review police incident reports that appear to be incomplete or which fail to articulate a specific basis for a vehicle search may be more apt to file a motion to suppress. Conversely, a well prepared police report may demonstrate to both the prosecution and defense that the officer is a professional who will be a well-prepared witness.

Conducting a vehicle search pursuant to a search warrant is always the preferred search method. Because a vehicle search pursuant to a warrant shows that the officer conducting the search took the extra step of having the factual situation independently evaluated, such searches are more likely to withstand scrutiny. However, time constraints and other exigencies routinely "interfere" with this preference.[2] As a

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1. The FBI is the central repository for felony arrestees' fingerprint cards as well as military personnel fingerprint cards. As such, the FBI receives thousands of fingerprint cards every weekday from numerous agencies.

2. When a vehicle is stopped in traffic, even if probable cause exists for a search

result, officers often conduct vehicle searches without a warrant.[3] Because of the many nuances raised by such searches, the officers may routinely conduct a search without a sufficient grasp of the various warrantless search theories that may be applicable in a given situation. This article discusses five ways to search vehicles without a warrant: consent;[4] vehicular frisk;[5] search incident to arrest;[6] vehicle exception;[7] and inventory.[8]

Law enforcement officers must have a strong grasp of these exceptions to make the exceptions effective. First, these exceptions are widely used but are closely scrutinized. Officers who can properly "pigeonhole" a vehicle search under an exception, therefore, stand a better chance of being able to justify the search. They may also be in a better position to discern and deflect trick questions posed by defense attorneys. Second, the specific areas of a vehicle that may be searched vary widely depending on which exception is used. Third, some theories overlap. An officer may use them in combination or must choose the best one to use. Finally, another more expansive search theory may suddenly emanate during a search, thus allowing a broader search than that originally contemplated.

Tables at the end of this article illustrate the basic prerequisites and parameters of the five major warrantless search theories. Table 1 shows the permissible search areas according to the particular search theory being used. For example, consent that is restricted in scope limits permissible search areas. Table 2 illustrates the object of each of

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warrant (*see infra* Part V), a warrantless search conducted on site quickly confirms or dispels the suspicions of the police and results in the driver being inconvenienced for a much shorter period than it would take for a search warrant to be procured. Moreover, some dangerous suspects are stopped at gunpoint. Having an officer leave the site to obtain a search warrant is impractical. In many instances, the officer stopping the vehicle is the sole officer on the scene. Also, the mobility of vehicles is a factor. A vehicle could move outside the jurisdiction of a warrant by the time a warrant was obtained, unless one officer detained the vehicle while another sought the warrant.

3. However, when officers come upon an unoccupied vehicle that they had not seen in motion, and they desire to search the vehicle, these two factors coupled together should serve as a "warning flag" that a search warrant might be the best procedure to follow. Since some prosecutors and judges focus on the inherent mobility of stopped vehicles as the justification for a warrantless vehicle search, an unoccupied vehicle found parked may be deemed to lack such mobility. Even if a warrant is not needed in some of these instances, it may be more prudent to obtain one, based upon the known preferences of the local magistrate who may be called upon to rule on the validity of the search.

4. *See infra* Part II.

5. *See infra* Part III.

6. *See infra* Part IV.

7. *See infra* Part V.

8. *See infra* Part VI.

the five types of vehicle search theories. Table 3 notes the general prerequisites for a vehicle search for each of the major search theories. A summary flowchart, which guides officers through the basics of the five search theories, is also included. Although charts and flowcharts never can substitute for legal training, they serve as summaries or memory triggers after such training is received.

By striving to discern the major differences between the varied search theories, officers will seem more credible and might see more of their searches upheld. This article is meant as a primer only. An in-depth analysis of vehicle search law is beyond the scope of this article.

II. CONSENT

Consent is often the first search method attempted because it is one of the easiest ways to search a vehicle. Although not problem free, the consent search may be all that is available when no other warrant exception exists. Moreover, an officer may ask for consent even when the officer does not suspect anything amiss.

To be valid, consent must be voluntary.[9] Courts generally use a totality of the circumstances test when determining if consent is voluntary.[10] Factors used in the evaluation include: whether the person was advised of his right to refuse consent;[11] the person's age and education;[12] the person's experience in dealing with the police;[13] and whether there was a display of weapons or other show of force by the police.[14] An officer's failure to inform a lawfully stopped motorist that he is free to go prior to asking for consent to search[15] does not

9. *See* Schneckloth v. Bustamonte, 412 U.S. 218, 222 (1973); United States v. Kon Yu-Leung, 910 F.2d 33, 41 (2d Cir. 1990).

10. *See Schneckloth*, 412 U.S. at 227. In *Schneckloth*, a driver was pulled over by the police for a burned out headlight and license plate light. *See id.* at 220. When the driver could not produce a license, the officer asked to search the car. *See id.* The driver consented and even assisted the officer during the search. *See id.* The court held that the driver's response to the officer's question was voluntarily given because there was no indication of coercion by the police. *See id.* at 247. The court explained further that although the officer's failure to apprise the driver of his right to refuse was a factor to consider in determining the voluntary nature of his consent, it was not a "prerequisite to establishing voluntary consent." *Id.* at 249.

11. *See id.* at 227.

12. *See* United States v. Mendenhall, 446 U.S. 544, 558 (1980) (finding a 22-year old with an 11th grade education capable of a knowing consent).

13. *See* United States v. Barnett, 989 F.2d 546, 556 (1st Cir. 1993) (considering defendant's eight prior convictions as evidence that his actions reflected consent).

14. *See* United States v. Guiterrez, 92 F.3d 468, 471 (7th Cir. 1996).

15. *See* Ohio v. Robinette, 519 U.S. 33, 39-40 (1996); People v. Brownlee, 687 N.E.2d 1174, 1176 (Ill. App. Ct. 1997).

alone make the consent involuntary.[16]

Obtaining the vehicle's driver's consent to search the car is the standard practice. Like the captain of a ship, the driver is generally the one exerting control over the vehicle.[17] Officers must be careful, however, when a driver consents to a search while a passenger's belongings are left on the passenger's seat.[18] Separate consent, a distinct exception to the general rule requiring search warrants, is needed to search the passenger's belongings.[19] Additionally, a passenger's consent to search his or her belongings might not be implied even if the passenger kept quiet when informed of the driver's consent to search and the driver's identification of the passenger as the owner.[20] If a passenger is really the vehicle's owner, and the driver consents to a search of the vehicle, the passenger's silence when he is told of such consent does not necessarily mean that the passenger provided implied consent.

An officer may receive consent in one of three ways: written, oral, or implied.[21] Typically, the driver is stopped for a routine traffic

16. *See Robinette*, 519 U.S. at 39-40 (holding that the Fourth Amendment does not require that a lawfully seized driver be advised that he is "free to go" before the driver's consent to the search will be recognized as voluntary); *Brownlee*, 687 N.E.2d at 1176 (holding that neither the federal constitution nor the Illinois constitution require the "first-tell-then-ask" rule whereby a police officer informs a stopped motorist that he is free to go before asking the motorist for consent to search his vehicle), *appeal granted*, 177 Ill. 2d 573 (Ill. 1998).

17. *See* United States v. Morales, 861 F.2d 396, 399 (3d Cir. 1998).

18. For example, it has been held that the driver's consent to search does not encompass a passenger's purse. *See* United States v. Welch, 4 F.3d 761 (9th Cir. 1993); People v. James, 163 Ill.2d 302 (1994).

19. *See Welch*, 4 F.3d at 764 (providing three ways that the government can establish third party consent: (1) by providing evidence of shared use and joint access, (2) by showing that the owner expressly authorized a third party to give consent, or (3) by establishing the 'apparent authority' doctrine).

20. *See* United States v. Jaras, 86 F.3d 383, 389 (5th Cir. 1996). In *Jaras*, the car driver gave the police officer permission to search his car and alerted the officer that the suitcases in the car's trunk did not belong to him but to the car's passenger. *See id.* The officer asked the passenger what was inside the suitcases but the passenger denied knowledge of their contents. *See id.* at 390. The officer then searched the suitcases without objection from the passenger. *See id.* The *Jaras* court held that consent could not be inferred from the passenger's silence and failure to object during the search because the officer did not expressly or implicitly request the passenger's consent. *See id.*

21. It has been the author's experience that most people who provide consent do so orally, in response to a direct oral request to provide such. If one seems to be especially cooperative, and/or is in custody, evidence of the person's written consent helps the court to determine the voluntariness of one's consent. In such situations, a written consent to search form might be given to the person to sign. Implied consent is much less common, and may occur when an unarrested husband stands silently next to his wife who just provided consent to search the commonly owned vehicle.

violation, and the officer may ask routine questions regarding the driver's destination, driver's license, registration, and proof of insurance. A citation for some infraction may follow. Consent is often requested orally right before a vehicle stop is finished. Obtaining written consent to a search is less vulnerable in court than relying on mere oral or implied consent.[22] In many instances, however, a written consent form is not used, and officers often rely solely on oral consent.[23] In such cases, consent is best secured in the presence of at least two law enforcement officers. This will help offset a one-on-one argument at an evidence suppression hearing regarding what was actually said.[24]

Implied consent, although not favored under the law, may be applicable in certain situations.[25] A driver's failure to respond to an officer's search request does not constitute implied consent.[26] Thus, in the majority of cases, consent will not be implied. For instance, if the leaseholder of a rental car is riding as a passenger in the rental car, and the driver consents to a search in the leaseholder's presence, the leaseholder's silence may be construed as consent.[27]

Drivers have a right to refuse to consent to a search. Indeed, the FBI's own internal consent-to-search form indicates that the consenting driver was advised of his right to refuse. However, this statement is not required under federal constitutional law.[28] A person in custody has no federal constitutional right to consult with an attorney before being asked to provide consent.[29] No court case exists

22. Written consent can be thought of as two-fold consent. The person providing consent would have just given oral consent and is then requested to confirm this affirmation on a document.

23. For example, during vehicle stops, the type of consent most often relied upon is oral consent, because the form is deemed impractical to use or is unavailable.

24. This technique allows the officers some support in court, because the oral consent provided is corroborated by a second officer.

25. *See* United States v. Morales, 861 F.2d 396, 399-400 (3d Cir. 1988).

26. The driver's failure to respond could be interpreted in several ways. For example, if the driver were under arrest, he may have exercised his right to remain silent. Perhaps with traffic noise he did not know the question was posed to him. Perhaps he heard the question and was thinking of his response. *See generally* United States v. Lindsay, 506 F.2d 166 (D.C. Cir. 1974) (discussing "silent consent" scenarios).

27. *See id.*

28. *See* United States v. Lattimore, 87 F.3d 647, 651 (4th Cir. 1996) (noting that a demonstration of a driver's understanding of his right to refuse is not an essential factor of voluntary consent); United States v. Saadeh, 61 F.3d 510, 518 (7th Cir. 1995) (concluding that the police were not constitutionally required to advise driver of her right to refuse a search before obtaining consent); United States v. Zapata, 18 F.3d 971, 977 (1st Cir. 1994) (rejecting driver's argument that the officer's failure to inform driver of his right to refuse permission to a search negated inference of consent).

29. *See* United States v. Lagrone, 43 F.3d 332, 337 (7th Cir. 1994); *see also* United

that requires officers to inform a person that he has a right to refuse consent. However, since the form is most often used after the person has already orally consented and includes a phrase on the form that the person has the right to refuse, it provides further evidence of the person's voluntariness in subsequent court hearings. However, the failure to inform the person of this right is a factor in determining the voluntariness of the person's consent.[30] Although not necessarily the determining factor, it is one factor courts examine in the totality of circumstances equation when evaluating the voluntariness of the consent.[31]

Officers must be aware of certain problems. Under the consent theory, officers must remember that consent may be restricted or withdrawn at any time.[32] Consent given voluntarily is presumed to continue until it is revoked.[33] However, once consent is granted, officers must strictly adhere to the exact parameters of the consent conferred.[34] For example, if the original search has been restricted, officers may search everywhere except the restricted area and must honor the restriction under the consent theory. Accordingly, after procuring consent, officers should search quickly to locate any seizable items before the consent is further restricted or revoked. Even if authority to search is revoked, officers must quickly evaluate whether another warrant exception may be used in lieu of consent. Items seized after consent has been withdrawn will be subject to suppression[35] unless their seizure can be supported on another search

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States v. Hidalgo, 7 F.3d 1566, 1570 (11th Cir. 1993) (explaining that the request for consent to search is not a trial-like confrontation equivalent to a pretrial lineup or interrogation).

30. *See* Schneckloth v. Bustamonte, 412 U.S. 218, 227 (1973). In *Shneckloth*, the Court rejected the suggestion that for police to rely upon a waiver, they must demonstrate that the consenter knew of his right to refuse consent. *See id.*; *see also* United States v. Lindsay, 506 F.2d 166 (D.C. Cir. 1974).

31. *See Schneckloth*, 412 U.S. at 227 (noting that police failure to advise accused of his right to refuse was a factor to be evaluated in assessing voluntariness); *Lattimore*, 87 F.3d at 651 (pointing out that driver's understanding of a right to refuse supports a finding of voluntariness); United States v. Gonzales, 79 F.3d 413, 421 (5th Cir. 1996) (listing the defendant's awareness of his right to refuse a search as one of six factors used in determining whether consent is given voluntarily).

32. *See* Vaughn v. Baldwin, 950 F.2d 331, 333 (6th Cir. 1991); United States v. Dyer, 784 F.2d 812, 816 (7th Cir. 1986); United States v. Griffin, 530 F.2d 739, 744 (7th Cir. 1976); Burton v. United States, 657 A.2d 741, 746 (D.C. 1994).

33. *See* United States v. Alfaro, 935 F.2d 64, 67 (5th Cir. 1991) (noting that consent is usually revoked upon an unequivocal act or statement of withdrawal).

34. *See Griffin*, 530 F.2d at 744.

35. *See* United States v. Bily, 406 F. Supp. 726, 729 (E.D. Pa. 1975) (ruling that revocations take immediate effect, thus leaving subsequent seizures unwarranted).

theory.[36]

Similarly, if officers locate an item of evidence or contraband during a consensual search, other search theories may suddenly emerge as viable alternatives or supplements to the consent method. If drugs are found under the front seat, an occupant can be arrested, and a search incident to the arrest may take place.[37] Additionally, the vehicle exception may manifest itself.[38] In some cases, after the driver's arrest, the vehicle will be impounded and an inventory search will be conducted.[39] This is especially true if the arrestee/driver was the sole occupant of the vehicle. The scope of these searches and their legal justifications for being conducted vary. It is important to note that an initial search conducted solely by consent may be suddenly transformed into a more expansive search. Further, a consent search, originally restricted in scope, may also suddenly transform into a more expansive search under a different search theory if something suspect is found during the initial consent search.

Another problem is the officer's belief that a refusal of the driver to provide consent, standing alone, is enough reason to detain the driver while awaiting the arrival of a police canine unit. Some officers' suspicions are especially heightened when people refuse to provide consent to search. While this suspicion may be valid in many cases, those suspicions alone are insufficient to allow further detention.

If a traffic citation is issued and the driver refuses to provide consent, the driver must be allowed to depart unless another search theory manifests.[40] If the driver consents to a search, and the officer contacts a canine unit to assist, the waiting period becomes

36. For example, if the driver is lawfully arrested and his vehicle is to be impounded, an inventory search will subsequently be conducted, regardless whether the driver revokes his consent to search. In that event, the inventory justifies the search rather than the consent.

37. *See infra* Part IV. A search incident to an arrest is a search conducted of a limited area into which the arrestee might reach in order to gain access to a weapon or evidence. *See* Chimel v. California, 395 U.S. 752, 762-63 (1969). With respect to vehicles, an arrest of any occupant permits the police to search the passenger compartment and its unlocked containers. *See* New York v. Belton, 453 U.S. 454, 460 (1981).

38. *See* discussion *infra* Part V. The vehicle exception is the warrantless search theory which allows a search based upon probable cause. *See* discussion *infra* Part V.

39. *See* discussion *infra* Part VI. An inventory search of a vehicle is a warrantless caretaking-type search which is conducted pursuant to standardized criteria. It is generally conducted after the vehicle is impounded. *See* discussion *infra* Part VI.

40. *See* United States v. Lee, 73 F.3d 1034, 1039 (10th Cir. 1996) (stating that after producing a driver's license and registration, a driver must be allowed to proceed without further questioning); People v. Sinclair, 666 N.E.2d 1221, 1225 (Ill. App. Ct. 1996) (determining that mere suspicion of criminal activity does not warrant a full search of a person or automobile).

meaningless. In other words, if the driver provides consent to search, and his consent is valid unless and until it is revoked, then the additional time that it takes for a canine unit to arrive is not a factor, because the driver, perhaps foolishly, did not revoke his consent during the additional delay. However, if during this time period, the driver expresses a desire to leave, the officer has little choice but to let the driver go.[41] If the driver remains and does not revoke his consent, the canine sniff is encompassed within the parameters of the original consent.[42] While a police drug-sniffing dog with its exceptional sense of smell may detect narcotics far better than its human handler, the dog is often far from the site of the traffic stop, resulting in prolonged delays.

When a driver is formally arrested, and the officers seek consent after the arrest occurs, no *Miranda* rights are needed to request the consent.[43] Similarly, if the arrested driver immediately invokes his right to remain silent or even his right to counsel, an officer should still ask for consent to search.[44] The arrestee's answer to the question, "Can we search your car?" is not designed to provoke an incriminating response, regardless of whether the answer is "yes" or "no."[45] The arrestee is obviously in custody, but this is not the kind of custodial interrogation for which *Miranda* rights are needed.[46] A person in custody has no federal constitutional right to consult with an attorney before providing consent.[47] The United States Supreme Court has stated that "the fact of custody alone has never been enough in itself to demonstrate a coerced confession or consent to search."[48] Officers may conduct a limited search based upon the search incident to arrest exception, but this search method is typically more limited than what a

41. In such a case, the driver has exercised his right to revoke or withdraw consent. *See* United States v. Dyer, 784 F.2d 812, 816 (7th Cir. 1986); Burton v. United States, 657 A.2d 741, 746 (D.C. 1994).

42. *See* United States v. Perez, 37 F.3d 510, 516 (9th Cir. 1994).

43. *See* United States v. Torres-Sanchez, 83 F.3d 1123, 1130 (9th Cir. 1996); United States v. Lagrone, 43 F.3d 332, 337 (7th Cir. 1994); United States v. Rodriguez-Garcia, 983 F.2d 1563, 1567 (10th Cir. 1993); Smith v. Wainwright, 581 F.2d 1149, 1152 (5th Cir. 1978); United States v. Lemon, 550 F.2d 467, 472-73 (9th Cir. 1977); United States v. Faruolo, 506 F.2d 490, 495 (2d Cir. 1974); People v. Wegman, 428 N.E.2d 637, 640 (Ill. App. Ct. 1981).

44. Requesting consent to search in such situations is permissible. *See* United States v. Glenna, 878 F.2d 967 (7th Cir. 1989).

45. *See Glenna*, 878 F.2d at 971; *see also* Cody v. Solem, 755 F.2d 1323, 1330 (8th Cir. 1985) ("[S]imply put, a consent to search is not an incriminating statement.").

46. *See Lemon*, 550 F.2d at 472; *Faruolo*, 506 F.2d at 495.

47. *See* United States v. LaGrone, 43 F.3d 332, 337 (7th Cir. 1994); United States v. Hidalgo, 7 F.3d 1566, 1570 (11th Cir. 1993).

48. United States v. Watson, 423 U.S. 411, 424 (1976).

consent search prior to arrest would encompass.[49] Additionally, if the vehicle is impounded based on the arrest, officers will usually conduct a thorough inventory search.[50]

Officers should also be very aware of the actual words they use when making a request for consent. For example, some officers may make the mistake of asking for restrictive permission to "look around" or merely to "look." If the driver consents, some courts have held that the driver merely consented to the officer looking, but not searching.[51] Other courts have found that the word "look," especially when examined in context, objectively communicates to a person that the officer is making a search request.[52] This is not merely a game of semantics. One could argue that a look implies that the officer may observe things as they are, but may not move anything around in order to look. A defense attorney might argue, and a judge might agree, that a mere look might not encompass the opening of an unlocked briefcase or other container. In that event, a "look" would be analogous to a plain view sighting, in which an officer may view something, but may not be permitted to move the item for closer inspection.[53] One court has also held that the permissible scope of the defendant's consent was limited when an officer said he did not want to look through each item but merely wanted to see how things in the trunk were packed.[54] Additionally, the question, "Does the trunk open?" could be interpreted literally. This ambiguous question does not directly seek consent and leaves open the question of whether the driver consented to the trunk being opened or felt compelled to open it. To offset such problems, officers should specifically ask for consent to search.

Some additional factors may also affect the legality of a consent-based search. If a locked container is found during the consent search,

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49. *See* discussion *infra* Part IV. A search incident to arrest of a vehicle's occupant is limited to the person, the passenger compartment and unlocked objects within the passenger compartment. With consent, police can search wherever they want, consistent with the limits placed on the consent, if any, or the expressed object of the search. *See* discussion *infra* Part IV

50. *See* discussion *infra* Part VI.

51. *See* People v. Baltazar, 691 N.E.2d 1186, 1190 (Ill. App. Ct. 1998), *appeal denied*, 178 Ill. 2d 583 (1998).

52. *See* United States v. Rich, 992 F.2d 502, 506 (5th Cir. 1993) (declining invitation to "establish a list of specific terms from which an officer must select the most appropriate"); United States v. Harris, 928 F.2d 1113, 1115, 1117 (11th Cir. 1991); United States v. Espinosa, 782 F.2d 888, 892 (10th Cir. 1986) (finding a request to "look through" car is sufficient when the defendant stood beside the car while expressing no concern).

53. *See* Arizona v. Hicks, 480 U.S. 321, 326-27 (1987).

54. *See* United States v. Elliott, 107 F.3d 810, 815 (10th Cir. 1997).

officers should proceed carefully. Notably, officers should determine if the consent was restricted in scope and if the driver is the sole occupant of the vehicle. Most important, the officer should evaluate whether the container can be unlocked without forcing it open.

When officers secure a driver's consent, they should ask for the keys to the vehicle as well. The turned-over keys support a potential argument by the officer that if the driver did not want the officers to open the locked briefcase which was in the trunk, then he could have said so.[55] If the driver consents to a search of the vehicle and turns over a set of keys, then the officers may have all the keys they need to open all locked items found inside the vehicle. A locked container opened by its key is arguably not forced open, and thus within the scope of the consent provided.[56] In *Florida v. Jimeno*,[57] the United States Supreme Court held that one's permission to search allows the police to search containers that might hold the object of the search.[58] In that case, consent to search generally authorized a broad search for drugs.[59] The Court also explained, however, that it is "unreasonable to think that a suspect, by consenting to the search of his trunk, has agreed to the breaking open of a locked briefcase within the trunk."[60] Arguably, a container that is opened by unlocking it with a key is not broken open.

In summary, officers need voluntary consent from one with authority to provide it. Consent may be restricted or revoked at any time, in which case officers should immediately consider whether other search theories are applicable. Officers should ask for consent to "search" rather than to "look," and should not break open locked containers based upon a general consent to search.

III. VEHICULAR FRISK

A second search method that may be conducted without a search warrant is the vehicular frisk. A warrantless search of a vehicle solely for weapons as a pre-arrest protective measure is known as a vehicular frisk. Before or during a vehicle stop, officers might develop

55. *See* United States v. Zapata, 18 F.3d 971, 977 (1st Cir. 1994).

56. *See* United States v. Reeves, 6 F.3d 660, 662 (9th Cir. 1993); *see also Zapata*, 18 F.3d at 977 (explaining that a voluntary surrender of keys to both car and trunk may in itself support an inference of consent to search the vehicle and any easily accessible containers therein).

57. 500 U.S. 248 (1991).

58. *See id.* at 249.

59. *See id.* at 251.

60. *Id.* at 251-52.

information that may lead them to believe that there is a weapon inside the vehicle. In such an event, the officers may search the interior passenger compartment and its unlocked containers for weapons.

A vehicular frisk search is limited both substantively and procedurally. First, the object of the search is strictly weapons; it is not a general search for any and all evidence of a crime.[61] Specifically, officers are searching for weapons which may be used against them during the stop.[62] If any other evidence surfaces, such as narcotics, the resulting evidence is merely a bonus for the police; such evidence cannot be the desired object of the search.[63] Second, the areas where the search may be conducted are restricted. The vehicular frisk is limited to the passenger compartment and its unlocked containers.[64] The trunk, the locked glove box and any locked briefcases found on the passenger seat are generally not permissible search areas under this exception to the warrant requirement because the occupant may not gain immediate control of a weapon located in these locked areas.[65] One court upheld a protective frisk of a locked glove box.[66] This opinion, however, appears to be the exception rather than the rule.[67]

To conduct a search under this limited exception to the warrant requirement, reasonable suspicion that there is a weapon inside the vehicle is required.[68] Notably, the standard used is not probable cause. Although not much evidence is needed to meet the reasonable suspicion standard, officers should note that a mere hunch or sneaking suspicion is not enough.[69]

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61. *See* Michigan v. Long, 463 U.S. 1032, 1049 (1983).

62. *See id.*

63. *See id.* at 1050.

64. *See id.* at 1049.

65. *See id.* at 1050-51 (holding that a vehicle search is restricted to those areas where the suspect generally has immediate control).

66. *See* United States v. Brown, 913 F.2d 570, 572 (8th Cir. 1990) (holding that individuals who are allowed to return to their vehicles after a personal frisk have access to the locked glove box, thus officers may search a locked glove box for weapons).

67. *See id.*

68. *See* Terry v. Ohio, 392 U.S. 1, 27 (1968) (holding that a police officer may conduct a search for weapons where he has "reason to believe that he is dealing with an armed and dangerous individual, regardless of whether he has probable cause to arrest the individual for a crime").

69. *See* Long, 463 U.S. at 1049 (citing *Terry*, 392 U.S. at 21, for the proposition that reasonable suspicion is based on "specific and articulable facts which, taken together with the rational inferences from those facts, reasonably warrant the officer in believing" weapons are at hand). An officer may have reasonable suspicion if his flashlight reveals a shiny object protruding from a bag in the vehicle of suspected prowlers. *See also* United States v. Brown, 133 F.3d 993, 998 (7th Cir. 1998); People v. Carvey, 226 A.2d 193, 194 (N.Y. App. Div. 1996) (holding that the officer had a

As with a consent search, other search exceptions may come into play during the course of a vehicular frisk. For example, if officers find narcotics under the front seat during a vehicular frisk, several possibilities arise. It may be possible that an occupant will be arrested for possession of narcotics. A search incident to the arrest may then take place, and the permissible vehicle areas that may be searched under the vehicular frisk and search incident theories are identical.[70] Finding narcotics under the front seat during a vehicular frisk may also trigger the vehicle exception theory.[71] In that event, a more expansive search will be permitted whether the occupant is arrested for possession or for any other offense. If a vehicle is impounded, a subsequent inventory search will occur.[72]

Vehicular frisks may also prompt personal frisks. If a vehicular frisk is justified on the reasonable suspicion that there is a weapon in the vehicle, it follows that reasonable suspicion likely exists that the driver or another occupant possesses a weapon. In such circumstances, the vehicle's occupants may be frisked.[73] However, officers should understand that the term "stop and frisk" is somewhat misleading.[74] Officers need separate justifications for the initial

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reasonable suspicion to justify searching a vehicle when the passenger was wearing a bullet proof vest underneath an open collar shirt); Turner v. United States, 623 A.2d 1170, 1172-73 (1993) (reasoning that agents who overheard a discussion of a transfer of a firearm to be used in a murder had reasonable suspicion to search the suspect's vehicle for weapons); State v. Dilyerd, 467 So.2d 301, 305 (Fla. 1985) (explaining that the suspect's furtive movement toward the floor of the vehicle as the officer approached was sufficient to establish reasonable suspicion for a vehicular search).

70. *See infra* Part IV.

71. *See infra* Part V.

72. *See infra* Part VI.

73. *See supra* note 69 (discussing the grounds for "reasonable suspicion").

74. Officers have been trained in the "stop and frisk" technique, whereby an individual is stopped based upon reasonable suspicion that the person may be involved in criminal activity, and the individual is questioned on the spot during this investigative detention. *See Terry*, 392 U.S. at 12. During such encounter, if the police have or develop reasonable suspicion that the detainee may be presently armed with a weapon, the detainee may be searched for a weapon. *See id.* at 24. Accordingly, if the police have reasonable suspicion that the stopped vehicle might contain a weapon, the circumstances surrounding the vehicle stop might give the officers reasonable suspicion that the occupants may be presently armed.

It has been the author's experience that over time, officers may forget that separate justifications are required for the initial stop and the subsequent frisk. Officers sometimes mistakenly believe that a frisk may always follow a lawful stop. Unfortunately, these officers merge the two justifications into one, which may cause evidence to be suppressed. Due to the plain feel exception and the phrase "frisk for narcotics" that may mistakenly creep into one's vocabulary, the author emphasizes the use of such phrases as "armed with a weapon" and "frisk for weapons" even though these phrases appear to be redundant.

vehicular stop and the subsequent personal frisk. A frisk does not automatically follow a stop. As a threshold matter, the initial traffic stop must be justified.[75] In most cases, this will not be a problem. Where pretextual traffic stops conducted by narcotics officers were once viewed with some suspicion, the United States Supreme Court has ruled that such stops are proper as long as there was an underlying traffic violation supporting the stop.[76]

If a stop is justified, officers must then have reasonable suspicion that the suspect is presently armed with a weapon. Officers should be wary of questions posed by defense attorneys that concern the "frisk for narcotics" because there is no such thing. The sole justification for a personal frisk is officer self-protection. It is never a frisk for narcotics or other evidence, not even pursuant to the plain feel exception first espoused in 1993.[77] The plain feel exception did not expand the *Terry*-type frisk.[78] It merely allowed the seizure of something which, during the protective pat-down, is immediately discerned to be contraband.

In sum, a vehicular frisk is a limited search exception. Specifically, before performing a vehicular frisk, officers must have a reasonable suspicion that the subject vehicle contains a weapon. Moreover, the officers are limited to searching for weapons only. Finally, the search area is restricted to the passenger area and its unlocked containers.

IV. SEARCH INCIDENT TO ARREST

A third exception to the search warrant requirement is the search incident to arrest. Under this theory, if an occupant of a vehicle is arrested, a limited search of the vehicle may be conducted.[79] The

75. *See id.* at 29 ("[E]vidence may not be introduced if it was discovered by means of a seizure and search which were not reasonably related in scope to the justification for their initiation.").

76. *See* Whren v. United States, 517 U.S. 806, 819 (1996) (holding that narcotics officers' probable cause to believe that a traffic violation had been committed rendered the stop reasonable and the evidence uncovered thereafter admissible even if a non-narcotics officer would not have stopped the motorist for the same traffic violation), *subsequent appeal*, 111 F.3d 956 (D.C. Cir. 1997), and *cert. denied*, 118 S. Ct. 1059 (1998).

77. *See* Minnesota v. Dickerson, 508 U.S. 366, 371 (1993).

78. A *Terry*-type frisk is a limited search or patdown of someone based upon reasonable suspicion that the person is presently armed with a weapon. *See Terry*, 392 U.S. at 27. The Court in *Minnesota v. Dickerson* did not expand this precept. *See Dickerson*, 508 U.S. at 373. *Dickerson* established the plain feel exception to the search warrant requirement. *See id.* at 375-76. During a *Terry*-type frisk for weapons, if the officer immediately discerns that an item he feels is contraband, and not a weapon, this contraband may be seized. *See id.*

79. *See* New York v. Belton, 453 U.S. 454, 460 (1981).

search is justified based on the officers' need to disarm the arrestee or to preserve any possible evidence located inside the vehicle.[80]

The type of arrest needed to justify a search incident thereto is the full custody arrest, where the arrestee is customarily handcuffed and transported to jail. Mere detentions for traffic citation purposes are insufficient to support a search incident to arrest.[81] A full arrest, however, can occur for misdemeanor traffic violations as long as the arrestee is taken to jail and booked.[82]

The arrest of any occupant of a vehicle, either the driver or any passengers, supports the subsequent search of the passenger compartment and its unlocked containers.[83] The United States Supreme Court has defined a "container" as "any object that is capable of holding another object, including closed or open glove compartments, consoles, or other receptacles located anywhere within the passenger compartment, as well as luggage, boxes, bags, clothing, and the like."[84] Unfortunately, the Court did not use the term "locked containers."[85] Had the Court used the term "locked containers," regardless of whether it meant to permit or prohibit searches thereof, it would have saved subsequent second-guessing. As noted, the search area of the search incident to an arrest is the same as that for a vehicular frisk.[86] The only difference between the two is that an occupant is arrested in order to support the search incident. In some cases, a vehicular frisk will precede a search incident to an arrest.

Officers do not need separate probable cause nor reasonable suspicion to justify a search incident to an arrest. The sole prerequisite is a valid custodial arrest.[87] Officers need not have any suspicion or hope of finding fruits, evidence or instrumentalities as a result of the search.

Even if the driver or sole occupant of the car has been handcuffed and placed into the squad car, an officer may still conduct a search of

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80. *See* United States v. Robinson, 414 U.S. 218, 234 (1973).

81. Such minor intrusions are not arrests, thus, a search incident to an arrest cannot occur due to the lack of the prerequisite arrest.

82. *See* People v. Bailey, 639 N.E.2d 1278, 1281 (Ill. 1994). *But see* State v. Brown, 588 N.E.2d 113, 115 (Ohio 1992) (holding that an arrest for a traffic violation does not automatically entitle an officer to conduct a detailed search of the arrestee's vehicle).

83. *See Belton*, 453 U.S. at 460.

84. *Id.* at 460 n.4.

85. *See id.*

86. *See supra* Part III.

87. *See* Michigan v. DeFillippo, 443 U.S. 31, 35 (1979); United States v. Arango, 879 F.2d 1501, 1504 (7th Cir. 1989).

the passenger compartment incident to the arrest.[88] Clearly, in such a situation, the arrestee is unable to obtain a weapon from the car or to hide evidence present therein. Although it may seem to be a legal fiction, this procedure is sanctioned by the United States Supreme Court.[89] However, a limitation exists because a search of a vehicle incident to an arrest must be conducted contemporaneously with the arrest.[90] Although it is difficult to specify the precise number of minutes after the arrest in which a search incident may be conducted, it is wise to conduct such a search as quickly as possible after the arrest has taken place and before the arrestee or the vehicle is transported from the site.[91] If the officer waits forty-five minutes for a backup officer, tow truck, or canine unit, a subsequent search of the passenger compartment and its unlocked containers will not be a search incident to the arrest. However, such a search may be justified pursuant to another exception to the search warrant requirement.

The permissible search area under a search incident to arrest of an occupant is the passenger compartment and unlocked containers found therein.[92] If someone is arrested outside of a vehicle and was not an occupant just prior to the arrest, the proper search area is analyzed under a slightly different, non-vehicle approach. The search area is limited to where an arrestee might reach for a weapon or items of evidence. This standard for non-vehicular searches incident to arrest, often referred to as the "lunging distance," is espoused in *Chimel v. California*.[93] The restricted search area cannot be defined in exact distances because the distances will vary widely depending upon the arrestee and the arrest site itself.

The trunk is off limits during a search incident to arrest, as are most locked containers including the locked glove box.[94] However, some courts have held that even some locked containers may be opened pursuant to a search incident to an arrest.[95] However, this is almost

88. *See Belton*, 453 U.S. at 460; United States v. Karlin, 852 F.2d 968, 971-72 (7th Cir. 1988); People v. Loftus, 444 N.E.2d 834, 838 (Ill. App. Ct. 1983).

89. *See Belton*, 453 U.S. at 460.

90. *See id.*

91. *See id.* at 462; Preston v. United States, 376 U.S. 364, 367 (1964).

92. *See Belton*, 453 U.S. at 460-61.

93. 395 U.S. 752, 763 (1969) (describing "lunging distance" as the area from which an arrestee could gain possession of a weapon or conceal any evidence); *See* United States v. Adams, 26 F.3d 702, 705 (7th Cir. 1994); 3 WAYNE R. LAFAVE, SEARCH AND SEIZURE: A TREATISE ON THE FOURTH AMENDMENT § 7.1(b) (3d ed. 1996).

94. *See* United States v. Wright, 932 F.2d 868, 878 (10th Cir. 1991).

95. *See* United States v. Gonzales, 71 F. 3d 819, 826-27 (11th Cir. 1996) (holding that a search of a glove compartment subsequent to a lawful arrest is constitutionally permissible); United States v. Veras, 51 F.3d 1365, 1372 (7th Cir. 1995) (deciding that

academic because it is usually the driver who is arrested, and the vehicle is subsequently impounded and an inventory search performed. During most inventory searches, locked glove boxes and locked trunks will be opened.

Overall, a search incident to arrest requires a valid, full custodial arrest of a vehicle's occupant. Officers may only search the passenger area and its unlocked containers. The search must be conducted shortly after the arrest but before the arrestee or the vehicle is moved from the scene. However, an officer may still conduct a search after the arrestee has been put in the squad car.

V. VEHICLE EXCEPTION

A fourth type of search that may be conducted without a warrant is the vehicle exception search. In the event that officers have probable cause that certain evidence or contraband is somewhere inside a vehicle, they may search the vehicle for such evidence without a warrant. First established in 1925,[96] this exception is perhaps the most far-reaching exception to the search warrant requirement for vehicles. The exception may be invoked at the scene of the stop or later during a search conducted at the police station.[97] The theory may also apply to parked vehicles.[98] This warrant exception was first justified by vehicle mobility and the need for swift on-the-scene action by police.[99]

Currently, the exception is still based on the mobility but even more so on the pervasive regulation and diminished expectation of vehicle privacy.[100] All motor vehicles are subjected to pervasive regulation in the sense that every vehicle is registered and has license plates or tags

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a secret compartment in the back seat area was part of the "passenger compartment" and thus lawfully searched by the officers); United States v. Woody, 55 F.3d 1257, 1269-70 (7th Cir. 1995) (holding that a search of a locked glove box incident to an arrest is reasonable because an arrestee can possibly break away and retrieve a weapon from that locked area).

96. *See* Carroll v. United States, 267 U.S. 132, 162 (1925); *see also* infra Part VI.

97. *See* Chambers v. Maroney, 399 U.S. 42, 47-48 (1970); Texas v. White, 423 U.S. 67, 68 (1975); Florida v. Meyers, 466 U.S. 380, 382 (1984).

98. *See* United States v. Hatley, 15 F.3d 856, 858-59 (9th Cir. 1994); United States v. Reed, 26 F.3d 523, 530 (5th Cir. 1994); United States v. Foxworth, 8 F.3d 540, 545-46 (7th Cir. 1993); United States v. Horne, 4 F.3d 579, 585-86 (8th Cir. 1993); United States v. McCoy, 977 F.2d 706, 710-11 (1st Cir. 1992); United States v. Bagley, 772 F.2d 482, 491 (9th Cir. 1985); Speight v. United States, 671 A.2d 442, 445-46 (D.C. 1996), *cert. denied*, 117 S. Ct. 375 (1996).

99. *See Carroll*, 267 U.S. at 153-54.

100. *See* California v. Carney, 471 U.S. 386, 391-93 (1985); South Dakota v. Opperman, 428 U.S. 364, 367-68 (1976).

issued by the state. In some municipalities, such as Chicago, vehicles registered to addresses within the city limits must display a vehicle sticker or decal. Trucks are subjected to even more regulation, based upon what they haul. Truck weigh stations are a common sight on the interstates. Due to the number of windows on a vehicle, the vehicle occupants are usually exposed somewhat to public view. The vehicle's windows are regulated with prohibitions against certain types of tinted glass.[101] While a vehicle is parked, anyone may approach and look into the vehicle through the windows.[102]

Although broad in scope, the vehicle exception search theory requires probable cause[103] to support the search.[104] In other words, officers must have enough facts at the scene so that they could theoretically draft an affidavit in support of a search warrant. Probable cause is a nebulous concept, and no litmus-type test exists to determine whether it is met. In practical terms, probable cause exists when someone neutral and detached, such as a magistrate, is convinced that a reasonable officer would believe that the evidence sought will be located in a particular place. Probable cause may develop as a result of evidence found during an investigative stop or a search incident to a lawful custodial arrest.[105] For example, signals emanating from an electronic device implanted in bank loot provide probable cause for a search of the robber's car trunk.[106] In addition, the odor of burnt marijuana emanating from a motorist may satisfy the probable cause threshold requirement to search the vehicle, including the trunk.[107] However, one court has held that such an odor is not enough, when followed by a fruitless search of the passenger compartment, to justify a search of the trunk as the officer found nothing to corroborate the odor.[108]

This search theory allows officers to conduct a search on the scene

101. *See* 625 ILL. COMP. STAT. ANN. 5/12-503 (West Supp. 1998).

102. *See* New York v. Class, 475 U.S. 106, 113-14 (1986) (addressing the general usage of the term "pervasive regulation").

103. Probable cause is a reasonable belief that an item sought will be located. It was defined by the United States Supreme Court, for contraband searches, as a fair probability that contraband or evidence of a crime will be found in a particular place. *See* Illinois v. Gates, 462 U.S. 213, 236 (1983). It requires a higher level of certainty than suspicion. *See* Mason v. Godinez, 47 F.3d 852, 855 (7th Cir. 1995).

104. *See Carroll*, 267 U.S. at 155-56. Additionally, the term, "vehicle exception," encompasses a motor home.

105. *See* United States v. Harvey, 788 F.Supp. 966, 970 (E.D. Mich. 1992).

106. *See* United States v. Levine, 80 F.3d 129, 133 (5th Cir. 1996).

107. *See* United States v. Caves, 890 F.2d 87, 90-91 (8th Cir. 1989).

108. *See* United States v. Nielsen, 9 F.3d 1487, 1491 (10th Cir. 1993).

or back at the station.[109] Moreover, the length of time a search may take is not determinative.[110] Although time may be on the side of the officers, they should conduct a thorough search as soon as it is practical to do so. If a search is not conducted quickly, the defense may argue that the officers should have obtained a search warrant because they had ample time to do so. This argument might put the prosecution on the defensive, especially in cases where the probable cause to support the vehicle exception was weak. However, an officer's time and opportunity to obtain a search warrant is irrelevant in determining the applicability of the vehicle exception.[111]

When a container is found in a vehicle and officers have probable cause to believe that it holds contraband, the officers may use the vehicle exception to seize the container and open it.[112] Without more, however, the officers will need additional justification to search the other areas of the vehicle and any containers therein.[113] Evidence discovered during a search of a container can be a factor in developing probable cause that still other evidence may be located in other areas of the vehicle.[114] In those circumstances, the vehicle exception will be used twice—once to open the container and then again to conduct a more expansive search.

One common misconception is that exigent circumstances are needed for this warrant exception to apply. Exigent circumstances may include the mobility of the vehicle itself, such as a hot pursuit/chase or a true life-or-death issue. Some courts have referred to the vehicle's inherent mobility as exigent circumstances.[115] Despite case law to the contrary, this myth still prevails.[116] In *Michigan v. Thomas*,[117] the United States Supreme Court held that the justification for conducting a vehicle exception search does not vanish when the vehicle has been immobilized, is not likely to be driven away, or

109. *See* United States v. Johns, 469 U.S. 478, 487-88 (1985); Texas v. White, 423 U.S. 67, 68 (1975); Chambers v. Maroney, 399 U.S. 42, 52 (1970).

110. *See Johns*, 469 U.S. at 487-88.

111. *See id.* at 487-88 (upholding a search which occurred three days after packages were removed from the vehicle); United States v. Reis, 906 F.2d 284, 291 (7th Cir. 1990); United States v. Swingler, 758 F.2d 477, 490 (10th Cir. 1985).

112. *See* California v. Acevedo, 500 U.S. 565, 579-80 (1991).

113. *See id.* at 580.

114. For example, ammunition found in a container, coupled with other facts resulting from an investigation, may lead an officer to reasonably believe that there may be a firearm somewhere else in the vehicle.

115. *See Reis*, 906 F.2d at 291; United States v. Rivera, 825 F.2d 152, 158 (7th Cir. 1987); United States v. Bagley, 772 F.2d 482, 491 (9th Cir. 1985).

116. *See Johns*, 469 U.S. at 486-87.

117. 458 U.S. 259 (1982).

without regard to whether its contents will be tampered with during the period required for the police to obtain a warrant.[118]

Another common misconception held by some officers is that the vehicle exception allows officers to search every part of the vehicle and all of its containers. In reality, the permissible scope of the search is the same as if a warrant had been procured.[119] For example, if the probable cause goes only to large, stolen stereo speakers, then officers may not search the glove box nor any briefcases, since these places are too small to hold the desired items. In order to search these items, other exceptions to the warrant requirement would be necessary. With requisite probable cause, officers may only search the vehicle itself and any of its contents that may conceal the object of the search.[120]

Overall, a vehicle exception search requires probable cause sufficient to obtain a warrant. A vehicle exception search may be made immediately after a traffic stop or for a period after, but the sooner the search is conducted, the better. Finally, officers may search wherever the object sought could be found, not anywhere else.

VI. INVENTORY SEARCHES

The fifth search warrant exception method is the inventory search. An inventory search is the search of property lawfully seized and detained in order to ensure that the property is harmless, to secure valuable items and to protect against false claims.[121] Inventory searches serve the following three general purposes: (1) to safeguard valuables; (2) to protect law enforcement agencies against unjustified claims for lost or damaged property; and (3) to protect law enforcement agencies from potentially dangerous items that may have come into their possession.[122] These three purposes are important for officers to remember in order to avoid being tripped up during a cross-examination.

Procuring evidence is not among the justifications for conducting inventory searches. If items of evidence are found during an inventory search, they are merely bonuses. However, during an inventory search, it is possible that a simultaneous search may be made under the vehicle exception. In that event, the search is clearly two-fold. The officers are looking for evidence while also conducting a non-

118. *See id.* at 261; *see also* United States v. Panitz, 907 F.2d 1267, 1271 (1st Cir. 1990).

119. *See* United States v. Ross, 456 U.S. 798, 825 (1982).

120. *See id.*

121. *See* South Dakota v. Opperman, 428 U.S. 364, 369 (1976).

122. *See* Florida v. Wells, 495 U.S. 1, 4 (1990); *Opperman*, 428 U.S. at 369.

evidentiary inventory. Therefore, officers should refrain from answering questions posed to them concerning their "inventory search for evidence" because no such search exists.[123] Justifying a search solely under the inventory exception could be fatal to the case because it will appear that the inventory search is merely a pretext for an evidentiary search. Similarly, if officers conduct a thorough search pursuant to the vehicle exception, they should also administer an inventory search. If they forego an inventory search, other inventory searches will appear to be mere pretexts for evidentiary searches.

Care should also be taken when documents or tape recordings are located during an inventory search. Since an inventory search is not, and cannot be, a search for evidence, actually reading the documents or listening to the tapes might be construed as an evidentiary search falling outside the scope of an inventory search. Obviously, reading documents or listening to tapes does not advance the three general purposes noted for justifying inventory searches.[124]

Law enforcement agencies should have a formal written policy regarding inventory searches and their parameters, including locked containers. Included in the policy should be a mandate that officers conduct an inventory search on every impounded vehicle. Such a mandate helps the department to maintain its credibility with the courts. Specifically, by failing to conduct an inventory search, the officers show the court the following: that they do not care to safeguard valuables that may be found in the vehicle; that they do not care about protecting the department from unjustified claims of lost or stolen property; and that they do not care whether the vehicle contained anything dangerous.

A standard form may also be useful when conducting an inventory search. Indeed, departments that leave the scope of inventory searches to individual officers are asking for trouble.[125] Departments without a standard form for officers to use will find that their officers are being given too much discretion in deciding when to conduct an inventory search and how the search should be conducted. As such, for the seizure of a given object, different officers may come to different

123. *See Wells*, 495 U.S. at 4; Colorado v. Bertine, 479 U.S. 367, 375-76 (1987).

124. *But see* State v. Weber, 471 N.W.2d 187, 193-95 (Wis. 1991) (upholding the listening of a cassette tape as part of an inventory search because an officer needs to listen to the tape in order to properly inventory the item).

125. *See Wells*, 495 U.S. at 4 (determining that absent a policy regarding inventory searches, the evidence found in a suitcase in the vehicle should be suppressed); *Bertine*, 479 U.S. at 374-75 (discussing the unreasonableness in expecting officers in the everyday course of their job to make the subtle distinctions in deciding what can and cannot be searched).

conclusions whether to conduct such a search, and the scope of any such search may differ depending upon the individual officer.

The FBI uses a standard form for such searches.[126] Using such a form helps convince courts that the search was not a pretext search for evidence but was instead a proper inventory search. The FBI form indicates that locked containers should not be forced open unless a compelling reason exists to do so. Accordingly, in some cases, unless another search method is successfully used, the inventory sheet will indicate that a locked item, contents unknown, is being inventoried.

Overall, the distinguishing feature of an inventory search is that it is not a search for evidence. In addition, to assist in adhering to proper form when making inventory searches, law enforcement agencies should use standardized criteria. Importantly, officers need a compelling reason to break open locked items and should obtain a warrant to read documents and/or listen to tapes.

VII. CONCLUSION

Various methods of conducting a vehicle search without a warrant are available to law enforcement officers. A firm grasp of each theory's particular parameters will enable investigating officers to testify more effectively and to uphold more vehicle searches in court. Officers who can readily discern each theory's limitations will know which theory will obtain the most expansive search legally permissible while simultaneously complying with each theory's own limitations.

126. The form is known as a Motor Vehicle Inspection Inventory Record.

Table 1

PERMISSIBLE SEARCH AREAS - VEHICLE SEARCHES

BY SEARCH THEORY

SEARCH THEORY	Passenger area and its unlocked items	Locked items within the passenger area	Trunk
Consent	X	X	X
Vehicular frisk	X		
Search incident	X		
Vehicle exception	X	X	X
Inventory	X	X	X

Table 2

OBJECT OF THE VEHICLE SEARCH

BY SEARCH THEORY

SEARCH THEORY	What he consented to	Weapons only	Fruits, evidence, etc.	Items for which there is probable cause	Whatever
Consent	X				
Vehicular Frisk		X			
Search incident to arrest			X		
Vehicle exception				X	
Inventory					X

Table 3

PREREQUISITES FOR A VEHICLE SEARCH

BY SEARCH THEORY

SEARCH THEORY	Voluntary consent by one with authority	Reas. suspicion of a weapon inside vehicle	Valid full-custody arrest	Enough probable cause for a search warrant	Written policy for inventory searches
Consent	X				
Vehicular frisk		X			
Search incident to arrest			X		
Vehicle exception				X	
Inventory					X

Table 4

SEARCH OF VEHICLES FLOWCHART