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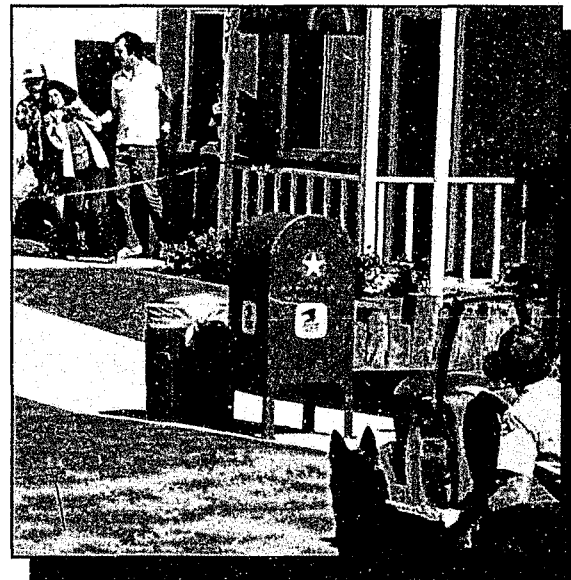
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# The Vehicle Exception to the Warrant Requirement

## Clarification by the Supreme Court

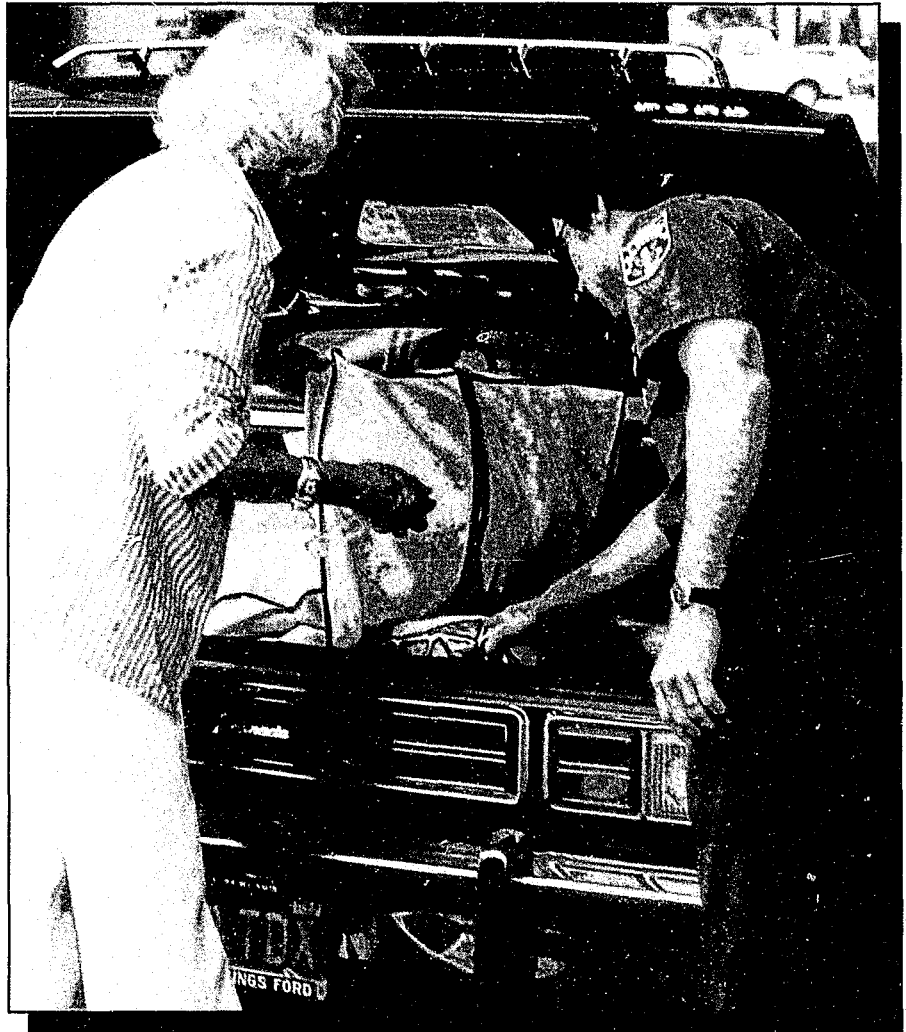
By  
THOMAS V. KUKURA, J.D.

Law enforcement officers frequently conduct warrantless vehicle searches. The U.S. Supreme Court has recognized the impracticality of securing a search warrant prior to every search of a vehicle and has established exceptions to the warrant requirement, such as the vehicle exception, the search incident to arrest, the inventory search, and the consent search. Each of these exceptions has its own set of requirements that must be present before the exception applies and its own specific limitations on the scope of the search allowed under the exception.<sup>1</sup>

This article examines the vehicle exception, one of the most useful recognized exceptions and one that is often the most confusing. It begins with a discussion of a recent Supreme Court decision, which clarifies the authority to search containers under the vehicle exception. The article then examines other recent court cases that delineate several important factors law enforcement officers should consider when contemplating a warrantless search under the vehicle exception.

### JUSTIFICATION FOR THE VEHICLE EXCEPTION

The vehicle exception, first recognized in *Carroll v. United*



*States*,<sup>2</sup> is often referred to as the *Carroll* doctrine. In *Carroll*, the Court held that a vehicle could be searched without a warrant if there was probable cause to believe it contained contraband or evidence.

Courts have applied this vehicle exception to uphold warrantless searches of an assortment of vehicles, including a motor home,<sup>3</sup> a house boat,<sup>4</sup> and a roomette on a train.<sup>5</sup>

The vehicle exception is based on the Court's conclusion that the expectation of privacy with respect to one's vehicle is lower than that regarding one's home or office. This is due, in part, to the inherent mobility of vehicles, their periodic inspection and licensing requirements, and the public nature of vehicle travel where both its occupants and contents are in plain view.<sup>6</sup>

### SCOPE OF VEHICLE EXCEPTION

In *California v. Acevedo*,<sup>7</sup> the Santa Ana, California, police, acting on information provided by an agent of the Drug Enforcement Administration (DEA), were maintaining surveillance on an apartment known to contain marijuana. One officer left the scene to obtain a search warrant for the residence.

While he was gone, the officers who remained on surveillance observed Charles Steven Acevedo

leave the apartment after a 10-minute stay. Acevedo was carrying a brown paper bag approximately the size of one of the marijuana packages that the agents believed were in the apartment. Acevedo placed the bag in the trunk of a car and started to drive away. The officers stopped him, opened the trunk, and found the marijuana in the brown paper bag. They then arrested Acevedo and charged him with possession with the intent to distribute marijuana. The California Court of Appeals upheld the warrantless seizure of the paper bag but concluded that the police required a warrant to open the bag.<sup>8</sup>

The U.S. Supreme Court reversed and upheld the warrantless search of the bag located in the trunk, even though the probable cause for the search was limited to the container itself. In *Acevedo*, the Court reviewed its historical coverage of the vehicle exception and the

confusing dichotomy that had been created in previous holdings concerning the authority to conduct warrantless searches of containers located in vehicles.

### Scope Determined by Probable Cause

In 1982, in *United States v. Ross*,<sup>9</sup> a warrantless search of Ross' car occurred after police established probable cause that Ross sold drugs from the trunk of his car. The officers stopped the car, searched it, and discovered drugs in a brown paper bag in the trunk of the car.

The Court held that the scope of a warrantless search under the vehicle exception "based on probable cause is no narrower—and no broader—than the scope of a search authorized by a warrant supported by probable cause."<sup>10</sup> Further, "if probable cause justifies the search of a lawfully stopped vehicle, it justifies the search of every part of the vehicle and its contents that may conceal the object of the search."<sup>11</sup> *Ross* clarified the scope of the vehicle exception to include a "probing search" of compartments and containers within a vehicle, as long as the search is supported by probable cause to search the car.<sup>12</sup>

### Prior Decisions Produced Confusing Rule

In 1977, in *United States v. Chadwick*,<sup>13</sup> the Court declined to apply the vehicle exception to authorize the warrantless search of a footlocker, notwithstanding the existence of probable cause to believe it contained contraband. Even though the footlocker, like a vehicle, was moveable, the Court



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concluded a person's expectation of privacy is higher in luggage and other closed containers than in a vehicle and that the vehicle exception should not be extended to such containers.

Two years later, in *Arkansas v. Sanders*,<sup>14</sup> the Court overturned the warrantless search of a suitcase located in the trunk of a taxicab. In *Sanders*, law enforcement officers had probable cause to believe a suitcase contained marijuana. The officers observed Sanders place the suitcase in the trunk of the taxi and ride away. After pursuing the taxi for a short time, the police stopped the taxi, found the suitcase in the trunk, and searched it.

Noting the existence of probable cause to believe that contraband was in the suitcase, the Court emphasized that the probable cause did not apply to the vehicle, but only to the suitcase. Therefore, the vehicle exception was not applicable.

This so-called *Chadwick-Sanders* rule drew "a curious line between the search of an automobile that coincidentally turns up a container and the search of a container that coincidentally turns up in an automobile."<sup>15</sup> The Court in *Acevedo* recognized that the *Chadwick-Sanders* rule confused law enforcement officers because it provided that if there is "probable cause to search a car, then the entire car—including any closed container found therein—may be searched without a warrant, but if there is probable cause only as to a container in the car, the container may be seized but not searched until a warrant is obtained."<sup>16</sup>

### Simplified Rule Covering Container Searches

The Court in *Acevedo* determined that such a confusing dichotomy was intolerable. It concluded that the fourth amendment does *not* require law enforcement officers to obtain a warrant to open a

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***In determining whether probable cause exists...a reviewing court evaluates the collective information of all officers involved.***

”

container in a movable vehicle simply because they lack probable cause to search the entire car.

The Court held that containers placed in vehicles may be searched without a warrant, even when probable cause to search focuses solely on those containers.<sup>17</sup> *Acevedo* is favorable for law enforcement because it simplifies the law by holding that the vehicle exception permits the search of a container found inside an automobile whether the probable cause applies to the vehicle generally or to the container specifically.

### FACTORS THAT DETERMINE LEGALITY OF VEHICLE EXCEPTION SEARCHES

The vehicle exception, by its very nature, requires law enforcement officers to make on-the-scene

judgments to assess its applicability and limitations. Law enforcement officers contemplating a warrantless search pursuant to the vehicle exception need to be knowledgeable of the general principles governing vehicle exception searches. Recent court decisions, discussed below,

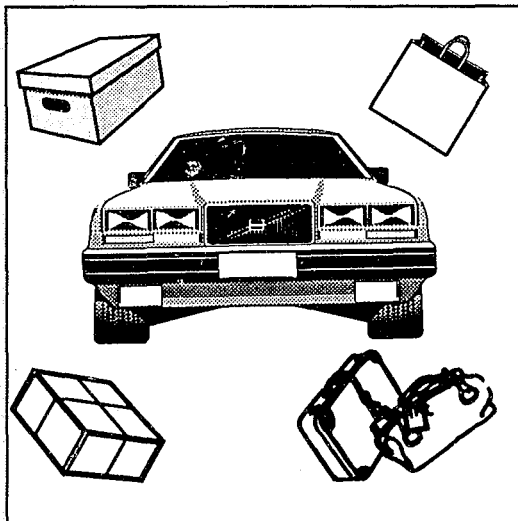
highlight several important legal principles concerning vehicle searches that are often misunderstood by law enforcement officers.

### Lawful Access and Probable Cause

A lawful vehicle exception search requires that the vehicle be located in a place where a law enforcement officer has lawful access. Also, facts amounting to probable cause must show that evidence or contraband is located within the vehicle.<sup>18</sup>

### Collective Knowledge

In determining whether probable cause exists to search a vehicle, a reviewing court evaluates the collective information of all officers involved. For example, the U.S. Court of Appeals for the Seventh Circuit recognized in *United States*



**“...containers placed in vehicles may be searched without a warrant, even when probable cause to search focuses solely on those containers.”**

*v. Celio*<sup>19</sup> the importance of a coordinated law enforcement effort to investigate international drug trafficking organizations. This court concluded that probable cause can rest on the collective knowledge of the law enforcement officers involved rather than solely on the officer who actually performs the search.<sup>20</sup>

The court found that State police officers did not violate the fourth amendment by searching a truck at the request of DEA agents who had probable cause to believe the vehicle contained drugs. The State officers did not have to be apprised of the underlying justification for the search because the “collective knowledge” of the DEA agents involved was sufficient to establish probable cause.

#### **Investigative Stop or Search Incident to Arrest**

The facts needed to establish probable cause often arise in whole or in part from the evidence discov-

ered during a lawful investigative stop or search incident to arrest.<sup>21</sup> For example, in *United States v. Harvey*,<sup>22</sup> police arrested the driver of an automobile for operating a motor vehicle on a suspended driver’s license. During a lawful search of the defendant incident to arrest, the officer found a rock of crack cocaine. The court found probable cause for a warrantless search of the defendant’s vehicle under the vehicle exception based on the officers finding the crack cocaine, the false information regarding ownership of the car provided by the defendant, and the defendant’s lack of proper identification.

Similarly, in *United States v. Thomas*,<sup>23</sup> the defendant, after being stopped for a traffic violation, consented to the search of the passenger compartment of the vehicle he was driving. The police officer discovered a “marijuana cigarette butt” in the rear ashtray.

The court found the discovery of the marijuana butt in the vehicle

“provided probable cause to search elsewhere in the vehicle (including the trunk) for contraband, and the officer had a right to open closed containers within the car without obtaining a warrant.”<sup>24</sup> Moreover, in *United States v. Reed*,<sup>25</sup> the Fifth Circuit Court of Appeals stated that the distinct odor of burnt marijuana would justify a search of an entire vehicle, including the locked compartments that would be a likely place to conceal the marijuana.

#### **Inherent Mobility of Vehicle Satisfies Exigency**

The view that the vehicle exception only applies when there are actual exigent circumstances is incompatible with the Supreme Court’s development of the vehicle exception.<sup>26</sup> The Court has stated “...that the justification to conduct a warrantless search does not vanish once the car has been immobilized; nor does it depend upon a reviewing court’s assessment of the likelihood in each particular case that the car would have been driven away, or that its contents would have been tampered with, during the period required for the police to obtain a warrant.”<sup>27</sup> Furthermore, numerous Federal circuit courts of appeals have expressly or implicitly construed prior Supreme Court cases as recognizing that the inherent mobility of a vehicle by itself provides the only exigent circumstance needed.<sup>28</sup>

In *United States v. Crabb*,<sup>29</sup> law enforcement officers, acting on a tip from a DEA informant that a rental truck traveling through Wyoming contained evidence of illicit drug manufacturing, located the defendant and a truck at a motel in Rock

Springs, Wyoming. The defendant consented to a search of the truck cab but not the cargo area of the truck.

The officers found nothing incriminating in the cab but did detect an "ether-like" odor emanating from the cargo area. Several hours later, DEA agents skilled in the handling of hazardous clandestine laboratory materials arrived, and an ensuing warrantless search of the cargo area resulted in the discovery of contraband.

The court found the vehicle exception applicable despite the absence of actual exigent circumstances. It concluded that the law enforcement officers' time and opportunity to obtain a warrant was irrelevant in determining the applicability of vehicle exception.<sup>30</sup> Consequently, probable cause will sustain the warrantless search of a vehicle regardless of whether actual exigent circumstances also exist at the time of the search.<sup>31</sup>

#### Contemporaneous Search Not Required

The Supreme Court has clearly held that law enforcement officers may conduct either an immediate or a delayed vehicle exception search of a vehicle, even after it has been impounded and is in police custody. Recently, in *United States v. Spires*,<sup>32</sup> the police, after lawfully seizing a truck 7 days earlier, received an anonymous tip that additional drugs were still hidden in the truck in a false battery. A law enforcement officer traveled to the storage yard where the truck was impounded, looked in the "battery," and found additional drugs. The

court held the warrantless vehicle exception search was valid, even though the search was conducted a week after the lawful seizure of the vehicle.

Delayed container searches have also been upheld. For example, in *State v. McLaughlin*,<sup>33</sup> the police established probable cause to search a toolbox that a passenger brought with him into a taxi cab. A police officer seized the toolbox from the cab and transported it back to the police station. The police then cut the lock on the box and discovered drugs inside. The defendant moved to suppress the contents of the toolbox as the result of an illegal warrantless search.

The Supreme Court of South Carolina found the police officer could have searched the toolbox at the time he seized it from the cab

cause to believe that it may be found.<sup>34</sup> This searching authority includes both locked and unlocked containers and any area of the vehicle where the item sought could be located.

The scope of a warrantless search under the vehicle exception is no narrower and no broader than would be allowed by a search warrant. Officers may search any part of a vehicle and any containers within the vehicle where there is probable cause to believe evidence or contraband is located.

#### Probable Cause Limits Scope But Not Applicability

Probable cause to search a container does not necessarily justify a search of the entire vehicle. The Supreme Court in *Acevedo* emphasized that since the police did not

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**...probable cause will sustain the warrantless search of a vehicle regardless of whether actual exigent circumstances also exist at the time of the search.**  
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under the vehicle exception. This entitlement to a warrantless search continued to justify the later search at the police station.

#### Scope Based on Object of the Search

The scope of a warrantless vehicle exception search is "defined by the object of the search and the places in which there is probable

articulate facts to support probable cause that evidence or contraband was hidden in any other part of the vehicle other than the paper bag, a search of the entire car would exceed the scope of a vehicle exception search.<sup>35</sup>

If probable cause to search is focused solely on a container located in a vehicle, police may only search the container. However, evi-

dence discovered during a lawful warrantless search of a container can be a factor in developing probable cause that evidence is also located in other areas of the vehicle. The vehicle exception would then allow for the extension of the warrantless search to those areas in the vehicle where the evidence or contraband could reasonably be located.

## CONCLUSION

The Court's decision in *Acevedo* clarifies the scope of the vehicle exception by upholding a warrantless search of a closed container found in a vehicle if there is probable cause to believe the object searched contains evidence or contraband. It is important to recognize that the vehicle exception does not authorize the warrantless search of a container unless the container is located by police in a vehicle.<sup>36</sup> Finally, officers contemplating a warrantless vehicle exception search should be thoroughly familiar with relevant State law since some State courts have imposed State law restrictions on police searches that are more restrictive than the Federal constitutional principles discussed in this article.<sup>37</sup> ♦

## Endnotes

<sup>1</sup> See generally Sauls, "Traffic Stops—Police Powers Under the Fourth Amendment," *FBI Law Enforcement Bulletin*, Sept./Oct. 1989.  
<sup>2</sup> 267 U.S. 132 (1925).  
<sup>3</sup> See, e.g., *California v. Carney*, 471 U.S. 386 (1985); and *United States v. Markham*, 844 F.2d 366 (6th Cir. 1988).  
<sup>4</sup> See, e.g., *United States v. Hill*, 855 F.2d 664 (10th Cir. 1988).  
<sup>5</sup> See, e.g., *United States v. Tartaglia*, 864 F.2d 837 (D.C. Cir. 1989).

<sup>6</sup> See, e.g., *Cardwell v. Lewis*, 417 U.S. 583 (1974).

<sup>7</sup> 111 S.Ct. 1982 (1991).

<sup>8</sup> *People v. Acevedo*, 216 Cal. App. 3d 586 (1990).

<sup>9</sup> 456 U.S. 798 (1982).

<sup>10</sup> *Id.* at 825.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 800.

<sup>13</sup> 433 U.S. 1 (1977).

<sup>14</sup> 442 U.S. 753 (1979).

<sup>15</sup> 111 S.Ct. at 1991.

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**Probable cause to search a container does not necessarily justify a search of the entire vehicle.**  
 ”

<sup>16</sup> *Id.* at 1985.

<sup>17</sup> *Id.* at 1991.

<sup>18</sup> See, e.g., *Cardwell v. Lewis*, 417 U.S. 583 (1974) (upheld vehicle exception search of unoccupied vehicle in public parking lot); and *Commonwealth v. A Juvenile (No.2)*, 580 N.E.2d 1014 (Mass. 1991) (upheld warrantless seizure of car from driveway).

<sup>19</sup> 945 F.2d 180 (7th Cir. 1991).

<sup>20</sup> See also *United States v. Cooper*, 949 F.2d 737 (5th Cir. 1991).

<sup>21</sup> See, e.g., *United States v. Rojo-Alyarez*, 944 F.2d 959 (1st Cir. 1991) (seizure of cocaine found in black bag in hatch of defendant's car was justified as a search incident to a lawful arrest or as a search within the vehicle exception to the warrant requirement).

<sup>22</sup> *United States v. Harvey*, \_\_\_ F.Supp. 1992 WL 70388 (E.D. Mich., Apr. 8, 1992).

<sup>23</sup> \_\_\_ F.Supp. \_\_\_ 1992 WL 59714 (E.D. Tex. March 12, 1992).

<sup>24</sup> *Id.* at \*17.

<sup>25</sup> 882 F.2d 147 (5th Cir. 1989).

<sup>26</sup> See, e.g., *United States v. Johns*, 469 U.S. 478 (1985).

<sup>27</sup> *Michigan v. Thomas*, 458 U.S. 259 (1982).

<sup>28</sup> See, e.g., *United States v. Reis*, 906 F.2d 284 (7th Cir. 1990); *United States v. Paulino*, 850 F.2d 93 (2d Cir. 1988), cert. denied, 109 S.Ct. 1967; *United States v. Markham*, 844 F.2d 366 (6th Cir. 1988); *United States v. Rivera*, 825 F.2d 152 (7th Cir. 1987); *Autoworld Specialty Cars, Inc. v. United States*, 815 F.2d 385 (6th Cir. 1987); *United States v. Bagley*, 772 F.2d 482 (9th Cir. 1985), cert. denied, 106 S.Ct. 1215; *United States v. Swinger*, 758 F.2d 477 (10th Cir. 1985).

<sup>29</sup> 952 F.2d 1245 (10th Cir. 1991).

<sup>30</sup> See also *United States v. Forker*, 928 F.2d 365 (11th Cir. 1991) and *United States v. Reis*, 906 F.2d 284 (7th Cir. 1990).

<sup>31</sup> See, e.g., *United States v. Nixon*, 918 F.2d 895 (11th Cir. 1990).

<sup>32</sup> 777 F.Supp. 1530 (C.D. Cal. 1991).

<sup>33</sup> 413 S.E.2d 819 (S.C. S.Ct. 1992).

<sup>34</sup> *Ross*, 456 U.S. at 822.

<sup>35</sup> 111 S.Ct. at 1991.

<sup>36</sup> Although *Acevedo* overruled *Sanders*, the basic holding of *Chadwick* survives. See *United States v. \$639,558 in U.S. Currency*, 955 F.2d 712 (D.C. Cir. 1992). However, in Justice Scalia's concurring opinion in *Acevedo*, he concurs with the judgment in the case "not because a closed container carried inside a car becomes subject to the 'automobile' exception to the general warrant requirement, but because the search of a closed container, outside a privately owned building, with probable cause to believe that the container contains contraband, is not one of those searches whose Fourth Amendment reasonableness depends upon a warrant." 111 S.Ct. at 1994.

<sup>37</sup> See, e.g., *Perry v. State*, 821 P.2d 1273 (Wyo. S.Ct. 1991) (court held the Wyoming constitution allows warrantless vehicle searches only when specific circumstances exist which make acquisition of warrant impracticable); and *State v. Savva*, 603 A.2d 378 (Vt. S.Ct. 1992) (adhered to the principles in *Sanders* and held as a general rule that a container in a vehicle should be seized and held pending the issuance of a warrant).

*Law enforcement officers of other than Federal jurisdiction who are interested in this article should consult their legal advisor. Some police procedures ruled permissible under Federal constitutional law are of questionable legality under State law or are not permitted at all.*