

Friday, May 4, 2007

### **A car is subject to a search incident, even when the suspect is stopped as a pedestrian.**

The Bill of Rights. (From the public domain.)<sup>^</sup> This entry follows up on my April 24-26 blog entries on searches. Sadly, in 2004, the Supreme Court held that police may search cars incident to arrest even when the suspect has already parked and left the car before police have an opportunity to stop the suspect (in this instance, the defendant<sup>^</sup> was found with drugs after being approached for having<sup>^</sup> had improper license tags). *Thornton v. U.S.*,<sup>^</sup> 541 U.S. 615 (2004).<sup>^</sup> The four-justice *Thornton* plurality,<sup>^</sup> joined for the most part by Justice O'Connor as a fifth vote, found it more important to give police a bright-line search rule (to be able to search incident to arrest) rather than to honor the Fourth Amendment. Jon Katz.

Posted by Jon Katz in Criminal Defense at 01:00

Jon - This *Thornton* case, fundamentally about searches of a vehicle incident to an occupant's arrest, reminds me of a question I've long had about vehicle searches. Legend has it that in certain cases, the trunk of a vehicle is a Constitutionally safer place for one's private items than is a car's passenger compartment. For instance, *New York v. Belton*, 453 U.S. 454 (1981), held that a search incident to arrest of a vehicle occupant could extend to the passenger compartment of the vehicle, but not the trunk. Another case, *Michigan v. Long*, 463 U.S. 1032 (1983), held that police may conduct the equivalent of a "Terry patdown" of the passenger compartment (not the trunk) if the police have reasonable suspicion to believe that weapons are in the car. (Quick question: are there any other cases in which a search of the passenger compartment would be Constitutionally justified, where under the same circumstances, a search of the trunk would not?) But suppose I drive a station wagon, or an SUV, or a hatchback, in which the "trunk" is not isolated from the passenger compartment? I also used to drive a motorcycle [Honda CBR600, image here: <http://www.motorcycles.org/images/Honda-CBR600RR.jpg>], in which the only storage area on the bike was an extremely small compartment under the seat, big enough for only the owner's manual, which could only be accessed by removing the bike's seat. So my question is, for these vehicle types, do their various "trunk-like" storage areas count as a trunk when it comes to a protective patdown of the passenger compartment under *Michigan v. Long*? Or a search of the passenger compartment incident to the arrest of an occupant? Or in any other case where a search of the passenger compartment is Constitutionally justified, but a search of the trunk is not? Is the law unclear on these points? Thanks Jon!

Anonymous on May 4 2007, 17:50

Thanks for your very good comments to Underdog Blog, Steve, When the feeling moves you, please reveal your ID, either here or by private e-mail.

Check back the week of May 7 for a blog posting on the line between searching a passenger compartment versus the trunk incident to arrest.

Meanwhile, *Thornton's* green light for a passenger compartment search pursuant to a lawful arrest stems from the Supreme Court's *Chimel* case permitting a search of the area within the arrestee's lunge and grasp; *Thornton* says it's setting down a black-letter ruling so that police need not do in-depth Fourth Amendment analysis about where they may or may not search incident to arrest.

The Supreme Court in *Thornton* extended the lunge and grasp area search to the area (and beyond, to the car the defendant walks away from) that the arrestee would be able to lunge and grasp to IF not in handcuffs nor in police custody. Courts seem concerned that friends of the arrestee might lunge and grasp to obtain contraband even if the arrestee is unable to do so.

The Supreme Court's *Carroll* doctrine (*Carroll v. U.S.*, 267 U.S. 132 (1925)) narrows the circumstances under which a warrant is needed to search a vehicle for probable cause, on the basis that a house does not go anywhere pending obtaining a search warrant, but the car can be driven away. Therefore, under *Carroll*, a dog's positive alert to drugs in a trunk would not require a search warrant under Supreme Court caselaw; however, some state courts might view their constitutions as providing more protection than that.

About driving a motorcycle or stationwagon: Under the *Chimel* lunge and grasp approach, arguably the police have freer reign to search the rear of the stationwagon but not the locked trunk of a sedan incident to arrest, because a locked trunk's contents are not within the lunge and grasp, but the wagon's contents and the motorcycle's contents are more accessible.

Have a great weekend. Jon  
Anonymous on May 4 2007, 18:54