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Automobile Searches and the Fourth Amendment

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AUTOMOBILE SEARCHES AND THE FOURTH AMENDMENT

INTRODUCTION

The Supreme Court has traditionally distinguished between the search of a residence and the search of an automobile.[1] While the courts safely guard the fourth amendment right[2] when dealing with searches of residences, such protection does not appear to extend to searches of vehicles. Indeed, recent Supreme Court decisions have practically eliminated the need for a search warrant when a motor vehicle is the object of the search.

Since the fourth amendment requires a warrant to validly search or seize, any time the Court upholds a search or seizure without a warrant it is carving out an exception to the mandates of that amendment.

This paper develops the various circumstances in which the courts have felt an exception to the warrant requirement was justified. However, it appears that the exceptions have swallowed the rule, for when probable cause is present, police officers have the authority to search an automobile without a warrant: prior to an arrest; as an incident of the arrest; subsequent to the arrest when the vehicle is in police custody; and most recently, after the arrest, even though the vehicle is not in police custody.

I. SEARCHES PRIOR TO THE ARREST

The question of whether a particular search occurred prior to or following an arrest is one that is not always free from doubt. There are cases in which the court has held that an arrest takes place as soon as a car is stopped[3] and consequently, classify the search as incidental to the arrest. However, the majority of cases dealing with this issue specifically indicate that their decision was founded on the officers' right to search based on probable cause and *not* as a search incident to an arrest.

The first case recognizing the right of a police officer to conduct a warrantless search of an automobile based on probable cause was *Carroll v. U.S.*[4]

[1] Chambers v. Moroney, 399 U.S. 42 (1970); Preston v. U.S., 376 U.S. 364 (1964); Johnson v. U.S., 333 U.S. 10 (1947); Agnello v. U.S., 269 U.S. 20 (1925); Carroll v. U.S., 267 U.S. 132 (1925).

[2] The 4th amendment provides: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." U.S. Const. Amend. IV. Automobiles are personal "effects" and are thereby entitled to 4th Amendment protection. Carroll v. U.S., 267 U.S. 132 (1925).

[3] Henry v. U.S., 361 U.S. 98 (1959) holding that an arrest had taken place when F.B.I. agents stopped the car, and since there was no probable cause to arrest, the subsequent search was invalid.

[4] 267 U.S. 132 (1925).

The facts were, on September 29, 1921, two undercover prohibition agents arranged to buy liquor from Carroll and Kiro in a Grand Rapids, Michigan apartment. Carroll and Kiro left in an Oldsmobile to get the liquor somewhere east of Grand Rapids but did not return. On December 15, two and one-half months later, the agents saw the same Oldsmobile heading east from Grand Rapids. Carroll and Kiro were in the car. The agents stopped the Oldsmobile on the suspicion that it contained liquor. Under the Prohibition Act[5] a first possession of liquor offense was a misdemeanor. Since the agents only suspected, but had not seen Carroll and Kiro in possession of liquor when they stopped the car, no misdemeanor had at that time been committed in their presence and they had no authority to arrest the suspects. The agents, nevertheless, searched the car, found sixty-eight bottles of liquor, and then arrested Carroll and Kiro.

The court specifically held that the search was justified on the basis of the officers' probable cause to believe that the automobile carried contraband.

> The right to search and the validity of the seizure are not dependent on the right to arrest. They are dependent on the reasonable cause the seizing officer has for belief that the contents of the automobile offend against the law. *The seizure in such a proceeding comes before the arrest.*[6] (Emphasis added.)

The rationale for allowing warrantless searches prior to the arrest is that the vehicle could be quickly moved out of the locality or jurisdiction in which the warrant must be sought. The requirement of securing a warrant prior to the arrest becomes impractical, and hence, the Court feels justified in making an exception to the fourth amendment.

In another case,[7] police had probable cause to believe that the occupants of an automobile had been involved in the breaking and entering of a motel room in which linens of the motel and a quantity of cigarettes were taken.[8] A day later the officer saw the car with a motel pillowcase inside. A search of the car without a warrant revealed a quantity of cigarettes. The court upheld the search stating that the "officer had reasonable cause to believe that the occupants of the automobile had been involved in a felony."[9]

It is clear that before the search of the vehicle can take place, the officers

[5] "When the commissioner, his assistants, inspectors, or any officer of the law shall discover any person in the act of transporting in violation of the law, intoxicating liquor in any wagon, buggy, automobile, water or air craft, or other vehicle, it shall be his duty to seize any and all intoxicating liquors found therein being transported contrary to law." Act of Oct. 28, 1919, ch. 85, 41 Stat. 305 (repealed 1935).

[6] 267 U.S. at 158-59. The Court defined the probable cause which is necessary to validate a search without a warrant as "a belief, reasonably arising out of circumstances known to the . . . . officer" that a crime has been committed. *Id.* at 149.

[7] People v. Harrington, 14 Mich. App. 298, 165 N.W.2d 275 (1968).

[8] The reasonable cause here was the officers' knowledge of a co-defendant who had rented the motel room and the identity of the car registered to the room.

[9] 14 Mich. App. at 299, 165 N.W.2d at 276.

must have probable cause to believe that contraband will be found therein.[10] Mere suspicion is not sufficient to justify a warrantless search.[11]

In *State v. Valentin*,[12] two police officers saw defendant at 1:45 A.M. when he parked his car and entered a tavern which closes at 2:00 A.M. The police officers, having seen defendant go into the tavern and not recognizing him, approached the parked vehicle. While one of the officers watched the defendant through the tavern window, the other started a search of defendant's car. He found a shotgun and shotgun shells under the driver's seat. The defendant was thereupon arrested as he left the tavern and charged with carrying a concealed weapon.

The court held that the search was unconstitutional; that the probable cause which is necessary to validate a search without a warrant was absent.

Thus, under what has become known as the "*Carroll* exception" to the fourth amendment warrant requirement, warrantless searches made prior to an arrest are valid. Two essential elements, however, must first be found: (1) the officers must have probable cause to believe that the automobile contains contraband and; (2) the vehicle must be readily movable so that it is not "reasonably practicable" to secure a search warrant.[13]

II. Searches Incident to Arrest

Unlike the preceding discussion where the right to conduct a warrantless automobile search prior to arrest was based on the officers' probable cause to believe that the vehicle contained items subject to seizure, in this section, the right to conduct a warrantless search is based solely upon the right to arrest. In general, the justification for such a search is predicated on: the right to protect the officer from concealed weapons; the prevention of the arrestee's escape; and the prevention of the destruction of evidence within the arrestee's immediate control.[14]

A. *Historical Development of the Right to Search Incident to Arrest*

The first decision by the Supreme Court which gave any indication of the extent of an incidental search was *Weeks v. U.S.*,[15] where the court suggested

[10] Carroll v. U.S., 267 U.S. 132 (1925).

[11] Note that under today's standards, the facts in the *Carroll* case would probably fall short of probable cause.

[12] 74 N.J. Super. 502, 181 A.2d 551 (1962).

[13] *See, e.g.* Brinegar v. United States, 338 U.S. 160 (1945); Scher v. United States, 305 U.S. 251 (1938); Husty v. United States 282 U.S. 694 (1931); U.S. v. Prince, 301 F.2d 558 (6th Cir. 1962); United States v. Murray, 51 F.2d 516 (D. Mo. 1931); United States v. Scala, 209 F. Supp. 956 (W.D. Pa. 1962); United States v. Wise, 190 F. Supp. 615 (D. Md. 1961); Durham v. Hayes, 258 F. Supp. 452 (E.D. Mo. 1966), *aff'd* 368 F.2d 989 (8th Cir. 1966); United States v. Littlejohn, 260 F. Supp. 278 (E.D.N.Y. 1966); Burnett v. State, 201 Ind. 134, 166 N.E. 430 (1925).

[14] Preston v. United States, 376 U.S. 364 (1964).

[15] 232 U.S. 383 (1914).

there is a right to search the arrestee's person.[16] The *Weeks* decision made no mention of the right to search the area where the arrest occurred, but limited the scope of the search to the person of the arrestee.

In *Agnello v. U.S.*[17] the Court held unreasonable a search of defendant's house made after the defendant had been arrested and taken into custody. The search of the house was not substantially contemporaneous in time and place with the arrest, and therefore, not incidental to it. The court, however, did say that the right to search the house, had it been contemporaneous with the arrest, was not doubted.[18]

In *Marron v. U.S.*[19] officers searched a building pursuant to a search warrant authorizing seizure of intoxicating liquors and articles used in their manufacture. In a closet they found incriminating documents. The defendant was not on the premises but the officers arrested one of defendant's partners. Although the warrant did not authorize seizure of the documents, the seizure was justified as an incident to arrest of defendant's partner. The officers "had a right without a warrant contemporaneously to search the place in order to find and seize things used to carry on the criminal enterprise."[20] Thus, the search could now be extended beyond the room where the arrest was made.

In *Go-Bart Importing Co. v. U.S.*,[21] decided two years after *Marron*, the court held unlawful a broad search of defendant's business office which was allegedly incident to an arrest. The court viewed the search as excessive in scope and held that since the officers had ample time and information to swear out a valid warrant, they should have done so.[22]

A decision which broadened the scope of incidental searches was *Harris v. U.S.*[23] In *Harris*, F.B.I. Agents acting on the authority of a valid arrest warrant, arrested defendant in his four room apartment for forgery. They then spent the next five hours searching his *entire* apartment for evidence of the forgery. Their search turned up altered draft cards which were concededly unrelated to

[16] "What then, is the present case? . . . It is not an assertion of the right on the part of the government, always recognized under English and American law, to search the person of the accused when legally arrested, to discover and seize the fruits or evidence of crime." *Id.* at 392.

[17] 269 U.S. 20 (1925).

[18] "The right without a search warrant contemporaneously to search persons lawfully arrested while committing crime and to search the place where the arrest is made in order to find and seize things connected with crime as its fruits or as the means by which it was committed, as well as weapons and other things to effect an escape from custody, is not to be doubted." *Id.* at 30.

[19] 275 U.S. 192 (1927).

[20] *Id.* at 199.

[21] 282 U.S. 344 (1931).

[22] *Id.* at 358. *See also* U.S. v. Lefkowitz, 285 U.S. 452 (1932) holding unreasonable a search of desk drawers and a cabinet incident to a lawful arrest. The Court distinguished *Marron* on the ground that the *Marron* search was limited in scope while here there was a "general exploratory search" in hope that evidence of a crime might be found.

[23] 331 U.S. 145 (1947).

the purpose of the arrest. Defendant's conviction for unlawful possession of draft board papers was upheld, with the court concluding that the search was *not* a general exploration.[24]

A year after *Harris*, however, the court once again began to limit the scope of warrantless searches incidental to an arrest. In the case of *Trupiano v. U.S.*[25] federal agents raided an illegal liquor distillery without search or arrest warrants. They arrested one defendant who was operating the still, searched the entire premises, and seized contraband. In holding the search unreasonable, the Court announced the "rule of practicability": "It is a cardinal rule that, in seizing goods and articles, law enforcement agents must secure and use search warrants whenever reasonably practicable."[26]

The rule of practicability "rests upon the desirability of having magistrates rather than police officers determine when searches and seizures are permissible and what limitations should be placed upon such activities."[27] Making an arrest on the premises searched does not alone give police the right to search. "The test is the apparent need for summary seizure. . . ."[28] Thus, the mere fact that there is a valid arrest does not legalize a search or seizure without a warrant.

The rule of practicability, however, was overruled two years later in *U.S. v. Rabinowitz.*[29] The new test announced by the Court looks not to the practicability of obtaining a warrant, but to the reasonableness of the search.

> To the extent that *Trupiano v. U.S.* . . . requires a search warrant solely upon the basis of the practicability of procuring it rather than on the reasonableness of the search after a lawful arrest, that case is overruled. The relevant test is not whether it is reasonable to procure a search warrant, but *whether the search was reasonable.* That criterion in turn depends upon the facts and circumstances—the total atmosphere of the case.[30]

The weakness of the *Rabinowitz* test became clear: what *is* reasonable; what are the standards by which reasonableness is determined?

It was this inherent vagueness that led the Court, in *Chimel v. California*[31] to directly overrule the reasonableness test.

The new standard is simple, precise and easy to apply. Officers may search "the arrestee's person and the area within his immediate control." The "area within his immediate control" was construed to mean the area from within which the arrestee might gain possession of a weapon or destructible evidence.[32]

Whether this present standard would apply to vehicle searches as well as to

[24] *Id.* at 153.
[25] 334 U.S. 699 (1948).
[26] *Id.* at 705.
[27] *Id.* at 705.
[28] *Id.* at 708.
[29] 339 U.S. 56 (1950).
[30] *Id.* at 66 (Emphasis added.)
[31] 395 U.S. 752 (1969).
[32] *Id.* at 763.

searches of residences, however, was ambiguous. The reason for this ambiguity was that the court relied on one automobile search case to support its decision,[33] while finding another vehicular search situation inapplicable.[34]

While some writers felt the *Chimel* decision would apply to auto searches,[35] it appears from recent statements by the court that Chimel will be strictly applied only to searches of residences.[36]

B. *Searches Incident to Automobile Arrests*

The scope of the automobile search must be considered to remain unaffected by the *Chimel* decision. Hence, police officers have the authority to search the entire vehicle as an incident to an arrest.

An arrest must be for something more than a mere traffic violation, as a search growing from a traffic violation would never be authorized because there can be no "fruits" of such a crime.[37] But, when the police, after stopping for a traffic violation, have reason to believe they are dealing with more than just a traffic violator, a search may, based upon that belief, be conducted.[38]

The police may not use the arrest as a pretext to search for evidence of other crimes. In *Amador-Gonzalez v. U.S.*,[39] defendant was stopped for making an improper left turn, speeding and failing to have a drivers license. An incidental search revealed narcotics. Prior to the arrest, detectives from the Narcotics Division of the El Paso Police Department had been watching Gonzalez, suspecting that he had been transporting narcotics. At the hearing to suppress the

[33] Preston v. U.S., 376 U.S. 364, is cited to support the contention that incidental searches are justified to protect the officer, to prevent an escape of the suspect, and to prevent the destruction of evidence.

[34] The Court citing Carroll v. U.S., 267 U.S. 132 (1925) states: "Our holding today is of course entirely consistent with the recognized principle that, assuming the existence of probable cause, automobiles and other vehicles may be searched without warrants 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."

[35] *See Warrantless Searches in Light of Chimel: A Return to the Original Understanding*, 11 Ariz. L. Rev. 457 (1969); Murray, Aitken, *Constitutional Limitations on Automobile Searches*, 3 Loyola UL Rev (L.A.) 95 (1970); *Chimel v. California: A Potential Roadblock to Vehicle Searches*, 17 U.C.L.A.L. Rev. 626 (1970). The dissent in *Chimel* points out that the reasons for the *Carroll* exception, i.e., that the evidence can be destroyed or moved out of the jurisdiction, are also present here, if the police are required to leave the scene of an arrest in order to obtain a search warrant and there is "a clear danger that the items for which they may reasonably search will be removed before they return with a warrant." 395 U.S. 752, 774.

[36] Vale v. Louisiana, 399 U.S. 30 (1970). ". . . our past decisions make clear that only in a 'few specifically established and well-delineated' situations . . . may a warrantless search of a *dwelling* withstand constitutional scrutiny," citing *Chimel* (emphasis added); Chambers v. Moroney, 399 U.S. 42; "Nothing said last term in *Chimel v. California* . . . , purported to modify or affect the rationale of *Carroll*." at 51, n.8. *See also* U.S. v. Brown, 432 F.2d 552 (5th Cir. 1970).

[37] Halko v. Anderson, 244 F. Supp. 696 (D. Del. 1965), *aff'd per curiam* 359 F.2d 435 (3rd Cir. 1966), *cert. den.* 382 U.S. 1011; People v. Reed, 36 Ill. 2d 358; 227 N.E.2d 69 (1967); Courington v. State, 74 So. 2d 652 (Fla. Sup. Ct. 1954); People v. Thomas, 31 Ill. 2d 272, 201 N.E.2d 413 (1964).

[38] People v. Tate, 38 Ill. 2d 184, 230 N.E.2d 697 (1967).

[39] 391 F.2d 308 (5th Cir. 1968).

evidence, the detective testified that "he wanted to search he car, that is why [he] wanted to reach" the defendant.[40] The search was held invalid; the officer could not use the traffic violation as a pretext for a search.

While it has generally been said that a search to be incidental to an arrest, must be substantially contemporaneous with the arrest and confined to the immediate vicinity of the arrest,[41] the cases dealing with vehicular searches are ambiguous.

In *Preston v. U.S.*,[42] defendant was arrested on a charge of vagrancy while he was sitting in his car. His car was thereafter towed to the police station garage and searched. From evidence found therein, the defendant was charged with conspiracy to rob a bank.

The Supreme Court, in holding the search invalid said that "where a search is remote in time or place from the arrest . . . and the accused is under arrest and in custody, a search made at another place, without a warrant, is simply not incident to the arrest."[43]

C. *If the Car Is in Police Custody*

Subsequent cases have strictly limited the principle enunciated in *Preston*, holding it applicable solely to searches incident to arrest. If a delayed search can be upheld on any other grounds, *Preston* simply does not apply.[44]

For example, in *Cooper v. California*,[45] the defendant was arrested for selling heroin to a police informer. After arresting Cooper, the police impounded his car for forfeiture proceedings.[46] A week later, while both the defendant and his automobile where still in custody, the police conducted a warrantless search of the car in the police garage. The search yielded a piece of brown paper bag which was later introduced into evidence against the defendant. In his appeal to the Supreme Court, Cooper relied on *Preston*, claiming the search was invalid and that the use of the evidence was reversible error. The court, however, upheld the search. *Preston* was distinguished as governing only searches incident to arrest, and the Court held that the subsequent search here was reasonable and valid. The fact that both the defendant's arrest and seizure of his car stemmed from the same violation was emphasized. Furthermore, since the car was to be

[40] *Id.* at 313.

[41] Preston v. U.S., 376 U.S. 364 (1964); Agnello v. U.S., 269 U.S. 20 (1925).

[42] 376 U.S. 364 (1964).

[43] *Id.* at 367; Agnello v. U.S. 269 U.S. 20, at 31.

[44] As to the validity of a warrantless search and seizure incident to a lawful arrest effected by a delay in conducting the search at a different place than vicinity of arrest, see *Modern Status of Rule as to Validity of Non-Consensual Search and Seizure Made Without Warrant After Lawful Arrest as Affected by Lapse of Time Between, or Difference in Places of, Arrest and Search*, and cases cited therein; Anno. 19 A.L.R.3d 727 (1968).

[45] 386 U.S. 58 (1967).

[46] The impounding was authorized by a California statute allowing seizure and forfeiture of any vehicle used in illegal transportation of narcotics. Cooper v. California, 386 U.S. 58, 60 (1967).

held until the forfeiture proceedings were complete, it would be unreasonable to prohibit the police from inspecting the vehicle as a precautionary measure. Preston was arrested for vagrancy, a crime which can have no "fruits," while the police had in *Cooper* probable cause to believe evidence of the crime for which he was arrested would be found in the car.

The principle that has evolved from *Cooper*, then, is that if the police have custody of the car *and* probable cause to believe that instruments or fruits of the crime for which defendant was arrested will be found, a search without a warrant will not offend the constitutional requirements of the fourth amendment.

III. Search After Arrest Based On Probable Cause

The Supreme Court appears to have added a new dimension to warrantless searches of automobiles in the recent case of *Chambers v. Moroney*.[47] It seems that as a result of this opinion, the police can now conduct a warrantless search of an automobile subsequent to an arrest, when the vehicle is *not* in police custody, if they have probable cause to believe that fruits of the crime for which the defendant was arrested will be found.

The facts are substantially as follows. During the night of May 20, 1963, a service station was robbed. Two teenagers earlier had noticed a blue compact station wagon circling the block in the vicinity of the service station and then saw the station wagon speed away from a parking lot near the service station. When they learned of the robbery they reported to the police that four men were in the car; that one was wearing a green sweater and another was wearing a trench coat. This information was broadcasted over the police radio.

Within an hour, a car answering the description, carrying four men was stopped; petitioner was one of the men in the car. He was wearing a green sweater. The occupants were arrested and the car was driven to the police station. After interrogating the defendants, the police went outside to search the car, found nothing, and again continued in the interrogation of the defendants. Then, for a second time, the police conducted a warrantless search of the vehicle. This time, however, the police found two revolvers under the dashboard, and cards bearing the name of a service station attendant who had been robbed a week earlier. This evidence was introduced at trial, and petitioner was convicted. The Supreme Court of the United States held the search was valid.

The opinion, delivered by Mr. Justice White, recognized that the search could not be justified as a search incident to an arrest.[48] The court further acknowledged that *Cooper* is inapplicable for "no claim is made that state law authorized that the station wagon be held as evidence or as an instrumentality of the crime."[49]

[47] 399 U.S. 42 (1970).
[48] *Id.* at 47.
[49] *Id.* at 49.

Therefore, the court had to turn its attention to the *Carroll* exception in order to uphold the validity of the search.

It will be remembered that *Carroll* was the first case to make an exception to the warrant requirements of the fourth amendment. Under *Carroll* when probable cause exists to believe that contraband is located in an automobile, and if the vehicle is readily movable, a warrantless search prior to arrest can be made.

The rationale used in sustaining the search in *Chambers* was that since the automobile could have been searched when it was stopped, there being probable cause to search and the car being readily movable, the probable cause factor still existed at the police station when the car was still available to be moved.

The opinion recognized that "arguably" the car should be seized and then a search warrant obtained; that "only the 'lesser' intrusion is permissible until a magistrate authorizes the 'greater.' "[50] However, which is the "greater" and which is the "lesser" intrusion is "a debatable question" and is left unanswered. As far as the Court is concerned, "for constitutional purposes we see no difference between on the one hand seizing and holding a car before presenting the probable cause issue to a magistrate and on the other hand carrying out an immediate search without a warrant."[51]

It can hardly be doubted that the *Chambers* decision greatly expands the *Carroll* exception and, in effect, dispenses with the requirements of a search warrant in automobile cases.

Carroll, and each of the court's decisions upholding a warrantless search on its authority involved a search for contraband.[52] This is the first decision that has expanded *Carroll* "to authorize a general search of a vehicle for evidence of crime without a warrant, in every case where probable cause exists."[53]

As to which would be the "greater" or "lesser" intrusions, seizing until a warrant can be obtained or searching without a warrant, Mr. Justice Harlan notes in his dissenting opinion[54] that very often the probable cause to search will justify arrest and since the occupants of the car are in custody (as they were in the present situation), they will suffer only minimal further inconvenience by immobilization of the vehicle until a warrant can be obtained. Yet, rather than decide which is the "greater" and which is the "lesser," the Court authorizes both.

The cases which have developed exceptions to the warrant requirement have always been decided to accommodate the exigencies of the particular situation.

[50] *Id.* at 51.
[51] *Id.* at 52.
[52] Brinegar v. U.S., 338 U.S. 160 (1949); Scher v. U.S., 305 U.S. 251 (1938); Husty v. U.S., 282 U.S. 694 (1931).
[53] Chambers v. Maroney, 399 U.S. 42, 63.
[54] *Id.* at 63-64.

The *Carroll* exception is justified as reasonable because the automobile, unless stopped on the highway, may never be found again if the officers must first obtain a warrant.

However, the situation presented in *Chambers* is vastly different. Unlike *Carroll*, the automobile is no longer stopped on the highway, but parked outside the police station, with the owner and occupants safely in police custody. The exigency permitting the immediate search on the highway is absent. Indeed, here the police searched, went away, then returned some time later, and conducted another search. By the holding of this court, the police are authorized to take the car to the police station and at their convenience conduct a warrantless search.

This decision will certainly make moot any arguments that might have existed as to the scope of a search incident to arrest.[55] When does an incidental search stop and the *Chambers* type search begin? In *U.S. v. Brown*[56] decided October 5, 1970, a search of defendant's automobile was conducted without a warrant after the defendants had been arrested and placed in custody in a nearby police vehicle. The court stated: "Although we once might have had some question concerning the admissibility of evidence obtained in such a manner, the Supreme Court's most recent opinion on this issue quiets all doubts which we might have entertained."[57]

IV. Conclusion

Chambers completes the continuum for warrantless searches of automobiles. The police can now search if there is probable cause prior to the arrest,[58] as an incident to a lawful arrest,[59] when the vehicle is in police custody,[60] and finally, subsequent to the arrest, when the vehicle is not in police custody.

With this allowable breadth of authority, it seems that only in the rarest of circumstances would a police officer bother to appear before a magistrate and present his evidence of probable cause. In effect, warrantless searches of automobiles are completely authorized.

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[55] *Supra* note 35 and accompanying text material.
[56] 432 F.2d 552 (5th Cir. 1970).
[57] *Id.* at 553 citing Chambers v. Maroney, 399 U.S. 42 (1970).
[58] Carroll v. U.S., 267 U.S. 132 (1925).
[59] Agnello v. U.S., 269 U.S. 20 (1925); Weeks v. U.S., 232 U.S. 383 (1914).
[60] Cooper v. California, 386 U.S. 58 (1967).