

PROTECTIVE CAR SEARCHES

“[I]nvestigative detentions involving suspects in vehicles are especially fraught with danger to police officers.”¹

When a person is detained in or near his car, a gun or other weapon located in the vehicle can be just as dangerous to officers as a weapon in the detainee’s waistband. But when the U.S. Supreme Court authorized pat searches of armed or dangerous suspects in 1968,² it didn’t say anything about searching their cars. It took 15 years for that issue to reach the Court, and when it did the Court ruled yes—under certain circumstances a protective search of a suspect may extend into the suspect’s car.³ And if officers find contraband or other evidence of a crime while conducting such a search, they may seize it.⁴

Although the justification for these protective car searches is essentially the same as the justification for pat searches (in fact, protective car searches are sometimes referred to as “vehicle pat downs”) there are some significant differences as to *when* they may be conducted and, of course, *how* they may be conducted.

WHEN PERMITTED

There are essentially two requirements for conducting a protective car search. First, an occupant of the car must have been lawfully detained, which generally means, (a) there must have been reasonable suspicion to believe the detainee had committed or was committing a crime⁵; and (b), in conducting the detention, officers did only those things that were reasonably necessary to confirm or dispel their suspicion or carry out other lawful duties.⁶

Second, officers must have reasonably believed a weapon was located in the passenger compartment.⁷ As we will now discuss, such a belief may be based on direct or circumstantial evidence.

Direct evidence

An officer’s belief that a weapon is located in the vehicle will usually be based on direct evidence—the officer will actually see a weapon in plain view or, occasionally, the officer will receive a tip from a reliable informant that a weapon is located there.⁸ In such cases, the officer’s right to seize the weapon and search for others depends on whether the weapon is a conventional weapon or a virtual weapon.

CONVENTIONAL WEAPON: Officers may conduct a protective search of a car if they have direct evidence that the passenger compartment contains a conventional weapon, such as a gun, knife, brass knuckles, sap, billy club, or nunchakus would satisfy this requirement even if possession of the weapon was lawful. For example, seeing a lawful hunting knife somewhere in the passenger compartment would justify a search.⁹

VIRTUAL WEAPON: It is not entirely clear whether the presence of a virtual weapon would be sufficient. As noted in the article on pat searches, a virtual weapon is an object that is capable of being used as a weapon, such as a club or crowbar. As the Court of Appeal observed, “Just how far this rule extends is

unclear. [A] baseball bat or hammer can be a lethal weapon; does this mean a policeman could reasonably suspect a person is dangerous because these items are observed in his or her car?"¹⁰

Although the court had no answer for its question, it seems likely the presence of a virtual weapon would justify a search in either of the following situations:

(1) APPARENT PURPOSE: Based on the nature of the object, its location or other circumstances, officers reasonably believed the object was intended to be used as a weapon; e.g., baseball bat located between bucket seats in a car; "a long black metal object" similar to a Mag flashlight located approximately nine inches from defendant's left hand in his truck.¹¹

(2) DETAINEE DANGEROUS: Officers reasonably believed the detainee posed a danger to them; e.g., detainee was hostile or appeared to be under the influence.¹²

Circumstantial evidence

In some cases, an officer's belief that a weapon is located in a vehicle will be based on circumstantial evidence. At present, there is very little law on this subject, so it's not known how exacting the courts will be.¹³ The courts will, of course, take into account the surrounding circumstances which were discussed in the article on pat searches; e.g., known gang member, furtive gestures, extreme nervousness.¹⁴

It appears, however, that officers may be required to cite at least one circumstance concerning the whereabouts of the weapon. For example, it would probably suffice that officers saw the outline of an object consistent with a weapon under some covering, such as a blanket. Or, as illustrated in the case of *People v. King*,¹⁵ heard something that, based on the surrounding circumstances, signaled danger.

In *King*, two San Diego police officers on patrol at about 10 P.M. made a traffic stop on a car driven by King for expired registration. As one of the officers was walking up to the driver's window, he saw King "reach under the driver's seat and heard the contact of metal on metal." The officer testified he "feared for the safety of his partner and himself because there was increased gang activity in the area and the driver reached under the seat." After ordering King and the other occupants out, the officers looked under the seat and found a .25-caliber semiautomatic handgun.

In ruling the search was a lawful protective search, the court said, "Here, in addition to King's movement, we have the contemporaneous sound of metal on metal and the officer's fear created by the increased level of gang activity in the area."

SEARCH PROCEDURE

Officers who have grounds to conduct a protective car search may search those areas in the passenger compartment in which a weapon may be found.¹⁶ For example, they may look under the seats, in the glove box, and under the armrest.

SEARCHING CONTAINERS: Any containers located in the passenger compartment may also be opened and searched if they are large enough to hold a

weapon.¹⁷ And all containers may be searched—regardless of their size—if at some point during the search officers develop probable cause to arrest an occupant. As the court noted in *People v. Molina*,¹⁸ a case in which officers found a billy club, “[O]nce the police have cause to arrest a person—here for possession of a billy club—they become entitled to search containers even when those containers are such that they could hold neither a weapon nor evidence of the criminal conduct for which the suspect was arrested.”

SEARCHING FOR ADDITIONAL WEAPONS: Officers who are conducting a lawful vehicle protective search need not discontinue the search after they have found a weapon. The courts have consistently held that the discovery of a weapon gives officers a right to search for more.¹⁹ As the court noted in *People v. Molina*,²⁰ “Once the officers discovered the knives, they had reason to believe that their safety was in danger and, accordingly, were entitled to search the [passenger] compartment and any containers therein for weapons.”

SEARCHING THE TRUNK: Although an officer’s belief that a weapon is located in the trunk will not justify a protective car search, the trunk may be searched as a probable cause car search if officers have probable cause to believe an illegal weapon or other evidence of a crime is located there.²¹

¹ *Michigan v. Long* (1983) 463 US 1032, 1047.

² See *Terry v. Ohio* (1968) 392 US 1.

³ *Michigan v. Long* (1983) 463 US 1032, 1049.

⁴ *Michigan v. Long* (1983) 463 US 1032, 1050. **NOTE:** A seizure of such evidence is permitted only if officers have probable cause it is, in fact, evidence of a crime. See *Arizona v. Hicks* (1987) 480 US 321, 326-8.

⁵ See *United States v. Sokolow* (1989) 490 US 1; *In re Tony C.* (1978) 21 Cal.3d 888.

⁶ See *Berkemer v. McCarty* (1984) 468 US 420, 439; *People v. Manis* (1969) 268 Cal.App.2d 653, 661-2; *People v. Brown* (1998) 62 Cal.App.4th 493, 499-500.

⁷ **NOTE:** In *Michigan v. Long* (1983) 463 US 1032, 1049 the U.S. Supreme Court indicated there were two requirements in addition to the requirement that officers reasonably believed a weapon was located in the passenger compartment; specifically, officers must have reasonably believed, (1) the detainee was dangerous, and (2) he may gain immediate control of a weapon. As a practical matter, however, these are not treated as additional requirements. With regard to the “requirement” that officers believed the detainee was dangerous, the courts have consistently taken the position that any detainee who may gain access to a weapon is dangerous to the officer who is detaining him. See *People v. Lafitte* (1989) 211 Cal.App.3d 1429, 1432; *People v. Molina* (1994) 25 Cal.App.4th 1038 [“Once the officers discovered the knives, they had reason to believe that their safety was in danger and, accordingly, were entitled to search the compartment and any containers therein for weapons.”]. With regard to the “gain immediate control of a weapon” requirement, the U.S. Supreme Court has pointed out that detainees may be able to break away from officers and retrieve the weapon; or, if he is released, he will be permitted to reenter the car. In either case, he will then have access to any weapon in the vehicle. *Michigan v. Long* (1983) 463 US 1032, 1051-2.

⁸ See *Adams v. Williams* (1972) 407 US 143; *People v. Coulombe* (2001) ___ Cal.App.4th ___.

⁹ See *Michigan v. Long* (1983) 463 US 1032; *People v. Lafitte* (1989) 211 Cal.App.3d 1429, 1433; *People v. Molina* (1994) 25 Cal.App.4th 1038, 1042.

¹⁰ *People v. Lafitte* (1989) 211 Cal.App.3d 1429, 1433 [citing *Michigan v. Long* (1983) 463 US 1032, 1061 [dis.opn. of Brennan, J.].

¹¹ See *People v. Avila* (1997) 58 Cal.App.4th 1069, 1074; *People v. Lafitte* (1989) 211 Cal.App.3d 1429, 1433 [“legal” four-inch knife “in a sheath, resting on the open glove box door, with the handle extended over the edge toward the driver’s seat.”]; *People v. Methey* (1991) 227 Cal.App.3d 349, 358 [detainee was carrying a pry bar].

¹² See *Michigan v. Long* (1983) 463 US 1032, 1050 [Court notes the detainee appeared to be under the influence of “some intoxicant”].

¹³ **NOTE:** There is authority for the proposition that the courts should not be too rigid. See *People v. Lafitte* (1989) 211 Cal.App.3d 1429 [The U.S. Supreme Court “seemed willing to allow more leeway in the officer’s decision that a suspect is ‘armed and presently dangerous,’ even for minor offenses.”]; *People v. Dickey* (1994) 21 Cal.App.4th 952, 957 [“The judiciary should not lightly second-guess a police officer’s decision to perform a patdown search for officer safety.”].

¹⁴ ALSO SEE *People v. King* (1989) 216 Cal.App.3d 1237, 1240 [“In determining whether a weapon search was reasonable, we must view the search in light of all the facts surrounding the activity.”].

¹⁵ (1989) 216 Cal.App.3d 1237.

¹⁶ See *Michigan v. Long* (1983) 463 US 1032, 1049.

¹⁷ See *Michigan v. Long* (1983) 463 US 1032, 1048-9 [search of pouch: Court noted the “trial court determined that the leather pouch containing marijuana could have contained a weapon.” At p. 1050-1]; *People v. Molina* (1994) 25 Cal.App.4th 1038, 1043 [search of duffel bag and toiletries case].

¹⁸ (1994) 25 Cal.App.4th 1038, 1043.

¹⁹ **NOTE:** In the following cases, courts upheld further searching after officers had located and seized one weapon: *Michigan v. Long* (1983) 463 US 1032, 1036; *People v. Lafitte* (1989) 211 Cal.App.3d 1429, 1431; *People v. King* (1989) 216 Cal.App.3d 1237, 1239; *People v. Molina* (1994) 25 Cal.App.4th 1038, 1042.

²⁰ (1994) 25 Cal.App.4th 1038, 1042.

²¹ See *United States v. Ross* (1982) 456 US 798, 800, 809, 825.