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## The Admissibility of Evidence Obtained from an Automobile

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## NOTES AND COMMENTS

**The Admissibility of Evidence Obtained from an Automobile**

Since it is well established that automobiles come within the purview of the Fourth Amendment to the United States Constitution,<sup>1</sup> it is therefore, essential that before material, tools, or contraband are admitted in evidence against the driver, owner, one in possession and control, or one who has consented to a warrantless search, the state first establishes that the seizure was a result of a reasonable search. It is imperative that the reasonableness of the search be established because "unreasonable searches and seizures" are prohibited by the Fourth Amendment. As an aid in determining what is reasonable, the courts have developed and established six major tests by which the reasonableness of a warrantless search is measured. First, the search must have been "reasonable" in its generic perspective.<sup>2</sup> Second, it must have been "incident to a lawful arrest."<sup>3</sup> Third, the search must have been "contemporaneous to a lawful arrest."<sup>4</sup> Fourth, the search must have been made upon "probable cause."<sup>5</sup> Fifth, the evidence seized must have been within "plain view" of the officer.<sup>6</sup> Sixth, the evidence is admissible if it was seized after the defendant willfully, knowingly, intelligently, and voluntarily consented to a warrantless search.<sup>7</sup> Thus, if the search was made within any of these tests, it is deemed not to have been unreasonable and, therefore, the objects seized are admissible in evidence against the defendant and dispenses with the need of a search warrant.

## REASONABLENESS

The inherent and generic peculiarity of the facts of a given case is another factor to be considered in determining the reasonableness of the search. Thus, what will be a reasonable search in one case may be unreasonable in another. For example, where defendants were caught "red-handed" passing counterfeit money and subsequently arrested in their

<sup>1</sup> Edwards v. State, 83 Okla. Crim. 340, 177 P.2d 143 (1947); Henry v. United States, 361 U.S. 98 (1959); Lanza v. New York, 370 U.S. 139 (1962).

<sup>2</sup> See section on Reasonableness, *infra*.

<sup>3</sup> See section on Contemporaneous and Incident to the arrest.

<sup>4</sup> *Id.*

<sup>5</sup> See section on Probable Course, *infra*.

<sup>6</sup> See section on Plain View, *infra*.

<sup>7</sup> See section on Consent, *infra*.

car, which was removed to the police station where a warrantless search was conducted, the counterfeit money was admitted into evidence<sup>8</sup> because the search was reasonable.<sup>9</sup> The given rationale for making the search reasonable is that the defendants had been caught passing counterfeit money; that they had been under surveillance as suspects of a rumored bank robbery attempt and of the possibility that the car might contain dangerous weapons.

It should be noted that this alone should not dispense with the need to obtain a search warrant, for once defendants are arrested, in custody, or in jail it will not be likely that they will destroy or remove the "dangerous weapons."<sup>10</sup> In addition, the court contends that since the car was subject to forfeiture the search that followed was reasonable. Again, it should be noted that "while the car is subject to forfeiture," the owner continues to have title and an interest in the automobile and its contents "until determined forfeited."

The most valid part of the decision seems to be that the right to make a warrantless search includes a contemporaneous search made pursuant to a lawful arrest which extends to things over which the defendant may have control.<sup>11</sup> Here, the car belonged to the defendant, and had the officer's and defendant's cars not been blocking traffic for half a mile, defendant's car would have been searched at the scene of the arrest. Thus, the removal of the car to the police station, which was a mile and a half away, was not only reasonable, but necessary. Therefore, this makes the search a reasonable one, for it was incident to the arrest. The moving of the scene of the arrest to a safer site does not make the search unreasonable.

On the other hand, the lawful custody of a vehicle does not in itself dispense with the reasonableness of the search. It is the reason for and the nature of the custody that may constitutionally justify the search.<sup>12</sup>

Where a car is impounded for being used in trafficking narcotics, and by statute is to be held as evidence until a forfeiture is declared or a release ordered, a search a week after the accused's arrest is reasonable for the search was closely related to the reason defendant was arrested and the reason for which his car was impounded.<sup>13</sup> This rule seems to

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<sup>8</sup> United States v. C. L. Powell, 407 F.2d 582 (4th Cir. 1969).

<sup>9</sup> United States v. Rabinowitz, 339 U.S. 56 (1950).

<sup>10</sup> Preston v. United States, 376 U.S. 364 (1964).

<sup>11</sup> United States v. Powell, 407 F.2d 582 (4th Cir. 1969).

<sup>12</sup> Cooper v. California, 386 U.S. 58 (1967).

<sup>13</sup> *Id.*

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say that where the police validly hold an automobile in accordance to a state statute, the search is reasonable if conducted in pursuance to the reason for which it was impounded. Since reasonableness is the test, it dispenses with the argument that a search warrant should have been procured for a search made a week after defendant's arrest.

However, a search is not reasonable where the police lack authority to hold a vehicle and a warrantless search produces evidence with which an entirely different offense could have been committed than the one for which the accused was arrested and placed in custody. Thus, when the offenses for which defendant was arrested and the car searched are different and not related, the search lacks the nexus which might have made it constitutionally reasonable.<sup>14</sup>

For example, where defendant was arrested in his car for vagrancy and the car was not searched at the time of the arrest, but was searched after defendant had been arrested and was in custody and the car had been stored in a garage, the evidence seized was not admitted to convict him of conspiring to rob a bank. Because once the accused is in custody, a warrantless search at another place is simply not incident nor contemporaneous to the arrest; thus, it is unreasonable and bars the evidence seized from being admitted.<sup>15</sup>

The prohibitions of the Fourth Amendment must be construed to protect and conserve the rights and interests of the individual;<sup>16</sup> thus, the police can not, without violating the Fourth Amendment, search for the sole purpose of obtaining evidence to arrest and convict.<sup>17</sup> It is well established that an unlawful search can not be justified by what is found and that a search that is unlawful *ab initio* is unlawful when it ends and is not made lawful by the discovery of evidence which is illegal to possess. This type of prying and searching is clearly what the constitution intends to prohibit.<sup>18</sup>

Although, "a search incident to a lawful arrest" connotes a search in the immediate place of arrest and a "search contemporaneous to the arrest" implies conducting a search within reasonable time of the arrest, at times they are applied interchangeably. For example, where an automobile was searched some one hundred yards from the arrest for store-

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<sup>14</sup> Preston v. United States, 376 U.S. 364 (1964); United States v. Coin; United States v. Condy, 332 F.2d 999 (6th Cir. 1964).

<sup>15</sup> *Id.*

<sup>16</sup> Carroll *et al.* v. United States, 267 U.S. 132 (1925).

<sup>17</sup> State v. Doyle, 42 N.J. 334, 200 A.2d 606 (1964).

<sup>18</sup> United States v. Slusser, 270 F.2d 818 (S.D. Ohio 1921).

breaking, the court held that it was sufficiently contemporaneous and incident to the arrest.<sup>19</sup> However, where one is arrested while in the car, and a search incident to his arrest is commenced and subsequently the suspect is taken away, the evidence that was obtained from the search that continued is admissible because the search is sufficiently contemporaneous with the arrest. It should be noted that the evidence was admitted, notwithstanding the fact that the accused was removed from the scene of the arrest while the search had not been completed, but while it was in progress.<sup>20</sup> Note that here the contemporaneous test is used to emphasize time, where above, it was used to stress distance.

The fact that *Preston v. United States* holds that a warrantless search is not permitted when the accused is in custody and the search is conducted at a different place from where he was arrested does not prohibit a search that is incident or contemporaneous to a lawful arrest. This is not so, even where the defendant is placed under arrest and has handed the car keys to the officer.<sup>21</sup>

The rationale for admitting evidence which was obtained from a warrantless search but made incident or contemporaneous to the arrest is that weapons may be used to assault an officer, to escape,<sup>22</sup> or to destroy the fruits of the crime, or tools and equipment used in committing the crime.<sup>23</sup> Since the incident and contemporaneous tests are so interrelated with the remaining tests, further treatment will be accorded them in the following material.

#### PROBABLE CAUSE

As stated above, evidence obtained by a warrantless search is admissible if it was made incident or contemporaneous to a lawful arrest or if search was reasonable under a given set of circumstances. The principle of law to be developed here is that evidence is admissible if obtained by a warrantless search which was the fruit of an arrest or search based on probable cause.<sup>24</sup> Conversely stated, it is illegal to make an arrest

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<sup>19</sup> *State v. K. R. Shedd*; *State v. J. L. Shedd*, 274 N.C. 95, 161 S.E.2d 477 (1968).

<sup>20</sup> *United States v. Trotta*; *United States v. Genovese*, 401 F.2d 514 (4th Cir. 1968); *Crawford v. Bannon*, 336 F.2d 505 (6th Cir. 1964).

<sup>21</sup> *Adams v. United States*, 336 F.2d 752 (D.C. Cir. 1964); *Sisk v. Lane*, 331 F.2d 235 (7th Cir. 1964).

<sup>22</sup> *Weeks v. United States*, 232 U.S. 383 (1914); *Agnello v. United States*, 269 U.S. 20 (1925); *United States v. Rabinowitz*, 339 U.S. 56 (1950).

<sup>23</sup> *Weeks v. United States*, 232 U.S. 383 (1914).

<sup>24</sup> *Henry v. United States*, 361 U.S. 98 (1959); *United States v. Haith*, 297 F.2d 65 (4th Cir. 1961); *Carroll v. United States*, 276 U.S. 132 (1925).

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or a search without having probable cause; consequently the evidence obtained from such a search is not admissible<sup>25</sup> for the search is deemed unreasonable.

The probable cause test is determined by whether the facts and circumstances within the officer's knowledge were sufficient in themselves to lead a reasonable man to believe that a vehicle contained contraband.<sup>26</sup> This is not to say that an officer may not "rely" on an informant's information. He may, as long as it is reasonably corroborated by facts of which the officer has knowledge.<sup>27</sup> On the other hand, while the officer may "rely" on an informant's information so long as the information is corroborated with facts of which the officer has knowledge, he may not "act" without such corroboration.

Therefore, the police can not search a car in response to an informer's information given over the phone.<sup>28</sup> The search must be based on what the officer believed<sup>29</sup> as a result of what he heard and saw,<sup>30</sup> unless the informer was a reliable source.

However, in *United States v. Callahan* once the officer learned that the license plates had been issued to a different vehicle, he had probable cause to believe that the car had been stolen. This justifies the search on probable cause.<sup>31</sup>

In this case, an independent reason existed to justify the search. The officer, with the aid of a flashlight, saw molds for United States coins through the car window. Their seizure was held not a product of a search, for to observe or to notice what is in "plain view" of the officer does not constitute a search.<sup>32</sup> This rule applies whether the observation was made in day light or in artificial light.<sup>33</sup>

Once having seized the mold which was in plain view, the officer had probable cause to arrest defendants for transporting counterfeit molds of United States coins. Defendant having been arrested on probable cause, the search and seizure of the rest of the molds are admissible in evidence, for the search was made incident to a lawful arrest which was made

<sup>25</sup> *Bowling v. United States*, 350 F.2d 1002 (D.C. Cir. 1965).

<sup>26</sup> *United States v. Walker*, 307 F.2d 250 (4th Cir. 1962).

<sup>27</sup> *Jones v. United States*, 362 U.S. 257 (1960); *Carroll et al. v. United States*, 267 U.S. 132 (1925).

<sup>28</sup> *United States v. Callahan*, 256 F. Supp. 739 (1964).

<sup>29</sup> *Carroll et al. v. United States*, 267 U.S. 132 (1925).

<sup>30</sup> *Scher v. United States*, 305 U.S. 251 (1938).

<sup>31</sup> *United States v. Callahan*, 256 F. Supp. 739 (1964).

<sup>32</sup> *Trujillo v. United States*, 294 F.2d 583 (10th Cir. 1961).

<sup>33</sup> *United States v. Lee*, 274 U.S. 559 (1927); *United States v. Williams*, 314 F.2d 795 (6th Cir. 1963).

upon probable cause; for the officer had knowledge of the molds at or prior to the time of arrest and seizure.<sup>34</sup> The thrust of this rule is that contraband in plain view gives rise to probable cause and thus justifies the subsequent arrest or search.

In instances in which the circumstances indicate probable cause<sup>35</sup> that a crime is being committed or is about to be committed,<sup>36</sup> officers have the right to stop, detain, frisk, and arrest and search the suspect<sup>37</sup> and his car<sup>38</sup> if the officer has reason to believe that he is dangerous<sup>39</sup> or that his car contains contraband.

But "mere suspicion alone" does not constitute probable cause to arrest, detain, or search. Therefore, a search based on "suspicion only" is unreasonable and the evidence seized is not admissible.<sup>40</sup> Thus, where an officer stopped a motorist who had not been suspected of any criminal activity at or prior to the time of detention or arrest, but had been stopped merely on the basis that the officers had seen him take packages from a neighborhood residence, the contraband found in the packages was not admissible in evidence for the search nor the arrest had been made upon probable cause nor could the discovery of the contraband justify the search.<sup>41</sup> The fact that the car is a moveable vehicle and can easily be taken out of the jurisdiction, that alone, does not dispense with the need of probable cause before it is searched.<sup>42</sup>

#### PLAIN VIEW

A search connotes "probing into hidden places for what may be concealed"<sup>43</sup> and requires some sort of force, whether the force is actual, constructive, much or little;<sup>44</sup> or at least a "forcible dispossession of the

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<sup>34</sup> *United States v. Callahan*, 256 F. Supp. 739 (1964); *Armada v. United States*, 319 F.2d 793 (5th Cir. 1963).

<sup>35</sup> *Petteway v. United States*, 261 F.2d 53 (4th Cir. 1958).

<sup>36</sup> *United States v. Haith*, 297 F.2d 65 (4th Cir. 1961).

<sup>37</sup> *State v. Moore*; *State v. Willin*, 55 Del. 356, 187 A.2d 807 (1963).

<sup>38</sup> *Carroll et al. v. United States*, 276 U.S. 132 (1925); *Agnello v. United States*, 269 U.S. 20 (1925); *United States v. Rabinowitz*, 339 U.S. 56 (1950).

<sup>39</sup> *Gisske v. Sanders*, 9 Cal. App. 13, 98 P. 43 (1908).

<sup>40</sup> *Bowling v. United States*, 350 F.2d 1002 (D.C. Cir. 1965); *Mallory v. United States*, 354 U.S. 449 (1957).

<sup>41</sup> *State v. Doyle*, 42 N.J. 334, 200 A.2d 606 (1964); *United States v. Slusser*, 270 F.2d 818 (S.D. Ohio 1921).

<sup>42</sup> *Henry v. United States*, 361 U.S. 98 (1959).

<sup>43</sup> *People v. Exum*, 382 Ill. 204, 47 N.E.2d 56 (1943).

<sup>44</sup> *Cornbest v. State*, 32 Okla. Crim. 47, 239 P. 936 (1925); *State v. Morris and Williams*, 243 S.C. 225, 133 S.E.2d 744 (1963).

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property of the owner by an officer's exploratory acts."<sup>45</sup> The Fourth Amendment prohibits the admissibility of evidence obtained from "unreasonable searches and seizures" but does not prohibit the admissibility of evidence which is not fruit of a search. Therefore, contraband seized which was in plain view of an officer, while discharging his official duties, is admissible in evidence because to notice that which is in plain view is not a search.<sup>46</sup> This rule is controlling, whether that which was observed was in daylight or with the aid of artificial light—flashlight.<sup>47</sup>

Where the arresting officer, while examining the driver's license of the defendant, noticed a stolen check book and check protector lying in plain view on the car seat,<sup>48</sup> or where non-tax-paid liquor and a pistol lay in a car exposed to plain view,<sup>49</sup> or where stolen clothes were seen in the back seat while warning the driver that a certain turn was dangerous and hazardous,<sup>50</sup> these articles and contraband were admitted in evidence for seizure of that which is in plain view is not unreasonable since it is not fruit of a search.<sup>51</sup>

Notice that these seizures—seizing of that which is in plain view—would have given rise to probable cause and justified the searching of other parts of the vehicle, or if defendants had been arrested for possession of the contraband, a further search would have been permissible as a search incident to a lawful arrest.<sup>52</sup>

To convict the defendant of bank robbery, the court admitted in evidence bundles of currency which were in the back seat and were seen and seized by the arresting officer while rolling up the windows of the defendant's car to protect it from the rain. The money was admitted in evidence, for to see what is patent and obvious does not constitute a search.<sup>53</sup> Certainly the officers are not required or expected to perform their duties with their eyes closed. The same rule is applied to the instance in which

<sup>45</sup> *Kelly v. State*, 39 Ala. App. 572, 195 So. 2d 687 (1958); *Crowell v. State*, 14 Tex. Crim. 299, 180 S.W.2d 343 (1944).

<sup>46</sup> *State v. D. E. Howard*; *State v. J. Howard*, 274 N.C. 186, 162 S.E.2d 495 (1968); *People v. Cattaneo*, 6 Ill. 2d 122, 126 N.E.2d 692 (1955).

<sup>47</sup> *United States v. Lee*, 274 U.S. 559 (1927); *United States v. Williams*, 314 F.2d 795 (6th Cir. 1963).

<sup>48</sup> *People v. Shockey*, 67 Ill. App. 133, 213 N.E.2d 573 (1966).

<sup>49</sup> *McSheriden v. State*, 43 Al. A. 239, 187 So. 2d 294 (1966); *State v. N. Giles*, 254 N.C. 499, 119 S.E.2d 394 (1961).

<sup>50</sup> *State v. Griffin*, 84 N.J. 508, 202 A.2d 856 (1964).

<sup>51</sup> *Id.*

<sup>52</sup> *People v. Cattaneo*, 6 Ill. 2d 122, 126, N.E.2d 692 (1955).

<sup>53</sup> *Fagundes v. United States*, 340 F.2d 673 (1st Cir. 1965); *Price v. United States*, 348 F.2d 68 (5th Cir. 1957).

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the immigration patrol, while checking occupant's citizenship, noticed defendant trying to conceal boxes containing marijuana.<sup>54</sup>

## CONSENT

The Fourth Amendment, which secures an individual's person, his home, his papers and property, including his automobile, from "unreasonable searches and seizures"<sup>55</sup> is one of the most important cornerstones of the American judicial process. A person, nonetheless, has an inherent right to waive his constitutional rights, if he voluntarily,<sup>56</sup> knowingly and intelligently,<sup>57</sup> unequivocally and specifically<sup>58</sup> gives officers consent to search; provided the search is free from any duress or coercion, actual or implied.<sup>59</sup> In addition, the person must be cognizant of his rights in the vehicle,<sup>60</sup> before he can intelligently waive them. Certainly, one can not intelligently surrender a right which he is not aware that he has.<sup>61</sup>

The requirement of knowledge of one's rights is to prevent the possibility that the ignorant may surrender his rights which he has an inherent right to enjoy. The defendant, then, must be warned of his right to refuse a warrantless search. Notice of defendant's Fourth Amendment rights is just as important and necessary as the notice required by *Miranda v. Arizona* in regard to the Fifth Amendment right of right to counsel.<sup>62</sup> Thus, materials obtained from a warrantless search will not be admitted in evidence in absence of evidence that defendant was warned or that he was aware of his right to refuse a search without a warrant.<sup>63</sup> However, once it is established that a person consented to a warrantless search, his constitutional right is deemed waived and he may not thereafter complain of the search.<sup>64</sup>

In testing to determine whether the accused has waived his Fourth Amendment rights, it is deemed that one has not voluntarily consented, if he has denied his guilt and assured the police that he has nothing to

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<sup>54</sup> *Haerr v. United States*, 240 F.2d 533 (5th Cir. 1957).

<sup>55</sup> *Edwards v. State*, 83 Okla. Crim. 340, 177 P.2d 143 (1947).

<sup>56</sup> *Wren v. United States*, 352 F.2d 617 (10th Cir. 1965).

<sup>57</sup> *United States v. Balalock*, 255 F. Supp. 268 (1966).

<sup>58</sup> *United States v. Thompson*, 356 F. 2d 216 (2d Cir. 1965).

<sup>59</sup> *United States v. Vickers*, 387 F.2d 703 (4th Cir. 1967).

<sup>60</sup> *Wren v. United States*, 352 F.2d 617 (10th Cir. 1965); *McDonald v. United States*, 307 F.2d 272 (10th Cir. 1962); *United States v. Balalock*, 255 F. Supp. 268 (1966).

<sup>61</sup> *United States v. Balalock*, 255 F. Supp. 268 (1966).

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> *State v. Colson*, 274 N.C. 295, 163 S.E.2d 376 (1968).

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hide and that they will not find anything, even though he subsequently encourages the policeman to search. The rationale is that no sane person who has denied his guilt would actually consent to a search which offers a certain chance that contraband will be found.<sup>65</sup> But, consent is given if the person admits his guilt, instead of denying it and permits the search without a warrant.<sup>66</sup> Note that a person voluntarily giving his consent does not have to have an affirmative desire for the search to be conducted.<sup>67</sup> On the other hand, if the person allows a warrantless search in a mistaken belief that he does not have anything which will incriminate him, and the officers do find incriminating evidence, consent is judged to have been given and the evidence is admissible.<sup>68</sup> In such a case, it would be hard to find clearer evidence of a person giving his consent voluntarily.<sup>69</sup> The same is true where one consents in hope that the officers are in a routine check and will move on, or where one consents in the belief that the officers have caught him and that it is to his advantage and interest to cooperate with them.<sup>70</sup> Consent is also deemed given where defendant consented to the search, but did not anticipate that the policemen would examine behind the car door's upholstery.<sup>71</sup>

To determine whether any coercion was applied, the court will scrutinize the circumstances, not merely the words, under which consent allegedly was given and will weigh the presumption against waiver and consent.<sup>72</sup>

Thus, alleged consent while defendant is in custody or in jail is not a voluntary consent. Because once in jail, there is hardly anything else the defendant could have said.<sup>73</sup> Likewise, exhaustive questioning or persistent demands constitute coercion, thus, the defendant is deemed not to have given his consent. However, the presence of an officer, with all his police paraphernalia alone, but absent any coercive words or acts does not amount to coercion.<sup>74</sup> But, where the officer displays his badge and says,

<sup>65</sup> *Channel v. United States*, 285 F.2d 217 (9th Cir. 1960); *Higgins v. United States*, 209 F.2d 819 (D.C. Cir. 1954).

<sup>66</sup> *United States v. Vickers*, 387 F.2d 703 (4th Cir. 1967).

<sup>67</sup> *United States v. Mitchell*, 322 U.S. 65 (1949).

<sup>68</sup> *United States v. De Vino*, 190 F. Supp. 483 (1961); *Higgins v. United States*, 209 F.2d 819 (D.C. Cir. 1954).

<sup>69</sup> *United States v. Simpson*, 353 F.2d 530 (2d Cir. 1965).

<sup>70</sup> *United States v. Thompson*, 356 F.2d 216 (2d Cir. 1965).

<sup>71</sup> *Grice v. United States*, 146 F.2d 849 (4th Cir. 1945).

<sup>72</sup> *Wion v. United States*, 325 F.2d 420 (5th Cir. 1963).

<sup>73</sup> *Judd v. United States*, 190 F.2d 649 (D.C. Cir. 1951); *United States v. Novero*, 58 F. Supp. 275 (1944).

<sup>74</sup> *United States v. Thompson*, 356 F.2d 216 (2d Cir. 1965); *United States v. Como*, 240 F.2d 891 (2d Cir. 1965).

"I am here to search," and in response defendant says, "All right, go ahead," the display of the badge and the officer's declaration constitute coercion and the defendant has not voluntarily consented.<sup>75</sup> Also, where consent is accorded to a show of arms as where patrolmen with drawn pistol and a riot gun order the occupants of an automobile to get out and arrested them, the alleged consent is not regarded as voluntary.<sup>76</sup>

A person is deemed to have voluntarily consented when permission to search is given in response to a threat to procure a search warrant,<sup>77</sup> but this is not so where the threat to get a search warrant is accompanied with the threat to impound the car.<sup>78</sup> The same result arises where the officers announce that they have a search warrant, when in fact they do not have a warrant at all or the warrant proves not to be valid.<sup>79</sup>

Consent may also be given by the person's conduct. Where defendant has volunteered to open the trunk of his automobile, such conduct constitutes an invitation to search and he can not afterwards complain of an unreasonable search when the contraband is admitted in evidence.<sup>80</sup>

The rule here, then, is that if a person consents to a search, he waives his right to complain that the search is unreasonable as prohibited by the Fourth Amendment, and the evidence is admissible against him.

#### WHO MAY OBJECT

The Fourth Amendment grants a personal privilege and an individual's right against unreasonable search only to the person whose rights have been encroached upon.<sup>81</sup> However, before a search and seizure is rendered unreasonable, defendant must assert proprietary or possessory interest in that which was searched and seized and sought to be introduced into evidence against him.<sup>82</sup>

A passenger in an automobile may not invoke the amendment that

<sup>75</sup> *United States v. Slusser*, 270 F. 818 (S.D. Ohio 1921).

<sup>76</sup> *Weed v. United States*, 340 F.2d 827 (10th Cir. 1965); *United States v. Marquette et al.* 271 F. 120 (N.D. Cal. 1920).

<sup>77</sup> *Gotterdam v. United States*, 5 F.2d 673 (6th Cir. 1925); *United States v. Baldocci*, 42 F.2d 567 (S.C. Cal. 1930); *Hamilton v. North Carolina*, 260 F. Supp. 632 (1966).

<sup>78</sup> *Weed v. United States*, 340 F.2d 827 (10th Cir. 1965); *Graham v. State*, 86 Okla. Crim. 9, 184 P.2d 984 (1947).

<sup>79</sup> *Bumper v. North Carolina*, 391 U.S. 543 (1968); *Meno v. State*, 197 Ind. 16, 164 N.E. 93 (1925).

<sup>80</sup> *State v. C. Miller*, 246 N.C. 608, 99 S.E.2d 795 (1957); *State v. Grace Brown*; *State v. C. E. Jones*, 247 N.C. 539, 101 S.E.2d 418 (1958).

<sup>81</sup> *State v. McPeak*; *Cordell and Campbell*, 243 N.C. 243, 90 S.E.2d 501 (1955); *State v. Hamilton*, 264 N.C. 277, 141 S.E.2d 506 (1965).

<sup>82</sup> *Baskerville v. United States*, 227 F.2d 454 (10th Cir. 1955).

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the search was unreasonable, where the owner of the vehicle has consented to the search.<sup>83</sup> But, a person has grounds to complain, where he is not the driver, but is in possession and has the right of control of the vehicle.<sup>84</sup> Likewise, a lessee of a car who is in possession of the vehicle has standing to object to an unreasonable search because he has a legal possessory interest which is protected by the Fourth Amendment.<sup>85</sup> But one who hires another to chauffeur him around town—taxi cab situation—has no right to object because the right of possession and control remains in the driver of the car.<sup>86</sup> On the other hand a bailee has standing to object to the introduction of evidence obtained from an unreasonable warrant because of his possessory interest.<sup>87</sup>

One who disclaims ownership or possession of what is being sought to be introduced in evidence, has no right to object because the constitutional protection is only extended to those who have a proprietary or possessory interest in the property.<sup>88</sup> A thief, then, has no legal possession or legal interest in a stolen car; thus, he has no constitutional standing to object to the methods of seizure nor to the introduction of the evidence seized.<sup>89</sup>

D. L. VILLARREAL

### **The Right to Resist an Unlawful Arrest Amended**

The increased conflict between police and citizenry today, and the cry for law and order, make the question of individual rights crucial. Decisions governing police practices and the rights of the arrested individual have generally increased personal protections. But the common law right to resist an unlawful arrest is now being scrutinized and chiseled away. It is curious that a right that has been firmly established for over three hundred years is waning.

<sup>83</sup> *State v. McPeak, Cordell and Campbell*, 243 N.C. 283, 158 S.E.2d 511 (1968).

<sup>84</sup> *State v. J. Bishop*, 272 N.C. 283, 158 S.E.2d 511 (1968).

<sup>85</sup> *Weed v. United States*, 340 F.2d 827 (10th Cir. 1965).

<sup>86</sup> *State v. Sylvester Dawson*, 262 N.C. 607, 138 S.E.2d 234 (1964).

<sup>87</sup> *United States v. Eldrige*, 302 F.2d 463 (4th Cir. 1962).

<sup>88</sup> *Baskerville v. United States*, 227 F.2d 454 (10th Cir. 1955); *Wilson v. United States*, 218 F.2d 754 (10th Cir. 1955); *People v. Exum*, 382 Ill. 204, 47 N.E.2d 56 (1943).

<sup>89</sup> *Williams v. United States*, 323 F.2d 90 (10th Cir. 1963).