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REASONABLE SUSPICION AND PROBABLE CAUSE IN AUTOMOBILE SEARCHES: A VALIDITY CHECKLIST FOR POLICE, PROSECUTORS, AND DEFENSE ATTORNEYS

In *United States v. Ross*,[1] the Supreme Court held that when police legitimately stop a vehicle and have probable cause to believe the vehicle contains contraband, the police can conduct a warrantless vehicle search that is as thorough as a magistrate could authorize by a warrant.[2] After *Ross*, the legitimacy of a warrantless vehicle search depends upon whether police have a reasonable suspicion[3] to stop the vehicle[4] and

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[1] 456 U.S. ____, 102 S. Ct. 2157 (1982).

[2] *Id.* at 2159, 2170-72.

[3] *See* 102 S. Ct. at 2159, 2168 n.22, 2172; *see also infra* text accompanying notes 17-60 (discussion of reasonable suspicion). In *United States v. Ross*, an informant's tip, supported by police observance of a vehicle and an individual described by the informant, provided police with a reasonable suspicion to believe that the driver was engaged in drug trafficking. 102 S. Ct. at 2160. The informant in *Ross* reported observing an individual selling narcotics and stated that more drugs were in the trunk of a parked vehicle. *Id.* From the informant's detailed descriptions, police recognized the defendant and his automobile. *Id.* The officers ran computer checks on both the defendant and the automobile to ascertain the accuracy of the informant's descriptions. *Id.*

[4] *See* Carroll v. United States, 267 U.S. 132, 153 (1925). In *Carroll*, the Supreme Court established the automobile exception to the fourth amendment's warrant requirement. *Id.* at 149, 153-56. The *Carroll* Court held that a vehicle's mobility provides an exigent circumstance justifying a warrantless search. *Id.* at 153. The Supreme Court expanded the automobile exception in *Chambers v. Maroney* to allow warrantless searches even when circumstances indicate that a vehicle is not mobile. *See* 399 U.S. 42, 52 (1970) (once police establish probable cause to search vehicle, warrantless search is valid at scene of stop or at police station); Texas v. White, 423 U.S. 67, 68 (1975) (warrantless search of vehicle exclusively within police custody valid even though police waited one hour after impounding vehicle to search); *see also* Cooper v. California, 386 U.S. 58, 62 (1967) (valid warrantless search of vehicle impounded under forfeiture proceedings for narcotics violation); Cady v. Dombrowski, 413 U.S. 433, 437-43 (1973) (valid warrantless search of vehicle involved in accident and in police custody); South Dakota v. Opperman, 428 U.S. 364, 375-76 (1976) (valid warrantless search of vehicle impounded for parking violations).

An individual's reduced privacy in a vehicle also presents justifications for allowing warrantless vehicle searches. *See* United States v. Ross, 456 U.S. ____, 102 S. Ct. 2157, 2171 (1982) (individual's privacy interests diminish in vehicle). Three reasons for an individual's reduced expectations of privacy in a vehicle have evolved from Supreme Court automobile exception decisions. *See* Katz, *Automobile Searches and Diminished Expectations in the Warrant Clause*, 19 AM. CRIM. L. REV. 557, 570 (1982) (discussion of justifications for automobile exception). First, people use automobiles for transportation on public roads where the automobile's occupants and contents are in plain view. *See* Cardwell v. Lewis, 417 U.S. 583, 590-91 (1974) (vehicle and its occupants are open to public scrutiny). Second, an automobile seldom serves as a repository for personal effects. *See id.* (individuals generally do not store personal effects in vehicle). Finally, the government extensively regulates vehicles. *See* Cady v. Dombrowski, 413 U.S. 433, 440-42 (1973) (officers have more contact

whether police have probable cause[5] to search the vehicle.[6] Before *Ross*, the Court held that police could not search a container during a warrantless vehicle search unless the container revealed its contents to public view.[7] The Court had reasoned that police could not search a container that concealed its contents from pulic view[8] because the container's owner expected the contents to remain private.[9] The *Ross* Court, however, stated that the fourth amendment's protection against warrantless searches[10]

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with vehicles because states require vehicle registration, operator licenses, and operation regulation).

[5] *See* United States v. Ross, 102 S. Ct. 2157, 2163 n.8, 2171-72 (1982); *see also infra* text accompanying notes 61-111 (discussion of probable cause). In *United States v. Ross*, police stopped Ross after receiving information that Ross was involved in ongoing drug trafficking and that his automobile contained narcotics. 102 S. Ct. at 2160, 2168 n.22. Police verification of an informant's description of Ross and the vehicle provided probable cause to search Ross's automobile. *Id.*

[6] *See* 102 S. Ct. at 2159, 2172 (*Ross* requirements for valid warrantless vehicle search).

[7] *See* Robbins v. California, 453 U.S. 420, 424-29 (1981) (overruled by United States v. Ross, 456 U.S. ____ (1982)). In *Robbins v. California*, the Supreme Court held that unless a closed container in an automobile reveals its contents to plain view, the fourth amendment protects the container from a warrantless search. 453 U.S. at 428-29. The *Robbins* Court limited a warrantless search of a container found in a vehicle because the container's owner had constitutionally protected expectations of privacy that the container's contents would remain concealed from public view. *Id.* at 426-28; *see infra* text accompanying note 9 (discussion of owner's privacy expectations in closed, opaque containers).

[8] *See infra* text accompanying notes 98-110 (discussion of plain view doctrine).

[9] *See* Robbins v. California, 453 U.S. at 428 (fourth amendment protects owner's privacy expectations in container that conceals contents); Katz v. United States, 389 U.S. 347, 351-52 (1967). In *Katz*, the Supreme Court held that the fourth amendment protects whatever an individual places inside a container when the container does not expose its contents to public scrutiny. *Id.* The *Katz* Court also held, however, that the fourth amendment does not protect items that an individual knowingly exposes to plain view. *Id.* at 351. The Court stated that the fourth amendment protects a person from unreasonable police searches and seizures whenever a person has a reasonable expectation of privacy. *Id.* at 352-53. Before *Katz*, the Court relied on property law to define protected areas and to determine whether a search unreasonably invaded a protected area. *See* Olmstead v. United States, 277 U.S. 438, 464-66 (1928) (overruled by Katz v. United States, 389 U.S. 347, 353 (1967)) (discussion of "property law approach" to fourth amendment protection against warrantless searches). The *Olmstead* Court required a physical trespass before a search was unreasonable under the fourth amendment. *Id.* at 466. In *Olmstead*, the Supreme Court upheld a warrantless telephone tap because the telephone projected words outside the defendant's home. *Id.* The Court found no illegal search and seizure because there was no physical invasion into the defendant's home. *Id.*; *see* Note, *From Private Places to Personal Privacy: A Post-*Katz *Study of Fourth Amendment Protection*, 43 N.Y.U. L. REV. 968, 971-78 (1968) (discussion of change of emphasis from property rights to privacy rights in warrantless search cases).

[10] *See* U.S. CONST. amend. IV. The fourth 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.

Id.

Generally, a search is per se unreasonable unless conducted pursuant to a warrant supported by probable cause. *See* United States v. Katz, 389 U.S. 347, 357 (1967). Although a warrantless search is per se unreasonable, the Supreme Court has established thirteen exceptions to the fourth amendment's warrant requirement:

(a) *Inventory search of vehicle*—When police have lawfuly impounded or seized a vehicle police may conduct a routine, warrantless search to inventory the vehicle's contents. *See* South Dakota v. Opperman, 428 U.S. 364, 375-76 (1976) (warrantless search of impounded automobile's interior and glove box valid); Cady v. Dombrowski, 413 U.S. 433, 448 (1973) (warrantless search of trunk of seized automobile valid).

(b) *Hot pursuit*—Police may follow a suspect into a building and search the building without a warrant to find the suspect. *See* United States v. Santana, 427 U.S. 38, 42-43 (1976) (emergency pursuit of suspect by police may begin in public place and extend to private place); Warden v. Hayden, 387 U.S. 294, 298-300 (1967) (exigencies of circumstance may provide police reasonable entry into house entered by armed suspect).

(c) *Border and customs searches*—Government officials may search a person and his property at an international boundary without probable cause. *See* Almeida-Sanchez v. United States, 413 U.S. 266, 272-75 (1973) (national self-protection justifies warrantless searches at international borders); United States v. Thirty-Seven Photographs, 402 U.S. 363, 376 (1971) (customs agents may seize illegal materials without search warrant).

(d) *Highly regulated business*—Government officials can search regulated businesses during business hours. *See* United States v. Biswell, 406 U.S. 311, 316-17 (1972) (warrantless search of firearms dealership to inspect records valid); *see also infra* note 113 (warrantless search of business based on implied consent valid).

(e) *Stop and frisk*—Police may stop a person suspected of committing a crime, pat the person's outer clothing, and reach inside clothing to seize an object believed to be a weapon. *See* Terry v. Ohio, 392 U.S. 1, 30-31 (1968) (warrantless pat-down of person questioned by police valid); *infra* text accompanying notes 19-28 (discussion of *Terry*).

(f) *Abandoned property*—Police may conduct a warrantless search of property reasonably assumed abandoned. *See* Abel v. United States, 362 U.S. 217, 240-41 (1960) (warrantless search of wastepaper basket after suspect vacated hotel valid because suspect had abandoned basket's contents).

(g) *Emergency aid*—Police may enter and search a building without a search warrant to find persons in need of immediate aid. *See* Mincey v. Arizona, 437 U.S. 385, 392 n.7 (1978) (fourth amendment does not bar police from making warrantless entries and searches when person is in need of immediate aid).

(h) *Consent*—Police may search a person's property with the person's voluntary permission. *See* Schneckloth v. Bustamonte, 412 U.S. 218, 222 (1973) (warrantless automobile search conducted with voluntary consent of owner valid); Zap v. United States, 328 U.S. 624, 628 (1946), *rev'd on other grounds*, 330 U.S. 800 (1946) (consent to examine business documents waives fourth amendment protections); *infra* text accompanying note 113 (discussion of consent).

(i) *Plain view and open fields*—Police do not need a warrant to search and seize an item inherently criminal in nature that is found if police are lawfully on the premises where the search occurs. *See* Air Pollution Variance Bd. of Western Alfalfa Corp., 416 U.S. 861, 865 (1974) (fourth amendment protections do not extend to pollution seen from field); Hester v. United States, 265 U.S. 57, 58-59 (1924) (moonshine seen by revenue officers 50 yards away is not search). *But see infra* note 99 (discussion of plain view discovery of evidence in search and nonsearch circumstances).

(j) *Fire and homicide investigations*—Fireman may enter a building

varies in particular settings.[11] The *Ross* Court allowed the search of a container found inside a vehicle[12] because society's interests in crime prevention outweigh an individual's privacy expectations.[13]

The *Ross* Court held that the privacy expectations of individuals occupying a vehicle diminish when police legitimately stop the vehicle and have probable cause to believe the vehicle contains contraband.[14] After

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without a search warrant to fight a fire and may remain briefly in the building to investigate the cause of the fire. *See* Michigan v. Tyler, 436 U.S. 499, 511 (1978) (firemen may later re-enter building after fire extinguished). Police at the scene of a homicide or other major felony briefly may search the area for victims and the felon. *See* Mincey v. Arizona, 437 U.S. 385, 392-93 (1978) (police may enter apartment for initial emergency search following homicide report).

(k) *Detention facilities*—Prison and jail officials may search prisoners and cells at any time. *See* Bell v. Wolfish, 441 U.S. 520, 555-59 (1979) (strip searches and body cavity searches of prisoners do not violate fourth amendment); Lanza v. New York, 370 U.S. 139, 143-45 (1962) (warrantless monitoring of prisoner's conversations does not violate fourth amendment).

(l) *Search incident to arrest*—Police do not need a search warrant to search an arrestee and the area within the arrestee's immediate control. *See* New York v. Belton, 453 U.S. 454, 457-63 (1981) (warrantless search of a vehicle's passenger compartment, glove compartment, or of jacket found inside the passenger compartment does not violate fourth amendment); United States v. Robinson, 414 U.S. 218, 235-36 (1973) (warrantless search of cigarette pack in arrestee's pocket does not violate fourth amendment); Chimmel v. California, 395 U.S. 752, 768 (1969) (warrantless search of arrestee's entire house does violate fourth amendment).

(m) *Vehicles*—Police may search a vehicle without a warrant upon probable cause that the vehicle contains contraband. *See* Carroll v. United States, 267 U.S. 132, 149, 153-56 (1925) (warrantless vehicle searches do not violate fourth amendment because vehicle's mobility provides exigent circumstances); *supra* note 4 (discussion of development of automobile exception).

Note, Automobile Container Searches: On the Road to Brighter Law? *Robbins v. California* and *New York v. Belton* (December 12, 1981) (unpublished manuscript on file with Law Review office).

[11] *Id.* at 2171. In *United States v. Ross*, the Supreme Court held that an individual's privacy interests must yield to a magistrate's determination of probable cause to search a container which may contain the object of the search. *Id.* The *Ross* Court further held that when police have probable cause to search, prior approval of a magistrate is unnecessary. *Id.* at 2172. The scope of a warrantless container search based on probable cause is equivalent to the scope of a container search pursuant to a warrant supported by probable cause. *Id.*

[12] *See* United States v. Ross, 456 U.S. ____, 102 S. Ct. 2157, 2172-73 (1982); *see also supra* text accompanying note 4 (discussion of automobile exception to fourth amendment's warrant requirement).

[13] *See* United States v. Ross, 102 S. Ct. 2157, 2171 (1982); *supra* note 10 (discussion of exemptions to fourth amendment's warrant requirement). The *Ross* Court explained that in exceptional situations, such as a customs search or a search incident to arrrest, police may search a container carried by an individual without a warrant. 102 S. Ct. 2157, 2171. Absent an exception to the fourth amendment's warrant requirement, police must have probable cause to search a container whether with or without a warrant. *Id.*; *see infra* text accompanying notes 61-111 (discussion of probable cause).

[14] *See* United States v. Ross, 102 S. Ct. 2157, 2171-72 (1982) (individual's privacy expectations in vehicle and contents cannot survive officer's probable cause determination that vehicle contains contraband).

Ross, police, prosecutors, and defense attorneys in warrantless vehicle search cases no longer must consider whether an individual had constitutionally protected privacy interests in a container found inside a vehicle.[15] Instead, police, prosecutors and defense attorneys must consider whether a vehicle stop is legitimate and whether probable cause exists to search the vehicle for contraband.[16]

For police to legitimately stop a vehicle, an officer must have a reasonable suspicion that an individual in the vehicle is violating or has violated the law.[17] A reasonable suspicion is a suspicion that would justify a reasonably prudent man in like circumstances to believe that danger threatens his or others' safety.[18] Reasonable suspicion to stop a vehicle arises when a police officer recognizes specific, articulable facts, and inferences from those facts, that justify an officer's intrusion upon an individual's privacy to investigate a possible violation of the law.[19]

In *Terry v. Ohio*,[20] the Supreme Court presented a two-part inquiry for determining when a police officer reasonably can stop an individual and investigate suspicious activity.[21] In *Terry*, two men attracted a

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[15] *See* Latzer, *Searching Cars and Their Contents*: United States v. Ross, 18 CRIM. L. BULL. 381, 400-05 (1982) (*Ross* exchanges individual privacy considerations for more certain standard for permitting warrantless search of vehicles and containers inside).

[16] *See infra* text accompanying notes 17-60 (discussion of reasonable suspicion to stop vehicle); *infra* text accompanying notes 61-111 (discussion of probable cause to search vehicle).

[17] *See* United States v. Ross, 102 S. Ct. 2157, 2163 n.8, 2168 n.22, 2172 (1982) (legitimate reasonable suspicion that automobile contains narcotics permits officer to stop vehicle); *see also infra* text accompanying notes 18-35 (discussion of reasonable suspicion necessary for an officer legitimately to stop a vehicle).

[18] *See* Terry v. Ohio, 392 U.S. 1, 27 (1967). In *Terry*, the Supreme Court considered the requirements for reasonable suspicion to permit an officer to stop and frisk an individual on the street. *Id.* at 20. The *Terry* Court stated that an officer need not have probable cause to arrest an individual, nor must the officer be certain an individual is carrying a weapon, to make an investigatory stop. *Id.* at 22. Although reasonable suspicion requires that an officer must have a reasonable belief that danger threatens himself or others, probable cause requires that an officer must have knowledge based upon articulable facts that support a reasonable belief that a crime is being committed or has been committed. *See* Brinegar v. United States, 338 U.S. 160, 172-76 (1949) (definition of probable cause). The *Terry* Court emphasized that a reasonable stop and search of an individual is necessary to protect police when an officer believes an individual is armed. 392 U.S. at 27. Another possible justification for allowing police to make an investigatory stop may be to prevent officers from having to choose between dereliction of duty, by refraining from making an investigatory stop, and risk of death, by stopping an individual without being able to search for weapons. *See* New York v. Earls, 431 U.S. 943, 948-49 (1977) (Burger, C.J., dissenting to denial of certiorari).

[19] *See* Terry v. Ohio, 392 U.S. 1, 19-22 (1967) (establishing standard for determining when a police officer has reasonable suspicion to stop an individual to investigate possible criminal activity).

[20] 392 U.S. 1 (1967).

[21] *Id.* at 19-20. In determining the reasonableness of a stop, the Supreme Court in *Terry* considered the nature and extent of the interests involved. *Id.* at 22. The *Terry* Court cited effective crime prevention and detection, a policeman's safety, danger to the public,

police officer's attention because the men paced back and forth in front of a store and repeatedly gazed into the store's window.[22] The officer stopped the men because of a suspicion that the two were "casing" the store for a robbery.[23] The officer frisked one of the men and found a pistol.[24] The *Terry* Court upheld the officer's stop.[25] First, the *Terry* Court held that for a police officer to make a legitimate investigatory stop, the officer first must suspect illegal conduct before the officer takes any action.[26] Second, the Court held that the officer's action must relate reasonably in scope to the circumstances justifying the officer's initial interference.[27] Consequently, the *Terry* Court held that the officer reasonably stopped the men because their suspicious behavior justified the officer's belief of possible criminal activity occurring.[28]

The Supreme Court applied the *Terry* reasonable suspicion standard to an investigatory stop of a vehicle's driver in *Adams v. Williams*.[29] In *Adams*, a tip from a reliable informant gave a police officer reasonable suspicion to stop a driver because police suspected that the driver's parked vehicle contained narcotics and a gun.[30] The officer in *Adams* recognized the described vehicle while patrolling a high-crime area at 2:15 a.m.[31] The policeman reached through the driver's open window and found a revolver in the driver's belt, exactly where the informant had indicated.[32] The *Adams* Court held that information provided by another person, as well as by an officer's personal observation, can supply

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and intrusion on individual rights as interests involved in allowing police to stop and frisk a person. *Id.* at 22-27.

[22] *Id.* at 6. In *Terry*, two men each made five or six trips in front of a store, pausing to look into the store each time they walked past. *Id.* After making several trips, the two men conferred with a third man. *Id.*

[23] *Id.* In *Terry*, a policeman approached three men he suspected of casing a store for a possible robbery. *Id.* The officer asked the men for names, but received mumbled replies. *Id.* at 7. The officer then grabbed Terry and frisked him. *Id.*

[24] *Id.* at 7.

[25] *Id.* at 8.

[26] *Id.* at 20. The *Terry* Court found that an officer reasonably stopped three men because the men's actions justified the officer's belief that the men were armed for robbery. *Id.* at 28. Accordingly, the officer had to make a quick decision to protect himself and others from possible danger. *Id.*

[27] *Id.* at 20, 29. In *Terry*, the scope of an officer's stop and frisk of three men suspected of carrying weapons consisted of patting down the men's outer clothing. *Id.* Upon feeling a weapon, the policeman removed guns from two of the men's overcoats. *Id.* at 7. The Court held that the policeman confined himself to a minimal search to find and remove weapons. *Id.* at 30.

[28] *Id.* at 30-31.

[29] 407 U.S. 143, 144-47 (1972).

[30] *Id.* at 144-45. In *Adams v. Williams*, a know informant approached a police cruiser in a high crime area and told an officer that an individual in a nearby vehicle had narcotics and a gun. *Id.*

[31] *Id.*

[32] *Id.* at 145.

reasonable suspicion to stop a vehicle's driver.[33] The Court explained that once a policeman has a reasonable suspicion to fear for his safety, he legally can insure his own safety by making a limited intrusion upon a vehicle's driver.[34] The *Adams* Court held that the informant's tip, verified by the officer's observation of the described vehicle parked in a high crime area early in the morning, plus legitimate safety considerations, supported the policeman's reasonable suspicion to stop the vehicle's driver and investigate suspected unlawful possession of a gun.[35]

Suspected illegal activities that support a reasonable suspicion to stop a vehicle range from minor traffic offenses to felonies.[36] A driver's actions may give police reasonable suspicion to stop a vehicle for a suspected minor traffic offense.[37] Driver actions constituting reasonable suspicion for police to stop a vehicle have included failure to signal a turn,[38] erratic driving,[39] and speeding.[40] Seemingly legal driver actions also have constituted reasonable suspicion.[41] For example, one court found that police had a reasonable suspicion to stop a vehicle because a driver did not look at an officer while passing the patrol car, the driver did not stop to talk to the officer, and the shabbily dressed driver was in a "real nice car."[42]

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[33] *Id.* at 147.

[34] *Id.* at 148.

[35] *Id.* at 147-49.

[36] *See infra* text accompanying notes 37-60 (discussion of suspected illegal activities supporting an officer's reasonable suspicion to stop a vehicle).

[37] *See infra* text accompanying notes 38-42 (driver's actions constituting reasonable suspicion to stop vehicle for traffic offenses); *see also* Preston v. United States, 376 U.S. 364, 365 (1964) (men seated for several hours in parked car and giving evasive answers when questioned by police supplied officers with reasonable suspicion to investigate possible vagrancy violation); Duncantell v. Texas, 563 S.W.2d 252, 254-56 (Tex. 1978) (driver proceeding slowly with automobile lights off, then speeding with lights on, established reasonable suspicion to stop vehicle), *cert. denied*, 439 U.S. 1032 (1978)

[38] *See* Michigan v. Thomas, 456 U.S. ____, 102 S. Ct. 3079, 3080 (1982) (per curiam) (driver's failure to signal left turn established reasonable suspicion to stop vehicle).

[39] *See* United States v. Schmidt, 662 F.2d 498, 501, 504 (8th Cir. 1981) (erratic driving, furtive behavior, and subsequent loading of objects into truck established reasonable suspicion to stop vehicle).

[40] *See* United States v. Haley, 669 F.2d 201, 202 (4th Cir. 1982) (excessive speed of vehicle established reasonable suspicion to stop automobile for speeding), *cert. denied*, 50 U.S.L.W. 3973, 3975 (June 15, 1982). The patrolman in *Haley* stated that he stopped a vehicle because he observed the speeding vehicle bearing out-of-state license plates. 669 F.2d at 202. The Fourth Circuit, however, did not mention the out-of-state plates when determining that the trooper reasonably stopped the speeding vehicle. *Id.* at 203-04.

[41] *See* North Carolina v. Fox, No. 8126SC1367, slip op. at ____ (N.C. Ct. App., Sept. 7, 1982) (driver's shabby dress, late-model car, failure to ask directions, and avoidance of officer's gaze established reasonable suspicion to stop vehicle).

[42] *Id.* at ____. In *Fox*, a policeman at 12:50 a.m. watched a late-modeled Chevrolet proceed slowly down a dead-end street surrounded by businesses. *Id.* at ____. The officer stated that several break-ins recently had occurred in the area. *Id.* at ____. The officer said that as

Suspected vehicle equipment or registration requirement violations also may constitute a reasonable suspicion for an officer to stop a vehicle.[43] Police legitimately have stopped vehicles for a broken side mirror,[44] burned out headlights and license plate lights,[45] expired license plates,[46] and improper license plates.[47] Police also validly have stopped a vehicle because of a reasonable suspicion that a driver may have been driving with a revoked license.[48]

In addition to minor traffic offenses or equipment violations, suspected major crimes that have supported a reasonable suspicion to stop a vehicle include smuggling illegal aliens,[49] transporting drugs,[50] and transporting illegal firearms.[51] Informants' tips that a described vehicle

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the vehicle turned and proceeded out of the dead-end, the driver "cocked" his head away from the officer to avoid the policeman's gaze. *Id.* at ____. The officer said that the driver did not "fit the area" because the driver was shabbily dressed and had forty or fifty shoulder-length braids. *Id.* at ____. The officer did not observe any traffic or equipment violations. *Id.* at ____. After stopping the driver, however, the policeman found that the driver did not have a drivers' license, was driving a stolen car, and was an escaped prisoner. *Id.* at ____.

[43] *See infra* notes 44-48 (discussion of equipment violations constituting reasonable suspicion to stop vehicle).

[44] *See* United States v. Cleary, 656 F.2d 1302, 1302-03 (9th Cir. 1981) (broken side mirror on van established reasonable suspicion for police to stop vehicle for safety equipment violation), *vacated on other grounds*, 456 U.S. ____, 102 S.Ct. 2919 (1982).

[45] *See* Schneckloth v. Bustamonte, 412 U.S. 218, 220 (1973) (burned out headlight and license plate light established reasonable suspicion to stop vehicle for traffic violation).

[46] *See* Pennsylvania v. Mimms, 434 U.S. 106, 107 (1977) (expired license plate provided reasonable suspicion to stop vehicle for registration violation).

[47] *See* United States v. Matthews, 615 F.2d 1279, 1281 (10th Cir. 1980) (civilian vehicle bearing military license plates established reasonable suspicion to stop for improper use of government property).

[48] *See* United States v. Robinson, 414 U.S. 213, 220 (1973) (earlier check by officer provided reasonable suspicion to believe driver was operating vehicle with revoked license).

[49] *See* United States v. Cortez, 449 U.S. 411, 414-15, 421-22 (1981) (vehicle's large size, direction of travel, and time of trip near the border established reasonable suspicion to stop truck to investigate for suspected smuggling of illegal aliens).

[50] *See* United States v. Schmidt, 662 F.2d 498, 501, 504 (8th Cir. 1981) (informant's tip and police observation of individual loading unidentified objects into truck established reasonable suspicion to stop truck for trafficking marijuana); United States v. Watkins, 662 F.2d 1090, 1094, 1096 (4th Cir. 1981) (police officers' hearing sound of marijuana bales loaded into tractor-trailer, observing vessel and vehicles entering and leaving property of convicted smuggler, and knowledge of immediate customs search of departing vessel provided reasonable suspicion to stop van and tractor-trailer for transporting marijuana); United States v. White, 648 F.2d 29, 30-32, 42-43 (D.C. Cir. 1981) (anonymous tip giving detailed information verified by officer's surveillance established reasonable suspicion to stop vehicle for ongoing drug trafficking); United States v. Vargas, 643 F.2d 296, 297-98 (5th Cir. 1981) (per curiam) (reliable information that vessel carried narcotics, police observation of men hurrying toward vehicle near dock, and men's difficulty in bending to enter vehicle established reasonable suspicion that the vehicle's occupants carried narcotics).

[51] *See* Adams v. Williams, 407 U.S. 143, 144-45 (1972) (informant's tip verified by officer's observation established reasonable suspicion that vehicle's driver was carrying weapon); United States v. Moschetta, 646 F.2d 955, 957 (5th Cir. 1981) (informant's tip that individual would be leaving from particular address with firearms and silencers in briefcase,

contains counterfeit money[52] or a passenger being held against his will have provided police with reasonable suspicion to make a valid investigatory stop to question a vehicle's driver.[53] Information that a vehicle contains fleeing felons, such as escaping prisoners or armed robbers, also provides police with reasonable suspicion to stop a vehicle and investigate.[54] Police observation of illegal activity or evidence of a crime, as well as an informant's description of a particular vehicle involved in illegal activity, can provide a reasonable suspicion to stop a vehicle.[55] After police legitimately stop a vehicle upon reasonable suspicion, safety considerations justify an officer's ordering the vehicle's occupants out of the car.[56]

Police do not need reasonable suspicion to stop vehicles in certain circumstances.[57] Police at a road block can stop vehicles without reasonable suspicion if the officers stop every vehicle or a certain numbered pattern of vehicles that pass the road block.[58] For example, police could stop six vehicles in a row, permit the next six vehicles passing the road block to proceed, then stop the next six vehicles.[59] Police at

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along with police observation of suspected individual, established reasonable suspicion to stop vehicle individual was driving), *cert. denied*, 456 U.S. _____, 102 S. Ct. 2919 (1982).

[52] *See* United States v. Combs, 672 F.2d 574, 575-77 (6th Cir. 1982) (informant's tip provided reasonable suspicion to stop van to question occupants about counterfeit money).

[53] *See* United States v. Hart, 656 F.2d 595, 596-98 (10th Cir. 1981) (informant's tip that driver of camper was holding woman against her will, along with police surveillance of driver's suspicious actions, established reasonable suspicion to stop camper to investigate).

[54] *See* Rakas v. Illinois, 439 U.S. 128, 130 (1978) (police radio call describing armed robbery getaway car established reasonable suspicion for officer to stop similar vehicle); Virgin Islands v. Rasool, 657 F.2d 582, 584-85 (3d Cir. 1981) (information that vehicle in which prisoner escaped seen by fellow officer established reasonable suspicion for another officer to stop vehicle).

[55] *See* United States v. Ross, 456 U.S. _____, 102 S. Ct. 2157, 2160, 2168 n.22, 2172 (1982) (police observation of circumstances verifying informant's description of individual selling narcotics from vehicle on particular street established suspicion to stop vehicle for drug trafficking); *see also supra* notes 3 & 5 (discussion of *Ross*).

[56] *See* Pennsylvania v. Mimms, 434 U.S. 106, 109, 111 n.6 (1977). In *Mimms*, the Supreme Court held that a policeman's order for occupants to get out of a vehicle was a minor intrusion of an individual's rights. *Id.* at 111. The Court stated that once police legitimately stop a vehicle, police can order occupants to step out of the vehicle and stand on the side of the road. *Id.* The *Mimms* Court further stated that permitting officers to make occupants step out of the vehicle and stand on the side of the road reduces the hazard of accidental injury to an officer from traffic passing by the stopped vehicle. *Id.* at 109-11.

[57] *See infra* text accompanying notes 58-60 (discussion of when police do not need reasonable suspicion to stop vehicles passing roadblock).

[58] *See* Delaware v. Prouse, 440 U.S. 648, 663 (1979). In *Prouse*, the Supreme Court stated that although random checks of drivers for a vehicle's registration or for a driver's license were unreasonable, police reasonably could check all drivers and vehicles. *Id.* at 663. The Court emphasized that the alternative practice of stopping all drivers and vehicles would eliminate an unconstrained exercise of police discretion that made random checks unreasonable. *Id.*

[59] *Id.*

a road block, however, need a reasonable suspicion to stop vehicles randomly.[60]

Although only a reasonable suspicion usually is necessary for police to make a legitimate stop of a vehicle, probable cause usually is necessary for police to make a valid warrantless search of the vehicle.[61] Probable cause requires an officer to have personal knowledge of facts and circumstances from reasonably trustworthy information that is sufficient for a man of reasonable caution to believe that a crime is being committed or has been committed.[62] An officer's personal knowledge of suspected crime may come from personal observation, another policeman's observations,[63] or a reliable informant's tip verified by police observation of illegal acts.[64]

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[60] *Id.* at 653-63. In *Delaware v. Prouse*, the Supreme Court held that stopping an automobile and detaining the driver to check his driver's license and registration is unreasonable unless a police officer has at least a reasonable, articulable suspicion that the driver is unlicensed or that an occupant of the car is otherwise subject to seizure for violating the law. *Id.*

[61] *See* Brinegar v. United States, 338 U.S. 160, 175-76 (1949) (probable cause is necessary for officers to make warrantless vehicle search).

[62] *Id.* In *Brinegar*, the Supreme Court determined that a previous search of an individual's vehicle for liquor, together with a federal agent's observation of the individual loading liquor into the automobile and knowledge of the individual's reputation for hauling liquor, constituted probable cause for federal agents to search the individual's vehicle. *Id.* at 165-72.

[63] *See* United States v. Laughman, 618 F.2d 1067, 1072-73 (4th Cir. 1980). In *Laughman*, the Fourth Circuit held that as long as an officer ordering a search has knowledge of facts establishing probable cause to search a vehicle, officers conducting the search do not have to know the facts. *Id.* at 1072; *see also* Scher v. United States, 305 U.S. 251, 253 (1938) (officer's observation of illegal liquor established probable cause to search vehicle); United States v. Hirschorn, 649 F.2d 360, 365 (5th Cir. 1981) (officer's surveillance of wagering activities and evidence established probable cause to search vehicle); United States v. Ortega, 644 F.2d 512, 513-15 (5th Cir. 1981) (police surveillance of vessels suspected of transporting contraband established probable cause to search vessel).

[64] *See* United States v. Ross, 456 U.S. _____, 102 S. Ct. 2157, 2160 (1982) (informant's tip that individual was selling drugs from car, verified by patrolman's check, established probable cause to search for narcotics); Arkansas v. Sanders, 442 U.S. 753, 755 (1979) (informant's tip that individual arriving at airport would be carrying suitcase containing marijuana and police observation established probable cause to believe particular individual was transporting marijuana); Adams v. Williams, 407 U.S. 143, 144-45 (1972) (informant's tip that driver carried gun and contraband, verified by officer's grabbing gun, established probable cause to search vehicle for contraband). Generally, courts upholding an informant's tip and police observation as establishing probable cause emphasize that police observation outweighs the informant's tip as a basis for probable cause. *See* Scher v. United States, 305 U.S. 251, 254 (1938) (police observation of reported circumstances is more important than actual informant's tip to establish probable cause to search vehicle); United States v. Hirschhorn 649 F. 2d 360, 363 (5th Cir. 1981) (unknown informant's tip about wagering activities verified by police surveillance to established probable cause to search vehicle). Contraband in plain view also may reinforce an informant's tip to establish probable cause to search a vehicle. *See* United States v. Schmidt, 662 F.2d 498, 502-04 (10th Cir. 1981) (informant's tip insufficient to establish probable cause for house search, but tip plus plain view of contraband sufficient to establish probable cause to search truck near house).

Informants' tips supported by police observations have provided probable cause to search a vehicle suspected of transporting narcotics,[65] firearms,[66] or liquor.[67] Courts generally permit an informant's tip to provide probable cause only when police surveillance substantiates the information of suspected crime,[68] and the tip is reliable and supported by underlying circumstances.[69] For example, in *Aguilar v. Texas*,[70] police relied upon information from an unnamed informant to obtain a warrant to search an individual's house for narcotics.[71] The police did not set up surveillance to verify the informant's tip.[72] The *Aguilar* Court found the search warrant invalid.[73] The Court held that in determining an informant's reliability, an officer must have specific facts to support a conclusion that the informant is telling the truth and that the informant obtained the information in a reliable manner.[74]

In *Adams v. Williams*,[75] the Supreme Court, however, took a lenient view regarding an informant's reliability to provide police with probable cause for a warrantless vehicle search.[76] The *Adams* Court stated that an

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[65] *See* United States v. Ross, 456 U.S. _____, 102 S. Ct. 2157, 2160 (1982) (informant's tip that particular individual conducted ongoing drug trafficking from specific vehicle, supported by police surveillance of individual and vehicle, established probable cause to search vehicle); United States v. Ortega, 644 F.2d 512, 513-15 (5th Cir. 1981) (informant's tip that vessel transporting contraband, supported by police surveillance, established probable cause).

[66] *See* United States v. Moschetta, 646 F.2d 955, 956-59 (5th Cir. 1981) (informant's tip that individual carried firearms and silencers in briefcase, supported by police surveillance, established probable cause to search vehicle and briefcase), *cert. denied*, 456 U.S. _____, 102 S. Ct. 1613 (1982); *see also* Adams v. Williams, 407 U.S. 143, 147-49 (1972) (informant's tip concerning weapons and narcotics, suspicious circumstances, and officer's verification that individual carried gun established probable cause to search vehicle).

[67] *See* Scher v. United States, 305 U.S. 251, 253 (1938) (informant's tip plus police surveillance of vehicle transporting illegal liquor, established probable cause to search vehicle).

[68] *See* text accompanying notes 65-80 (courts allowing informant's tip to supply probable cause may also require police surveillance to support information of suspected crime).

[69] *See* Aguilar v. Texas, 378 U.S. 108, 114 (1964). In *Aguilar*, the Supreme Court held that when a police officer uses an informant's tip as a basis for probable cause for an affidavit to obtain a search warrant, the officer must show underlying circumstances supporting the validity of the information and the reliability of the informant. *Id.*; *see* Spinelli v. United States, 393 U.S. 410, 415-18 (1969). In *Spinelli*, the Supreme Court reaffirmed the *Aguilar* standard for permitting an informant's tip to establish probable cause. *Id.* at 415-16. The *Spinelli* Court explained that only the probability of criminal activity, not a prima facie showing of criminal activity, is the standard for establishing probable cause. *Id.* at 419.

[70] 378 U.S. 108 (1964).

[71] *Id.* at 109-10

[72] *Id.* at 109 n.1.

[73] *Id.* at 115-16.

[74] *Id.* at 113-15.

[75] 407 U.S. 143 (1972).

[76] *See* Adams v. Williams, 407 U.S. at 147 (reliability of informants' tips to establish probable cause may vary according to circumstances).

informant's tip may vary in reliability in different circumstances.[77] The Court held that a policeman had probable cause to arrest and search a vehicle's driver because the policeman found that the driver had a revolver in his belt where an informant had said the weapon would be.[78] The *Adams* Court further held that the officer's discovery of the gun corroborated the reliability of the informant's report that the vehicle contained narcotics.[79]

Courts have explained that in establishing probable cause, police observance of an illegal activity is more important than an informant's tip about the activity.[80] Police observance is a direct source of information, but an informant's tip is not. An officer's past observation of criminal activities[81] or an officer's unsupported belief of present criminal activities, however, are alone insufficient to establish probable cause for a warrantless vehicle search.[82] Actual practical and factual considerations at the time of the search must support an officer's knowledge of suspected criminal activity to establish sufficient probable cause to search a vehicle without a warrant.[83] For example, an officer's observa-

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[77] *Id.* at 147. In *Adams*, the Supreme Court found that an unverified informant's tip by itself may not be sufficient to establish probable cause to search. *Id.* The Court stated that once police corroborate the informant's reliability and consider surrounding circumstances, however, probable cause can exist to search or arrest. *Id.* The *Adams* Court also stated that police do not have to show the specific evidence necessary to support each element of an offense for conviction when establishing probable cause. *Id.* at 149.

[78] *Id.* at 148.

[79] *Id.*

[80] *See* Scher v. United States, 305 U.S. 251, 253-55 (1938) (although police had informant's tip, officers' observance of illegal liquor in vehicle established valid grounds for warrantless search of vehicle); United States v. Hirschhorn, 649 F.2d 360, 363, 365 (5th Cir. 1981) (unknown informant's tip supported by police surveillance established probable cause to search vehicle for evidence of illegal wagering).

[81] *See* Henry v. United States, 361 U.S. 98, 99-104 (1959) (officer's past observation of criminal activity insufficient to establish probable cause for present search). In *Henry*, the Supreme Court would not allow an officer's earlier observation of stolen radio shipments to establish probable cause to search a vehicle. *Id.* at 99-104. The *Henry* Court held that previous surveillance was not a reasonable ground to justify an officer's present belief that the packages observed in a vehicle also contained stolen radios. *Id.* at 103-04. Similarly, in *Dyke v. Taylor Implement Mfg. Co.*, the Supreme Court held that an officer's observation of a bullet hole in the side of an automobile was insufficient to establish probable cause to search the vehicle. *See* 391 U.S. 216, 220-21 (1968). The *Dyke* Court explained that because police did not know that someone had fired shots at the car, the bullet hole was insufficient to justify officers' beliefs that they would find evidence of an earlier shooting in a vehicle stopped for speeding and reckless driving. *Id.* at 218, 220-22.

[82] *See* Brinegar v. United States, 338 U.S. 160, 175-76 (1949) (officer must have knowledge of facts and circumstances reasonably supporting belief of criminal activity to establish probable cause for search); United States v. Bush, 647 F.2d 357, 362-65 (3d Cir. 1981) (officer's belief must have corroboration from reliable facts, circumstances, and information).

[83] *See* Adams v. Williams, 407 U.S. 143, 148-49 (1972) (court evaluates facts and circumstances at time of search to determine whether police had probable cause to act); Brinegar v. United States, 338 U.S. 160, 175 (1949) (probable cause determination depends

tion of a driver's actions, such as erratic driving, slurred speech, or efforts to flee, can provide probable cause to search a vehicle for alcohol or narcotics.[84] Police surveillance of persons loading suspected contraband into a vehicle also provides probable cause to search the vehicle for liquor,[85] gambling paraphernalia,[86] or drugs.[87]

Once an informant's tip and police surveillance establish probable cause, exigent circumstances can permit a search without a warrant.[88] The Supreme Court has allowed exigent circumstances to justify a warrantless search when delay in obtaining a warrant could endanger police officers or the public, or would result in loss or destruction of evidence.[89] For exigent circumstances to permit a warrantless search, the need for an officer to make a warrantless search must be readily apparent.[90] A vehicle's mobility generally provides an exigent circumstance to permit a warrantless search.[91] Other exigencies that permit a warrantless vehicle search include an officer's knowledge that chemicals stored in a mobile home could explode[92] or that a man in a camper is holding a woman against her will.[93] Danger to the public and to police officers is an

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upon probabilities from the facts and circumstances under which a reasonable, prudent man would act).

[84] *See* Duncantell v. Texas, 563 S.W.2d 252, 254-55 (Tex. 1978), *cert. denied*, 439 U.S. 1032 (1978). In *Duncantell*, the Texas Supreme Court held that police had probable cause to search a vehicle for narcotics and alcohol because of the driver's bizaare actions. 563 S.W.2d at 255. Police observed an automobile proceeding slowly without lights, then abruptly speeding with the lights on. *Id.* at 254. When police stopped the driver for speeding, he became angry and abusive, hit an officer, and tried to flee in the vehicle. *Id.* The driver appeared intoxicated and talked in slurred speech. *Id.* at 255. The Texas Supreme Court held that the driver's actions justified the police officers' beliefs that the vehicle contained alcohol or narcotics. *Id.*

[85] *See* Scher v. United States, 305 U.S. 251, 253 (1938) (probable cause established by police observation of liquor being loaded into vehicle).

[86] *See* United States v. Hirschhorn, 649 F.2d 360, 365 (5th Cir. 1981) (probable cause established by police observation of gambling evidence in vehicle).

[87] *See* United States v. Ortega, 644 F.2d 512, 513-15 (5th Cir. 1981) (probable cause provided by police observation of contraband being loaded onto vessel).

[88] *See* Arkansas v. Sanders, 442 U.S. 753, 759-60 (1979). In *Sanders*, the Supreme Court explained that exigent circumstances are those requiring an officer to act immediately to insure his or the public's safety, or to prevent the destruction of evidence. *Id.* at 759-60.

[89] *Id.*

[90] *Id.* at 763. The Supreme Court measures exigent circumstances immediately before a search. *Id.* Once circumstances creating an exigency are over, a warrantless search becomes unreasonable. *See* Sibron v. New York, 392 U.S. 40, 63-65 (1968) (exigent circumstances do not exist without reasonable grounds to believe officer in danger); Terry v. Ohio, 392 U.S. 1, 19-20)1968) (reasonableness of officer's intrusion depends upon whether exigent circumstances existed at time officer interferes with individual); Preston v. United States, 376 U.S. 364, 367-68 (1964) (exigent circumstances do not exist when search is too remote in time to be incident to arrest).

[91] *See* Carroll v. United States, 267 U.S. 132, 153 (1925) (vehicle's inherent mobility estabished exigent circumstances to permit warrantless search).

[92] *See* United States v. Brock, 667 F.2d 1311, 1317-18 (9th Cir. 1982) (need for search readily apparent because officers aware that motor home contained explosive chemicals).

[93] *See* United States v. Hart, 656 F.2d 595, 596-600 (10th Cir. 1981) (exigent cir-

exigent circumstance that permits a warrantless vehicle search for weapons when police observe the vehicle's occupants repeatedly looking at a bank through binoculars.[94] Exigent circumstances, combined with the discovery of contraband, instrumentalities, or fruits of a crime in plain view also support a warrantless search of a vehicle to prevent the destruction of evidence.[95]

Once police legitimately have stopped a vehicle, contraband in plain view can establish probable cause[96] and the vehicle's mobility provides exigent circumstances to permit a warrantless search of the vehicle.[97] In *Coolidge v. New Hampshire*,[98] the Supreme Court held that police may conduct a warrantless search and seizure when they are legitimately on the premises, inadvertently discover evidence of crime, and discover evidence in plain view.[99] In *Colorado v. Bannister*,[100] the Court held, however, that because evidence of a crime was in plain view, police had

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cumstances existed because of officer's fear that vehicle's driver threatened woman's safety by holding her against her will in camper).

[94] *See* United States v. Sears, 663 F.2d 896, 903 (9th Cir. 1981) (exigent circumstances created by threat to public safety when officers observed individuals in automobile with out-of-state tags repeatedly surveying bank through binoculars), *cert. denied*, 102 S. Ct. 1731 (1982).

[95] *See* United States v. Watkins, 662 F.2d 1090, 1096 (4th Cir. 1981) (exigent circumstance of mobility plus plain view of marijuana on tractor-trailer bumper permitted warrantless search of vehicle for contraband), *cert. denied*, 102 S. Ct. 1613 (1982).

[96] *See infra* notes 98-111 (discussion of contraband in plain view establishing probable cause to search a vehicle).

[97] *See supra* text accompanying notes 88-95 (exigent circumstances permit a warrantless search once police have probable cause).

[98] 403 U.S. 443 (1971).

[99] *Id.* at 464-73. In *Coolidge v. New Hampshire*, the Supreme Court held that police may conduct a warrantless search and seizure when they are legitimately on the premises, inadvertently discover evidence of crime, and observe evidence in plain view. 403 U.S. at 464-73. There are two types of plain view situations, search plain view and nonsearch plain view. *See* 1 W. LAFAVE, SEARCH AND SEIZURE § 2.2, at 242-48 (1978). Search plain view occurs when police are legitimately on the premises where they are conducting a search. *Id.*; *see* Coolidge v. New Hampshire, 403 U.S. 443, 466, 468-69 (discussion of inadvertent discovery of evidence in plain view after police make lawful intrusion). Nonsearch plain view occurs when an officer observes evidence without first having made a lawful intrusion to search a vehicle. LAVAVE, *supra* at 242-48. A nonsearch plain view discovery requires that an officer face exigent circumstances before proceeding with a warrantless search. *Id.*; *see* Harris v. United States, 390 U.S. 234, 235-36 (1968) (per curiam). In *Harris*, a policeman made a nonsearch discovery of a robbery victim's vehicle registration card in plain view on the front door rim of a vehicle in protective custody. *Id.* at 235. The officer was about to lock the car as required by impoundment regulations when he discovered the registration card. *Id.* The Supreme Court held that the policeman's discovery of the registration card was not the result of a vehicle search, but of a required procedure to protect an impounded vehicle from vandals. *Id.* at 236. The *Harris* Court reaffirmed that police legitimately may seize evidence falling into plain view when an officer has a right to be in the position to have that view. *Id.*; *see* Ker v. California, 374 U.S. 23, 42-43 (1963) (valid discovery of marijuana in plain view because police legitimately were on premises to arrest Ker, and Ker's wife could have destroyed marijuana).

[100] 449 U.S. 1 (1980).

probable cause to make a warrantless seizure of evidence found in a vehicle.[101] In *Bannister*, a police officer heard a radio report of the theft of specific items from an auto parts store and later spotted an automobile fitting the description of the robbers' vehicle.[102] The officer approached the parked vehicle, and observed stolen lug nuts in an open compartment between the vehicle's bucket seats, and stolen lug wrenches on the back floorboard.[103] The vehicle's occupants also met the description of individuals suspected of the robbery.[104] The *Bannister* Court held that evidence in plain view, as well as suspected robbers occupying the vehicle, gave the officer probable cause to seize the evidence without a warrant.[105]

In addition to making a valid warrantless seizure of evidence in plain view, police have conducted a valid warrantless vehicle search after spotting contraband, such as marijuana, in plain view on a vehicle's bumper.[106] In other plain view situations, an officer's smelling contraband,[107] or a trained dog's sniffing contraband,[108] can provide probable

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[101] *See* Colorado v. Bannister, 449 U.S. 1, 2-4 (1980) (officer's observation of suspected stolen lug nuts on seat of vehicle stopped for speeding establishing probable cause to search vehicle for evidence from auto parts store theft).

[102] *Id.* at 2.

[103] *Id.* at 4

[104] *Id.*

[105] *Id.*

[106] *See* United States v. Watkins, 662 F.2d 1090, 1096 (4th Cir. 1981). In *Watkins*, police stopped a tractor-trailer truck suspected of transporting contraband. *Id.* at 1094. An officer found marijuana residue on the vehicle's bumper, opened the rear doors, and found marijuana bales. *Id.* The Fourth Circuit determined that the officer's discovery of marijuana residue in plain view on the tractor-trailer bumper, gave policemen probable cause to search the vehicle for contraband. *Id.* at 1096.

[107] *See* Johnson v. United States, 333 U.S. 10, 13 (1948) (opium odor sufficient to provide probable cause to search motel room); Taylor v. United States, 286 U.S. 1, 6 (1932) (narcotics odor reliable indicator of possible crime); United States v. Haley, 669 F.2d 201, 203-04 (4th Cir. 1982) (marijuana odor sufficient to provide probable cause to search vehicle for contraband), *cert. denied* 456 U.S. _____, 102 S. Ct. 2928 (1982); *see also* Virgin Islands v. Rasool, 657 F.2d 582, 586-87 (3d Cir. 1981) (smell of gun powder and sight of gun on seat established probable cause to search vehicle).

[108] *See* United States v. Waltzer, 51 U.S.L.W. 2081, 2084 (2d Cir., Aug. 10, 1982). In *Waltzer*, the Second Circuit held that a trained drug-detecting dog with a proven record of reliability can establish probable cause to arrest a person possessing luggage for possession of contraband. *Id.* at 2084. The *Waltzer* Court held that the dog's sniffing did not constitute a search of the luggage. *Id*; *see* United States v. Viera, 644 F.2d 509, 511-12 (5th Cir. 1981) (trained drug-detecting dog's reliable success rate for sniffing contraband established probable cause to search luggage for contraband), *cert. denied*, 454 U.S. 867 (1981); Buck v. State, 77 Okla. Cr. 17, _____, 138 P.2d 115, 119-22 (1943) (bloodhound's training and experience considered when court determines dog's reliability to track down scent). *But see* People v. Williams, 51 Cal. App. 3d 346, 348-51, 124 Cal. Rptr. 253, 254-55 (1975). In *Williams*, a California appeals court held that police without probable cause could not enter an airline's restricted luggage area with a trained dog to use the dog's sense of smell to establish probable cause to search a suitcase for marijuana. 51 Cal. App. 3rd at 350; 124 Cal. Rptr. at 255. *See generally* LAFAVE, *supra* note 99, § 2.2(f) (discussion of use of trained canine to establish probable cause).

cause to support an officer's belief of criminal activity.[109] Courts, however, have not extended the plain view doctrine to permit an officer's sense of touch to establish probable cause by the plain feel of evidence in a container.[110]

Once police have probable cause to make a warrantless vehicle search, the search may occur at the scene of the stop or at the station house.[111] Certain situations, however, permit police to conduct warrantless vehicle searches without probable cause whether the search occurs at the scene of the stop or at the station house.[112] When an individual consents to an officer's request to search a vehicle, police can make a warrantless vehicle search without probable cause.[113] Valid consent to make a warrantless vehicle search can come from a driver,[114] a passenger,[115] a vehicle's rental agent,[116] a suspect's spouse who jointly owns the vehicle,[117] or the owner of a container inside the vehicle.[118]

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[109] *See supra* notes 107-08 (discussion of individual's or dog's sense of smell to establish probable cause to search for contraband).

[110] *See* Leake v. Commonwealth, 220 Va. 937, 265 S.E.2d 701 (1980). In *Leake*, the Supreme Court of Virginia held that an officer's grasping and shaking a bag of marijuana constituted a warrantless search. *Id.* at 942, 265 S.E.2d at 704. The court also held that the grabbing search was unreasonable because the search was without an exception to the warrant requirement. *Id.* at 942, 265 S.E.2d at 704. In *Leake*, the officers admitted that they had no probable cause to believe the bag contained contraband. *Id.* at 939, 265 S.E.2d at 703. *See* LAFAVE, *supra* note 99, at 46-47 (Supp. 1982) (rejecting idea of plain touch doctrine allowing examination of containers in all circumstances).

[111] *See* Chambers v. Maroney, 399 U.S. 42, 52 (1970) (if vehicle search valid at scene of stop, then police also can search vehicle at station house); Texas v. White, 423 U.S. 67, 68 (1975) (probable cause to search vehicle valid at both scene of stop and later at station house) (per curiam); United States v. Haley, 669 F.2d 201, 203-04 (4th Cir. 1982) (probable cause to believe vehicle transporting marijuana supports search on highway or at police station).

[112] *See infra* text accompanying notes 113-132 (discussion of circumstances permitting warrantless vehicle searches without probable cause).

[113] *See* Schneckloth v. Bustamonte, 412 U.S. 218, 221-22 (1973). In *Schneckloth*, the Supreme Court stated that in order for police to make a valid warrantless search of a vehicle pursuant to an individual's consent, the consent must be voluntary and cannot result from durress or coercion whether express or implied. *Id.* at 248; *see* United States v. Watson, 423 U.S. 411, 412, 424-25 (1976) (upholding warrantless automobile search after owner gave voluntary consent to search).

When an individual engages in a highly regulated business, implied consent acts as an exception to the fourth amendment's warrant requirement. *See* United States v. Biswell, 406 U.S. 311, 316-17 (1972) (valid warrantless inspection of firearms dealership); Wyman v. James, 400 U.S. 309, 318-24 (1971) (valid warrantless inspection of welfare recipient's home).

[114] *See* United States v. Watson, 423 U.S. 411, 412, 424 (1976) (valid warrantless automobile search after voluntry consent of driver).

[115] *See* Schneckloth v. Bustamonte, 412 U.S. 218, 220-21, 223-49 (1973) (passenger can give voluntary consent for police to search vehicle).

[116] *See* United States v. Martin, 636 F.2d 974, 976-78 (5th Cir. 1981) (rental agent can give valid consent for police to search vehicle fitting robbery getaway vehicle description), *cert. denied*, 451 U.S. 917 (1981).

[117] *See* United States v. Baldwin, 644 F.2d 381, 383 (5th Cir. 1981) (wife can give valid consent for police to search vehicle jointly owned by husband and wife).

[118] *See* United States v. Combs, 672 F.2d 574, 577-78 (6th Cir. 1982) (owner gave valid

Similarly, a warrantless vehicle search also is permissible incident to the arrest of a vehicle's occupants.[119]

Police do not need probable cause to make a warrantless vehicle search when an officer makes a search incident to arrest.[120] In *New York v. Belton*,[121] the Supreme Court held that in a search incident to a lawful custodial arrest, police can search the passenger compartment of a vehicle, as well as containers found in the passenger compartment.[122] In *Belton*, police arrested four men for possession of marijuana, then searched an envelope of marijuana and a jacket containing cocaine found inside the vehicle.[123] The Court held that police legitimately searched the jacket and the envelope incident to the arrest because both items were in the passenger compartment and were within the arrestee's immediate control.[124] The Court explained that protecting evidence and the officer's safety justified permitting the officer to search the area within the arrestee's control.[125] The *Belton* Court further held that once an officer establishes sufficient probable cause to arrest an individual, the officer can make a search of a vehicle's passenger compartment, including containers inside the vehicle, incident to arrest.[126]

The Supreme Court has allowed other types of warrantless vehicle searches.[127] Police can search vehicles or vessels crossing national boundaries without probable cause because of national safety and health considerations.[128] The Court also has permitted a warrantless vehicle search

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consent for police to search her purse for counterfeit money), *cert. denied*, 102 S. Ct. 3495 (1982).

[119] *See* New York v. Belton, 453 U.S. 454, 457-59 (1981) (search of container found in car after individual arrested upheld); United States v. Robinson, 414 U.S. 218, 222-23 (1973) (justification for arrest also justified search of cigarette package inside driver's pocket because package within arrestee's control); Adams v. Williams, 407 U.S. 143, 149 (1972) (search incident to arrest reasonably allows limited intrusion from search of individual for officer's safety because officer had sufficient probable cause to arrest); Hill v. California, 401 U.S. 797, 802-04 (1971) (although police arrested wrong person, vehicle search incident to arrest allowed).

[120] *See infra* text accompanying notes 121-126 (discussion of search incident to arrest).

[121] 453 U.S. 454 (1981).

[122] *Id.* at 460-61, 461 n.4. In *New York v. Belton*, the Supreme Court permitted police to search a vehicle's passenger compartment and containers after arresting an individual because the passenger compartment was within the arrestee's control right before the arrest. *Id.* at 460-61. The *Belton* Court stated that police must be able to search the area within an arrestee's control to prevent the arrestee's use of a weapon or destruction of evidence. *Id.* at 457-58. The *Belton* Court did not include a vehicle's trunk as an area within the arrestee's control. *Id.* at 460 n.4.

[123] *Id.* at 455-56.

[124] *Id.* at 462-63.

[125] *Id.* at 460-61

[126] *Id.*

[127] *See infra* text accompanying notes 128-32 (warrantless vehicle searches valid at border or when vehicle in police custody).

[128] *See* Almeida-Sanchez v. United States, 413 U.S. 266, 268-73 (1973) (establishing border search exception to fourth amendment's warrant requirement); *see supra* note 10 (discussion of exceptions to fourth amendment's warrant requirement).

without probable cause when a vehicle is in police custody in order to protect the owner's property, to protect the police against claims for stolen property, to protect police and the public from potentially dangerous weapons stored inside a vehicle, and to determine whether a vehicle is stolen.[129] Ways that a vehicle may come into police custody include arrest of the vehicle's occupants,[130] impoundment of the vehicle due to involvement in a crime or accident,[131] and forfeiture proceedings under criminal or tax statutes.[132]

Regardless of circumstances supporting warrantless searches, police actions may taint an otherwise valid warrantless search and cause courts to exclude evidence obtained during the search.[133] Justifications for excluding evidence when police act improperly include deterring further police misconduct and precluding the government from benefitting from illegally obtained evidence.[134] In *United States v. Dunn*,[135] Federal Drug Enforcement Agency (DEA) agents without a warrant trespassed on Dunn's ranch, detected a strong chemical odor, and investigated the contents of two barns.[136] Although in one barn the agents observed only empty chemical boxes, they discovered chemicals and laboratory equip-

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[129] *See* South Dakota v. Opperman, 428 U.S. 364, 369 (1976) (discussion of justifications for permitting police to make warrantless vehicle search without probable cause when vehicle in police custody). In *Opperman*, Court held that when police lawfully impound or seize a vehicle, police may conduct a warrantless search to inventory the vehicle's contents. *Id.* at 375-76. The Court found that policeman conducted a valid warrantless search of the impounded vehicle's interior and glove compartment. *Id.*; *see* Cady v. Dombrowski, 413 U.S. 433, 448 (1973) (valid warrantless search of trunk of vehicle seized by police following accident); *supra* note 10 (discussion of exceptions to fourth amendment's warrant requirement).

[130] *See* Cady v. Dombrowski, 413 U.S. 433, 442-43 (1973) (valid inventory search of vehicle in police custody after driver arrested following accident); Cooper v. California, 386 U.S. 58, 62 (1967) (valid inventory search at police station following driver's arrest for narcotics charges).

[131] *See* Cardwell v. Lewis, 417 U.S. 583, 591-93 (1974) (valid search of vehicle after vehicle impounded as evidence of murder); Cady v. Dombrowski, 413 U.S. 433, 448 (1973) (valid search of car in police custody after driver arrested following accident); Cooper v. California, 386 U.S. 58, 62 (1967) (valid arrest for narcotics charges).

[132] *See* General Motors Leasing Corp. v. United States, 429 U.S. 338, 344-45 (1977) (valid search of auto seized pursuant to jeopardy assessment by IRS); Cooper v. California, 386 U.S. at 58-59, 61-62 (1967) (valid search of vehicle impounded under forfeiture proceedings for narcotics violations).

[133] *See* United States v. Dunn, 674 F.2d 1093, 1101 (5th Cir. 1982) (federal agents' post-warrant conduct fatal to warrant because agents trespassed and delayed in obtaining warrant), *petition for cert. filed*, 51 U.S.L.W. 3292 (U.S. Oct. 12, 1982) (No. 82-508); *infra* text accompanying notes 135-44 (discussion of *Dunn*).

[134] *See* United States v. Peltier, 422 U.S. 531, 542 (1975) (discussion of justifications for excluding evidence obtained by police misconduct); *see also* United States v. Cook, 657 F.2d 730, 733-36 (5th Cir. 1981) (search warrant invalidated because officer failed to give particular descriptions of items to be seized).

[135] 674 F.2d 1093 (5th Cir. 1982).

[136] *Id.* at 1096.

ment in the other barn.[137] The agents made no attempt to seize the chemicals during their warrantless searches of the barns, even though the agents later claimed that exigent circumstances existed to allow the searches.[138] The agents returned to Dunn's property while other agents were obtaining a warrant.[139] Although the warrant affidavit claimed that exigent circumstances existed because someone could destroy chemicals easily, the agents again made no effort to seize the chemicals.[140] The next day agents returned to Dunn's ranch, searched the property, and seized the chemicals.[141] The Fifth Circuit held in *Dunn* that although circumstances tended to bolster probable cause of criminal activity, the DEA agents performed their duties illegally by trespassing.[142] The *Dunn* court found that the odor was of legal chemicals not yet processed into contraband and that the agents failed to take swift action under contended exigent circumstances to prevent processing or destruction of the chemicals.[143] The Fifth Circuit held that the agents' unconstitutional entry and investigation, as well as the officer's post-warrant conduct, precluded admission of evidence seized during the final search.[144]

The Supreme Court has stated that policies underlying exclusion of evidence require deterrence only when an officer has knowledge that his action is unconstitutional.[145] Conversely, courts may admit invalidly seized evidence because of an officer's good faith belief that he is conducting a proper search and seizure.[146] Courts, however, have stated that when considering "good faith" situations, a court should analyze carefully each case individually.[147]

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[137] *Id.*

[138] *Id.* at 1096-97, 1102.

[139] *Id.* at 1097.

[140] *Id.* at 1097 n.4.

[141] *Id.* at 1097-98.

[142] *Id.* at 1100-01.

[143] *Id.* at 1102.

[144] *Id.* at 1102-03.

[145] *See* United States v. Peltier, 422 U.S. 531, 542 (1975). The *Peltier* Court stated that the policies underlying exclusion of evidence require deterrence only when an officer has knowledge that his action is unconstitutional. *Id.* at 542; *see also* Michigan v. DeFillippo, 443 U.S. 31, 37-38 (1979) (officer acted in good faith by stopping individual pursuant to city ordinance, even though officer did not know ordiance was unconstitutional).

[146] *See* United States v. Alvarez-Porras, 643 F.2d 54, 60-66 (2nd Cir. 1981) (evidence from illegal warrantless search not excluded because agents proceeded with search in good faith, but under mistaken belief, that search warrant already issued), *cert. denied*, 454 U.S. 839 (1981).

[147] *Id.* at 60. Unconstitutionally seized evidence may be admissible at trial if the seizing officer acted with the good faith belief that his conduct was constitutional and he had a reasonable basis for the belief. *See* Michigan v. DeFillippo, 443 U.S. 31, 39-40 (1979) (drugs found during search incident to arrest admissible even though city ordinance which authorized arrest later declared unconstitutional). The Second Circuit in *United States v. Alvarez-Porras*, however, warned against allowing an officer's good faith actions to become an exception for

After *Ross*, police must meet three requirements to make a warrantless search of a vehicle and containers inside the vehicle.[148] First, an officer must have a reasonable suspicion to stop the vehicle.[149] Second, an officer must have probable cause to search the vehicle and containers inside the vehicle.[150] Finally, police must be able to show that the vehicle or containers inside the vehicle reasonably could contain the object of the search.[151] Although *Ross* expanded the scope of a warrantless search of a container found inside a vehicle, the Supreme Court limited the search of a vehicle when police have probable cause to search only one container inside the vehicle.[152] Under *Ross*, police must be able to articulate and describe the object of a search and the place to be searched.[153] For example, police cannot claim that probable cause to believe a van transports illegal aliens justifies a warrantless search of a suitcase found in the van.[154] Conversely, the *Ross* Court held that probable cause to believe a suitcase in a vehicle contains contraband does not justify a warrantless search of an entire vehicle.[155]

Police, prosecutors, and defense attorneys in warrantless automobile search cases now must consider how police articulate the facts and circumstances giving rise to a reasonable suspicion to stop and probable cause to search.[156] Since police must articulate the object of the

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allowing unconstitutionally seized evidence to be admitted at trial when police conducted invalid warrantless searches. *See* 643 F.2d 54, 60 (2nd Cir. 1981) (warning against good faith exception to fourth amendment's warrant requirement), *cert. denied*, 454 U.S. 839 (1981). *See generally* Ball, *Good Faith and the Fourth Amendment: The "Reasonable" Exception to the Exclusionary Rule*, 69 J. CRIM. L. & CRIMINOLOGY 635 (1978) (discussion of whether courts should adopt good faith exception to fourth amendment's warrant requirement); Note, *The Role of Police Officer Good Faith in Substantive Fourth Amendment Doctrine*, 55 WASH. L. REV. 849 (1980) (discussion of whether courts' reliance on officers' good faith actions circumvents fourth amendment's warrant requirement and encroaches upon individual's substantive rights).

[148] *See supra* text accompanying notes 1-16 (discussion of *Ross* prerequisites for valid warrantless vehicle search).

[149] 102 S. Ct. 2157, 2159, 2172; *see supra* text accompanying notes 17-60 (discussion of situations constituting reasonable suspicion to stop a vehicle).

[150] 102 S. Ct. 2157, 2159, 2172; *see supra* text accompanying notes 61-111 (discussion of probable cause necessary to search vehicle).

[151] 102 S. Ct. at 2172. In *Ross*, the Supreme Court speculated that in a situation where police would have probable cause to search a specific suitcase, officers could not extend the search to an entire vehicle transporting the suitcase. *Id.* The *Ross* Court explained that the object of the search defines the scope of the search. *Id.*

[152] *See* United States v. Ross, 102 S. Ct. 2157, 2172 (1982) (limiting vehicle search when police have probable cause only to believe that specific container inside vehicle contains contraband).

[153] *Id.*

[154] *Id.*

[155] *Id.*

[156] *See* LATZER, *supra* note 15, at 402-05. Although police will have to define the object of a search in order to make a valid warrantless container search, officers no longer have to consider whether a particular container is protected from a warrantless search by the

search,[157] defense counsel should pinpoint whether at the time of the search the vehicle or containers reasonably could contain the object for which police searched.[158] Defense counsel also should consider the possibility that an object in a specific container inside a vehicle was the articulated object of a policeman's search.[159] For example, an individual may place a briefcase containing contraband inside a vehicle's trunk.[160] The *Ross* Court specifically rejected the search of an entire vehicle when the object sought is in a particular container.[161]

After *Ross*, new considerations may appear as police, prosecutors, and defense attorneys question the exact articulated object of each warrantless search of vehicles and containers. The requirements that police must articulate the object of a search now supplants privacy expectations to prevent police from making a general search of vehicles or containers when the vehicle or container reasonably cannot contain the object of a search.[162] For example, police searching for liquor or firearms reasonably could not expect to find either item in a slightly flattened envelope found inside a vehicle. Police, however, could feel the envelope outside and ascertain that it contained a powdery or crystalized substance by sliding the sides of the envelope over one another.[163] Under *Ross*, police conducting a warrantless search for a container containing liquor or firearms could not open the envelope without a warrant even though they suspected that the envelope contained narcotics.[164] *Ross*,

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owner's expectations of privacy that the container's contents will remain unexposed. 102 S. Ct. at 2171-72; LATZER, *supra* at 402. Police still must obtain a warrant to search a container not found inside a vehicle. 102 S. Ct. at 2172; LATZER, *supra*, at 402, 405. Police, however, will not have to define the object of a container search when the container is inside a vehicle and police have probable cause to believe the vehicle contains contraband. 102 S. Ct. at 2170-71.

[157] 102 S. Ct. at 2171-72.

[158] *Id.*

[159] *Id.* at 2179-82 (Marshall, J., dissenting).

[160] *Id.* at 2171-72.

[161] *Id.*

[162] *Id.* at 2177, 2180-82 (Marshall, J., dissenting) (citizens' privacy outweighs need for police intrusion to search for evidence); *see* LATZER, *supra*, note 15 at 403-05 (discussion of whether *Ross* actually changes individual's right to privacy in automobiles); *see also* Fyfe, *Enforcement Workshop:* Robbins, Belton *and* Ross—*The Policeman's Lot Becomes a Happier One*, 18 CRIM. L. BULL. 461, 466-67 (1982) (*Ross* broadens police search powers by waiving privacy consideratons).

[163] *See supra* text accompanying note 110 (discussing idea of extension of plain view doctrine to allow police to establish probable cause by plain feel). Although courts have not established a plain feel doctrine, several courts have stated that an officer's feeling a container can constitute a search. *See* United States v. Martin, 562 F.2d 673, 676 n.6 (D.C. Cir. 1977) (probing the bulge in suitcase side may constitute search); Hernandez v. United States, 353 F.2d 624, 626 (9th Cir. 1965), (manipulation or squeezing of suitcase sides constitutes search) *cert. denied*, 384 U.S. 1008 (1966); Leake v. Commonwealth, 220 Va. 937, 942, 265 S.E.2d 701, 704 (1980) (grasping and shaking of paper bag constitutes search).

[164] 102 S. Ct. at 2171-72.

however, may encourage police to manufacture reasonable suspicion to stop a vehicle and probable cause to search for objects found in containers inside a vehicle, after police already have conducted the search.[165]

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[165] *See* Fyfe, *supra* note 163, at 466-67. Law enforcement officers may view *Ross* as broadening the search powers of the police. *Id.* at 466. *Ross* may prove to be a signal to police that under the automobile exception officers will not have to stop their searches of automobiles to obtain a warrant at a point when they have ripped open upholstery or opened compartments and containers. *Id.* at 466-67.