Consent searches scope - Legal Digest

Jayme Walker Holcomb

A law enforcement officer asks a woman if she will consent to a search of her luggage for drugs. After the woman consents to the search, the officer finds a sealed can labeled as vegetables that, when shaken, feels as if it contains no liquid. The officer promptly opens the can with a can opener and discovers a white powdery substance, later identified as cocaine, inside. Did the officer exceed the scope of the woman's consent to search by prying open the can?

The Fourth Amendment preserves the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." (1) The U.S. Supreme Court has stated that a search conducted pursuant to lawfully given consent is an exception to the warrant and probable cause requirements of the Fourth Amendment. However, because a consensual search of an item or location is still a search, the Fourth Amendment reasonableness requirement still applies. (2)

[ILLUSTRATION OMITTED]

This article considers the question of whether the officer's opening of the can in the example violated the Fourth Amendment. The article also addresses the standard that courts apply in determining the scope of a consent search, officer statements and actions that impact upon scope, subject statement and actions that impact upon scope, and scope-related issues, such as reasonableness and the damaging or destruction of property during a consent search.

[ILLUSTRATION OMITTED]

The Standard

The U.S. Supreme Court addressed the issue of the scope of a consent search in the 1991 decision Florida v. Jimeno. (3) In Jimeno, an officer overheard Jimeno apparently arranging a drug transaction over a public telephone. The officer followed Jimeno's car and pulled him over after observing him commit a traffic violation. The officer told Jimeno he had reason to believe that Jimeno had narcotics in his car. The officer asked for consent to search Jimeno's car. Jimeno consented to the search. The officer found a folded brown paper bag on the passenger side floorboard. The officer picked up the bag, looked inside, and found a kilogram of cocaine.

The Court specifically addressed the question of whether consent to search a vehicle may extend to closed containers located in the vehicle and stated:

> The touchstone of the Fourth Amendment is reasonableness. The Fourth Amendment does not proscribe all state-initiated searches and seizures; it merely proscribes those which are unreasonable. Thus, we have long approved consensual searches because it is no doubt reasonable for the police to conduct a search once they have been permitted to do so. The standard for measuring the scope of a suspect's consent under the Fourth Amendment is that of "objective" reasonableness--what would the typical reasonable person have understood by the exchange between the officer and the suspect? (4)

In holding that Jimeno's general consent to search the car included consent to search the paper bag, the Court found it important that the officer said he was looking for narcotics and that Jimeno placed no explicit limitation on the search. The Court rejected the argument that police should have to separately ask permission to search each closed container within a car under such circumstances. However, the Court distinguished Jimeno from another case decided by the Supreme Court of Florida where that court held that consent to search a car trunk did not include prying open a locked briefcase in the trunk, stating that

> It is very likely unreasonable to think that a suspect, by consenting to the search of his trunk, has agreed to the breaking open of a locked briefcase within the trunk, but it is otherwise with respect to a closed paper bag. (5)

As stated by the Court, the standard for measuring the scope of a person's consent to a search is one of objective reasonableness. (6) In short, to determine the scope of the consent to search, the overall context in which the consent was obtained must be examined. (7) And, just as it is the government's burden to prove that a subject voluntarily consented to the search, (8) the government also must prove that a search conducted by officers was within the scope of the consent given. (9) Evidence that is obtained by the government that exceeds the scope of an individual's consent to search must be excluded at trial unless another lawful reason existed to search. (10)

Officer Statements and Actions

An officer may place limitations on or expand the scope of a search when asking a subject for consent to search. The statements made, (11) forms used, (12) or actions taken by an officer asking a subject for consent to search all impact upon the scope of the search that may be conducted and may relate to what, (13) where, (14) how, (15) and when (16) the officer can search. (17)

An example of an officer's statements limiting the scope of a consent search is the decision by the U.S. Court of Appeals for the Tenth Circuit in United States v. Elliott. (18) In Elliott, an officer stopped a car for speeding. After issuing a warning ticket to the driver, the officer asked, "Say, there's nothing illegal in the vehicle, in the trunk by chance?" After the driver stated that there was nothing, the officer asked if he could "look through the trunk there and see what you got in there? I don't want to look through each item." The officer told the driver that he just wanted to see how things were "packed" or "packaged."

The driver then pushed a trunk release button in the glove box and opened the trunk. The officer saw that the trunk was full of luggage. The officer pushed and felt the outside of a nylon bag. He then unzipped the bag 5 to 7 inches and saw a package wrapped in a material with little red dots on it. The officer recognized the packaging as similar to that which he had seen in a prior drug case. After being asked a few questions about the bag, the driver consented to the officer making a little cut into the package, inside of which the officer found what appeared to be marijuana.

The court concluded that, although the driver voluntarily consented to the search, the officer exceeded the scope of the consent. The court analyzed the question of whether, based upon the exchange between the officer and the driver, the typical reasonable person would think that the driver consented to the officer touching and unzipping one of the bags in the trunk. The court stated that the officer's request to "look through the trunk," if considered alone, would have conveyed that the officer wanted to search the trunk and its contents. (19) The court then stated:

> Significantly, however, Dyer did not stop with his first question. Instead, he told Elliott that he did not "want to look through each item." Further, he explained to her that he just wanted to see how things were "packed" or "packaged." We conclude that a typical reasonable person would have construed these additional statements as expressly limiting the scope of Dyer's request To us, Dyer's statements, considered in their entirety, would have conveyed to a reasonable person that Dyer was

> interested only in visually inspecting the trunk and its contents and did not convey his intent to look into any containers in the trunk ....
>
> Because he expressly and narrowly limited the scope of his request, it is apparent that Dyer exceeded the scope of Elliott's consent and thereby violated her Fourth Amendment rights by unzipping and looking inside one of the bags in the trunk. (20)

Subject Statements and Actions

Just as officers may expand (21) or limit (22) the scope of a consent search, so too may the person giving the consent. (23) The scope of a consent search may be determined through statements made (24) or actions taken (25) by the subject during the exchange with the officer and may relate to such details as the time, (26) location, or manner (27) in which the search can be conducted. One court has noted that--

> the need for a warrant is waived only to the extent granted by the defendant in his consent. A defendant's consent may limit the extent or scope of a warrantless search in the same way that the specifications of a warrant limit a search pursuant to that warrant. Both limit the officer's activity by stipulating the areas into which they may look. Both may limit a search to certain areas or even to certain specified items within an area. (28)

An example of a situation in which an individual placed a limitation on where an officer could search is the U.S. Court of Appeals for the Sixth Circuit decision in United States v. Roark. (29) In Roark, officers received an anonymous tip that marijuana was being "stripped" at a particular residence. Responding to the tip, several officers went to the house and asked to search the residence. The defendant's sister consented to the search. While several officers searched the house, other officers searching the outside of the house discovered a well-worn path behind the residence. The path led to a second house at the top of a hill. The officers entered the second house and found marijuana growing in buckets under bright lights and the defendant sleeping on a mattress while holding a rifle. The officers seized approximately 124 marijuana plants from the second house. (30)

[ILLUSTRATION OMITTED]

The Roark court found that the officers exceeded the scope of the sister's consent. More particularly, the court stated that while the sister consented

to a search of the first house, she did not consent to a search of the surrounding property. The court reversed the trial court's denial of the defendant's motion to suppress the marijuana found in the second house.

In the 1971 U.S. Court of Appeals for the Seventh Circuit case of United States v. Dichiarinte, (31) agents had a warrant to arrest the defendant on a narcotics charge. After arresting the defendant, the agents asked him whether he had any narcotics at his house. The defendant denied having any narcotics and invited the agents to his house to have a look. After the search had been going on for about 45 minutes, the defendant saw an agent seize currency exchange receipts from a drawer and said,

> "Does that look like narcotics if that is what you want to search for?" and the agent replied, "Sorry, Pal, we are here now and this is what we are going to do." Shortly thereafter, defendant announced, "The search is over. I am calling off the search." However, the agents continued their search for about ten more minutes. The agents seized currency exchange receipts, insurance polices, receipts for a loan, and a certificate of title to real estate and took them to their office. (32)

The court assumed that the consent given by the defendant for the search was voluntary and that the documents seized were evidence of a crime. Even so, the court stated that the consent given by the defendant was limited to a search for narcotics. Significantly, the court noted that--

> the defendant's statement that the agents could "come over to the house and look" must be taken to mean at most that they might come and conduct only such a search as would be necessary to establish whether he had any narcotics. Government agents may not obtain consent to search on the representation that they intend to look only for certain specified items and subsequently use that consent as a license to conduct a general exploratory search. (33)
> The court further stated:
> In the case before us, the defendant's consent set the

> parameters of the agents' conduct at that which would reasonably be necessary to determine whether he had narcotics in his home. But the agents went beyond what was necessary to determine whether defendant had hidden narcotics among his personal papers; they read through those papers to determine whether they gave any hint that defendant was engaged in criminal activity. This was a greater intrusion into defendant's privacy than he had authorized and the fourth amendment requires that any evidence resulting from this invasion be suppressed. (34)

The court concluded that the government failed to sustain its burden of demonstrating that it acted within the scope of the defendant's consent to search. Although the record was not clear, the court stated that at least some of the items seized could not have been seized under a plain-view theory because they had to be opened and read, and this action was not authorized by the defendant's limited consent.

In many cases, a subject will provide a general consent to search with no specific limitations. Defendants are generally unsuccessful in having evidence suppressed when their argument is that the officers exceeded the scope of a general consent to search but the defendant failed to object or withdraw consent while watching the officers search. (35) However, officers cannot represent that they will only search certain locations or for particular items and then use that consent to conduct a general exploratory search. (36) It also should be noted that officers are not required to conduct all searches in plain view of a subject (37) or slowly enough to give a subject enough time to limit or withdraw the consent. (38)

Reasonableness

Officers must conduct consent searches in a reasonable manner and be prepared to clearly explain the circumstances surrounding the search when testifying in court. (39) Whether the scope of a consent search is reasonable will depend largely on who, what, where and how the search is conducted. When an officer conducts a consent search of a person, (40) for example, the court will analyze the reasonableness of the search differently than an officer's search of a home, (41) area, (42) vehicle, (43) or an item of property. (44)

An example of a case involving the question of whether officers acted reasonably within the bounds of a given consent involving a person is the U.S. Court of Appeals for the Eleventh Circuit case of United States v. Blake. (45) In Blake, officers approached two men in the public concourse area of an airport and asked if the men would consent to speak with them. The men agreed to speak with the officers and consented to a search of their baggage and their persons for drugs. Within seconds of consenting to the search, one of the officers reached down the front of the pants and into the crotch of one of the men, felt a foreign object, and heard a crinkling sound. The officer then searched the second man in the same way. The men were taken to a police office outside of the public concourse where suspected packages of crack cocaine were removed.

[ILLUSTRATION OMITTED]

The court found that the general consent to search the persons of the two men did not include the type of intrusive search conducted by the officers. In reaching this conclusion, the court made it clear that searches like the one conducted by the officers could be conducted; however, proper consent would have to be obtained. The court stated: "[g]iven this public location, it cannot be said that a reasonable individual would understand that a

search of one's person would entail an officer touching his or her genitals." (46)

In another case involving a consent search of a person, the U.S. Court of Appeals for the District of Columbia in United States v. Ashley (47) determined the actions taken by the officer were reasonable. In Ashley, an officer approached the defendant after observing him exit a bus and walk out of the bus station. The officer asked the defendant if he was carrying any drugs on his person. The defendant said, "No," raised his hands, and said, "Do you want to search me?" The officer then said, "Yes. May I search you?" The defendant said, "Yes." The officer told the defendant to lower his arms and proceeded to pat down the outer surfaces of the defendant's sleeves, pant legs, and pants. After feeling a hard rock substance underneath the defendant's pants in the groin area, the officer asked the defendant to open his pants. The officer discovered the defendant had on a second pair of pants, which the officer opened and removed a hard object, part of which was sticking up from the defendant's underwear. The object was a bag of crack cocaine. (48)

The defendant argued that the officer's search exceeded the scope of the consent. The court found that the search and seizure were lawful. Specifically, the court found the officer's patdown search was properly conducted and that probable cause existed for the officer, based on his knowledge regarding the transport and packaging of drugs, to believe that the hard object detected during the patdown was crack cocaine. (49)

This article began with an example and the resulting question of whether the officer exceeded the scope of a consent to search by prying open and destroying a can found inside a piece of luggage. This particular question has been addressed by two federal circuits with differing results. In United States v. Kim, (50) officers engaged an individual traveling in a train roomette in a conversation. One of the officers obtained consent to search the defendant's luggage. The officer found six apparently factory sealed cans labeled "Naturade All-Natural Vegetable Protein" with the seals intact. The officer opened one of the cans and determined that it contained narcotics.

In Kim, the U.S. Court of Appeals for the Third Circuit determined that the defendant voluntarily consented to the search of the luggage. The court also rejected defendant's argument that the consent to search the luggage did not extend to the sealed cans. The court held that a reasonable person would have understood the exchange between the officer and defendant to include permission to search any items found in the luggage for drugs and that, therefore, the cans could be searched. (51) The court found no distinction between the officer opening the folded paper bag in Jimeno and the opening of the sealed cans. The court rejected the argument that the sealed cans were similar to a locked briefcase. The court also rejected the idea that the officers should have asked for specific permission to open the sealed cans, stating that such reasoning had been rejected by the Jimeno Court, and indicating that it was up to the defendant to object to the opening of the sealed cans.

The U.S. Court of Appeals for the Tenth Circuit took the opposite approach to the opening of sealed cans found in luggage in United States v. Osage. (52) The Osage case involved officers who searched an individual's luggage after being given consent to search the bag during the course of a consensual encounter with the individual while traveling on a train. After giving consent to search, the subject opened the luggage with a key. Inside the luggage, the officer found four 28-ounce cans labeled "tamales in gravy." The officer noticed that the label on the can appeared to have been tampered with. When the officer shook the can, he noted that it felt like a container of salt would feel if shaken, not as if it contained a liquid. The officer then took a tool from his belt, opened the can, and found a plastic bag containing methamphetamine.

The Osage court began its analysis by assuming that the defendant voluntarily consented to the search. The court noted that in prior cases, a subject's failure to object to a search could be considered an indication that the search was within the scope of the consent. The court then stated that the narrow issue in this case was: "whether Mr. Osage's failure to object to a search of a sealed can permitted the officer, in the course of conducting his search, to destroy the can or render it completely useless for its intended function." (53) The court concluded that it did not.

In concluding that the officer exceeded the scope of the defendant's consent, the court rejected the reasoning of the Kim court that sealed cans were more like the paper bag in Jimeno than a locked briefcase and concluded just the opposite. The court held that "before an officer may actually destroy or render completely useless a container which would otherwise be within the scope of a permissive search, the officer must obtain explicit authorization or have some other, lawful basis upon which to proceed." (54) The court also distinguished Osage from other cases in which officers had "dismantled" items during the course of a consent search, noting that those cases did not involve the complete destruction of the item as occurred in the Osage case.

Conclusion

Whether an individual voluntarily consents to a search is only one of the issues for a court to consider in cases involving consent searches. Courts must also evaluate the scope of the consent. The U.S. Supreme Court has established an "objective reasonableness" standard for measuring the

scope of a suspect's consent. (55) Under this test, courts will consider what a reasonable person would have understood about the communication between the person and the officer regarding the scope of the search.

The government has the burden of showing that the search conducted by officers was within the scope of the consent given by the subject. Courts will consider, among other things, an officer's and subject's statements and actions during the search, the manner in which the search is actually conducted, and the reasonableness of the search in determining whether the officer exceeded the scope of the consent. The reasonableness of a particular consent search also will depend upon whether the officer is searching a person, house, car, or item. The Blake (56) case confirms that officers must conduct consent searches within the scope of the consent given and in a reasonable manner.

Questions still exist regarding certain issues related to the scope of consent searches. For example, during consent searches, the opening of closed areas or items that are within a location that could hold an item expressly included in the search by the officer has been upheld by most courts. (57) Indeed, in Jimeno, the U.S. Supreme Court clarified that the officer could open the closed paper bag on the floorboard of the car to look for narcotics. However, the Jimeno Court implied that the officer could not have opened a locked briefcase in the car under similar circumstances. (58)

Whether the damaging or destruction of property during the course of conducting a consent search is within the scope of the consent is another unsettled question. Federal case law addressing situations where officers have opened sealed items or enclosures during a consent search, without damaging or destroying the area or item, have generally found the actions taken by the officers to be lawful. (59) However, when officers have damaged, destroyed, or rendered items nonfunctional during the course of conducting the consent search, courts, with Kim as a notable exception, generally have found that such damaging or destruction exceeded the scope of the search. (60) Officers searching an item pursuant to consent should keep in mind the result in the Osage case that an officer who damages or destroys an item while searching it must have explicit authorization from the subject consenting to the search or another lawful basis upon which to conduct the search.

Officers must be acutely aware that what they say and do in obtaining consent to search impacts directly upon how, where, what, and when they can search. Officers must think about what and how they want to search before asking for consent. Officers carefully should document exactly what they said and did during the course of asking for and in conducting the search.

Additionally, officers meticulously should record statements made and actions taken, or not taken, by the subject during the entire time the officer has contact with the individual. Paying close attention to the details surrounding the consent search and clearly articulating the facts and circumstances of the search are critical in consent to search cases.

Law enforcement officers of other than federal jurisdiction who are interested in this article should consult their legal advisors. Some police procedures ruled permissible under federal constitutional law are of questionable legality under state law or are not permitted at all.

Endnotes

(1) U.S. CONST. Amend. IV.

(2) Schenkloth v. Bustamonte, 412 U.S. 218, 219 (1973); United States v. Dichiarinte, 445 F.2d 126, 129 (7th Cir. 1971) ("A consent search is reasonable only if kept within the bounds of the actual consent.") (citing Honig v. United States, 208 F.2d 916, 919 (8th Cir. 1953)).

(3) 500 U.S. 248 (1991).

(4) Id. at 250-51 (citations omitted); United States v. Rich, 992 F.2d 502, 507 (5th Cir. 1993).

(5) Id. at 251-52. United States v. McRae, 81 F.3d 1528 (10th Cir. 1996); United States v. Snow, 44 F.3d 133, 135 (2nd Cir. 1995) ("Based on the plain meaning of the word 'search,' an individual who consents to a search of his car should reasonably expect that readily-opened containers discovered inside the car will be opened and examined."); United States v. Crain, 33 F.3d 480 (5th Cir. 1994); United States v. Smith, 901 F.2d 1116 (D.C. Cir. 1990); United States v. Torres, 663 F.2d 1019 (10th Cir. 1981).

(6) See, e.g., United States v. McRae, 81 F.3d 1528 (10th Cir. 1996); United States v. Saadeh, 61 F.3d 510, 518 (7th Cir. 1995); United States v. Maldonado, 38 F.3d 936 (7th Cir. 1994); United States v. Cannon, 29 F.3d 472 (9th Cir. 1994); United States v. Rich, 992 F.2d 502 (5th Cir. 1993); United States v. Acosta, 110 F. Supp. 2d 918, 924 (E.D.Wis. 2000) ("A consent search is reasonable only if kept within the bounds of the actual

consent."); United States v. Cucci, 892 F. Supp. 775, 792 (W.D. Va. 1995).

(7) United States v. Lemmons, 282 F.3d 920, 924 (7th Cir. 2002); United States v. Turner, 169 F.3d 84, 87 (1st Cir. 1999) ("We therefore look beyond the language of the consent itself, to the overall context, which necessarily encompasses contemporaneous police statements and actions."); United States v. McRae, 81 F.3d 1528, 1536-37 (10th Cir. 1996) ("We determine from the totality of the circumstances whether a search remains within the boundaries of the consent given."); United States v. Brandon, 847 F.2d 625, 630 (10th Cir. 1988); United States v. Sealey, 830 F.2d 1028, 1032 (9th Cir. 1987).

(8) Bumper v. North Carolina, 391 U.S. 543 (1968); United States v. Dichiarinte, 445 F.2d 126, 130 (7th Cir. 1971).

(9) United States v. Turner, 169 F.3d 84, 87 n.3 (1st Cir. 1999); United States v. Schaefer, 87 F.3d 562, 569 (1st Cir. 1996); United States v. Strickland, 902 F.2d 937, 941 (11th Cir. 1990); United States v. Cruz Jimenez, 894 F.2d 1, 6 (1st Cir. 1990); United States v. Blake, 888 F.2d 795 (11th Cir. 1989); United States v. Dichiarinte, 445 F.2d 126, 130 (7th Cir. 1971).

(10) United States v. Martinez, 949 F.2d 1117, 1119 (11th Cir. 1992).

(11) See, e.g., United States v. Orrego-Fernandez, 78 F.3d 1497, 1505 (10th Cir. 1996); United States v. Saadeh, 61 F.3d 510, 518 (7th Cir. 1995).

(12) United States v. Lemmons, 282 F.3d 920, 924 (7th Cir. 2002).

(13) See United States v. Turner, 169 F.3d 84, 88 (1st Cir. 1999) (Police indicated they wanted to search in places where physical evidence of an assault could have been put that excluded an examination of the files on the defendant's computer); United States v. Maldonado, 38 F.3d 936 (7th Cir. 1994); United States v. Rich, 992 F.2d 502, 508 (5th Cir. 1993); United States v. Guitierrez-Mederos, 965 F.2d 800, 803 (9th Cir. 1992) (scope of a search generally is defined by its expressed object); United States v. Martinez, 949 F.2d 1117, 1119 (11th Cir. 1992); United States v. Al-Marri, 230 F. Supp. 2d 535 (S.D.N.Y. 2002).

(14) See, e.g., United States v. Rich, 992 F.2d 502, 508 (5th Cir. 1993); United States v. Martinez, 949 F.2d 1117, 1119 (11th Cir. 1992); United States v. Al-Marri, 230 F. Supp. 2d 535 (S.D.N.Y. 2002).

(15) See, e.g., United States v. Martinez, 949 F.2d 1117 (11th Cir. 1992).

(16) See, e.g., United States v. Rich, 992 F.2d 502, 508 (5th Cir. 1993).

(17) The fact that an officer may develop probable cause during the search is beyond the scope of this article. See United States v. Alverez, 235 F.3d 1086, 1088 (8th Cir. 2000); United States v. West, 219 F.3d 1171, 1177 (10th Cir. 2000); United States v. Strickland, 902 F.2d 937, 941 (11th Cir. 1990); United States v. Garcia, 897 F.2d 1413, 1419 (7th Cir. 1990).

(18) 107 F.3d 810 (10th Cir. 1997).

(19) Id. at 812. A number of federal courts have found that an officer's asking to look in an area or item is sufficient to constitute a general request to search. See, e.g., United States v. Gant, 112 F.3d 239, 242 (6th Cir. 1997) ("The district court was correct in its view that the use of the term 'look' placed no particular limitations on the scope of the search."); United States v. McSween, 53 F.3d 684, 687 (5th Cir. 1995) ("Even if Price actually asked to 'look in' McSween's vehicle, we would still conclude that in these circumstances Price effectively asked for a general consent to search."); United States v. Berke, 930 F.2d 1219, 1222 (7th Cir. 1991); United States v. Harris, 928 F.2d 1113, 1117 (11th Cir. 1991) (search of unlocked luggage in trunk held valid after consent given to look in vehicle for drugs, weapons, or other contraband); United States v. Pena, 920 F.2d 1509, 1515 (10th Cir. 1990) ("We will not attach unduly restrictive meaning to the officer's request to 'look' inside the vehicle."); United States v. Sierra-Hernandez, 581 F.2d 760 (9th Cir. 1978) (officer's search under car hood upheld after defendant gave permission for officer to look inside truck).

(20) Id. at 815-16.

(21) See, e.g., United States v. Lemmons, 282 F.3d 920 (7th Cir. 2002) (In Lemmons, the defendant aided officers in their search of his trailer. The consent search eventually resulted in officers discovering child pornography on the defendant's computer after the defendant invited the officer to

check his computer and watched the officer locate and open files.); United States v. Mejia, 953 F.2d 461, 465 (9th Cir. 1991) ("Mejia correctly asserts that consent to enter one's threshold for the limited purpose of talking about an investigation does not include permission to enter a bedroom occupied by a sleeping spouse. ... However, once the officers were in the house, Cajigas gave a subsequent implied consent to let them enter the bedroom by not objecting when the officers followed her into the bedroom.").

(22) See, e.g., United States v. Acosta, 110 F. Supp. 2d 918, 924 (E.D. Wisc. 2000) (After first refusing to consent to search the house for people or evidence, the defendant then gave consent to a search for people. During the search, an officer opened a small plastic box and found bullets inside. The court found that the officer exceeded the scope of the consent by searching a box that was clearly too small to hold a person.).

(23) Florida v. Jimeno, 500 U.S. 248 (1991); United States v. Rich, 992 F.2d 502 (5th Cir. 1993); United States v. Felix, 134 F. Supp. 2d 162 (D. Mass. 2001).

(24) United States v. Maldonado, 38 F.3d 936, 941 (7th Cir. 1994) (defendant's expression of concern that packaging of boxes not be disturbed did not amount to a limitation on the scope of the search or a withdrawal of consent).

(25) United States v. Maldonado, 38 F.3d 936, 940 (7th Cir. 1994); United States v. Rudolph, 970 F.2d 467 (8th Cir. 1992) (defendant assisted officer in moving truck seat so officer could search behind it); United States v. Chaidez, 906 F.2d 377, 383 (8th Cir. 1990) ("Chaidez's behavior during the search is relevant when assessing the scope of the consent. ...").

(26) See, e.g., United States v. Al-Marri, 230 F. Supp. 2d 535, 539 (S.D.N.Y. 2002) ("Al-Marri's silence on this subject and his failure to raise the issue again the next day persuades this Court that his consent could reasonably have been understood to be open-ended and given without a limitation on time or scope."); United States v. Felix, 134 F. Supp. 2d 162, 173 (D. Mass. 2001) ("Ms. Felix granted the police permission to search Felix's house under several conditions. The police were to enter her home after she arrived to meet them, after she had unlocked the house. They were to perform the search in her presence. And finally, they were to search for the limited purpose of locating firearms." The court found it was objectively unreasonable for the officers to believe they could search before Ms. Felix arrived.).

(27) United States v. Felix, 134 F. Supp. 2d 162, 173 (D. Mass. 2001).

(28) United States v. Dichiarinte, 445 F.2d 126, 130 n.3 (7th Cir. 1971).

(29) 36 F.3d 14 (6th Cir. 1994).

(30) The Roark court found that the defendant's sister owned both houses and, even though she only entered the second house upon her brother's invitation, and he was in the process of buying the house from her, she had the authority to consent to a search of the premises. But see Wilheim v. Boggs, 290 F.3d 822 (6th Cir. 2002) (regarding common authority).

(31) 445 F.2d 126 (7th Cir. 1971).

(32) Id. at 126.

(33) Id. at 129.

(34) Id.

(35) See, e.g., United States v. Patten, 183 F.3d 1190, 1194 (10th Cir. 1999) ("Additionally, the court found defendant's silence and acquiescence in opening his suitcase indicated that defendant's consent to search was not limited to examining the exterior of the suitcase."); United States v. Gordon, 173 F.3d 761, 766 (10th Cir. 1999) (duffle bag of train passenger); United States v. Saadeh, 61 F.3d 510, 518 (7th Cir. 1995) ("Finally, we note that Saadeh did not object to the search of his tool box."); United States v. McSween, 53 F.3d 684, 685 (5th Cir. 1995) (officers searching under hood of car after asking to search car upheld as defendant stood by and watched the search); United States v. Cannon, 29 F.3d 472, 477 (9th Cir. 1994) (glove box, car trunk); United States v. Martel-Martines, 988 F.2d 855, 857 (8th Cir. 1993) ("Martel-Martines's failure to object made it objectively reasonable for the officer to conclude that his general consent to search the truck included consent to access the compartment in a minimally intrusive manner."). But see United States v. Ibarra, 965 F.2d 1354, 1357 (5th Cir. 1992) ("The fact that Chambers neglected to foresee the officers'

conduct and failed specifically to state any limitations on his permission to search the house is, we think, an insufficient basis for interpreting his consent as authorizing the officers to damage the house or any property in it.").

(36) United States v. Milian-Rodriguez, 759 F.2d 1558, 1563 (11th Cir. 1985); United States v. Dichiarinte, 445 F.2d 126 (7th Cir. 1971); United States v. Acosta, 110 F. Supp. 2d 918, 924 (E.D.Wis. 2000) ("The rule is straight forward: Government agents may not obtain consent to search on the representation that they intend to look only for certain specified items and subsequently use that consent as a license to conduct a general exploratory search.").

(37) See, e.g., United States v. George, 987 F.2d 1428 (9th Cir. 1993); United States v. Lechuga, 925 F.2d 1035, 1041 (7th Cir. 1991).

(38) See, e.g., United States v. Rich, 992 F.2d 502, 507 (5th Cir. 1993).

[ILLUSTRATION OMITTED]

(39) United States v. Strickland, 902 F.2d 937, 941 (11th Cir. 1990) ("When an individual gives a general statement of consent without express limitations, the scope of a permissible search is not limitless. Rather it is constrained by the bounds of reasonableness: what a police officer could reasonably interpret the consent to encompass.").

(40) See, e.g., United States v. Ashley, 37 F.3d 678 (D.C. Cir. 1994); United States v. Pace, 893 F.2d 1103, 1104 (9th Cir. 1990) ("The drug agents conducted a reasonable pat-down search with the defendant's consent and were entitled to remove the bulky objects which they reasonably suspected from the pat-down to be bricks of cocaine."); United States v. Blake, 888 F.2d 795 (11th Cir. 1989).

(41) See, e.g., United States v. Pena, 143 F.3d 1363, 1368 (10th Cir. 1998) (request to look in hotel room for drugs would reasonably be understood to include a thorough search of the room, including in the bathroom ceiling); United States v. Rojas, 906 F. Supp. 120, 130 (E.D.N.Y. 1995) ("While officers did not have permission to cause physical damage to the apartment, opening the 'traps' in the floor of the bedroom closets did not amount to physical damage.").

(42) See, e.g., United States v. Martinez, 949 F.2d 1117, 1119 (11th Cir. 1992) (The defendant consented to officer's search of mini-warehouse for narcotics. The court found that prying open the trunk of a 1949 Dodge in the warehouse was reasonably within the scope of the consent.)

(43) See, e.g., United States v. Alverez, 235 F.3d 1086, 1088 (8th Cir. 2000) ("the cutting of the spare tire likely exceeded the scope of the consensual search and may well have required suppression of the evidence had the officers not had probable cause to expand the search."); United States v. Martel-Martines, 988 F.2d 855, 857 (8th Cir. 1993) (defendant consented to a search of truck for drugs and watched silently as officers examined truck on a hoist and prepared to puncture sheetmetal covering a secret compartment); People v. Crenshaw, 9 Cal. App. 4th 1403 (Cal. Ct. App. 1992) (discussing cases regarding the removal of car panel vents for contraband based on a general consent to search).

(44) See, e.g., United States v. Mendoza-Gonzales, 318 F.3d 663 (5th Cir. 2003) (officer's slicing open tape that closed a small cardboard box found to reasonably be within defendant's unqualified consent to general search of truck); United States v. Melendez, 301 F.3d 27, 33 (1st Cir. 2002) (officer's unscrewing of one screw and removal of speaker woofer did not destroy the speaker or violate the defendant's limitation placed on the search to not "tear up" the house).

(45) 888 F.2d 795 (11th Cir. 1989).

(46) Id. at 800-01.

(47) 37 F.3d 678 (D.C. Cir. 1994).

(48) Id. at 679.

(49) Id. at 680-81.

(50) 27 F.3d 947 (3d Cir. 1994).

(51) Id. at 956.

(52) 235 F.3d 518 (10th Cir. 2000).

(53) Id. at 520.

(54) Id. at 522.

(55) United States v. Jimeno, 500 U.S. 248 (1991).

(56) 888 F.2d 795 (11th Cir. 1989).

(57) See, e.g., United States v. Mendoza-Gonzalez, 318 F.3d 663 (5th Cir. 2003); United States v. Gant, 112 F.3d 239, 243 (6th Cir. 1997); United States v. Springs, 936 F.2d 1330 (D.C. Cir. 1991); United States v. Dyer, 784 F.2d 812 (7th Cir. 1986); United States v. Al-Reyes, 230 F. Supp. 2d 535, 540 (S.D.N.Y. 2002) ("With regard to closed containers, the general rule holds that separate consent to search such an item found within a fixed premises is unnecessary."); United States v. Medina, 922 F. Supp. 818, 834 (S.D.N.Y. 1996) (general consent to search a car included consent to search the memory of a pager found in the car).

(58) Florida v. Jimeno, 500 U.S. 248, 252 (1991). But see United States v. Reeves, 6 F.3d 660, 662 (9th Cir. 1993) (search of locked briefcase in car upheld after defendant signed consent to search form); United States v. Gutierrez-Mederos, 965 F.2d 800, 803 (9th Cir. 1992) (officer used defendant's key to open locked compartment in defendant's car after defendant consented to a search for drugs and weapons).

(59) See, e.g., United States v. Melendez, 301 F.3d 27 (1st Cir. 2002); United States v. Snow, 44 F.3d 133, 135 (2d Cir. 1995); United States v. Maldonado, 38 F.3d 936 (7th Cir. 1994); United States v. Santurio, 29 F.3d 550 (10th Cir. 1994); United States v. Springs, 936 F.2d 1330 (D.C. Cir. 1991); United States v. Dyer, 784 F.2d 812 (7th Cir. 1986); United States v. Dominguez, 911 F. Supp. 261 (S.D. Tx. 1995); United States v. Rojas, 906 F. Supp. 120, 130 (E.D.N.Y. 1995).

(60) See, e.g., United States v. Strickland, 902 F.2d 937, 941 (11th Cir. 1990).

BY JAYME WALKER HOLCOMB, J.D.

Ms. Holcomb serves as chief of the Legal Instruction Section, DEA Training Academy.