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ONE MINUTE BRIEF

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NUMBER: 2019-12 **DATE:** 05-13-19 **BY:** Devallis Rutledge **TOPIC:** The Instrumentality Exception

ISSUE: When does the “instrumentality exception” permit warrantless seizures and searches?

The US Supreme Court has said that **four** categories of things may be seized and examined by police for their evidentiary value without a warrant, assuming lawful access and probable cause: (1) **contraband**, and the (2) **fruits**, (3) **instrumentalities** and (4) **evidence** of a crime. *Warden v. Hayden* (1967) 387 US 294, 306-07.

An “instrumentality” could be anything used to facilitate commission of the crime, such as a weapon, a ransom note, a lockpick, a balance-beam scale, or in some cases, a **vehicle**. When items such as tools, implements, weapons and supplies are lawfully encountered by police, their seizure is usually justified under another exception, such as plain view, incident to arrest, fleeting targets, inventory, *etc.* *Coolidge v. New Hampshire* (1971) 403 US 443, 465-66. But in some cases where a **vehicle** is an instrumentality of the crime, this doctrine may be **independently applied** to justify warrantless seizure and search:

*“We have recognized and applied the **instrumentality exception** in several cases. ... The propriety of a warrantless seizure and search where **the vehicle is itself evidence** or the **instrumentality of a crime** is implicit in a number of United States Supreme Court decisions as well.”* *People v. Griffin* (1988) 46 Cal.3d 1011, 1024-25 (upholding warrantless seizure and blood-sample collection and analysis from the floorboard of a murderer’s truck).

- A vehicle may be an instrumentality of a crime where it is used as an **implement** (as in a hit-and-run, ADW, vehicular manslaughter or rundown murder), or where it provided the

situs of a crime committed **in** or **from** the vehicle (as in a street kidnap, or a rape or murder inside the vehicle, or a drive-by shooting).

- A vehicle is **not** an instrumentality simply because it provided **transportation** to and from a crime scene, or might **contain evidence** of a crime not committed by or within the vehicle (though other exceptions may apply). *People v. Minjares* (1979) 24 Cal.3d 410, 422.

- Examples of “implement” cases:

Cardwell v. Lewis (1974) 417 US 583 (OK to examine a tire and take exterior paint scrapings from a car used to push a murder victim’s vehicle over a cliff).

People v. Diaz (2013) 213 Cal.App.4th 743, 757 (downloading data from the diagnostic module of a lawfully-impounded vehicle in a **vehicular manslaughter** case “*fell squarely within the instrumentality exception*”).

People v. Rice (1981) 126 Cal.App.3d 477, and *People v. Wolf* (1978) 78 Cal.App.3d 735 (OK to seize evidence of collision damage from lawfully-accessed **hit-and-run** vehicles).

People v. Robinson (1974) 41 Cal.App.3d 658 (OK to seize and examine a vehicle used to run over the **murder** victim).

- Examples of “situs” cases:

People v. Bittaker (1989) 48 Cal.3d 1046 (OK to search inside a van in which victims had been **raped, tortured and murdered**).

People v. Rogers (1978) 21 Cal.3d 542 (OK to search the interior of a van used as a mobile photography studio for **child pornography**).

North v. Superior Court (1972) 8 Cal.3d 301 (OK to search a vehicle used to **kidnap** a schoolgirl off the street at knifepoint).

People v. Teale (1969) 70 Cal.2d 497 (seizure and scientific examination of blood and fiber evidence OK from a vehicle within which the victim had been **murdered**).

- **Scope of search** under the instrumentality exception will depend on the nature of the crime and of the evidence sought, since “*The scope of a search must be strictly tied to and justified by the circumstances which rendered its initiation permissible.*” *Terry v. Ohio* (1968) 392 US 1, 19 (e.g., the trunk could not usually be searched for evidence of a hit-and-run).

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BOTTOM LINE: While searches under *warrant* are preferable where practicable, police with lawful access and probable cause may seize and search a vehicle that is suspected of having been the *instrumentality* of a crime.

(Emphases added in some quoted material.)

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