

The Case of the Warrantless Searched BMW



PARA 132: Computer Assisted Legal Research and Writing



Secondary Sources: National and State Specific Encyclopedias



Secondary Sources Exercise Part 1: National and State Specific Encyclopedias

This exercise is designed to become acquainted with obtaining needed primary law while at the same time using Westlaw and its National and State Specific Encyclopedias. This will help students to get a good start by launching out and analyzing primary law. This specific exercise is not asked to come to a final conclusion, but to get the students critically thinking as they begin legal research and writing in the classroom.

As a litigation paralegal employed by Cheatem and Howe Law Firm, the supervising attorney has tasked the litigation paralegal to perform research on an incident that occurred to a newly retained client, James Monroe.

Facts of Case

Mr. Monroe on January 15, 2020 at 6:00 A.M. received a knock on his front door at his Point Loma home in the County of San Diego. When he opened the door, with great shock and surprise, he was simultaneously greeted by his unwelcomed guests with a search warrant who identified themselves as the *FBI and IRS criminal division*. Mr. Monroe was presented with a copy of the search warrant.

Some Background Facts:

Mr. Monroe had been under investigation for tax evasion and possession with intent to distribute.

What is at Issue:

The issue is Mr. Monroe's vehicle (that was on the property at the time of the search) did not specifically contain the description of his 2019 BMW in the search warrant. During the search nearly 20 grams of cocaine was confiscated in Mr. Monroe's vehicle. Mr. Monroe was subsequently arrested.

You are tasked to review the issue to determine if there is an exception for not having the vehicle listed on the search warrant.

Question Presented:

Can the confiscation of the illegal drugs be set aside due to an illegal search and seizure because the vehicle was not listed on the search warrant?

You know nothing about this issue of law, so where do you think you should begin your legal research?

In the Legal Encyclopedias

1. What are some of the key words that come to mind launching your search in the secondary sources?

Search and Seizure, warrant, warrantless searches, incident to arrest

2. What does the term mean “incident to arrest”? Why do you think this phrase may be relevant in light of the fact pattern?

Search incident to a lawful arrest, commonly known as **search incident to arrest (SITA)** or the **Chimel rule**, is a legal principle that allows police to perform a warrantless search of an arrested person, and the area within the arrestee’s immediate control, in the interest of officer safety, the prevention of escape, and the destruction of evidence.

The warrant did not specifically list the vehicle where the contraband was located. This may be an issue. Further research will need to be conducted to overcome this issue.

There are so many variables such as being arrested following the search of the vehicle with a warrant that did not list the vehicle. Getting on the other side of the argument is important in this case.

3. With this said, you want to go to a State Specific Encyclopedia so you Click on Secondary Sources. What state specific encyclopedia are you going to use?

California Jurisprudence.

Why?

Because it is a state specific for issue of California. I will not be concerned about sorting through different jurisdictions as it will be specific for purposes of my jurisdiction.

4. Going into the Index of the state specific encyclopedia what search terms appear relevant? Why?

Belief

1. arrest based on belief that arrestee has committed felony, warrantless searches and seizures, CLPRE § 491.

2. information and belief, nature and source of information relied upon in application for warrant, [CLPRE § 410](#).
3. occupant believed to be armed, excusal of compliance with knock-and-notice rule in execution of warrant, [CLPRE § 456](#).
4. weapons believed present, probable cause for vehicle searches without warrant, [CLPRE § 527](#).

Incident to arrest

1. controlled substances, seizure of property by peace officer, [CLCADM § 167](#), [168](#).
2. lawful arrest, warrantless searches and seizures, [CLPRE § 484](#) to [CLPRE § 507](#).
3. scope and manner of searches and seizures, [CLPRE § 590](#) to [CLPRE § 593](#).
4. vehicle searches without warrant, [CLPRE § 532](#).
5. voluntariness of consent given, warrantless searches and seizures, [CLPRE § 562](#), [563](#).

Because Mr. Monroe was arrested after the search and discovery of the contraband in a vehicle.

5. What annotation seemed most relevant to your search terms and the facts of the case? Why?

vehicle searches without warrant, [CLPRE § 532](#).

6. What is the section Number?

§ 532. Search of vehicle incident to arrest

20 al. Jur. 3d Criminal Law: Pretrial Proceedings § 532

7. Who is the author(s)?

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8. When was the section updated?

May 2019 Update

9. Why is this important to take note of?

10. What are the relevant key numbers?

West's Key Number Digest

West's Key Number Digest, Arrest🔑 71.1(4.1), 71.1(5), 71.1(8)

West's Key Number Digest, Automobiles🔑

349.5(1)

West's Key Number Digest, Searches and Seizures🔑

60.1, 64

11. Why are these key numbers important to record?

Will lead to Possible Relevant primary law.

12. What elements must be proven for a search of a vehicle in California to be permissible? Would you cite to this section in your brief?

A search of the vehicle is permissible in California under the following circumstances:

- (1) where there is a lawful custodial arrest;
- (2) where the search is contemporaneous to the arrest;
- (3) where the search is limited to the passenger compartment; and
- (4) where the arrestee is the driver, a passenger, or a recent occupant of the vehicle.

No, because this is from a secondary source. I would go to the primary law citing.

13. What does the term “mobility” refer to in the section? Is this important?

An automobile, because of its mobility, may be searched without warrant as incident to an arrest where the officer has reasonable cause to believe that it contains contraband or instruments or evidence of crime.

20 Cal. Jur. 3d Criminal Law: Pretrial Proceedings § 532

14. What is the standard of proof for an officer to have justification for an arrest according to this section?

An automobile, because of its mobility, may be searched without warrant as incident to an arrest where the officer has **reasonable cause** to believe that it contains contraband or instruments or evidence of crime.

15. Are there any updates? Where would you locate this?

CUMULATIVE SUPPLEMENT

Cases:

Arrestee's inability to access car does not preclude a search of the vehicle as a search incident to arrest if the police reasonably believe it contains evidence of the offense for which the individual has been arrested. [U.S. Const. Amend. 4](#). [People v. Johnson, 2018 WL 1516871 \(Cal. App. 2d Dist. 2018\)](#).

16. Are there any cases in the footnotes that are outside of California

Jurisdiction? Yes, How many? 1. 1

[Davis v. U.S., 564 U.S. 229, 131 S. Ct. 2419, 180 L. Ed. 2d 285, 68 A.L.R. Fed. 2d 665 \(2011\)](#).

17. Record two California Cases.

[People v. Baker, 164 Cal. App. 4th 1152, 79 Cal. Rptr. 3d 858 \(5th Dist. 2008\)](#).

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[People v. Balassy, 30 Cal. App. 3d 614, 106 Cal. Rptr. 461 \(2d Dist. 1973\)](#).

18. Does the footnote list a United States Supreme Court Case? Would I want to review this case? Why?

Yes, see above.

19. What are the importance of the footnotes?

The footnotes give links to cases that have interpreted this legal issue. These cases are going to be very important.

20. Would all these cases be relevant to your client's issue and fact pattern? Why or Why not?

Answers May vary.
