



POLICE / PROSECUTOR UPDATE

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It is settled law that police may **search a vehicle incident to the arrest** of an occupant of the vehicle. As established by the United States Supreme Court, this doctrine provides that when a police officer has made a lawful custodial arrest of an occupant of a vehicle, he may, as a contemporaneous incident of the arrest, search the passenger compartment of that vehicle. The police may also examine the contents of any containers found within the passenger compartment. Such a container may be searched whether it is open or closed. Containers may be searched even though they might be of a type which could hold neither a weapon nor evidence of the criminal conduct for which the suspect was arrested. "Container" means any object capable of holding another object, including closed or open glove compartments, consoles, or other receptacles located anywhere within the passenger compartment, as well as luggage, boxes, bags, clothing, and the like. However, this doctrine does not encompass the trunk of a car.

A recent Indiana Court of Appeals case examined the scope of this doctrine. For purposes of our discussion, a Deputy Sheriff stopped a vehicle driven by the defendant for the purpose of arresting the passenger. After making the arrest, the deputy took both individuals into custody, handcuffed them, and placed them in separate police vehicles.

At this point, the immediate area where the passenger was seated was searched and no contraband was found. Then, the entire vehicle was searched with no result. The police at that point dismantled the glove box of the vehicle, enabling the officers to look behind the glove box and into the chassis of the vehicle. There, a Crown Royal bag was discovered which contained suspected cocaine. The substance was later tested and confirmed to be positive for cocaine.

The State argued that this search was proper as incident to the lawful custodial arrest of the passenger. However, the Court of Appeals determined that this doctrine cannot be stretched to the extent argued by the State.

With the arrest of the passenger, the officers did not stop with merely searching the immediate area where the passenger had been seated, the search of the "closed glove box, consoles, receptacles, luggage, boxes, and bags found within the vehicle's passenger compartment, which would have been permissible. Rather, they dismantled the glove box to look behind it into the vehicle's chassis." The Court stated that if it accepted the State's argument, it would extend the doctrine from not only allowing the police to search the passenger compartment without a search warrant after an arrest, but it would allow the dismantling of the interior structures of vehicles without the benefit of a search warrant. In conclusion, while a search incident to arrest is a valid warrant exception, the officers' search in this case exceeded the permissible scope. Bell v. State, 818 N.E.2d 481 (Ind. Ct. App. 2004)

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In another case, a defendant, prior to being given a **breathalyzer test**, was placed in a waiting room in the police department for the **twenty-minute waiting period**. The police officer who administered the test was not present in the room. However, the defendant was being recorded by a video camera. One of the defendant's arguments was that because the officer was not continuously present during the twenty-minute period, he didn't follow the proper procedure. However, the court of appeals reiterated that the procedure for administering breath tests does not require twenty minutes of continuous observation. Haddin v. State, 812 N.E.2d 1057 (Ind. Ct. App. 2004).