



DPS TRAINING BULLETIN

LEGAL BULLETIN NO. 159
June 13, 1991

CONSENT TO SEARCH VEHICLE

Reference: Florida
v.
Luz Piedad Jimeno

United States Supreme Court
59 LW 4471 (No. 90-622)
May 23, 1991

FACTS:

A police officer overheard Jimeno arranging on a public telephone what he thought to be a drug transaction. Believing that Jimeno might be involved in illegal drug trafficking, the officer followed Jimeno's car and observed Jimeno commit a traffic violation. He pulled him over. The officer informed Jimeno that he stopped him for the traffic violation, but also had reason to believe that Jimeno was carrying narcotics in his car.

The police officer asked permission to search the car, informing Jimeno that he did not have to consent to the search. Jimeno stated he had nothing to hide and gave the officer permission for the search of his vehicle. On the floor of the car, the officer saw a folded brown-paper bag and discovered a kilogram of cocaine when he opened it.

Jimeno was charged with possession with intent to distribute the cocaine. Before trial, Jimeno moved to suppress the cocaine found in the bag on the grounds that his consent to search the car did not extend to the closed paper bag inside the car.

ISSUE:

Did the consent to search the vehicle extend to a closed but not locked container (the bag) found inside the vehicle?

HELD: Yes.

REASONING:

1. Jimeno granted the officer permission to search his car and did not place any explicit limitations on the scope of the search.
2. It was objectively reasonable for police to conclude that general consent to search the car also included consent to search containers within the car which they felt might bear drugs.

NOTES:

Caution--The court did make a comment regarding locked containers (briefcases, etc.) found during a consent search of a vehicle; it stated, "It is very likely unreasonable to think that a suspect, by consenting to the search of the trunk of his vehicle, has agreed

to the breaking open of a locked briefcase within the trunk..." In other words, you will need either a second consent before opening a locked container or probable cause to justify its seizure while you apply for a search warrant.

In another recent case, California v. Charles Steven Acevedo, 59 LW 4559 (no Bulletin), decided May 30, 1991, the United States Supreme Court ruled that the police may search an automobile and the contents within it where they have probable cause to believe contraband or evidence is contained. This case was decided as another "vehicle exception" to the warrant requirement.

In other words, closed containers found during an automobile search can be opened; however, containers seized elsewhere (the airport, etc.) are still governed by prior rulings.

Remember--Alaska has, to date, not adopted the "vehicle exception" to the warrant requirement.

NOTE TO SUBSCRIBERS TO THE ALASKA LEGAL BRIEFS MANUAL:

Add this case to Sections B, "Consent," and J, "Vehicle Exception," of your Contents and Text. File Legal Bulletin No. 159 numerically under Section R of the manual.