

The Motor Vehicle Exception

By EDWARD HENDRIE, J.D.

There is a presumption that a search conducted under the authority of a search warrant is reasonable.¹ Conversely, a search conducted without a search warrant is presumed unreasonable.² The presumption of unreasonableness can be rebutted through an applicable exception to the search warrant requirement. One of those exceptions is known as the motor vehicle exception. The U.S. Supreme Court has ruled that if an officer has probable cause to believe that evidence or contraband is located in a motor vehicle, he may search the area of the vehicle he reasonably believes contains that evidence without a search warrant to the same degree as if he had a warrant.³ The scope of the search is limited only by what the officer has probable cause to search for and may encompass the entire vehicle, including the trunk. The motor vehicle exception is based upon the reduced expectation of privacy that citizens have in their motor vehicles because of the pervasive regulation to which they are subjected



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and the fact that the mobility of vehicles present an inherent exigency.⁴

In addition to the motor vehicle exception, there are other exceptions to the search warrant requirement that allow an officer to search all or part of a motor vehicle. Those exceptions allow officers to 1) search the passenger compartment (but not the trunk) of a suspect's vehicle incident to his arrest;⁵ 2) frisk the passenger compartment (but not the trunk) of an automobile for weapons upon reasonable suspicion that a weapon may be there;⁶ 3) inventory an impounded vehicle, including

items in the trunk, pursuant to standardized agency regulations;⁷ or 4) search a motor vehicle upon the consent of the person who has the actual or apparent authority and control over that vehicle.⁸ While these listed exceptions can be applied to motor vehicles, they are not limited in their application to motor vehicles, as is the motor vehicle exception.

Probable Cause

To search under the motor vehicle exception, an officer must have probable cause. The Supreme Court has stated that "probable cause is a fluid

concept—turning on the assessment of probabilities in particular factual contexts—not readily, or even usefully, reduced to a neat set of legal rules.”⁹ Probable cause is not a “one size fits all” standard. In fact, probable cause is a range that occupies a zone¹⁰ that is assessed under the totality of the circumstances.¹¹

The seminal motor vehicle exception case is *Carroll v. United States*.¹² The *Carroll* decision illustrates just how low the probable cause standard is when conducting a warrantless search under the motor vehicle exception. In *Carroll*, federal prohibition agents acting undercover had negotiated for the purchase of illegal whiskey in Grand Rapids from the two defendants, Kiro and Carroll. The sale was never consummated. Approximately 1 week later, the agents saw Kiro and Carroll traveling toward Detroit in the same car they used to drive to the undercover negotiations. More than 2 months later, the agents once again saw the defendants driving in the same automobile from the Detroit area toward Grand Rapids. The agents knew that at the time, the Detroit area was an active center for bringing illegal liquor into the United States. Believing that Kiro and Carroll were smuggling a load of illegal liquor from Detroit to Grand Rapids, the agents stopped the vehicle. The agents conducted a

warrantless search of the vehicle and found illegal liquor hidden beneath the upholstery of the seats. The U.S. Supreme Court approved of the warrantless motor vehicle search in *Carroll* because the agents had probable cause.

One of the often-overlooked but rather significant findings by the U.S. Supreme Court in *Carroll* was that the probable cause in that case was clear. The U.S. Supreme Court stated:

[I]t is clear the officers here had justification for the search and seizure. This is to say that the facts and circumstances within their knowledge and of which they had reasonably trustworthy information were sufficient in themselves to warrant a man of reasonable caution in the belief that intoxicating liquor was

being transported in the automobile which they stopped and searched.¹³

In *Chambers v. Maroney*,¹⁴ a service station was robbed by two armed men. At about the time of the robbery, two teenagers noticed a blue station wagon circling the block in the vicinity of the gas station and later speed away with four people inside, one of whom was wearing a green sweater. The station attendant recounted that one of the robbers was wearing a green sweater and the other was wearing a trench coat. A description of the car and robbers was broadcast over the police radio. Within an hour, a light blue compact station wagon carrying four men was stopped by the police approximately 2 miles from the gas station. One of the passengers was wearing a green sweater, and there was

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a trench coat in the car. The occupants of the car were arrested. The money, guns, and other incriminating evidence from the robbery were found inside the car during a later warrantless vehicle search conducted at the station. The U.S. Supreme Court found that there was probable cause to arrest the suspects and probable cause to search the vehicle. The Court approved of the later vehicle search under the motor vehicle exception.

Scope of the Search

The scope of a search under the motor vehicle exception is limited to the areas in the vehicle where the evidence or contraband could reasonably be located. For instance, suppose an officer has probable cause to believe that a suspect is carrying a suitcase full of illegal drugs, and the officer sees the suspect hail a cab and put the suitcase in the trunk of the cab. If the suspect is detained by the officer before he gets in the cab, the officer would have probable cause to believe that the drugs are in the suitcase put in the trunk but not anywhere else in the cab. Under the motor vehicle exception, therefore, the officer would only have authority to search the trunk because he would lack probable cause to believe that any contraband or evidence would be found elsewhere in the taxicab.¹⁵

In the more usual case, an officer would be in a situation where he has found contraband or other evidence of a crime in the passenger compartment of a vehicle. In such a case, it would be reasonable for the officer to believe that other contraband or evidence could also be in the trunk of the vehicle.¹⁶ For example, in *Commonwealth v. Moses*,¹⁷ the Supreme Court of Massachusetts ruled that drugs and a gun found in the passenger compartment of a vehicle

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during a frisk for weapons gave an officer probable cause to believe that more drugs or weapons could be in the trunk. Ordinarily, an officer would not be permitted to search the trunk while frisking the automobile for weapons. However, once the drugs were found in the passenger compartment of the vehicle during the initial frisk, the search of the trunk was permitted under the motor vehicle exception based upon the probable cause arising from the

presence of the drugs in the passenger compartment. The same inference can be drawn from finding a gun in the passenger compartment of the vehicle. A gun found in the passenger compartment of a motor vehicle would support an inference that other weapons, ammunition, or contraband could be in the trunk of that vehicle.¹⁸

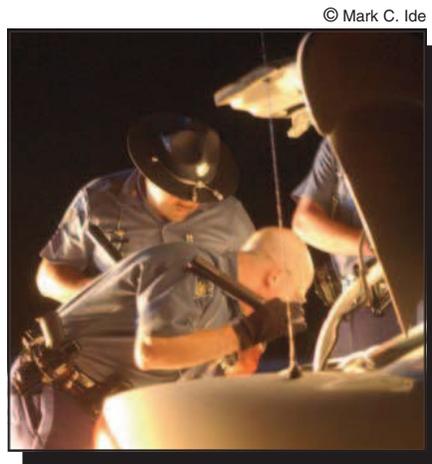
Personal-Use Amount of Drugs

It should be noted that some courts are of the view that the presence of a personal-use amount of drugs in the passenger compartment of a motor vehicle would only give the officer probable cause to search the passenger compartment but not the trunk. For example, in *Wimberly v. Superior Court of San Bernardino County*,¹⁹ officers stopped a motorist for driving erratically. The officers approached the stopped vehicle and saw a smoking pipe next to 12 round seeds on the floor of the vehicle. The officers smelled the odor of burnt marijuana emanating from inside the car, and upon examining the pipe, they found burnt marijuana residue in the pipe bowl. The officers searched the interior of the car and found a plastic bag containing a small quantity of marijuana in the pocket of a coat. The officers used the car keys to open the trunk of the car where they

found several pounds of marijuana and hashish in a suitcase in the trunk. The California Supreme Court ruled that the officers had probable cause to search the passenger compartment of the vehicle upon observing the marijuana seeds in close proximity to the smoking pipe on the floor of the vehicle. The court, however, also ruled that the erratic driving, the observation of the marijuana seeds adjacent to the smoking pipe, the odor of burnt marijuana, the burnt residue in the pipe, and the small quantity of marijuana secreted in the jacket indicated only that the defendants were casual users of marijuana. The court determined that it was not reasonable for the officer to infer that casual drug users would have additional contraband hidden in the trunk. Because the court found that the officers did not have probable cause to search the trunk, the court suppressed the evidence found in the trunk.

The *Wimberly* decision represents a minority of courts. In most courts, if there is physical evidence of drugs found in the passenger compartment of the vehicle, even if it is only a personal-use amount, that will be sufficient to establish probable cause that more drugs could be found in the trunk of that vehicle.²⁰ For example, in *United States v. Turner*,²¹ a U.S. Park Police officer stopped a

motorist for failing to display a front license on his vehicle. When the defendant rolled down the window of the vehicle, the officer noticed a strong odor of burnt marijuana. The driver produced a temporary registration but could not produce a driver's license. The officer saw torn pieces of cigar tobacco in the defendant's lap and on the floor at his feet. The officer knew that marijuana users often hollow out cigars



and use them as a receptacle for smoking marijuana. The officer also observed on the floor directly behind the driver's seat a clear plastic bag of green weed-like material, which he believed to be marijuana. The officer asked for the keys to the car, which he used to open the trunk. The officer searched the trunk where he found \$825 in small bills and a 62-gram chunk of cocaine base. The defendant argued that the officer only had

information that he was a marijuana user and that there was not sufficient evidence to establish probable cause that there would be more drugs in the trunk of the vehicle. The U.S. Court of Appeals for the District of Columbia Circuit disagreed with the defendant's argument and ruled that there was probable cause to believe that the defendant would have additional drugs in his trunk.

Odor of Marijuana

In *Turner*, the officer noticed the smell of burnt marijuana, but there was also other evidence of marijuana use by the driver that gave the officer probable cause to search the trunk. The smell of burnt marijuana emanating from the passenger compartment of a vehicle in and of itself is usually sufficient to establish probable cause to search the passenger compartment for the source of the odor.²² However, the odor of burnt marijuana alone is generally not viewed by the courts as sufficient to establish probable cause to search the trunk of a vehicle.²³

For example, in *United States v. Nielsen*,²⁴ an officer pulled over the defendant for speeding and subsequently smelled the odor of burnt marijuana coming from the open window of the defendant's vehicle. The officer obtained consent to search the passenger

compartment of the vehicle but found nothing there that could have been the source of the marijuana odor. A criminal record check revealed that the driver had been arrested for a misdemeanor marijuana offense approximately 15 years earlier. The officer then removed the keys from the ignition and opened the trunk of the vehicle. Inside the trunk, the officer found approximately 2 kilograms of cocaine. The U.S. Court of Appeals for the Tenth Circuit ruled that the odor of the marijuana alone was not sufficient to establish probable cause to search the trunk of the motor vehicle.

The *Nielsen* court was concerned with the credibility of the uncorroborated detection by an officer of the mere odor of burnt marijuana in a motor vehicle. The *Nielsen* court stated, and most courts agree, that if there is evidence that corroborates the odor of burnt marijuana, the corroborated odor would be sufficient to establish probable cause to search the vehicle's trunk. The corroboration could be as simple as finding a marijuana cigarette in the car or in the possession of the driver.²⁵ The *Nielsen* court distinguished between the detection of the smell of marijuana by an officer and the detection of drugs by a trained drug-sniffing dog. The court stated that a drug dog with a good track record for reliability

would not require corroboration to establish probable cause to search the trunk of a vehicle.²⁶

The corroboration of the marijuana odor does not have to be in the form of physical evidence. In *State v. Ireland*,²⁷ officers pulled over the defendant because he was driving with his headlights off. The officers ultimately determined that the driver was driving on a suspended license. The officers arrested the driver and searched the vehicle incident to his arrest.

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As they searched the vehicle, they detected a burnt marijuana smell under the driver's seat. There was a passenger in the car who indicated that she owned the car. One of the officers asked the owner if there was anything in the trunk. She responded that there was nothing in the trunk and that she had no key available to open the trunk. The officers in due time found the trunk key inside the passenger compartment. Upon

opening the trunk they found an unspecified number of marijuana plants.

The driver was found guilty of drug trafficking under state law, and he appealed his conviction. The defendant argued that because the detection of the marijuana odor in the passenger compartment was not supported by any corroborating evidence of the presence of marijuana, there was not probable cause to search the trunk of the vehicle. The Supreme Court of Maine ruled that the odor of marijuana was corroborated by the furtive behavior of the owner of the vehicle in denying that she had a key to the trunk when, in fact, there was a key readily available in the passenger compartment of the vehicle. Her false statement suggested that more marijuana would be found in the trunk of the vehicle.

The above cases deal with the issue of the odor of burnt marijuana. When, however, the odor detected by the officer is the odor of fresh, unburned marijuana, courts have not required additional evidence to corroborate the presence of the marijuana before an officer may search the trunk of the vehicle.²⁸

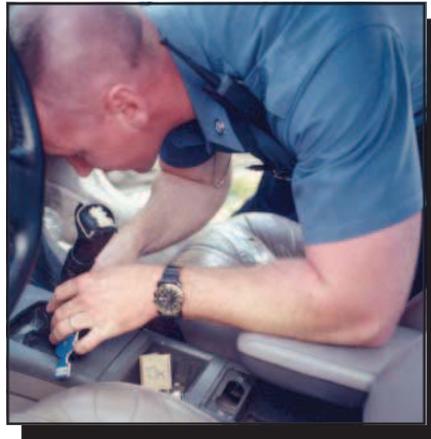
Motor Vehicle

The term *motor vehicle* for purposes of the motor vehicle exception is a term of art, which has not been limited to ordinary automobiles. In *California v. Carney*,²⁹ the U.S. Supreme

Court applied the motor vehicle exception to a motor home. In *Carney*, a DEA agent received uncorroborated information that a motor home was being used by someone to exchange marijuana for sex. Several DEA agents set up surveillance in the area of the motor home in downtown San Diego and watched as the defendant approached a youth. The youth accompanied the defendant to his motor home parked in a nearby parking lot. The agents observed the defendant and the youth close the window shades on the motor home. The agents kept the motor home under surveillance for 1 hour and 15 minutes until the youth exited the motor home. The agents stopped the youth and talked with him, at which time, the youth admitted that he had received marijuana in return for sex. The youth agreed to return with the agents to the motor home and knock on its door. When the defendant stepped out of the motor home, the agents identified themselves as law enforcement officers. One of the agents entered the motor home and observed marijuana, plastic bags, and a scale of the kind used to weigh drugs. The defendant was arrested, and the agents impounded the motor home. A subsequent search of the motor home at the police station revealed additional marijuana in the cupboards and refrigerator.

The defendant pleaded *nolo contendere* to the drug charges, and he was placed on probation. He appealed the order placing him on probation. The California Supreme Court reversed his conviction, holding that the expectation of privacy in a motor home was more like a dwelling and, therefore, the search without a search warrant did not fall within the motor vehicle exception.

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The U.S. Supreme Court reversed the judgment of the California Supreme Court and ruled that the search of the motor home was reasonable under the Fourth Amendment because the motor home was a readily movable motor vehicle and the expectation of privacy in a motor vehicle is significantly less than in a home or office. The reduced expectation of privacy in the motor home was due, in part, to the fact that, like all automobiles that are capable of traveling on the

public highways, motor homes are subject to pervasive regulation. The Court stated that simply because the vehicle in this case was a motor home did not mean that it was not subject to a warrantless search under the motor vehicle exception.³⁰ The Court stated:

To distinguish between respondent's motor home and an ordinary sedan for purposes of the vehicle exception would require that we apply the exception depending upon the size of the vehicle and quality of its appointments.... We declined today to distinguish between "worthy" and "unworthy" vehicles which are either on the public roads and highways, or situated such that it is reasonable to conclude that the vehicle is not being used as a residence.³¹

The Court, however, made a distinction between a readily mobile motor home parked in a public parking lot and a motor home that is being used as a residence at a campsite.³²

We need not pass on the application of the vehicle exception to a motor home that is situated in a way or place that objectively indicates that it is being used as a residence. Among the factors that might be relevant in determining whether a warrant would be required in such a

circumstance is its location, whether the vehicle is readily mobile or instead, for instance, elevated on blocks, whether the vehicle is licensed, whether it is connected to utilities, and whether it has convenient access to a public road.³³

In addition to automobiles and motor homes, courts have applied the motor vehicle exception to trucks,³⁴ trailers³⁵ pulled by trucks, boats,³⁶ house boats,³⁷ airplanes,³⁸ and even the sleeping compartments of trains.³⁹

Emergency

The ready mobility of a vehicle is viewed by the U.S. Supreme Court as an inherent exigency that is always present when conducting a motor vehicle search.⁴⁰ The federal rule is that it is not required that there be an additional separate emergency for the application of the motor vehicle exception. In *Pennsylvania v. Labron*,⁴¹ the U.S. Supreme Court explained, “If a car is readily mobile and probable cause exists to believe it contains contraband, the Fourth Amendment thus permits police to search the vehicle without more.”⁴²

States, however, are free to be more restrictive of police conduct as a matter of state law. In some states, police conduct that is permitted under the U.S. Constitution may not be

allowed under their state constitutions. In that regard, some state courts have limited the application of the motor vehicle exception under their state constitutions to circumstances when there is a separate emergency.⁴³ Those state courts require some showing by the state that the exigencies of the circumstances made it impracticable for the police to obtain a search warrant before they

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searched the car. Most state courts, however, follow the federal rule and do not require an emergency when applying the motor vehicle exception.⁴⁴

The nonemergency application of the motor vehicle exception is best illustrated by the U.S. Supreme Court case of *Maryland v. Dyson*.⁴⁵ In *Dyson*, Maryland police officers had probable cause and 13 hours advance notice that the defendant would be driving a vehicle containing crack cocaine north

on an interstate highway to Maryland. The officers waited the 13 hours for the defendant to drive past them on the highway before stopping his vehicle and conducting a warrantless search of the vehicle for the drugs. Upon searching the vehicle, the officers found the bag of crack cocaine for which they were looking. There was no exigency in the case. The officers had ample time to obtain a search warrant during the 13-hour wait. The U.S. Supreme Court, nevertheless, determined that the stop and search of the vehicle was valid under the motor vehicle exception because the motor vehicle exception does not require a separate exigency to justify a vehicle search.

Dyson was a case where the officers had plenty of time before seizing the car to get a warrant. What if officers lawfully seize a car and have ample opportunity to obtain a warrant after the seizure? In the previously discussed case of *Chambers v. Maroney*,⁴⁶ the police had the vehicle secured and clearly had an opportunity to obtain a search warrant. The U.S. Supreme Court ruled that it was lawful for the police to search the motor vehicle at the station house after the vehicle was seized. With the vehicle in police custody, there was no risk that the vehicle or its contents would disappear. The

U.S. Supreme Court, nonetheless, ruled that it was not necessary to obtain a search warrant to search the vehicle.⁴⁷

In *Texas v. White*,⁴⁸ officers arrested a suspect who had attempted to pass a fraudulent check at a bank. An officer was called and, upon his arrival at the scene, directed the defendant to park his vehicle. At that point, the officer and one of the bank employees saw the suspect stuffing something between the seats of his car. Ultimately, the police arrested the suspect, seized his car, and drove him and his car to the station house. After bringing the suspect to the station house, the officers requested consent to search his automobile, but the defendant refused. The officers then searched the automobile anyway and discovered four wrinkled fraudulent checks that corresponded to the checks that he had attempted to pass earlier at a bank. The defendant was convicted for attempting to pass a forged instrument, but his conviction was overturned by the Texas Court of Criminal Appeals. The Texas court ruled that the search that turned up the checks was unlawful because the police failed to obtain a search warrant as required by the Fourth Amendment.

The U.S. Supreme Court overturned the Texas court's decision. The Supreme Court ruled that the officers were not

required to obtain a search warrant to search a vehicle under the motor vehicle exception, even when the vehicle is impounded and they have time to get a search warrant.

What if a vehicle is in police custody and has already been subjected to an inventory search pursuant to standardized police regulations? Can the police return to that vehicle later and search it again without a warrant for evidence or contraband?



In *Florida v. Myers*,⁴⁹ the defendant was arrested and his automobile was inventoried, seized, and secured in a locked impound lot. Approximately 8 hours later, a police officer who had probable cause that the vehicle contained evidence or contraband went to the impound lot and searched the car a second time without a warrant. The U.S. Supreme Court ruled that the second search by the

officer was a valid search under the motor vehicle exception, even though the vehicle had already been subjected to an inventory search and was impounded.⁵⁰

Containers in Vehicles

The motor vehicle exception permits officers to search not only the vehicle and trunk but also any containers in the vehicle that could contain the evidence or contraband that is the object of the search.⁵¹ Furthermore, the scope of a warrantless search of an automobile is not defined by the nature of the container in which the contraband is secreted. Rather, it is defined by the object of the search and the places in which there is probable cause to believe it may be found.

If officers have probable cause to search a lawfully stopped vehicle, they are justified under the motor vehicle exception in searching any part of the vehicle in which the object of the search may be located, including containers inside the vehicle. It does not matter who owns the item that is to be searched. In *Wyoming v. Houghton*,⁵² the U.S. Supreme Court approved of an officer searching a purse found in the passenger compartment of an automobile. The vehicle search was based on evidence that the driver had drug paraphernalia on his person and admitted he

was a drug user. The officer was told that the purse belonged to a female passenger and not the driver before he searched it. When the officer searched the purse, he found drugs and drug paraphernalia inside it. The U.S. Supreme Court upheld the search, ruling that the ownership of an object found and searched in the vehicle is irrelevant to the legitimacy of the motor vehicle search.

Because the general rule is that the motor vehicle exception does not require that there be an emergency, the search of the motor vehicle could be hours and even days after the vehicle is seized. If packages are taken from a motor vehicle, those packages would also be subject to a warrantless search under the motor vehicle exception long after they have been taken from the vehicle. For example, in *United States v. Johns*,⁵³ the U.S. Supreme Court ruled that DEA agents acted lawfully when they conducted warrantless searches of packages 3 days after they took the packages from a motor vehicle. The later warrantless searches were lawful, even though the packages were securely in DEA custody and the agents had ample opportunity to obtain a search warrant.⁵⁴ The Court ruled that the later package searches were reasonable because the agents had probable cause to search the packages

when they were seized from the motor vehicle and could have searched them at that time. The Court reasoned “Inasmuch as the government was entitled to seize the packages and could have searched them immediately without a warrant, we conclude that the warrantless search 3 days after the packages were placed in the DEA warehouse was reasonable and consistent with our precedent

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involving searches of impounded vehicles.”⁵⁵ The *Johns* court held out the possibility that in a given case, a delay in searching a package taken from a motor vehicle could perhaps be unreasonable, but the defendants in the case before the Court did not present any facts that established that the delay adversely affected their Fourth Amendment rights.⁵⁶

Conclusion

Searches conducted under the authority of a search warrant are presumed to be reasonable. On the contrary, searches

conducted without a search warrant are presumed unreasonable. Officers should always consider the benefits of the presumption of reasonableness that accompanies a search under the authority of a search warrant. There are, however, well-recognized exceptions to the search warrant requirement that can rebut the presumption of unreasonableness; one is the motor vehicle exception. If an officer has probable cause to believe that evidence or contraband is located in a motor vehicle, the officer may search the vehicle without a warrant to the same degree as if he had a search warrant. Probable cause depends on the totality of the circumstances. If an officer has sufficient evidence to establish probable cause for a search warrant, then he would have sufficient facts to search a motor vehicle without a search warrant.

Courts have applied the motor vehicle exception to automobiles, trucks, trailers pulled by trucks, motor homes, boats, house boats, airplanes, and even the sleeping compartments of trains. The federal rule followed by most states is that if an officer has probable cause that there is evidence or contraband in a motor vehicle, it is not required that the officer be faced with an emergency for him to conduct a warrantless search of the vehicle. ♦

Endnotes

¹ See generally *United States v. Leon*, 468 U.S. 897, 922 (1984); *Franks v. Delaware*, 438 U.S. 154 (1978).

² *Mincey v. Arizona*, 437 U.S. 385 (1978).

³ *Carroll v. United States*, 267 U.S. 132 (1925). In *Carroll*, the searching agent started to open up the back cushion to the rumble seat on a roadster where illegal liquor was hidden and in the process “did tear the cushion some.” 267 U.S. at 172 (McReynolds, J., dissenting). See also *California v. Acevedo*, 500 U.S. 565 (1991).

⁴ *Pennsylvania v. Labron*, 518 U.S. 938, 940 (1996) (per curiam); *California v. Carney*, 471 U.S. 386, 391-92 (1985).

⁵ *New York v. Belton*, 453 U.S. 454 (1981).

⁶ *Michigan v. Long*, 463 U.S. 1032 (1983).

⁷ *Florida v. Wells*, 495 U.S. 1 (1990).

⁸ *Florida v. Jimeno*, 500 U.S. 248, 252 (1991) (In dicta the Court disapproved of prying open a locked briefcase pursuant to a consent search of a car trunk. In the holding, however, the Court approved of the police opening a paper bag found in a car trunk during a consent search.). See generally *United States v. Drayton*, 536 U.S. 194 (2002); *Illinois v. Rodriguez*, 497 U.S. 177 (1990); *United States v. Matlock*, 415 U.S. 164 (1974); *Schneckloth v. Bustamonte*, 412 U.S. 218 (1973); *Bumper v. North Carolina*, 391 U.S. 543 (1968).

⁹ *Illinois v. Gates*, 462 U.S. 213, 232 (1983).

¹⁰ *Llaguno v. Mingey*, 763 F.2d 1560 (7th Cir. 1985) (en banc) (plurality opinion), abrogated in part on other grounds by *County of Riverside v. McLaughlin*, 500 U.S. 44 (1991).

¹¹ *Illinois v. Gates*, 462 U.S. 213 (1983).

¹² 267 U.S. 132 (1925).

¹³ 267 U.S. at 162.

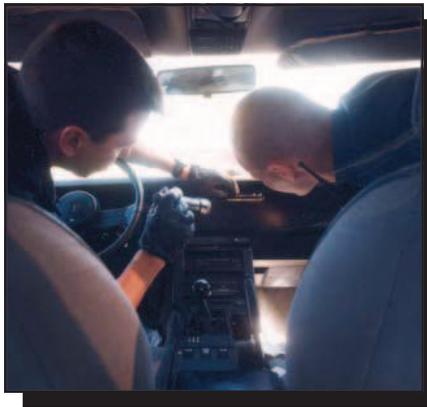
¹⁴ 399 U.S. 42 (1970).

¹⁵ See *California v. Acevedo*, 500 U.S. 565, 579-80 (1991) (quoting *United States v. Ross*, 456 U.S. 798, 824 (1982)). The mere fact that an unknown suspect has put drugs in the trunk of a car, without more, may not be sufficient to establish probable cause that drugs would be elsewhere in the car. *Acevedo*, *supra*. On the other hand, additional facts known to an officer may change the result. For instance, if the suspect gets in his vehicle after putting the drugs in his trunk and an officer has information the vehicle is regularly used by the suspect to traffic in illegal drugs, arguably, an officer could reasonably believe that the passenger compartment may contain more illegal drugs or drug records. This is the reverse of the typical

scenario. Usually, the issue is whether there is sufficient cause to search the trunk after having found drugs in the passenger compartment. In a case where drugs are found in the trunk, an officer would have probable cause to arrest the driver and then be able to search the passenger compartment of the vehicle incident to arrest under *New York v. Belton*, 453 U.S. 454 (1981).

¹⁶ See *United States v. Brown*, 374 F.3d 1326 (D.C. Cir. 2004) (false identification and stolen credit card found in passenger compartment gave officer probable cause to search trunk); *Whiting v. State*, 725 A.2d 623 (Md. App. 1998) (officer had probable cause to search trunk after gun and crack cocaine smoking pipe were found in passenger compartment of car); *United States v. Watson*, 697 A.2d 36 (D.C. App. 1997) (marijuana cigarette and white powder in six plastic bags banded together found in passenger compartment gave probable cause to search vehicle trunk).

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¹⁷ 557 N.E.2d 14, 19 (Mass. 1990). “Once the officers discovered the cocaine and the handgun pursuant to the protective search, they had probable cause to search the entire automobile, including the passenger compartment and the trunk, for contraband and weapons.” *Id.*

¹⁸ See, e.g., *United States v. Brown*, 334 F.3d 1161, 1171 (D.C. Cir. 2003) (gun found in car next to suspect, who was “tickling the handle,” after multiple gunshots were fired in the vicinity gave probable cause to search the trunk for more weapons or ammunition).

¹⁹ 547 P.2d 417 (Cal. 1976). See also *Burkett v. State*, 607 S.W.2d 399 (Ark. 1980) (roach clip and marijuana cigarette butt in the ashtray do not establish probable cause to search the trunk).

²⁰ E.g., *United States v. Burnett*, 791 F.2d 64, 65 (6th Cir. 1986).

²¹ 119 F.3d 18 (D.C. Cir. 1997).

²² *United States v. Staula*, 80 F.3d 596, 602 (1st Cir. 1996) (odor of burnt marijuana gave officer probable cause to search passenger compartment of truck).

²³ See, e.g., *State v. Schmeakeka*, 38 P.2d 633, 637-38 (Idaho App. 2001). *Contra*, *People v. Kazmierczak*, 605 N.W.2d 667 (Mich. 2000). “[T]he smell of burned, burning, and unburned marijuana, when immediately apparent, are equally incriminating.” *Id.* at 675 n.13.

²⁴ 9 F.3d 1487 (10th Cir. 1993).

²⁵ See *United States v. Parker*, 72 F.3d 1444 (10th Cir. 1995) (a rolled-up dollar bill with a white powder residue and a marijuana cigarette found on the driver were sufficient to corroborate the odor of marijuana and give probable cause to search the trunk); *State v. Betz*, 815 So.2d 627 (Fla. 2002) (officer had probable cause to search trunk where he detected odor of marijuana emanating from the car; the driver was found to be in possession of marijuana; and the driver was nervous and jittery).

²⁶ See also *United States v. Ludwig*, 10 F.3d 1523, 1527-28 (10th Cir. 1993) (dog alert established probable cause to search trunk). Cf. *United States v. Williams*, 69 F.3d 27, 28 (5th Cir. 1995).

²⁷ 706 A.2d 597 (Me. 1998).

²⁸ *State v. Wright*, 977 P.2d 505, 507-08 (Utah App. 1999); *United States v. Downs*, 151 F.3d 1301 (10th Cir. 1998). Cf. *People v. Kazmierczak*, 605 N.W.2d 667 (Mich. 2000) (The odor of unburnt marijuana alone was sufficient to establish probable cause to search the trunk. Although the officer smelled the odor of unburnt marijuana, the court ruled that whether the odor is of burnt or unburnt marijuana makes no difference in establishing probable cause to search the trunk.). In *State v. Guerra*, 459 A.2d 1159 (N.J. 1983), an officer detected the odor of fresh marijuana during a traffic stop on the New Jersey Turnpike. Ultimately, the officer searched the trunk and found 176.5 pounds of marijuana. The Supreme Court of New Jersey ruled that the odor of fresh marijuana alone was sufficient to give the officer probable cause to search the trunk.

²⁹ 471 U.S. 386 (1985).

³⁰ If, however, a camper trailer is unhitched and not readily mobile, then it would not be considered a motor vehicle for purposes of the motor vehicle exception. *State v. Durbin*, 489 N.W.2d 655 (Wis. App. 1992). See also *State v. Kypreos*, 61 P.3d 352, 357 (Wash. App. 2002).

³¹ 471 U.S. at 393-94.

³² See *United States v. Adams*, 845 F. Supp. 1531, 1536-37 (M.D.Fla. 1994), wherein the court held that the motor vehicle exception did not apply to a motor home that was being used as a temporary residence. The motor home contained food, clothing, and other personal effects; was hooked to an electric generator; and was located in a rural area on a private wooded lot owned by the defendants, from which there was no convenient or easy access to a public road. In addition, the defendants used other vehicles located on the property for transportation. See also *United States v. Matteucci*, 842 F. Supp. 442, 449 (D. Or. 1994), wherein the court did not allow a search of a motor home under the motor vehicle exception because it was being used in a state park as a residence. The motor home was snowed in at the park, and in order for the defendants to get to a public road, they would have to drive the motor home down a steep hill and travel several miles in the park. Furthermore, one of the defendants told the officer prior to his search of the motor home that the motor home was used as their home because they had been "kicked out" of their apartment several weeks earlier. In *United States v. Levesque*, 625 F. Supp. 428, 450-51 (D.N.H. 1985), the court ruled that the motor vehicle exception did not apply to a trailer that was situated on a lot in a trailer park, under circumstances indicating that it was being used as a residence. The truck which towed the trailer was only a few feet from the trailer, but the trailer was not readily mobile because one end of the trailer was elevated on blocks and the trailer was connected to utilities at the campground. It would have taken the defendants three quarters of an hour to connect the trailer and truck before they could tow it from the trailer park. But see *United States v. Hamilton*, 792 F.2d 837 (9th Cir. 1986), disapproved on other grounds, *United States v. Kim*, 105 F.3d 1579 (9th Cir. 1997) (motor vehicle exception applied to a motor home parked in driveway and plugged to electrical utilities by an extension cord).

³³ 471 U.S. at 394 n.3.

³⁴ *United States v. Johns*, 469 U.S. 478 (1985).

³⁵ *United States v. Forrest*, 620 F.2d 446 (5th Cir. 1980).

³⁶ *United States v. Lee*, 274 U.S. 559 (1927).

³⁷ *United States v. Hill*, 855 F.2d 664 (10th Cir. 1988).

³⁸ *United States v. Nigro*, 727 F.2d 100, 106-07 (6th Cir. 1984); *United States v. Montgomery*, 620 F.2d 753 (10th Cir. 1980).

³⁹ *United States v. Tartiglia*, 864 F.2d 837, 841-43 (D.C. Cir. 1989); *United States v. Whitehead*, 849 F.2d 849, 854 (4th Cir. 1988).

⁴⁰ *Pennsylvania v. Labron*, 518 U.S. 938 (1996) (per curiam).

⁴¹ 518 U.S. 938 (1996) (per curiam).

⁴² *Id.* at 940.

⁴³ *State v. Elison*, 14 P.3d 456 (Mont. 2000) ("We have consistently reaffirmed the requirement that, in order to justify a warrantless search of an automobile, the State must show exigent circumstances under which it was not practicable to obtain a warrant."); *State v. Gomez*, 932 P.2d 1 (N.M. 1997) ("a warrantless search of an automobile and its contents requires a particularized showing of exigent circumstances"); *State v. Cooke*, 751 A.2d 92 (N.J. 2000) ("The automobile exception applies only in cases in which probable cause and exigent circumstances are evident, making it impracticable for the police to obtain a warrant."); *State v. Harnisch*, 954 P.2d 1180 (Nev. 1998) ("[T]he Nevada Constitution requires both probable cause and exigent circumstances in order to justify a warrantless search of a parked, immobile, unoccupied vehicle.").

⁴⁴ *State v. Werner*, 615 A.2d 1010 (R.I. 1992) ("exigency is no longer a requirement of the automobile exception"); *State v. Marquardt*, 635 N.W.2d 188 (Wis. App. 2001) ("Issues concerning whether the police could have obtained a warrant prior to searching [the motor vehicle] are not relevant to the analysis."); *State v. Redfearn*, 441 So.2d 200, 202 (La. 1983) ("Given that a warrantless search on the scene would have been constitutional, the later search at the police pound is also constitutional."); *Commonwealth v. Moses*, 557 N.E.2d 14 (Mass. 1990) ("A reasonable delay in a warrantless automobile search does not violate the Fourth Amendment or art. 14 [of the Mass. Const.]"); *State v. Gallant*, 574 A.2d 385, 391 (N.H. 1990) ("For constitutional purposes we see no difference between a warrantless search conducted at the location where the vehicle is first stopped and a subsequent warrantless search that takes place at another location, so long as the subsequent search is conducted as soon as practicable and is motivated by either safety or law enforcement concerns....The State, however, bears the burden, as with other circumstances justifying a warrantless search, of proving by a preponderance of the evidence the presence of public safety or law enforcement factors requiring removal from the location where probable cause and exigency would have allowed a warrantless search.");

People v. Blasich, 541 N.E.2d 40 (N.Y. 1989) ("The justifications for a warrantless search conducted upon probable cause pursuant to the automobile exception do not dissipate merely because the vehicle has been placed in the control of the police...and the exception is equally applicable whether the search is conducted at the time and place where the automobile was stopped or whether, instead, the vehicle is impounded and searched after removal to the police station.").

⁴⁵ 527 U.S. 465 (1999).

⁴⁶ 399 U.S. 42 (1970).

⁴⁷ 399 U.S. at 52.

⁴⁸ 423 U.S. 67 (1975) (per curiam).

⁴⁹ 466 U.S. 380 (1984) (per curiam).

⁵⁰ See also *Michigan v. Thomas*, 458 U.S. 259 (1982) (per curiam).

⁵¹ *United States v. Ross*, 456 U.S. 798 (1982).

⁵² 526 U.S. 295 (1999).

⁵³ 469 U.S. 478 (1985).

⁵⁴ See also *United States v. Albers*, 136 F.3d 670 (9th Cir. 1997), wherein the U.S. Court of Appeals for the Ninth Circuit ruled that it was reasonable for a National Park Service ranger to conduct a warrantless viewing of videotapes seized from the defendant's car 7 to 10 days earlier.

⁵⁵ *Johns*, 469 U.S. at 487.

⁵⁶ The *Johns* Court stated: "We do not suggest that police officers may indefinitely retain possession of a vehicle and its contents before they complete a vehicle search. Cf. *Coolidge v. New Hampshire*, 403 U.S. 443 (1971) (White, J., dissenting). Nor do we foreclose the possibility that the owner of a vehicle or its contents might attempt to prove that delay in the completion of a vehicle search was unreasonable because it adversely affected a privacy or possessory interest. Cf. *United States v. Place*, 462 U.S. 696 (1983)... Respondents do not challenge the legitimacy of the seizure of the trucks or the packages, and they never sought return of the property. Thus, respondents have not even alleged, much less proved, that the delay in the search of packages adversely affected legitimate interests protected by the Fourth Amendment." 469 U.S. at 487.

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.