DOES THE AUTOMOBILE EXCEPTION APPLY WHEN THE AUTO IS ON CURTILAGE-PART TWO

January 2017

Article Source: http://www.llrmi.com/articles/legal_update/2017_state_v_vickers_part2.shtml

The automobile exception to the search warrant requirement allows officers to search a vehicle without a warrant when they have probable cause to believe evidence of a crime is located within the vehicle. This rule was first established by the United States Supreme Court in *Carroll v. United States*[i] in 1925, and has been reiterated by that court in a long line of cases.

However, despite the longstanding support of warrantless searches of automobiles based on the automobile exception, it is important to remember that states can be more restrictive than the Supreme Court, based upon the individual state's own constitution. Additionally, the precedent from the Supreme Court does leave open some "gray area" for states and federal courts of appeal to differ on opinions.

This article series will focus on one such area of differing opinion. Particularly, whether the automobile exception to the search warrant requirement applies when the vehicle is parked on curtilage, or in a residential location.

On February 3, 2016, the Court of Criminal Appeals of Alabama decided *Harris v. Alabama*[ii], in which, like the Court of Appeals of Georgia as discussed in Part One of this series, the court examined the issue of whether a police officer violated the Fourth Amendment when he conducted a warrantless search of a vehicle that was located on the curtilage of the defendant's residence based upon the automobile exception to the search warrant requirement. The relevant facts of *Harris*, taken directly from the case, are as follows:

> Carlton Ott, a corporal with the Dothan Police Department assigned to the vice-intelligence division, testified that on August 19, 1999, he received information from a confidential informant, who had provided reliable information in the past, that Harris was in possession of a large amount of marijuana at his residence at 2401 Brown Street. The informant said that he had seen Harris in possession of the marijuana within the last few hours; that the marijuana was located in Harris's white Plymouth Laser automobile, which was parked outside the residence; and that a second automobile, a white Mazda 929, was also parked outside the residence. That evening, approximately six hours after

receiving the information from the informant, Cpl. Ott and Mark Nelms, a sergeant in the vice-intelligence division of the Dothan Police Department, set up surveillance at Harris's residence, a mobile home, to corroborate the information received from the informant. They saw both vehicles described by the informant parked in the front yard of the mobile home.

Cpl. Ott testified that at approximately 10:10 p.m. they saw Harris leave the mobile home and get in the Plymouth Laser. According to Cpl. Ott, Harris sat in the vehicle for a few minutes until a black female drove up in a maroon Hyundai Sonata automobile and parked on the street in front of the residence. At that point, Cpl. Ott said, Harris got out of the Plymouth Laser and got into the Hyundai Sonata; Harris and the driver of the Sonata sat in the vehicle for a few minutes and then drove away. Cpl. Ott then radioed two backup officers and told them to stop the Sonata. Cpl. Ott said that he saw no bulges in Harris's clothing when he got out of the Laser and into the Sonata; that he had no information on the driver of the Sonata; and that no arrests were made during the stop. According to Cpl. Ott, no more than three minutes after the stop was completed, the Sonata returned to Harris's residence, Harris got out of the Sonata and got in the Laser, and then drove the Laser toward the back of the mobile home. At that point, Cpl. Ott said, they decided to "move in" because "[i]t was obvious . . . that criminal activity was taking place."

Cpl. Ott and Sgt. Nelms, as well as the officers who had stopped the Sonata, entered the premises and met Harris as he was walking around from the back to the front of the mobile home. They detained Harris and conducted a *Terry*[2] patdown of his person. Cpl. Ott testified that Harris told him that his mother was inside the residence, and Cpl. Ott then knocked on the front door. According to Cpl. Ott, he informed Harris's mother that he had information that Harris was in possession of marijuana, and Harris's mother gave him permission to search her mobile home. Cpl. Ott testified that Harris did not appear nervous about the search of the mobile home. However, shortly after detaining Harris, Cpl. Ott called for a K-9 unit to come to the residence so that a drug-sniffing dog could sniff the Laser. When Harris heard that Cpl. Ott had called for a K-9 unit, Cpl. Ott said, Harris became nervous and began calling for his mother. Cpl. Ott then asked Harris for the key to the Laser, and Harris handed him a key. However, Cpl. Ott recognized that the key Harris gave him was not a Chrysler-product key and he then asked Harris if he was sure this was the key to the Laser. According to Cpl. Ott, Harris told him that the key fit the Mazda 929 and that he did not have a key to the Laser. Cpl. Ott testified that the officer who had conducted the patdown of Harris told him that Harris had another key ring in the pocket of his shorts and Cpl. Ott then reached in Harris's pocket and retrieved the key to the Laser.

Shortly after Cpl. Ott retrieved the key, the K-9 unit arrived, and the K-9 officer walked his dog around the Laser; the dog alerted to the presence of narcotics at the rear of the vehicle. At that point, Cpl. Ott used the key to open the vehicle and discovered in the rear hatchback portion of the vehicle three one-gallon Ziploc brand plastic bags that were later determined to contain 2.92 pounds of marijuana. In addition, a large amount of currency was found in the center console, various papers with Harris's name on them were found in the glove compartment, and the registration indicated that the vehicle was registered to "Tim or Patricia Harris."[iii]

Harris was arrested and filed a motion to suppress the evidence obtained as a result of the warrantless search of the automobile. The motion was denied and he was convicted of trafficking marijuana. He then appealed the denial of his motion to suppress.

On appeal, he argued that there was insufficient probable cause to search his vehicle and that, even if probable cause was present, the automobile exception to the warrant requirement did not apply because the vehicle was on his residential curtilage.

The court first noted that, based on the totality of the circumstance, to include the K9 alert on the automobile, there was clearly probable cause to believe it contained illegal drugs. Thus, the court moved to the second issue; particularly whether the automobile exception applies to allow police to conduct a warrantless search of an automobile that is parked on protected curtilage, such as a person's driveway or yard.

Harris, in this case, relied upon a quote from the Supreme Court case of *California v. Carney*[iv] in which the Court stated

> **When a vehicle is being used on the highways, or if it is readily capable of such use and is *found stationary in a place not regularly used for residential purposes* — temporary or otherwise — the two justifications for the vehicle exception come into play**." 471 U.S. at 392-93, 105 S.Ct. 2066 (footnote omitted; emphasis added).[v]

This is the same language used by the Court of Appeals of Georgia in Part One of this series to hold that the automobile exception did not apply on protected curtilage, such as a driveway.

The Court of Criminal Appeals of Alabama took a different view, first noting the original purpose of the automobile exception. The court stated

> The two bases for the exception are: (1) the ready mobility of automobiles and the potential that evidence may be lost before a warrant is obtained; and (2) the lessened expectation of privacy in motor vehicles which are subject to governmental regulation.[vi]

The Alabama court then set out to analyze the context of the quote from *California v. Carney* where the court stated the automobile exception applied when

> … a vehicle is being used on the highways, or if it is readily capable of such use and is *found stationary in a place not regularly used for residential purposes* — temporary or otherwise..." 471 U.S. at 392-93, 105 S.Ct. 2066 (footnote omitted; emphasis added).[vii]

The court noted that the search in *Carney* involved a search of a *motorhome* which was parked in a parking lot in downtown San Diego, rather than a campsite made for the purpose of parking a motorhome for the purpose of using it for "residential purposes." The court stated

> *Carney* involved the warrantless search of a motor home, readily capable of use either as a home or as a vehicle. In upholding the warrantless search under the automobile exception to the warrant requirement, the United States Supreme Court relied in part on

> the location of the motor home — in a parking lot in downtown San Diego — in concluding that the motor home was "so situated that an objective observer would conclude that it was being used not as a residence, but as a vehicle." *Carney,* 471 U.S. at 393, 105 S.Ct. 2066. Indeed, the Court pointed out that it "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." 471 U.S. at 394 n. 3, 105 S.Ct. 2066. **Thus, the Court's statement in *Carney* that the automobile exception applies when a vehicle is found "in a place not regularly used for residential purposes**," 471 U.S. at 392, 105 S.Ct. 2066, **was a reference to the limitation of the automobile exception to motor homes (or other objects that are equally capable of use as either a home or a vehicle) that are situated in such a place and in such a manner as to indicate their use as vehicles rather than homes**.[viii] [emphasis added]

Thus, in context, the statement regarding whether a vehicle is in an area used for "residential purposes – temporary or otherwise," was a reference to multi-purpose use of motorhomes. Particularly, a motorhome at a campsite, whether temporary or permanent, should be viewed as a home, and a motorhome roadside or in a regular parking lot (not a campsite) can be treated as a typical motor vehicle for the purpose of the automobile exception. In Carney, the Supreme Court upheld the warrantless search based on the automobile exception since the motorhome was in a parking lot in downtown San Diego.

The Alabama court also noted that, after Carney, the Supreme Court decided *Maryland v. Dyson* and held that

> **[T]he `automobile exception' is applicable `[i]f a car is readily mobile and probable cause exists to believe it contains contraband**.' [*Maryland v.] Dyson,* 527 U.S. [465,] 466, 119 S.Ct. 2013 [(1999)][ix]

The court also discussed the applicability of the Supreme Court's decision in *Coolidge v. New Hampshire*[x] to Harris' case. The court noted that *Coolidge* involved a murder investigation where police already had probable cause and the time to secure a warrant at the time they had the defendant's car towed to the police station. In *Coolidge,* the Supreme Court stated

> [T]here is nothing in this case to invoke the meaning and purpose of the rule of *Carroll v. United States*—no alerted criminal bent on flight, no fleeting opportunity on an open highway after a hazardous chase, no contraband or stolen goods or weapons, no confederates waiting to move the evidence, not even the inconvenience of a special police detail to guard the immobilized automobile. In short, by no possible stretch of the legal imagination can this be made into a case where 'it is not practicable to secure a warrant,' *Carroll*, supra, at 153, 45 S.Ct., at 285, and the 'automobile exception,' despite its label, is simply irrelevant.[xi]

Thus, in *Coolidge*, the Court held that there exigency such as the readily mobile factor and the likelihood that evidence could be destroyed or moved did not exist. The Alabama court noted that *Coolidge* was not applicable to Harris' case because his car was readily mobile and there was probable cause to believe evidence could be lost or destroyed.

The Alabama court then held

> In light of the Supreme Court's holding in *Dyson,* we find the `automobile exception' applicable to the case before us. First, the motor vehicle at issue was clearly operational and therefore `readily movable.' Second, as discussed in greater detail above, the police officers had probable cause to conclude that there was contraband in the vehicle, as the party responsible for the vehicle's flight, Brookins' wife, was present on the scene at her mother's home. Given these facts, the warrantless search of Brookins' vehicle by law enforcement officers did not violate his Fourth Amendment rights.[xii]

Thus, we see that that there are two contradictory interpretations of *California v. Carney* and it's application to vehicles (non-motorhomes) that are located on residential property.

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[i] 267 U.S. 132 (1925)
[ii] 948 So.2d 583 (Ala. Crim. App., 2006)
[iii] Id. at 585-586
[iv] 471 U.S. 386, 390-391 (1985)
[v] Harris, 948 So.2d at 591
[vi] Id.
[vii] Harris, 948 So.2d at 591
[viii] Id. at 592
[ix] Id. at 593
[x] 403 U.S. 443, 91 S.Ct. 2022, 29 L.Ed.2d 564 (1971)
[xi] Id. at 462
[xii] Harris, 948 So.2d at 593