



# POLICE / PROSECUTOR UPDATE

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In June the United States Supreme Court handed down a decision clarifying the application of the automobile exception to the search warrant requirement. The case arose in Maryland, and the facts reveal that a deputy sheriff received a tip from a reliable informant that the defendant had gone to New York to buy drugs and would be returning later that day in a rented red Toyota, license number DDY 787, with a large quantity of cocaine. The deputy investigated the tip and found that the license number belonged to a red Toyota Corolla that had been rented to the defendant, a known drug dealer. When the defendant returned to Maryland, deputies stopped and searched the vehicle, finding 23 grams of crack cocaine in the trunk. The defendant's conviction was overturned by a Maryland defendant's conviction was overturned by a Maryland appeals court. The court reasoned that in order for the automobile exception to apply, there must not only be probable cause to believe that evidence of a crime is contained in an automobile but that there must also be a separate finding of exigent circumstances precluding the police from obtaining a warrant. In that court's view, even though there was clearly probable cause, there was no exigency that prevented or even made it significantly difficult for police to obtain a search warrant.

The Maryland court incorrectly interpreted the automobile exception. This well-recognized exception provides that probable cause that a vehicle contains contraband justifies a warrantless search of the entire vehicle and its contents, including all containers capable of containing the contraband. The exception has no separate exigency requirement. If a vehicle is readily mobile and probable cause exists to believe it contains contraband, the Fourth Amendment permits police to search it *without more*. Probable cause alone satisfies the automobile exception.

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Another exception to the search warrant requirement is a consent to search, which the Court of Appeals recently addressed:

The facts of this case reveal that an officer properly stopped a vehicle because of a mismatched license plate. Although the defendant was a

passenger, he was the owner of the car. During questioning to determine if the car might be stolen, an officer asked the defendant if the car could be searched for "guns, drugs, money, or illegal contraband." The defendant consented. None of these items were discovered, but two cellular flip phones were recovered, one on the driver's side and one on the passenger's side, which the defendant said was his girlfriend's. An officer performed a "short-out technique" on each phone. In plain English, the phones were found to have been modified such that when in use the charges would be billed to someone else's active cellular phone number. The defendant was convicted of theft.

The court of appeals had no problem in deciding that the initial stop of the car was proper and that the defendant's consent to search was valid. Thus, the question boiled down to whether the officers' action in testing the phones exceeded the scope of the consent. In these types of cases, the scope of the authority to search is *strictly limited* to the consent given.

The scope of a consensual search is generally defined by its express object, in this case guns, drugs, money, or illegal contraband. A cellular phone is a container capable of containing such items. Thus, it would have been proper for the officers to seize the phone long enough to determine if it was actually an operating cellular phone or merely a pretense for hiding the items which were the object of their search. However, the further action of the officers in accessing the computer memory of the phone to retrieve its electronic contents exceeded the scope of the consent to search and was invalid. The conviction was reversed.

In reaching its decision, the court noted that other courts have long recognized that information (i.e., intangible items) is protected by the Fourth Amendment. Therefore, it concluded that the Fourth Amendment affords protection from the unreasonable search and seizure of the computer memory of a cellular phone to retrieve its electronic contents.

Maryland v. Dyson, 119 S.Ct. 2013 (1999).

Smith v. State, \_\_\_ N.E.2d \_\_\_ (Ind. Ct. App. 06/28/99).