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United States Supreme Court

WARRANT REQUIREMENT – SEARCH OF VEHICLE IN DRIVEWAY OF HOME

On two separate occasions, officers of the Albemarle County, Virginia, Police Department witnessed a motorcyclist on an extended frame orange and black motorcycle commit traffic infractions. In both instances, the motorcyclist eluded officers. Officer David Rhodes investigated the incidents and determined "that the motorcycle likely was stolen and in the possession of… Ryan Collins." He then discovered photographs of an orange and black motorcycle on Collins' Facebook profile. In the photographs, the motorcycle was "parked at the top of the driveway of a house." Officer Rhodes was able to determine the location of the house and drove there to investigate further. It was later determined that "Collins' girlfriend lived in the house and that Collins stayed there a few nights per week."

While parked on the street in front of the residence, "Officer Rhodes saw what appeared to be a motorcycle with an extended frame covered with a white tarp, parked at the same angle and in the same location on the driveway as in the Facebook photograph." The tarp was in a partially enclosed portion of the driveway that sat "behind the front perimeter of the house" and which was bounded "on two sides by a brick wall about the height of a car and on a third side by the house." Officer Rhodes, without obtaining a warrant, entered the property and approached the tarp. He then removed the tarp and confirmed that the motorcycle was the orange and black extended frame model he had seen on Collins' Facebook profile. "He then ran a search of the license plate and [VIN], which confirmed that the motorcycle was stolen."

Based upon the evidence Officer Rhodes obtained, Collins was later indicted by a grand jury for receiving stolen property. Collins then moved to suppress the evidence obtained by Officer Rhodes "as a result of the warrantless search of the motorcycle," arguing that Collins had trespassed on the "curtilage" of the house without a warrant in order to search the motorcycle, in violation of the Fourth Amendment. The trial court denied Collins motion. Collins appealed the trial court's decision to both the Court of Appeals of Virginia and the Supreme Court of Virginia, but both courts upheld the trial court's ruling. The Supreme Court of Virginia reasoned that the warrantless search was justified by the automobile exception to the Fourth Amendment's warrant requirement. Following that ruling, Collins appealed to the U.S. Supreme Court, which agreed to hear the case.

The Supreme Court explained that **an officer who has probable cause to search an automobile may generally do so without a warrant due to the "ready mobility of the automobile" and the "pervasive regulation of vehicles capable of traveling on the public highways." However, the Court further explained that the automobile exception to the warrant requirement "extends no further than the automobile itself."** Here, the automobile was located in an area specifically protected by the Fourth Amendment: the curtilage of a house. The curtilage, consisting of "the area 'immediately surrounding and associated with the home'" is considered "part of the home itself for Fourth Amendment purposes." Absent exigent circumstances or another exception to the warrant requirement the curtilage cannot be searched without a warrant. The Court thus held that **the automobile exception, by itself, does not permit an officer to enter the curtilage of a house to search a vehicle without a warrant.** Thus, Officer Rhodes' search of the vehicle in this case could not be justified by the automobile

exception to the warrant requirement. The Supreme Court remanded the case to the lower court to determine whether the warrantless search could be justified under any other exception to the warrant requirement, such as exigent circumstances. *Collins v. Virginia*, No. 16-1027, 2018 WL 2402551 (U.S. May, 29, 2018).

EXPECTATION OF PRIVACY IN VEHICLE – UNAUTHORIZED DRIVER OF RENTAL CAR

In September of 2014, Pennsylvania State Troopers performed a traffic stop on a vehicle being driven by Terrence Byrd. Byrd was the only occupant of the vehicle, which was a rental car. The vehicle had been rented by Latasha Reed, who allowed Byrd to drive the car but did not list him on the rental agreement as an additional driver. Under the terms of the rental agreement, Byrd was not authorized to drive the vehicle.

After stopping the car for a traffic violation, a trooper asked Byrd for his identification. Byrd was visibly nervous but eventually produced a license and the rental agreement. The trooper noticed that Byrd was not listed as an additional driver on the rental agreement. Eventually, troopers on the scene became suspicious that Byrd may have contraband in the vehicle and asked for his consent to search. He did not immediately provide consent, but the troopers searched the car anyways, stating that "they did not need consent because [Byrd] was not listed on the rental agreement." The troopers eventually found 49 bricks of heroin and body armor in the trunk of the vehicle.

Byrd was arrested on several charges, including controlled substance violations and illegal possession of body armor. During his prosecution, he "moved to suppress the evidence found in the trunk of the rental car, arguing that the search violated his Fourth Amendment rights." The U.S. District Court for the Middle District of Pennsylvania denied his motion, stating that he lacked standing to challenge the search because he had no reasonable expectation of privacy in the rental car since he was not an authorized driver under the rental car agreement. Byrd appealed to the Third Circuit Court of Appeals, which upheld the District Court's decision. Byrd then appealed to the U.S. Supreme Court, which agreed to hear the case.

The U.S. Supreme Court reversed the lower courts' decision and held that "**as a general rule, someone in otherwise lawful possession and control of a rental car has a reasonable expectation of privacy in it even if the rental agreement does not list him or her as an authorized driver."** While certain circumstances may eliminate that reasonable expectation of privacy, the troopers failed to argue in this case that any such circumstances existed. The Court was thus unwilling to hold that Byrd lacked a reasonable expectation of privacy in the vehicle *solely* because he was not an authorized driver on the rental agreement. The case was remanded back to the Third Circuit to determine whether any other factors eliminated his reasonable expectation of privacy or whether the troopers in question had probable cause to perform the search which would overcome Byrd's expectation of privacy. *Byrd v. U.S.*, No. 16-1371, 2018 WL 2186175 (U.S., May 14, 2018).

11TH CIRCUIT COURT OF APPEALS

WARRANTLESS SEARCH OF HOME – SUSPECTED BURGLARY IN PROGRESS

In the Spring of 2011 a neighborhood in Volusia County, Florida, was experiencing a series of daytime burglaries. One afternoon, Officer Todd Raible of the Volusia County Sheriff's Office was patrolling the neighborhood in an unmarked car when he saw "a young man—later identified as William Rivera—who was standing on the sidewalk in front of the residence at 1127 West New York Avenue and who appeared to be looking around nervously while talking on a cell phone." Officer Raible was aware of the recent burglaries and decided to observe Rivera. Rivera "'seemed anxious' and 'kind of hunched' as he paced up and down in front of the house." Officer Raible then saw Rivera walk to the rear of the house. As Rivera approached the back door, Officer Raible saw another young man, later identified as Troy Copeland, huddling

nearby in a manner that made him believe Copeland was acting as a lookout for Rivera.

Officer Raible then asked for back up, stating he was on the scene of a burglary in progress. Another officer arrived and the officers eventually confronted Rivera and Copeland at the rear of the house and placed them in handcuffs. Raible then "entered the home's back door and stepped through a small vestibule to a second door, which led to the home's interior and was slightly ajar. Without crossing the threshold, Raible leaned through the second door and shouted, 'Sheriff's office, come out if anybody's in there, sheriff's office.' Hearing no answer after about 10 seconds, Raible went back outside." The officers then searched Rivera and Copeland and discovered two kitchen knives in Rivera's pants pockets. Officer Raible also observed what appeared to be fresh pry marks on the back door, which were consistent with the knives. Rivera and Copeland also both produced IDs that had other addresses listed as their residences. Based upon this evidence, the officers arrested Rivera and Copeland.

Following the arrest, other officers arrived, several of whom "entered the home's main structure… to check… 'for additional perpetrators or potential victims.'" This sweep "lasted about four minutes," during which the officers "saw in plain view what they believed to be marijuana and associated drug paraphernalia." One of the homeowners later arrived and officers determined that Rivera and Copeland were actually residents of the home. Because officers could not determine to whom the drugs and drug paraphernalia belonged, no drug-related charges were filed.

Rivera, Copeland, and Michael Montanez – one of the co-owners of the home – sued the responding officers alleging violations of their constitutional rights. Montanez alleged that the officers' entries into the home – including "Raible's initial 10-second entry announcing the police's presence and the officers' ensuing four-minute sweep of the house" – were unconstitutional. The officers moved for summary judgment with respect to all of the claims against them and argued that they had probable cause to enter the home and that the warrantless entry was justified by exigent circumstances. The U.S. District Court for the Middle District of Florida denied the motion with respect to those claims, and the officers appealed to the Eleventh Circuit Court of Appeals.

The Eleventh Circuit reiterated the rule that, assuming officers have probable cause to enter a home, they may do so without a warrant if "'exigent circumstances' mandate immediate action." The Court explained that "[t]he principal question here is whether exigent circumstances justified—and thus rendered 'reasonable'—the officers' first two warrantless entries into [the] house." The Court held that **in this case, exigent circumstances existed which justified the entry into the home** because the officers had probable cause to believe they had interrupted a burglary in progress or which had just occurred, and therefore had reason to believe there may be additional suspects or victims in the home. The Eleventh Circuit further explained that **in any case in which "police have probable cause to suspect a residential burglary—whether they believe the crime is currently afoot or has recently concluded—they may, without further justification, conduct a brief warrantless search of the home to look for suspects and potential victims."** As such, the officers in this case were entitled to summary judgment with respect to the claims against them. *Montanez v. Carvajal*, No. 16-17639, 2018 WL 2126389 (May 9, 2018).

Georgia Supreme Court

CONSTITUTIONALITY OF ROADBLOCK – SCREENING OFFICER'S EXPERIENCE

Police in Henry County stopped Latisha McCoy at a roadblock at approximately 12:30 A.M. The screening officer who initially stopped her "suspected that she was impaired from marijuana," and McCoy was directed to another officer, who investigated and eventually arrested McCoy for DUI. During her prosecution, "McCoy moved to suppress all evidence seized as a result of the stop and arrest." The only person to testify at the hearing on McCoy's motion was the supervisor "who made the decision to implement the roadblock pursuant to the police department's

written policy. When asked what training the screening officers had to determine if a driver needed to be given field sobriety tests," the supervisor "responded that the officers 'go through a certification during [basic POST academy.]'"

Under the case of *LaFontaine v. State*, a police roadblock must meet five requirements in order to be lawful: "[1] the decision to implement the roadblock [must be] made by supervisory personnel rather than the officers in the field; [2] all vehicles [must be] stopped as opposed to random vehicle stops; [3] the delay to motorists [must be] minimal; [4] the roadblock operation [must be] well identified as a police checkpoint; and [5] the 'screening' officer's training and experience [must be] sufficient to qualify him to make an initial determination as to which motorists should be given field tests for intoxication." In addition, under the U.S. Supreme Court case *City of Indianapolis v. Edmond*, the roadblock must have been for a legitimate primary purpose distinguishable from general crime control. In this case, McCoy argued that the fifth *LaFontaine* requirement was not met. The trial court denied McCoy's motion and held that POST certification was sufficient training to allow an officer to determine which motorists should receive field sobriety tests. McCoy appealed and the Georgia Court of Appeals upheld the trial court ruling on the same grounds. McCoy appealed again to the Georgia Supreme Court, which agreed to hear the case.

The Georgia Supreme Court held that the fifth *LaFontaine* factor was unlike the other four because "it involves what occurs subsequent to the initial roadblock stop." Whereas the first four factors are relevant to whether the roadblock *itself* is constitutional, the fifth factor involves determining whether an officer is qualified and has sufficient evidence to turn a brief roadblock stop into a full *Terry* stop based upon reasonable articulable suspicion. **Thus, the Court eliminated the fifth *LaFontaine* factor and held that it should not be considered in establishing the constitutionality of roadblocks. The Court explained, however, that "courts reviewing roadblock stops [should] instead consider, if challenged, whether the screening officer had reasonable, articulable suspicion to refer the defendant for further detention and field tests."** In this case, there was no evidence that the screening officer lacked reasonable, articulable suspicion to justify a secondary screening of McCoy, and McCoy did not timely argue that the officer lacked that justification. Moreover, McCoy did not challenge any other aspect of the constitutionality of the roadblock. As such, the Court held that her motion to suppress was properly denied. *McCoy v. State*, No. S17G1530, 2018 WL 2089520 (Ga., May 7, 2018).

WARRANTLESS SEARCH AND ARREST BASED UPON ODOR OF MARIJUANA

On November 1, 2015, Deputy Mark Patterson performed a traffic stop on Richard Caffee based upon Caffee's expired tag. During the course of the traffic stop, Deputy Patterson smelled the odor of raw marijuana – which he recognized from his prior training and experience – coming from Caffee's truck. Deputy Patterson ordered Caffee to exit the vehicle and "asked Caffee if he had marijuana in the truck." Caffee replied that he did not. Deputy Patterson decided to search Caffee's truck based upon the odor. During the search of the vehicle, Deputy Patterson "found only two small empty bottles that smelled of marijuana." As Deputy Patterson conducted the search, the smell of marijuana dissipated from the vehicle.

After searching the vehicle, Deputy Patterson re-approached Caffee and again smelled the odor of marijuana. Based upon that smell, "Deputy Patterson searched Caffee's outer clothing and found in Caffee's shirt pocket a small plastic bag containing less than an ounce of marijuana. Caffee did not consent to any of the searches. Caffee was arrested and charged with possession of marijuana and driving with an expired tag."

Caffee later moved to suppress the evidence found during the search of his clothing, arguing that the search was not constitutional. The trial court rejected that argument, held the search was valid, and denied Caffee's motion. He then appealed to the Georgia Court of Appeals. The Court of Appeals upheld the trial court, stating that Deputy Patterson "had probable cause to believe that marijuana would be found on

Caffee's person." Caffee appealed this decision to the Georgia Supreme Court, which agreed to hear the case.

The Georgia Supreme Court held that although the analysis of the case by the Court of Appeals was wrong, its ultimate conclusion was correct. Specifically, the Court of Appeals erred in its analysis because it *only* considered whether Deputy Peterson had sufficient probable cause to justify a search of Caffee's person, and did not consider whether the search was justified under an exception to the warrant requirement. The Georgia Supreme Court explained that **"no amount of probable cause can justify a warrantless search absent an exception to the warrant requirement."**

In this case, however, **Deputy Patterson's search *did* fall within a recognized exception to the warrant requirement: the search incident to arrest doctrine.** As the Court explained, the facts known to Deputy Patterson at the time of the search were sufficient to establish probable cause not only to search Caffee, but also to justify his arrest. Specifically, the Court explained that "Deputy Patterson was familiar with the smell of raw marijuana based on his training and experience. Before the search, he observed that an odor of raw marijuana was coming from Caffee's vehicle, the odor dissipated when Caffee was out of the vehicle, and the odor returned when Deputy Patterson returned to talk to Caffee after the vehicle search. Moreover, Deputy Patterson found two empty bottles smelling of raw marijuana during a search of Caffee's vehicle. **These facts, which were known to Deputy Patterson prior to any search of Caffee's person, were sufficient to create probable cause to arrest Caffee for possession of marijuana."** The Court further explained that its conclusion was based "on the strength of more than the mere nearby presence of the odor of marijuana. **Criminal possession is not committed merely by being nearby the prohibited substance. Rather, it was law enforcement's ability to localize the odor of marijuana to Caffee's person that allows us to find probable cause to arrest for that crime." Because Deputy Patterson had both probable cause to search Caffee *and* probable cause to arrest him, no warrant was required for the search under the search incident to arrest doctrine, and the search of Caffee's person was therefore constitutional.** *Caffee v. State*, No. S17G1691, 2018 WL 2089615 (Ga., May 7, 2018).

Georgia Court of Appeals

DUI ARREST – MIRANDA WARNING, PROBABLE CAUSE, AND CONSENT

Yeong Sik Oh was pulled over on December 31, 2015, after a police officer observed that Oh had a malfunctioning brake light. At the time he performed the traffic stop, the officer had not witnessed any signs of impairment or other traffic offenses. Upon approaching Oh's door and speaking with him, the officer smelled burned marijuana coming from the vehicle. Oh stated "that he had smoked marijuana in the vehicle a few days before." When asked, Oh initially denied that he had consumed any alcohol that evening. The officer smelled alcohol on Oh's breath and Oh eventually admitted "that he had consumed one beer about an hour earlier… with a meal… [T]he officer also observed that Oh's eyes were red and watery."

Based on his observations, the officer decided to perform field sobriety tests on Oh. During the tests, the officer detected six out of six clues of impairment during the HGN test, four out of eight clues during the walk and turn test, and zero clues during the one leg stand test. Based on those results, "the officer told Oh that he believed he was impaired due to alcohol consumption and offered him a portable breath test (PBT)." The officer "accused Oh of lying about the amount of alcohol he had consumed that evening," and Oh ultimately admitted that he had consumed four beers. Oh eventually agreed to blow into the PBT, which generated a number so high the officer believed the test was not accurate. The officer had Oh blow into the PBT again, "which yielded a positive test for alcohol." Oh was then placed under arrest for DUI.

The arresting officer read Oh the appropriate implied consent notice and asked Oh to consent to a breath test. Oh asked several questions and asked the officer to re-read the notice, which the officer did, while also accusing Oh of stalling. After several additional

questions, Oh finally consented to a breath test. The breath test was administered and produced results "consistent with the evidence of impairment the officer had observed during the traffic stop… The officer described his encounter with Oh as 'pleasant' and noted that he had not had to raise his voice with Oh during the stop." This was confirmed by dashboard camera video and audio.

During Oh's prosecution, he moved to suppress all evidence of the stop based on violations of his constitutional rights, but the trial court denied his motion. Oh appealed the ruling after being convicted, alleging that (1) he was in custody and should have been Mirandized before being asked to blow into the PBT and admitting to drinking four beers; (2) the officer lacked probable cause to place him under arrest for DUI; and (3) he did not provide actual consent for a state-administered breath test.

The Court of Appeals rejected all three of Oh's arguments. With respect to his first argument, the Court explained that *Miranda* rights are only required to be read when a person is in custody, and "the test for determining whether a person is 'in custody' at a traffic stop is if a reasonable person in the suspect's position would have thought the detention would not be temporary." In this case, Oh was not "in custody" prior to taking the PBT or admitting to drinking four beers. While the officer told Oh he believed he was impaired before administering the PBT, the officer never stated that Oh "would be under arrest regardless of the outcome of the test or whether he agreed to submit to the test at all." **Under the circumstances, the Court held, the officer did not give Oh the impression that his detention was anything more than temporary prior to Oh's submission to the PBT and admission that he drank four beers. Therefore, the officer was not required to read Oh his *Miranda* rights.**

With respect to the Oh's second argument, the Court found that the officer had sufficient probable cause to arrest Oh for DUI. **Given that the officer observed Oh's red and watery eyes, smelled alcohol on his breath, detected clues of impairment on two of the field sobriety tests, and observed a positive alcohol reading on the PBT, there was probable cause to arrest Oh for DUI less safe.** The Court held that such probable cause can exist even without "proof that a person actually committed an unsafe act while driving" when – as here – the circumstantial evidence of impairment is sufficiently strong.

Finally, the Court held that under the facts of this case, Oh provided actual, voluntary consent for his state administered breath test. **The evidence showed that Oh did not suffer the sort of "negative psychological impact" during the traffic stop that would negate his consent. The officer "made no effort to deceive Oh into consenting to the test," and was calm and professional with Oh throughout.** As such, his consent was voluntary and the test was admissible. *Oh v. State*, No. A18A0642, 2018 WL 2189531 (Ga. Ct. App., May 14, 2018).

ALS REMINDERS

If you are unavailable for an ALS Hearing, a written continuance motion must be filed with the OSAH Judge as soon as possible but no less than seven to ten days prior to the scheduled hearing. The Court does not accept continuance requests by telephone or in the body of an email.

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