

# Fourth Amendment Search Warrant or Consent Requirement Applies to Unauthorized Rental Car Drivers and Vehicles Parked on Private Property

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ATTORNEYS

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Jennifer Petrusis

Two recent cases have further defined the Fourth Amendment's requirement that law enforcement officers obtain consent or a warrant before searching certain vehicles. In one case, the United States Supreme Court held that a driver in lawful possession or control of a rental car has a reasonable expectation of privacy in the car, even if he or she is not an authorized driver, and the driver's consent or a warrant is required to conduct a lawful search of the vehicle. In the second, the Court held that the automobile exception to the Fourth Amendment does not permit warrantless police entry into the curtilage of a home in order to search a vehicle parked there in plain view. The curtilage of a home is the private area immediately surrounding the home, including the yard and the driveway.

In the rental car case, *Byrd v. United States*, Pennsylvania State Troopers pulled over a rental car for a traffic violation. Because the car's driver was not listed as an authorized driver on the rental agreement, the troopers believed they did not need his consent to search the car. The troopers conducted a warrantless search of the car and discovered body armor and a large quantity of heroin in the trunk. The driver was consequently convicted and challenged the search and seizure as a violation of his Fourth Amendment rights. The United States District Court and the Third Circuit Court of Appeals upheld the search and seizure, holding the driver did not have a reasonable expectation of privacy in the rental car because he was not listed as an authorized driver on the rental agreement. The United States Supreme Court unanimously reversed, holding that a driver in lawful possession or control of a rental car has a reasonable expectation of privacy in the car, even if he or she is not an authorized driver, so consent or a search warrant was required to conduct a lawful search.

The Court rejected the argument that only authorized rental car drivers have a reasonable expectation of privacy in a rental car, reasoning that this rule would be too restrictive a view of the protections guaranteed under the Fourth Amendment. Underlying the Court's decision was the idea that a driver of a rental car who lawfully possesses or controls the car has the right to exclude others from it, and an expectation of privacy comes with the right to exclude. Prior to this decision, there was a circuit split as to whether an unauthorized rental car driver has a reasonable expectation of privacy in the car.

In the other case, the United States Supreme Court held that the automobile exception to the Fourth Amendment's warrant requirement does not permit warrantless police entry into the curtilage of a home in order to search a vehicle parked there in plain view. In *Collins v. Virginia*, a motorcyclist riding a stolen orange and black motorcycle with an extended frame committed several traffic violations. The rider eluded police officers who attempted to pull him over.

An officer drove to the address where police learned the rider had parked the motorcycle. From the street, the officer could see what appeared to be a motorcycle with an extended frame covered with a white tarp in the driveway. Without a warrant, the officer walked onto the driveway, confirmed the identity of the vehicle, and arrested the rider. When the rider challenged the officer's warrantless entry onto the driveway as a violation of his Fourth Amendment rights, the Supreme Court of Virginia rejected the challenge, holding that because the officer had probable cause to believe the motorcycle was contraband, his warrantless search was justified under the automobile exception.

The United States Supreme Court reversed, holding that the automobile exception does not permit the warrantless invasion of a home or its curtilage. The automobile exception, which allows police officers to search a vehicle on public roads without a warrant, is justified due to the ready mobility of vehicles and the pervasive regulation of vehicles traveling on public streets. The Court explained that these justifications do not apply to one's home or its curtilage. Therefore, officers may not enter into or on private property under the automobile exception without consent or a warrant to search a vehicle parked there in plain view.

If you have any questions regarding these decisions or other Fourth Amendment search and seizure issues, please contact **Jennifer Petrusis** or any lawyer in the Police Practices Group.