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ONE MINUTE BRIEF

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NUMBER: 2018-09 **DATE:** 05-29-18 **BY:** Devallis Rutledge **TOPIC:** Vehicle Search in the Driveway

ISSUE: Does the “fleeting targets” exception for warrantless search of vehicles allow entry onto a residential driveway to make the search?

Under the “**fleeting targets**” doctrine (also called the “automobile exception”—although it also applies to RVs, motorcycles, boats, trains, planes and other inherently-mobile conveyances), officers may make a warrantless search of a “fleeting target” if they have (1) **probable cause** to believe something seizable is inside and (2) **lawful access** to the vehicle. *US v. Ross* (1982) 456 US 798, 824. See 1MB 2006-30.

Because the “**curtilage**” of a residence is entitled to the same degree of Fourth Amendment protection as the residence, (1) **entry** onto the curtilage (2) in order **to seek evidence** requires one of the same four justifications as entry into the residence itself. *Florida v. Jardines* (2013) 569 US 1, 7. See 1MB 2014-15.

How do these principles apply to the warrantless entry onto a residential **driveway** in order to make a warrantless search of a vehicle parked there?

- Ryan Austin Collins parked a stolen motorcycle in the driveway of his girlfriend's house where, as an **overnight guest**, he shared her Fourth Amendment protection of the home and curtilage. *Minnesota v. Olson* (1990) 495 US 91, 98-100. See 1MB 2014-21. Police officers walked up the driveway and pulled back a tarp concealing the motorcycle, so they could see the VIN and confirm that the bike was stolen. Collins moved to suppress their observations as the fruit of illegal entry. His motion was denied by the Virginia courts, on the basis of the “fleeting targets” exception. The US Supreme Court has reversed (8-1).

Finding that the part of the driveway where the motorcycle was parked was “properly considered curtilage,” the court said this:

*“[T]he Court considers **curtilage—the area immediately surrounding and associated with the home**, to be part of the home itself for Fourth Amendment purposes. ... When a law enforcement officer physically intrudes on the curtilage to gather evidence, a **search** within the meaning of the Fourth Amendment has occurred. ... “[A]n officer must have a **lawful right of access** to a vehicle in order to search it pursuant to the automobile exception. ... [S]earching a vehicle parked in the curtilage involves not only the invasion of the Fourth Amendment interest in the vehicle but also an invasion of the sanctity of the curtilage. ...*

*“[N]othing in our case law, however, suggests that the automobile exception gives an officer the right to enter a home or its curtilage to access a vehicle without a warrant. ... **The question before the Court is whether the automobile exception justifies the invasion of the curtilage. The answer is no.**”*

Collins v. Virginia (2018) 584 US ___, WL 2402551, slip opn. at 5, 6, 7, 9.

- If warrantless entry onto the curtilage can be justified by **consent, exigency or probation/parole/PRCS search terms**, warrantless search of a vehicle could then be justified by the “fleeting targets” exception (see *id.*, slip opn. at 12). (The *Collins* case was remanded for consideration of whether entry was justified by exigent circumstances.)

BOTTOM LINE: *“[T]he automobile exception does not permit an officer without a warrant to enter a home or its curtilage in order to search a vehicle therein.” *Id.*, slip opn. at 14.*

(Emphases added and citations and punctuation omitted from quoted material.)

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