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IF SUFFICIENT PROBABLE CAUSE DEVELOPS DURING A TRAFFIC STOP, THE *CARROLL DOCTRINE* (THE “AUTOMOBILE EXCEPTION”) ALLOWS THE OFFICER TO SEARCH A VEHICLE’S AIR BAG COMPARTMENT FOR CONTRABAND

QUESTION: DURING A TRAFFIC STOP, DOES A STRONG ODOR OF BURNT MARIJUANA EMANATING FROM THE PASSENGER COMPARTMENT OF THE STOPPED VEHICLE PROVIDE SUFFICIENT PROBABLE CAUSE TO ALLOW THE INVESTIGATING OFFICER TO PRY OPEN AND SEARCH THE AIR BAG COMPARTMENT OF THE VEHICLE FOR CONTRABAND?

ANSWER: YES. IF THE INITIAL TRAFFIC STOP IS JUSTIFIED, A STRONG ODOR OF MARIJUANA COMING FROM INSIDE THE VEHICLE ESTABLISHES SUFFICIENT PROBABLE CAUSE TO SEARCH THE VEHICLE FOR CONTRABAND, INCLUDING SEARCHING ITS HIDDEN AIR BAG COMPARTMENT.

CASE: *State v. Harding*, No. 637, September Term, 2005
Court of Special Appeals of Maryland, December 7, 2005

In a case of first impression in Maryland, the Maryland Court of Special Appeals in *State v. Harding* examined the issue of whether a strong odor of burnt marijuana coming from inside a vehicle stopped for a traffic violation provided sufficient probable cause to justify a warrantless search of the vehicle’s air bag compartment for contraband.

In the *Harding* case, the facts established that State Trooper J.D. Cameron stopped Donovan Anthony Harding for speeding on Interstate 95 in Prince George’s County. When he reached the driver’s window, Trooper Cameron immediately smelled a strong odor of burnt marijuana emanating from the passenger compartment of Harding’s pickup truck. The officer promptly called for backup, and after a second officer arrived, searched Harding’s vehicle inside and out for the source of the odor. The search initially turned up only a number of pine-tree air fresheners. After searching for approximately eight minutes, Trooper Cameron turned his attention to the hidden compartments in the vehicle. Trooper Cameron had learned during the course of his drug-interdiction training that a vehicle’s air bag compartment could be modified and used for hiding contraband. Using a screwdriver, the officer pried up the cover of the passenger-side air bag compartment and discovered that the air bag had been removed. A hydraulic piston had been attached to the cover. In the air bag compartment were a pistol, a plastic bag that appeared to contain marijuana, and a partially-smoked joint.

Less than ten minutes after the search of the vehicle commenced, when the contraband in the air bag compartment was discovered, Harding was placed under arrest. The police officers had Harding's truck towed to their barracks, where they continued their search of the vehicle. During this search, the officers discovered a large package of additional marijuana hidden in a spare tire that was in the bed of the pickup truck. Harding was charged with illegal possession of narcotics and the handgun.

Prior to trial, Harding moved to suppress the evidence discovered in his truck. Trooper Cameron was the only witness presented by the State at the hearing. In his testimony, the officer related that he decided to probe Harding's air bag compartment because the seam did not look quite straight. Trooper Cameron further testified that he eventually discovered the air bag compartment in the pickup truck had been fitted with a hydraulic piston and electrical wiring that enabled the cover of the air bag compartment to be remotely opened and closed. Although the trial judge believed the officer's testimony, he suppressed the evidence, seemingly on the grounds that the officers lacked probable cause to open the air bag compartment, and/or that they took too long to discover and search the hidden compartment. The State appealed this ruling.

On appeal, the Court of Special Appeals reversed the ruling of the trial court and returned the case for further proceedings. In doing so, the Court first determined that the initial traffic stop for speeding was valid and justified, as the officer had observed Harding exceeding the posted speed limit. The Court next concluded that the strong odor of marijuana detected by the officer during his initial approach to the vehicle satisfied the requirement of "a reasonable, articulable suspicion that criminal activity [was] afoot." In other words, the officer had probable cause to believe from the very outset of the encounter that the pickup contained contraband.

This probable cause triggered application of the *Carroll* doctrine. This doctrine takes its name from *Carroll v. United States*, the landmark 1925 Supreme Court decision which held that police officers who had probable cause to believe an automobile was carrying illegal contraband (crime-connected item) could conduct a search of the vehicle without seeking a warrant. Decades after the *Carroll* decision, the Supreme Court made clear that a warrantless search under *Carroll* could include compartments and containers that might be used for hiding contraband within a vehicle. (*United States v. Ross*, 1986.) "If probable cause justifies the search of a lawfully stopped vehicle, it justifies the search of every part of the vehicle and its contents that may conceal the object of the search." (*Wyoming v. Houghton*, U.S. Supreme Court, 1999.)

In Harding's case, the court observed that it was not only theoretically possible that marijuana—and even a partially smoked joint—might be concealed in the air bag compartment; "these items of contraband . . . were, in fact, concealed within the air bag compartment." Because Trooper Cameron had received training in drug interdiction that gave him a basis for suspecting that the air bag compartment might be a possible hiding place, that "container" was within the permissible scope of the warrantless search of the vehicle. Finally, because the time the officers spent actually searching Harding's vehicle was less than ten minutes before the hidden air bag compartment was opened, the search was

clearly not unreasonable in duration. Accordingly, the Court of Special Appeals concluded that the trial court had erred in suppressing the evidence discovered in the air bag compartment of the pickup truck.

NOTE: The *Harding* case is also important for its discussion of the continued search of the pickup truck after it had been removed to the State Police barracks. There, a large package of marijuana was found in the spare tire that was in the covered bed of the pickup. The Court of Special Appeals held that this search was valid on the basis that the “automobile exception” does not have a separate exigency requirement. In other words, if an immediate search of a vehicle on the street is permissible without a warrant, a search soon thereafter at the police station is permissible if the vehicle is impounded. This was especially true in the *Harding* case where the officer had become aware that the pickup truck had been modified in a very sophisticated way (viz., the remotely controlled hydraulic air bag cover) that gave the officer probable cause to believe there might be additional contraband hidden in the truck.

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