# DEPARTMENT OF PUBLIC SAFETY

## TRAINING ACADEMY

LEGAL BULLETIN NO. 94
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## AUTOMOBILE EXCEPTION TO WARRANT REQUIREMENT

Reference: California
v.
Charles R. CARNEY

United States Supreme Court
~~53 LW 4521~~ 471 US _____
May 13, 1985

FACTS:

Drug Enforcement Administration (DEA) agents had received information that a motor home, parked in a public lot, was being used to exchange marihuana fo sex. During surveillance, they observed a young male enter the motor home an at the same time, the window shades being closed, including the one across th front window. The young man stayed for about an hour and fifteen minutes. When the young man left the motor home, the DEA agents stopped and questioned him. He told them that in exchange for marihuana he had allowed CARNEY to ha sexual contact with him. The youth agreed to return to the motor home and, after knocking on the door, CARNEY came out. When CARNEY came out, the DEA agents made a warrantless entry into the motor home and observed marihuana, plastic bags and a scale on the table. CARNEY and the motor home were taken into custody. A subsequent search of the motor home at the police station re vealed additional marihuana in the cupboards and refrigerator.

The California Supreme Court ruled the evidence inadmissible because the DEA agents did not have a search warrant. The State of California appealed the decision to the United States Supreme Court.

ISSUE:

Did the DEA agents violate the Fourth Amendment when they conducted the warra less search, based on probable cause, of a fully mobile "motor home" located in a public place?

HELD: No.

REASONING:

1. The vehicle was obviously readily mobile by the turn of a switch key.

2. There is a reduced expectation of privacy stemming from its use as a licensed motor vehicle subject to a range of police regulation inapplicable tc a fixed dwelling. (emphasis added)

3. The mobility of automobiles creates circumstances of such exigency that, as a practical necessity, rigorous enforcement of the warrant requirement is impossible.

4. To fail to apply the exception to vehicles such as a motor home ignores the fact that a motor home lends itself easily to use as an instrument of illicit drug traffic and other illegal activity.

5. Under the vehicle exception to the warrant requirement, only the prior approval of the magistrate is waived; the search otherwise must be such as the magistrate could authorize. (emphasis added)

NOTES:

A word of CAUTION: Even though the U.S.Supreme Court has recognized the "automobile exception" to the warrant requirement of the Fourth Amendment since 1925 (see Carroll v. U.S.), the Alaska Supreme Court has not as yet adopted this exception under our State Constitution (Article I, Section 14). So far, our court has indicated that warrantless searches conducted in automobiles are merely "sub-categories" of the other exceptions such as "incident to arrest," "emergency," "hot pursuit," etc.

In this case, the court states that the motor home was mobile and, because of the exigency, only the prior approval of the magistrate was waived. The agents had ample probable cause and a magistrate would have, no doubt, authorized a search warrant.

Had this motor home been on private property, elevated on blocks, unlicensed and perhaps connected to utilities, it would not have been considered "mobile" and a warrant would have been required.

You should review the following:

U.S. v. Ross (Legal Bulletin No. 59) where U.S. Supreme Court upheld "automobile exception" to the warrant requirement, waiving "prior approval" by a magistrate.

Texas v. Brown (Legal Bulletin No. 68) where U.S. Supreme Court upheld "plain view" seizure of drugs observed during a drivers license checkpoint.