



POLICE / PROSECUTOR UPDATE

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This month we will look at a case involving the **automobile exception to the search warrant requirement**.

A police officer responded to a call of individuals smoking marijuana at a school playground. When he arrived at the scene he found the defendant and two other individuals sitting on a bench, with three other individuals standing next to the bench. In a parking lot near the playground was a car, later determined to belong to the defendant, with its stereo playing loudly.

The officer parked his patrol car near the defendant's car and walked across the playground toward the individuals. As he approached, he detected the smell of burnt marijuana in the air. The officer performed a patdown on the defendant and the other persons to check for weapons. He noticed a large bulge in the defendant's front pocket that turned out to be folded money. The defendant possessed no weapon. He was handcuffed while the officer searched the others. One possessed a large bag of marijuana. None had a weapon.

When additional police officers arrived at the playground, one walked over to the parking lot to turn down the stereo in the defendant's car. As he did so, he noticed the odor of raw marijuana coming from inside the car. Soon after, the original officer approached the vehicle and also noted the odor of raw marijuana. He observed seeds and stems in the passenger seat. He then proceeded to enter and search the entire car.

When he opened the glove box, he found a bag of raw marijuana inside. At the time of the search, the defendant was handcuffed for safety reasons on the playground, some distance from the car. No weapons were discovered at the scene. The police did not attempt to obtain the

defendant's consent to the search, nor did they procure a search warrant.

The automobile exception to the search warrant requirement was recognized nearly 80 years ago by the U.S. Supreme Court due to the "practical difficulty inherent in obtaining warrants to search movable conveyances." However, the Court stressed that a warrant must be obtained where it is reasonably practicable. The key to the automobile exception is the *inherent mobility* of the vehicle. When a vehicle is no longer inherently mobile, it is not within the automobile exception if obtaining a search warrant is reasonably practicable.

In this case, when the officer performed the warrantless search of the defendant's car, it was parked legally in a school parking lot *and* surrounded by police officers. It was not blocking traffic or any exit or entrance to the school. At the time the search occurred, the defendant was detained in handcuffs on the playground some distance from the car.

There was neither a shortage of time nor an emergency situation for the officers to deal with. No weapons were discovered at the scene, and there was no threat that the car might disappear and become lost to the police. Because the defendant's car was not "inherently mobile" and obtaining a search warrant would have been reasonably practicable under the circumstances, the court held that the automobile exception did not apply in this case.

Scott v. State, 775 N.E.2d 1207 (Ind. App. 2002).