



LEGAL QUESTIONS ANSWERED

Warrantless Searches of Automobile Computer “Black Box”

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QUESTION: *A relatively new vehicle is involved in a serious vehicle crash. Due to sustained damage the vehicle is no longer drivable. The vehicle is towed to a secured police evidence lot. The vehicle is equipped with an item commonly known as a black box. The black box in the vehicle has crash data stored in it.*

Things to consider:

- 1. There are no exigent circumstances for the search.*
- 2. The vehicle is no longer mobile and is being stored in a secured facility.*
- 3. The black box is a computer that stores data.*
- 4. Your desire is to download the crash data from the computer (Black Box.)*

In your opinion, does Carroll Doctrine apply to warrant a warrantless search? Or, is a search warrant required?

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ANSWER: An answer to this question can likely be found by examining court precedent on the topic of warrantless searches of automobiles such as the Eighth Circuit Court of Appeals case of the *United States v. Perry*.ⁱ In *Perry*, officers arrested suspects for robbery and, with sufficient probable cause but without a search warrant, searched their vehicle for evidence. The vehicle was then towed to the police station. There, it was again searched without a warrant; evidence was photographed and removed from the trunk.

Later, one of the issues in the case was whether the officers acted properly relying upon the “automobile exception” (see *Carroll v. U.S.*ⁱⁱ and its progeny) by searching the vehicle at the police station without a search warrant.

As a reminder, the “automobile exception”, was established by the United States Supreme Court, in *Carroll v. U.S.* In this case, officers stopped a car and had probable cause to believe it contained illegal liquor. The officers searched the car on the side of the road without a search warrant. The U.S. Supreme Court held that officers who have probable cause to believe that evidence of a crime is located in a motor vehicle, can search the vehicle without a first obtaining a search warrant. This was based upon the inherent mobility of motor vehicles. Since 1925, the United States Supreme Court has developed a fairly extensive body of law clarifying this exception.ⁱⁱⁱ

In *Perry*, the Eighth Circuit looked at the Supreme Court case of *U.S. v. Ross*^{iv} and held that it controlled their decision in *Perry*. In *Ross*, police received information that amounted to probable cause that *Ross* was dealing narcotics from his vehicle. They located *Ross* and stopped him. They searched his vehicle without a warrant on the scene and found a gun and heroin. *Ross* was arrested and his vehicle was towed to the police station. The police then, again without a search warrant, searched *Ross*’ trunk and found \$3,200 in cash. The Supreme Court upheld all of the warrantless searches of *Ross*’ vehicle based upon the probable cause that evidence was located in the vehicle.

Eighth Circuit, in a footnote in *Perry*, stated the following:

While the mobility of automobiles is part of the reasoning behind *Ross*, the question is not, as *Perry* has argued, whether the car is likely to be driven off; the question is whether probable cause that contraband is within the vehicle supports a search within the scope that a warrant would have authorized. It is the characteristic mobility of all automobiles, not the relative mobility of the car in a given case, that gives rise to the *Ross* standard which allows for warrantless searches when probable cause exists.^v

However, although the court upheld the search of *Perry*’s *operational* vehicle, they also stated

However, we agree with the district court (and it is worth noting) that it is "advisable," "better practice," and just plain "smarter," for officers to first obtain a warrant whenever possible. [internal citations omitted]^{vi}

Now, back to the question at hand, we must consider the part of the question that states the vehicle is seriously damaged and no longer drivable (mobile). The Eleventh Circuit Court of Appeals, in *United*

States v. Watts^{vii}, held that the automobile exception allows the police to conduct a search of a vehicle if (1) the vehicle is **readily mobile and** (2) the police have **probable cause** for the search. **Further, this same case held that the “mobility” requirement is satisfied “merely if the automobile is operational.”**

As a reminder, in the scenario presented in the question above, the writer states that the vehicle is “no longer mobile and is being stored in a secure facility.” In a case out of the United States District Court for the Northern District of Iowa, the district court faced an issue regarding a warrantless search of an *apparently immobile, damaged vehicle*. In the *United States v. O’Connell*^{viii}, officers had probable cause to arrest O’Connell. They went to his parent’s property and found his car. They checked his car, and it was unoccupied. About five feet from the car, the police observed a conversion van that was parked in two foot tall weeds. It had flat front tires and a severely damaged front end. The vehicle had been “totaled” in a crash six weeks prior and was apparently no longer operational. The police entered the van to search for O’Connell and he was arrested. They also searched the van without a warrant and found a shotgun.

One of O’Connell’s arguments was that the “automobile exception” to the search warrant requirement did not apply because the vehicle was *immobile (not capable of operation)*. Although the district court held that the police did *not* have sufficient probable cause to enter the van, the court did analyze, if probable cause had been present, whether the automobile exception would have applied. The court focused on the mobility of the vehicle and stated

The automobile search exception has two justifications: "ready mobility" and "the individual's reduced expectation of privacy in an automobile."^{ix}

The court then concluded

Because the van's immobility was readily apparent, the court concludes it was not reasonable for the officers in this case to assume the vehicle was readily mobile.

Therefore, the automobile exception does not apply.^x

The final answer: In light of the above case law and the fact that the question presented states that the vehicle at issue is not operational due to a damage, it would seem best for the officer to obtain a search warrant in order to seize the electronic data recorder (a.k.a. “black box”), and the data contained therein, from a vehicle.

Note: Court holdings can vary significantly between jurisdictions. As such, it is advisable to seek the advice of a local prosecutor regarding questions on specific cases. This answer is not intended to constitute legal advice on a specific case.

SEE ALSO:

2006: Warrant Searches of Motor Vehicles:

http://www.llrmi.com/articles/legal_update/warrantless_vehicle-searches.shtml

2010: Warrantless Searches of Automobiles Based on Probable Cause

http://www.llrmi.com/articles/legal_questions/4-mar10.shtml

CITATIONS

ⁱ 925 F.2d 1077 (8th Cir. 1991)

ⁱⁱ 267 U.S. 132 (1925)

ⁱⁱⁱ See *Chambers v. Maroney*, 399 U.S. 42 (1970); *United States v. Ross*, 456 U.S. 798 (1982); *Michigan v. Thomas*, 458 U.S. 259 (1982); *Florida v. Myers*, 466 U.S. 380 (1984); *Pennsylvania v. Labron*, 518 U.S. 938 (1996); *Maryland v. Dyson*, 527 U.S. 465 (1999); *California v. Carney*, 471 U.S. 386 (1985); *California v. Acevedo*, 500 U.S. 565 (1991)

^{iv} 456 U.S. 798 (1982)

^v *Perry*, 925 F.2d at 1081, fn 4 (citing *Ross*, 456 U.S. at 804-09)

^{vi} *Id.* at 1081

^{vii} 329 F.3d 1282 (11th Cir. 2003)

^{viii} 408 F.Supp. 2d 712 (2005)

^{ix} *Pennsylvania v. Labron*, 518 U.S. 938, 940 (1996).

^x *O'Connell*, 329 F.Supp. 2d at 723