AMERICAN CONSTITUTIONALISM

VOLUME II: RIGHTS AND LIBERTIES

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Supplementary Material

Chapter 11: The Contemporary Era – Criminal Justice/Search and Seizure

**Collins v. Virginia, \_\_\_ U.S. \_\_\_** (2018)

*Officer David Rhodes of the Albemarle County Police Department in Virginia witnessed a person driving an orange and black motorcycle driving substantially over the speed limit. Further investigation indicated that Ryan Collins was the likely driver and that the motorcycle was likely stolen. After seeing a picture of an orange and black motorcycle parked in a driveway on Collins’s Facebook page, Rhodes went to the house in question that he later cleared was owned by Collins’s girlfriend. Rhodes saw the motorcycle and, without a warrant, went on to the driving, pulled off the tarp covering the vehicle, and took the license number. A quick check revealed the motorcycle had been stolen. At Collin’s trial for receiving stolen property, he claimed the state’s evidence should be suppressed because the police search violated his Fourth and Fourteenth Amendment rights. The trial court disagreed. Collins was convicted. Two state appellate courts sustained that decision. Collins appealed to the Supreme Court of the United States.*

 *The Supreme Court by an 8-1 vote reversed the decision of the Virginia courts. Justice Sonia Sotomayor’s majority opinion held that police officers normally need a search warrant when on the curtilage of a house. What is the “curtilage” of a house? How do the different opinions understand what constitutes curtilage? Who has the better argument. Justices Sotomayor and Samuel Alito agree that a car can usually be searched without a warrant, but not the curtilage of a house. How does each balance these two principles and whose balance is better? Justice Clarence Thomas agrees with Justice Sotomayor on the curtilage issue but insists the court should revisit the exclusionary rule. Why do you think no judge even discussed this invitation? Given the lack of response, why does Justice Thomas bother?*

JUSTICE [SOTOMAYOR](https://1.next.westlaw.com/Link/Document/FullText?findType=h&pubNum=176284&cite=0145172701&originatingDoc=I84783e40633111e8bbbcd57aa014637b&refType=RQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)) delivered the opinion of the Court.

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The Court has held that the search of an automobile can be reasonable without a warrant. The Court first articulated the so-called automobile exception in *Carroll v. United States* (1925). . . . . The Court upheld the warrantless search and seizure, explaining that a “necessary difference” exists between searching “a store, dwelling house or other structure” and searching “a ship, motor boat, wagon or automobile” because a “vehicle can be quickly moved out of the locality or jurisdiction in which the warrant must be sought.”  The “ready mobility” of vehicles served as the core justification for the automobile exception for many years.  Later cases then introduced an additional rationale based on “the pervasive regulation of vehicles capable of traveling on the public highways.” . . . In announcing each of these two justifications, the Court took care to emphasize that the rationales applied only to automobiles and not to houses, and therefore supported “treating automobiles differently from houses” as a constitutional matter.

When these justifications for the automobile exception “come into play,” officers may search an automobile without having obtained a warrant so long as they have probable cause to do so.

 Like the automobile exception, the Fourth Amendment's protection of curtilage has long been black letter law. “[W]hen it comes to the Fourth Amendment, the home is first among equals.” . . . To give full practical effect to that right, the Court considers curtilage—“the area ‘immediately surrounding and associated with the home’”—to be “‘part of the home itself for Fourth Amendment purposes.”  “The protection afforded the curtilage is essentially a protection of families and personal privacy in an area intimately linked to the home, both physically and psychologically, where privacy expectations are most heightened.”

When a law enforcement officer physically intrudes on the curtilage to gather evidence, a search within the meaning of the Fourth Amendment has occurred.  Such conduct thus is presumptively unreasonable absent a warrant.

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The “‘conception defining the curtilage’ is ... familiar enough that it is ‘easily understood from our daily experience.’”  Just like the front porch, side garden, or area “outside the front window,” the driveway enclosure where Officer Rhodes searched the motorcycle constitutes “an area adjacent to the home and ‘to which the activity of home life extends,’ ” and so is properly considered curtilage.

In physically intruding on the curtilage of Collins' home to search the motorcycle, Officer Rhodes not only invaded Collins' Fourth Amendment interest in the item searched, *i.e.,*the motorcycle, but also invaded Collins' Fourth Amendment interest in the curtilage of his home. . . .

Applying the relevant legal principles to a slightly different factual scenario confirms that this is an easy case. Imagine a motorcycle parked inside the living room of a house, visible through a window to a passerby on the street. Imagine further that an officer has probable cause to believe that the motorcycle was involved in a traffic infraction. Can the officer, acting without a warrant, enter the house to search the motorcycle and confirm whether it is the right one? Surely not.

The reason is that the scope of the automobile exception extends no further than the automobile itself. . . . Nothing in our case law . . . suggests that the automobile exception gives an officer the right to enter a home or its curtilage to access a vehicle without a warrant. Expanding the scope of the automobile exception in this way would both undervalue the core Fourth Amendment protection afforded to the home and its curtilage and “‘untether’” the automobile exception “‘from the justifications underlying’” it.

The Court already has declined to expand the scope of other exceptions to the warrant requirement to permit warrantless entry into the home. . . A plain-view seizure thus cannot be justified if it is effectuated “by unlawful trespass.”  Had Officer Rhodes seen illegal drugs through the window of Collins' house, for example, assuming no other warrant exception applied, he could not have entered the house to seize them without first obtaining a warrant.

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Just as an officer must have a lawful right of access to any contraband he discovers in plain view in order to seize it without a warrant, and just as an officer must have a lawful right of access in order to arrest a person in his home, so, too, an officer must have a lawful right of access to a vehicle in order to search it pursuant to the automobile exception. The automobile exception does not afford the necessary lawful right of access to search a vehicle parked within a home or its curtilage because it does not justify an intrusion on a person's separate and substantial Fourth Amendment interest in his home and curtilage.

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*Scher v. United States* (1938) is inapposite. Whereas Collins' motorcycle was parked and unattended when Officer Rhodes intruded on the curtilage to search it, the officers in *Scher* first encountered the vehicle when it was being driven on public streets, approached the curtilage of the home only when the driver turned into the garage, and searched the vehicle only after the driver admitted that it contained contraband. *Scher* by no means established a general rule that the automobile exception permits officers to enter a home or its curtilage absent a warrant. . . . The Court then explained that the officers did not lose their ability to stop and search the car when it entered “the open garage closely followed by the observing officer” because “[n]o search was made of the garage.” . . .

Second, Virginia points to *Pennsylvania v.* [*Labron* (1996)](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=1996145497&pubNum=0000708&originatingDoc=I84783e40633111e8bbbcd57aa014637b&refType=RP&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)) where the Court upheld under the automobile exception the warrantless search of an individual's pickup truck that was parked in the driveway of his father-in-law's farmhouse.  But *Labron* provides scant support for Virginia's position. Unlike in this case, there was no indication that the individual who owned the truck in *Labron* had any Fourth Amendment interest in the farmhouse or its driveway, nor was there a determination that the driveway was curtilage.

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The Court . . . has long been clear that curtilage is afforded constitutional protection. As a result, officers regularly assess whether an area is curtilage before executing a search. Virginia provides no reason to conclude that this practice has proved to be unadministrable, either generally or in this context. Moreover, creating a carveout to the general rule that curtilage receives Fourth Amendment protection, such that certain types of curtilage would receive Fourth Amendment protection only for some purposes but not for others, seems far more likely to create confusion than does uniform application of the Court's doctrine.

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JUSTICE [THOMAS](https://1.next.westlaw.com/Link/Document/FullText?findType=h&pubNum=176284&cite=0216654601&originatingDoc=I84783e40633111e8bbbcd57aa014637b&refType=RQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)), concurring.

I join the Court's opinion because it correctly resolves the Fourth Amendment question in this case. Notably, the only reason that Collins asked us to review this question is because, if he can prove a violation of the Fourth Amendment, our precedents require the Virginia courts to apply the exclusionary rule and potentially suppress the incriminating evidence against him. I write separately because I have serious doubts about this Court's authority to impose that rule on the States. The assumption that state courts must apply the federal exclusionary rule is legally dubious, and many jurists have complained that it encourages “distort[ions]” in substantive Fourth Amendment law.

. . . . At the founding, curtilage was considered part of the “hous[e]” itself. And except in circumstances not present here, house searches required a specific warrant. . . .

While those who ratified the Fourth and Fourteenth Amendments would agree that a constitutional violation occurred here, they would be deeply confused about the posture of this case and the remedy that Collins is seeking. Historically, the only remedies for unconstitutional searches and seizures were “tort suits” and “self-help.”  The exclusionary rule—the practice of deterring illegal searches and seizures by suppressing evidence at criminal trials—did not exist. . . .

The Founders would not have understood the logic of the exclusionary rule either. Historically, if evidence was relevant and reliable, its admissibility did not “depend upon the lawfulness or unlawfulness of the mode, by which it [was] obtained.” . . . The exclusionary rule appears nowhere in the Constitution, postdates the founding by more than a century, and contradicts several longstanding principles of the common law.

Recognizing this, the Court has since rejected *Mapp*'s “‘[e]xpansive dicta’” and clarified that the exclusionary rule is not required by the Constitution. . . .  Instead, the exclusionary rule is a “judicially created” doctrine that is “prudential rather than constitutionally mandated.”

Although the exclusionary rule is not part of the Constitution, this Court has continued to describe it as “federal law” and assume that it applies to the States.  Yet the Court has never attempted to justify this assumption. If the exclusionary rule is federal law, but is not grounded in the Constitution or a federal statute, then it must be federal common law. As federal common law, however, the exclusionary rule cannot bind the States.

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 In sum, I am skeptical of this Court's authority to impose the exclusionary rule on the States. We have not yet revisited that question in light of our modern precedents, which reject *Mapp v. Ohio* (1963)'s essential premise that the exclusionary rule is required by the Constitution. We should do so.

JUSTICE [ALITO](https://1.next.westlaw.com/Link/Document/FullText?findType=h&pubNum=176284&cite=0153052401&originatingDoc=I84783e40633111e8bbbcd57aa014637b&refType=RQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)), dissenting.

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If the motorcycle had been parked at the curb, instead of in the driveway, it is undisputed that Rhodes could have searched it without obtaining a warrant. Nearly a century ago, this Court held that officers with probable cause may search a motor vehicle without obtaining a warrant.  The principal rationale for this so-called automobile or motor-vehicle exception to the warrant requirement is the risk that the vehicle will be moved during the time it takes to obtain a warrant. We have also observed that the owner of an automobile has a diminished expectation of privacy in its contents.

So why does the Court come to the conclusion that Officer Rhodes needed a warrant in this case? Because, in order to reach the motorcycle, he had to walk 30 feet or so up the driveway of the house rented by petitioner's girlfriend, and by doing that, Rhodes invaded the home's “curtilage.”  The Court does not dispute that the motorcycle, when parked in the driveway, was just as mobile as it would have been had it been parked at the curb. Nor does the Court claim that Officer Rhodes's short walk up the driveway did petitioner or his girlfriend any harm. Rhodes did not damage any property or observe anything along the way that he could not have seen from the street. But, the Court insists, Rhodes could not enter the driveway without a warrant, and therefore his search of the motorcycle was unreasonable and the evidence obtained in that search must be suppressed.

An ordinary person of common sense would react to the Court's decision the way Mr. Bumble famously responded when told about a legal rule that did not comport with the reality of everyday life. If that is the law, he exclaimed, “the law is a ass—a idiot.”

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The Fourth Amendment protects “[t]he right of the people to be secure in their persons, houses, papers, and effects.” A “house,” for Fourth Amendment purposes, is not limited to the structure in which a person lives, but by the same token, it also does not include all the real property surrounding a dwelling. Instead, a person's “house” encompasses the dwelling and a circumscribed area of surrounding land that is given the name “curtilage.”  Land outside the curtilage is called an “open field,” and a search conducted in that area is not considered a search of a “house” and is therefore not governed by the Fourth Amendment. Ascertaining the boundaries of the curtilage thus determines only whether a search is governed by the Fourth Amendment. The concept plays no other role in Fourth Amendment analysis.

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In considering that question, we should ask whether the reasons for the “automobile exception” are any less valid in this new situation. Is the vehicle parked in the driveway any less mobile? Are any greater privacy interests at stake? If the answer to those questions is “no,” then the automobile exception should apply. And here, the answer to each question is emphatically “no.” The tarp-covered motorcycle parked in the driveway could have been uncovered and ridden away in a matter of seconds. And Officer Rhodes's brief walk up the driveway impaired no real privacy interests.

In this case, the Court uses the curtilage concept in a way that is contrary to our decisions regarding other, exigency-based exceptions to the warrant requirement. Take, for example, the “emergency aid” exception. When officers reasonably believe that a person inside a dwelling has urgent need of assistance, they may cross the curtilage and enter the building without first obtaining a warrant.  The same is true when officers reasonably believe that a person in a dwelling is destroying evidence. In both of those situations, we ask whether “‘the exigencies of the situation’ make the needs of law enforcement so compelling that the warrantless search is objectively reasonable.”  We have not held that the need to cross the curtilage independently necessitates a warrant, and there is no good reason to apply a different rule here.[3](https://1.next.westlaw.com/Document/I84783e40633111e8bbbcd57aa014637b/View/FullText.html?navigationPath=Search%2Fv1%2Fresults%2Fnavigation%2Fi0ad604ab00000163b21c3eee6960bc46%3FNav%3DCASE%26fragmentIdentifier%3DI84783e40633111e8bbbcd57aa014637b%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=21b3c3e26bcdf1d7e22be96bc02676f0&list=ALL&rank=1&sessionScopeId=fbb1964204dd9c33c8cceaacdc55494f6bc2a3d2e4ee2faa853ae3914b72a7b6&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_B01332044624679)

It is no answer to this argument that the emergency-aid and destruction-of-evidence exceptions require an inquiry into the practicality of obtaining a warrant in the particular circumstances of the case. Our precedents firmly establish that the motor-vehicle exception, unlike these other exceptions, “has no separate exigency requirement.”  It is settled that the mobility of a motor vehicle categorically obviates any need to engage in such a case-specific inquiry. Requiring such an inquiry here would mark a substantial alteration of settled Fourth Amendment law.