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Under-reported Story: Supreme Court Upholds Fourth Amendment's Restriction on Warrantless Searches

In a lopsided 8 to 1 decision, the Supreme Court of the United States has restored a section of the barricade to government intrusion originally erected by the Founders in the Fourth Amendment.

Most commentators were busy this past week breaking down the high court's June 4 decision in the *Masterpiece Cakeshop* case. The headlines garnered by that case were of course warranted. But another important case decided a few days earlier (May 29) by the high court did not receive nearly so much attention.

The decision handed down in the *Collins v. Commonwealth of Virginia* case may not have made headlines but it did make headway in the effort to prevent the erosion of the right of Americans to be free from unwarranted police searches and seizures, a right protected explicitly by the Fourth Amendment to the U.S. Constitution.

In relevant part, the Fourth Amendment reads:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Specifically, the court in the Collins case held that police cannot search a vehicle parked near a home without a warrant. Virginia was arguing that the car was covered by the so-called "automobile exception," which exception purports to authorize law enforcement to conduct warrantless searches of cars parked in public.

Before examining the key constitutional protections upheld in the decision, here's a brief recitation of the facts, as contained in the court's opinion in *Collins*:

> During the investigation of two traffic incidents involving an orange and black motorcycle with an extended frame, Officer David Rhodes learned that the motorcycle likely was stolen and in the possession of petitioner Ryan Collins. Officer Rhodes discovered photographs on Collins' Facebook profile of an orange and black motorcycle parked in the driveway of a house, drove to the house, and parked on the street. From there, he could see what appeared to be the motorcycle under a white tarp parked in the same location as the motorcycle in the photograph. Without a search warrant, Office Rhodes walked to the top of the driveway, removed the tarp, confirmed that the motorcycle was stolen by running the license plate and vehicle identification numbers, took a photograph of the uncovered motorcycle, replaced the tarp, and returned to his car to wait for Collins. When Collins returned, Officer Rhodes arrested him. The trial court denied Collins' motion

> to suppress the evidence on the ground that Officer Rhodes violated the Fourth Amendment when he trespassed on the house's curtilage to conduct a search, and Collins was convicted of receiving stolen property. The Virginia Court of Appeals affirmed. The State Supreme Court also affirmed, holding that the warrantless search was justified under the Fourth Amendment's automobile exception.

Constitutionalists worried that should the Supreme Court rule in favor of law enforcement, the decision would geometrically expand the "automobile exception" which in turn would represent a reduction in the right against such intrusions intended to be protected by the Fourth Amendment.

In the majority opinion, Justice Sonia Sotomayor agreed, writing, "To allow an officer to rely on the automobile exception to gain entry to a house or its curtilage for the purpose of conducting a vehicle search would unmoor the exception from its justifications, render hollow the Fourth Amendment protection the Constitution extends to the house and its curtilage, and transform what was meant to be an exception into a tool with far broader application. Indeed, its name alone should make all this clear enough: It is, after all, an exception for automobiles."

As for the constitutionality of the "automobile exception," the Rutherford Institute's John W. Whitehead writes:

> The "automobile exception" arose out of the Prohibition era in order to crack down on bootleggers who were using vehicles to smuggle liquor. Yet even with this exception on the books, police cannot merely disregard the Fourth Amendment whenever it suits their purposes. As the Supreme Court itself has recognized, "Illegitimate and unconstitutional practices get their first footing in that way, namely, by silent approaches and slight deviations from legal modes of procedure." In America, framers of our Constitution used their own experience and the lessons of history as cautionary tales that informed their own efforts to shield the citizens of their new union from similar deprivations of the fundamental right to be free from warrantless searches of private property.

The Framers abhorred this practice, believing that "papers are often the dearest property a man can have" and that permitting the government to "sweep away all papers whatsoever," without any legal justification, "would destroy all the comforts of society."

In 1776, George Mason, the principal author of the Virginia Declaration of Rights — a document of profound influence on the construction of the federal Bill of Rights — upheld the right to be free from such searches, as well: "That general warrants, whereby any officer or messenger may be commanded to search suspected places without evidence of a fact committed, or to seize any person or persons not named, or whose offence [sic] is not particularly described and supported by evidence, are grievous and oppressive, and ought not to be granted."

Thus, the Fourth Amendment is in substantial part taken from Mason's Virginia Declaration of Rights.

The rights guaranteed by the Fourth Amendment are under nearly constant assault by the forces of the federal government. From NSA surveillance to IRS use of tax records as a political tool, the papers, effects, and homes of all Americans are now de facto denied the protections our Founders held so dear.

Unfortunately, state governments and their agents are often guilty of carrying out similar deprivations in the name of "law enforcement."

Finally, while it is commendable that the court held in favor of the black letter of the Constitution, Americans should understand that the Supreme Court is not the arbiter of what is and is not

constitutional. The Court cannot alter the law — even for ostensibly good reason — for such an alteration would be nothing more than judicial legislation and that would reduce our republic to an oligarchy ruled over by nine judges, none of whom is accountable at all to the people of the United States, whose servants all government agents should be.

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