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State Supreme Court

# Rules shift for police auto probes

## High court decision tightens code for warrantless searches

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It is a scenario that's happened to many motorists: A police officer pulls their vehicle over and takes the opportunity to look in the passenger area of the car.

And if the motorist is unlucky enough to have contraband in the car - a gun or drugs, for example - the officer generally has no trouble making charges stick.

Not anymore. At least not in Pennsylvania.

A state Supreme Court ruling handed down in December in a Pittsburgh case has made it tougher for police to search cars before getting a search warrant.

While hard numbers on how the ruling is affecting cases statewide are unavailable, prosecutors say some cases are being dismissed and, at least once in Dauphin County, drug charges were dropped against a defendant.

The case behind the ruling is Commonwealth vs. White, in

which police secured a search warrant for William White's residence and person after obtaining information that he was involved in the drug trade. They also searched his car, allegedly finding a marijuana cigarette and bag of cocaine.

The Supreme Court ruled the alleged drug evidence found in the car to be inadmissible for court because police had not obtained a warrant to search White's car.

While defense attorneys are hailing the decision as affirmation of Pennsylvania citizens' privacy rights, many in law enforcement see it as hindering police. Some see it as further proof that a state constitutional amendment is needed to limit criminal defendants' rights to the same as those outlined by the U.S. Supreme Court under the federal Constitution.

Contrary to Pennsylvania's high court, the U.S. Supreme Court has taken the position in various decisions that people have a very narrow right to

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privacy when it comes to their vehicles.

Ronald Eisenberg, head of the law division in the Philadelphia district attorney's office, said more than 10 drug cases in the city have been dismissed because officers did not get search warrants before finding contraband in a vehicle.

And Eisenberg said he has heard reports of other cases

across the state getting tossed for the same reason.

"These are all cases where there are really people found with drugs and, in many drug cases, it is really the suppression hearing which is the true battle - if you get past the suppression hearing it is very difficult for the person to escape conviction," Eisenberg said. "In the long run [the White decision] will have the effect of

fewer arrests being made."

### A case in point

One evening in August 1995 two state troopers spotted a blue Subaru parked in a vacant lot on the Weiser State Game Lands in Jackson Twp., Dauphin County, and decided to check it out.

As the officers approached, they noted the car was running, the interior lights and radio were on, and, when the man in the driver's seat rolled down the window, they smelled marijuana, according to the troopers' report.

Taken into custody was Mitchell Bobb of Herndon. Besides the marijuana allegedly found in a cigarette pack in Bobb's shirt pocket, the troopers found, according to their report, about a quarter-ounce of the drug when they searched the car.

Ultimately, Bobb was charged with driving while under the influence of alcohol, possession of a small amount of marijuana, and possession of drug paraphernalia.

Believing the search of the vehicle to be incorrect under the White ruling, Bobb's attorney, Patrick F. Lauer, asked the court to hold a suppression hearing to determine what evidence could be allowed against his client.

The Dauphin County district attorney's office and Lauer were able to strike a deal last month: The DUI and possession of marijuana charges were dismissed and Bobb pleaded guilty of possession of drug paraphernalia, receiving a \$50 fine and six months' probation.

By avoiding the DUI or the drug possession charge, Bobb kept his license.

Because his client was in custody, Lauer said, the officers had the opportunity to - and

were required to - get a warrant before searching the car.

"Based on the circumstances, once they had my guy handcuffed outside of his car and he was no threat to anyone, I thought they would have had a very difficult time arguing exigent circumstances or that there was a fear for their safety," Lauer said.

"Exigent circumstances" is the legal label for situations that arise that make it impossible for police to first get a search warrant. Such circumstances are allowed to prevent a suspect from destroying evidence, or if the search is prompted by a legitimate fear for the officer's safety.

The problem now for police is that the White decision does not spell out any detailed guidelines officers should use in deciding whether to get a warrant before searching a vehicle.

In the White case, the state high court noted that it was providing more protection for Pennsylvanians than they would receive under federal law, and said, "... under Pennsylvania balance, an individual's privacy interests are given greater deference than under federal law."

The high court at the same time also made a similar ruling in a Philadelphia case called Commonwealth vs. Labron. The U.S. Supreme Court overturned that ruling in June but did not overturn the White decision - even though it said it did not

agree with it.

"It is not clear right now under what circumstances that police need to secure a warrant prior to searching, and White doesn't answer that question," said Joanna Reynolds, assistant counsel with the Pennsylvania State Police.

"In those circumstances where they can secure a search warrant prior to the search of the car, we are advising them to go ahead and get the warrant," Reynolds said.

Reynolds and other law enforcement officials said that it could put officers in the difficult position of having to stand guard over a vehicle while a warrant is obtained - a waste of manpower at the very least, they say.

The May state police newsletter to all troopers had an article from the department's chief counsel's office summarizing White and giving a warning.

"Although this rule may be inconvenient and impractical, attempting to rationalize a warrantless search of a vehicle based on the automobile or search incident to arrest exception may fail under the judicial analysis set forth in White," the article concluded.

Chief Deputy Attorney General Robert Graci, who heads the office's appellate division, said police should expect to have to give, in painstaking detail, their reason for searching a vehicle.

And he said he is sure in some bigger cases, where the state court suppresses the evidence, the charges will end up filed in federal court.

"I think these interpretations, though they may be well intentioned, do have the effect of hamstringing the police," Graci said.

Michael Rozman, the Dauphin County chief deputy district attorney who handled the Bobb case, said there was a real concern that all the evidence could have been tossed because of White.

The officers could have locked the car and returned with a warrant, or one of the troopers could have stayed with the car, Rozman said. In short, he said, there seem to be few circumstances under White when a warrant will not be needed.

"The feeling is that unless there is a reason why you have to jump in, get a warrant," Rozman said. "It's better to be safe than sorry because I still think that with White and everything swirling around there is no way of telling where this is going to end up."

## Pushing for change

The Pennsylvania District Attorneys Association has been pushing the Legislature to lay the groundwork for an amendment to the state constitution which would tie defendants' search and seizure rights to what is provided under federal law.

The move is backed by the state attorney general's office and others in law enforcement, and, not surprisingly, labeled dangerous and not needed by defense lawyers.

Known as Senate Bill 806 during this legislative session, it ended up dying but is sure to be re-introduced next year. Before such a measure could pass, a public referendum also would be needed.

"These decisions have a very real impact on law enforcement," said Janice Martino-Gottshall, executive director of the District Attorneys Association, of White and other state Supreme Court decisions.

"It's a scary trend considering that crime statistics and drug use all seem to be continuously on the rise and the jobs of police and prosecutors are being made more difficult," she said.

Eisenberg, who is a member of the association, said he feels Pennsylvania's citizens should be allowed to make a choice on how criminal defendants should be treated.

"I think there is a significant policy decision for the people of this state to make about where they want the balance to be drawn between protecting the rights of criminal defendants and law-abiding citizens," he said.

The idea of bringing the commonwealth's law in line with

# WARRANT/Ruling spurs some drug-case dismissals

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federal law, Eisenberg said, would also bring the state into agreement with most of the rest of the country.

Jules Epstein, an instructor at the University of Pennsylvania Law School and a defense attorney for 18 years, cautioned that Pennsylvanians may get a rude shock if their extra protections are suddenly stripped away.

"I think there are a lot of Pennsylvanians who believe they should have a right to privacy with their bank accounts, telephones, mobile homes and cars," Epstein said. "Do you want a police officer deciding whether he or she can rummage through your bank records or your telephone records?"

Under federal law, search warrants are not needed by agents wanting access to those areas, he said.

Epstein said the idea of tying

search and seizure laws to the federal rulings go way beyond mere car searches, and he said he feels law enforcement officials are making a "mountain out of a molehill" in complaining about White.

"Regardless of the law, many police officers have always searched cars and then come

up with justifications after the fact, so whatever the law was didn't make much of a difference," he said. "More importantly, these new cases are not radical changes in Pennsylvania law - for the last 20 years this has been the law in Pennsylvania."