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TRAINING BULLETIN

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Training Bulletin: Chalking of Tires

"CHALKING" THE TIRES OF PARKED VEHICLES FOUND TO BE A VIOLATION OF THE FOURTH AMENDMENT

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Taylor v. City of Saginaw, 2019 U.S. App. LEXIS 11586 (6th Cir. Apr. 22, 2019)

On April 22, 2019, the Sixth District Court of Appeals, in Taylor v. City of Saginaw, 2019 U.S. App. LEXIS 11586 (6th Cir. Apr. 22, 2019), held that "chalking," the practice of parking enforcement officers marking parked vehicles with chalk to track how long the vehicles are parked, and issuing parking citations if the posted time for parking passes and the vehicle has not moved, constituted a search under the Fourth Amendment because the City committed a trespass by making intentional contact with the Plaintiff's vehicle, and it was used to issue parking citations. Further, the Court held that the search was unreasonable.

Background:

Between 2014 and 2017, City of Saginaw parking enforcement officer Tabitha Hoskins chalked Plaintiff Alison Taylor's tires on fifteen (15) separate occasions and issued her citations in kind. Each citation referenced the date and time the chalk was placed on Taylor's tires. In April 2017, Taylor filed suit against the City under 42 U.S.C. § 1983, alleging the City violated her Fourth Amendment right against unreasonable searches by placing chalk on her tires without her consent or a valid search warrant.

The City filed a motion to dismiss, arguing that chalking was not a search within the meaning of the Fourth Amendment, or, alternatively, if it was a search, it was reasonable under the community caretaking exception to the warrant requirement. The district court granted the motion to dismiss. It concluded the placement of chalk on Taylor's tires to gather evidence of a parking violation constituted a search, but that the search was reasonable because (1) there is a lesser expectation of privacy in automobiles, and (2) the search was subject to the community caretaking exception to the warrant requirement. Taylor appealed.

Discussion:

A three-judge panel of the Sixth Circuit Court of Appeals reversed the district court's order granting the motion to dismiss. The Court explained that, to determine whether a Fourth Amendment violation has occurred, the Court asks two questions: first, whether the alleged government conduct constitutes a search within the meaning of the Fourth Amendment, and second, whether the search was reasonable. The Court found that the chalking constituted a search and that the search was unreasonable.

The Search:

The Court explained that the Supreme Court has articulated two approaches to determine when government conduct constitutes a search. The first is the search analysis established by Katz v. United States, 389 U.S. 347 (1967). Under Katz, a search occurs when a government official invades an area in which "a person has a constitutionally protected reasonable expectation of privacy." There are two parts to the Katz search analysis: first, that a person exhibits a subjective expectation of privacy, and second, whether the expectation is one that society will recognize as reasonable. The second search analysis was articulated in United States v. Jones, 565 U.S. 400 (2012). Under Jones, when a governmental invasion is accompanied by a physical intrusion, a search occurs when the government: (1) trespasses upon a constitutionally protected area, (2) to obtain information. The Court, citing Jones, noted that the Katz test has been "added to, not substituted for," the common-law trespass test.

The Court found that Jones provided the appropriate analytical framework for determining whether chalking constitutes a search within the meaning of the Fourth Amendment. It explained that the threshold question is whether chalking constitutes a common-law trespass upon a constitutionally protected area. The Court looked to and adopted the Restatement (Second) of Torts' definition of common-law trespass, which defines such trespass as "an act which brings [about] intended physical contact with a chattel in the possession of another." The Restatement also provides that an actor can commit a trespass by intentionally causing a chattel to come into contact with another object. Here, the Court found, the City committed a trespass because it made intentional physical contact with Taylor's vehicle.

Next, the Court explained that, once it determined that the government trespassed on a constitutionally protected area, it had to determine whether the trespass was connected with an attempt to obtain information. Here, the Court found that the practice of chalking vehicles to identify vehicles that had been parked in the same location for a certain period of time amounted to an attempt to obtain information.

Reasonableness:

The Court explained the basic rule that searches conducted outside the judicial process are per se unreasonable under the Fourth Amendment, subject to only a few specifically established and well-delineated exceptions, and that the government bears the burden of demonstrating an exception to the warrant requirement. The Court held that the City did not meet its burden.

The City argued that, if chalking is a search, the search was reasonable because there is a reduced expectation of privacy in an automobile. Further, the City argued that the search was subject to the community caretaker exception to the warrant requirement. The Court rejected both arguments.

Expectation of Privacy in Automobiles:

The Court rejected the City's argument that searching Taylor's vehicle was reasonable solely based on the reduced expectation of privacy in the vehicle. The Court explained that the diminished expectation of privacy in automobiles is what justified the automobile exception to the warrant requirement. However, the Court held that the automobile exception does not apply here because there was no probable cause for the search. The Court further distinguished case law cited by the City, noting that the City commences its searches of vehicles that are parked legally, without probable cause or an individualized suspicion of wrongdoing, which is "the touchstone of the reasonableness standard."

Community Caretaking Exception to Warrant Requirement:

The Court also rejected the City's argument that the search fell within the community caretaking exception to the warrant requirement. The Court explained that the community caretaking exception to the warrant requirement applies when government actors are performing "community-caretaker" functions rather than traditional law enforcement functions. It explained that courts have applied the community caretaker exception in narrow instances when public safety is at risk. The Court concluded that the City failed to meet its burden of establishing that the community caretaking exception applied to this case. It noted that the City did not demonstrate how the search bears a relation to public safety and that, to the contrary, at the time of the search, Taylor's vehicle was lawfully parked, imposing no safety risk whatsoever. The Court concluded that because "the purpose of chalking it to raise revenue, and not to mitigate hazard, the City was not acting in its 'role as [a] community caretaker.'"

The Court held that the City did not demonstrate, "in law or logic," that the need to deter drivers from exceeding the time permitted for parking was sufficient to justify a warrantless search under the community caretaking exception. However, the Court noted that this did not mean the exception could never apply to the warrantless search of a lawfully parked vehicle, or that its holding suggests that "no other exceptions to the warrant requirement might apply in this case."

The Court reversed the lower court's order granting the City's motion to dismiss and remanded the case for further proceedings consistent with its decision.

HOW THIS AFFECTS YOUR AGENCY

This decision was issued by the Sixth Circuit Court of Appeals, which has jurisdiction over federal appeals arising from the states of Kentucky, Michigan, Ohio, and Tennessee. Accordingly, the decision is only binding in those states. Courts of Appeals are not bound by decisions of other Courts of Appeals. However, in the absence of binding authority from the United States Supreme Court or the Court of Appeals that is analyzing an issue, the Court of Appeals and other district courts give consideration and weight to decisions of other Courts of Appeals. (See United States v. Autery, 555 F. 3d 864, 870 (9th Cir. 2009).)

The Ninth Circuit Court of Appeals, which has jurisdiction over federal appeals arising from California, has not yet addressed the issue of chalking tires. It also appears that no other Court of Appeals has addressed the issue. Accordingly, if the Ninth Circuit, or a district court within the Ninth Circuit, had an occasion to hear a case challenging the chalking of tires, such court would likely give consideration and weight to the Sixth Circuit's decision as persuasive authority. Therefore, local entities and law enforcement agencies within the Ninth Circuit that still use chalking for parking enforcement may wish to proactively consider changing their method of tracking how long vehicles have been parked. Instead of chalking, jurisdictions could, for example, use methods such as time-stamped photographs to document how long a vehicle has been parked, parking meters, or pay-by-phone applications. If utilizing the time-stamped photo method of documentation, perhaps mark the pavement with chalk on either side of a vehicle's tire, rather than the tire itself, to demonstrate that it has not been moved in the interim period.

It should also be noted that the Sixth Circuit, in issuing its decision, indicated that (1) its decision did not mean that the community caretaking exception could never apply to the warrantless search of a lawfully parked car, and (2) that its holding did not suggest that no other exceptions to the warrant might apply in the case. The City had the burden of demonstrating an exception to the warrant requirement. The Court found that it did not meet that burden.

Another exception to the warrant requirement, as applicable to these facts, might be consent. Some cities have ordinances that provide that the privilege of parking on the city's street is conditioned upon the city's parking enforcement officers being able to place chalk or other marks on the owner's or operator's tires for the purpose of enforcing parking regulations. If such cities were challenged for using chalking for parking enforcement, cities enacting such ordinances would likely argue that the owner consented to chalking, and therefore the search was reasonable and not in violation of the Fourth Amendment. However, a reviewing court would ultimately decide if such argument holds weight.

Thus, while the decision of the Sixth Circuit in the Taylor matter is not binding on California, California jurisdictions that still use chalking for parking enforcement may wish to consider other methods of tracking how long vehicles have been parked.