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Recent Developments: Criminal Law—Search and Seizure—Automobile Search on Police Lot Held Valid Due Exigent Circumstances. Skinner v. State, 16 Md. App. 116, 293 A.2d 828 (1972)

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the final arbiters of professional conduct for members of the bar in Maryland, then it is the courts who must *actively* seek to aid lawyers in defining proper ethical conduct where the code or case law has been vague or silent. Failure to do so leaves at best no guidelines for those concerned practitioners faced with a similar ethical situation, and, at worst, a temptation for others to exceed proper bounds of professional conduct. *State v. Mahoney* represented an opportunity lost for such guidance.

Richard S. Miller

CRIMINAL LAW—SEARCH AND SEIZURE—AUTOMOBILE SEARCH ON POLICE LOT HELD VALID DUE TO EXIGENT CIRCUMSTANCES. *SKINNER V. STATE*, 16 Md. App. 116, 293 A.2d 828 (1972).

In *Skinner v. State*,[1] the Court of Special Appeals of Maryland upheld a conviction for receipt of stolen goods and possession of heroin and controlled paraphernalia.[2] The defendant was discovered in an attempt to cash a stolen check at a bank, and thereafter fled to a waiting car. A description of the defendant and the car was reported to the police, who relayed it to a patrol unit, which in turn stopped the defendant's car in an apartment parking lot.

After locking his car, the suspect was taken to the police station, and his car was towed to headquarters where officers secured a warrant authorizing its search. In dealing with the constitutionality of the search of the car in the police garage, the *Skinner* court stated:

> The search is constitutionally unassailable. With scrupulous regard for their suspect's 4th Amendment protections, the [police] did more than they were required to do. Their effort, in terms of its constitutionality, is like Portia's quality of mercy, "twice blest."
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> . . . . [A]t the moment when [one of the officers] saw the [defendant's] automobile pull onto the parking lot . . . he . . . had probable cause to believe that the automobile contained fruits, instrumentalities and evidence of crime. We are further satisfied that the exigency of the situation would have justified an immediate warrantless search of the automobile there upon that parking lot.[3]

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1. 16 Md. App. 116, 293 A.2d 828 (1972).
2. This note will not deal with the exception to a search warrant due to a bona fide inventory search. A jury verdict of statutory common nuisance, also not dealt with in this note, was reversed. Skinner v. State, 16 Md. App. 116, 293 A.2d 828 (1972).
3. 16 Md. App. at 118-19, 293 A.2d at 830-31 (1972).

The search conducted after the warrant had been obtained uncovered the evidence leading to the convictions on the narcotics charges. In this appeal the defendant contended that the warrantless seizure of the automobile prior to the issuance of the search warrant tainted the entire proceeding. The *Skinner* court held that there was probable cause for the seizure of the car and that:

> It is quite clear that since the police could have searched the automobile without a warrant in the first instance or could have seized it without a warrant and removed it to the police garage for a subsequent warrantless search in the second instance, the justification for the mere seizure not followed by a warrantless search is subsumed within the larger justification. *The search of the [defendant's] automobile was constitutional* . . . because of the combination of probable cause and exigent circumstances, *even absent a warrant.*[4]

The operative principle in the case at hand, as well as the key to the continuing controversy in this particular province of search and seizure law, finds its embodiment in this statement by the court, and an analysis as to its validity in the context of prior related holdings is essential to an evaluation of *Skinner's* significance.

The first Supreme Court case which set forth the so-called automobile exception to the necessity of a search warrant under the fourth amendment was *Carroll v. United States*,[5] where prohibited liquor was found in the defendant's car.[6] The Court rejected the theory that the mere discovery of contraband would justify a prior warrantless search,[7] but based the validity of the search on the mobile nature of the place to be searched:

> [T]he guaranty of freedom from unreasonable searches and seizures . . . has been construed . . . as recognizing a necessary difference between a search of a store, dwelling house or other structure in respect of which a proper official warrant readily may be obtained, and a search of a ship, motor boat, wagon or automobile, for contraband goods, where it is not practicable to secure a warrant because the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant must be sought.[8]

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4. *Id.* at 121, 293 A.2d at 832 (emphasis added).
5. 267 U.S. 132 (1925).
6. In *Carroll* there was no prior arrest to justify the warrantless search of the defendant's car, although officers had probable cause (through information given by an undercover agent) to make an initial stop of the vehicle.
7. 267 U.S. 132, 141 (1925).
8. *Id.* at 153.

While the *Carroll* Court did require the existence of probable cause to validate such warrantless searches, the mobility rationale above served as the basis for what was later to be verbalized as "exigent circumstances."

It was not until 1964 that the Court found it necessary to pull in the reins on the *Carroll* decision, in *Preston v. United States.*[9] There, the defendant was arrested (in his car) for vagrancy, and the car was later impounded and searched without a warrant. Noting that there was no connection between the crime and the necessity for a search at the station, the Court declared that the search was too remote in time and place to be validly considered incident to the arrest. In discussing the exigency of the situation, the Court said:

> [T]he police had the right to search the car when they first came on the scene. But this does not decide the question of the reasonableness of a search at a later time and at another place. . . . At this point [when the car was in the police garage] *there was no danger that any of the men arrested could have used any weapons in the car or could have destroyed any evidence of a crime.* . . .[10]

The *Skinner* case resembles *Preston* in so far as the inculpatory evidence found in both cases was unrelated to the crime for which the defendant in each was arrested; however, the cases are distinguishable in that the crime of vagrancy does not inherently require *any* search for evidence, while the crime of larceny of checks *may* require such a search. Furthermore, as pointed out by the quotation above, the need to prevent the destruction of evidence and to seize weapons connected with a crime may provide a justification for a warrantless search at a time later than the arrest. The *Preston* Court had little difficulty holding that the warrantless search of an automobile in secure police custody was unreasonable where the alleged crime was vagrancy.

The separation in time and place from the scene of the arrest was later developed in *Cooper v. California,*[11] where a warrantless search was effected one week after the arrest of the defendant. Cooper's vehicle was seized pursuant to a state statute which provided for the holding as evidence of any vehicle used in connection with the sale or possession of narcotics,[12] the crimes for which Cooper was arrested. In upholding the warrantless search, *Cooper* easily distinguished *Preston*, on the basis that the former "was closely related to the reason [the defendant] was arrested, the reason his car had been impounded, and the reason it was being retained."[13] *Cooper* further stated:

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9. 376 U.S. 364 (1964).
10. *Id.* at 367-68 (emphasis added).
11. 386 U.S. 58 (1967).
12. *Id.* at 60. Thus, *Cooper* does not extend the *Carroll* doctrine that such searches could be made only where there is probable cause to suspect contraband.
13. *Id.* at 61.

> The forfeiture of [the defendant's] car [as provided for in the same statute that authorized its seizure] did not take place until over four months after it was lawfully seized. It would not be unreasonable to hold that the police, having to retain the car in their custody for such a length of time, had no right, even for their own protection, to search it. . . .
>
> Our holding, of course, does not affect the State's power to impose higher standards on searches and seizures than required by the Federal Constitution if it chooses to do so.[14]

Through *Skinner*, Maryland is declining to impose such "higher standards" on the police.

The facts in *Skinner* are in agreement with those in *Cooper* in regard to the connection between the alleged crime and the search. In *Skinner* the search of the automobile was related to the offense of larceny of checks, although the products of the search were unrelated to the crime. However, the justification for the search in *Skinner* was based on a complex doctrine stemming from a line of cases that once again returned to the concept of mobility as a basis for providing an exception to the warrant requirement.[15] The key case in this group that justified warrantless searches on grounds rooted in the concept of mobility was *Chambers v. Maroney*.[16]

The defendant in *Chambers* was arrested with three other men in an automobile which was stopped by police shortly after a robbery. As in *Skinner* the car was taken to the police station where a warrantless search revealed inculpatory evidence (guns from an earlier robbery). Unlike the facts in *Skinner* (but in accord with the Skinner dictum[17]), no search warrant was obtained for the search at the police station. The *Chambers* Court held that the search was constitutional, not as incident to the arrest of the defendant (too much time had elapsed between the arrest and the search), but under the automobile exception set forth in *Carroll*.

The *Chambers* Court formally introduced the requirement of exigent circumstances in these cases,[18] which must now be combined with the *Carroll* requirement of probable cause to justify this type of search. However, the crux of the *Chambers* opinion is the extension of such exigent circumstances that were present when the car was stopped for a warrantless search on the road to a period a short time later, when the car had been removed to a police garage. The Court reasoned that:

> Arguably, because of the preference for a magistrate's judgment, only the immobilization of the car should be

14. *Id.* at 61-62.
15. *See* Dyke v. Taylor Implement Co., 391 U.S. 216 (1968), in which the Court returned to an emphasis on mobility as a justification for the automobile exception.
16. 399 U.S. 42 (1970).
17. 16 Md. App. at 118-19, 293 A.2d at 830-31 (1972).
18. 399 U.S. 42, 52 (1970).

> permitted until a search warrant is obtained; arguably, only the "lesser" intrusion is permissible until the magistrate authorizes the "greater." But which is the "greater" and which is the "lesser" intrusion is itself a debatable question . . . .[19]

By this reasoning *Chambers* resolved the question of what is the "greater" intrusion into a defendant's rights under the fourth amendment in favor of law enforcement officials. The Court did not delve into the question of how much time the officials had at their disposal to make this later intrusion.[20] While the *Chambers* Court gave at least lip service[21] to the *Trupiano* requirement of securing a warrant when practicable,[22] it is certainly arguable that *Chambers* effectively dispenses with the warrant requirement altogether.

To understand the *Chambers* rationale, extending the limits of a warrantless search where exigent circumstances are present (thereby encompassing the dictum in *Skinner*,[23] the case of *Coolidge v. New Hampshire*[24] must be examined. There, a defendant was arrested in his own home for murder; at the time of his arrest his car was parked in the driveway of his home, from which it was towed to a police garage. Vacuum sweepings from the car which were made over a year later produced inculpatory evidence. Although the police had obtained a warrant to search the defendant's automobile at the time of his arrest, this warrant was later held to be invalid by the Court,[25] thus requiring the search at the police station to be viewed as a warrantless one.

The *Coolidge* Court examined the holdings of *Carroll* and *Chambers* for the presence of exigent circumstances, distinguished these cases on their facts, and held the search unconstitutional. *Carroll* was distinguished because the facts of *Coolidge* indicated "no alerted criminal bent on flight, no fleeting opportunity on an open highway after a hazardous chase, no contraband or stolen goods or weapons, no confederates waiting to move the evidence, not even the inconvenience of a special police detail to guard the immobilized automobile."[26] All

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19. *Id.* at 51.
20. In regard to allowing the police this discretion, Justice Douglas has said:
    > Power is a heady thing; and history shows that the police acting on their own cannot be trusted. . . . We cannot be true to that constitutional requirement [the fourth amendment] and excuse the absence of a search warrant without a showing by those who seek exemption from the constitutional mandate that the exigencies of the situation made the course imperative.

    McDonald v. United States, 335 U.S. 451, 456 (1948).
21. 399 U.S. 42, 51 (1970).
22. Trupiano v. United States, 334 U.S. 699 (1948), stands for the proposition that a search warrant must be obtained whenever possible under the circumstances of a given case; however, this holding has been discarded by many courts. *See* Coolidge v. New Hampshire, 403 U.S. 443, 482 (1971).
23. 16 Md. App. at 118–19, 293 A.2d at 830–31 (1972).
24. 403 U.S. 443 (1971).
25. *Id.* at 449.
26. *Id.* at 462.

of these examples are presumably suggestive of exigent circumstances. To explain how such exigent circumstances can be present in a police garage, the *Coolidge* Court set forth its concept of how an automobile may be "mobile":

> In this case, it is, of course, true that even though Coolidge was in jail, his wife was miles away in the company of two plainclothesmen, and the Coolidge property was under the guard of two other officers, the automobile was in a literal sense "mobile." A person who had the keys and could slip by the guard could drive it away. *We attach no constitutional significance to this sort of mobility.*[27]

In view of the above language, it might seem that the *Coolidge* Court would be opposed to *any* search conducted without a warrant once a car is in custody at a police station. However, *Coolidge* would allow a search following the rationale of *Chambers*, "that *given* a justified initial intrusion, there is little difference between a search on the open highway and a later search at the station."[28]

The *Coolidge* Court was thus concerned only with circumstances that would justify an initial intrusion, and in regard to this point the Court said: "no amount of probable cause can justify a warrantless search or seizure absent 'exigent circumstances'."[29] Addressing the *Carroll* exception of old, the *Coolidge* Court said, "The word 'automobile' is not a talisman in whose presence the Fourth Amendment fades away and disappears."[30] *Coolidge* went further and clarified the open-view doctrine as it applies to such cases: because the seizure of the automobile in *Coolidge* was *planned* by the police before they arrived at the actual scene of its seizure, the Court held that the requirement that the seizure of an object in plain view not be "foreseeable" was not met.[31] However, if the initial seizure conformed to the requirements of probable cause and exigent circumstances, the same *Coolidge* Court would presumably allow a "foreseeable" warrantless search in a police garage.

By again looking at the facts in *Skinner*, it is evident that under the doctrines of *Carroll* and *Chambers* there was no difficulty in justifying the warrantless seizure of the automobile from the open road. There would also seem to have been little difficulty in upholding a warrantless search in the police garage, had such an event occurred. But there are two reasons for supporting the sound judgment of the police in taking the time to procure a search warrant. The first is now of little note:

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27. *Id.* at 461 n.18 (emphasis added).
28. *Id.* at 463 n.20.
29. *Id.* at 468.
30. *Id.* at 461-62.
31. *Id.* at 464-66.

each state court is free to adopt higher standards in regard to the fourth amendment than set forth by the Supreme Court (as pointed out by the *Cooper* Court[32]). Because of the *Skinner* opinion it would appear that this is not the case in Maryland. The second reason is still viable: every time the police make a seizure they cannot be absolutely certain that they have met the requirements of *Carroll* and *Chambers*, as interpreted by the *Skinner* court. The fruits of such an unconstitutional warrantless search would not be admissible as evidence.[33]

To establish the exact position of the Maryland Court of Special Appeals in regard to the automobile exception to the warrant requirement, two recent decisions by that court are helpful. In the first, *Peterson v. State*,[34] the defendants were observed by police engaging in activities related to the sale and possession of heroin while in an automobile on the parking lot of a liquor store. In their appeal, the defendants questioned the validity of a warrantless search of the vehicle *while still at the parking lot.* The *Peterson* court held that the search was constitutional, as exigent circumstances were present, unlike the car in *Coolidge*, which it characterized as being in a "quiet haven strikingly unlike the parking lot at bar."[35] However, if such a place is in fact a "quiet haven," how could there be exigent circumstances there? If an automobile is not mobile as the defendant and his family are in police custody, on what grounds should a warrantless search be justified? The second Maryland decision, *Bailey v. State*,[36] answers these questions.

In *Bailey*, the defendants' car was searched by the police at a turnpike gas station in connection with an alleged rape. As in *Skinner*, the probable cause for this initial search was furnished by a police broadcast (there was a second warrantless search at the gas station some hours after the first). Because it was unclear whether the defendants were under arrest at the time of the initial search which produced inculpatory evidence, the *Bailey* court applied the *Carroll-Chambers* test of probable cause plus exigent circumstances and found the search constitutional:[37] "The mere placing of a suspect vehicle's occupants in custody does not extinguish exigency, if it otherwise exists."[38] *Bailey* went on to cite many Maryland cases[39] supporting what it considered to be the *Chambers* theory of exigency, *i.e.* that once an automobile has been secured constitutionally, the police may examine it at their leisure and in a place of safety.[40] It should be noted that the *Bailey*

32. 386 U.S. 58, 62 (1967).
33. Mapp v. Ohio. 367 U.S. 643 (1961).
34. 15 Md. App. 478, 292 A.2d 719 (1972).
35. *Id.* at 492, 292 A.2d at 723. Another distinction between the two cases is that *Coolidge* did not involve contraband. *See* 403 U.S. at 472.
36. 16 Md. App. 83, 294 A.2d 123 (1972).
37. *Id.* at 103-04, 294 A.2d at 135.
38. *Id.* at 105, 294 A.2d at 135.
39. *Id.* at 105-06, 294 A.2d at 135-36.
40. *Id.* at 106, 294 A.2d at 136.

court also imposed the *Coolidge* precondition that the search be unforeseeable.[41]

In comparing the two prior Maryland cases to *Skinner*, it appears that the Maryland Court of Special Appeals has attempted to comply with the minimum requirements of the fourth amendment as set forth by the Supreme Court. However, not all state courts have reached the same conclusion in similar situations, particularly with regard to what may be considered the *Chambers* view of exigency.[42] For example, the Supreme Court of Mississippi recently held in *Wolf v. State*[43] (post-*Coolidge*) that the *Chambers* rationale made a search of a defendant's automobile, after it had been removed to a police station, constitutional. But unlike the court's dictum in *Skinner*,[44] the Mississippi court said:

> The validity of continuing the search at the police parking lot presents a close question and officers would make a mistake to conclude that the warrant requirement no longer applies to automobiles. The officer who makes a warrantless search when there is time to obtain a search warrant takes a calculated risk of having his efforts nullified by the suppression of evidence . . . . *Officers will be well advised to obtain a search warrant whenever practical.*[45]

The *Wolf* court stated that the *Chambers* rule allowing warrantless searches at the police station was being applied in that case only because the time elapsed between a primary cursory search and the one at the police station was brief, as in *Chambers*.[46] The *Skinner* court did not place this same emphasis when stating that there could be an "immediate" warrantless search at the parking lot of the liquor store.[47]

In the Oklahoma case of *Henry v. State*[48] the defendants were arrested inside a laundromat after they parked their car outside. Officers then directed them to drive to another location for identification purposes. While there, the defendants' automobile was left unattended for a few minutes before it was searched over protest. The *Henry* court held that because the arrest in the laundromat was illegal (due to lack of probable cause) inculpatory evidence found in the car was inadmissible. The court also held that the automobile exception

41. *Id.* at 106-07, 294 A.2d at 136.
42. *E.g.*, Henry v. State, 494 P.2d 661 (Okla. Crim. 1972); State v. Allen, 15 N.C. App. 695, 190 S.E.2d 719 (1972) (warrantless search at a police station under the hood of an automobile held inadmissible). *See also* Wolf v. State, 260 So. 2d 425 (Miss. 1972).
43. 260 So. 2d 425 (Miss. 1972).
44. 16 Md. App. at 118-19, 293 A.2d at 830-31 (1972).
45. 260 So. 2d 425, 431 (Miss. 1972) (emphasis added).
46. *Id.*
47. 16 Md. App. at 119, 293 A.2d at 831 (1972).
48. 494 P.2d 661 (Okla. Crim. 1972).

to the warrant requirement did not apply because there were no exigent circumstances. The Oklahoma court gave a narrow interpretation of the term "exigent circumstances," saying: "because the vehicle was subject to being impounded at that time; and because there were sufficient officers present to have controlled the situation . . . there were no unusual exigent circumstances existing at that moment."[49]

Although the Oklahoma court is entitled to adopt this view of exigent circumstances, it appears to be in conflict with authority such as *Bailey* which holds that the fact that a defendant's vehicle is in custody will not extinguish exigent circumstances.[50] The *Henry* court rendered its interpretation of the automobile exception as set forth by cases in the Supreme Court in that it made a direct comparison between the facts before it and those of *Coolidge*.[51] *Henry* did not delve directly into the *Chambers* rule, but simply stated, "there is no merit, in this jurisdiction, to the notion that a car may be searched without a warrant simply because it is a moveable object."[52]

Most jurisdictions have, by means of the *Chambers* rationale, extended exigent circumstances from the place of arrest or seizure to the police garage.[53] In *People v. Deutschman*,[54] a California court held that a warrantless search in a police garage of the trunk of the defendant's automobile was permissible. The court cites *Dyke v. Taylor Implement Mfg. Co.*[55] in support of the rule that only probable cause is needed to make a warrantless search in such circumstances. The simplistic view of the *Deutschman* court,[56] which completely overlooks the *Chambers* and *Coolidge* requirements of exigent circumstances, may demonstrate how difficult it is to apply the logic of courts which endeavor to extend the existence of exigent circumstances to the police garage. This approach, however, would also seem to take the California court in a direction that it cannot go: a shortcut past the defendant's rights under the fourth amendment.

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49. *Id.* at 664.
50. 16 Md. App. 83, 105, 294 A.2d 123, 135 (1972).
51. 494 P.2d 661 (Okla. Crim. 1972)..
52. *Id.* at 665.
53. *E.g.*, Gonzales v. Beto, 460 F.2d 314 (5th Cir. 1972); State v. Tosatto, 107 Ariz. 231, 485 P.2d 556 (1971); People v. Morehead, 6 Ill. App. 3d 946, 287 N.E.2d 44 (1972). *See also* Skinner v. State, 16 Md. App. 116, 293 A.2d 828 (1972).
54. 23 Cal. App. 3d 559, 100 Cal. Rptr. 330 (1972).
55. 391 U.S. 216 (1968). In *Dyke* a suspicious car was pursued in connection with a shooting which involved several persons in a union dispute. While the occupants of the car were being held in jail, a warrantless search was made of their car. The Supreme Court held that the search was invalid because there was insufficient probable cause for the officers to have believed that they would find contraband or other evidence of a crime. The *Dyke* Court cited both *Carroll* and *Cooper* as support for the automobile exception to the warrant requirement. Accordingly, the concept of probable cause is treated by *Dyke* only as a precondition to and not as a substitute for the requirement of exigent circumstances.
56. The *Deutschman* court is not the only one to be confused about cases such as *Coolidge*. The *Coolidge* Court itself said: "Of course, it would be nonsense to pretend that our decision today reduces Fourth Amendment law to complete order and harmony. The decisions of the Court over the years point in differing directions and differ in emphasis." 403 U.S. 443, 483 (1971).

The present basis for allowing constitutional warrantless searches where police have seized automobiles under exigent circumstances is the *Carroll* automobile exception, as extended by the *Chambers* rule allowing a warrantless search in a police garage. Most courts use a strained construction of the term "exigent circumstances" to extend to the situation in which police have taken an automobile to a place of secure custody, and thus comply with the minimum requirements of the fourth amendment as set forth by the Supreme Court. However, some state courts prefer to adopt their own common sense interpretation of exigent circumstances,[57] which they are entitled to do as long as they do not impose further restrictions on a defendant's rights as indicated by recent Supreme Court opinions.[58]

A further refinement of exigent circumstances may be forthcoming from the United States Supreme Court in *Cady v. Dombrowski*,[59] a case recently granted certiorari. In *Cady* the defendant (a policeman) was arrested for drunken driving at the scene of a collision involving his car. After this arrest, a warrantless search of the defendant's car, including its trunk, was made for his missing service revolver. Thereafter, the car was locked and towed to a police garage where a second warrantless search produced evidence instrumental in the defendant's conviction for murder.[60] The United States Court of Appeals reversed the conviction on the ground that the second search was unreasonable under the holding in *Preston*.

As discussed above, the defendant in *Preston* was arrested for vagrancy, and the Court held that a warrantless search purportedly incident thereto was unreasonable. Although the crime of drunken driving appears to be in a class of crimes which is not serious enough to justify a search for evidence, *Cady* and *Preston* are distinguishable. One feature that sets *Cady* apart is the existence of a dangerous weapon which might have threatened the safety of the arresting officers. It is not clear whether this weapon provided an exigent circumstance which would have justified its transfer to the later warrantless search in the police garage. Even if the Supreme Court should hold that the second search was justified, there is no certainty that this area of the search and seizure law will become more predictable than it is at present.

In conclusion, the Maryland Court of Special Appeals in *Skinner* has indicated that it would be willing to apply a construction to the term

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57. Common sense is not limited to state courts. This approach was used in Preston v. United States, 376 U.S. 364, 366 (1964), which said: "Common sense dictates, of course, that questions involving searches of motorcars or other things readily moved cannot be treated identical to questions arising out of searches of fixed structures like houses."
58. 386 U.S. at 62.
59. *Cert. granted*, 41 U.S.L.W. 3330 (U.S. Oct. 11, 1972).
60. A warrantless search of another automobile parked on a farm belonging to the defendant's brother also produced inculpatory evidence. The Court of Appeals held that the search of this second vehicle was unconstitutional under the rule of *Coolidge*, as the police had prior knowledge that they would find the car at the farm. The State is apparently not contesting this part of the holding. *See* 11 CRIM. L. REP. 2290 (1972).

"exigent circumstances" that would allow warrantless searches of cars in police custody where such exigent circumstances were present at the time of the initial seizure. However, the police should continue to exercise care and caution and obtain a search warrant (as did the police in the *Skinner* case), both for their own benefit in suppression hearings, and for the protection of a defendant under the fourth amendment.

Frederick S. Lipton

CONSTITUTIONAL LAW—EQUAL PROTECTION CLAUSE—SUNDAY BLUE LAWS HELD CONSTITUTIONAL. *Giant of Maryland v. State's Attorney for Prince George's County*, _ Md. _, 298 A. 2d 427 (1973).

In *Giant of Maryland v. State's Attorney for Prince George's County*[1] the Maryland Court of Appeals held that, in accordance with Article 27, § 534H[2] of the Maryland Code, a retail establishment may not remain open on Sunday if, at any time in the course of its weekday operating scheme, it employs more than six persons per shift.[3]

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1. __ Md __, 298 A.2d 427 (1973). Safeway Stores, Incorporated and the Grand Union Company were enjoined from operating on Sunday by identical petitions brought by the Prince George's State's Attorney in the Court of Appeals of Maryland No. 149, September Term. The appeals were separately argued, but the court chose to consolidate both into one opinion because of their similarity of issues.
2. MD. ANN. CODE art. 27, § 534H (1971). Insofar as pertinent to the issues presented in Giant, this article provides:

   (a) In Prince George's County, except as specifically in this section otherwise provided, it is unlawful on Sunday for any wholesale or retail establishment to conduct business for labor or profit in the usual manner and location or to operate its establishment in any manner for the general public. It shall not cause, direct, permit, or authorize any employee or agent to engage in or conduct business on its behalf on Sunday.

   (b) Notwithstanding any provision of this section, the operation of any of the following types of retail establishment is allowed on Sunday.

   1. Drugstores whose principal business is the sale of drugs and related items.

   2. Delicatessens whose principal business is the sale of delicatessens and related food items.

   3. Bakeries and bakeshops.

   ....

   (c) Nothing in this section applies to:

   ....

   3. Small business with not more than six (6) persons on any shift with the exception of persons or retailers engaged in the sale of motor vehicles.

   The statute further authorizes the Circuit Court to enjoin violation of this section and provides for misdemeanor penalties of one thousand dollars per employee directed to operate in violation thereof.
3. The Blue Laws of Maryland are found in MD. ANN. CODE art. 27, §§ 492-534M. Section 534H, which governs Sunday sales in Prince George's County, is similar to those sections operative in Montgomery (*id.* § 534J), Baltimore (*id.* § 534L), Harford and Wicomico (*id.* § 534M) Counties. Section 534J is identical except that it contains the word "basic" in subsection (b)(1), while § 534H(b)(1) uses the word "principal". Section 534L is nearly