

1986

Function Over Form: The Automobile Exception Applied to Motor Homes--Fourth Amendment: California v. Carney, 105 S. Ct. 2066 (1985)

Shane V. Nugent

Follow this and additional works at: <https://scholarlycommons.law.northwestern.edu/jclc>

 Part of the [Criminal Law Commons](#), [Criminology Commons](#), and the [Criminology and Criminal Justice Commons](#)

Recommended Citation

Shane V. Nugent, Function Over Form: The Automobile Exception Applied to Motor Homes--Fourth Amendment: California v. Carney, 105 S. Ct. 2066 (1985), 76 J. Crim. L. & Criminology 955 (1985)

This Supreme Court Review is brought to you for free and open access by Northwestern University School of Law Scholarly Commons. It has been accepted for inclusion in Journal of Criminal Law and Criminology by an authorized editor of Northwestern University School of Law Scholarly Commons.

FOURTH AMENDMENT—FUNCTION OVER FORM: THE AUTOMOBILE EXCEPTION APPLIED TO MOTOR HOMES

California v. Carney, 105 S. Ct. 2066 (1985).

I. INTRODUCTION

In *California v. Carney*,¹ the United States Supreme Court upheld the warrantless search of a stationary motor home under the automobile exception to the fourth amendment's warrant requirement² first articulated in *Carroll v. United States*.³ In *Carney*, the Court maintained that the inherent mobility and the reduced expectation of privacy associated with a motor home justified the application of the automobile exception.⁴

This Note argues that the Court properly applied the automobile exception to the warrantless search of the motor home in *Carney* because of the vehicle's *function* at the time of the searching. There are two justifications for the automobile exception: the inherent mobility of an automobile⁵ and the lesser expectation of privacy associated with an automobile.⁶ A motor home's ability to function both as transportation and as a residence complicates the application of the automobile exception. This complication arises because of the Court's historic protection of an individual's fourth amendment right to privacy in his or her home.

The automobile exception should be applied cautiously by the

¹ *California v. Carney*, 105 S. Ct. 2066 (1985).

² The fourth amendment states:

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.

U.S. CONST. amend. IV. It should be noted that the fourth amendment protects an individual's privacy and not places. See Amsterdam, *Perspectives On the Fourth Amendment*, 58 MINN. L. REV. 349, 357 (1974) (citing *Katz v. United States*, 389 U.S. 347, 351 (1967)).

³ *Carroll v. United States*, 267 U.S. 132 (1924). For a discussion of the automobile exception see *infra* notes 80-135 and accompanying text.

⁴ *Carney*, 105 S. Ct. at 2066-71.

⁵ See *Carroll*, 267 U.S. at 153.

⁶ See *Cardwell v. Lewis*, 417 U.S. 583 (1974).

courts in the context of motor homes. Courts should apply it only when the circumstances indicate that the motor home functioned more like an automobile than a residence at the time of the search. Carney's motor home functioned sufficiently like an automobile at the time of the search that the application of the automobile exception was appropriate. The Court did not significantly alter or expand the automobile exception by applying the exception to the search of the motor home.

II. THE FACTS IN *CARNEY*

On May 31, 1979, Drug Enforcement Agency (DEA) agents Williams and Peralta were engaged in an unrelated investigation near a commercial plaza in downtown San Diego when they first observed Charles Carney.⁷ Agent Williams saw Carney approach and talk to a minor.⁸ Carney and the minor subsequently walked to a nearby public parking lot where they entered a Dodge mini-motor home parked in the lot.⁹ Checking the vehicle's license number, Williams discovered that the vehicle had previously been reported by a local citizens' group, WeTip, for being involved in the sale of illicit drugs.¹⁰

In a letter, WeTip had reported that drugs were being distributed from the motor home by Carney and two other men.¹¹ WeTip's letter stated that Carney and the others "operated out of the Horton Plaza area and were involved in soliciting sex with young boys in exchange for narcotics."¹² The group also reported that the motor home's curtains were closed during those activities for periods ranging from ten minutes to two hours.¹³ This information was uncorroborated.¹⁴

⁷ See *People v. Carney*, 172 Cal. Rptr. 430, 432 (1981). (Because the California Supreme Court granted a hearing, *People v. Carney* has been omitted from the California Appellate Reports. The original citation was 117 Cal. App. 3d 36 (1981). In this Note, all subsequent citations to the appellate decision of *People v. Carney* will be made only to the California Reporter.).

⁸ *Id.*

⁹ *Id.* The parking lot was located at the corner of two streets in San Diego, thus providing convenient access to public thoroughfares. *Id.*

¹⁰ *Id.* WeTip stands for "We Turn In Pushers." *Id.* at 432 n.2. WeTip was an organization that relayed anonymously provided information concerning drug dealers to law enforcement agencies. *Id.* at 432.

¹¹ *Id.* WeTip reported that Carney, Lee Bowman and Lewis A. Gonzalez were distributing narcotics from the motor home. *Id.*

¹² *Id.* The letter stated that the three men "'offer[ed] joints to young boys invited them over to . . . [the motor home] to watch porno films then attempts [sic] to have sex with them.'" *Id.*

¹³ *Id.*

¹⁴ *Carney*, 105 S. Ct. at 2067.

Williams and Peralta observed Carney close the motor home's curtains, effectively shielding the motor home's interior from all outside view.¹⁵ Williams and other agents kept the motor home under surveillance for approximately seventy-five minutes until the minor left the vehicle.¹⁶ At that point, Williams and Peralta followed the minor, and were soon joined by Agent Clem, a San Diego Police Department narcotics officer.¹⁷ The three agents stopped the minor, identified themselves as law enforcement officials, and asked the minor what he had been doing inside the motor home.¹⁸ The minor told the agents the older man inside the motor home asked to have sex with him and gave him a small bag of marijuana in exchange for doing so.¹⁹ The minor later produced a small bag of marijuana from his pants.²⁰

At the agent's request, the minor returned to the motor home, knocked on its door, and asked Carney to step outside.²¹ After the agents identified themselves, Carney complied.²² Without either Carney's consent or a search warrant,²³ one agent briefly stepped in the motor home to see if anyone else was inside.²⁴ Upon entering the vehicle, the agent's initial search revealed drug paraphernalia and a large amount of marijuana in plain view on a table.²⁵

The motor home was subsequently driven to a nearby Narcotics Task Force office.²⁶ There, the motor home was subjected to a warrantless "inventory" search.²⁷ The "inventory" search revealed ad-

¹⁵ *People v. Carney*, 172 Cal. Rptr. at 432.

¹⁶ *Id.*

¹⁷ *Id.* at 432-33.

¹⁸ *Id.* at 433.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.* The Supreme Court's opinion suggested that Carney stepped out of the motor home before the agents identified themselves. See *Carney*, 105 S. Ct. at 2067.

²³ *Carney*, 105 S. Ct. at 2067.

²⁴ See *People v. Carney*, 172 Cal. Rptr. at 433.

²⁵ *Id.* Agent Clem saw a scale, a large quantity of marijuana and some ziploc bags on a table inside the motor home. *Id.*

²⁶ *Id.* The office was located in National City, California. *Id.*

²⁷ *Carney*, 105 S. Ct. at 2067. The courts have generally upheld warrantless inventory searches whenever the initial seizing of the vehicle was lawful. See W. LAFAVE, *SEARCH AND SEIZURE: A TREATISE ON THE FOURTH AMENDMENT* § 7.4, at 556 (1978). In *Carney*, the Court did not consider the initial and inventory searches individually. *Carney*, 105 S. Ct. at 2067. Thus, the validity of the inventory search in *Carney* turned on the validity of the initial search, an issue which was considered by the Court. An examination of the constitutional validity of inventory searches is beyond the scope of this Note. Warrantless inventory searches, however, have come under constitutional attack by legal scholars. For a discussion of the breadth and validity of inventory searches see Miles & Wefing, *The Automobile Search and the Fourth Amendment: A Troubled Relationship*, 4 SETON HALL 105, 135-44 (1973); Reamey, *Reevaluating the Vehicle Inventory*, 19 CRIM. L. BULL.

ditional quantities of marijuana in the motor home's refrigerator and cupboards.²⁸

Carney was arrested and charged with possession of marijuana for sale.²⁹ At a preliminary hearing, Carney sought to suppress the evidence seized from the motor home on the grounds that the agents entered and searched the vehicle in violation of the fourth amendment's warrant requirement.³⁰ The presiding magistrate denied the motion, finding that the initial search was a justified search for other persons and that the second search was a routine "inventory" search.³¹

At trial the California Superior Court rejected Carney's motion to suppress the evidence seized from the motor home.³² The Superior Court held that there was probable cause to arrest Carney, that the search of the motor home was permissible under the automobile exception, and that the motor home could be seized as the instrumentality of the crime.³³ Carney pleaded *nolo contendere* to the charges against him and was placed on three years probation.³⁴

Carney appealed to the California Court of Appeals.³⁵ The Court of Appeals affirmed the lower court's decision, noting that the automobile exception to the fourth amendment's warrant requirement could be applied to motor homes.³⁶

The California Supreme Court reversed Carney's conviction.³⁷ The court did not contest the trial court's conclusion that the DEA agents had probable cause to arrest Carney and to believe that the motor home contained evidence of a crime.³⁸ The court, however, rejected the application of the automobile exception to the search of the motor home.³⁹ The court held that the search of the motor home was unreasonable because the agents did not first obtain a search warrant.⁴⁰

325 (1983); Case Comment, *The Automobile Inventory Search and Cady v. Dombrowski*, 20 VILL. L. REV. 147 (1974).

²⁸ *Carney*, 105 S. Ct. at 2067-78.

²⁹ *Id.* at 2068.

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.* The California Court of Appeals' opinion in *People v. Carney* is reported at 172 Cal. Rptr. 430 (1981). See *supra* note 7.

³⁶ See *People v. Carney*, 172 Cal. Rptr. 430 (1981).

³⁷ *Carney*, 105 S. Ct. at 2068. The California Supreme Court's opinion in *People v. Carney* is reported at 34 Cal. 3d 597, 668 P.2d 807, 194 Cal. Rptr. 500 (1981).

³⁸ *Carney*, 105 S. Ct. at 2068.

³⁹ *Id.*

⁴⁰ *Id.*

The California Supreme Court maintained that the traditional rationale for the automobile exception, the inherent mobility of a vehicle, was no longer a prime justification for the application of the exception.⁴¹ Rather, the court maintained that the automobile exception rested on the reduced expectation of privacy associated with the vehicle.⁴² The court held that "a motor home is fully protected by the fourth amendment and is not subject to the 'automobile exception,'"⁴³ because "[w]hatever expectations of privacy those travelling in an ordinary car have, those travelling in a motor home have expectations that are significantly greater."⁴⁴ The United States Supreme Court granted certiorari.⁴⁵

III. THE SUPREME COURT DECISION IN *CARNEY*

A. THE MAJORITY

The majority of the Supreme Court in *California v. Carney*⁴⁶ reversed the California Supreme Court's decision and held that the warrantless search of Carney's motor home was permissible under the automobile exception to the fourth amendment's warrant requirement.⁴⁷ In doing so, the Supreme Court reasserted the vitality of the "inherent mobility" justification for the automobile exception.⁴⁸ Moreover, contrary to the view of the California Supreme Court, the Court found that Carney's motor home could be given the same reduced expectation of privacy accorded to an automobile.⁴⁹

First, the majority noted that the inherent mobility of the automobile was the original justification for the automobile exception.⁵⁰ Affirming its position in *Carroll v. United States*, in which the automobile exception was first articulated, the Court wrote that although "the privacy interests in an automobile are constitutionally protected . . . the ready mobility of the automobile justifies a lesser de-

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Carney*, 34 Cal. 3d at 610, 668 P.2d at 814, 194 Cal. Rptr. at 507.

⁴⁴ *Id.* at 609, 668 P.2d at 813, 194 Cal. Rptr. at 507 (quoting *United States v. Williams*, 630 F.2d 1322, 1326 (9th Cir. 1980)).

⁴⁵ *California v. Carney*, 104 S. Ct. 1589 (1984).

⁴⁶ Chief Justice Burger delivered the opinion of the Court in which Justices O'Connor, Rehnquist, Powell, Blackmun, and White joined. Justice Stevens delivered the dissenting opinion in which Justices Brennan and Marshall joined.

⁴⁷ *Carney*, 105 S. Ct. at 2067-71.

⁴⁸ *See id.* The Court did not address the California Supreme Court's dismissal of this justification. *See id.*

⁴⁹ *Id.*

⁵⁰ *Id.* at 2068-69.

gree of protection of those interests.”⁵¹ The majority found that the mobility of a motor home was identical to “the ready mobility of the automobile”⁵² because the motor home was “obviously readily mobile by the turn of a switch key”⁵³ and “[a]bsent the prompt search and seizure, it could have readily been moved beyond the reach of the police.”⁵⁴ Second, the majority found that the expectation of privacy associated with a motor home was, like that associated with an automobile, significantly less than that relating to a home or office.⁵⁵ In fact, this lesser expectation of privacy has justified the application of the automobile exception even where an automobile is not immediately mobile.⁵⁶ The majority further noted that an automobile’s design contributed to a lower expectation of privacy “because the passenger compartment of a standard automobile is relatively open to plain view.”⁵⁷ The majority asserted that this reduced expectation of privacy did not derive from the fact that the area searched is in plain view, but rather from “the pervasive regulation of vehicles capable of traveling on the public highways.”⁵⁸ “Historically, ‘individuals always [have] been on notice that moveable vessels may be stopped and searched on facts giving rise to probable cause that the vehicle contains contraband, without the protection afforded by a magistrate’s prior evaluation of those facts.’”⁵⁹ The majority noted that this pervasive regulation of vehicles as a basis for the reduced expectation warranted the application of the exception where “enclosed ‘repository’ areas have been involved.”⁶⁰

⁵¹ *Id.* at 2068. The majority relied on the *Carroll* Court’s historic distinction between stationary structures and vehicles because a “‘vehicle can be quickly moved out of the locality or jurisdiction in which the warrant may be sought.’” *Id.* at 2069 (quoting *Carroll v. United States*, 267 U.S. 132, 153 (1974) (emphasis supplied in the *Carney* opinion)). The majority noted that there is slight opportunity to search the vehicle because of the vehicle’s inherent mobility and that this mobility presents an exigency which precludes rigorous enforcement of the fourth amendment’s warrant requirement. *See id.*

⁵² *Id.* at 2068.

⁵³ *Id.* at 2070.

⁵⁴ *Id.*

⁵⁵ *Id.* at 2069. *See also* *South Dakota v. Opperman*, 428 U.S. 364, 367 (1976).

⁵⁶ *Carney*, 105 S. Ct. 2069. *See also* *Cady v. Dombrowski*, 413 U.S. 433, 440-41 (1973).

⁵⁷ *Carney*, 105 S. Ct. at 2069 (commenting on *Cardwell v. Lewis*, 417 U.S. 583, 590 (1974)).

⁵⁸ *Id.* at 2069.

⁵⁹ *Id.* at 2070 (quoting *United States v. Ross*, 456 U.S. 798, 806 (1982)).

⁶⁰ *Id.* at 2069. *See e.g.*, *United States v. Johns*, 105 S. Ct. 881 (1985) (sealed package inside a covered pick-up truck); *United States v. Ross*, 456 U.S. 798 (1982) (packages in a closed automobile trunk); *Cady v. Dombrowski*, 413 U.S. 433 (1973) (locked automobile trunk); *Chambers v. Moroney*, 392 U.S. 42 (1970) (closed compartment under the automobile’s dashboard); *Carroll v. United States*, 267 U.S. 132 (1924) (automobile upholstery).

The majority found that the motor home, like other vehicles subject to the automobile exception, "was licensed to 'operate on public streets; [was] serviced in public places; . . . and [was] subject to extensive regulation and inspection.'" ⁶¹ The majority added that the motor home "was so situated [in the public parking lot] that an objective observer would conclude that it was being used not as a residence, but as a vehicle."⁶² Consequently, the majority found that both justifications for the automobile exception were present in *Carney*.⁶³

B. THE DISSENT

Justice Stevens, writing in dissent, attacked the majority's decision on two grounds.⁶⁴ First, the dissent maintained that the general rule for constitutionally protected searches is that a search warrant must be secured when it is reasonably practicable to do so.⁶⁵ Justice Stevens emphasized that the fourth amendment's warrant requirement, designed to protect individual privacy, should not be easily set aside in favor of law enforcement efficiency in the form of warrantless searches.⁶⁶ As such, the dissent framed the automobile exception in narrow terms.⁶⁷

Second, Justice Stevens maintained that the inherent mobility of a vehicle alone was not a sufficient justification for the application of the automobile exception where the area searched had a high expectation of privacy associated with it.⁶⁸ *Carney's* motor home had

⁶¹ *Carney*, 105 S. Ct. at 2069 (quoting *Rakas v. Illinois*, 439 U.S. 128, 154 (1978) (Powell, J., concurring)). In *Rakas*, the Court held that persons, adversely effected only through the introduction of evidence secured through an illegal search and seizure of a third person's premises or property, did not have their fourth amendment rights violated. *Rakas*, 439 U.S. at 154.

⁶² *Carney*, 105 S. Ct. at 2070.

⁶³ See *id.* at 2068-71. The majority rejected *Carney's* contention that the motor home should be distinguished from other vehicles covered by the automobile exception because the vehicle was "*capable of functioning as a motor home.*" *Id.* at 2070 (emphasis in original). The majority refused to distinguish the motor home from other vehicles covered by the automobile exception because to do so would require the Court to "apply the exception depending upon the size of the vehicle and the quality of its appointments." *Id.*

⁶⁴ See *id.* at 2074-78 (Stevens, J., dissenting).

⁶⁵ See *id.* at 2074 (Stevens, J., dissenting). In *Carroll*, the Court maintained that a search warrant must be secured before law enforcement officials conduct a search where it is reasonably practicable to do so. *Carroll v. United States*, 267 U.S. 132, 156 (1924).

⁶⁶ *Carney*, 105 S. Ct. at 2074-75 (Stevens, J., dissenting). The dissent stated that: "[t]he ascendancy of the Warrant Requirement in our system of justice must not be bullied aside from extravagant claims of necessity . . ." *Id.* at 2075.

⁶⁷ See *id.* at 2075-76 (Stevens, J., dissenting).

⁶⁸ *Id.* at 2075 (Stevens, J., dissenting). Justice Stevens stated that "[o]ur prior cases teach us that inherent mobility is not a sufficient justification for the fashioning of an

such a high expectation of privacy because “[m]otor homes, by their common use and construction, afford their owners a substantial and legitimate expectation of privacy when they dwell within.”⁶⁹ The dissent continued, asserting that where a motor home is removed from the highway, American society is prepared to attach the same expectation of privacy to the motor home as it has to fixed residences.⁷⁰ Because, under most circumstances, homes may only be searched pursuant to a search warrant,⁷¹ Justice Stevens asserted that warrantless searches of motor homes were reasonable only “when the motor home is traveling on the public streets or highways, or when exigent circumstances otherwise require[d] an immediate search without the expenditure of time necessary to obtain a warrant.”⁷² The dissent maintained that the warrantless search was unconstitutional and admonished the DEA agents for failing to secure a warrant before conducting the search.⁷³ Because the motor home was parked in a parking lot near a courthouse where a search warrant could have easily been obtained,⁷⁴ Justice Stevens would have affirmed the California Supreme Court’s decision and required a search warrant.⁷⁵

IV. ANALYSIS

A. *CARNEY* CONSIDERED

Both the majority and the dissent in *Carney* maintained that the DEA agents had the requisite probable cause to search Carney’s motor home.⁷⁶ The two sides disagreed, however, on the extent to which the fourth amendment’s warrant requirement should have been applied to the search of the motor home. The majority’s holding gives rise to two questions. First, was the Court’s application of the automobile exception consistent with prior applications of the

exception to the warrant requirement, especially in the face of heightened expectations of privacy in the location searched.” *Id.* at 2075.

⁶⁹ *Id.* (Stevens, J., dissenting).

⁷⁰ *See id.* at 2075 (Stevens, J., dissenting).

⁷¹ *See id.* (Stevens, J., dissenting).

⁷² *Id.* (Stevens, J., dissenting). The dissent further maintained that the Court had never considered whether the “practical justification that apply to a vehicle that is stopped in transit on a public way apply with the same force to a vehicle parked in a lot near a court house where it could easily be detained while a warrant is issued.” *Id.*

⁷³ *See id.* at 2076 (Stevens, J., dissenting). The dissent noted that “[t]he officers plainly had probable cause to arrest the petitioner and search the motor home, and on this record, it is inexplicable why they eschewed the safe harbor of a warrant.” *Id.* at 2076 (footnote omitted).

⁷⁴ *Id.* (Stevens, J., dissenting).

⁷⁵ *See id.* at 2071-78 (Stevens, J., dissenting).

⁷⁶ *See id.* at 2071 (majority opinion); *id.* at 2076 (dissenting opinion).

exception? Second, if it was not, was the automobile exception properly expanded?

In *Carney*, neither side disputed that the motor home could function as a motor vehicle.⁷⁷ An examination of the Court's rationales justifying the automobile exception is required before one can conclude that the exception was properly applied in *Carney*.

B. INHERENT MOBILITY

In *Carroll v. United States*,⁷⁸ the Court established its first justification for the automobile exception to the fourth amendment's warrant requirement where police officers conducted a warrantless search of an automobile after it had been stopped for probable cause in transit upon the highway.⁷⁹ The Court found that automobiles presented a unique exigency in that they can be "quickly moved out of the locality or jurisdiction in which the warrant must be sought."⁸⁰ The Court was concerned that contraband goods concealed and transported in such quickly mobile vehicles could be placed beyond the reach of law enforcement officials before a search warrant could be secured and the search executed.⁸¹ Chief Justice Taft, writing for the Court, maintained that warrantless automobile searches could be conducted only if the law enforcement officials conducting the search had "probable cause for believing that . . . [the] vehicles are carrying contraband or illegal merchandise."⁸² The Court qualified the automobile exception by adding that "[i]n cases where the securing of a warrant is reasonably practicable, it must be used."⁸³ Consequently, the Court upheld the

⁷⁷ See *id.*

⁷⁸ *Carroll v. United States*, 267 U.S. 132 (1924).

⁷⁹ See *id.* The search revealed contraband alcohol behind the seats of the vehicle. *Id.* at 136. One commentator would apply the automobile exception or "Carroll doctrine" based solely on the inherent mobility justification. See Moylan, *The Automobile Exception: What It Is and What It Is Not — A Rationale in Search of a Clearer Label*, 27 MERCER L. REV. 987 (1976). Moylan believes that the only justification for the automobile exception should be the inherent mobility justification first articulated in *Carroll*. See *id.* at 987-88. Moylan stated that "under the *Carroll* doctrine we are interested in but two things: (1) was there probable cause to believe that the automobile contained evidence? and (2) was there an exigency requiring an immediate warrantless search? Stick to the checklist!" *Id.* at 1013. See also *infra* note 112.

⁸⁰ *Carroll*, 267 U.S. at 153.

⁸¹ See *id.* at 143-53. The Court's reliance on this argument indicates a concern with law enforcement efficiency and a balancing of that concern against the fourth amendment's warrant requirement. See *id.*

⁸² *Id.* at 154.

⁸³ *Id.* at 156. It appears that the Court found the situation in *Carroll* to be one where it was not reasonably practicable to secure a warrant because of the vehicle's ready mobility. See *id.*

search of the automobile.⁸⁴

In *Carney*, the motor home was not stopped in transit, but rather was parked in a public parking lot with its engine off.⁸⁵ Further, the motor home's curtains were drawn to block all outside view of the interior and there was no indication that the motor home was about to depart prior to Agent Clem's entry of the vehicle.⁸⁶ These facts distinguish *Carney* from *Carroll*, and several other Supreme Court cases in which warrantless searches have been upheld under the automobile exception.⁸⁷ Nonetheless, the exception was properly applied in *Carney* because of the possibility that some unseen or unknown individual could have removed the motor home from the reach of law enforcement officials.

The Court has not applied the automobile exception to the warrantless searches of stationary vehicles under all circumstances. Specifically, the Court has tended not to apply the exception where it was not practicable for the suspect, a suspected accomplice, or other interested party to remove the vehicle from the reach of the police. For example, in 1971, in *Coolidge v. New Hampshire*,⁸⁸ the Court refused to apply the automobile exception to the warrantless search of an automobile parked in the suspect's driveway.⁸⁹ In *Coolidge*, the police had known for "some time" prior to the search that the suspect's automobile had a probable role in the crime.⁹⁰ The Court maintained that it had not been reasonably impracticable to secure a warrant prior to the search because the police had been investigating the suspect for over two and one half weeks.⁹¹ Neither the suspect in police custody, nor his wife in the company of police, were in a position to remove the vehicle prior to its removal by the police, thus negating the possibility of the vehicle's removal from the reach of the police prior to the search.⁹²

⁸⁴ *Id.* at 162.

⁸⁵ See *People v. Carney*, 172 Cal. Rptr. at 432-33.

⁸⁶ See *id.*

⁸⁷ See, e.g., *United States v. Ross*, 456 U.S. 798 (1982); *Chambers v. Maroney*, 399 U.S. 42 (1969). In *Ross*, the police stopped a vehicle and conducted a warrantless search of a previously observed vehicle's interior, trunk, and a paper bag found within the trunk based on an informant's tip. *Ross*, 456 U.S. at 801-02. The Court upheld the search under the automobile exception. *Id.* at 825. In *Chambers*, the police stopped and seized a vehicle containing robbery suspects. *Chambers*, 399 U.S. at 44-5. The vehicle was immediately driven to the police station where a warrantless search was executed. *Id.* The Court upheld the search under the automobile exception. *Id.* at 52.

⁸⁸ 403 U.S. 443 (1971).

⁸⁹ See *id.* at 458-64.

⁹⁰ *Id.* at 460.

⁹¹ *Id.* at 460-62.

⁹² See *id.* at 460-62. The Court also noted that the suspect did not have an accomplice. *Id.*

By contrast, three years later in *Cardwell v. Lewis*,⁹³ the Court upheld the warrantless search of an automobile parked in a public parking lot.⁹⁴ The Court in *Cardwell* deemphasized the practicability of securing a search warrant and indicated a willingness to allow warrantless searches of vehicles upon a finding of probable cause because of the exigency arising from a vehicle's mobility.⁹⁵ The Court noted that, for constitutional purposes, no practical difference existed between seizing and holding a vehicle while securing a warrant from a magistrate and executing a warrantless search.⁹⁶ " 'Given probable cause to search, either course is reasonable under the Fourth Amendment.' " ⁹⁷ The Court indicated that whether the vehicle had been stopped and seized while in transit was not constitutionally determinative.⁹⁸ "The fact that . . . Lewis' car was seized from a public parking lot [as opposed to being stopped and seized while in transit] has little, if any, legal significance."⁹⁹ The Court indicated, however, that it would continue to consider the possibility that the vehicle could be removed from the scene while a warrant was sought in deciding whether to validate a warrantless search.¹⁰⁰ In *Cardwell*, the Court noted that Lewis' vehicle "was seized from a public place where access was not meaningfully restricted."¹⁰¹

On balance, the Court has favored applying the automobile exception when it was possible for some individual to remove the vehicle because of the vehicle's inherent mobility, and when it was not reasonably practicable to secure a search warrant prior to the

⁹³ 417 U.S. 583 (1974). The Court in *Cardwell* relied heavily on its prior decision in *Chambers v. Moroney*, 399 U.S. 42 (1979). *Cardwell*, 417 U.S. at 593-596. In *Chambers*, the Court upheld the warrantless search of an automobile after the suspect had been arrested and the vehicle had been towed to the police station. See *Chambers*, 399 U.S. at 52.

⁹⁴ *Cardwell*, 417 U.S. at 583-88. The search was conducted at the police impound lot. *Id.* at 587.

⁹⁵ See *id.* at 594-96.

⁹⁶ *Id.* at 594.

⁹⁷ *Id.* at 594 (quoting *Chambers*, 399 U.S. at 52). The *Cardwell* Court continued that "[t]he probable-cause factor still obtained at the station house and so did the mobility of the car unless the Fourth Amendment permits a warrantless seizure of the car and the denial of its use to anyone until a warrant is secured. In that event there is little to choose in terms of practical consequences between an immediate search without a warrant and the car's immobilization until a warrant is obtained." *Id.* Moylan noted that "[g]ranted the major premise [that there is no constitutional difference between searches and seizures], the conclusion does at least follow validly." Moylan, *supra* note 79, at 1003. Whether there is a constitutional difference between searches and seizures is a question which, in the final analysis, may be a matter of individual preference.

⁹⁸ See *Cardwell*, 417 U.S. at 593-96.

⁹⁹ *Id.* at 594.

¹⁰⁰ See *id.* at 593-96.

¹⁰¹ *Id.* at 593.

search.¹⁰² Given these considerations, it was consistent with *Carroll*, *Coolidge* and *Cardwell* for the Court in *Carney* to apply the automobile exception to the initial search of the motor home. Like the automobile in *Cardwell*, the motor home in *Carney* was parked in a public parking lot¹⁰³ where, absent seizure, it could have been removed. The motor home was, as the majority in *Carney* noted, "obviously mobile by the turn of a switch key,"¹⁰⁴ a characteristic it shares with all properly maintained motor vehicles. Further, *Carney*, although in the presence of the DEA agents, could have attempted to escape by reentering the motor home and driving away. The situation in *Carney* is distinguishable from that in *Coolidge*, where the police restricted access to the vehicle and had more than two weeks in which to secure a warrant.¹⁰⁵

The Court was correct to apply the automobile exception in *Carney* particularly because of the strong possibility that *Carney* was not alone in the motor home. Although the agents had not observed anyone other than *Carney* and the minor enter the vehicle,¹⁰⁶ the anonymous tip that described the vehicle and named *Carney* also named two other men as participants in the distribution of narcotics from the motor home.¹⁰⁷ One or both men, or some unknown individual(s), could have been within the vehicle before the agent's surveillance began.¹⁰⁸ There is no mention in any of the appellate court opinions that the DEA agents saw that the motor home was unoccupied prior to *Carney's* entrance and the closing of the motor home's curtains.¹⁰⁹ Clearly, Agent Clem's look inside the motor home for additional persons was reasonable and prudent under the circumstances because of the exigency that a concealed individual within the motor home could present.

This exigency makes untenable the dissent's position in *Carney* that the DEA agents should have secured a search warrant before looking inside the motor home for other persons.¹¹⁰ The Court

¹⁰² See *supra* notes 78-101 and accompanying text.

¹⁰³ *People v. Carney*, 172 Cal. Rptr. at 432.

¹⁰⁴ *Carney*, 105 S. Ct. at 2070.

¹⁰⁵ See *People v. Carney*, 172 Cal. Rptr. at 432.

¹⁰⁶ See *id.* at 430-32.

¹⁰⁷ *Id.* at 432.

¹⁰⁸ In fact, Agent Williams testified that Agent Clem stepped into the motor home to see if anyone else was inside for "safety reasons" before observing the contraband in plain view. *Id.* at 433.

¹⁰⁹ See *id.* at 432-33. The minor also stated that the "older man" spoke to him. *Id.* at 433. It was reasonable to infer from the minor's statement that *Carney* was not alone inside the motor home.

¹¹⁰ The exigency referred to is the same one referred to in *Carroll*. The vehicle could have fled the scene, placing the evidence beyond the reach of law enforcement officials.

noted in *Cardwell* that there is no constitutional difference between seizing a vehicle while a search warrant is pursued and conducting a warrantless search of the vehicle. Either course is acceptable under the constitution.¹¹¹ As such, the agent's decision to look inside the vehicle, instead of seizing it, was constitutional. Even if one rejects the Court's contention in *Chambers* that searches and seizures are equally intrusive and instead accepts the dissent's contention in *Carney* that the agents should have obtained a warrant before entering the vehicle, reason dictates that the agents would have had to seize the motor home to prevent its departure while a warrant was being secured. Due to the vehicle's inherent mobility and the peculiar facts of the case, such a seizure would have required the agents to take complete control of the motor home, in effect, to have acted precisely as they did.

C. EXPECTATIONS OF PRIVACY

The second justification for the automobile exception is the reduced expectation of privacy associated with a vehicle.¹¹² Whether this justification warrants the application of the automobile exception to the warrantless search of the motor home is more problematic, however. This difficulty arises because of a motor home's hybrid nature—its ability to function both as transportation and as a residence.¹¹³

The Court has advanced several reasons for the reduced expectation of privacy associated with a vehicle. In *Cardwell*, the Court maintained that there is a reduced expectation of privacy associated with a motor vehicle "because its function is transportation and it seldom serves as one's residence or as the repository of personal effects."¹¹⁴ The Court in *Cardwell* continued that motor vehicles

¹¹¹ See *Cardwell*, 417 U.S. at 594. Further, Moylan's "checklist" is satisfied in *Carney*, resulting in the application of the automobile exception. See *supra* note 79. See also *supra* notes 84-111 and accompanying text.

¹¹² See, e.g., *South Dakota v. Opperman*, 428 U.S. 364 (1976). In *Opperman*, the Court upheld the warrantless search of an automobile after the defendant had been arrested for numerous traffic violations and the vehicle had been towed to the police lot. *Id.* at 376. One commentator has rejected using a reduced expectation of privacy as a justification for the automobile exception because the rationales supporting this justification are, in his view, untenable. See Katz, *Automobile Searches and Diminished Expectations in the Warrant Clause*, 19 AM. CRIM. L. REV. 557, 569-72 (1982). Professor Katz maintains that the Court's focus on the reduced expectation of privacy justification has reduced concern for the mobility and exigent circumstances justifications for the automobile exception. *Id.* Professor Katz also notes that personal possessions are sometimes stored in automobiles and that there is not an adequate loss of privacy in an automobile to warrant a reduced standard. *Id.* See also *supra* note 97.

¹¹³ See *Carney*, 105 S. Ct. 2066.

¹¹⁴ *Cardwell*, 417 U.S. at 590.

travel "public thoroughfares where both its occupants and its contents are in plain view."¹¹⁵ Two years later, in *South Dakota v. Opperman*,¹¹⁶ the Court articulated another rationale for the reduced expectation of privacy, i.e., that vehicles are subject to pervasive and continuing government regulations while fixed residences are not subject to such invasive regulations.¹¹⁷ The Court in *Opperman* noted that vehicles are stopped and inspected periodically to determine if they are in compliance with licensing, inspection, safety, and emission regulations.¹¹⁸ Recently, in *United States v. Ross*,¹¹⁹ the Court noted that "individuals always had been on notice that movable vessels may be stopped and searched on facts giving rise to probable cause that the vehicle contains contraband. . . ."¹²⁰

Thus, the Court has applied a lower expectation of privacy in an automobile than in a home because of a vehicle's usual function as transportation, the fact that its interior is subject to public view, the pervasive government regulation of vehicles, and the public notice that individuals do not enjoy the same level of privacy in a vehicle that they do in a fixed residence.

Applying those conditions to the facts in *Carney*, it is clear that a motor home is quite capable of traveling public highways and does afford the public some, albeit limited, view of the vehicle's interior. Other equally mobile vehicles may also afford a limited view of the vehicle's interior because of such appointments as tinted glass, curtains, shades, or an elevated chassis which can marginally increase the expectation of privacy associated with a vehicle. Even if there is a marginal increase in the expectation of privacy because the motor home's curtains were drawn, this expectation can never be as great as the expectation of privacy associated with a home, which has a greater expectation of privacy associated with it even when all doors and windows are open.

An analysis of the other rationales for the reduced expectation of privacy associated with a vehicle more conclusively demonstrates

¹¹⁵ *Id.*

¹¹⁶ 428 U.S. 364 (1976).

¹¹⁷ *Id.* at 368.

¹¹⁸ *Id.*

¹¹⁹ 456 U.S. 798 (1978).

¹²⁰ *Id.* at 806, n.8. In *Ross*, the Court referred to the federal statutes passed between 1789 and 1815 that the *Carroll* Court focused on for its support of the proposition that there is a constitutional difference between searches of stationary structures and moveable vehicles. See *id.* at 806-07. See also *Carroll v. United States*, 267 U.S. 132, 149-53 (1924). The earlier statutes referred to the searches of ships and vessels by customs officials. See 1 Stat. 627, 677-78 (1799); 1 Stat. 309, 315 (1793); 1 Stat. 145, 170 (1790); 1 Stat. 29, 43 (1789). In 1815, customs officials were permitted to search any vehicles, beasts, or persons for illegally imported goods. See 3 Stat. 231-32 (1815).

the applicability of the automobile exception in *Carney*. In *Carney*, the motor home was a licensed and regulated vehicle.¹²¹ Thus, the motor home was subject to many of the same invasive government regulations and controls applicable to automobiles and other motor vehicles.¹²² Further, the government regulation and control of motor homes as motor vehicles, combined with public notice that readily moveable vehicles can be searched without a warrant, obviously gives rise to an expectation of privacy that is substantially less than that associated with a fixed residence.

Finally, there is the Court's consideration that there is a reduced expectation of privacy associated with automobiles because automobiles usually function as transportation and seldom serve as a residence or repository of personal effects.¹²³ The function of the motor home in *Carney* is dispositive of whether the automobile exception should have been applied. In *Carney*, the dissent urged that a motor home should be treated more like a fixed residence than like an automobile in terms of the associated expectation of privacy, thereby precluding the application of the automobile exception.¹²⁴ The dissent maintained that motor homes are "designed to accommodate a breadth of ordinary everyday living."¹²⁵ By contrast, the majority implicitly concluded that it is the motor home's function, and not its capabilities, at the time the search was conducted, that is properly dispositive of whether the automobile exception should be applied.¹²⁶ On this point, the majority's view is clearly correct.

Any vehicle is capable of serving more than one function. An

¹²¹ See *People v. Carney*, 172 Cal. Rptr. at 432. This is apparent from the license number that Agent Williams copied from the motor home. See *id.*

¹²² Most states require that motor vehicles comply with various safety and emission regulations during the life of the vehicle. See, e.g., CAL. VEH. CODE § 2804 (West 1971) (a member of the California Highway Patrol, upon reasonable belief that a vehicle is being operated in violation of any provision of the vehicle code, can require the driver to stop and submit to an inspection of the vehicle and its equipment). Those regulations are most often enforced by periodic inspection of the vehicle's interior and exterior. See, e.g., N.Y. VEH. & TRAF. LAW §§ 8301-03 (McKinney 1970) (New York requires the periodic inspection of all motor vehicles each year at official inspection cites in order to check for compliance with equipment and safety standards). By contrast, fixed residences are subject to government construction and safety regulations prior to occupancy. See, e.g., CAL. HEALTH & SAFETY CODE § 17980 (West 1971) (buildings are subject to the standards of the California State Building Standards Code). In some municipalities, barring a complaint by a resident, enforcement of those regulations seldom requires inspection of the structure's interior once the individual has taken residence in the structure. See Howe, *Housing Code Enforcement in Eleven Cities*, 60 U. DET. J. URB. L. 373 (1983).

¹²³ See *supra* notes 114-20 and accompanying text.

¹²⁴ See *Carney*, 105 S. Ct. at 2074-78.

¹²⁵ *Id.* at 2077 (Stevens, J., dissenting).

¹²⁶ See *id.* at 2070.

automobile can sometimes function as a residence in addition to its primary function as transportation.¹²⁷ A motor home, as a hybrid of a vehicle and a residence, is readily capable of functioning as either. As such, it makes little sense to categorize a motor home as either a vehicle or a residence for fourth amendment purposes without first giving consideration to the motor home's function in the particular circumstance.

While the majority in *Carney* categorically rejected classifying vehicles according to their various appointments for fourth amendment purposes,¹²⁸ it appears that the majority focused upon the motor home's function at the time the search was conducted when considering whether to apply the automobile exception.¹²⁹ The majority stated that "the . . . [motor home] was so situated [in the public parking lot] that an objective observer would conclude that it was being used not as a residence, but as a vehicle."¹³⁰ A public parking lot is unlike a campground, rest area, or other area designated for the purposes of establishing a temporary residence. The Court correctly understood that it would be rare for a municipality to permit the parking of motor homes in public parking lots for the purpose of establishing a temporary residence, instead of temporary parking.¹³¹

Under this scenario, the majority indicated that various objective indicia would bear on whether the motor home was being used as a residence at the time of the search.¹³² The majority stated that some of the criteria to be considered included "whether the vehicle is readily mobile or . . . elevated on blocks, whether the vehicle is licensed, whether it is connected to utilities, and whether it has convenient access to a public road."¹³³ The motor home in *Carney* met none of these criteria for residential status when the search was conducted.¹³⁴ Accordingly, the reduced expectation of privacy associated with the vehicle in these particular circumstances justifies the application of the automobile exception to the warrantless search of the motor home in *Carney*.

¹²⁷ See *Cardwell*, 417 U.S. at 591.

¹²⁸ See *Carney*, 105 S. Ct. at 2077 (Stevens, J., dissenting).

¹²⁹ See *id.* at 2069-71.

¹³⁰ *Id.* at 2070.

¹³¹ In any event, an individual would have a low expectation of privacy in a public parking lot because of the constant comings and goings.

¹³² See *Carney*, 105 S. Ct. at 2071, n.3.

¹³³ *Id.* These factors would be relevant in considering the search of any vehicle that could be arguably said to be functioning as a residence at the time of the search.

¹³⁴ See *People v. Carney*, 172 Cal. Rptr. at 432-33. In *Carney*, the motor home was readily mobile, unconnected to utilities, and had convenient access to a public road. *Id.*

V. CONCLUSION

The United States Supreme Court properly applied the automobile exception to the warrantless search of a motor home in *California v. Carney* because of the vehicle's *function* at the time of the search. Both the inherent mobility and the reduced expectation of privacy, the underlying rationales for the exception, are satisfied in *Carney*. Further, the Court did not significantly alter or expand the automobile exception by applying the exception to the search of a stationary motor home. Even though the motor home potentially could have come within the fourth amendment's warrant requirement under other facts (for example, if the motor home had been parked in a campground and was connected to utilities), in this context the motor home's primary function at the time the search was conducted was as a vehicle. Thus, the underlying rationales justifying the automobile exception for warrantless searches of vehicles were satisfied. Any subsequent warrantless searches of motor homes or of other hybrid vehicles, however, should be carefully examined in light of these principles and the vehicle's function at the time of the search.

SHANE V. NUGENT