Fourth Amendment — Search and Seizure — Automobile Exception — Collins v. Virginia

The axiom is familiar: searches conducted without warrants are per se unconstitutional under the Fourth Amendment — "subject only to a few specifically established and well-delineated exceptions."[1] The rule has been eroded by its exceptions in most contexts.[2] But it has held strong in one: the home.[3] Last Term, in *Collins v. Virginia*,[4] the Supreme Court continued the tradition by holding that the warrant requirement's automobile exception could not justify an officer's warrantless search of a vehicle parked in the immediate surroundings of a home.[5]

The Court reversed the contrary decision of the Supreme Court of Virginia and remanded. Limiting its holding to the automobile exception, the Court noted that the intrusion "may have been reasonable on a different . . . exception to the warrant requirement."[6] On remand, however, the lower court cannot find the officer's entry justified on the basis of any recognized warrant exception while remaining faithful to the *Collins* reasoning.

In July 2013, Officer David Rhodes spotted defendant Ryan Collins driving a motorcycle at 100 miles per hour, nearly twice the speed limit on the Virginia road.[7] Officer Rhodes tried to stop him, but Collins zipped away at a speed of over 140 miles per hour.[8] Just weeks earlier, a motorcyclist had outrun one of Officer Rhodes's colleagues under similar circumstances.[9] In the interest of safety, that officer had also aban-

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[1] Katz v. United States, 389 U.S. 347, 357 (1967) (footnote omitted). The rule has been recited in some form by the Supreme Court in at least twenty opinions, including *Arizona v. Gant*, 556 U.S. 332, 338 (2009); *California v. Acevedo*, 500 U.S. 565, 580 (1991); *Illinois v. Rodriguez*, 497 U.S. 177, 191 (1990) (Marshall, J., dissenting); *Horton v. California*, 496 U.S. 128, 133 n.4 (1990); *Thompson v. Louisiana*, 469 U.S. 17, 19–20 (1984) (per curiam); *Welsh v. Wisconsin*, 466 U.S. 740, 749 (1984); *United States v. Ross*, 456 U.S. 798, 825 (1982); *Steagald v. United States*, 451 U.S. 204, 211 (1981); *Payton v. New York*, 445 U.S. 573, 586 n.25 (1980); *Mincey v. Arizona*, 437 U.S. 385, 390 (1978); *Schneckloth v. Bustamonte*, 412 U.S. 218, 219 (1973); and *Coolidge v. New Hampshire*, 403 U.S. 443, 454–55 (1971).

[2] *See* Groh v. Ramirez, 540 U.S. 551, 572–73 (2004) (Thomas, J., dissenting) (describing the "plethora of exceptions to presumptive unreasonableness" and concluding that "our cases stand for the illuminating proposition that warrantless searches are *per se* unreasonable, except, of course, when they are not"); SAM KAMIN & RICARDO J. BASCUAS, INVESTIGATIVE CRIMINAL PROCEDURE 165 (1st ed. 2011) ("In practice, however, the Supreme Court's preference for searches and seizures effected pursuant to a valid warrant is largely observed in the breach.").

[3] *Payton*, 445 U.S. at 590 ("[T]he Fourth Amendment has drawn a firm line at the entrance to the house. Absent exigent circumstances, that threshold may not reasonably be crossed without a warrant.").

[4] 138 S. Ct. 1663 (2018).

[5] *Id.* at 1671. The automobile exception ordinarily allows officers with probable cause to search a vehicle without first getting a warrant. *See, e.g.*, Carroll v. United States, 267 U.S. 132, 153–56 (1925).

[6] *Collins*, 138 S. Ct. at 1675.

[7] Collins v. Commonwealth, 790 S.E.2d 611, 612–13 (Va. 2016).

[8] *Id.* at 613.

[9] *Id.* at 612.

doned his chase, but not before taking note of the motorcycle's distinctive features: orange and black paint and an extended frame.[10] The officers, both of the Albemarle, Virginia, police department, compared notes and concluded that the same motorcyclist had evaded them both.[11]

Officer Rhodes used footage from his dashboard camera to pull the motorcycle's license plate number.[12] He soon learned that the motorcycle was stolen and that the driver, Ryan Collins, had bought it without title earlier that year.[13] Six weeks after Rhodes's chase, police responded to a report from the Department of Motor Vehicles that Collins was trying to register a different stolen vehicle.[14] Officer Rhodes decided to go to the DMV as well so that he could ask Collins about the motorcycle.[15] Collins denied knowing anything about it, even after being shown photos of the motorcycle that the officer had pulled from Collins's own Facebook page.[16] The photos showed the motorcycle parked in the driveway of a house in Charlottesville.[17]

Officer Rhodes found the house's address that same day.[18] He drove over and parked along the street.[19] From his car, he could see a motorcycle peeking out from under a white tarp and parked in the same spot as the motorcycle in the Facebook photos.[20] Officer Rhodes walked up the driveway and, to "investigate further," pulled off the tarp.[21] He snapped a photo of the motorcycle — orange and black and with an extended frame.[22] He put the tarp back, returned to his car, and lay in wait.[23]

Before long, Collins arrived and entered the house.[24] It belonged to his girlfriend, but Collins was a regular overnight guest.[25] Officer

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[10] *Id.* Motorcycles are sometimes modified to have extended (or "stretched") frames, either for racing or for looks. A stretched bike's lower stance improves its traction, allowing more power to be directed toward forward acceleration. *See* Cherise Threewitt, *What Does Stretching a Sportbike Do?*, HOWSTUFFWORKS, https://auto.howstuffworks.com/what-does-stretching-a-sportbike-do.htm [https://perma.cc/CTP9-RH6F].

[11] *Collins*, 790 S.E.2d at 612–13.

[12] *Id.* at 613.

[13] *Id.*

[14] *Id.* at 613 & n.1.

[15] *Id.*

[16] *Id.* at 613–14.

[17] *Id.* at 614.

[18] *Id.*

[19] *Id.*

[20] *Collins*, 138 S. Ct. at 1668.

[21] *Id.*

[22] *Id.*

[23] *Id.*

[24] *Id.*

[25] Collins v. Commonwealth, 790 S.E.2d 611, 621 n.1 (Va. 2016) (Mims, J., dissenting). Although the Court indicated that Collins did not live at the home full time, it occasionally described the house as "Collins' home." *E.g.*, *Collins*, 138 S. Ct. at 1671. But because a prior ruling extended Fourth Amendment protection to overnight guests, *see* Minnesota v. Olson, 495 U.S. 91, 96–100

Rhodes went up to the home and knocked on the front door; Collins answered and agreed to speak with him.[26] After Collins admitted to having bought the motorcycle without title, Officer Rhodes arrested him, and a grand jury indicted him for receiving stolen property.[27] Collins moved to suppress all evidence that resulted from Officer Rhodes's warrantless search, but the trial court denied his motion and Collins was convicted.[28]

The Virginia Court of Appeals affirmed, finding the search lawful under the warrant requirement's exigent circumstances exception.[29] First, the officer had probable cause to believe that the motorcycle was evidence of a crime.[30] Second, a motorcycle is "inherent[ly] mobil[e]," and Collins knew that police officers might be looking for his because Officer Rhodes had asked him about it at the DMV.[31] These exigencies, according to the court, "justified both [the] entry onto the property and [the] moving [of] the tarp to view the motorcycle" underneath.[32]

The Supreme Court of Virginia affirmed, relying on a different exception.[33] It did not consider the applicability of the exigent circumstances exception, noting that neither the trial court nor the Commonwealth had invoked it below.[34] The Supreme Court of Virginia turned instead to the automobile exception — a "distinct and independent exception to the warrant requirement," even though its origins also "reflect the inherent exigency associated with the readily mobile nature of vehicles."[35] Unlike the exigent circumstances exception, the automobile exception is a "bright-line test": as long as Officer Rhodes had probable cause to believe that the object searched was contraband, the automobile exception would justify the warrantless search.[36]

The Supreme Court of the United States reversed and remanded.[37] Writing for an eight-Justice majority, Justice Sotomayor[38] announced that the automobile exception does not excuse an officer's warrantless

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(1990), Collins had standing to seek suppression of evidence either way, *see Collins*, 138 S. Ct. at 1668 n.1 (citing *Olson*, 495 U.S. at 96–100).

[26] *Collins*, 138 S. Ct. at 1668.

[27] *Id.* at 1668–69.

[28] *Id.* at 1669.

[29] Collins v. Commonwealth, 773 S.E.2d 618, 623–24 (Va. Ct. App. 2015).

[30] *Id.* at 622.

[31] *Id.* at 623 (quoting Thims v. Commonwealth, 235 S.E.2d 443, 447 (Va. 1977)).

[32] *Id.*

[33] Collins v. Commonwealth, 790 S.E.2d 611, 621 (Va. 2016).

[34] *Id.* at 616–17.

[35] *Id.* at 617 (first citing Maryland v. Dyson, 527 U.S. 465, 466–67 (1999) (per curiam); and then citing Pennsylvania v. Labron, 518 U.S. 938, 940 (1996) (per curiam)).

[36] *Id.* at 618 (citing McCary v. Commonwealth, 321 S.E.2d 637, 642 (Va. 1984)).

[37] *Collins*, 138 S. Ct. at 1675.

[38] Justice Sotomayor was joined by Chief Justice Roberts and Justices Kennedy, Thomas, Ginsburg, Breyer, Kagan, and Gorsuch.

entry into the curtilage of a home to search a vehicle.[39] She began by explaining that the case arose at the intersection of two lines of doctrine: the automobile exception and the constitutional protection of curtilage[40] — the area "immediately surrounding and associated with the home."[41] She reviewed the principles underlying each. As for the automobile exception, she explained that its two justifications — the "ready mobility"[42] and "pervasive regulation"[43] of vehicles on roads — did not apply to homes. And as for the protection of the curtilage, Justice Sotomayor explained that for the purposes of Fourth Amendment jurisprudence, the Court "ha[d] long . . . consider[ed] curtilage . . . to be 'part of the home itself.'"[44]

With these principles in mind, Justice Sotomayor turned to the facts of the case and determined that the motorcycle was parked within the home's curtilage.[45] Taking the position that the "conception [of] the curtilage is familiar enough that it is easily understood from . . . daily experience," she quickly determined that the part of the driveway where the motorcycle stood was "properly considered curtilage."[46] In support of this conclusion, she observed that a visitor to the home would not reach that part of the driveway on the way to the front door.[47]

Having established that the motorcycle was parked in the curtilage, Justice Sotomayor found this to be "an easy case": the automobile exception could not justify entry.[48] Could an officer who spotted through a window a motorcycle parked in a home's living room enter without a warrant to investigate further? "Surely not," Justice Sotomayor concluded, so neither could Officer Rhodes enter the curtilage here.[49] Although the officer might have had probable cause to search the tarp-covered object, he had no lawful right of access to the curtilage.[50] The automobile exception could not create that right of access, the Court determined, because the exception's "scope . . . extends no further than

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39 *Collins*, 138 S. Ct. at 1668.

40 *Id.* at 1669.

41 *Id.* at 1670 (quoting Florida v. Jardines, 569 U.S. 1, 6 (2013)).

42 *Id.* at 1669 (quoting California v. Carney, 471 U.S. 386, 390 (1985)).

43 *Id.* at 1670 (quoting *Carney*, 471 U.S. at 392).

44 *Id.* (quoting *Jardines*, 569 U.S. at 6).

45 *Id.* at 1670–71.

46 *Id.* at 1671 (internal quotation marks omitted) (first quoting *Jardines*, 569 U.S. at 7; and then citing *id.*).

47 *Id.*

48 *Id.*

49 *Id.*

50 *Id.* at 1672.

the automobile itself."[51] After all, "the rationales underlying the automobile exception are specific to the nature of a vehicle and the ways in which [a vehicle] is distinct from a house."[52]

In the course of its reasoning, the Court rejected Virginia's two proposed positions: 1) that the automobile exception could justify the warrantless search of a vehicle inside either the home or its curtilage, or 2) that it could justify the warrantless search of a vehicle inside the curtilage but not the home.[53] The Court gave three reasons for rejecting this second, less extreme proposition. First, the Court observed, Fourth Amendment doctrine had long avoided drawing lines between the curtilage and the home.[54] Second, the Court disagreed that there was a "constitutional significance of visibility" upon which to base a distinction between home and curtilage.[55] And third, it noted that Virginia's proposed rule would result in unequal constitutional protections between those who could afford to live in homes with closed garages and those who could not.[56] "Given the centrality of the Fourth Amendment interest in the home and its curtilage," the Court "decline[d] [the] invitation . . . to permit a warrantless intrusion" therein.[57]

The Court reversed the Virginia Supreme Court's opposite conclusion that the automobile exception justified the warrantless entry. It remanded the case for a determination of "whether Officer Rhodes' warrantless intrusion on the curtilage of Collins' house may have been reasonable on a different basis, such as the exigent circumstances exception to the warrant requirement."[58]

Justice Thomas concurred. He joined the Court's opinion in full but wrote separately to question the Court's authority to require states to exclude evidence unconstitutionally obtained.[59] The Court, he argued, had exceeded its authority in *Mapp v. Ohio*[60] when it imposed this exclusionary rule on the states.[61] He noted that exclusion as a remedy

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[51] *Id.* at 1671 (citing Pennsylvania v. Labron, 518 U.S. 938, 940 (1996) (per curiam); Wyoming v. Houghton, 526 U.S. 295, 300 (1999)).

[52] *Id.* at 1672.

[53] *Id.* at 1673–75.

[54] *Id.* at 1674–75.

[55] *Id.* at 1675.

[56] *Id.*

[57] *Id.* at 1673.

[58] *Id.* at 1675.

[59] *Id.* (Thomas, J., concurring).

[60] 367 U.S. 643 (1961).

[61] *Collins*, 138 S. Ct. at 1677 (Thomas, J., concurring). The exclusionary rule requires the suppression of any evidence derived from an unconstitutional search. It is the principal remedy for violations of the Fourth Amendment right against unreasonable searches. *See* William J. Stuntz, *The Uneasy Relationship Between Criminal Procedure and Criminal Justice*, 107 YALE L.J. 1, 11 n.34 (1997) (describing the exclusionary rule as "the dominant remedy for Fourth Amendment violations"); *see also* 1 WAYNE R. LAFAVE, SEARCH AND SEIZURE § 1.1 (5th ed. 2012).

would have bewildered the Founders,[62] and he concluded that the Constitution did not require the exclusionary rule despite *Mapp*'s "expansive dicta" to the contrary.[63] The Court had long since abandoned *Mapp*'s constitutional position in subsequent cases, Justice Thomas observed.[64] And neither a federal statute nor a principle of federal common law had given the Court authority to impose the rule on the states.[65] In light of this historical understanding, recognized by modern precedents, Justice Thomas urged that *Mapp* be overturned.[66]

Justice Alito dissented. In his view, Officer Rhodes had acted "entirely reasonabl[y]," and therefore constitutionally.[67] He reminded the Court that the Fourth Amendment's "hallmark is reasonableness" and decried the "strikingly unreasonable decision" as a departure from "Fourth Amendment basics."[68] If the scene had occurred just thirty feet away — on the sidewalk and not on the driveway — all would have accepted its constitutionality.[69] By granting constitutional significance to the distinction, Justice Alito argued, the Court had slipped into a pedantry that would astound "an ordinary person of common sense."[70]

Ultimately, the question in *Collins* was a narrow one: whether the automobile exception could serve as an independent basis for an officer's warrantless entry into a home. The Court held that it could not. The Court has recognized only six bases upon which police may lawfully enter a home; in *Collins*, it declined to add the automobile exception as a seventh.

Although the Supreme Court remanded the case to see if the entry might have been justified on another basis, the receiving court cannot find the officer's entry constitutional without contradicting the *Collins* reasoning. Of the six established grounds for entry into a home, only one could apply: the imminent-loss-of-evidence exigency — and only then because a motorcycle is inherently mobile. (A motorcycle, if moved and hidden, cannot be seized as evidence.) So to make use of this exception, the lower court must rely on inherent mobility as a dispositive factor. It cannot grant this characteristic, common to all automobile exception cases, dispositive constitutional weight without carving a path around the protections the Supreme Court intended to secure.

The warrant requirement admits of many exceptions for searches in public places, but few for searches of the home. In the absence of a

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[62] *Collins*, 138 S. Ct. at 1676–77 (Thomas, J., concurring).
[63] *Id.* at 1677 (alteration omitted) (quoting Davis v. United States, 564 U.S. 229, 237 (2011)).
[64] *Id.* at 1677–80.
[65] *Id.*
[66] *Id.* at 1680.
[67] *Id.* (Alito, J., dissenting).
[68] *Id.* at 1681.
[69] *Id.*
[70] *Id.*

warrant or consent, a law enforcement officer may not enter a home to conduct a search unless "exigent circumstances" justify the entry.[71] The Court has recognized only four such circumstances: police may enter a home without a warrant when they are in hot pursuit of a fleeing suspect, when entry is otherwise necessary to prevent a suspect's escape, when there is a risk of harm to police or others nearby, or when entry is necessary to prevent imminent loss or destruction of evidence.[72] These four exigencies, along with the two other bases (warrants and consent), make up the only six circumstances in which the Fourth Amendment allows law enforcement officers to enter a home.

Of these six, only the imminent-loss-of-evidence exigency could conceivably apply to the *Collins* facts. Officer Rhodes had neither a warrant nor consent when he walked up the driveway. So his entry into the curtilage must be justified on the basis of one of the four exigent circumstance exceptions, if at all. But Officer Rhodes entered the curtilage when he knew Collins was not home, so the "hot pursuit" and "preventing escape" exigencies do not apply. And Officer Rhodes himself was in no danger, nor was anyone else — there are no indications that anyone else was even around — so the "risk of danger" exception also does not apply. Of the six possibilities, only one remains:

1. ~~With a warrant~~
2. ~~With consent~~

exigent circumstances:
3. ~~When in hot pursuit of a fleeing suspect~~
4. ~~To prevent a suspect's escape~~
5. ~~For the safety of police or others~~
6. To prevent imminent loss of evidence

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[71] *See, e.g.*, Illinois v. Rodriguez, 497 U.S. 177, 191 (1990) (Marshall, J., dissenting) ("The Court has tolerated departures from the warrant requirement only when an exigency makes a warrantless search imperative to the safety of the police and of the community."); Payton v. New York, 445 U.S. 573, 587–88 (1980) (describing the "long-settled premise that, absent exigent circumstances, a warrantless entry to search for . . . contraband is unconstitutional even when . . . there is probable cause to believe that incriminating evidence will be found within"); Coolidge v. New Hampshire, 403 U.S. 443, 474–75 (1971) ("It is accepted, at least as a matter of principle, that a search or seizure carried out on a suspect's premises without a warrant is *per se* unreasonable, unless the police can show that it falls within one of a carefully defined set of exceptions based on the presence of exigent circumstances." (internal quotation marks omitted) (footnote omitted)).

[72] *See, e.g.*, Kentucky v. King, 563 U.S. 452, 460 (2011) (identifying "emergency aid," "hot pursuit of a fleeing suspect," and "prevent[ion of] imminent destruction of evidence" as the recognized exigencies); United States v. Santana, 427 U.S. 38, 43 (1976) ("We thus conclude that a suspect may not defeat an arrest which has been set in motion in a public place, and is therefore proper . . . by the expedient of escaping to a private place."); *see also* Minnesota v. Olson, 495 U.S. 91, 100 (1990) (describing this test as the "proper legal standard" for determining whether exigent circumstances existed). Though the Court has so far rejected recognition of exigent circumstances that fall outside of the four categories, it has not definitively held the list of exigent circumstances to be a closed set. *See* Mincey v. Arizona, 437 U.S. 385, 390–91 (1978) (rejecting Arizona's creation of a new exception to the warrant requirement, but acknowledging the theoretical possibility that one could be created in "an exceptional situation," *id.* at 391).

Therefore, when the Court narrowly limited its holding to the automobile exception, and thus left for resolution "whether Officer Rhodes' warrantless intrusion on the curtilage . . . may have been reasonable on a different basis, such as the exigent circumstances exception,"[73] it effectively remanded so the trial court could decide whether the loss-of-evidence exigency applies.

The trial court would have to base a finding that the loss-of-evidence exigency applies on the motorcycle's inherent mobility, at least in part. As an illustration of the role mobility must play, consider a motorcycle that cannot move on its own: it cannot be dissolved or completely burned, and it is too big to be flushed or buried out of sight. In short, it probably cannot be disposed of on urban residential property. Nor can it be easily moved off the property without the aid of a vehicle, because of its size and weight. But if a car towed or carried it from the property, an officer could then stop the car and seize the motorcycle under the normal automobile exception to the warrant requirement.[74] Officer Rhodes, who was waiting on the street in his police car when Collins arrived home, was in a prime position to do just that.[75] Put simply, the loss-of-evidence exigency is inapplicable if the motorcycle's mobility is assumed away.

But if a court is to find that the loss-of-evidence exigency justified Officer Rhodes's entry, inherent mobility must be a determinative factor. To be sure, inherent mobility need not be sufficient just because it is necessary: inherent mobility plus "something more" could trigger the exception, even though inherent mobility alone is not enough. The problem is the barrenness of the factual landscape: so little exists to supplement the exigency that inheres in mobile contraband. If a lower court *could* find a "genuine" exigency on these facts,[76] it could be only through a drastic weakening of the warrant requirement.

There are no facts in the *Collins* case suggesting that anyone could have moved the motorcycle beyond reach before the police could get a warrant. Officer Rhodes entered the curtilage to conduct his search when no one was around. He had talked to Collins earlier that day in the DMV, but at the time of the search, he knew that Collins had not yet come home. Officer Rhodes could see the tarp-covered motorcycle from his parked police car, so when he entered the curtilage, he knew

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[73] *Collins*, 138 S. Ct. at 1675.

[74] The Court of Appeals of Virginia pointed out that Collins had succeeded in eluding the police on the motorcycle at least twice before. Collins v. Commonwealth, 773 S.E.2d 618, 623 (Va. Ct. App. 2015). But this time, the residential setting would probably have hindered Collins's escape: in plain view of Officer Rhodes, Collins would have had to mount the motorcycle, accelerate it from a standstill, and make a series of turns at lower speeds to navigate the neighborhood roads without crashing.

[75] *Collins*, 138 S. Ct. at 1668.

[76] *King*, 563 U.S. at 470 ("Any warrantless entry based on exigent circumstances must, of course, be supported by a genuine exigency." (citing Brigham City v. Stuart, 547 U.S. 398, 406 (2006))).

that neither Collins nor anyone else was attempting to hide it. Officer Rhodes could have called for a warrant as soon as he saw the suspicious motorcycle, without ever leaving the scene. Collins might have had a motive to hide the motorcycle from the police, but there was no indication that he was attempting to — or was even intending to — when the officer conducted his search.

The only fact that could plausibly be relevant to an exigency analysis is that Collins was on notice that police were interested in his motorcycle. And the Supreme Court has ruled that police are not deprived of the exigent circumstances exception when they prompt an exigency by announcing their investigatory intent.[77]

But that factor cannot meaningfully change the exigency determination without evidence of a suspect's destructive response. The police may not unilaterally create an exigency that they could then take advantage of at will. The warrant exception is available because the *suspect* creates an exigency when she, responding to the police announcement, tries to destroy evidence.[78] According to the Court's reasoning, that suspect has forfeited a constitutional right by attempting to destroy evidence. She thus brings the result on herself: "Occupants who choose not to stand on their constitutional rights but instead elect to attempt to destroy evidence have only themselves to blame for the warrantless exigent circumstances search that may ensue."[79] The exigency cannot be sustained on the police's activity alone. Were it so, the police could search any home by merely announcing their intent to investigate a crime and thus giving the occupants a reason to destroy any incriminating evidence scattered within.

The implications are clearest by analogy. Motorcycles are inherently mobile; drugs are inherently destructible. If putting Collins on notice that police are looking for his motorcycle could meaningfully change the exigency determination, so too must putting occupants on notice that police are looking for drugs. The consequence is that police could search a home without a warrant simply by telling the homeowner that he is under investigation. But that is not our law. Police may not knock on a suspected dealer's door, announce their intent, and stroll in, having secured by announcement a legitimate warrant exception. In the exigency calculation, notice adds nothing to destructibility if there is no evidence of a suspect's response. If the opposite were true, the occupants would hardly have an option to stand on their constitutional rights, and the warrant requirement would mean little at all.

Officer Rhodes's motorcycle search is constitutional only if an exigency justified his entry. The facts furnish but two circumstances that

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[77] *Id.* at 455.
[78] *Id.*
[79] *Id.* at 470.

could produce an exigency: the contraband's inherent mobility, and notice of investigatory intent. But because Collins had taken no steps to forfeit his rights in response to the notice, the latter cannot change the calculation. Given the facts of the case, an exigency determination must arise entirely from the motorcycle's inherent mobility. But if the fact that a vehicle is in a position from which it could be quickly moved can, by itself, establish exigent circumstances, little would be left of the *Collins* holding.

After scores of decisions admitting exceptions to the warrant requirement, the Court in *Collins* found a line it would not cross: an officer may not enter a home or its curtilage just because a suspicious vehicle is parked within. The Court remanded, perhaps creating an illusion of choice.[80] But if the line is to hold, only one option remains — to find Officer Rhodes's entry into the curtilage unconstitutional. If the lower court does the opposite, permitting entry on the basis of the loss-of-evidence exigency, it would do so in defiance of the Court's reasoning. And if other courts follow suit, the line the Court drew would quickly start to fade.

[80] *Cf.* Maryland v. Balt. Radio Show, Inc., 338 U.S. 912, 919 (1950) (Frankfurter, J., respecting the denial of the petition for writ of certiorari) ("[T]his Court has rigorously insisted that such a denial carries with it no implication whatever regarding the Court's views on the merits of a case which it has declined to review."); Erwin Chemerinsky, *2003–2004 Supreme Court Update*, 2005 UTAH L. REV. 97, 97 (reasoning that "[s]ometimes the Court left open questions because it decided issues narrowly").