



Sixth Circuit Court Rules Chalking Tires Unconstitutional

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The Sixth Circuit ruled this week that the practice of “chalking” car tires by parking enforcement officers to see if the car has been moved violates the Fourth Amendment and is unconstitutional. In [Taylor v. City of Saginaw](#), the court held that chalking tires is a trespass to obtain information and therefore an unreasonable search when done without a warrant. The court reasoned that when an officer intentionally makes physical contact with a parked vehicle with chalk, the officer has committed a trespass. And when an officer trespasses with the intent to obtain information, a search has occurred.

The Sixth Circuit based its reasoning on *United States v. Jones*, a 2012 U.S. Supreme Court case that introduced the idea that a physical trespass combined with an intent to obtain information equaled a search. Therein, the Supreme Court held that the placement of a GPS tracking device on a suspect’s car for 28 days was a search because it was a physical trespass intended to obtain information about the whereabouts of the vehicle and its passengers.

Because the Sixth Circuit held that chalking is a search, an officer must either have a warrant, or an exception to the warrant requirement must apply. The court explained that, at least in this particular case, the exceptions to the warrant requirement argued by the city did not apply to the chalking of a parked car and so, by default, the warrantless search was unlawful. The “automobile exception” did not apply because there was no probable cause to believe that the vehicle contained evidence of a crime; and the “community caretaker” exception did not apply because there was no reasonable relation to public safety. Finally, such a search was not justifiable based on a general interest in having an orderly parking system because even that interest is subject to constitutional limitations.

In municipalities where parking violations are considered civil infractions, it is unclear that a person challenging a ticket can

suppress evidence of chalked tires, provided the U.S. Supreme Court has not explicitly determined whether the exclusionary rule applies to civil proceedings. Despite the uncertainty, the safest bet for all municipalities is to refrain from chalking tires as a method of enforcement in time-limited parking spots, regardless of whether parking violations are considered civil or criminal. This decision does not appear to apply to enforcement in tow-away zones or nuisance vehicles that are the subject of complaints by city residents.

Significantly, this is the first case in the country to rule on the legality of chalking tires, and other circuits may decide this issue differently. For now, though, this decision is binding law in states where the Sixth Circuit has jurisdiction (Michigan, Ohio, Kentucky, and Tennessee). Municipalities and townships should be aware of this decision and update policies and procedures for parking enforcement as needed. Municipalities are currently working through different options, including photographing the vehicle at different times to show whether the vehicle has moved, chalking outlines on the street around tires, and other options as well.

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