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When police can search your glove box

By Warren Richey

WASHINGTON - In terms of personal privacy, a man's home is his castle.

It is a bedrock principle of the Fourth Amendment that law-enforcement officers may not intrude into someone's house without the authorization of a judge.

But what about a car? Do Americans have the same right to privacy when they take to the nation's roads and highways?

Not even close, say legal experts.

"When you are in a car, you are fair game," says Tracey Maclin, a law professor and Fourth Amendment scholar at Boston University School of Law.

The limited privacy protections that do exist for cars may shrink even more as a result of a case set for oral argument Wednesday at the US Supreme Court. At issue in Thornton v. US is whether police may conduct a search of a passenger compartment without a warrant even if they arrest the driver or a recent occupant outside the car.

If a majority of justices permit the practice, it would expand an existing rule from a 1981 Supreme Court decision called New York v. Belton. That ruling allowed police to search a car's interior, without first obtaining a warrant, whenever a suspect is arrested while inside the car.

The Bush administration and 21 states are urging the justices to extend the rule to authorize warrantless searches when the arrestee exits his or her vehicle voluntarily prior to encountering police.

"Belton's bright-line rule applies whenever such an arrest takes place, whether or not the police initiate contact with an arrestee while he is still inside the vehicle," says US Solicitor General Theodore Olson in his brief to the court.

The issue arises in the case of Marcus Thornton. In July 2001, a police officer in Norfolk, Va., became suspicious of Mr. Thornton after noticing that the license plate on his Lincoln Town Car was registered to a 1982 Chevrolet.

The officer followed Thornton into a shopping-center parking lot. But before the officer could intercept him, Thornton got out of his car. The police officer confronted Thornton in the lot, questioning him about his car registration. The officer asked Thornton a series of questions, including whether he had any narcotics or weapons. Thornton said he did not.

Thornton then consented to a frisk, and the officer soon discovered a quantity of marijuana and crack cocaine in his pocket.

After arresting Thornton, the officer searched his car. He found a loaded semiautomatic pistol.

At trial, Thornton was convicted of drug dealing and weapons possession charges. He was sentenced to 15 years in prison.

On appeal, Thornton's lawyers challenged the admission of the handgun as evidence, saying that police needed a warrant to search Thornton's car. A federal appeals court panel in Richmond ruled that the officer acted within his authority.

Thornton's lawyer, Frank Dunham, says the high court should reverse that decision and make clear that such warrantless searches may take place only when the initial contact with police occurs while the arrestee is still in the car.

If the person leaves the car after contact with police, the police could still search the car, Mr. Dunham says. But police should not be permitted to search when the driver or occupant left the car without knowledge they would be confronted by police.

Dunham says this approach is in keeping with two original justifications for warrantless searches of cars as part of arrests: to protect

the safety of officers by permitting them to search for weapons that might be within reach, and to protect against the destruction or concealment of evidence.

Olson sees problems with certain curbs on searches. "Such a limitation would create an incentive for suspects to jump out of cars before police initiate contact with them and, at the same time, encourage police to rush contact with suspects before they can exit a car, creating a potentially explosive dynamic," he says in his brief.
