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THE MARYLAND CRIMINAL LAW GROUP OF PRICE BENOWITZ LLP

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Consent Search

This post was written by <u>Maryland criminal lawyer</u> Colleen Kirby. Ms. Kirby is a former Assistant State's Attorney in Howard County. Prior to her work in Howard County as a <u>Maryland DUI lawyer</u>, she clerked for the Honorable Joseph F. Murphy who sits on the Maryland Court of Appeals. Colleen received her Juris Doctor from the University of Baltimore School of Law.

I received an interesting telephone call this evening. The caller had been stopped by a police officer and the officer told the caller that he wanted to search the vehicle because it smelled like cologne. It was the officer's belief that the caller was covering up the odor of marijuana.

The caller's question was "Can I tell the officer that it's okay to look in my trunk and not the rest of my car?" My answer was that he can absolutely limit the scope of the search. Anytime there is a consent search, the person giving consent can limit the area to which the police can search.

I was curious as to why he would want the officer to look in the trunk alone. After listening to the situation, it made perfect sense. The caller had just left the golf course, had been smoking cigarettes, and was on his way to meet his girlfriend for lunch. His girlfriend does not like the smell of cigarettes, and the caller wanted to cover up the smell of the cigarettes before meeting her. He explained this to the officer and wanted to show him the empty pack of cigarettes in his trunk. However, he was in a hurry to meet his girlfriend and did not have time to wait for his entire car to be searched. He explained this to the officer, who was forced to allow him to leave - having no reason to further detain him.

In explaining to the caller why it is acceptable to limit the search to the trunk, I compared it to a consent search of your home. If an officer knocks on the door and asks if he can step inside, giving consent to step inside the door does not give consent to search the entire house. If the officer views illegal items within plain view while standing in the foyer, he can seize that evidence and file the appropriate charges. However, he cannot walk around the entire house looking for possible contraband.

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Therefore, when it comes to a situation where the officer is asking permission to search, you have the authority to say no, or limit the areas to which the officer can search. Saying no, or putting limits on the search, does not give any more power to the police.