Published on *The National Law Review* https://natlawreview.com

Just Approaching The Canadian Border Can Satisfy The Fourth Amendment's Probable Cause Requirement For A Suspicionless Search

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In D.E. v. Doe (15-2128), the Sixth Circuit upheld the conviction of a teenager who "took a wrong turn on his way to summer camp." When he reached the Canadian border, he asked permission to turn around without crossing the border—but had his car searched instead. The opinion written by Judge Rogers holds that a search was reasonable because the Customs and Border Protection officers cannot "tell the difference between a motorist who has just crossed the border … and a 'turnaround motorist' who is at the border area by mistake." Because the teenager was near the international border, the panel held that he had to submit to a suspicionless search.

Judge Keith disagreed, arguing that a suspicionless search is only allowed when a person actually crosses the border, and that the difficulty in deciding whether a person actually crossed the border does not excuse that constitutional limitation. He also explained that because Customs and Border Protection chooses to "comingle non-crossing motorists with crossing motorists" they should not complain that it is hard to distinguish the two. Judge Keith was "deeply troubled" that the government admitted that its usual practice, which plainly violates the Fourth Amendment, was to conduct suspicionless searches of people that did not cross the border.

National Law Review, Volume VI, Number 239