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Expansion of the Automobile Exception to the Warrant Requirement: Police Discretion Replaces the Neutral and Detached Magistrate

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Expansion of the "Automobile Exception" to the Warrant Requirement: Police Discretion Replaces the "Neutral and Detached Magistrate"

California v. Acevedo[1]

As illegal drug usage continues to be an increasing concern of this country, the United States Supreme Court has lessened Fourth Amendment constraints on law enforcement officials.[2] Because of the nature of drugs (minute amounts are illegal and thus they are easily transported and hidden), the allowable scope of searches is a critical issue in the "war on drugs." Regardless of whether the Court had drugs in mind when it set forth this new rule,[3] it is drug related offenses where this decision will have the visible impact.[4]

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1. 111 S. Ct. 1982 (1991).

2. Recent examples of the Court's lessening of Fourth Amendment restrictions include Florida v. Bostick, 111 S. Ct. 2382, 2385-87 (1991) (police search "sweeps" of buses is not *per se* unconstitutional; dissent accuses Court of suspending Fourth Amendment protections to fight "war on drugs" (Marshall, J., dissenting)); Florida v. Jimeno, 111 S. Ct. 1801, 1805-06 (1991) (consent searches of automobiles may be extended to closed containers under "objective test;" cocaine found inside paper bag at issue in the case); California v. Hodari, 111 S. Ct. 1547, 1549-52 (1991) (Fourth Amendment "seizure" of person redefined more narrowly; crack cocaine discarded prior to seizure at issue in the case); Illinois v. Rodriguez, 110 S. Ct. 2793, 2795-96 (1990) (reasonable, but mistaken, officer evaluation of third party consent to search is now not a violation of Fourth Amendment; drugs found during search at issue in the case); Florida v. Wells, 110 S. Ct. 1632, 1638-39 (1990) (Stevens, J., concurring) ("Apparently the mere possibility of a minor burden on law enforcement interests is enough to generate corrective action by this Court.") Florida v. Riley, 488 U.S. 445, 456-57 (1989) (Brennan, J., dissenting) ("It is indeed easy to forget, especially in view of current concern over drug trafficking, that the scope of the Fourth Amendment's protection does not turn on whether the activity disclosed by a search is illegal or innocuous.")

3. The Court made no references to illegal drugs in discussing the policy behind its holding. *Acevedo*, 111 S. Ct. at 1988-91.

4. In the eight cases that have applied the rule set forth in *Acevedo*, seven have involved a search exposing illegal drugs or, in one case, chemicals used to manufacture illegal drugs. United States v. Celio, 945 F.2d 180 (7th Cir. 1991) (heroin); United States v. Sanchez, 944 F.2d 497 (9th Cir. 1991) (cocaine); United States v. Rojo-Alvarez, 944 F.2d 959 (1st Cir. 1991) (cocaine); United States v. Cook, 938 F.2d 149 (9th Cir. 1991) (chemicals used to manufacture drugs); People v. Rodrigues-Fernandez,

I. THE FACTS

In October 1987, a federal drug enforcement agent in Hawaii seized a Federal Express package containing nine clear bags of marijuana.[5] The package was addressed to J.R. Daza of Santa Ana, California.[6] On October 28, 1987, the federal agent contacted Officer Coleman of the Santa Ana Police Department and arranged for the package to be sent to Coleman.[7] Coleman was to take the package to the local Federal Express office and arrest the package's claimant.[8]

On October 29, Coleman received the package and delivered it to the Federal Express office.[9] The next day, at approximately 10:30 a.m., a man identifying himself as Jamie Daza claimed the package, drove to his apartment, and took the package inside.[10] Police officers followed Daza to his apartment.[11] At 11:45 a.m., Daza left his apartment and put the box and paper from the package in the trash.[12] Officer Coleman then left to obtain a search warrant.[13]

At 12:30 p.m., Charles Steven Acevedo went into the apartment.[14] After about 10 minutes, Acevedo left the apartment carrying a brown paper bag that appeared to be full.[15] The officers noticed that the bag was the same size as one of the clear bags within the package picked up by Daza.[16] Acevedo walked to a car, placed the bag in the trunk, and started to drive

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286 Cal. Rptr. 700 (Cal. Ct. App. 1991) (cocaine); State v. Search, 472 N.W.2d 850 (Minn. 1991) (stolen electronics); State v. Lugo, 592 A.2d 1234 (N.J. Super. 1991) (heroin).

5. People v. Acevedo, 365 Cal. Rpt. 23 (Cal. Ct. App. 1989), *rev'd*, California v. Acevedo, 111 S. Ct. 1982 (1991).

6. *Id.*

7. California v. Acevedo, 111 S. Ct. 1982, 1984 (1991).

8. *Id.*

9. *Id.*

10. *Id.*

11. *Acevedo*, 265 Cal. Rpt. at 25.

12. *Acevedo*, 111 S. Ct. at 1984.

13. *Id.*

14. *Id.* Prior to this, at 12:05 a.m., Richard St. George left the apartment with a knapsack that appeared to be half full. *Id.* St. George was stopped as he drove off, and a search of the knapsack produced one and one-half pounds of marijuana. *Id.*

15. *Id.*

16. *Id.*

away.[17] The officers stopped the car, opened the trunk and searched the bag.[18] The bag contained marijuana.[19]

Acevedo was charged in a California superior court with possession of marijuana for sale.[20] He moved to suppress admission of the marijuana found in the trunk.[21] The motion was denied and Acevedo appealed.[22] The California Court of Appeal, after concluding that a warrant was necessary to open the bag, ruled that the marijuana should have been suppressed.[23] The Supreme Court of California denied petition for review.[24] The United States Supreme Court granted certiorari.[25]

The Supreme Court reversed and remanded after holding that a warrant is not necessary to search a container located in an automobile when an officer has probable cause to believe that container holds contraband or evidence.[26]

II. LEGAL BACKGROUND

The Fourth Amendment to the Constitution of the United States provides the following:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by Oath or affirmation and particularly describing the Place to be searched, and the persons or things to be seized.[27]

The Supreme Court has held "that the mandate of the [Fourth] Amendment requires adherence to judicial processes."[28] Therefore, "searches conducted outside the judicial process, without prior approval by judge or magistrate are *per se* unreasonable under the Fourth Amendment—subject only to a few

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17. *Id.* at 1984-85.

18. *Id.* at 1985.

19. *Id.*

20. Possession of marijuana for sale is in violation of CAL. HEALTH & SAFETY CODE § 11359 (West 1987).

21. *Acevedo*, 111 S. Ct. at 1985.

22. *Id.* Acevedo plead guilty after his suppression motion was denied prior to appealing the denial. *Id.*

23. *Acevedo*, 265 Cal. Rpt. at 28.

24. *Acevedo*, 111 S. Ct. at 1985.

25. *Id.* at 1985.

26. *Id.* at 1991.

27. U.S. CONST. amend. IV.

28. Katz v. United States, 389 U.S. 347, 357 (1967) (quoting United States v. Jeffers, 342 U.S 48, 51 (1951)).

specifically established and well-delineated exceptions."[29] In 1925, the Court created such an exception with its ruling in *Carroll v. United States*.[30]

In *Carroll*, federal prohibition agents had probable cause to believe defendants George Carroll and John Kiro were transporting contraband in their automobile.[31] The agents stopped and searched the automobile on a public highway.[32] The search revealed contraband.[33] Defendants were indicted for transporting the contraband.[34] Defendants moved for the return of the contraband to Carroll, the owner of the automobile.[35] The motion was denied, and defendants appealed to the Supreme Court.[36]

The *Carroll* Court noted that the First, Second, and Fourth Congresses had created differentiated warrant requirements based on whether the search was of a dwelling or of a movable vessel.[37] The Court interpreted the distinctions, enacted contemporaneously with the adoption of the Fourth Amendment, as evidence that no warrant requirement exists for automobiles under the Fourth Amendment.[38] The justification for the distinction rested on the premise that vehicles, unlike dwellings and other structures, are inherently movable objects and would consequently have the ability to avoid search simply by relocating in another jurisdiction.[39] The Court thus concluded that the "right to search and the validity of the seizure . . . are [solely] dependent on the reasonable cause the seizing officer has for belief that the contents of the automobile offend against the law."[40]

Forty-five years later, in *Chambers v. Maroney*,[41] the Court enlarged the realm of constitutional warrantless automobile searches by ruling that the

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29. *Katz*, 389 U.S. at 357 (footnotes omitted). This language has been consistently reaffirmed by the Court in it's Fourth Amendment cases. *See* Mincey v. Arizona, 437 U.S. 385, 390 (1978) (Justice Stewart, writing for a unanimous court); *see also Acevedo*, 111 S. Ct. at 1991, 1994; Thompson v. Louisiana, 469 U.S. 17, 20 (1984) (per curium).

30. 267 U.S. 132, 153 (1924).

31. *Id.* at 136. Prior to the day of the search, the agents had encountered the defendants numerous times while investigating possible violations of the National Prohibition Act. *Id.*

32. *Id.*

33. *Id.* The contraband was sixty-eight bottles of liquor found behind the upholstering of the automobile seat. *Id.*

34. *Id.*

35. *Id.* at 134.

36. *Id.* at 133.

37. *Id.* at 151.

38. *Id.* at 151-53.

39. *Id.* at 153.

40. *Id.* at 158-59.

41. 399 U.S. 42 (1970).

reasoning of *Carroll* was applicable when the automobile is searched at a police station.[42] In *Chambers*, police officers had probable cause to arrest four occupants of an automobile they had stopped.[43] The police had probable cause to search the automobile,[44] but did not search it at the time of the arrests.[45] After the car was driven to the police station, a thorough search revealed incriminating evidence that was later used to convict one of the car's occupants.[46]

Writing for the Court, Justice White reaffirmed the rationale of *Carroll*, stating that the exigency created by the inherent movability of automobiles justifies an immediate warrantless search.[47] Justice White then asserted that when probable cause exists, the seizure of an automobile until a warrant is obtained is constitutional under *Carroll*.[48] This led to the conclusion that the *warrantless* station house search in this case was constitutional.[49] The Court apparently based this conclusion on the assumption that the mobility of the car was unaffected by its presence at the police station, therefore the *Carroll* exigency rationale was still applicable.[50]

In the term following *Chambers*, the Court, in *Coolidge v. New Hampshire*,[51] established that the *Chambers* temporal extension applied only if *Carroll* would have justified an immediate warrantless search.[52] In *Coolidge*, the police arrested defendant Edward Coolidge at his home, towed his car from his driveway to the police station, and conducted a warrantless search of the car.[53] The search produced evidence used to convict Coolidge.[54] The defendant appealed his conviction to the Supreme Court based

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42. *Id.* at 52.

43. *Id.* at 46. The police were investigating a robbery that had occurred in the vicinity. *Id.* Probable cause was based on the description of the car and the occupants given to police by witnesses of the robbery. *Id.*

44. *Id.* at 47-48.

45. *Id.* at 44.

46. *Id.* at 44-45. The occupant was Frank Chambers. *Id.* Chambers did not directly appeal the conviction, but contested the legality of search and seizure through a federal Habeas Corpus motion filed from state prison. *Id.* at 45-46.

47. *Id.* at 51.

48. *Id.* at 52.

49. *Id.* at 51-52.

50. *Id.* at 52. The Court used the language: "The probable-cause factor still obtained at the station house and so did the mobility of the car unless the Fourth Amendment permits a warrantless seizure of the car and the denial of its use to anyone until a warrant is secured." *Id.*

51. 403 U.S. 443 (1971).

52. *Id.* at 463.

53. *Id.* at 447-48.

54. *Id.* at 448.

on the failure of the trial court to suppress the evidence discovered in the search of his car.[55]

The Court ruled that the exigency rationale justifying a *Carroll* search did not support an immediate search of the defendant's car.[56] There was "no alerted criminal bent on flight, no fleeting opportunity on an open highway after a hazardous chase, no contraband or stolen goods or weapons, no confederates waiting to move the evidence, not even the inconvenience of a special police detail to guard the immobilized automobile."[57] The Court held that because an immediate search would have been unconstitutional, the *Chambers* extension was not applicable. Hence, the rule to arise from *Chambers* became: "[I]f the police have probable cause to justify a warrantless seizure of an automobile on a public roadway, they may conduct either an immediate or a delayed search of the vehicle."[58]

With the exigency rationale for the automobile warrant exception firmly established in *Carroll* and *Chambers*, and refined by *Coolidge*, the Court began to shape a second rationale for automobile searches. Beginning with *Cardwell v. Lewis*,[59] the Court reasoned that the exception is also justified because of a lower expectation of privacy in automobiles.[60] In *Cardwell*, as in *Coolidge*, the police arrested the defendant and impounded his car.[61] Unlike *Coolidge*, the car was towed from a public lot.[62] The "search" by the police was limited to the exterior of the car.[63]

Justice Blackmun, writing for a four Justice plurality, established the second rationale by simply concluding that "[o]ne has a lesser expectation of privacy in a motor vehicle because its function is transportation and it seldom

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55. *Id.*

56. *Id.* at 462.

57. *Id.*

58. *Acevedo*, 111 S. Ct. at 1986.

59. 417 U.S. 583 (1974). This was the first use of this rationale by a majority of the Court; however, a concurring opinion written by Justice Powell a year prior to *Cardwell* stated that the search of an automobile is "far less intrusive" than that of a building. Almeida-Sanchez v. United States, 413 U.S. 266, 279 (1973).

60. *Cardwell*, 417 U.S. at 590. As to Fourth Amendment searches in general, the Court has held that "[w]hat a person knowingly exposes to the public, even in his own home or office, is not subject to Fourth Amendment protection." Katz v. United States, 389 U.S. 347, 351 (1967).

61. *Cardwell*, 417 U.S. at 587-88. The defendant had submitted to a police request to appear at the police station. *Id.* at 587.

62. *Id.* at 593.

63. *Id.* at 591. The search consisted of an examination of the car's tire tread and a taking of paint scrapings. *Id.* The police were investigating a murder that involved contact between two vehicles—one belonging to the victim, the other attributed to the suspect. *Id.* at 586.

serves as one's residence or as the repository of personal effects."[64] Taking into consideration the limited nature of the search and the place from where the car was removed, the Court held that the warrantless search was not unreasonable under the Fourth Amendment.[65] The Court noted that the issue here was distinct from cases involving the search of a car's interior.[66]

In *United States v. Chadwick*,[67] the Court delineated the rationales of the automobile warrant exception when it refused to expand the exception to include movable containers.[68] In *Chadwick*, federal agents had probable cause to believe a footlocker contained narcotics.[69] The footlocker was placed in the trunk of defendant's car, and the agents arrested defendant Chadwick.[70] A warrantless search of the footlocker was conducted at the federal building an hour and a half later.[71] The search revealed large amounts of marijuana.[72]

Indicted for possession of marijuana with intent to distribute and for conspiracy,[73] the defendants successfully moved for suppression of the marijuana found in the footlocker.[74] The Court of Appeal for the First Circuit affirmed the suppression.[75] The appellate court acknowledged that the exigency due to the movability rationale logically encompassed a portable container, yet declined to broaden the exception without explicit justification from the Supreme Court.[76]

On appeal to the Supreme Court, the government petitioned the Court to expand the warrant exception to include containers such as the footlocker.[77] The Court responded: "The answer lies in the diminished expectations of

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64. *Id.* at 590.

65. *Id.* at 592.

66. *Id.* at 592 n.8.

67. 433 U.S. 1 (1977).

68. *Id.* at 12.

69. The probable cause was based on several factors: The footlocker was leaking talcum powder, a substance often used to conceal the smell of narcotics; the footlocker was unusually heavy; and a police dog trained to detect narcotics had indicated that the footlocker contained a controlled substance. *Id.* at 3, 4.

70. *Id.* at 4. Two people assisting Chadwick with the footlocker were also arrested. *Id.*

71. *Id.*

72. *Id.* at 4.

73. Possession of marihuana with intent to distribute is in violation of 21 U.S.C. § 841(a)(1) (1988). The conspiracy count was a violation of 21 U.S.C. § 846 (1988).

74. *Chadwick*, 433 U.S. at 5.

75. United States v. Chadwick, 532 F.2d 773, 782 (1st Cir. 1976).

76. *Id.* at 781.

77. *Id.* at 11-12.

privacy which surrounds the automobile . . . . The factors which diminish the privacy aspects of an automobile do not apply to the [defendants'] footlocker."[78]

The Court further explained that the footlocker's mobility does not provide justification for expansion of the warrant exception under the exigency rationale.[79] Consequently, because the automobile exception was inapplicable, and expansion of the exception was unjustified, the warrantless search was unreasonable under the Fourth Amendment.[80]

In *Arkansas v. Sanders*,[81] the Court held that where police have probable cause to believe a suitcase contains contraband,[82] a warrantless search of the suitcase, when found in the trunk of a taxi stopped on a public road, does not fall within the automobile warrant exception.[83] The Court framed the issue here as "whether the warrantless search of respondent's suitcase falls on the *Chadwick* or the *Chambers-Carroll* side of the Fourth Amendment line."[84] If the search is governed by *Chadwick*, the police had the right to seize the luggage, but not to search it prior to obtaining a warrant.[85] If the search is viewed simply as an automobile search, however, then it is governed by *Carroll* and *Chambers*, which permit such warrantless searches.[86]

In determining what type of search was involved, the Court evaluated the facts under both rationales.[87] As to the exigency rationale, the Court ruled

78. *Chadwick*, 433 U.S. at 12-13.

79. *Id.* at 13.

80. *Id.* at 15-16.

81. 442 U.S. 753 (1979).

82. *Id.* at 761. Probable cause was based on a series of events. In April of 1976, a reliable informant told Little Rock, Arkansas police officers that Lonnie James Sanders was to arrive at the city's airport that afternoon, and that he would be carrying a green suitcase containing marijuana. *Id.* at 755. Using information provided by the informant, the officers located Sanders. *Id.* The officers observed Sanders meet a man later identified as David Rambo, and then pick up a green suitcase from the baggage claim. *Id.* Sanders gave the suitcase to Rambo, and then went to a taxi. *Id.* Rambo joined Sanders a few minutes later, after depositing the suitcase in the trunk of the taxi. *Id.*

83. *Id.* at 763.

84. *Id.* at 757. Sanders acknowledged that the police acted within the confines of the Fourth Amendment when they stopped the taxi and seized the suitcase. *Id.* at 761-62. This apparently includes the defendant's stipulation that the officers had probable cause; therefore, under *Chambers* these acts were constitutional.

85. *Id.* at 762.

86. *Id.* at 761-62. *See supra* notes 29-49 accompanying text.

87. *Id.* at 763-65.

that the degree of exigency must be evaluated immediately prior to the search.[88] In the facts before the Court here, the suitcase had no mobility after the taxi had been stopped, therefore, no exigency existed, and the rationale is inapplicable.[89]

As to the privacy rationale, the Court noted that a suitcase "serve[s] as a repository for personal items" and that such a purpose is not altered by placement of the suitcase into an automobile.[90] Consequently, the privacy expectations held in a suitcase placed in an automobile do not parallel the privacy expectations held in an automobile.[91] The State's interpretation of the automobile warrant exception (as encompassing a personal container found in an automobile) was found to lack justification under both rationales.[92] Consequently, because the automobile exception was inapplicable, the warrantless search was unreasonable under the Fourth Amendment.

In *United States v. Ross*,[93] the Court held that the permissible scope of an automobile search under the warrant requirement exception is identical to the scope authorized by a warrant, had one been obtained.[94] In *Ross*, police had probable cause to search defendant's entire automobile.[95] A search of the automobile's trunk, and of a brown paper bag found therein, revealed

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88. *Id.* at 763.

89. *Id.*

90. *Id.* at 764. The Court noted that not all containers found in automobiles "will deserve the full protection of the Fourth Amendment." *Id.* at 764 n.13. Those that convey their contents by way of the container itself hold no privacy expectation. *Id.*

91. *Id.* at 764-65.

92. *Id.* at 765.

93. 456 U.S. 798 (1982).

94. *Id.* at 825. This issue had been addressed the previous term in Robbins v. California, 453 U.S. 420 (1981). The parties in *Robbins*, however, did not adequately address the issue. *Id.* at 817. Additionally, *Robbins* did not produce a majority opinion. *Id.* at 815. Therefore, *Ross* was the first definitive word from the Court on this issue. *Ross*, 456 U.S. at 824.

95. *Id.* at 817. Probable cause to search arose from the following series of events. In November of 1978, an informant contacted Detective Marcum of the District of Columbia Police Department and told him that someone known as "Bandit" had been selling narcotics out of the trunk of his automobile. *Id.* at 800. Marcum and two other officers drove to the location provided by the informant, and eventually found the car described by the informant. *Id.* Driving the car was Albert Ross, who police had learned through a computer check was the registered owner of the car and used the alias "Bandit." *Id.* The officers stopped the car, asked Ross to get out, and searched him. *Id.* at 801. Meanwhile, one of the officers found a bullet on the front seat of the car. *Id.* This led to a search of the glove compartment, where a gun was found. *Id.*

contraband.[96] Ross was charged and convicted of possession of heroin with intent to distribute.[97] After Ross' conviction was reversed on appeal,[98] the Supreme Court granted the government's petition for certiorari.[99]

The Court first pointed out that in both *Chadwick* and *Sanders*, the officers did not have probable cause to search the vehicle involved.[100] In both cases, probable cause existed only for the container at issue.[101] The Court then framed the issue in *Ross* as distinct from *Sanders* and *Chadwick*.[102] That is, when officers have probable cause to search the entire vehicle, may that search invade closed containers inside the vehicle?[103]

After tracing the history of the automobile warrant exception,[104] the Court concluded that the scope of a search under the exception is identical to the scope of a warrant authorized search.[105] When a valid warrant has been obtained, it is permissible to search anywhere the object of the search may be found.[106] Therefore, the Court reasoned, officers acting under the automobile warrant exception may search anywhere in the vehicle that the object of the search may be found, regardless of whether additional entry into containers within the automobile is required.[107]

The Court pointed out that *Sanders* and *Chadwick* dealt only with circumstances involving probable cause to search a container in a car, whereas *Ross* dealt only with circumstances involving probable cause to search the car itself.[108] Therefore, the constitutional status of containers in automobiles for which the police lack probable cause to search was unaffected by *Ross*.[109]

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96. *Id.*

97. *Id.* Possession of heroin with intent to distribute is in violation of 21 U.S.C. § 841(a) (1988).

98. United States v. Ross, 655 F.2d 1159 (D.C. Cir. 1981).

99. 454 U.S. 891 (1981).

100. *Ross*, 456 U.S. at 814.

101. *Id. See supra* notes 69 & 82 and accompanying text.

102. *Ross*, 456 U.S. at 817.

103. *Id.* at 817.

104. *Id.* at 804-20. The Court seemed to place great weight in the fact that the case creating the exception, Carroll v. United States, involved the highly intrusive act of ripping open a car seat to find the contraband. *Id.* at 804-05.

105. *Id.* at 823.

106. *Id.* at 820-21.

107. *Id.* at 825.

108. *Id.* at 817.

109. *Acevedo*, 111 S. Ct. at 1987, 1988, 1998.

III. INSTANT DECISION

A. Justice Blackmun's Majority

Justice Blackmun wrote the opinion of the Court, joined by Chief Justice Rehnquist, Justice O'Connor, Justice Kennedy, and Justice Souter.[110] After tracing the same line of cases discussed above, the Court stated the rule as it stood following *Ross*:[110] "[I]n a *Ross* situation [(probable cause to search the car)], the police could conduct a reasonable search under the Fourth Amendment without obtaining a warrant, whereas in a *Sanders* situation [(probable cause existing only to search a container)], the police had to obtain a warrant before they searched."[111] The Court then framed the issue of *Acevedo* as whether this distinction is supported by the requirements of the Fourth Amendment.[112]

The Court held that it is not.[113] In reaching this conclusion, the Court asserted that the rule derived from the *Sanders* side of the formulation was simply not working.[114] The Court put forth three main arguments to support this conclusion.[115]

First, the Court argued that the *Sanders* rule does not protect privacy interests, and is therefore an unjustified impediment of law enforcement.[116] The majority asserted that the *Sanders* rule actually causes unnecessary privacy intrusions.[117] Starting with the premise that it is often unclear whether probable cause exits to search the entire automobile, or merely to search a container, the Court concluded that this ambiguity would lead to greater privacy intrusions by the state.[118]

Justice Blackmun reasoned that police officers with probable cause only as to a container will expand their search to the entire automobile "in order to establish the general probable cause required by *Ross*."[119] This reasoning apparently operates under the assumption that the officer will feel that an expansion of the search will cause the search to be viewed as one in which

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110. *Id.* at 1985-87.

111. *Id.* at 1987.

112. *Id.* at 1988. The Court stated: "[W]hether the Fourth Amendment requires the police to obtain a warrant to open the sack in a movable vehicle simply because they lack probable cause to search the entire car." *Id.*

113. *Id.* at 1988.

114. *Id.* at 1988-91.

115. *Id.*

116. *Id.* at 1988.

117. *Id.*

118. *Id.*

119. *Id.*

probable cause existed to the entire automobile.[120] If the officer is successful in causing this to occur, then the search is interpreted under *Ross* and the warrantless entry into containers is constitutional.[121] Thus, a rule is promulgated "that requires law enforcement officers to conduct a more intrusive search in order to justify a less intrusive one."[122] The Court did not wish to promulgate such a rule.[123]

In addition, the Court determined that any privacy interests protected by *Sanders* are slight.[124] The Court provided three rationales for determining that *Sanders* failed to protect privacy interests: (1) Because the container may be seized and then opened upon issuance of a warrant, the container will usually be opened anyway, consequently, no privacy interest is protected; (2) Police can often search containers as incident to a lawful arrest, therefore, in such a situation, there is no privacy interest protected; and (3) The opening of a container is less of a privacy invasion than that perpetrated in *Carroll v. United States*, where the Court, in creating the automobile warrant exception, found that warrantless intrusion to be reasonable.[125]

Second, the Court argued that the prevailing rule had only served to confuse the courts.[126] The Court cited its frequent return to this issue to illustrate the constant need for clarification due to confusion in lower courts.[127] Critical commentaries were cited for their position that this is an unsettled and ambiguous area of law.[128] In addition, the majority asserted that the *Chadwick-Sanders* line has resulted in the confusing anomaly "that the more likely the police are to discover drugs in a container, the less authority they have to search it."[129]

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120. The Court uses the following language: "If the police know that they may open a bag only if they are actually searching the entire car, they may search more extensively . . . ." *Id.*

121. *See supra* notes 106-08 and accompanying text.

122. *Acevedo*, 111 S. Ct. at 1989. Justice Blackmun pointed to United States v. Johns, 469 U.S. 478 (1985), where the Court ruled that although the warrantless search was limited to containers, the search was justified under *Ross* because the officers had probable cause as to the entire vehicle and therefore *could* have searched the entire vehicle had they desired. *Acevedo*, 111 S. Ct. at 1988-89. This directly contradicts Justice Blackmun's fear of expanded searches to justify limited searches. *See id.* at 2001 n.9.

123. *Id.* at 1989.

124. *Id.*

125. *Id.*

126. *Id.*

127. *Id.* at 1989-91.

128. *Id.* at 1989.

129. *Id.* at 1990. This conclusion is apparently based on the hypothetical situations of the police having probable cause to search the entire vehicle (presumably

Third, the Court asserted that law enforcement has been confused because when an automobile is involved, an officer with probable cause must first decide which rule applies before he can proceed with a search.[130] The Court felt that such a rule did not provide the kind of clear guidance to law enforcement that sound policy demands.[131]

The Court then proceeded to set forth the new rule: "The police may search an automobile and the containers within it where they have probable cause to believe contraband or evidence is contained."[132] The Court stated that this rule does not expand *Carroll*, but merely determines that *Carroll* is applicable to all automobile searches.[133]

B. Justice Scalia's Concurrence

Justice Scalia joined in the judgment of the Court, but not in its opinion.[134] He agreed with the dissent that the result reached by the majority was anomalous,[135] yet felt the Court was at least moving in the correct direction.[136]

For Scalia, the key to the issue was that the Fourth Amendment did not proscribe warrantless searches, but instead prohibits unreasonable searches.[137] He acknowledged that it is conceivable that the reasonableness requirement does mandate issuance of a warrant prior to a search.[138] Justice Scalia, however, viewed the Court's present stance on the Fourth Amendment as a mass of inconsistencies caused by a general warrant requirement "so riddled with exceptions that it [is] basically unrecognizable."[139]

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with little likelihood that a particular container will possess drugs). In that situation they may search the container. Yet if the police have probable cause to search a particular container (and presumably not the entire vehicle), then they may not search the container. *See id.* at 2000.

130. *Id.* at 1989-90.

131. *Id.* at 1990.

132. *Id.* at 1991.

133. *Id.* at 1991.

134. *Id.* at 1992.

135. Specifically, Justice Scalia felt "that it is anomalous for a briefcase to be protected by the 'general requirement' of a prior warrant when it is being carried along the street, but for that same briefcase to become unprotected as soon as it is carried into an automobile." *Id.*

136. *Id.*

137. *Id.* at 1992.

138. *Id.*

139. *Id.*

Therefore, Justice Scalia asserted that the Court must return to the basic reasonableness requirement when evaluating Fourth Amendment searches.[140] Under this analysis, Justice Scalia would hold that when an officer has probable cause to believe that a container located outside of a privately owned building "contains contraband, and when it in fact does contain contraband, [it] is not one of those Fourth Amendment searches whose reasonableness depends on a warrant."[141] Accordingly, the search in *Acevedo* was reasonable, and the California Court of Appeal should be reversed.[142]

C. Justice Stevens' Dissent

Justice Stevens, joined by Justice Marshall and in part by Justice White, dissented.[143] Justice Stevens prefaced his dissent by asserting that the warrant requirement is well-grounded both in this country's history, and in "sound policy judgment."[144] He then traced the same cases that the majority and this Note analyze.[145] From this foundation, Justice Stevens concluded that

> [The Court] recognized in *Ross* that *Chadwick* and *Sanders* had not created a special rule for container searches, but rather had merely applied the cardinal principle that warrantless searches are per se unreasonable unless justified by an exception to the general rule. *Ross* dealt with the scope of the automobile exception; *Chadwick* and *Sanders* were cases in which the exception simply did not apply.[146]

With this point established, Justice Stevens proceeded to attack the majority's reasoning. First, Justice Stevens asserted that there has been no "confusion" in this area of the law.[147] In support, he cites four cases (including the case at bar) decided by the Court since *Ross*, and concluded that each "were perfectly straightforward. . . ."[148] The majority, however,

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140. *Id.* at 1993.

141. *Id.* at 1994.

142. *Id.*

143. Justice White wrote a separate dissent: "Agreeing as I do with most of Justice Stevens opinion and with the result he reaches, I dissent and would affirm the judgment below." *Id.*

144. *Id.*

145. *Id.* at 1995-98.

146. *Id.* at 1998 (interior citations omitted).

147. *Id.* at 1998.

148. *Id.* at 1999. The four cases discussed by Justice Stevens, and the propositions he draws from them are as follows: Oklahoma v. Castleberry, 471 U.S. 146 (1985) (probable cause only as to container in car, container may be seized, but

addressed these cases and found that each case, in some fashion, demonstrated that this is a confused area of law.[149]

Justice Stevens also addressed the majority's claim that the prior cases have resulted in an anomaly.[150] Justice Stevens asserted that, even if such an anomaly can be contrived,[151] the majority has simply substituted one paradox for another.[152] He pointed out that under the majority's ruling, a briefcase that the police have probable cause to search is transformed from that which is not subject to a warrantless search, to that which is, simply by its insertion into an automobile.[153]

Second, Justice Stevens asserted that the prior cases have in fact afforded protection of privacy interests.[154] He noted that the majority's concern for expanded searches to justify limited searches[155] necessarily contemplated the evaluation of probable cause based not on the officer's knowledge at the search's inception, but on what the scope of the search later becomes.[156] As Justice Stevens pointed out, this type of "*post hoc* justification" cannot be used to establish the existence of probable cause.[157]

Justice Stevens also attacked the majority's use of the search incident to arrest warrant requirement exception as justification for expansion of the automobile warrant requirement exception.[158] He noted that in the case cited by the majority,[159] the justification for the warrantless search was based on a threat to the arresting officer's safety, not on the automobile

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not searched prior to obtaining warrant); United States v. Place, 462 U.S. 696 (1983) (detention of luggage unreasonable due to length of time detained; *Ross* did not modify *Sanders*); United States v. Johns, 469 U.S. 478 (1985); *see supra* note 122; People v. Acevedo, 365 Cal. Rpt. 23 (Cal. Ct. App. 1989) (California court of appeal ruled that probable cause as to bag in car means bag can be seized, but not searched without warrant).

149. *Acevedo*, 111 S. Ct. at 1988-89, 1990.

150. *Id.* at 2000. *See id.* at 1900; *see also supra* note 129 and accompanying text.

151. Justice Stevens believes the majority's logic is based on the "flawed premise that the degree to which the police are likely to discover contraband is correlated with their authority to search *without a warrant*." *Id.* at 2000 (emphasis in original).

152. *Id.* at 2000-01.

153. *Id.* at 2001. *See id.* at 1992.

154. *Id.* at 2001.

155. *Id.* at 1989. *See supra* notes 120-24 and accompanying text.

156. *Id.* at 2001. *See id.* at 1999 n.9.

157. *Id.*

158. *Id. See id.* at 1989; *see also supra* note 125 and accompanying text.

159. New York v. Belton, 453 U.S. 454 (1981).

exception.[160] Consequently, Justice Stevens asserted, such a case is inapplicable to the case at bar.[161]

Third, Justice Stevens criticized the majority's contention that prior cases have impeded law enforcement.[162] After stating that the majority provided no authority for its conclusion, he contended that even if an impediment is created, such is the case for all individual rights protected by the Bill of Rights.[163]

The dissent closes by asserting that the true significance of the majority's ruling is not found in the particular result reached on these facts, but is in the "Court's willingness to inflict it without even a colorable basis for its rejection of prior law."[164]

IV. COMMENT

The instant decision provides a bright-line rule: Probable cause to search a container, in addition to its location within an automobile, is justification for a warrantless search of the container. Setting forth clear guidelines aides effective law enforcement.[165] The Court's method of establishing this rule, however, led the Court to contradict much of the policy and rationale supporting the automobile exception and Fourth Amendment law in general.

As mentioned above, the *Sanders* and *Chadwick* decisions had nothing to do with the automobile exception to the warrant requirement, aside from the fact that the situations presented in them were held to be outside the realm of the automobile exception.[166] In *Acevedo*, as in *Sanders* and *Chadwick*, the connection between the automobile involved and the container was largely coincidental.[167] Unlike the *Sanders* and *Chadwick* Courts though, the *Acevedo* Court chose to give significance to this coincidence.

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160. *Id.* at 460-61; *Acevedo*, 111 S. Ct. at 2001.

161. *Acevedo*, 111 S. Ct. at 2001.

162. *Id.* at 2001-02.

163. *Id.* at 2002-03.

164. *Id.* at 2003.

165. The Court has acknowledged the benefit of "clear and unequivocal" guidelines for law enforcement in reference to Fifth and Sixth Amendment law. *See* Minnick v. Mississippi, 111 S. Ct. 486, 490 (1990) (quoting Arizona v. Roberson, 486 U.S. 675, 682 (1988)). The *Acevedo* majority quotes this language prior to asserting that the *Chadwick-Sanders* rule is the "antithesis" of such a policy. *Acevedo*, 111 S. Ct. at 1990.

166. *See supra* notes 68 & 83 and accompanying text; *see also Acevedo*, 111 S. Ct. at 1988.

167. *See supra* notes 17-19, 69-70, 83 and accompanying text.

Consequently, *Acevedo*, unlike its predecessors in this area of law, is exclusively neither a container case nor an automobile case. It is both. In meshing these previously separated concepts, the Court did more than overrule the *Chadwick-Sanders* rule,[168] it ignored the two rationales that provided the foundation for the automobile warrant exception.

A. The Exigency Rationale

Since 1925, the Court has recognized the exigency rationale as providing the original justification for the automobile warrant exception.[169] In *Acevedo*, however, the Court expanded the automobile exception with no justification from the exigency rationale. To follow the majority's bypass of the exigency rationale, one must first retreat to the *Ross* decision.

The *Ross* Court laid the foundation for this expansion by placing containers within the realm of the automobile exception.[170] Because the Court reached this conclusion by equating the automobile exception with a search under a valid warrant, there was no need to differentiate between the automobile and the containers within the automobile.[171] Consequently, the search of the container could logically be seen as encompassed by the exigency implicit in an automobile. The *Acevedo* Court, however, pointed to this consequence of a *Ross* search as justification for a warrantless search of an automobile that police do not have probable cause to search—a situation not applicable to the *Ross* decision.[172]

The *Acevedo* Court noted "this Court in *Ross* took the critical step of saying that closed containers in cars could be searched without a warrant because of their presence within the automobile."[173] The Court then discarded as unworkable the distinction between probable cause to search a car and probable cause to search a container in a car.[174] With this distinction brushed aside, the *Ross* holding now becomes the justification for the *Acevedo* search.[175]

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168. *Acevedo*, 111 S. Ct. at 1991.

169. *See Carroll*, 267 U.S. at 153; *Chambers*, 399 U.S. at 51; *Coolidge*, 403 U.S. at 462; *Chadwick*, 433 U.S. at 13; *Sanders*, 442 U.S. at 763; *Ross*, 456 U.S. at 805-07. *See also supra* notes 39, 47, 56-57, 79, 87-88 and accompanying text.

170. *Ross*, 456 U.S. at 823-24.

171. *Id.* at 824.

172. *See infra* note 183 and accompanying text.

173. *Acevedo*, 111 S. Ct. at 1987.

174. *Id.* at 1988.

175. *Id.* at 1991.

Lost in the Court's abandonment of this critical distinction was any justification for an *Acevedo* search under the exigency rationale.[176] Still, the Court purported to hold in *Acevedo* that *Carroll*, the origin of the exigency rationale, "provid[es] one rule to govern all automobile searches."[177] Basically, the Court extracted the "rules" it liked from *Ross* and *Carroll* while conveniently leaving behind the justification for those rules.

B. The Privacy Rationale

Since the 1974 *Cardwell* decision, the Court has focused much of the reasoning of the automobile warrant exception cases on the rationale that persons have a "lesser" expectation of privacy in cars.[178] Until *Ross*, the Court consistently held that the lowered expectation of privacy found in the automobile is not applicable to movable containers.[179] Even the *Ross* court distinguished, and thus left undisturbed, the *Chadwick-Sanders* rule applicable to situations where the police have probable cause limited to the search of a container.[180]

The *Acevedo* Court, however, placed the *Chadwick-Sanders* situation of *Acevedo* within the realm of the automobile exception.[181] This automatically justifies an *Acevedo* search under this rationale because the automobile exception, prior to this expansion, is clearly supported by the "lesser" privacy expectation rationale. However, because this rationale for the automobile exception is based, coincidentally enough, on the automobile, it offers no justification for a rule that in reality involves the privacy expectation one holds in a container.[182]

With no support to be found in the two rationales that shaped every prior case in this area of Fourth Amendment law, the majority turned to policy arguments to justify its conclusion.

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176. The officers clearly had the right to seize the bag in *Acevedo*, therefore, no exigency existed.

177. *Id.* at 1991.

178. *Cardwell*, 417 U.S. at 590; *See Chadwick*, 433 U.S. at 12-13; *Sanders*, 442 U.S. at 764-65; *Ross*, 456 U.S. at 823. *See also supra* notes 60, 64, 78-79, 90-91 and accompanying text.

179. *See Chadwick*, 433 U.S. at 12-13; *Sanders*, 442 U.S. at 764-65; *see also supra* notes 78-79, 90-91 and accompanying text.

180. *Ross*, 456 U.S. at 817.

181. *See supra* notes 171 & 178 and accompanying text.

182. It could be argued that, more accurately, *Acevedo* involves the privacy expectation one holds in a container located in an automobile, but to require such a specification would be to assert that one's privacy expectation in a container changes when it is placed in a car—an assertion unsupported by logic or precedent.

C. *Majority's Policy Arguments*

The *Acevedo* Court believed the restriction on the state due to the *Chadwick-Sanders* rulings was unjustified because it was providing "minimal" protection of privacy while burdening law enforcement.[183] The Court contended law enforcement will be impeded because police officers will become confused during vehicle searches.[184] The Court supported the assertion that privacy protection has been minimal under the following three theories.

In the first, the majority correctly stated that prior to this case a container with which officers possess probable cause to search may be seized but not opened.[185] These cases "routinely" result in the issuance of a warrant and the independent opening.[186] Consequently, the Court asserted, there is no protection of privacy interests.[187] Basically, the Court stated that because officers usually only seize containers with probable cause, they should be allowed to search them also.

This circumvention of a neutral magistrate based on the probability of a correct end result is clearly not what the Court had in mind when it held that "searches conducted outside the judicial process, without prior approval by judge or magistrate are *per se* unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions."[188] The probability of constitutionality is not such an exception.

Further, the majority's reliance on the assumption that law enforcement officers will usually have probable cause in an *Acevedo* situation is in direct conflict with controlling Fourth Amendment precedent. In the often cited *Johnson v. United States*,[189] Justice Jackson held:

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183. *Acevedo*, 111 S. Ct. at 1989.

184. *Id.* at 1989-90. The Court states: "For example, when an officer, who has developed probable cause to believe that a *vehicle* contains drugs, begins to search the vehicle and immediately discovers a closed container, which rule applies?" *Id.* (emphasis added) Obviously, because the officer has probable cause to search the *vehicle*, *Ross* applies, and the entire automobile may be searched as if a warrant had been obtained. *Ross*, 456 U.S. at 823-24.

185. *Acevedo*, 111 S. Ct. at 1989.

186. *Id.*

187. *Id.*

188. *Katz*, 389 U.S. at 357. *See supra* note 28.

189. 333 U.S. 10 (1948). This portion of *Johnson* was cited by the dissent in *Acevedo*. *Acevedo*, 111 S. Ct. at 1995. This quote has been set forth as the reason for the warrant requirement in a leading treatise. CHARLES H. WHITEBREAD, CHRISTOPHER SLOBOGIN, CRIMINAL PROCEDURE, AN ANALYSIS OF CASES AND CONCEPTS 144 (2d ed. 1986) (unaltered by 1990 supplement). Justice Powell, writing for a unanimous Court, referred to the quote as the "classic statement" of Fourth Amend-

> The point of the Fourth Amendment, which is often not grasped by zealous officers, is not that it denies law enforcement the support of the usual inferences which reasonable men draw from evidence. Its protection consists in requiring that those inferences be drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of fettering out crime.[190]

Zealous Justices might well be grouped with "zealous officers" as those not grasping the point of the Fourth Amendment.

Second, the Court asserts that because officers may often search a container located in a car incident to an arrest, there is minimal protection of privacy by the *Sanders* rule.[191] As the dissent pointed out, the justification for warrantless searches incident to arrest stems from the policy that officers must be allowed to secure the immediate environment for their own safety.[192] When applicable, this is clearly a sound justification for an exception to the warrant requirement. The assertion, however, that the "subject to arrest" exception provides a basis for expansion of the automobile exception, regardless of whether the officer is in jeopardy, is not consistent with the policies behind either exception.

If the Court's point is that these searches will occur under the arrest exception anyway and therefore there is no privacy interest protected, then there is no need to overrule *Sanders*, for the arrest exception must already encompass most *Sanders* situations. But that is not the case because there are endless situations imaginable where the arrest exception will not apply, and *Sanders* would have controlled and offered significant protection of privacy. *Acevedo* is one such situation.[193]

Third, the Court compared the privacy violation in *Carroll* with that of *Acevedo* and held that "[i]f destroying the interior of an automobile is not unreasonable, we cannot conclude that looking inside a closed container is."[194] This comparison does not logically support the conclusion that the *Chadwick-Sanders* rule afforded "minimal" protection of privacy. Plainly stated, the contention is this: Because an automobile may be searched extensively under *Carroll*, the separate *Chadwick-Sanders* rule prohibiting the search of containers offers "minimal" privacy protection. The *Chadwick-*

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ment policy. Gerstein v. Pugh, 420 U.S. 103, 112 (1975).

190. *Johnson*, 333 U.S. at 13-14.

191. *Acevedo*, 111 S. Ct. at 1989.

192. *See Belton*, 453 U.S. at 460-61; *see also supra* notes 161-62 and accompanying text.

193. The arrest exception to the warrant requirement would logically never be applicable anytime the search of an automobile's trunk is involved.

194. *Acevedo*, 111 S. Ct. at 1989.

Sanders rule offers privacy protection to containers—not to the upholstering of automobiles. Yet the Court suggests that because it does not offer such protection, it should be struck down as ineffective.[195] It simply does not follow that the allowable scope of an automobile search highlights minimal privacy protection afforded by a rule prohibiting the search of containers.

V. CONCLUSION

Apparently, the *Acevedo* Court wanted to reach the result that the warrantless search of a properly seized container located in an automobile is constitutional. It did accomplish this; however, it should have done so directly. Instead, the Court broadens a previously "well-delineated" exception to the warrant requirement with no justification from the two rationales supporting that exception. In disregarding these rationales the Court has destroyed the foundation on which this area of Fourth Amendment law was built. Beyond the complaint that the Court rejected precedent "without even a colorable basis"[196] for doing so, there is the realization that the Court now has no guidance for the future in this area of law.

The Court would have reached a better result if it had left the inapplicable automobile exception out of this decision and dealt with the matter before it—the constitutionality of the warrantless search of a container subject to a valid seizure. The Court might have reached the same result while setting forth clear law for the future and leaving the automobile exception intact.

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195. *Id.* at 1989.
196. *Id.* at 2003 (Stevens, J., dissenting).