Denver Law Review

Volume 50 | Issue 2 Article 8

March 2021

Criminal Procedure - Stop and Frisk: Warrantless Car Searches - Adams v. Williams, 407 U.S. 143 (1972)

Frederick D. Lewis Jr.

COMMENT

CRIMINAL PROCEDURE — STOP AND FRISK: WARRANTLESS CAR SEARCHES — *Adams v. Williams*, 407 U.S. 143 (1972).

IN the predawn hours of October 30, 1966, a police officer on car patrol in a "high-crime area"[1] of Bridgeport, Connecticut, was approached by an "informant" who had supplied him information in the past.[2] This informant reported to the officer that an individual (later identified as Williams) sitting in a vehicle nearby was carrying narcotics and had a gun at his waist.[3] With no further verification or corroboration, after making a radio call for assistance, the officer approached the vehicle. When Williams rolled down the window in response to the officer's request to open the door, the officer reached in and removed a loaded pistol from Williams' waistband.[4] Upon seizing the pistol the officer arrested Williams for unlawful possession of a handgun. Later, after other officers had arrived, a more thorough search was conducted of Williams' person and the car. This search turned up not only substantial quantities of heroin on his person and in his car, but also another pistol and a machete in the car.

Williams was subsequently charged and convicted of both the illegal possession of a handgun and of heroin, and, in 1968, on appeal to the Supreme Court of Connecticut, the conviction was affirmed.[5] Two years later, on petition for federal habeas corpus relief which had been denied in federal district court, the United States Court of Appeals for the Second Circuit denied Williams' petition and affirmed the conviction.[6] On

[1] Adams v. Williams, 407 U.S. 143, 144 (1972). This particularly graphic bit of imagery represents what was undoubtedly an important factor in the Court's consideration of the factual circumstances relevant to the case, especially as it relates to the Court's justification of the police officer's actions under the rationale of Terry v. Ohio, 392 U.S. 1 (1968). *See* p. 244 *infra*.

[2] 407 U.S. at 146.

[3] *Id.* at 144-45. There is evidence of some discrepancy in this version of how the police officer became aware of Williams' activities. In dissent, Circuit Judge Friendly noted that in the first hearing on a motion to suppress in the trial court, the officer indicated that he approached Williams in response to a police signal telling him to go to Williams' car; in a second hearing on the motion, however, the officer's testimony recounted the unnamed informant version here outlined by the Court. Williams v. Adams, 436 F.2d 30, 39 n.9 (2d Cir. 1970) (dissent).

[4] It is acknowledged that the pistol was not visible to the officer from outside the car. 407 U.S. at 145.

[5] Connecticut v. Williams, 157 Conn. 114, 249 A.2d 245 (1968).

[6] Williams v. Adams, 436 F.2d 30 (2d Cir. 1970).

rehearing, however, the circuit court reversed itself and set the conviction aside.[7] In June of 1972, on certiorari to the court of appeals, the United States Supreme Court reversed the grant of habeas corpus relief and affirmed Williams' conviction.

INTRODUCTION

In affirming Williams' conviction, the Supreme Court, in an opinion delivered by Mr. Justice Rehnquist, justified its disposition of the case by ruling on two separate and distinct issues of law: First, it validated the search for and seizure of the pistol and Williams' subsequent arrest for illegal possession thereof under the rationale set forth in *Terry v. Ohio*;[8] second, it upheld the validity of the later search of Williams' person and of the car (after the arrest) and the seizure of items thereby found, reasoning that it was a "proper" search and seizure incident to a lawful arrest, citing *Brinegar v. United States*[9] and *Carroll v. United States* as authority.[10]

In order to treat these two distinct issues of the *Adams* decision, this comment is divided into two separate parts. The first part will set forth in some detail the reasoning and authority employed by the Court in its opinion; the second part will analyze the significance and possible ramifications of the Court's holdings.

I. THE *Adams* DECISION

A. *Stop and Frisk*

It is the first of the two above-mentioned issues with which the Court actually concerned itself and to which it dedicated all but the last few lines of its opinion. In dealing with the legality of the seizure of the pistol from Williams' waistband, the Court held that the doctrine enunciated in *Terry* was applicable to the facts of this case and that the initial search and seizure of the pistol, though based on less than probable cause for arrest, fell within the narrow limitations prescribed by *Terry* for a "limited intrusion" which is "reasonable" under the fourth amendment.[11]

The ruling in *Terry* announced the principle that certain limited invasions of an individual's fourth amendment right to be secure from unreasonable searches and seizures are not

---

[7] Williams v. Adams, 441 F.2d 394 (2d Cir. 1971).
[8] 392 U.S. 1 (1968).
[9] 338 U.S. 160 (1949), *cited in* 407 U.S. at 149.
[10] 267 U.S. 132 (1925), *cited in* 407 U.S. at 149.
[11] 407 U.S. at 148.

per se unreasonable nor unconstitutional when, depending on the circumstances at the time,[12] they are based upon an articulable suspicion of criminal activity (though less than probable cause) which affords a police officer the reasonable belief that a crime is being or is about to be committed and that the person with whom the officer is dealing is presently armed and dangerous.[13] Under such circumstances a police officer has the right to stop and frisk the subject — to detain the person temporarily and conduct a limited "pat down" search for weapons — in order to investigate the activity of which he is suspicious.

It was the contention of the respondent in *Adams*, and of dissenting Justices Brennan, Marshall, and, to a limited extent, Douglas,[14] that even under the standards of *Terry* the initial seizure of Williams' pistol was unreasonable under the fourth amendment; that an uncorroborated tip from an unnamed informant is not sufficient in itself, absent other grounds for suspicion, to justify the police officer's actions.[15]

The majority of the Court, however, clearly disagreed with this contention and found that such information, under the circumstances, was sufficient grounds upon which the officer could lawfully seize the gun[16] and that the gun was therefore properly admissible as evidence.[17] Having so concluded, the Court then reasoned that since the gun was found where the informant had indicated it would be, this tended to act as corroboration for the rest of the informant's tip and clearly afforded the officer the probable cause sufficient to arrest Williams lawfully for illegal possession of the gun.[18]

B. *Warrantless Car Search*

The second major issue resolved by the *Adams* Court in

[12] 392 U.S. at 29. *Accord*, Sibron v. New York, 392 U.S 40, 59 (1968), wherein the Court reaffirmed this aspect of the *Terry* ruling, holding that "[t]he constitutional validity of a warrantless search is pre-eminently the sort of question which can only be decided in the concrete factual context of the individual case."

[13] 392 U.S. at 26-27.

[14] Mr. Justice Douglas based his dissent primarily on second amendment grounds. 407 U.S. at 149-51.

[15] The dissents of Justices Brennan and Marshall clearly expostulate the view that such a tip from an unnamed informant under these circumstances lacked the credibility and reliability necessary to justify the reasonableness of the officer's action in seizing the pistol. 407 U.S. at 153-61.

[16] "Since we conclude that the policeman's actions here conformed to the standards this Court laid down in *Terry v. Ohio* . . . ." 407 U.S. at 144.

[17] *Id.* at 148.

[18] *Id.* The Court based this finding on the definition of probable cause to arrest set out in Beck v. Ohio, 379 U.S. 89, 91 (1964).

affirming Williams' conviction involved the validity of the subsequent search for and seizure of items found on Williams' person and in his car after the arrest. In ruling that these actions were valid as being incident to a lawful arrest, the Court, in contrast to its detailed consideration of the first issue, paid almost no attention to this element of the decision. No argument was set forth in its behalf; nowhere in any of the dissenting opinions is the issue or its merits discussed. Clearly preoccupied with the question of *Terry's* application to the case at hand, the Court summarily disposed of the car search issue with the following language which is to be found in the last paragraph of the majority opinion and which represents the sum total of the Court's reported consideration of the matter:

> Under the circumstances surrounding Williams' possession of the gun seized by Sgt. Connolly, the arrest on the weapons charge was supported by probable cause, and the search of his person and of the car incident to that arrest was lawful. . . . The fruits of the search were therefore properly admitted at Williams' trial, and the Court of Appeals erred in reaching a contrary conclusion.[19]

II. THE *Adams* DECISION ANALYZED

The reasoning of the Court outlined above appears relatively straightforward; however, further analysis of specific aspects of the two major issues reveals developments in the law not apparent on the face of the *Adams* opinion. With respect to the issue of the initial stop and frisk, it will be shown in Section A how *Adams* has expanded or "put flesh to the bones"[20] of *Terry* (1) as it applies to uncorroborated informants' tips and (2) as it reflects Mr. Justice Harlan's argument in *Terry* that the doctrine authorizes forcible stops and that the concomitant right to frisk for weapons follows automatically thereafter, without any requirement that the officer first make reasonable inquiries.

Dealing with the second issue — the subsequent car search — Section B is likewise divided into two subsections. The first subsection will analyze the general area of warrantless car searches and demonstrate how the Court has developed two distinct and dissimilar rationales for constitutionally justifying such searches. The second subsection will point out not only how the *Adams* Court has apparently disregarded this distinction by citing the precedent for one rationale while couching its holding in the language of the other, but will also speculate as to the possible ramifications of this incongruity.

[19] 407 U.S. at 149.

[20] *Id.* at 153 (Marshall, J., dissenting).

A. *The Adams Expansion of the Terry Doctrine*

1. The Role of the Informer's Tip

It is made clear in *Adams* that the strict requirements of the rule established in *Aguilar v. Texas*,[21] and later clarified in *Spinelli v. United States*,[22] for determining the reliance officers may lawfully place on information from informants, is not applicable in *Adams*-type stop and frisk cases under the rationale of *Terry*. In exploring the rationale behind this new approach, it is to be noted, first, that both *Aguilar* and *Spinelli* dealt with the sufficiency of affidavits in support of a finding of probable cause for the issuance of a search warrant and an arrest warrant respectively, and hence were dealing with *probable cause* requirements specifically and not the "narrowly drawn authority to permit a reasonable search"[23] under certain circumstances as was outlined in *Terry*.[24]

Specifically, the *Aguilar-Spinelli* "two-pronged test"[25] does not require that a finding of probable cause be based on direct personal observation of the affiant; it may be based upon hearsay information.[26] When such is the case, as with informants' tips, the affiant must reveal sufficient "underlying circumstances" from which a magistrate could conclude that there are reasonable grounds for (1) the affiant's belief that the informant himself is reliable or credible and (2) the informant's conclusion that what he said is true; *i.e.*, that there is some basis upon which the informant founded his information.[27]

Even though the Court in *Adams* recognized that *Aguilar* and *Spinelli* established the general rule to be applied in informant-probable cause situations,[28] the *Adams* decision indicates that such requirements are not relevant to cases which are founded, under *Terry*, upon an "articulable suspicion *less than probable cause*."[29] The crucial point would seem to be that since stop and frisk intrusions themselves need not meet exacting probable cause standards to be "reasonable," there is no reason why such standards should be applied just because the officer happens to be acting on the basis of an informant's

[21] 378 U.S. 108 (1964).

[22] 393 U.S. 410 (1969).

[23] Terry v. Ohio, 392 U.S. 1, 27 (1968).

[24] *Id.* at 25-27.

[25] Spinelli v. United States, 393 U.S. 410, 413 (1969).

[26] Aguilar v. Texas, 378 U.S. 108, 114 (1964), *citing as authority for this proposition* Jones v. United States, 362 U.S. 257 (1960).

[27] Spinelli v. United States, 393 U.S. 410, 416 (1969).

[28] 407 U.S. at 147.

[29] Terry v. Ohio, 392 U.S. 1, 31 (1968) (emphasis added).

tip rather than on his own personal observation. The Court in *Adams* quite specifically adopted this position when it held that "[w]e reject respondent's argument that reasonable cause for a stop and frisk can only be based on the officer's personal observation, rather than on information supplied by another person."[30]

In refusing to apply the *Aguilar-Spinelli*: criteria to stop and frisk cases, the Court has now adopted the view, in apparent disregard of earlier lower court decisions on the matter,[31] that such tips and information merely have about them "enough indicia of reliability" to justify the particular intrusion.[32] Though the Court announced no clear objective criteria as to what shall constitute "enough indicia" (indicating that such determination must depend on the circumstances of a given case), it did indicate that some "tips" would not warrant the intrusion.[33] For the purpose of deciding the issue in *Adams*, however, it simply noted that the informant was known to the officer personally, had supplied him information in the past,[34] had come forward personally to give the information, and the tip was immediately verifiable at the scene. These circumstances were sufficient to meet this "indicia of reliability" test.[35]

It is quite apparent, moreover, that the Court in *Adams* has rejected any notion that *Terry* requires any direct police observation of the supposed unusual and suspicious conduct. *Adams* specifically stands for the proposition that tips from unnamed informants will suffice at least where the officer is in a position to verify the tip at the scene. Any language of the majority opinion in *Terry* to the contrary[36] would seem now to be only so much surplusage.

---

[30] 407 U.S. at 147.

[31] *See, e.g.*, Ballou v. Massachusetts, 403 F.2d 982 (1st Cir. 1968). The court there held that an anonymous phone tip to the police, when combined with specific facts known to the officers at the time and visual corroboration at the scene, afforded the police the reasonable suspicion sufficient to justify their actions under *Terry*. The *Ballou* court went on, however, to warn that (1) "such a trip must be linked to other facts known by the police," and (2) "the critical question is the accuracy of the tip, to be assured both by its specificity and capability of being substantially corroborated by observation." *Id.* at 986.

[32] 407 U.S. at 147.

[33] *Id.*

[34] Mr. Justice Marshall's dissent attacked this aspect of the decision by pointing out that the past information supplied by this informant was hardly of the type to clearly establish his reliability as a credible source of information and that even under *Terry* an officer cannot justify "an invasion of liberty" on the basis of "unreliable, unsubstantiated, conclusory hearsay." *Id.* at 156-59.

[35] *Id.* at 146.

[36] *See Terry* excerpt, p. 249 *infra*.

2. The Harlan View Prevails

The application of *Terry* in *Adams* is also noteworthy in that it gives a rather clear indication that it is the Harlan configuration of the *Terry* rule which will prevail, rather than that of Mr. Chief Justice Warren who wrote the majority opinion. The specific ruling of the majority in *Terry* was expressed as follows:

> We merely hold today that where a police officer *observes* unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot and that the persons with whom he is dealing may be armed and presently dangerous, where in the course of investigating this behavior *he identifies himself as a policeman and makes reasonable inquiries,* and where nothing in the initial stages of the encounter serves to dispel his reasonable fear for his own or others' safety, he is entitled for the protection of himself and others in the area to conduct a carefully limited search of the outer clothing of such persons in an attempt to discover weapons which might be used to assault him.[37]

Mr. Justice Harlan, however, in his concurring opinion, argued that this language left some crucial areas of the theory underlying *Terry* in doubt and that "a few gaps" needed to be filled in.[38] It was his contention that two things were left out of the majority opinion which are essential to the rule. He argued first that it is vital that the "articulable suspicion less than probable cause" which will justify a limited protective search carries with it, of necessity, the right "to make a forcible stop."[39] Second, the right to search for weapons in such situations "follows automatically" and immediately upon the stop,[40] and there is no reason why the officer should be required to "ask one question and take the risk that the answer might be a bullet."[41] Apparently, it was his concern that any requirement holding that officers must first make inquiries before frisking was one which posed a serious threat to such police activities.

It is apparent from *Adams* that Mr. Justice Harlan's views have prevailed on these two points. Not only did the *Adams* Court use the term "forcible stop" specifically and repeatedly in describing the police conduct in question,[42] but the description of the factual situation in the case in no way reveals any

[37] 392 U.S. at 30 (emphasis added).
[38] *Id.* at 31.
[39] *Id.* at 31-32.
[40] *Id.* at 34.
[41] *Id.* at 33.
[42] 407 U.S. at 146-47.

inquiries or questioning of Williams by the police officer (other than the "request" that he open the car door). The Court, moreover, did not even discuss the issue in the opinion and made no effort to deal with the absence of such interrogative endeavors by the officer. Only Mr. Justice Marshall brought up the question of such a requirement.[43] However, since his was one of the three dissenting opinions, it may be surmised that although the issue was perhaps in deliberation, it was felt by the majority of the Court to be of little consequence, or at least not a controlling consideration under *Terry*.

From these initial, rather cursory observations on the more obvious effects of the *Adams* decision upon the *Terry* doctrine, it is clear that this case will exert a telling influence on stop and frisk case law.[44] By extending *Terry* (at least apparently) to certain types of possessory offenses and by allowing unsubstantiated informants' tips to suffice as the basis upon which an officer may initiate, without further inquiry, a forcible stop and frisk, a significant expansion of *Terry* has been recognized.[45] Leaving this aspect of *Adams* aside, however, this comment now turns to a much subtler and perhaps more intriguing element of the decision — that dealing with a warrantless car search.

B. *Two Distinct Rationales for Warrantless Car Searches: Has Adams Disregarded the Distinction?*

1. Car Search Case Law — The Development of Search Incident and Probable Cause Rationales

Over the years, case law dealing with warrantless car searches has developed at least two different and distinct theories upon which such searches may be justified: searches incident to a lawful arrest, and searches which are based upon probable cause. Through a process of evolution and sophistication these two approaches have come to stand upon entirely separate grounds, each having certain limitations and qualifications not found in the other. This inquiry will turn first to the development of the "search incident" rationale.

---

[43] *Id.* at 157-61.

[44] For more lengthy and expilict analyses of the impact of *Adams* upon *Terry*, see Note, *The Predicates of Suspicion: Stop and Frisk on an Informant's Tip — Extending Terry to Possessory Offenses*, 49 N.D.L. REV. 127 (1972); Comment, *The Informant's Tip and Terry's "Reasonable Conclusion" — A Modified Standard*, 4 TEXAS TECH. L. REV. 167 (1972).

[45] *See generally* LaFave, *"Street Encounters" and the Constitution: Terry, Sibron, Peters, and Beyond*, 67 MICH. L. REV. 40 (1968); Note, *Stop and Frisk: The Issue Unresolved*, 49 J. URBAN L. 733 (1972).

a. *Search Incident to a Lawful Arrest*

In *Chimel v. California*,[46] the recent landmark decision which dealt with the "permissible scope under the Fourth Amendment of a search incident to a lawful arrest,"[47] the Supreme Court, in charting the grounds for its decision, supplied an enlightening retrospection of the development of the judicial treatment of warrantless searches incident to lawful arrests.

The Court in *Chimel* noted, first, that the concept of the legitimacy of warrantless searches incident to arrest started as dictum in the 1914 decision of *Weeks v. United States*[48] where the arresting officer was said to have a right to search the person of an arrestee.[49] The notion of such a lawful right was then expanded by an "embellishment of the *Weeks* statement"[50] in *Carroll v. United States*[51] in 1925. In dictum, the *Carroll* Court extended the scope of such a search beyond the person to the "places" which were "in his control."[52] The *Chimel* Court, more than 40 years later, noted, however, that *Carroll's* expansion of the doctrine "was far from a claim that the 'place' where one is arrested may be searched so long as the arrest is valid."[53]

In the same year as *Carroll*, in *Agnello v. United States*,[54] the *Carroll* language regarding the "places" which could be lawfully searched as incident to arrest was expanded to encompass the idea that such searches could extend to the place where the arrest was made "in order to find and seize things connected with the crime as its fruits or as the means by which it was committed, as well as weapons and other things to effect an escape from custody."[55] *Agnello* went on to hold that such a right, however, does not extend to other places "remote" from the scene of the arrest, and such searches could not be properly justified as "incident" to arrest.[56]

Following *Agnello* came a line of cases which further developed the idea that the real problem and limitation under search incident justification is the lawful scope of such searches.

[46] 395 U.S. 752 (1969).
[47] *Id.* at 753.
[48] 232 U.S. 383 (1914).
[49] *Id., as interpreted in* Chimel v. California, 395 U.S. 752, 755 (1969).
[50] *Id.*
[51] 267 U.S. 132 (1925).
[52] *Id.* at 158, *as construed in* Chimel v. California, 395 U.S. 752, 755 (1914).
[53] 395 U.S. at 756.
[54] 269 U.S. 20 (1925).
[55] *Id.* at 30.
[56] *Id.* at 31.

In 1927, *Marron v. United States*[57] upheld the seizure of items not enumerated in a search warrant because, since the search was made *after* the arrest of the petitioner (and therefore could be justified as a search incident to that arrest), the proper scope of such a search could then extend to the whole situs of the arrest and to anything which could be connected to the criminal enterprise for which the arrest was made.

Some years later, in *Go-Bart Importing Co. v. United States,*[58] and also in *United States v. Lefkowitz,*[59] the thrust of the *Marron* decision was blunted by the limitation that searches of the whole situs of the arrest could not involve a "general search or rummaging of the place," but must be restricted to items "visible and accessible and in the offender's immediate custody."[60]

According to the Court in *Chimel,* this limitation was "thrown to the winds"[61] with the ruling in *Harris v. United States*[62] which authorized the search of an entire four-room apartment as a proper search incident to an arrest. On the heels of *Harris,* however, came *Trupiano v. United States*[63] which severely limited the application of a search incident justification of the scope allowed in *Harris* to only those situations where the obtaining of a search warrant is impracticable. Specifically, the *Trupiano* decision held that something more "in the way of necessity"[64] than merely the existence of a lawful arrest was required to uphold such warrantless searches; if it was practicable to obtain a search warrant first, then even a search "incident" to an arrest could not proceed without it.

Trupiano, however, was short-lived, being overruled in 1950 by *United States v. Rabinowitz.*[65] In *Rabinowitz* the Court authorized a search incident to arrest much like that in *Harris.* In doing so, the Court held that it is the "reasonableness" of such searches, not the practicability of obtaining a warrant, which is the test.[66] Looking back to *Weeks* and *Carroll,* the Court founded this position on the idea that the *right* to search the person or places in his "immediate control"[67] is dependent

[57] 275 U.S. 192 (1927).
[58] 282 U.S. 344 (1931).
[59] 285 U.S. 452 (1932).
[60] 282 U.S. at 358.
[61] 395 U.S. at 757.
[62] 331 U.S. 145 (1947).
[63] 334 U.S. 699 (1948).
[64] *Id.* at 708.
[65] 339 U.S. 56 (1950).
[66] *Id.* at 66.
[67] *Id.* at 63.

merely upon the validity of the arrest itself, not upon the impracticability of getting a warrant; given a lawful arrest, the only question remaining is the reasonableness of the scope of the search. In *Rabinowitz,* the fact that the search was "limited," in that it was confined to those areas within the respondent's "immediate control," made it both reasonable and valid.[68]

Finally in 1969, after having reviewed all of these cases, *Chimel* recognized that the real issue in warrantless searches incident to arrest is not their initial justification — which, as was carefully pointed out in *Rabinowitz,* is dependent only on the validity and lawfulness of the arrest — but their "permissible scope under the Fourth Amendment."[69] The *Chimel* Court then went on to overrule *Rabinowitz* to the extent that searches justified as incident to lawful arrest may be conducted of the person and of the area within his immediate control, construing that phrase to mean the area from within which he might gain possession of a weapon or destructible evidence.[70]

This severe limitation on the scope of such searches was based, according to the *Chimel* Court, on the underlying rationale for justifying *any* warrantless search as "incident" to arrest; *i.e.,* that it is necessary to prevent escape, a weapons-assault on the arresting officer, or the destruction of criminal evidence. This rationale, the Court noted, has been enunciated in other cases as well[71] and was present in the decision rendered in the case of *Preston v. United States.*[72] In *Preston,* the search incident rationale would have validated a contemporaneous automobile search had it not been, vis-à-vis *Agnello,* too "remote" in time and place.[73] Although perhaps not significant as new precedent in the general development of the search incident approach, *Preston* is a pivotal case, however, in that the *Chimel* Court by indirection (in citing *Preston* with approval) has placed warrantless *car searches* within the confining grasp of the now-controlling rule of *Chimel.*[74]

---

[68] *Id.*

[69] 395 U.S. at 753.

[70] *Id.* at 764.

[71] *Id.* The Court noted that this rationale was clearly set out in Sibron v. New York, 392 U.S. 40 (1968), where a search incident to arrest was upheld "only because" its scope had been "reasonably limited" by the "need to seize weapons" or "prevent the destruction of evidence."

[72] 376 U.S. 364 (1964), *cited in* Chimel v. California, 395 U.S. 752, 764 (1964).

[73] 376 U.S. at 368.

[74] *See* Comment, *Chimel v. California: A Potential Roadblock to Vehicle Searches,* 17 U.C.L.A.L. REV. 626 (1970).

b. *Probable Cause Searches*

Having explored the development of case law dealing with the "search incident" rationale used to justify warrantless searches, and noting that *Chimel* has now clearly established that the problem to be overcome in legitimating such a rationale is the proper scope of the search, this inquiry now turns to an investigation of the alternative rationale of "probable cause" searches.

As mentioned earlier, the *Chimel* Court spoke of the fact that a search incident approach in *Preston* would have succeeded had the search not been too remote from the arrest. The decision in the case, however, did not turn on this ruling. As an alternative to the search incident rationale, with its concomitant scope problem, the *Preston* Court based its holding upon the validation of the search as being one within the parameters of a "probable cause" rationale. Viewing the *Preston* decision with approval, the *Chimel* Court observed that this alternative rationale, first enunciated in *Carroll,* is not at all inconsistent with the search incident approach.[75]

Turning to *Carroll,* the correctness of the *Chimel* Court's observation is evident. As was noted earlier, *Carroll dictum* dealt with the scope of warrantless searches incident to arrest. The holding in the case, however, was based upon an entirely new and different rationale. *Carroll* was in fact *not* a case dealing with a search conducted after an arrest. It was concerned with a warrantless search conducted before there were grounds to arrest, and for that reason the petitioner had argued that since there was no lawful arrest there could then be no valid search "incident" thereto.[76] The Court, however, justified this search by constructing a detailed schema based upon the "necessary difference" between the search of houses and other structures and the search of mobile vehicles like cars.[77] This difference, according to the *Carroll* Court, lay in the fact that cars "can be quickly moved out of the locality or jurisdiction in which [a] warrant must be sought," and in light of this reality, it is often simply "not practicable" to secure a warrant.[78]

The *Carroll* Court then went on to hold that — as distinguished from the justification of a search as incident to a lawful arrest — an automobile search, under circumstances mak-

[75] 395 U.S. at 764 n.9.
[76] 267 U.S. at 158.
[77] *Id.* at 153.
[78] *Id.*

ing it impracticable to obtain a warrant, could be conducted without a warrant upon a showing of "probable cause for believing that [the vehicle was] carrying contraband or illegal merchandise."[79] The *Carroll* approach, then, based the validity of such searches upon probable cause grounds, and not upon any search incident rationale. Moreover, in further holding that "[i]n cases where the securing of a warrant is reasonably practicable, it must be used," and "[i]n cases where seizure is impossible except without a warrant, the seizing officer acts unlawfully" except upon a showing of such probable cause,[80] the *Carroll* Court made it clear that a showing of circumstances rendering the obtaining of a warrant impracticable was at least as important as was a showing of probable cause.

In later cases the *Carroll* doctrine was clarified and the distinction between probable cause searches and searches incident to arrest was given solidity and substance.

In *Brinegar v. United States*,[81] the Court found the material facts to be virtually "indistinguishable" from those found in *Carroll* 25 years earlier[82] and affirmed the applicability of that approach.

As was discussed earlier, *Preston* distinguished the probable cause and search incident rationales and noted specifically that the police have the right to search a car contemporaneously at the scene of an arrest "*either* because the arrest [is] valid *or* because [they] had probable cause."[83]

In 1970, after the *Chimel* ruling, the Court handed down a a decision in *Chambers v. Maroney*[84] which was clearly an application of the *Carroll* probable cause rationale and which strengthened the *Carroll* requirement that a showing of exigent circumstances making the obtaining of a warrant impracticable is as important as a showing of probable cause. After finding that a car search could not be justified as incident to arrest,[85] the Court held that "alternative grounds" based on *Carroll* could be found to justify the search.[86] The Court reasoned that "the search of an auto on probable cause proceeds on a theory *wholly different* from that justifying the search incident to an arrest."[87]

[79] *Id.* at 154.
[80] *Id.* at 156.
[81] 338 U.S. 160 (1949).
[82] *Id.* at 171.
[83] 376 U.S. at 367-68 (emphasis added).
[84] 399 U.S. 42 (1970).
[85] *Id.* at 47.
[86] *Id.*
[87] *Id.* at 49 (emphasis added).

The *Chambers* Court then reasserted the *Carroll* requirement that such probable cause searches are always dependent upon "exigent circumstances," making it impracticable for the police to obtain a warrant, and that without a clear showing of such exigencies even probable cause to conduct the search falls short.[88]

Chambers, however, departed significantly from the implications of prior holdings when it dealt specifically with the temporal aspects of the probable cause-exigent circumstances relationship. Having established that probable cause existed to justify the seizure of an auto, and that exigent circumstances then also existed to fully validate such seizure under *Carroll,* the *Chambers* Court then went on to hold that a later search of the car at the police station was thereby justified. This rather confusing position (somehow having avoided the question of exigent circumstances at the time of the *search* as opposed to the time of the *seizure*) was based on the reasoning that once an initial seizure was justifiable under *Carroll* there could be no logical difference between holding the car to obtain a warrant and searching later without one.[89]

As late as June 1971, in *Coolidge v. New Hampshire,*[90] the Court had continued to maintain that a showing of exigent circumstances is critical to the justification of a warrantless car search on probable cause grounds. There is evidence, however, that the *Coolidge* ruling, insofar as it apparently limited the *Chambers* approach (in dealing with the issue of exigent circumstances) to cases where a moving vehicle was actually stopped by the police, is now being very strictly construed by lower courts in favor of a *Chambers*-oriented analysis.[91]

c. *Probable Cause and Search Incident Rationales: A Brief Summation*

In view of the foregoing it would seem clear that, at least prior to *Adams,* the Supreme Court had established that auto-

[88] *Id.* at 51, where the Court held that "[o]nly in exigent circumstances will the judgment of the police as to probable cause serve as a sufficient authorization for a search."

[89] *Id.* at 52.

[90] 403 U.S. 443 (1971).

[91] *See, e.g.,* United States v. Bozada, 473 F.2d 389 (8th Cir 1973) (no warrant required for search of parked truck following stakeout); United States v. Cohn, 472 F.2d 290 (9th Cir. 1973) (permitting warrantless seizure 19 hours after warrantless search disclosed contraband). These cases might be regarded as examples of how *Chambers* may be used to counter the limitations imposed by *Coolidge,* under the implication that initial exigent circumstances somehow do not disappear even after a substantial passage of time. Such reasoning, it is here argued, is a clear distortion of the logic of *Carroll.*

mobile searches without warrants may be justified on at least *two separate and distinct* grounds, each having its own set of unique requirements and limitations.

The first of these grounds is that of "search incident to a lawful arrest." Under this rationale, the special difficulty which must be overcome is the permissible scope of the search. As to this requirement, pre-*Adams* cases would seem to be governed by the holding in *Chimel* which limits such a search to the person of the arrestee and the places within his "immediate control." Specifically, such "places" are limited to those areas into which the arrestee might reach to obtain weapons or to conceal or destroy evidence. Moreover, *Chimel* applies this limitation to car searches, at least to the extent that it interpreted *Preston* in this manner.

The second ground for justifying a warrantless car search is based on the rationale of *Carroll,* which, as a distinctly different theory, validates such a search on the basis of a finding of probable cause. This approach is limited, however, by the fact that probable cause must always be accompanied by a showing of "exigent circumstances" which render the obtaining of a warrant impracticable under the circumstances.

It is important to remember that *Carroll* founded its exigent circumstances requirement upon the unique dissimilarity between houses, which do not move, and automobiles, which do. In this regard, it is crucial to realize that such "mobility," in *Carroll,* was due not so much to any intrinsic qualities of the automobile as to the simple fact that at the time the search was conducted there was no way for the police to prevent its mobility. The police had no probable cause upon which to arrest the subjects and hence no way to validate any real detention of the car by way of an argument attempting to justify it as a search or seizure "incident" to an arrest.

2. Does *Adams* Fit In?

The *Adams* Court declares the search of a car lawful as being "incident to [a lawful] arrest," citing *Carroll* and *Brinegar* as authorities. But, as has been shown, *Carroll* did *not* uphold a search incident to arrest. Rather, it is the landmark case for upholding warrantless car searches based upon probable cause grounds only. Therefore, why the reliance of the *Adams* Court on *Carroll* when upholding the lawfulness of a search as being one incident to arrest? Certainly the mere fact that a car search is in issue does not make it automatically fall within

Carroll, especially in view of subsequent case law on the subject. More importantly, if the Court were attempting to make this a true "probable cause" case, as would seem to be indicated by its reliance upon *Carroll* and *Brinegar,* why are the "exigency" requirements not discussed? There is no consideration at all of this second but equally essential element of the *Carroll* rationale.

If, on the other hand, the *Adams* Court were actually upholding this search as one incident to a lawful arrest, as would seem to be indicated by the language used by the Court, where then is the appropriate precedent? *Carroll's* treatment of the search incident rationale was mere dictum, and its discussion of the "places" which could be searched under that theory has been mooted by subsequent rulings. Why is there no reference to or consideration of *Chimel, Preston,* or even *Rabinowitz*? [92] In short, the *Adams* Court has not only failed to cite proper authority, it in no way resolved the correlative search incident question of the proper scope of the search.

It may always be argued, of course, that these considerations were simply never put in issue before the Court or, even if they were, they were rendered moot by the fact that the search of Williams' person had already turned up both the gun *and* narcotics. Thus, the subsequent car search may have had little real bearing on the case. But, in an area so rapidly changing as that of search and seizure law, such valid contentions as may exist in the Court's favor must always be suspect, especially where there is no supportive argument in evidence at all.

Admitting that speculation may be precarious when based on no more than the fact that the Court has neglected to speak to a potentially important issue, it is possible that *Adams* may be one of those cases which marks the beginning of a new or at least different approach to a controversial area of law.[93]

It is apparent, for example, that the Court is not yet prepared to rule specifically upon whether or not the arrest of

[92] *See* Williams v. United States, 401 U.S. 646 (1971), in which *Chimel* was held to be prospective only. Since the search of the defendant in *Adams* occurred before the decision in *Chimel* was handed down, *Rabinowitz* would have been controlling precedent for the *Adams* case as to search incident law.

[93] That *Adams* may have a substantial impact in the area of car searches is amply illustrated by United States v. Ragsdale, 470 F.2d 24 (5th Cir. 1972). In this case, after developing an intriguing justification for "imputing" the knowledge of one police officer to another, the court apparently reasoned that in *Carroll*-type situations, with exigent circumstances but absent full probable cause, *Adams* may be used to apply *Terry* to car searches, allowing such searches on the basis of reasonable suspicion rather than probable cause.

a person (1) who is in or with a car on the public streets, (2) who is handcuffed or at least placed in custody out of reach of that car, and (3) who is so detained until the arrival of other police officers who then search the car, has so "immobilized" that automobile, absent other circumstances, as to remove the situation from the realm of "exigent circumstances" required for probable cause car searches.

It is possible that the Court, though it undoubtedly *could* have articulated the probable cause necessary for a *Carroll* rationale, even under a *Chambers* analysis, has considered instead that the unique problems of car searches exempt them from any "exigency" test at all where they are otherwise "reasonable," especially when they are in fact contemporaneous to a lawful arrest. If such is the case, it is incumbent on the Court to articulate its reasoning.

It is also possible that the Court may be paving the first steps in an effort to exempt contemporaneous car searches totally from the strict limitations imposed upon search incident justifications by *Chimel.*

Finally, isn't it entirely possible that the Supreme Court has simply disposed of these issues in a careless and confusing manner?

However speculative the nature of the above observations, the Court's treatment (or *non-treatment*) of the car search in *Adams* has afforded its observers a unique opportunity to consider the past development and present status of such case material in our Supreme Court.

Frederick D. Lewis, Jr.