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Texas Wesleyan Law Review

Volume 2 | Issue 2 Article 7

10-1-1995

Stare Decisis and Autran v. State

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Recommended Citation

Austin T. Williams, *Stare Decisis and Autran v. State*, 2 Tex. Wesleyan L. Rev. 375 (1995).
Available at: https://doi.org/10.37419/TWLR.V2.I2.6

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STARE DECISIS AND *AUTRAN v. STATE*?

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I. INTRODUCTION

A fundamental right of every U.S. citizen under the Fourth Amendment is the right to be free from "unreasonable searches and seizures."[1] The United States Supreme Court defines an unreasonable search as any search conducted without proper warrant, subject to a few limited exceptions.[2] Automobile searches are one of these narrow exceptions.[3]

A warrantless search of an automobile must be based on probable cause[4] and limited to searches for evidence, searches incident to an arrest,[5] or inventory searches.[6] The Supreme Court defines an automobile inventory search as the "routine practice of securing and inventorying the automobile contents."[7] Although the proper scope of an automobile inventory search is the question of much debate, in 1987, the Supreme Court held an inventory search reasonable that included police officers opening a closed container found within an automobile.[8] The Texas Court of Criminal Appeals, however, in accordance with Article I, Section 9 of the Texas Constitution,[9] recently restricted the authority of police officers to open closed containers discovered during an automobile inventory search.

In *Autran v. State*,[10] the Texas Court of Criminal Appeals found "[t]he officers [sic] interest in the protection of appellant's property, as well as the protection of . . . the agency from claims of theft, can be satisfied by recording the existence of and describing and/or photographing the closed or locked container."[11] Thus, *Autran* interpreted Article I, Section 9 of the Texas Constitution as requiring less intrusive means than the Fourth Amendment of the U.S. Constitution

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1. The Fourth Amendment provides:

> 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 person or things to be seized.

U.S. CONST. amend. IV.

2. Katz v. United States, 389 U.S. 347, 357 (1967).
3. Carroll v. United States, 267 U.S. 132, 153 (1925).
4. California v. Acevedo, 500 U.S. 565, 580 (1991).
5. New York v. Belton, 453 U.S. 454, 462-63 (1981).
6. South Dakota v. Opperman, 428 U.S. 364, 372 (1976).
7. *Id.* at 369.
8. Colorado v. Bertine, 479 U.S. 367, 374-75 (1987).
9. The Texas Constitution provides:

> The people shall be secure in their persons, houses, papers and possessions, from all unreasonable seizures or searches, and no warrant to search any place, or to seize any person or thing, shall issue without describing them as near as may be, nor without probable cause, supported by oath or affirmation.

TEX. CONST. art. I, § 9.

10. 887 S.W.2d 31 (Tex. Crim. App. 1994).
11. *Id.* at 42.

for conducting automobile inventory searches. This note examines the proper scope of an automobile inventory search as currently defined under federal and Texas law, and discusses *Autran*'s failure to adhere to *stare decisis*[12] by unnecessarily overturning previously relied upon precedents.

II. History of Warrantless Searches Under the Fourth Amendment

A. The Automobile Exception

Under the Fourth Amendment, automobiles are generally exempt from the warrant requirement because of an individual's inherent lesser expectation of privacy in them and their mobility.[13] In 1925, in *Carroll v. United States*,[14] officers stopped an automobile based on probable cause that the occupants were transporting illicit liquor.[15] While conducting a warrantless automobile search, officers discovered several cases of liquor under the seat upholstery. The Supreme Court held the warrantless automobile search reasonable because there was probable cause to believe the automobile was carrying contraband.[16] The *Carroll* Court reasoned, "[I]t is not practicable to secure a warrant [for an automobile] because the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant must be sought."[17]

Fifty years later, in *Cardwell v. Lewis*,[18] the Supreme Court held the warrantless examination of an automobile's exterior reasonable.[19] In *Lewis*, the respondent was arrested for murder.[20] An exterior examination of the respondent's automobile revealed incriminating evidence linking the respondent to the crime scene.[21] The *Lewis* Court stated, "One has a lesser expectation of privacy in a motor vehicle because its function is transportation and it seldom serves as one's residence or as the repository of personal effects."[22] Therefore, by distinguishing between a warrantless search of an automobile's exterior and an individual's residence, the *Lewis* Court held that due to an individual's inherent lesser expectation of privacy in his automobile, an automobile is not subject to the Fourth Amendment warrant requirement.[23]

12. *See infra* note 229 and accompanying text.
13. Cardwell v. Lewis, 417 U.S. 583, 590-91 (1974).
14. 267 U.S. 132, 153 (1925).
15. *Id.* at 162.
16. *Id.* at 155-56.
17. *Id.* at 153.
18. 417 U.S. 583 (1974).
19. *Id.* at 592.
20. *Id.* at 586-87.
21. *Id.* at 588.
22. *Id.* at 590.
23. *Id.* at 591.

B. *Policies for Upholding Warrantless Automobile Inventory Searches*

In 1967, in *Cooper v. California*,[24] the Supreme Court upheld a warrantless automobile search even though there was no threat the automobile would leave the jurisdiction.[25] In *Cooper*, officers seized the petitioner's automobile after arresting him for selling heroin.[26] The petitioner's conviction was based on evidence seized without a warrant from the automobile's glove compartment one week after the petitioner's arrest.[27] The *Cooper* Court upheld the conviction, stating, "It would be unreasonable to hold that the police, having to retain the car in their custody for such a length of time, had no right, even for their own protection, to search it."[28]

One year later, in *Harris v. United States*,[29] protection of property was the basis for upholding a warrantless automobile search. While safeguarding the petitioner's automobile from the elements, an officer discovered in plain view a robbery victim's automobile registration card.[30] The petitioner was convicted of robbery based upon this evidence.[31] The Supreme Court found the intrusion reasonable because the automobile was initially impounded "to protect the car [from the elements] while it was in police custody"[32] and "objects falling in the plain view of an officer who has a right to be in the position to have that view are subject to seizure and may be introduced in evidence."[33]

Furthermore, in 1973, in *Cady v. Dombrowski*,[34] public safety was the basis for holding an automobile inventory search reasonable.[35]

24. 386 U.S. 58 (1967).
25. *Id.* at 61-62.
26. *Id.* at 58-61.
27. *Id.* at 58.
28. *Id.* at 61-62 (purpose of the search was to obtain legal title for a forfeiture proceeding).
29. 390 U.S. 234 (1968).
30. *Id.*
31. *Id.* at 234-35.
32. *Id.* at 236. *Harris* has been relied upon twice to uphold convictions based on evidence found during automobile inventory searches. In United States v. Mitchell, 458 F.2d 960 (9th Cir. 1972), the defendant was stopped and arrested for speeding. An officer noticed an open case containing watches in the defendant's automobile. While safely securing the watches, the officer found a gun in the case. Mitchell was subsequently convicted for the unlawful possession of a weapon. The court of appeals upheld the conviction and stated "the action of the patrolman in safeguarding valuable property in plain sight in a lawfully impounded car was reasonable . . . ." *Id.* at 961. In United States v. Kelehar, 470 F.2d 176 (5th Cir. 1972), the defendant was arrested on outstanding traffic warrants. Officers found counterfeit bills while conducting an automobile inventory search. In justifying the inventory search, the court of appeals found such inventories serve the purposes of "protecting the defendant's property and safeguarding the police from groundless claims for 'lost' possessions." *Id.* at 178.
33. *Harris*, 390 U.S. at 236.
34. 413 U.S. 433 (1973).
35. *Id.* at 447.

The defendant in *Cady* was involved in an automobile accident.[36] Officers, concerned that the defendant police officer might have left his service revolver in his automobile, searched the automobile and discovered evidence linking the defendant to a murder.[37] The defendant was later convicted of murder based upon the seized evidence.[38] The Supreme Court held the search reasonable based on "concern for the safety of the general public who might be endangered if an intruder removed a revolver from the trunk of the vehicle."[39]

In *South Dakota v. Opperman*,[40] the Supreme Court reversed a lower court decision and held the police did not violate the respondent's Fourth Amendment rights when officers conducted an inventory search of the respondent's automobile.[41] In *Opperman*, the respondent's automobile was towed for violating a parking ordinance.[42] Pursuant to standard police department procedures, officers conducted an inventory search and found a bag of marijuana in the unlocked glove compartment of the respondent's automobile.[43] The *Opperman* Court held automobile inventory searches are reasonable if conducted for "the protection of the owner's property while it remains in police custody, the protection of police against claims or disputes over lost or stolen property, and the protection of the police from potential danger."[44]

The *Opperman* Court relied on the policies announced in *Cooper*, *Harris*, and *Cady*.[45] However, *Opperman* did not directly address the question of whether the proper scope of such inventory searches includes closed containers seized from within an automobile.[46] Rather, the *Opperman* Court stated, "[w]hen the police take custody of any sort of container [such as] an automobile . . . it is reasonable to search the container to itemize the property to be held by the police."[47] Texas courts later followed *Opperman* and extended the scope of an automobile inventory search to include closed containers found therein.[48]

In summary, the United States Supreme Court distinguishes between automobiles and dwellings because of an individual's inherent

36. *Id.* at 435-36.
37. *Id.* at 437.
38. *Id.* at 434.
39. *Id.* at 447.
40. 428 U.S. 364 (1976).
41. *Id.* at 365.
42. *Id.* at 365-66.
43. *Id.* at 366.
44. *Id.* at 369 (footnotes omitted).
45. *See id.*
46. *Id.* at 371.
47. *Id.* (quoting United States v. Gravitt, 484 F.2d 375, 378 (5th Cir. 1973)).
48. *See, e.g.*, Evers v. State, 576 S.W.2d 46 (Tex. Crim. App. 1978); Heitman v. State, 815 S.W.2d 681 (Tex. Crim. App. 1991) (en banc).

lesser expectation of privacy in his automobile and its mobility.[49] Thus, warrantless automobile searches are generally upheld if conducted to protect the police from danger,[50] to protect an owner's property,[51] to protect police from claims of lost or stolen property,[52] or to protect the general public.[53]

C. *Extending Automobile Inventory Searches to Closed Containers Found Therein*

In *Colorado v. Bertine*,[54] the scope of a vehicle inventory search was extended to include searching personal belongings left in a van.[55] In *Bertine*, the respondent was arrested for driving while under the influence.[56] During an inventory search of the respondent's van, an officer discovered a closed backpack.[57] The officer opened the backpack and found three metal canisters containing an assortment of illegal drugs, and a large quantity of cash.[58]

The lower court found the inventory search unreasonable because the petitioner's automobile was stopped in a place sufficient to protect the petitioner's property, and the petitioner was not "offered an opportunity to make other arrangements to safeguard his property."[59] The Supreme Court rejected this argument and found "[t]he reasonableness of any particular government activity does not necessarily or invariably turn on the existence of alternative less intrusive means."[60]

The *Bertine* Court found that the lower court erroneously relied upon *Arkansas v. Sanders*[61] and *United States v. Chadwick*,[62] because these cases concerned investigation of criminal conduct requiring probable cause, rather than inventory searches.[63] The Supreme Court reversed the lower court's decision and held the search did not violate the Fourth Amendment.[64]

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49. Cardwell v. Lewis, 417 U.S. 583, 590 (1974).
50. Cooper v. California, 386 U.S. 58, 61-62 (1967).
51. United States v. Mitchell, 458 F.2d 960, 961 (9th Cir. 1972).
52. United States v. Kelehar, 470 F.2d 176, 178 (5th Cir. 1972) (citations omitted).
53. Cady v. Dombrowski, 413 U.S. 433, 447 (1973).
54. 479 U.S. 367 (1987).
55. *Id.* at 368-69.
56. *Id.* at 368.
57. *Id.* at 369.
58. *Id.*
59. *Id.* at 373.
60. *Id.* at 374 (quoting Illinois v. Lafayette, 462 U.S. 640, 647 (1983)).
61. 442 U.S. 753, 764-65 (1979) (holding officers with probable cause cannot search a suitcase found in the trunk of a taxi because securing luggage in an automobile's trunk does not diminish the owner's expectancy of privacy in such items).
62. 433 U.S. 1 (1977) (holding officers with probable cause cannot seize and open a container found within an automobile without a search warrant).
63. *Bertine*, 479 U.S. at 371.
64. *Id.* at 376.

The *Bertine* Court based its decision on the policies announced in *Opperman* and *Illinois v. Lafayette.*[65] In *Lafayette*, an inventory search of the defendant's shoulder bag during the booking process revealed incriminating evidence.[66] The *Lafayette* Court found reasonable the police department's procedures for opening closed containers and listing their contents.[67] Thus, by relying on *Lafayette*, the *Bertine* Court found "reasonable police regulations relating to inventory procedures administered in good faith satisfy the Fourth Amendment. . . ."[68]

Recently, in *Florida v. Wells,*[69] the Supreme Court reinforced the importance of standardized police procedures. In *Wells*, officers discovered marijuana while conducting an inventory search of a suitcase found in an impounded automobile.[70] The Florida Supreme Court held the inventory search violated the Fourth Amendment because the police had no standardized procedures for opening closed containers.[71] The *Wells* Court affirmed the decision and found police departments must have established routines for opening closed containers found during inventory searches because "an inventory search must not be a ruse for a general rummaging in order to discover incriminating evidence."[72]

III. AUTOMOBILE INVENTORY SEARCHES IN TEXAS

A. *Texas Adopts* South Dakota v. Opperman

Prior to *Autran*, the Texas Court of Criminal Appeals harmonized Article I, Section 9 of the Texas Constitution with the United States Supreme Court's interpretation of the Fourth Amendment.[73] Moreover, in 1976, the Texas Court of Criminal Appeals adopted the *Opperman* holding as it relates to automobile inventory searches.

In *Robertson v. State*,[74] the appellant wrecked his automobile and was sent to the hospital.[75] During an inventory search of the appellant's automobile, officers found marijuana in the glove compartment.[76] Relying on *Opperman*, the Texas Court of Criminal Appeals

65. 462 U.S. 640 (1983).
66. *Id.* at 641-42.
67. *Id.* at 648.
68. *Bertine*, 479 U.S. at 374.
69. 495 U.S. 1, 4 (1990).
70. *Id.* at 2.
71. *Id.* at 3.
72. *Id.* at 4 (citation omitted).
73. *See, e.g.*, Gordon v. State, 801 S.W.2d 899, 912 (Tex. Crim. App. 1990) (en banc); Johnson v. State, 803 S.W.2d 272 (Tex. Crim. App. 1990); Bower v. State, 769 S.W.2d 887 (Tex. Crim. App. 1989), *cert. denied,* 492 U.S. 937 (1989); Eisenhauer v. State, 754 S.W.2d 159 (Tex. Crim. App. 1988); Brown v. State, 657 S.W.2d 797 (Tex. Crim. App. 1983); Crowell v. State, 180 S.W.2d 343 (Tex. Crim. App. 1944).
74. 541 S.W.2d 608 (Tex. Crim. App. 1976).
75. *Id.* at 609.
76. *Id.*

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held the inventory search reasonable because "it was incident to the caretaking function of the police to protect the community's safety."[77]

Two years later, in *Evers v. State*,[78] the Texas Court of Criminal Appeals again relied on *Opperman*. In *Evers*, the appellant was arrested for an "improper start from a parked position."[79] During an inventory search of the appellant's impounded automobile, an officer opened an unlocked attache case, revealing a handgun.[80] The *Evers* Court held the inventory search reasonable as a legitimate caretaking function.[81]

B. Texas Requires the Automobile's Lawful Impoundment

In *Daniels v. State*,[82] the appellant was stopped for traveling the wrong way on a one-way street.[83] The appellant and his two passengers were arrested,[84] and the appellant's automobile was impounded for safekeeping. While conducting an inventory search, officers found and seized three weapons.[85]

The appellant argued his companions were arrested only as a subterfuge to justify the impoundment of his automobile in order for police to conduct the inventory search.[86] The *Daniels* court rejected this argument and held the impoundment and search lawful because the appellant was legally arrested, and the police would have been derelict in their duties if they had allowed the automobile to be left with any of its passengers, none of whom had a valid driver's license.[87] Thus, under *Daniels*, an inventory search of an automobile will be upheld if there was a lawful impoundment of the automobile.[88]

In *Benavides v. State*,[89] the Texas Court of Criminal Appeals found an impoundment improper, and thus held the inventory search illegal under the Fourth Amendment.[90] In *Benavides*, an officer found the appellant with a self-inflicted wound lying alongside his dead wife in the appellant's garage.[91] Officers located the appellant's automobile legally parked two blocks away on a residential street.[92] An inventory search produced a suicide note which was later used to convict the

77. *Id.* at 611.
78. 576 S.W.2d 46, 50 (Tex. Crim. App. 1978).
79. *Id.* at 47.
80. *Id.*
81. *Id.* at 50 (citing South Dakota v. Opperman 428 U.S. 364 (1976)).
82. 600 S.W.2d 813, 814 (Tex. Crim. App. 1980).
83. *Id.*
84. *Id.*
85. *Id.*
86. *Id.* at 814-15.
87. *Id.* at 815.
88. *Id.* at 814.
89. 600 S.W.2d 809 (Tex. Crim. App. 1980).
90. *Id.* at 812.
91. *Id.* at 810.
92. *Id.*

appellant of murder.[93] The *Benavides* court held, "[T]he mere arrest of a defendant cannot be construed to authorize seizure of his automobile."[94] Furthermore, "There must be some reasonable connection between the arrest and the vehicle."[95]

C. *Automobile Inventory Searches Include Compartments or Containers Found Therein*

In *Gill v. State*,[96] officers discovered the appellant sitting in his automobile holding a syringe. The appellant was arrested for possession of hydromorphone.[97] During the automobile search, officers removed the back seat in order to gain access to the locked trunk.[98] The Texas Court of Criminal Appeals held the search violated Article I, Section 9 of the Texas Constitution and the Fourth Amendment because no probable cause existed to believe the trunk contained contraband.[99] The *Gill* court reasoned, "There is a greater expectancy of privacy in the trunk than in the interior because it is not in plain view and is not normally involved in government control and inspection."[100] The court denied the state's motion for rehearing on the issue of whether the search could be sustained as an inventory.[101] The *Gill* court found even though officers have the right to impound and perform caretaking functions, they do not have the right to use force to enter a locked trunk under either the Texas or U.S. Constitution.[102]

In *Stephen v. State*,[103] however, the Texas Court of Criminal Appeals held officers can lawfully enter and inventory search the contents of an automobile trunk if they have the keys to the trunk. In *Stephen*, officers stopped the appellant after observing him make an abrupt left turn without a signal.[104] Officers arrested the appellant after verifying outstanding felony warrants in the appellant's name.[105] During an automobile inventory search, officers took the keys from the ignition, opened the trunk, and found incriminating evidence in a paper bag.[106] The appellant claimed the evidence was inadmissible

93. *Id.*
94. *Id.*
95. *Id.*
96. 625 S.W.2d 307, 309 (Tex. Crim. App. 1981).
97. *Id. Hydromorphone hydrochloride* is a synthetic derivative of morphine with an analgesic potency of approximately ten times that of morphine. STEDMAN'S MEDICAL DICTIONARY 733 (25th ed. 1990).
98. *Gill*, 625 S.W.2d at 310.
99. *Id.* at 311-12.
100. *Id.* at 311.
101. *Id.* at 320.
102. *Id.*
103. 677 S.W.2d 42 (Tex. Crim. App. 1984).
104. *Id.* at 43.
105. *Id.*
106. *Id.*

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because the paper bag was a repository for personal effects, and thus the appellant had an inherent expectation of privacy in it.[107]

The Texas Court of Criminal Appeals affirmed the appellant's conviction and held permissible inventory searches of such container items as long as police departments have policies permitting such procedures.[108] The *Stephen* court found even though it is possible to protect the container's contents by sealing the container, it is also reasonable to inventory an unsealed container and its contents.[109] "[L]ess intrusive alternatives" are not required.[110]

D. *Texas Is Not Bound by United States Supreme Court Decisions*

In *Heitman v. State*,[111] an appellant sought to overturn his conviction for possession with intent to deliver by claiming an automobile inventory search, which produced methamphetamine from a locked briefcase, violated the appellant's rights under both the federal and Texas Constitutions.[112] The Texas Court of Criminal Appeals granted the appellant's petition for discretionary review for the purpose of determining whether Article I, Section 9 of the Texas Constitution accords the citizens of Texas greater protection than the Fourth Amendment.[113] The *Heitman* court expressly stated that when analyzing and interpreting Article I, Section 9 of the Texas Constitution, it will not be bound by Supreme Court decisions addressing comparable Fourth Amendment issues.[114]

Without deciding the merits, the *Heitman* court remanded the case to determine whether the inventory search violated Article I, Section 9, but failed to issue instructions or guidelines to interpret Article I, Section 9 independent of the Fourth Amendment. On remand, the lower court followed precedent, affirmed the appellant's conviction, and held the search reasonable under Article I, Section 9 of the Texas Constitution.[115]

Under a federalist system, states are free to reject federal rulings as long as such rulings do not fall below the minimal constitutional standards set by the United States Supreme Court.[116] Though the *Heitman* court recognized this legal principle, the Texas Court of Criminal Appeals never affirmatively stated whether Article I, Section 9 of the

107. *Id.* at 44.
108. *Id.* at 44-45.
109. *Id.* (citing Illinois v. Lafayette, 462 U.S. 640 (1983)).
110. *Id.*
111. 815 S.W.2d 681 (Tex. Crim. App. 1991) (en banc).
112. *Id.* at 682.
113. *Id.* at 683.
114. *Id.* at 690.
115. *See* Heitman v. State, 836 S.W.2d 840, 842-43 (Tex. App.—Fort Worth 1992, no pet.).
116. *See also* Prune Yard Shopping Ctr. v. Robins, 447 U.S. 74 (1980); Cooper v. California, 386 U.S. 58 (1967).

Texas Constitution actually grants greater protection than the Fourth Amendment.[117] Was the *Heitman* court stating a truism regarding federalism? Or does Article I, Section 9 of the Texas Constitution in certain circumstances grant greater protection than the Fourth Amendment? The Texas Court of Criminal Appeals answered this question in *Autran v. State*.[118]

IV. *AUTRAN V. STATE*

A. *Statement of the Facts*

In *Autran*, an Orange County sheriff stopped the appellant and his son for failing to drive within a single lane.[119] The appellant consented to the search of the automobile's trunk.[120] Inside the trunk, the sheriff discovered a large ice chest, shopping bag, cardboard box, and two suitcases.[121] However, when the sheriff attempted to open the ice chest, the appellant immediately closed the trunk. The appellant was arrested for failure to drive within a single lane.[122] The appellant's son was arrested for public intoxication.[123]

Officers conducted an automobile inventory search pursuant to established departmental policies.[124] During the search, officers found large sums of money covered with a white powdery substance.[125] At that time, officers discontinued the search and the appellant's vehicle was towed to the sheriff's department where the inventory search resumed in a secured location.[126] The seized money was sent to a crime lab, and the white powdery substance was later determined to be cocaine.[127] During a final inventory search, officers found cocaine in a closed plastic key box located underneath the driver's seat.[128] The appellant was convicted for possession of a controlled substance and sentenced to twenty years in prison.[129]

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117. *See* Mathew W. Paul & Jeffrey L. Van Horn, Heitman v. State*: The Question Left Unanswered*, 23 ST. MARY'S L.J. 929 (1992).

118. 830 S.W.2d 807 (Tex. App.—Beaumont 1992), *rev'd*, 887 S.W.2d 31 (Tex. Crim. App. 1994).

119. *Autran*, 887 S.W.2d at 33.

120. *Id.*

121. *Id.*

122. *Id.*

123. *Id.*

124. *Id.*

125. *Id.*

126. *Id.*

127. *Id.*

128. *Id.*

129. *Id.*

B. Beaumont Court of Appeals

On April 9, 1990, the appellant filed a written notice of appeal with the Beaumont Court of Appeals.[130] The appellant advanced two points of error. The appellant alleged first that the evidence was insufficient to support the conviction, and second, that the appellant's pretrial motion to suppress was unlawfully denied.[131]

The Beaumont Court of Appeals found sufficient evidence to link the cocaine to the appellant.[132] As to the suppression issue, the appellant relied on *Gill* to argue the items seized "were outside of the parameter of the inventory search."[133] However, the Beaumont Court of Appeals distinguished *Gill*, and held *Opperman* and *Bertine* controlled.[134]

Relying on *Bertine*, the Beaumont court held the seizure of money valid based on the sheriff's department's established policies for conducting automobile inventory searches that included containers found therein.[135] Furthermore, the court found the purpose of the inventory search was to safeguard personal property, a policy valid under *Opperman*.[136]

The appellant argued the key box evidence should be suppressed, claiming the purpose of an automobile inventory search is to take stock of "loose personal items" found within an automobile.[137] Thus, since the key box was attached underneath the seat, the appellant argued it was not subject to the inventory search. The Beaumont court rejected this argument, reasoning the key box may have contained valuable jewels requiring safeguarding.[138]

The Beaumont court, as required by *Heitman*, determined the validity of the inventory search under the Texas Constitution and not the Fourth Amendment.[139] The court harmonized Article I, Section 9 of

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130. Autran v. State, 830 S.W.2d 807, 808 (Tex. App.—Beaumont 1992), *rev'd*, 887 S.W.2d 31 (Tex. Crim. App. 1994).

131. *Id.*

132. *Id.* at 811 (holding the state must show appellant exercised control over the contraband and knew the items were contraband to prove unlawful possession) (citing Guiton v. State, 742 S.W.2d 5, 8 (Tex. Crim. App. 1987) (en banc)). The court considered such factors as whether the accused had access to the contraband, whether the accused was the driver of the automobile in which the contraband was found, whether the contraband was found underneath the accused's seat, and whether the accused owned the automobile in which the contraband was found. *Id.*

133. *Id.* at 812.

134. *Id.* at 812-13. The court distinguished *Autran* from *Gill.* In *Gill,* officers gained access through forced entry, and in *Autran* the appellant consented to the opening of his trunk. *See* Gill v. State, 625 S.W.2d 307 (Tex. Crim. App. 1981).

135. *Autran*, 830 S.W.2d at 812.

136. *Id.* at 813.

137. *Id.* at 814.

138. *Id.* at 815.

139. *Id.* at 813 (citing Heitman v. State, 815 S.W.2d 681, 690 (Tex. Crim. App. 1991)).

the Texas Constitution with the Fourth Amendment[140] and affirmed the conviction.[141]

C. *The Texas Court of Criminal Appeals*

1. *Autran* Applies the Fourth Amendment

The Texas Court of Criminal Appeals granted the appellant's petition for discretionary review to determine whether the Texas Constitution grants greater protection than the Fourth Amendment in the context of inventory searches.[142] The *Autran* court first summarized the relevant federal case law.[143] In applying the facts to federal law, the Texas Court of Criminal Appeals found the inventory search lawful under the Fourth Amendment.[144]

2. *Autran* Relies on *Heitman*

After determining the inventory search valid under the Fourth Amendment, the *Autran* court embarked upon a discussion of federalism.[145] The court noted the United States Constitution provides the floor for an individual's rights, whereas the Texas Constitution sets the ceiling for those rights.[146] In *Heitman*, the Texas Court of Criminal Appeals held the Texas Constitution may in some circumstances afford greater protection than the Fourth Amendment.[147] Thus, the *Autran* court applied *Heitman*'s reasoning to determine whether Article I, Section 9 of the Texas Constitution provides greater protection

140. *Id.* (citing Osban v. State, 726 S.W.2d 107 (Tex. Crim. App. 1986) and Brown v. State, 657 S.W.2d 797 (Tex. Crim. App. 1983)).

141. *Autran,* 830 S.W.2d at 816.

142. *Autran,* 887 S.W.2d at 33.

143. *Id.* at 34-36. Judge Baird noted the Supreme Court has long held automobile inventory searches an exception to the warrant requirement under the Fourth Amendment. *See, e.g.,* Illinois v. Lafayette, 462 U.S. 640 (1983). Inventory searches are reasonable if they are conducted to protect an owner's property, protect police against claims of lost or stolen property, or protect the police from danger. *See, e.g.,* South Dakota v. Opperman, 428 U.S. 364 (1976). The Fourth Amendment only requires an automobile inventory search not be a subterfuge to search for incriminating evidence without probable cause. *See, e.g.,* Florida v. Wells, 495 U.S. 1 (1990). The Supreme Court also requires standardized police procedures for conducting inventory searches. *See, e.g., Lafayette,* 462 U.S. at 648. Moreover, officers are not required to employ less intrusive means. *See, e.g.,* Colorado v. Bertine, 479 U.S. 367, 373-74 (1987). Therefore, an officer may at his discretion decide to open a closed container found within an automobile. *See, e.g.,* Florida v. Wells, 495 U.S. 1, 4 (1990).

144. *Autran,* 830 S.W.2d at 35-36. The court considered determinative the officer's testimony that the search was conducted according to department policy which included the opening of closed containers, and that there was no showing the inventory search was a ruse to discover evidence.

145. *Id.* at 36.

146. *Id.*

147. *Id.*

than the Fourth Amendment in the limited context of inventory searches.[148]

3. *Autran* Applies the Texas Constitution

The *Autran* court used the following factors in its independent analysis of the Texas Constitution: 1) an examination of the text; 2) the framers' intent and the historical consideration and application of the Texas Constitution; 3) comparable jurisprudence; and 4) practical policy considerations.[149]

a. *Examination of the Text*

By comparing the Fourth Amendment and Article I, Section 9, the *Heitman* court found there was a strong resemblance in form and choice of words between the two constitutional provisions. However, the *Autran* court concluded the language used in both constitutional provisions is vague, generic, and required further analysis. The *Autran* court found little evidence in the text to indicate the framers of the Texas Constitution intended Article 1, Section 9 to provide greater protection than the Fourth Amendment.[150]

b. *The Framer's Intent and Historical Consideration and Application of the Texas Constitution*

The *Autran* court stated Article I, Section 9 was the primary protector of an individual's rights against state action until 1949, when the protection of the Fourth Amendment, by way of the Fourteenth Amendment, was extended to the states.[151] Therefore, the *Autran* court found that the framers of Article I, Section 9 drafted the article without considering the Fourth Amendment, recognizing the Fourth Amendment did not extend to the states before 1949.[152] Thus, there is no evidence that the framers of the Texas Constitution looked to the United States Constitution for guidance. The *Autran* court found this indicates Article I, Section 9 of the Texas Constitution provides broader protection.[153]

c. *Comparable Jurisprudence*

The *Autran* court noted that the Massachusetts Supreme Court has held its constitution provides greater protection for criminal defend-

148. *Id.*
149. *Id.* at 37.
150. *Id.* at 38.
151. *Id.* at 39.
152. *Id.*
153. *Id.*

DOI: 10.37419/TWLR.V2.I2.6

ants than the Fourth Amendment.[154] Furthermore, the *Autran* court noted many other states have interpreted their state constitutions to provide greater protection than the Fourth Amendment.[155] The *Autran* court determined California, South Dakota, and Alaska find greater protection in their constitutions, and specifically extend greater protection to automobile inventory searches.[156]

The court concluded the rationale behind these state court rulings is that inventory searches should not be a "pretext to discover not readily visible evidence."[157] Moreover, the *Autran* court found state supreme courts that continue to follow the United States Supreme Court's interpretation of the Fourth Amendment are violating their sworn duty to preserve, protect and defend their own constitutions.[158]

d. Policy Considerations

In reversing the Beaumont Court of Appeals, the *Autran* court held, "Article I, Section 9 does provide a privacy interest in closed containers which is not overcome by the general policy considerations underlying an inventory search."[159] The *Autran* court found inventory searches "can be satisfied by recording the existence of and describing and/or photographing the closed or locked container."[160] Moreover, the court expressly stated it "refuse[s] to presume the search of a closed container reasonable under Article I, Section 9 simply because an officer followed established departmental policy."[161]

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154. *Id.* (citing Commonwealth v. Snyder, 597 N.E.2d 1363, 1367 (Mass. 1992) and Commonwealth v. Upton, 476 N.E.2d 548, 556 (Mass. 1985)). The Massachusetts Constitution provides:

> Every subject has a right to be secure from all unreasonable searches, and seizures of his person, his houses, his papers, and all his possessions. All warrants, thereof, are contrary to this right, if the cause or foundation of them be not previously supported by oath or affirmation; and if the order in the warrant to a civil officer, to make search in suspected places, or to arrest one or more suspected persons, or to seize their property, be not accompanied with a special designation of the persons or objects of search, arrest, or seizure; and no warrant ought to be issued but in cases, and with the formalities, prescribed by the laws.

MASS. CONST. art. XIV.

155. *Autran*, 887 S.W.2d at 40 n.9. The court cited constitutions from Alaska, Arizona, California, Colorado, Connecticut, Hawaii, Idaho, Louisiana, Montana, New Hampshire, New Jersey, New York, Oregon, South Dakota, and Washington. *Id.*

156. *Id.* at 40-41.

157. *Id.* at 40 (citing Mozzetti v. Superior Court, 484 P.2d 84 (Cal. 1971); People v. Brisendine, 531 P.2d 1099 (Cal. 1975); State v. Opperman, 228 N.W.2d 152 (S.D. 1975); and State v. Daniel, 589 P.2d 408 (Alaska 1979)).

158. *Autran*, 887 S.W.2d at 40.

159. *Id.* at 41-42.

160. *Id.* at 42.

161. *Id.*

e. The Dissent

In his dissent, Judge McCormick declared "[T]he plurality [is] attempt[ing] to lead this court down a slippery slope of judicial activism . . . ."[162] Judge McCormick believed the plurality was trying to correct an injustice by imposing a "socially and politically desirable result."[163] He believed historical precedents, contrary to the plurality's opinion, require the plurality to exercise judicial restraint and not hold that the inventory search violates Article I, Section 9 of the Texas Constitution.

Judge McCormick claimed *Heitman* only stands for the proposition that Texas has the *right* to provide greater protection than the United States Constitution, not that Article I, Section 9 actually *grants* greater protection.[164] Judge McCormick stated the plurality should have remanded *Autran*, as did the majority in *Heitman*,[165] and allowed the lower court to determine whether Article I, Section 9 of the Texas Constitution was violated.[166]

Believing *Heitman* only states a truism, Judge McCormick reasoned prior case law constitutes valid precedent. Judge McCormick contended Texas case law follows federal Fourth Amendment case law when interpreting Article I, Section 9.[167] Therefore, *stare decisis* dictates restraint and deference to the legislative process.[168] Moreover, Judge McCormick stated his approach is not unreasonable because the citizens of Texas frequently amend their constitution.[169]

Judge McCormick found the automobile inventory search lawful under Article I, Section 9. He pointed to the text of Article I, Section 9, which expressly permits reasonable searches.[170] Since the *Autran* plurality never expressly found the inventory search unreasonable, Judge McCormick assumed the search reasonable. Judge McCormick claimed the plurality was announcing a better policy for conducting inventory searches rather than determining whether the inventory in

162. *Id.* at 43 (McCormick, J., dissenting).
163. *Id.*
164. *Id.*
165. *Id.* at 43. In *Heitman*, the Texas Court of Criminal Appeals remanded the case to the Fort Worth Court of Appeals. The Fort Worth court determined that conducting an inventory of a locked briefcase is reasonable under Article I, § 9. *See* Heitman v. State, 836 S.W.2d 840, 843 (Tex. App.—Fort Worth 1992, no writ).
166. *Autran*, 887 S.W.2d at 43.
167. *Id.* at 44-45. As an illustration, Judge McCormick referred to Cagle v. State, 180 S.W.2d 928 (Tex. Crim. App. 1944). The *Cagle* court relied on Supreme Court decisions when interpreting the Texas version of the exclusionary rule. The court, without considering whether Article I, Section 9 afforded greater protection than the Fourth Amendment, stated, "[T]he decisions of the Supreme Court . . . should be first consulted; and, *where applicable and controlling, they should be followed.*" *Id.* at 937 (emphasis added).
168. *Autran*, 887 S.W.2d at 45.
169. *Id.*
170. *Id.* at 46.

question was reasonable.[171] Judge McCormick reasoned this is improper because Texas law does not require the least intrusive means when conducting an automobile inventory search.[172]

Judge McCormick noted, "[T]he plurality apparently concedes that both constitutional provisions embody the same basic protection."[173] Therefore, both provisions should be interpreted as guaranteeing the same basic protection.[174]

Moreover, Judge McCormick contended much of the comparable jurisprudence on which the plurality relied does not support their analysis. He pointed to the plurality's reliance on *Mozzetti v. Superior Court,*[175] which was decided on Fourth Amendment grounds, rather than independent state grounds, and is therefore irrelevant.[176] Judge McCormick concluded, "[T]his Court's voice [is] one of power, not reason."[177] He stated, "The plurality opinion applies no objective criteria, and ignores relevant historical precedents in reaching a result it deems socially desirable for the 'unenlightened masses.'"[178]

V. ANALYSIS

Autran attempts to maintain certainty and predictability in the area of automobile inventory searches by providing a bright line rule. However, *Autran* violates the doctrine of *stare decisis*, the very purpose of which is to create certainty and predictability in the application of law. Despite *Heitman*, Texas courts have historically interpreted Article I, Section 9 of the Texas Constitution in harmony with the Fourth Amendment. The *Autran* court should not have violated the doctrine of *stare decisis* by departing from well-settled precedents.[179]

A. Autran *Avoided Uncertainty by Adopting a Bright Line Rule*

Commentators contend *Heitman*'s departure from well-established constitutional precedent may lead to "uncertainty and ambiguity [for] police officers, lawyers and judges."[180] However, *Heitman* only sig-

171. *See id.*
172. *Id.* (McCormick, J., dissenting) (citing Stephen v. State, 677 S.W.2d 42 (Tex. Crim. App. 1984)).
173. *Id.*
174. *Id.* at 43-45.
175. 484 P.2d 84 (Cal. 1971).
176. *Autran*, 887 S.W.2d at 47.
177. *Id.* at 49.
178. *Id.*
179. *See* Evers v. State, 576 S.W.2d 46 (Tex. Crim App. 1976); Robertson v. State, 541 S.W.2d 608 (Tex. Crim. App. 1978); Daniels v. State, 600 S.W.2d 813 (Tex. Crim. App. 1980); Benavides v. State, 600 S.W.2d 809 (Tex. Crim. App. 1980); Gill v. State, 625 S.W.2d 307, 317 (Tex. Crim. App. 1980); Stephen v. State, 677 S.W.2d 42 (Tex. Crim. App. 1984).
180. Paul & Van Horn, *supra* note 117, at 970-71.

naled a partial departure from precedent. The full departure came with *Autran*. Although *Autran* relied heavily on *Heitman*, it avoided uncertainty and predictability by replacing the old bright line rule from *Heitman* with a new bright line rule.

Matthew W. Paul and Jeffrey L. Van Horn[181] assert *Heitman*'s reasoning for interpreting Article I, Section 9 of the Texas Constitution independent of the Supreme Court's Fourth Amendment decisions was previously tried and rejected with Article I, Section 10 of the Texas Constitution in *Forte v. State*.[182] In *Forte*, the appellant was convicted of driving while intoxicated and claimed his right to counsel under Article I, Section 10[183] of the Texas Constitution was violated when police denied his request to consult an attorney prior to administering a breath test.[184]

However, the Texas Court of Criminal Appeals held the appellant's rights under the Sixth Amendment were not violated.[185] The United States Supreme Court previously held a defendant's rights to counsel under the Sixth Amendment[186] are triggered "only at or after the initiation of adversary judicial proceedings against the defendant."[187] Thus, the issue in *Forte* was whether the defendant had a right to counsel under Article I, Section 10 of the Texas Constitution prior to the start of formal judicial proceedings.[188]

In *Forte*, Judge Duncan relied on *United States v. Wade*,[189] and stated "concern will invariably exist at many stages of a criminal prosecution prior to the onset of formal charges; therefore, the demarcation of formal charges before the right to counsel is triggered is probably arbitrary and capricious."[190] Thus, *Forte* rejected the Supreme Court's bright line rule in favor of a more flexible standard under Article I, Section 10 of the Texas Constitution and required "each case [to be] judged on whether the pretrial confrontation presented necessitates counsel's presence so as to protect a known right or safeguard."[191]

181. *Id.* at 968-71.

182. 759 S.W.2d 128 (Tex. Crim. App. 1988) (en banc), *overruled by* McCambridge v. State, 778 S.W.2d 70, 76 (Tex. Crim. App. 1989) (en banc).

183. Article I, Section 10 provides: "In all criminal prosecutions the accused shall . . . not be compelled to give evidence against himself, and shall have the right of being heard by himself or counsel, or both . . . ." TEX. CONST. art. I § 10.

184. *Forte*, 759 S.W.2d at 129-30.

185. *Id.* at 139.

186. The Sixth Amendment provides: "In all criminal prosecutions, the accused shall enjoy the right . . . to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense." U.S. CONST. amend. VI.

187. United States v. Gouveia, 467 U.S. 180, 187 (1994).

188. *Forte*, 759 S.W.2d at 133.

189. 388 U.S. 218 (1967).

190. *Forte*, 759 S.W.2d at 134.

191. *Id.* at 138.

The Texas Court of Criminal Appeals, however, overruled *Forte* in *McCambridge v. State*.[192] In *McCambridge*, Judge Duncan concluded the rule requiring a case-by-case determination of what constitutes a critical stage in the criminal process, thus triggering the right to counsel, is unworkable.[193] The *McCambridge* court claimed a bright line rule ultimately benefits the public because such a rule results in predictability, provides precise judicial review, and gives law enforcement parameters to operate legally.[194]

Autran, similar to *Forte*, departed from Supreme Court precedent. The *Autran* court chose not to follow the Supreme Court regarding inventory searches, just as the *Forte* court chose not to follow the Supreme Court on the issue of an individual's right to counsel. Furthermore, *Autran*, like *Forte*, abandoned a bright line rule. However, rather than adopting a more flexible standard, *Autran* established a new bright line rule regarding inventory searches. The *Autran* rule requires closed containers seized from automobiles during inventory searches to be recorded and/or photographed.[195]

B. *Article I, Section 9 - Textual and Historical Considerations*

The *Autran* court gave little deference to the textual similarity between Article I, Section 9 and the Fourth Amendment. The Texas Court of Criminal Appeals claimed the textual similarity was insignificant without considering the framers' intent. Thus, since there is no information on precisely what protection the framers of Article I, Section 9 intended to afford the citizens of Texas when they drafted the provision, the *Autran* court gave little weight to textual similarities between the Fourth Amendment and Article I, Section 9. However, the court should not have dismissed the textual similarities so quickly. There is a plausible theory which supports the fact that the framers intended for Article I, Section 9 to provide the same protections as the Fourth Amendment.

Texas had five constitutions from 1836 to 1876.[196] The search and seizure provision remained virtually unchanged in all five versions.[197] One historian concludes there is no information available on the deliberations of the 1836 Texas Constitution because the drafters were under great pressure and time constraints.[198] Therefore, the 1836 drafters adopted terms and expressions from older constitutions already interpreted and clarified by the courts.[199]

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192. 778 S.W.2d 70 (1989).
193. *Id.* at 75.
194. *Id.* at 76.
195. Autran v. State, 887 S.W.2d 31, 42 (Tex. Crim. App. 1994).
196. Paul & Van Horn, *supra* note 117, at 945-54.
197. *Id.*
198. *Id.* at 943 (citing Rupert N. Richardson, *Framing the Constitution of the Republic of Texas,* 31 Sw. Hist. Q. 191, 214 (1928)).
199. *Id.*

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In 1876, after Reconstruction, Texas adopted its current constitution without changing the search and seizure provision of Article I, Section 9.[200] During the 1875 constitutional convention, W.N. Ramey of Panola, Texas, said:

> Every one here knows very well that the great and leading principles of our American Constitutions *are in substance almost the same*, and in none of them are these settled principles better expressed than in the Constitution of 1845. We certainly don't expect to change the fundamental principles of Government established by our fathers.[201]

Thus, it is plausible the framers of the Texas Constitution did not debate the search and seizure provision precisely because they were intending to give the citizens of Texas the same protection afforded by the Fourth Amendment.

C. *Article I, Section 9 — Harmonized with the Fourth Amendment*

In *Crowell v. State*,[202] the Texas Court of Criminal Appeals stated, "Art. I, sec. 9, of the Constitution of this State, and the 4th Amendment to the Federal Constitution are, in all material aspects, the same."[203] In *Aguilar v. State*,[204] the appellant argued a violation under both constitutions.[205] However, the *Aguilar* court found, "[I]f we have properly decided this case under our Constitution and statutes then it has been properly decided under the Constitution of the U.S. and the holding in *Mapp v. Ohio*."[206]

Furthermore, in *Hall v. State*,[207] the appellant argued the insufficiency of an affidavit authorizing the issuance of a search warrant.[208] Without considering the Fourth Amendment, the *Hall* court looked to *Aguilar v. Texas*[209] and held the affidavit was insufficient under Article I, Section 9 of the Texas Constitution.[210]

For years, Texas courts held officers cannot seize mere evidence as opposed to implements of crime.[211] When the United States Supreme Court held the seizure of mere evidence does not violate the Fourth

200. *Id.* at 954-55.

201. DEBATES IN THE TEXAS CONSTITUTIONAL CONVENTION OF 1875, at 43 (Seth S. McKay ed., 1930).

202. 180 S.W.2d 343 (Tex. Crim. App. 1944).

203. *Id.* at 346; *see also* Brown v. State, 657 S.W.2d 797 (Tex. Crim. App. 1983).

204. 362 S.W.2d 111 (Tex. Crim. App. 1962), *rev'd and remanded,* 378 U.S. 108 (1964).

205. *Id.* at 113.

206. *Id.*

207. 394 S.W.2d 659 (Tex. Crim. App. 1965).

208. *Id.* at 659-60.

209. *Aguilar,* 378 U.S. at 108 (1964).

210. *Hall,* 394 S.W.2d at 659.

211. *See* LaRue v. State, 197 S.W.2d 570, 571 (Tex. Crim. App. 1946); Cagle v. State, 180 S.W.2d 928, 937-38 (Tex. Crim. App. 1944).

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DOI: 10.37419/TWLR.V2.I2.6

Amendment,[212] the Texas Court of Criminal Appeals abandoned its prohibition on the seizure of mere evidence.[213]

Furthermore, the Texas Court of Criminal Appeals followed the Supreme Court when it broadened the *Aguilar-Spinelli* two-prong test in *Illinois v. Gates*.[214] Although the Texas Court of Criminal Appeals could have continued to follow the more restrictive *Aguilar-Spinelli* test, the Texas court instead adopted the broader *Gates* test.[215]

D. Article I, Section 9 — Granting Lesser Protection than the Fourth Amendment

In some instances, Texas courts have found Article I, Section 9 to be more restrictive in scope than the Fourth Amendment.[216] Texas adopted an exclusionary rule in 1925, but it was a creature of statute, rather than a constitutional provision. The Texas exclusionary statute provides that evidence obtained by an officer in violation of either the laws or constitutions of Texas and the United States shall not be admitted into evidence against a defendant accused of a crime.[217]

However, in *Welchek v. State*,[218] Texas had the opportunity to interpret Article I, Section 9 as providing for an exclusionary rule similar to that which was later adopted by the Supreme Court in *Weeks v. United States*.[219] The *Welchek* court stated:

> [T]here is nothing in [our] constitutional provision inhibiting unreasonable searches and seizures which lays down any rule of evidence with respect to the evidential use of property seized under search without warrant, nor do we think anything in said constitutional provision can be properly construed as laying down such rule. . . . We believe that nothing in section 9, art. I, of our constitution . . . can be invoked to prevent the use in testimony in a criminal case of physical facts found on the person or premises of one accused of

212. Warden v. Hayden, 387 U.S. 294, 310 (1967).
213. Haynes v. State, 475 S.W.2d 739, 742 (Tex. Crim. App. 1971).
214. Illinois v. Gates, 462 U.S. 213 (1983). The *Aguilar* two-prong test is used to determine whether an informant's information creates probable cause for a search or arrest. First, the informant must be reliable, and second, there must be facts demonstrating the basis of the informant's knowledge. Aguilar v. Texas, 378 U.S. 108, 112-14 (1964). Spinelli v. United States, 394 U.S. 410 (1969), suggests either prong by itself, supported by evidence, can establish probable cause. *Id.* at 416-18. Finally, in *Gates* the Supreme Court announced a "totality-of-the-circumstances" test. *Gates*, 462 U.S. at 230. The Court compared a "totality-of-the-circumstances analysis, which permits a balanced assessment of the relative weights of all the various indicia of reliability . . . attending and informant's tip" with the "excessively technical dissection of informants' tips" required by the two-prong test. *Id.* at 234.
215. Eisenhauer v. State, 754 S.W.2d 159, 164 (Tex. Crim. App. 1988); *see also* Whaley v. State, 686 S.W.2d 950, 951 (Tex. Crim. App. 1985) (en banc).
216. *See, e.g.*, Welchek v. State, 247 S.W. 524 (Tex. Crim. App. 1922).
217. TEX. CODE CRIM. PROC. ANN. art. 38.23 (West 1991 & Supp. 1995); *see also* Chapin v. State, 296 S.W.2d 1095, 1099 (Tex. Crim. App. 1927).
218. 247 S.W. 524 (Tex. Crim. App. 1922).
219. 232 U.S. 383 (1914).

crime, which are material to the issue in such case, nor to prevent oral testimony of the fact of such finding which transgresses no rule of evidence otherwise pertinent.[220]

Similarly, in *Stevenson v. State*,[221] the Texas Court of Criminal Appeals refused to adopt the Supreme Court's automatic standing rule for all persons legitimately on the premises.[222] At that time, standing was a federal procedural question, and thus not binding on the states. However, in *Henley v. State*,[223] the Texas Court of Criminal Appeals recognized the automatic standing rule, perhaps in light of *Mapp v. Ohio*.[224]

It was not until *Rakas v. Illinois*[225] that standing became a substantive Fourth Amendment question, requiring all states to provide standing to those having a legitimate expectation of privacy in the place and items searched.[226] Thus, *Welchek* and *Stevenson* indicate that Article I, Section 9 provides less individual protection than the Fourth Amendment.

Texas must abide by the minimum procedural standards provided by the Fourth Amendment. Therefore, since the U.S. Constitution provides the floor for an individual's rights, the Texas Court of Criminal Appeals is *minimally* required to read Article I, Section 9 in harmony with the Fourth Amendment.

E. Autran *Violates* Stare Decisis

Prior to *Autran*, the law of automobile inventory searches in Texas was clear. Under *Evers v. State*,[227] officers conducting an automobile inventory search could inventory the contents of closed containers found therein.[228] Once a point of law is settled by a decision of the state's highest court, it should not be departed from and forms precedent. This is the doctrine of *stare decisis*.[229]

Texas courts, however, may depart from "prior rulings where cogent reasons exist, and where the general interest will suffer less by such a departure, than by a strict adherence."[230] In *State v. Gonzalez*,[231] Judge Baird stated, "When a rule has been once deliberately adopted

220. *Welchek*, 247 S.W. at 528-29.
221. 334 S.W.2d 814 (1960).
222. *See also* Jones v. United States, 362 U.S. 257 (1960), *overruled by* United States v. Salvucci, 448 U.S. 83 (1980).
223. 387 S.W.2d 877, 880 (Tex. Crim. App. 1965), *overruled on other grounds*, *Ex parte* Wilson, 588 S.W.2d 905 (Tex. Crim. App. 1979).
224. 367 U.S. 643 (1961).
225. 439 U.S. 128 (1978).
226. *See also* Wilson v. State, 692 S.W.2d 661 (Tex. Crim. App. 1985).
227. 576 S.W.2d 46 (Tex. Crim. App. 1979).
228. *Id.* at 48-50.
229. 16 TEX. JUR. 3d *Courts* § 119 (1981).
230. 16 TEX. JUR. 3d § 131 n.2 (citing Higgins v. Bordages, 31 S.W. 52 (Tex. 1895)).
231. 855 S.W.2d 692 (Tex. Crim. App. 1993).

and declared and uniformly followed, it should not be abandoned except upon the most urgent reasons."[232] However, in *Autran*, Judge Baird did not disclose what the most urgent reasons were for overruling precedent. Instead, he relied upon comparable jurisprudence.

The *Autran* court might have found guidance from a recent United States Supreme Court case regarding *stare decisis*. Although it is only persuasive authority for the Texas court, in *Planned Parenthood v. Casey*,[233] Justice O'Connor applied a four-part test to determine under what circumstances a court should overrule its prior decisions. Under the *Casey* test, a court should examine (1) whether the previous rule is workable; (2) whether there has been such reliance on the previous rule that overruling it would be unjust; (3) whether related principles of law have so far developed that the old rule is obsolete; and (4) whether facts have so changed or have become perceived so differently that the old rule is no longer justified.[234]

First, in applying the test to *Autran*, the bright line rule of allowing law enforcement officers with established procedures to open closed containers while conducting an inventory search was workable. Second, prior to *Autran*, the only persons relying on the old law were police officers. In addition, changing the law does not harm the general public because the new law gives the public protection against warrantless intrusions. Thus, the public will not be affected because *Autran* substitutes one bright line rule for another. Third, related principles have not changed. As previously stated, an individual has an inherent lesser expectation of privacy in his automobile than in his dwelling, and neither the United States Supreme Court nor the Texas Court of Criminal Appeals has departed from this view. Fourth, policy justifications for automobile inventory searches are still valid. Such policy reasons include the protection of police officers from claims of lost or stolen property, the safety of the general public, the protection of an owner's property, and protection of police officers from danger.

Stare decisis governs propositions of law and has no application to fact issues.[235] The *Autran* court did not have to depart from precedent. Instead, the Texas Court of Criminal Appeals could have distinguished the facts from its previous decisions and reached the same result. For example, officers conducted three inventory searches after seizing Autran's truck.[236] Inventory searches may not be used as a pretext to discover evidence which is not easily discoverable. Thus,

232. *Id.* at 696 (citing Gearheart v. State, 197 S.W. 187, 188-89 (Tex. Crim. App. 1917)).

233. 112 S. Ct. 2791 (1992).

234. *Id.* at 2808.

235. Rogge v. Gulf Oil Corp., 351 S.W.2d 565, 570 (Tex. Civ. App.—Waco 1961, writ ref'd n.r.e.); Duvol County Ranch Co. v. Foster, 318 S.W.2d 25, 28 (Tex. Civ. App.—San Antonio 1958, writ ref'd n.r.e.).

236. *Autran*, 887 S.W.2d at 33.

the Texas Court of Criminal Appeals could have held that three successive warrantless inventory searches are unreasonable as a matter of law.

VII. Conclusion

If the *Autran* court intended to send a warning to police officers not to use inventory searches as a ruse to discover evidence, then the Texas Court of Criminal Appeals should have ruled on that basis. Instead, the *Autran* court ignored precedent and opted to change the law by denying officers the right to open closed containers discovered during inventory searches.

Furthermore, as *Welchek* demonstrates, if there is any difference between the United States Constitution and the Texas Constitution, it is that the Texas Constitution is more restrictive of an individual's rights. It is commendable the Texas Court of Criminal Appeals sought to give independent meaning to the Texas Constitution, but not at the expense of *stare decisis*. If the laws of Texas require changing, it is a job more suited for the legislature, not the courts.[237]

Austin Travis Williams

237. Brown v. State, 657 S.W.2d 797, 799 (Tex. Crim. App. 1983) (en banc).