FOURTH AND FOURTEENTH AMENDMENTS—SEARCH AND SEIZURE—POLICE OFFICERS WITH PROBABLE CAUSE TO SEARCH A VEHICLE MAY INSPECT A PASSENGER'S BELONGINGS FOUND IN THE VEHICLE THAT ARE CAPABLE OF CONCEALING THE OBJECT OF THE SEARCH—*Wyoming v. Houghton*, 119 S. Ct. 1297 (1999).

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I. INTRODUCTION

The Fourth Amendment[1] of the United States Constitution protects, "[t]he right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures . . . ."[2] The warrant requirement is designed to prevent government officials from violating an individual's expectation of privacy.[3] In determining whether a particular search violates the

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[1] The Fourth Amendment states:

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

U.S. CONST. amend. IV. The United States Supreme Court has held the Fourth Amendment applicable to the states through the Due Process Clause of the Fourteenth Amendment. *See* Mapp v. Ohio, 367 U.S. 643, 655-56 (1961) (holding that evidence obtained through searches and seizures that are violative of the Constitution are, by the same authority, inadmissible in state court), *reh'g denied*, 368 U.S. 871 (1961).

[2] The words "searches and seizures" are terms of limitation. 1 WAYNE LAFAVE, SEARCH AND SEIZURE §2.1(A), at 299 (2d ed. 1987 & Supp.1994) [hereinafter "1 LAFAVE"] (citing Amsterdam, *Perspectives on the Fourth Amendment*, 58 MINN.L.REV. 349, 356 (1974)). Under the traditional approach, a "search" is said to imply "some exploratory investigation or an invasion and quest . . . the mere looking at that which is open to view is not a 'search,'" 1 LAFAVE § 2.1(a), at 301-02 (quoting CJ.S. § 1 (§ 1 (1952)), whereas a "seizure" occurs when there is some "meaningful interference with an individual's possessory interests in [his or her] property." *Id.* at 299-300 (quoting United States v. Jacobsen, 466 U.S. 109, 113 (1984)). *See* Karen M. Spano, *Fourth and Fourteenth Amendments—Search and Seizure—a Warrantless Seizure of Nonthreatening Contraband During a Valid Frisk is Reasonable if the Officer's Sense of Touch Makes it Immediately Apparent That the Object is Contraband*—Minnesota v. Dickerson, 4 SETON HALL CONST. L.J. 787, n.2 (1994).

[3] *See* Catherine A. Shepard, *Search and Seizure: From* Carroll *to* Ross, *The Odyssey of the Automobile Exception*, 32 CATH. U. L. REV. 221 (1982) (citing Cardwell v. Lewis, 417

Fourth Amendment, the central function of a court is to decide whether the search was reasonable.[4] It is well established that a police search without a warrant is *per se* unreasonable,[5] unless the government can prove that one of the six narrowly-crafted exceptions to the warrant requirement is applicable.[6]

U.S. 583, 589 (1974)).

[4] 1 LAFAVE, supra note 2, § 2.1, at 299.

[5] *See* Shepard, *supra* note 3, at 221 (citing Katz v. United States, 389 U.S. 347, 357 (1967)).

[6] *See* Katz v. United States, 389 U.S. 347, 357 (1967) (footnote omitted). The six exceptions to the warrant requirement are:

The automobile exception. *See* Carroll v. United States, 267 U.S. 132 (1925) (police may search a moving automobile when there is probable cause to believe the vehicle contains contraband).

Search incident to a lawful arrest. *See* United States v. Robinson, 414 U.S. 218 (1973) (police may fully search a person incident to a full custody arrest).

Stop and frisk. *See* Terry v. Ohio, 392 U.S. 1 (1968) (a policeman who identifies himself may conduct a protective search of the outer clothing when it reasonably appears that the suspect is armed and presently dangerous).

Consent. *See* Schneckloth v. Bustamonte, 412 U.S. 218 (1973) (when a person voluntarily consents, the police may search without a warrant and without probable cause).

Plain view. *See id.* at 222. (the plain view doctrine applies exclusively to warrantless seizures. Items that a person knowingly exposes to the public are not protected by the Fourth Amendment (citing Katz v. United States, 389 U.S. 347, 351 (1961)).

Emergency. *See* Warden v. Hayden, 387 U.S. 294 (1967) (police in hot pursuit of a suspect may enter the premises without a warrant)).

R. Andrew Taggart, Jr., *Criminal Procedure—Search and Seizure—Closed Containers Found Pursuant to a Legitimate Automobile Search may be Searched Without Benefit of a Warrant*: United States v. Ross, 57 TUL. L. REV. 1013 n.7 (1983).

The automobile exception[7] to the Fourth Amendment's warrant requirement permits an officer to search a vehicle without a search warrant if there exists both exigent circumstances and probable cause to believe that the search would lead to the discovery of contraband, thereby implicating the suspect in a crime.[8] In *Carroll v. United States*,[9] the United States Supreme Court created the automobile exception by holding that the warrantless search of a vehicle by law enforcement officials, who had probable cause to believe the automobile contained bootleg liquor, was in fact reasonable.[10] Since *Carroll*, cases presenting various circumstances of automobile searches have led to a clarification and expansion of the automobile exception.[11] The following note shall examine the Supreme Court's recent holding that a warrantless search of personal property found within an automobile, belonging to an individual otherwise not suspected of criminal activity, falls within the automobile exception to the warrant requirement.

In *Wyoming v. Houghton*,[12] the United States Supreme Court addressed the issue of whether the Fourth Amendment permits a police officer with probable cause to search a car, as well as a passenger's belongings located in the car, which are capable of concealing the object of the search.[13] Specifically, the Supreme Court examined whether a police officer overstepped the parameters

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[7] The term "automobile exception" is misleading because courts have applied the exception to other modes of transportation. *See, e.g.*, United States v. Harris, 627 F.2d 474, 476-77 (D.C. Cir. 1980), *cert. denied*, 453 U.S. 912 (1980) (automobile exception applies to search of a van); United States v. Hudson, 601 F.2d 797, 800 (5th Cir. 1979) (applying automobile exception to search of motor home); *see also* Shepard, *supra* note 3, at 225 (describing the automobile doctrine first articulated in *Carroll*).

[8] *See* Carroll v. United States, 267 U.S. 132 (1925).

[9] *See id.*

[10] *See id.*

[11] *See* Peter C. Prynkiewicz, Casenote, California v. Acevedo: *The Court Establishes One Rule to Automobile Searches, Opens the Door to Another Frontal Assault on the Warrant Requirement*; 67 U.N. DAME L. REVIEW 1269 (1992). The automobile exception has undergone significant transformations since its inception in *Carroll*. The original justification for the exception was the impractibility of obtaining a warrant while an officer has a suspect stopped. However, this purpose was expanded beyond the impracticability of obtaining a warrant in *Chambers v. Maroney* 399 U.S. 42 (1970) (holding that a warrantless search of an automobile at the police station was valid).

[12] 119 S. Ct. 1297 (1999).

[13] *See id.* at 1299.

of the automobile exception by searching a passenger's purse when the officer had probable cause to believe it contained contraband.[14] Relying on *Carroll* and its progeny,[15] the Supreme Court held that a police officer may seize contraband found inside a container which belonged to a passenger not suspected of criminal activity, yet was located within the suspected vehicle.[16]

II. STATEMENT OF THE CASE

On July 23, 1995, a Wyoming highway patrol officer made a routine traffic stop of an automobile for speeding and driving with a broken taillight.[17] The driver of the car was accompanied by his girlfriend and respondent, Sandra Houghton.[18] Upon approaching the vehicle, the officer noticed a hypodermic syringe in the driver's shirt pocket.[19] When asked about the syringe, the driver acknowledged that he had used it to take drugs.[20] The officer subsequently instructed the two passengers to step out of the vehicle.[21] Based upon Young's admission, the officer searched the entire vehicle for contraband.[22] When the officer discovered a purse on the back seat, Houghton claimed it was hers.[23] The officer opened the purse and discovered a brown bag containing drug paraphernalia and a syringe with sixty ccs of methamphetamine.[24] After noticing fresh needle track marks on Ms. Houghton's arms, the officer arrested and charged her

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[14] *See id.*

[15] *See generally* California v. Acevedo 500 U.S. 565 (1991); United States v. Ross 456 U.S. 798 (1982); Chambers v. Maroney 399 U.S. 42 (1970); Cardwell v. Lewis, 417 U.S. 583 (1974); Carroll v. United States, 267 U.S. 132, 135 (1925).

[16] *See Houghton*, 119 S.Ct. at 1304.

[17] *See id.* at 1299.

[18] *See id.*

[19] *See id.*

[20] *See id.*

[21] *See id.*

[22] *See Houghton*, 119 S. Ct. at 1299.

[23] *See id.*

[24] *See id.*

with felony possession of methamphetamine in a liquid amount greater than three-tenths of a gram.[25]

Prior to trial, Houghton filed a motion to suppress the evidence obtained from the purse, alleging that the search was a violation of the Fourth and Fourteenth Amendments.[26] Denying Houghton's motion to suppress, the trial court held that "the officer had probable cause to search the car for contraband, and, by extension, any containers therein that could hold the contraband."[27] With the methamphetamine admitted into evidence, a Wyoming jury convicted Houghton as charged.[28]

On appeal, the Wyoming Supreme Court reversed the conviction and held that the search violated Houghton's Fourth Amendment guarantee to be free from unreasonable search and seizure.[29] The court opined that a passenger's property is outside the scope of a warrantless automobile search if the police officer knows, or has reason to know, that the property does not belong to the driver and there existed no opportunity to hide the contraband in the passenger's property.[30]

Accordingly, the Wyoming Supreme Court applied the aforementioned rule and held that the search of Sandra Houghton's purse violated the Fourth and Fourteenth Amendments.[31] The court reasoned that the officer knew, or should

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[25] *See id.* at 1299-1300.

[26] *See id.*

[27] *See id.* (citing Houghton v. State, 956 P.2d 363 (Wyo. 1998)).

[28] *See Houghton*, 119 S.Ct. at 1300.

[29] *See Houghton*, 956 P.2d at 372. The Wyoming Supreme Court articulated the following rule:

> Generally, once probable cause is established to search a vehicle, an officer is entitled to search all containers therein which may contain the object of the search. However, if the officer knows or should have known that a container is the personal effect of a passenger who is not suspected of criminal activity, then the container is outside the scope of the search unless someone had the opportunity to conceal the contraband within the personal effect to avoid detection.

Id.

[30] *See id.*

[31] *See id.*

have known, that the purse did not belong to the suspected criminal, but rather, to one of the passengers.[32] Furthermore, the court found that the police officer had no reason to believe that someone was concealing contraband within the purse.[33] Consequently, the search was deemed unreasonable and Houghton's conviction was overturned.[34]

The United States Supreme Court granted *certiorari* to determine whether a police officer, who has probable cause to believe that contraband is concealed in a vehicle, may search containers found in the car, regardless of whether the container's owner is suspected of criminal wrongdoing.[35] Agreeing with the Wyoming trial court, a divided Supreme Court held that the search was reasonable.[36] Writing for the majority, Justice Scalia declared that the search would have been regarded as reasonable by the Framers at the time the Fourth Amendment was created.[37] Alternatively, Justice Scalia opined that the government interest in effective law enforcement outweighed the passenger's reduced privacy interest in property kept within an automobile.[38]

III. THE EVOLUTION OF THE AUTOMOBILE SEARCH DOCTRINE

The Fourth Amendment protection from unreasonable search and seizure was incorporated to the states through the Fourteenth Amendment in *Mapp v. Ohio*.[39] In *Mapp*, police discovered obscene books, pictures and photographs during an illegal search of the petitioner's house.[40] This evidence ultimately lead to petitioner's conviction under a state obscenity statute.[41] On appeal to the Ohio Su-

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[32] *See id.*

[33] *See id.*

[34] *See id.*

[35] *See* Wyoming v. Houghton, 119 S.Ct. 1297, 1299 (1999).

[36] *See id.*

[37] *See id.* at 1301.

[38] *See id.*

[39] 367 U.S. 643 (1961), *reh'g denied*, 368 U.S. 871 (1961).

[40] *See id.* at 644-45.

[41] *See id.*

preme Court, the conviction was upheld pursuant to the state's common law rule, which allowed the admission of illegally-seized evidence.[42] The United States Supreme Court reversed,[43] holding that evidence obtained through searches and seizures, in violation of the United States Constitution, is not admissible in state court, regardless of contrary state common law.[44] Writing for the majority, Justice Clark reasoned that federalism principles, combined with the interest in effective law enforcement, require the elimination of unnecessary conflict between federal and state courts.[45] Moreover, the majority opined that permitting states to admit unlawfully-seized evidence would encourage disobedience of the United States Constitution by individual states.[46]

Established in 1925, the automobile exception to the warrant requirement was formulated by the Supreme Court's holding that police officers, who have probable cause to believe contraband is hidden within a car, may search the entire car for contraband without a warrant.[47] In *Carroll v. United States*, federal prohibi-

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[42] *See id.* at 645.

[43] *See id.* Justice Clark, writing for the majority, declared that evidence obtained through an unconstitutional search was not admissible in a subsequent state prosecution. *See id.* at 654-55. Justice Black and Douglas concurred in the opinion, agreeing with the overruling of *Wolf v. Colorado*, 338 U.S. 25 (1949), and recognizing the problem of allowing evidence that is inadmissible in federal court to be admissible in state court. *See Mapp*, 367 U.S. at 661-66 (Black, J. concurring); *see id.* at 666-72 (Douglas, J., concurring). Justice Harlan dissented, along with Justices Frankfurter and Whittaker. *See id.* at 678 (Harlan, J., dissenting). The dissent opined that the majority's reasoning rested on the theory that "whatever configurations of the Fourth Amendment have been developed in the particularizing federal precedents are likewise . . . enforceable against the States." *Id.* at 679 (Harlan, J., dissenting). The dissent further reasoned that "it is the principle of privacy 'which is at the core of the Fourth Amendment'" and this does not include the exclusionary rule. *Id.* (quoting Wolf v. Colorado, 338 U.S. 25, 27 (1949)).

[44] *See id.* The Supreme Court overruled *Wolf v. Colorado*, which held that the Due Process Clause of the Fourteenth Amendment does not forbid the admission, into state court, of evidence that was obtained through an unreasonable search and seizure. *See id.* (citing Wolf v. Colorado, 338 U.S. 25 (1949)). The majority opined that it was necessary to extend the substantive protections of due process to state as well as federal prosecutions. *See id.* at 655-56.

[45] *See Mapp*, 367 U.S. at 655-56

[46] *See id.* at 657-58 (citing Elkins v. United States, 364 U.S. 206 (1958) (holding that the purpose of the exclusionary rule "is to compel respect for the constitutional guaranty in the only effectively available way—by removing the incentive to disregard it")).

[47] *See* Mary Brandt Jenson, Casenote, *The Scope of Warrantless Searches under the Automobile Exception*, United States v. Ross, 43 LA. L. REV. 1561, n.7 (1983). The agents had reason to suspect the defendants, Carroll and Kiro. Two months prior to the stop, the

tion officers stopped and searched an automobile occupied by two suspected bootleggers.[48] The search produced sixty-eight bottles of Scotch whiskey and Gordon gin hidden in the upholstery of the backseat.[49]

The defendants, Carroll and Kiro, were subsequently charged with violating Section 25, Title 2, of the National Prohibition Act,[50] which made it unlawful to possess any liquor.[51] At trial, the defendants moved to suppress the liquor as evidence against them, arguing that the search violated the Fourth Amendment because the officers did not obtain a warrant before searching the automobile.[52] Admitting the evidence, the trial court subsequently convicted Carroll and Kiro.[53]

The United States Supreme Court granted *certiorari* to determine whether the prohibition officers violated the Fourth Amendment by searching the vehicle without a warrant.[54] Writing for the majority, Chief Justice Taft held that the search was valid because the officers had probable cause to believe that the vehicle contained contraband. Furthermore, the Chief Justice found the search reasonable because exigent circumstances were present to justify the search.[55] The Court found existing probable cause because the defendants had unsuccessfully attempted to sell bootleg liquor to the officers two months prior to their arrest.[56]

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agents had posed as employees of the Michigan Chair Company at a meeting with Carroll. They attempted to buy three cases of whiskey from him at $130 per case. At the time of the stop, the officers were not looking for the defendants, but they knew the defendants often transported contraband liquor in an Oldsmobile. When the officers spotted the Oldsmobile by chance, they stopped it and conducted a search. *See id.* at 1562.

[48] *See* Carroll v. United States, 267 U.S. 132, 135 (1925).

[49] *See id.* at 134 (1925).

[50] *See* 41 Stat. 305 (1919) (repealed 1933). Section 25, title 2, of the National Prohibition Act made it unlawful to have or to possess any liquor and declared that no property rights existed in liquor.

[51] *See Carroll*, 267 U.S. at 135.

[52] *See id.*

[53] *See id.* at 134.

[54] *See id.* at 132.

[55] *See id.* at 155-56.

[56] *See id.* at 160-61. Probable cause exists when the facts of a situation are such that a reasonable person would believe that an offense either has been, or will be committed. *See*

Moreover, the Court noted that the officers had reason to believe that the suspects possessed liquor by virtue of their close proximity to Detroit, a haven for illegal liquor importation.[57]

Chief Justice Taft examined whether the search would have been regarded as unlawful under the common law when the Fourth Amendment was framed.[58] In reaching its decision, the Chief Justice opined that Fourth Amendment jurisprudence recognized a distinction between the search of a structure such as a house, and the search of a movable vessel such as a boat, wagon or automobile, "where it is not practicable to secure a warrant as a vehicle can be quickly moved out of the locality or jurisdiction." [59] The Chief Justice concluded that the warrantless search of a home or structure is subject to greater constitutional scrutiny because a search warrant could easily be obtained,[60] and there is a reduced risk of evidence being lost or destroyed.[61] Conversely, exigent circumstances exist when automobiles are involved because they are mobile by nature. Consequently, contraband concealed therein could be easily lost or destroyed because the suspect would have the opportunity to escape the jurisdiction before a warrant is issued.[62] Therefore, the Chief Justice determined that it was impractical for the agents to risk losing the suspects while waiting for a warrant.[63]

The majority placed a limitation on the applicability of the automobile search doctrine. The Chief Justice stressed that those lawfully in the country have the right of free passage without interruption or search.[64] Thus, the majority rejected

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Brinegar v. United States, 338 U.S. 160, 175, *reh'g denied*, 338 U.S. 839 (1949).

[57] *See Carroll*, 267 U.S. at 160. The location of the stop, Grand Rapids, Michigan, is located approximately 152 miles away from Detroit. During Prohibition, the stretch of the Detroit River that forms the Canadian border was one of the most active centers for the smuggling of illegal liquor. John Carroll was known as a member of the "Carroll boys," a group allegedly engaged in the practice of bootlegging in Grand Rapids, Michigan, during the middle portion of the 1920's. *See id.*

[58] *See id.* at 149.

[59] *Id.* at 153.

[60] *See id.*

[61] *See id.*

[62] *See id.*

[63] *See Carroll*, 267 U.S. at 159-60.

[64] *See id.* at 154. In furtherance of national self-protection, travelers seeking entrance into the country can be required to show identification and their personal effects are subject

the practice of stopping every automobile on the chance of finding contraband.[65] Instead, an officer must have probable cause to believe that a particular automobile contains contraband goods before it can be searched.[66] Applying this standard to the facts and circumstances of *Carroll*, the Court concluded that the officer's search was reasonable and the liquor seized was admissible as evidence.[67]

Following *Carroll*, the automobile exception was rarely employed to justify the warrantless search of an automobile outside the scope of prohibition related traffic stops.[68] When police obtained incriminating evidence from a warrantless search, courts typically applied the search incident-to-arrest doctrine to justify the search.[69] However, in 1969, the Supreme Court narrowed the scope of the incident-to-arrest exception to the warrant requirement in *Chimel v. California*.[70] Prior to *Chimel*, police officers were permitted to search the entire area within the control of the arrestee as a search incident-to-arrest.[71] Thus, an "area within the control of the arrestee" was broadly interpreted to mean the entire interior of an automobile.[72] Accordingly, when police searched a vehicle following the ar-

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to inspection. *See id.*

[65] *See id.*

[66] *See id.*

[67] *See id.* at 132.

[68] *See* 1 W. LAFAVE, *supra* note 2, at 511. *See also* Scher v. United States, 305 U.S. 251 (1938) (automobile exception justified warrantless search for liquor). However, the Supreme Court found the automobile exception inapplicable in *Preston v. United States*, 376 U.S. 364 (1964). There, the police searched a car that was towed to the station following the arrest of its owner. *See Preston*, 376 U.S. at 365. The Court held that the search was too remote in time and place to be a search incidental to arrest. *See id.* at 368. Moreover, the Court opined that exigent circumstances were not present because the suspect was under arrest at the police station and the vehicle was impounded. *See id.*

[69] *See* 1 W. LAFAVE, *supra* note 2, at 511. The search incident-to-arrest doctrine permitted police officers, to search areas beyond the immediate control of a suspect which was liberally interpreted to mean the entire interior of a vehicle. *See id.*

[70] 395 U.S. 752 (1969). In *Chimel*, police officers went to a suspected burglar's home with an arrest warrant, but not a search warrant. Following the arrest, the officers searched the suspect's home for evidence of his criminal activity, using the arrest as grounds for the search. The Supreme Court held that the search was unreasonable because it extended beyond the area from which the arrestee could have obtained a weapon or destroyed evidence. *See id.* at 768.

[71] *See supra* note 69 and accompanying text.

rest of a motorist, the evidence obtained from the search was admitted at trial as the fruits of a search incident-to-arrest.[73] The United States Supreme Court severely narrowed the scope of this doctrine, holding that the "immediate control of the arrestee" meant the area within which the arrestee could grab a weapon or destructible evidence.[74] Following *Chimel*, the search incident-to-arrest doctrine no longer justified a search of the entire interior of a vehicle following a motorist's arrest.[75] Not coincidently, as the scope of the search incident-to-arrest was narrowed, the automobile exception took a much more prominent role in justifying the warrantless police search of moving vehicles.

The expanded role of the automobile exception became evident the very next year when the Supreme Court determined that the warrantless search of an automobile at a police station was reasonable. In *Chambers v. Maroney*,[76] the police stopped a car when its occupants matched the description of suspects sought in the armed robbery of a service station.[77] Rather than search the car in the dark parking lot where the car was stopped, the police elected to arrest the suspects and inspect the car at the police station.[78] The resulting search produced evidence that linked the suspects to the robbery for which they were suspected, as well as another armed robbery carried out in a similar fashion.[79] Following their conviction, the petitioners appealed the admissibility of the evidence obtained

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[72] *See id.*

[73] *See id.*

[74] *See Chimel*, 395 U.S. at 768.

[75] *See id.*

[76] 399 U.S. 42 (1975).

[77] *See id.* at 44. On May 20, 1963, two men robbed a Gulf Service Station in North Braddock, Pennsylvania, at gunpoint. The robbers instructed the attendant to place the money from the register into his right glove. Two teenagers witnessed a blue station wagon speed away from the parking lot shortly before the police arrived. When the police came, the teenagers stated that there were four men in the station wagon, and one man was wearing a green sweater. A description of the men and the station wagon was broadcast over the police radio and within an hour, police stopped the vehicle. *See id.* at 44.

[78] *See id.*

[79] *See id.* A search of the blue station wagon revealed two .38 caliber revolvers, a right hand glove containing change, and business cards bearing the name of a gas station attendant who had been robbed one-week prior in nearby McKeesport, Pennsylvania. *See id.* Moreover, a search of the suspect's home the next day produced bullets for a .38 caliber pistol. *See id.*

from their vehicle by arguing that the evidence was the fruit of a Fourth Amendment violation.[80] The petitioners claimed that the automobile exception was inapplicable because there was an absence of exigent circumstances.[81]

Writing for the majority, Justice White upheld the stationhouse search of the car,[82] reasoning that the officers had probable cause to stop the suspects because their vehicle matched the description of the robbers' vehicle offered by the victims.[83] Moreover, the Court opined that exigent circumstances were present due to the darkness of the parking lot and potential danger to the officers.[84] Although the Court asserted that exigent circumstances were still required to justify a search pursuant to the automobile exception, its decision in *Chambers* indicated a willingness to allow searches in the absence of exigent circumstances.[85]

While it was clear that police were permitted to search an automobile when there was probable cause to believe it contained evidence of criminal activity,[86] not until 1977 did the Supreme Court examine whether the automobile exception extended to closed containers within the vehicle.[87] In *United States v. Chadwick*,[88] the Supreme Court held that the warrantless search of a footlocker, which the police had probable cause to believe contained contraband, was unconstitutional because the police did not have probable cause to believe the entire vehicle concealed contraband.[89] In *Chadwick*, federal narcotics agents became suspicious when a two-hundred pound footlocker, placed on a train in San Diego, was

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[80] *See id.* at 45.

[81] *See id.*

[82] *See Chambers* 399 U.S. at 44.

[83] *See id.* at 47.

[84] *See id.* at 52 n.10.

[85] *See* Gardner, *Search and Seizure of Automobiles and Their Contents: Fourth Amendment Considerations in a Post-*Ross *World*, 62 NEB. L. REV. 1,9 (1983).

[86] *See generally* Chambers v. Maroney, 399 U.S. 42 (1975); Cardwell v. Lewis, 417 U.S. 583 (1974); Carroll v. United States, 267 U.S. 132 (1925).

[87] *See generally* United States v. Ross, 456 U.S. 798 (1982); Arkansas v. Sanders, 442 U.S. 753 (1979); United States v. Chadwick, 433 U.S. 1 (1977).

[88] 433 U.S. 1, (1977).

[89] *See id.* at 14.

leaking talcum powder, a substance used to mask the smell of marijuana.[90] The agents tracked the package to Boston and arrested the petitioners after it was placed in the trunk of their automobile.[91] While the suspects were in custody, the agents opened the footlocker and, as expected, discovered a large quantity of marijuana.[92] Prior to trial, the defendants moved to suppress the marijuana as the fruit of an unlawful search.[93] The District Court for the District of Massachusetts allowed the suppression of the marijuana, holding that the automobile exception did not apply because the suspect had an increased privacy expectation in his luggage.[94] Affirming the suppression of the marijuana, the First Circuit Court of Appeals held that probable cause for believing the footlocker contained contraband, absent exigent circumstances, was not sufficient to justify the search.[95]

After granting *certiorari*, the United States Supreme Court affirmed, concluding that the search did not fall within the automobile exception.[96] Writing for the majority, Justice Burger declared that the search fell beyond the scope of the exception because it was not a general search of the car and the police had probable cause to believe only that the footlocker contained marijuana. [97] The

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[90] *See id.* at 3.

[91] *See id.* at 4.

[92] *See id.*

[93] *See id.* at 5. The defendants argued that exigent circumstances were not present because they were in custody at the time of the search and the police had no reason to believe that the footlocker contained explosives or other inherently dangerous substances. *See id.* Moreover, one of the arresting agents testified that there was no risk that whatever was contained in the footlocker trunk would be removed by the defendants or their associates. *See id.*

[94] *See Chadwick*, 433 U.S. at 5. The district court reasoned that the relationship between Chadwick's automobile and the footlocker was merely coincidental and that the footlocker was not a part of "the area from within which (respondents) might gain possession of a weapon or destructible evidence." *Id.* (citing Chimel v. California, 395 U.S. 752, 763 (1969)).

[95] *See id.* The First Circuit agreed that the footlocker was lawfully seized pursuant to the arrest, and the agents had probable cause to believe it contained marijuana. *See id.* However, the court determined exigent circumstances were not present because there was no risk that the evidence could be taken by the defendants, and the agents had no reason to believe that the footlocker contained explosives. *See id.*

[96] *See id.* at 16.

[97] *See id.* The government argued that the Warrant Clause of the Fourth Amendment protects individual interests associated with private homes. *See id.* Justice Burger dis-

majority rejected the government's argument that the Warrant Clause protects only those privacy interests associated with one's home.[98] The court noted a distinction between the general search of an entire automobile and the specific search of a piece of luggage in a car trunk.[99]

Justice Burger recognized that historically, an individual had a higher privacy expectation in luggage placed in an automobile because the contents are not open to public view, not subject to inspection at regular intervals, and not subject to official scrutiny.[100] Although luggage is mobile, the Court pointed out that Fourth Amendment protections are not rendered inapplicable.[101] Therefore, the *Chadwick* Court held that when a piece of luggage is the object of the search, the proper police procedure is to seize the luggage and postpone the search until a warrant is secured. The Court reasoned that the search of a parcel, which police had probable cause to believe contained contraband, is clearly distinguishable from situations such as *Carroll*, where the police have probable cause to search the entire vehicle.[102]

In *Arkansas v. Sanders*,[103] the Supreme Court attempted to clarify the application of the *Chadwick* rule.[104] In *Sanders*, police received a tip from a reliable source that the petitioner would arrive at a local airport with a suitcase full of marijuana.[105] When a companion met the petitioner at the airport, he placed the

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agreed, opining that the "Fourth Amendment protects people, not places." *See id.* (citing Katz v. United States, 389 U.S. 347, 351 (1967)).

[98] *See id.* at 7.

[99] *See id.*

[100] *See Chadwick*, 433 U.S. at 14.

[101] *See id.*

[102] *See id.* The Court opined that the Fourth Amendment was derived in a large part from the Framers' distaste for the general warrants that were used in England. *See id.* at 7-8. These general warrants granted customs officials and other agents of the King broad authority to search for smuggled goods. *See id.* at 8. This wide authority to search included the ability to search incoming vessels and wagons at length. *See id.* Accordingly, Justice Burger opined that it would be a mistake to conclude that the Fourth Amendment was designed merely to protect privacy interests in the home. *See id.* at 8-9.

[103] 442 U.S. 753 (1979).

[104] *See id.* at 755.

[105] *See id.* at 754.

suitcase into the trunk of a taxi.[106] After the taxi had traveled a few blocks from the airport, the police stopped the cab and instructed the driver to open the trunk.[107] The officers subsequently opened the suitcase without a warrant and discovered several pounds of marijuana.[108] Following Sanders' conviction, the Arkansas Supreme Court held that the exclusionary rule applied, thereby prohibiting admission of the evidence against the petitioner.[109] The court opined that a warrantless search generally must be supported by "probable cause coupled with exigent circumstances."[110] Although there was probable cause to believe that there was contraband in the suitcase, the Arkansas Supreme Court reasoned that there was an absence of exigent circumstances because the police were in control of both the automobile and its occupants at the time of the search.[111] Moreover, the court noted that there was no danger of destruction of evidence.[112]

The United States Supreme Court affirmed, holding that the search of any closed article of luggage, even if discovered pursuant to a valid search of the car, must be supported by a warrant.[113] Relying on *Chadwick*, the Court reasoned that the warrant requirement applies to personal luggage taken from automobiles in the same manner as luggage taken from other locations.[114] Furthermore, the Court noted that there is a greater expectation of privacy generally associated with personal effects.[115] Accordingly, under the *Sanders* holding, a warrantless search of luggage discovered pursuant to a *Carroll* search must be supported by an exception to the warrant requirement that is separate and distinct from the automobile exception.[116]

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[106] *See id.* at 754.

[107] *See id.*

[108] *See id.* at 755-56.

[109] *See Sanders*, 442 U.S. at 755-56.

[110] *See id.* at 756 (citing Arkansas v. Sanders, 262 Ark. 59, 62 (1979)).

[111] *See id.*

[112] *See id.*

[113] *See id.* at 766.

[114] *See id.* at 764.

[115] *See Sanders*, 442 U.S. at 764.

[116] *See id.* at 766.

In *United States v. Ross,* the scope of the automobile search doctrine was expanded to include containers within the vehicle, as long as the officer has probable cause to believe they contained contraband.[117] In *Ross*, police officers obtained a tip from an informant that the petitioner was selling narcotics out of the trunk of a vehicle parked on a specific street in Washington, D.C.[118] The officers went to the location, placed petitioner's maroon Malibu under surveillance and waited for him to appear.[119] When the petitioner appeared and began to drive away, the officers stopped the vehicle and searched the passenger compartment.[120] After discovering a bullet and a pistol in the back seat of the vehicle, the officers opened the trunk and discovered a brown paper bag containing heroin, along with a leather pouch holding $3,200.00 cash.[121] Petitioner was subsequently arrested and charged with possession of heroin with intent to distribute, a violation of 21 U.S.C. § 841(a). [122]

Prior to trial, the petitioner moved to suppress both the heroin found in the paper bag and the currency, arguing that the evidence was the fruit of an illegal

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[117] *See* United States v. Ross, 456 U.S. 798, 800 (1982). The Supreme Court had previously expanded *Chadwick* in *Arkansas v. Sanders*, 442, U.S. 753 (1979). In *Sanders*, police discovered marijuana after they searched the suitcase of a suspected smuggler subsequent to seeing him place it into the trunk of a taxi. *See Sanders*, 442 U.S. at 755. The Supreme Court held that the search was unconstitutional because the automobile exception did not apply to luggage found within a lawfully stopped automobile due to the increased privacy expectations one has in personal luggage. *See id.* at 764-66.

In *Robbins v. California*, the Court further bolstered the belief that individuals deserve a higher expectation of privacy in their luggage. *See* Robbins v. California, 453 U.S. 420, 428-29 (1981). In *Robbins*, the police discovered a cloud of marijuana smoke in the defendant's station wagon during a routine traffic stop. *See id.* at 422. While searching the car, the officer noticed two packages wrapped in green plastic. *See id.* The defendant was arrested after the officer opened the package and discovered two bricks of marijuana. *See id.* The Supreme Court deemed the search unconstitutional, holding that there was no distinguishable difference between the privacy values associated with luggage and closed containers stored in a car. *See id.* at 425. Thus, the Court determined that the automobile exception did not apply to any closed containers found within a lawfully stopped vehicle. *See id.* at 429.

[118] *See Ross*, 456 U.S. at 800.

[119] *See id.* at 802.

[120] *See id.*

[121] *See id.* at 801.

[122] *See id.*

search violating the Fourth Amendment.[123] The District Court for the District of Columbia denied the motion, and Ross was subsequently convicted.[124] In reversing the conviction, the Court of Appeals for the District of Columbia Circuit held that the police had probable cause to search the car, but not the two containers found in the trunk.[125] The Court of Appeals acknowledged that the officers had probable cause to stop and search the car pursuant to *Carroll*.[126] Considering the warrantless search of the leather pouch and brown paper bag separately, the court held that the constitutionality of each search depended upon whether Ross had a reasonable expectation of privacy in the items.[127] Accordingly, the court determined that the warrantless search of the paper bag was valid, whereas the search of the leather pouch was invalid.[128] The United States Supreme Court granted the government's petition for *certiorari* to determine whether the automobile exception to the warrant requirement applies to containers found in the vehicle.[129]

The Supreme Court reversed, holding that the search of the containers found within the vehicle did not violate the Fourth Amendment.[130] Justice Stevens, writing for the majority, narrowed the issue to "whether, in the course of a legitimate warrantless search of an automobile, police are entitled to open containers found within the vehicle." [131] The majority determined that police officers,

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[123] *See id.*

[124] *See Ross*, 456 U.S. at 801.

[125] *See id.*

[126] *See id.*

[127] *See id.* at 802.

[128] *See id.* The Court of Appeals treated the warrantless search of the containers found in the trunk separately from the search of the interior of the vehicle. *See id.* Applying *Arkansas v. Sanders*, the court held that the constitutionality of the warrantless search of a container found in an automobile depends upon whether the owner possesses a reasonable expectation of privacy in its contents. *See id.* Accordingly, the court held that the warrantless search of the paper bag was valid because Ross did not have a reasonable expectation of privacy in the paper bag. *See id.* at 805. However, the court concluded that Ross did have a reasonable expectation of privacy in the leather pouch. *See id.*

[129] *See id.* at 804. Writing for the majority, Justice Stevens noted that there was a need for clarification in the law in situations where police have probable cause to believe contraband may be found in a stopped vehicle. *See id.*

[130] *See Ross*, 456 U.S. at 825.

[131] *Id.* at 817.

who had legitimately stopped a vehicle and had probable cause to believe that contraband was concealed somewhere within it, could conduct a warrantless search of every part of the vehicle that could conceivably conceal the contraband.[132] The Court opined that the *Chadwick-Sanders* rule was distinguishable only "because the police there had probable cause to search the double-locked footlocker and the suitcase respectively before either came near an automobile."[133] Conversely, the police in *Ross* had probable cause to search the entire vehicle and the contraband was discovered pursuant to a valid warrantless search of the entire vehicle.[134]

Justice Stevens stressed that the warrantless search of a vehicle, justified by the automobile exception, can be no broader than a similar search, justified by a warrant.[135] Accordingly, "[i]f probable cause justifies the search of a lawfully stopped vehicle, it justifies the search of every part of the vehicle and its contents that may conceal the object of the search."[136] The Court reasoned that the *Carroll* decision would be of little consequence if the permissible scope of a warrantless automobile search did not include containers and packages found inside the vehicle.[137] Justice Stevens observed that contraband, by its very nature, is intended to be withheld from public view and thus, contraband is rarely placed into an automobile unless in some form of container.[138] Moreover, Justice Stevens recognized that a lawful search of an area generally extends to the entire area in which the object of the search may be found.[139] For example, a warrant that

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[132] *See id.* at 825.

[133] *Id.* at 822 (citing Robbins v. California, 453 U.S. 420, 444 (1978) (Stevens, J., dissenting)).

[134] *See id.* at 814.

[135] *See id.* at 825.

[136] *Ross*, 456 U.S. at 825.

[137] *See id.* at 820.

[138] *See id.* The Court noted that the legislation, which supported *Carroll* concerned the enforcement of laws imposing duties on imported goods. *See id.* at 820 n. 26. Accordingly, much of this merchandise was shipped in various types of closed containers. *See id.* Therefore, since Congress had authorized the warrantless searches of vessels for imported merchandise, it would be inconceivable that Congress intended a customs official to obtain a search warrant for each and every package discovered during the search. *See id.* The Court opined that Congress did not intend for customs officials to merely inspect the exterior of cartons or boxes in which smuggled goods might be concealed. *See id.*

[139] *See id.* at 820-21.

authorizes an officer to search a home for illegal weapons also "provides authority to open closets, chests, drawers and containers in which the weapon might be found." [140] Based upon this reasoning, the Court held that police could search any container found in a vehicle that is capable of concealing the object of the search.[141]

Critics of *Ross* argue that the original justification for the automobile exception to the warrant requirement—impracticability—would not support the extension of the exception to closed containers, even if the search was supported by a general probable cause.[142] Exigent circumstances disappear once police seize a container and bring it into their control. Accordingly, it would not be impractical to obtain a search warrant at this point.[143] Nevertheless, the *Ross* Court determined that the governmental interest in effective law enforcement outweighed the petitioner's privacy interest in the containers within his automobile.[144]

Following *Ross*, a confusing dichotomy developed regarding the parameters of the automobile exception.[145] On one side of this dichotomy, the *Carroll* rule permitted the warrantless search of an automobile when police had probable

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[140] *See id.* at 821. The practical considerations that justify the automobile exception continue to apply until the search of the entire automobile and its contents has been completed. *See id.* at 821 n. 28. Technically, a police officer could search the entire car without a warrant, and take all of the closed containers to a magistrate for a warrant. *See id.* But in effect, this problem would compound the intrusion on privacy because it would require officers to secure the vehicle while a warrant was obtained. *See id.* The Court opined that this requirement would be inconsistent with the rationale supporting *Carroll*. *See id* at 821 n. 21.

[141] *See id.* at 821. Justice Stevens opined that,

> [w]hen a legitimate search is under way, and when its purpose and its limits have been precisely defined, nice distinctions between closets, drawers, and containers, in the case of a home, or between glove compartments, upholstered seats, trunks and wrapped packages, in the case of a vehicle, must give way to the interest in the prompt and efficient completion of the task at hand.

Id.

[142] *See* Shepard, *supra* note 3, at 224.

[143] *See id.*

[144] *See Ross*, 456 U.S. at 817.

[145] *See* Joel S. Hjelmaas, *The Need for a Higher Standard of Exigency as a Prerequisite for Warrantless Vehicle Searches*, 71 IOWA L. REV. 1161, 1168 (1986).

cause to search an entire vehicle.[146] Conversely, the *Chadwick-Sanders* rule prevented officers from searching containers in the car when probable cause existed as to a particular container in the vehicle.[147] This dichotomy created confusion for police and courts alike. Consequently, the line between probable cause to search a vehicle and probable cause to search a package in that vehicle remained unclear.

In *California v. Acevedo,*[148] the United States Supreme Court abrogated this dichotomy by holding that the automobile exception authorized police to search all containers found in an automobile, without a warrant, regardless of whether they have probable cause to search a container within a vehicle, or probable cause to search the vehicle itself.[149] In *Acevedo*, police officers observed the petitioner leave an apartment, which was suspected of marijuana use, carrying a brown paper bag the size of marijuana packages previously seized from the apartment.[150] The officers stopped the vehicle after they witnessed the petitioner place the brown bag into its trunk.[151] Possessing probable cause to believe the brown paper bag contained contraband, the officers opened the trunk and discovered marijuana in the brown paper bag.[152] The petitioner was subsequently arrested and charged with possession of marijuana for distribution purposes.[153] The trial court denied Acevedo's pre-trial motion to suppress the marijuana, thereby causing him to subsequently plead guilty.[154]

On appeal, the California Court of Appeals reversed, holding that the exclusionary rule required suppression of the marijuana because the warrantless search was unreasonable.[155] Although the officers had probable cause to believe

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[146] *See id.* at 1169-70.

[147] *See id.*

[148] 500 U.S. 565 (1991).

[149] *See id.* at 576.

[150] *See id.*

[151] *See id.* at 568.

[152] *See id.* at 567.

[153] *See id.*

[154] *See Acevedo*, 500 U.S. at 568.

[155] *See id.* (citing State v. Acevedo, 216 Cal.App. 3d 586 (1990)).

that the bag contained contraband, the appellate court reasoned that the police lacked probable cause to believe that the car itself contained marijuana.[156] Accordingly, the court, applying the *Chadwick-Sanders* rule, held that the police could seize movable luggage or other closed containers; but they could not search them without a warrant based on an individual's greater privacy expectation in such containers.[157]

A divided United States Supreme Court held that police may search a container in an automobile where they have probable cause to believe that the parcel contains contraband.[158] Citing *Carroll* and *Ross*, Justice Blackmun reasoned that the Court's previous attempts to differentiate between a container for which police were specifically searching, and a container, which the police came across during a general automobile search, provided only minimal privacy protection while hindering effective law enforcement.[159] Justice Blackmun noted that can be difficult for police to determine whether they have probable cause to search an entire vehicle or whether it exists only for a particular container in the vehicle.[160] Accordingly, the Justice determined that a separate rule could actually disserve privacy interests because police would be able to broaden their ability to search without a warrant.[161] For example, if police were required to establish general probable cause before opening a specific container, they would be compelled to search the entire vehicle before opening the target of the search.[162]

Furthermore, the Court reasoned that "the search of a paper bag intrudes far less on individual privacy than does the incursion sanctioned long ago in *Carroll*."[163] Finally, the Court noted that the *Chadwick-Sanders* rule is limited because police are often able to search containers without a warrant when the

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[156] *See id.*

[157] *See id.*

[158] *See id.* In a 5-1-3 decision, Justice Blackmun authored the majority opinion, joined by Chief Justice Rehnquist, and Justices O'Connor, Kennedy and Souter. *See id.* at 565. Justice Scalia filed a concurring opinion. *See id.* Justices Stevens filed a dissenting opinion in which Justice Marshall joined. *See id.* Justice White filed a separate dissenting opinion. *See id.*

[159] *See id.* at 575-76.

[160] *See Acevedo*, 500 U.S. at 576.

[161] *See id.*

[162] *See id.*

[163] *Id.*

search is incident-to-arrest.[164]

Following *Acevedo*, the automobile exception authorized police to search containers without regard to whether the search was directed at the car or to a specific package.[165] However, the authorization for police to search all containers regardless of ownership, remained an undetermined issue. In *Wyoming v. Houghton,*[166] the United States Supreme Court answered this question affirmatively.

IV. *WYOMING V. HOUGHTON*— THE FOURTH AMENDMENT PERMITS THE WARRANTLESS SEARCH OF A PASSENGER'S BELONGINGS THAT ARE CAPABLE OF CONCEALING THE OBJECT OF THE SEARCH.

In *Wyoming v. Houghton,* a Wyoming highway patrol officer stopped an automobile for driving erratically with a broken taillight.[167] In addition to the driver, there were two passengers in the vehicle: the driver's girlfriend and the respondent, Sandra Houghton.[168] Upon approaching the vehicle, the officer noticed a hypodermic syringe in the driver's front shirt pocket.[169] When asked why he had the syringe, the driver replied that he had used it to take drugs.[170] Believing there was probable cause to find contraband concealed somewhere within the vehicle, the officer ordered the passengers out of the car.[171] When the officer opened a purse resting on the backseat, he discovered a paper bag containing sixty cc's of methamphetamine.[172] The respondent was arrested after the officer noticed needle track-marks on her arm.[173] Prior to her trial, the respondent

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[164] *See id.*

[165] *See id.*

[166] 119 S. Ct. 1297 (1999).

[167] *See id.* at 1299.

[168] *See id.*

[169] *See id.*

[170] *See id.*

[171] *See id.*

[172] *See Houghton*, 119 S. Ct. at 1299.

[173] *See id.*

moved to have the contraband excluded as evidence against her, alleging that the warrantless search was a violation of her Fourth Amendment guarantee to be free from unreasonable search and seizure.[174]

Denying her motion, the trial court held that the police had probable cause to search the car for contraband due to the syringe in the driver's pocket and his admission to using the syringe for drugs.[175] The court reasoned that the police had further authorization to search the passenger's purse because the probable cause extended to any containers that could conceal the object of the search. The respondent then appealed to the Wyoming Supreme Court.[176]

The Wyoming Supreme Court reversed, holding that the passenger property rule does not authorize the warrantless search of all containers found in a vehicle that are capable of concealing the object of the search.[177] The court acknowledged that the officer had probable cause to search the entire vehicle for contraband.[178] However, the court opined that probable cause to search a vehicle for contraband does not extend to all containers in the vehicle when the officer knows or should have known that the container does not belong to the individual suspected of criminal activity.[179] The court found that the police knew, or should have known, that the purse did not belong to the driver. Furthermore, the police had no reason to believe that the driver had placed contraband into the purse.[180] Accordingly, the Wyoming Supreme Court concluded that the search of the passenger's purse violated the Fourth and Fourteenth Amendments because the officer "knew or should have known that the purse did not belong to the driver," and because "there was no probable cause to search the passengers' personal effects and no reason to believe that contraband had been placed within the purse."[181]

The United States Supreme Court granted *certiorari* to determine whether police may search containers, which potentially could conceal the object of the search, despite the officer's belief that the container does not belong to an indi-

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[174] *See id.*

[175] *See id.* at 1300.

[176] *See id.*

[177] *See id.* (citing Houghton v. Wyoming, 956 P.2d 363, 372 (Wyo. 1998)).

[178] *See Houghton*, 119 S. Ct. at 1299.

[179] *See id.*

[180] *See id.*

[181] *See id.*

vidual suspected of criminal activity.[182]

A. JUSTICE SCALIA DETERMINES THAT THE SEARCH WOULD HAVE BEEN REGARDED AS REASONABLE UNDER COMMON LAW BY THE FRAMERS OF THE FOURTH AMENDMENT AND UNDER TRADITIONAL FOURTH AMENDMENT REASONABLENESS STANDARDS.

Writing for the majority,[183] Justice Scalia began the opinion by outlining the two-part inquiry traditionally applied by the Supreme Court when determining the constitutionality of a police search.[184] First, the Court must determine whether the search would have been regarded as unlawful under the common law when the Fourth Amendment was framed.[185] If this inquiry fails to provide a satisfactory determination, the Court then evaluates the search in terms of traditional standards of reasonableness, by balancing the degree to which the search intrudes on individual privacy against the legitimate governmental interests promoted by the search.[186] The Supreme Court held that the search of Sandra Houghton's purse was valid under both tests.[187]

Citing *Carroll*, Justice Scalia opined that the framers would have found the search of Young's car reasonable at the time the Fourth Amendment was written.[188] The majority pointed out that the police had probable cause to search the vehicle for contraband because "with refreshing candor, Young [the driver] replied that he used [the syringe] to take drugs."[189] The Court noted that factually,

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[182] *See* Wyoming v. Houghton, 119 S. Ct. 31 (1998).

[183] In a 5-1-3 opinion, Justice Scalia was joined by Chief Justice Rehnquist, along with Justices O'Connor, Kennedy, and Thomas. *See Houghton*, 119 S. Ct. at 1297. Justice Breyer filed a concurring opinion. *See id.* Justice Stevens filed a dissenting opinion in which Justices Souter and Ginsberg joined. *See id.*

[184] *See id.* at 1300.

[185] *See id.*

[186] *See id.*

[187] *See id.* at 1297.

[188] *See id.*

[189] *Houghton*, 119 S. Ct. at 1297. Citing *Carroll*, Justice Scalia noted that the Framers would have regarded the warrantless search of an automobile as reasonable in light of the legislation enacted from 1789-99 that authorized customs officials to search any ship or vessel without a warrant if they had probable cause to believe that it contained goods subject to a duty. *See id.*

Carroll was similar to the present case because it involved the warrantless search of a vehicle, which the police had probable cause to believe contained contraband.[190] Justice Scalia then referred to legislation enacted by Congress in the late 1700's, which authorized customs officials to search ships without a warrant when they had probable cause to believe that it contained goods subject to a duty.[191] Accordingly, the search of Young's car was not unreasonable because the police had probable cause to believe it contained contraband.[192]

Justice Scalia then explained that under *United States v. Ross*, the warrantless search of the containers found in Young's vehicle was reasonable.[193] The majority reasoned that the framers authorized warrantless searches of vessels for imported merchandise, and therefore, "it is inconceivable that it intended customs officials to obtain a warrant for every package discovered during the search."[194] Moreover, the Court determined that customs officials could open the packages when necessary, opposed to merely inspecting their exterior.[195]

In a similar fashion, the Court reasoned that the search of the containers in Young's vehicle was reasonable because the Wyoming Highway Patrol Officer had probable cause to believe that contraband may have been concealed somewhere within the vehicle.[196]

Justice Scalia then addressed the issue of ownership of the purse and the fact that the driver, as opposed to the respondent, was suspected of criminal activity.[197] According to the Court, the dispositive question was whether the respondent's purse was capable of concealing contraband.[198] Consequently, the majority declared that the automobile exception "app[lies] broadly to all containers within a car, without qualification as to ownership."[199] For the majority, the

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[190] *See id.* at 1300.

[191] *See id.*

[192] *See id.*

[193] *See id.*

[194] *See id.*

[195] *Houghton*, 119 S. Ct. at 1301 (citing United States v. Ross, 456 U.S. 798, 806 (1982)).

[196] *See id.*

[197] *See id.*

[198] *See id.*

critical element of a reasonable search does not center on the police officer's suspicion of the property owner, but whether the police officer has reasonable cause to believe that contraband can be found in the container.[200]

Relying on *United States v. Ross*,[201] Justice Scalia acknowledged that there was no question as to who owned the leather pouch and paper bag that were searched in *Ross*.[202] Moreover, the majority noted that there was not even a passenger in *Ross*.[203] Nonetheless, the Court reasoned that *Ross* authorized the search of closed containers in a vehicle because of their presence in the vehicle, regardless of ownership.[204] Justice Scalia opined that the holding in *Ross* was not limited to containers belonging to the driver, because, if so, "one would have expected that substantial limitation to be expressed" in the opinion.[205] Accordingly, the Court determined that the Framers would have regarded the warrantless search of a passenger's property as reasonable.[206]

Alternatively, the majority determined that even if historical precident did not support the search, the governmental interest in effective law enforcement outweighed the respondent's privacy interest in the purse.[207] First and foremost, the majority noted that passengers in an automobile have a reduced privacy interest in property "that they transport in cars which 'trave[l] public thoroughfares.'"[208]

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[199] *Id.*

[200] *Id.* (citing Zurcher v. Stanford Daily, 436 U.S. 547 (1978)). In *Zurcher*, police entered the offices of the Stanford student newspaper without a warrant. The officers were searching for pictures taken at a student demonstration at a campus hospital in an attempt to identify those protesters who used violence against police during the demonstration. The United States Supreme Court upheld the warrantless search, concluding that the critical element of a search is that the there is probable cause to believe it will be found, not whether the owner of the property is suspected of criminal activity. *See Zurchar*, 436 U.S. at 549-54.

[201] 456 U.S. 798 (1982).

[202] *See id.* at 824.

[203] *See Houghton*, 119 S. Ct. at 1301 (citing *Ross*, 456 U.S. at 824).

[204] *See id.*

[205] *Id.*

[206] *See id.*

[207] *See id.* at 1302.

[208] *Id.* (citing Cardwell v. Lewis, 417 U.S. 583, 590 (1974)). In *Cardwell*, police ar-

The Court reasoned that automobiles are "subject to police stop and examination to enforce 'pervasive' governmental controls '[a]s an everyday occurrence.'" [209]

The majority distinguished the search of the respondent's purse from the two cases which the Wyoming Supreme Court deemed dispositive. *United States v. De Re*[210] and *Ybarra v. Illinois*[211] involved police searches of one's person without a warrant, rather than the search of personal property discovered in an automobile.[212] Justice Scalia noted that the search of one's person is far more intrusive than the search of personal property transported in an automobile.[213] The Court reasoned that cases involving the warrantless search of one's person, "constitutes a severe, though brief, intrusion upon cherished personal security, and it must surely be an annoying, frightening, and perhaps humiliating experience."[214] Conversely, the majority opined that a search of personal property does not im-

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rested the petitioner for his involvement in the murder of a business associate. *See Cardwell,* 417 U.S. at 583. While he was in police custody, the police impounded petitioner's car. *See id.* The next day, while the car was still impounded, the police searched the outside of his car without a warrant in an attempt to match the tire tracks of the vehicle with those that were left at the scene of the murder. *See id.* The police also took paint samples from the car to match those left on the victim's car. *See id.* The evidence linking him to the murder scene helped secure his conviction for the murder. *See id.*

On appeal, the petitioner alleged that the warrantless search of his vehicle was a violation of the Fourth Amendment. *See id.* The Supreme Court upheld the admission of the evidence at trial. *See id.* Writing for the majority, Justice Blackmun opined that the search of a vehicle is less intrusive than the search of a home, and implicates a lesser expectation of privacy. *See id.* at 584. The majority reasoned that "an individual 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." *Id.* at 590. Moreover, the Court noted that a car travels on public roadways where its occupants and contents are in plain view, and, therefore, has "little capacity for escaping public scrutiny." *Id.*

[209] *Houghton*, 119 S.Ct. at 1302 (citing South Dakota v. Opperman, 428 U.S. 364, 368 (1976)).

[210] 332 U.S. 581 (1948).

[211] 444 U.S. 85 (1979).

[212] *See Houghton*, 119 S. Ct. at 1302.

[213] *See id.* (citing United States v. De Re, 332 U.S. 581 (1948) (probable cause to search a car did not justify a bodily search of a passenger)). *See also* Ybarra v. Illinois, 444 U.S. 85 (1979) (search warrant for a tavern and its bartender did not permit bodily searches of all the bar's patrons).

[214] *Houghton*, 119 S. Ct. at 1302 (citing Terry v. Ohio, 392 U.S. 1, 24-25 (1968)).

plicate such traumatic consequences.[215]

Having established a passenger's diminished privacy expectation in property stored in an automobile, the Court opined that the government interest in effective law enforcement is a substantial one.[216] Justice Scalia noted that effective law enforcement would be "impaired without the ability to search a passenger's personal belongings when there is reason to believe contraband or evidence of criminal wrongdoing is hidden in the car."[217] The Court reasoned that the "ready mobility of an automobile creates a risk that the evidence or contraband will be permanently lost while a warrant is obtained."[218] Moreover, the majority presumed that a passenger in an automobile "will often be engaged in a common enterprise with the driver, and have the same interest in concealing the fruits or the evidence of their wrongdoing."[219] Thus, the Court reasoned that a criminal might be able to hide contraband in a passenger's property without the passenger's knowledge or permission.[220] Justice Scalia conceded that while these factors are not present in every case, "a balancing of the interests must be conducted with an eye to the generality of the cases."[221] Accordingly, the majority concluded that the government interest in effective law enforcement would be impaired if police officers, in the absence of a warrant, had to show individualized probable cause before searching containers discovered in an automobile.

Finally, the Court stressed the need for a bright line test to govern the warrantless search of packages, in which police have probable cause to believe evidence of a crime exists.[222] The majority reasoned that the passenger property rule endorsed by the Wyoming Supreme Court would "dramatically reduce the ability to find and seize contraband and evidence of a crime," because it would require an officer to have positive reason to believe that the passenger and driver were "engaged in a common enterprise."[223] Accordingly, the Court feared that

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[215] *See id.*

[216] *See id.*

[217] *Id.*

[218] *Id.* (citing California v. Carney, 471 U.S. 386, 390 (1985)).

[219] *Id.* (citing Maryland v. Wilson, 519 U.S. 408, 413-14 (1997)).

[220] *See Houghton*, 119 S. Ct. at 1303.

[221] *Id.*

[222] *See id.*

[223] *Id.*

once the passenger property rule became widely known, passengers would simply claim that all of the containers in a car belonged to them.[224] Moreover, the majority predicted that a passenger property rule would lead to a substantial increase in automobile search litigation. The Court envisioned an increase in both motions to suppress evidence in criminal trials and civil lawsuits to resolve "such questions as whether the officer should have believed a passenger's claim of ownership, whether he should have inferred ownership from various objective factors, and whether he had probable cause to believe that the passenger was a confederate . . . ."[225] Accordingly, the Court determined that the governmental interest in effective law enforcement outweighed Sandra Houghton's privacy interest in her purse.[226]

B. JUSTICE BREYER AGREES WITH THE OUTCOME, BUT EXPRESSES CONCERN WITH THE WARRANTLESS SEARCH OF A WOMAN'S PURSE.

In a concurring opinion, Justice Breyer agreed that it is reasonable for a police officer to search all the containers found in a car when there is probable cause to believe that the vehicle contains contraband.[227] Justice Breyer reasoned that if police had to establish ownership of each container prior to a search, the uncertainty would render the *Ross* Court's bright line test unworkable.[228] Moreover, Justice Breyer stressed that the application of the rule is limited to automobile searches and containers found therein.[229]

Importantly, Justice Breyer noted that the automobile exception applied in this case only because the respondent's purse was found on the backseat of the car at a "considerable distance from its owner."[230] If the respondent had held the purse during the search and seizure of the contraband, Justice Breyer would have most certainly sided with the dissent [231] because purses "are repositories of espe-

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[224] *See id.*

[225] *Id.*

[226] *See Houghton*, 119 S. Ct. at 1304.

[227] *See id.* (Breyer, J. concurring).

[228] *See id.*

[229] *See id.* Justice Breyer noted that even a limited search of the person implicates a significantly heightened expectation of privacy. *See id.*

[230] *Id.*

[231] *See id.* Justice Breyer opined that a woman's purse is similar to a man's wallet be-

cially personal items that people generally like to keep with them at all times."[232] Consequently, Justice Breyer reasoned that a purse may receive increased protection, much like the protection afforded to outer clothing.[233] Nonetheless, because the purse was found "at a considerable distance from its owner, who did not claim ownership until the officer discovered her identification while looking through it," Justice Breyer concurred with the majority.[234]

C. JUSTICE STEVENS ARGUES THAT THE WYOMING SUPREME COURT DECISION SHOULD BE AFFIRMED IN LIGHT OF THE UNITED STATES SUPREME COURT'S PREFERNCE FOR WARRANTS AND INDIVIDUALIZED SUSPICION.

In a blistering dissent, Justice Stevens argued that the warrantless search of the respondent's purse was unsupported by previous Supreme Court jurisprudence because the police lacked individualized suspicion against the respondent. Justice Stevens reasoned that, in each previous application of the warrant requirement, the defendant was either the operator of the vehicle or the object of the search was in the driver's possession. Conversely, in the present case, the respondent was not suspected of criminal activity and there was no reason to believe that the purse belonged to the driver.[235]

Citing *Ross*, the dissent reasoned that the scope of a warrantless search pursuant to the automobile exception is not "defined by the nature of the container in which the contraband is secreted."[236] Instead, the search is defined "by the object of the search and the places in which there is probable cause to believe that it may be found."[237] Accordingly, Justice Stevens argued that the police officers did not have probable cause to believe Sandra Houghton's purse contained contraband because the search was based on the driver's admission regarding the syringe in his pocket.[238] Justice Stevens opined that the majority erroneously

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cause people store personal items in them, and they are generally with the person at all times. *Id.*

[232] *Houghton*, 119 S. Ct. at 1304 (Breyer, J., concurring).

[233] *See id.*

[234] *Id.*

[235] *See id.*

[236] *Id.*

[237] *Id.*

[238] *See Houghton*, 119 S. Ct. at 1304 (Stevens, J., dissenting).

made the presumption that a passenger was a criminal conspirator with the driver based upon their close proximity in the automobile.[239] To illustrate this point, Justice Stevens posed a hypothetical whereby the police stop a taxicab.[240] According to the majority, if the police obtained probable cause to search the driver for contraband, they could also search the passenger's property, even in the absence of individualized suspicion against either the passenger or his belongings.[241] The dissent noted that this possibility was addressed and squarely rejected in *Ross*.[242] Finally, the dissent concluded that the state interest in effective law enforcement does not outweigh the individual privacy interests at stake. Justice Stevens opined that police officers would not have difficulty applying the passenger property rule announced by the Wyoming Supreme Court.[243]

V. CONCLUSION

The scope of the automobile exception has gradually expanded from a doctrine, which allowed the search of a vehicle when police have probable cause to believe the vehicle contained contraband,[244] to a doctrine which permitted the search of individual containers found in an automobile when the police have probable cause to believe the container contained contraband.[245] However, it is surprising that the United States Supreme Court would ignore precedent to further erode Fourth Amendment protections.

Nonetheless, the *Houghton* majority determined that a bright line rule for police officers, who have with probable cause to believe contraband is located somewhere within an automobile, outweighed the long-standing rule that the scope of a search conducted pursuant to the automobile exception cannot extend

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[239] *See id.*

[240] *See id.*

[241] *See id.*

[242] *See id.*

[243] *See id.*

[244] *See* Carroll v. United States, 267 U.S. 132, 134 (1925). In *Carroll*, the majority concluded that a police officer with probable cause to believe an automobile contains contraband may search the vehicle without a warrant. *See id.* The Court reasoned that the ready mobility of an automobile, which made it impracticable for a police officer to obtain a search warrant, combined with the reduced expectation of privacy in containers transported on public roadways, justified the search. *See id.* at 153.

[245] *See* California v. Acevedo, 500 U.S. 565, 580 (1991).

beyond that of a search warrant.[246] In so holding, the Court ignored the well-settled distinction between the warrantless search of a driver's belongings and the warrantless search of a passenger's belongings.[247] Importantly, in all prior automobile exception cases, the defendant was either the operator of the vehicle or the defendant always had ownership or custody of the parcel searched.[248] Moreover, the majority failed to recognize that *Ross* was concerned with the interest of the driver and the integrity of his automobile. Therefore, the *Ross* majority categorically rejected the notion that the scope of a search, conducted pursuant to the automobile exception, is defined by the nature of the container.[249]

Perhaps the most telling sign of the majority's disregard for Fourth Amendment protections is the Court's extension of the automobile exception to allow the search of a passenger's belongings based solely on the driver's misconduct.[250] Indeed, as a result of this decision, police may justify a search of each and every piece of property belonging to an innocent passenger in a vehicle based solely on the driver's misconduct. Consequently, the Court merely requires that the police had probable cause to believe there was contraband in the vehicle. Finally, the Court furthered an anomaly created by the *Acevedo* case, whereby the search of a briefcase, carried on a public street by its owner is forbidden, because the *Houghton* holding would theoretically permit the search of a briefcase found in the trunk of an automobile.[251] In holding that the scope of an

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[246] *See Houghton*, 119 S.Ct. at 1300 (1999).

[247] *See id.* at 1305 (Stevens, J. dissenting).

[248] *See id.* In the only automobile case involving the search of a passenger, the Court held that the automobile exception to the warrant requirement did not apply. *See id.* (citing United States v. Di Re, 332 U.S. 581 (1948)). In *Di Re*, the police discovered counterfeit, auto-fuel ration coupons that a passenger had stored in the space between his pants and his underwear. *See id.* at 1306. Not unlike the circumstances of the *Houghton* search, the information prompting the search of the passenger defendant directly implicated the driver, and not the passenger. *See id.* The Supreme Court determined that the search was unreasonable because the police did not have probable cause to believe the passenger had committed a crime. *See id.*

[249] *See id.* (citing United States v. Ross, 456 U.S. 798 (1982)). In *Ross*, the Court opined that the scope of an automobile exception search is defined by the object of the search and the places in which there is probable cause to believe that it may be found. *See id.* Moreover, the Court stressed that it would not approve a container-based distinction between a man's pocket and a woman's pocketbook. *See id.*

[250] *See id.* at 1307 (Stevens, J., dissenting).

[251] *See* Prynkiewicz, supra note 11, at 1282. The author argued that the search in *Acevedo* was unconstitutional because one's privacy interest in a piece of luggage is not diminished by removing it from a public thoroughfaire and placing it into the trunk of an

automobile exception search is governed by the object of the search, without regard to the property's ownership, the Court has rendered a passenger's interest in property stored in a car virtually non-existent. If an individual passenger's Fourth Amendment protection from a search and seizure by police will depend exclusively upon the behavior of the driver, the constitutional rights of such passengers are severely diluted.

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automobile. *See id.*