University of Arkansas at Little Rock Law Review

Volume 6 | Issue 2 Article 8

1983

Criminal Procedure—Supreme Court Defines Scope of Automobile Exception to Fourth Amendment Warrant Requirement

Michael Schneider

CRIMINAL PROCEDURE—SUPREME COURT DEFINES SCOPE OF AUTOMOBILE EXCEPTION TO FOURTH AMENDMENT WARRANT REQUIREMENT. *United States v. Ross*, 456 U.S. 798 (1982).

Acting on information from a reliable informant that an individual known as "Bandit" was selling narcotics kept in the trunk of a car parked at a specified location, the District of Columbia police, without obtaining a warrant, immediately drove to the location. Upon arrival, the police ran a license check on the car and found that the car was registered to Albert Ross. The car and driver fit the informant's description of the dealer. The officers stopped the car as it started to leave the area. While two officers searched Ross, the third noticed a bullet on the front seat, searched the interior of the car, and found a pistol in the glove compartment. Ross was arrested and handcuffed. An officer took Ross' keys from the ignition[1] and opened the trunk, where he found a closed brown paper bag. The officer opened the bag and discovered a number of glassine bags containing a white powder later determined to be heroin. The officer replaced the bag and drove the car to police headquarters where another warrantless search of the trunk revealed a zippered leather pouch containing $3,200 in cash.

Ross was charged with possession of heroin with intent to distribute.[2] A motion to supress the heroin and money was denied, and Ross was convicted. A three-judge panel of the District of Columbia Court of Appeals reversed the conviction. The court held that the police had probable cause to stop and search Ross' car, including the trunk[3] and paper bag, without a warrant, but the warrantless search of the leather pouch was held invalid.[4] The entire court of appeals voted to rehear the case en banc. On rehearing, the majority[5] rejected the three-judge panel's conclusion that a distinction of constitutional significance existed between the two containers found

1. Brief for Respondent at 9. United States v. Ross, 655 F.2d 1159 (D.C. Cir. 1981) (available on LEXIS, General library, Brief file).

2. In violation of 21 U.S.C. § 841(A) (1972).

3. The court of appeals panel cited Carroll v. United States, 267 U.S. 132 (1925), and Chambers v. Maroney, 399 U.S. 42 (1970), for authority for the warrantless search of the automobile, including the trunk.

4. The court of appeals panel cited Arkansas v. Sanders, 442 U.S. 753 (1979), for authority that the warrantless search of the paper bag was valid but that the search of the leather pouch was invalid.

5. The opinion for the court was filed by Circuit Judge Ginsburg, in which Chief

in respondent's trunk and held that the police should not have opened either the paper bag or the pouch without first obtaining a warrant.[6]

The United States Supreme Court granted certiorari and reversed the decision of the court of appeals. The Supreme Court held that police officers who have legitimately stopped an automobile and who have probable cause to believe that contraband is concealed somewhere within it may conduct a warrantless search of the vehicle and its contents, including all containers and packages, as thoroughly as with an authorized warrant. The Court refused to use the analysis of previous decisions based upon the type of container and the expectation of privacy,[7] and stated that the proper rule was that the scope of a warrantless search of an automobile is not defined by the nature of the container in which the contraband is secreted, but rather, is defined by the object of the search and the places in which there is probable cause to believe that it may be found. *United States v. Ross*, 456 U.S. 798 (1982).

The fourth amendment to the Constitution of the United States established the guarantee of freedom from unreasonable searches and seizures.[8] However, the adoption of the fourth amendment in 1791 did not immediately affect the methods of search and seizure then in practice, because its effect was only felt after court decisions gave it significance. The fourth amendment was not seen as a limitation of searches, but rather a restatement of then existing law.[9]

Judge McGowan, and Circuit Judges Wright, Robinson, Wald, Mikua and Edwards concurred.

6. United States v. Ross, 655 F.2d 1159, 1161 (D.C. Cir. 1981).

7. *See infra* nn.46 to 63 and accompanying text, and J. HALL, SEARCH AND SEIZURE, 13-20 (1982).

8. U.S. CONST. amend. IV 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.

For a review of the background and development of the fourth amendment, *see* J. HALL, SEARCH AND SEIZURE 13-20 (1982); W. LAFAVE, SEARCH AND SEIZURE 3-6 (1978). *See also* Stengle, *The Background of the Fourth Amendment to the Constitution of The United States, Part Two*, 4 U. RICH. L. REV. 60 (1969). For a review of the background and application of the exclusionary rule, see W. LAFAVE, SEARCH AND SEIZURE 6-20 (1978).

9. Meanwhile Congress, acting in the interim, passed laws permitting searches by customs officers and Indian agents based on mere suspicion, and the Supreme Court upheld, or did not take exception to, these statutes. *See generally* the Act of July 31, 1789, 1 Stat. 29, 43, Ch. 5 (1789), gave collectors and naval officers power to enter any ship or vessel in which they had reason to suspect goods or merchandise subject to duty were concealed, and to search for, seize and secure any goods or merchandise; the Act of April 25, 1808, 2 Stat. 501

Not until the latter part of the nineteenth century did the Supreme Court begin to recognize that the fourth amendment prohibition against unreasonable search and seizure embodied a substantive right.[10] To protect this right against unreasonable search and seizure, a necessary offshoot, the exclusionary rule, began to develop.[11] Under the exclusionary rule, evidence which is seized in violation of the fourth amendment may not be used against the defendant at trial.[12]

As the law of search and seizure evolved, courts began to recognize that the exigencies of certain situations made it impracticable

(1808), whereby customs officers were empowered to detain any vessel whenever they believed there existed the intention to violate the embargo provisions; and the Act of May 6, 1822, 3 Stat. 682 (1822), authorizing Indian agents to search the goods of traders upon suspicion and information that ardent spirits were being introduced into the Indian country by such traders. In Crowell v. M'Fadon, 12 U.S. (8 Cranch) 94, 97 (1814), the Supreme Court answered the argument that the officer must show probable cause, by stating that "[t]he law places a confidence in the opinion of the officer. . . ." *See also* American Fur Company v. United States, 27 U.S. (2 Pet.) 358, 359 (1829) (in which the Court did not object to the language of the Statute of 1822 that permitted searches by agents upon suspicion or information); Locke v. United States, 11 U.S. (7 Cranch) 339, 347 (1813) (the Court stated that probable cause in the case of seizures imports a seizure made under circumstances which would warrant suspicion); Stengle, *The Background of the Fourth Amendment to the Constitution of the United States, Part Two*, 4 U. RICH. L. REV. 60 (1969); and Carroll v. United States, 267 U.S. 132, 150-53 (1925).

10. *Ex parte* Jackson, 96 U.S. 727 (1877), dealt with postal laws applicable to the inspection of unsealed items. The Court held that the fourth amendment constitutional guaranty of the right of the people to be secure in their papers against unreasonable searches and seizures extended to sealed mail and, thus, it could not be opened and searched without a warrant. Fourth amendment cases before *Jackson*, which were not of great significance: *Ex parte* Burford, 7 U.S. (3 Cranch) 448 (1806) (fourth amendment covered arrest as well as search, and an arrest warrant issued without probable cause was invalid); Smith v. Maryland, 59 U.S. (18 How.) 71 (1855) (fourth amendment did not protect against searches conducted by state officers); Den v. The Hoboken Land and Improvement Co., 59 U.S. (18 How.) 272 (1855) (fourth amendment did not extend to civil proceedings).

11. The first instance of the use of this mechanism to protect fourth amendment rights was Boyd v. United States, 116 U.S. 616 (1886), in which the federal government sought the forfeiture of goods alleged to have been illegally imported, and ordered the production of an invoice for a portion of the goods. The Court held that under the fourth amendment the forced production of the invoice was an unreasonable search, and that the order to produce the invoice and the law which authorized it (Section 5, Act of June 22, 1874, entitled "An Act to Amend the Customs Revenue Laws; etc., 18 Stat. 186 (1874)) were repugnant to substantive rights of the fourth and fifth amendments to the Constitution and therefore void. Thus, the invoice, secured by an unconstitutional search, was held inadmissible in federal court.

12. Weeks v. United States, 232 U.S. 383 (1914). The Court excluded evidence seized during a warrantless search of Weeks' home, concluding that materials seized without a warrant in violation of the fourth amendment will not be admitted into evidence in a federal criminal trial. It was not until 1961 that the Supreme Court ruled in Mapp v. Ohio, 367 U.S. 643 (1961), that the federal exclusionary rule in search and seizure cases was applicable to the states through the fourteenth amendment due process clause.

for law enforcement officials to secure warrants before the search.[13] The courts recognized that warrantless searches and reasonable searches were not mutually exclusive because the reasonableness of a search was dependent upon the particular facts of each case.[14] Subsequent case law abandoned the reasonableness standard, however, in favor of a rule that would hold any search without a warrant unreasonable per se and thus unconstitutional.[15] Under this new standard, government officials, in order to avoid the effect of the exclusionary rule, must show that a warrantless search falls within one of the few "specifically established and well-delineated"[16] exceptions to the fourth amendment warrant requirement.[17]

Due to the automobile's predominant role in American society, the exception to the fourth amendment warrant requirement that has perhaps had the most pervasive and confusing effect upon the law of criminal procedure is the automobile exception.[18] The auto-

13. For instance, the Court recognized that autos could be moved easily, and in the time it took to get the warrant, the car could be gone. *See* Katz, *Automobile Searches and Diminished Expectations in the Warrant Clause*, 19 AM. CRIM. L. REV. 557, 563-64 (1982).

14. *See* Cady v. Dombrowski, 413 U.S. 433, 440 (1973) (reasonableness of search is factual question); Cooper v. California, 386 U.S. 58, 62 (1967) (car search was found not unreasonable "[u]nder the circumstances of this case."); Lewis v. United States, 385 U.S. 206, 212 (1966) (reasonableness of search dependent upon facts of each case); United States v. Rabinowitz, 339 U.S. 56, 66 (1950) ("the relevant test is not the reasonableness of procuring a search warrant but whether the search was reasonable"). *See also* Harris v. United States, 331 U.S. 145, 150 (1947) (quoting Go-Bart Importing Co. v. United States, 282 U.S. 344, 357 (1931)).

15. *See* Robbins v. California, 101 S. Ct. 2841, 2844 (1981), *overruled* in United States v. Ross, 456 U.S. 798 (1982) (warrantless searches may be per se unreasonable); United States v. United States District Court, 407 U.S. 297, 315 (1972) (expressly rejecting the reasonableness-of-the-search test); Coolidge v. New Hampshire, 403 U.S. 443, 470-71 (1971) (warrantless search is per se unreasonable unless it falls within a recognized exception); Chimel v. California, 395 U.S. 752, 763 (1969) (if no exceptions to warrant requirement exist, warrant is necessary); Katz v. United States, 389 U.S. 347, 357 (1967) (stating that prior approval of magistrate is required or search conducted will be unreasonable per se).

16. Katz v. United States, 389 U.S. 347, 357 (1967).

17. Included among these exceptions were: (1) search incident to lawful arrest, *e.g.*, Chimel v. California, 395 U.S. 752 (1969); United States v. Rabinowitz, 339 U.S. 56 (1950) (overruled by *Chimel*); (2) exigent circumstances, *e.g.*, McDonald v. United States, 335 U.S. 451 (1948); (3) a search conducted during hot pursuit of a fleeing felon, *e.g.*, Warden v. Hayden, 387 U.S. 294 (1967); (4) consent searches, *e.g.*, Schneckloth v. Bustamonte, 412 U.S. 218 (1973); (5) a search of a movable vehicle where probable cause exists to believe that the vehicle contains contraband or instrumentalities of a crime, *e.g.*, Chambers v. Maroney, 399 U.S. 42 (1970); Carroll v. United States, 267 U.S. 132 (1925); (6) plain view doctrine, *e.g.*, Coolidge v. New Hampshire, 403 U.S. 443 (1971); (7) stop and frisk, *e.g.*, Terry v. Ohio, 392 U.S. 1 (1968).

18. Miles and Wefing, *The Automobile Search and the Fourth Amendment: A Troubled Relationship*, 4 SETON HALL L. REV. 105 (1972).

The automobile exception is applicable to searches of all types of vehicles, including,

mobile exception, established in *Carroll v. United States*,[19] allows a lawful, warrantless search of an automobile that law enforcement officials have probable cause to believe contains contraband or other evidence of criminal activity. *Carroll* dealt with the warrantless search of an automobile upon probable cause that it contained illegal liquor.[20] On review of the defendant's conviction for transporting intoxicating liquor,[21] the defendants argued that the warrantless search and subsequent seizure were in violation of the fourth amendment[22] since the search of the automobile could not be justified as incident to lawful arrest.[23] In upholding the conviction, the Court stated that if probable cause was present to search,[24] the impracticability of obtaining a warrant and the possibility that the contraband might be removed or destroyed combined to make the search reasonable.[25]

---

for example, vans, campers, trailers attached to automobiles, trucks, tractor trailers, tractors, boats and airplanes. J. HALL, SEARCH AND SEIZURE 264, n.1 (1982).

19. 267 U.S. 132 (1925).

20. In *Carroll* federal prohibition agents received evidence that the defendants were bootleggers who frequently traveled a certain highway and stopped Carroll's roadster on the highway to check it for liquor. The warrantless search of the car revealed no liquor until an officer, noticing the seat cushion to be harder than usual, tore open the cushion and found sixty-eight bottles of gin and whiskey concealed inside. *Id.* at 135, 136.

21. *Id.* at 154. This was a violation of the National Prohibition Act in which Congress had statutorily authorized federal agents to search, without a warrant, movable vehicles suspected of carrying contraband spirits. Ch. 85, tit. II, § 26, 41 Stat. 315 (1919) (repealed 1935).

22. *Carroll*, 267 U.S. at 158.

23. "The right to search and the validity of the seizure are not dependent on the right to arrest. They are dependent on the reasonable cause the seizing officer has for belief that the contents of the automobile offend against the law." *Id.* at 158-59.

24. The Court found that the officers had probable cause to search because "the facts and circumstances within their knowledge and of which they had reasonably trustworthy information were sufficient in themselves to warrant a man of reasonable caution in the belief that intoxicating liquor was being transported in the automobile which they stopped and searched." *Id.* at 162.

25. Chief Justice Taft held:

> On reason and authority the true rule is that if the search and seizure without a warrant are made upon probable cause, that is, upon a belief, reasonably arising out of circumstances known to the seizing officer, that an automobile or other vehicle contains that which by law is subject to seizure and destruction, the search and seizure are valid. The Fourth Amendment is to be construed in the light of what was deemed an unreasonable search and seizure when it was adopted, and in a manner which will conserve public interests as well as the interests and rights of individual citizens.

Id. at 149. In explaining the basis for this rule, the *Carroll* Court noted that, historically, warrantless searches of vessels, wagons and carriages—as opposed to fixed premises such as a home—had been treated differently by Congress. The movability of vehicles can give rise to more exigent circumstances to search without a warrant. *Id.* at 153. *See also* Steagald v.

While *Carroll* was frequently relied upon in the enforcement of prohibition laws[26] as an exception to the warrant requirement, the *Carroll* doctrine was for the most part neglected because of an overlap with the *Weeks*[27] search incident to arrest exception.[28] Frequently the same probable cause that points to a particular automobile or a likely container also points to the criminality of its owner, driver or passenger. Therefore, auto searches based upon probable cause that the occupants were violating the law were not challenged under *Carroll* because of the *Weeks* effect. In early stages of the *Carroll* doctrine the scope of searches incident to arrest was quite broad.[29] During that time, since a lawful arrest gave rise automatically to an incidental search of an entire premises, it followed that when the underlying arrest occurred in or near a vehicle, it gave rise automatically to a search of the entire vehicle.[30] This would be true even though the police lacked probable cause to believe the vehicle contained contraband or evidence.[31] However, when the Supreme Court reduced the search incident to arrest perimeter in *Chimel v. California*[32] to a point where it did not necessarily extend to all parts of a vehicle,[33] it became necessary to look more carefully at the *Carroll* probable cause search.[34]

United States, 451 U.S. 204, 211 (1981) (referring to houses only); Chambers v. Maroney, 399 U.S. 42, 48 (1970) (referring to vehicles).

26. *See e.g.*, Brinegar v. United States, 338 U.S. 160 (1949); Scher v. United States, 305 U.S. 251 (1938); Husty v. United States, 282 U.S. 694 (1931).

27. The search incident to lawful arrest exception, first recognized in Weeks v. United States, 232 U.S. 383, 392 (1914), gave law enforcement officers the right to search the person who is the subject of a full custodial arrest. The Supreme Court later expanded the scope of searches incident to arrest in Harris v. United States, 331 U.S. 145 (1947). The *Harris* Court sustained an intensive search of the arrestee's apartment by reasoning that the arrestee was in exclusive possession of his apartment and that his control extended as much to the bedroom where the draft cards were found as to the living room where he was arrested. United States v. Rabinowitz, 339 U.S. 56 (1950), sustained an intensive search of an office and papers incident to an arrest. Warrantless searches of automoblies were almost always justified as being incident to the lawful arrest of the drivers and occupants of the vehicles. Both *Harris* and *Rabinowitz* were overruled by Chimel v. California, 395 U.S. 752 (1969). *See* Moylan, *The Automobile Exception: What It Is And What It Is Not—A Rationale In Search Of A Clearer Label*, 27 MERCER L. REV. 987, 1000 (1976) [hereinafter cited as Moylan].

28. *See* Moylan, *supra* note 27, at 1000.

29. *See supra* note 27.

30. *See* Moylan, *supra* note 27, at 1000.

31. *See supra* note 27.

32. 395 U.S. 752 (1969).

33. The scope of the search was limited to that area within the immediate control of the arrestee; "[T]he area from within which he might gain possession of a weapon or destructible evidence." *Id.* at 763.

34. *See supra* note 23, at 1001.

Within a year after *Chimel*, the Supreme Court reaffirmed the *Carroll* doctrine in *Chambers v. Maroney*[35] and extended the automobile exception to cover the warrantless search of an automobile after police had moved it to the station.[36] The *Chambers* Court held that, if officers had probable cause to search the automobile at the time it was stopped as *Carroll* said they did, then the probable cause extended to a subsequent warrantless search of the automobile at the police station.[37] The Court also found no constitutional difference between seizing and holding a car before a presentation of the probable cause issue to a magistrate and carrying out an immediate search without a warrant.[38]

The *Chambers* Court, in keeping with *Carroll*, tied the warrantless search to the sudden development of probable cause and the exigencies of a mobile vehicle. However, according to dicta in later Supreme Court decisions,[39] *Chambers* indicated that mobility alone could not justify the exception since the officers had impounded the car prior to searching it. These later decisions based their validation of *Chambers* upon a lesser expectation of privacy[40] in an automo-

35. 399 U.S. 42 (1970).

36. *Id.* at 52. After the defendants' arrest, their automobile was towed to police headquarters and seached without a warrant. *Id.* at 44. Evidence obtained in the search was admitted under the *Carroll* exception even though it would not have been admitted under the search incident to arrest exception of *Weeks*. *Id.* at 46-48. The Court added that here there was probable cause and that when a vehicle is involved probable cause must always be present under *Carroll*. *Id.* at 47-51. The Court was careful to point out, however, that the *Carroll* exception to a search warrant was a special circumstance. "[Generally], it has also required the judgment of a magistrate on the probable-cause issue and the issuance of a warrant before a search is made. Only in exigent circumstances will the judgment of the police as to probable cause serve as a sufficient authorization for a search." *Id.* at 51.

37. *Id.* at 52. "The probable cause factor still obtained at the station house and so did the mobility of the car." *Id.* The Court reasoned that the search of the automobile at the time of the stop may at times be impractical and unsafe for the officers. *Id.* at 52 n.10.

38. *Id.* at 51, 52. The Supreme Court curtailed *Chambers* somewhat in Coolidge v. New Hampshire, 403 U.S. 443 (1971). The Court in *Coolidge* held that if there was no real possibility that the automobile was going to be moved and the police had ample opportunity to obtain a warrant, then the necessary exigent circumstances of *Carroll* and *Chambers* did not exist and the police should have obtained a warrant. *Coolidge*, 403 U.S. at 462.

39. Cardwell v. Lewis, 417 U.S. 583 (1974); Almeida-Sanchez v. United States, 413 U.S. 266 (1973).

40. *See, e.g.*, Almeida-Sanchez v. United States, 413 U.S. 266 (1973) (Powell, J., concurring). "The search of an automobile is far less intrusive on the rights protected by the Fourth Amendment than the search of one's person or of a building." *Id.* at 279. *See also* Cardwell v. Lewis, 417 U.S. 583 (1974), in which the 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. A car has little capacity for escaping public scrutiny. It travels public thoroughfares where its occupants and its contents are in plain view. 'What a per-

bile. Later, in support of this lower expectation of privacy analysis, *United States v. Chadwick*[41] and *Arkansas v. Sanders*[42] both pointed out that potential mobility was not always present when the warrantless search of an automobile occurred and that an officer could search an automobile without a warrant in situations which would require a warrant to search a house. Therefore, the lesser expectations of privacy[43] in the automobile as compared to the home had emerged as another justification for the automobile exception.

Although not an automobile exception case, *Chadwick* was the first Supreme Court case to apply the expectation of privacy rationale to containers located inside a car.[44] The government did not argue that the *Carroll* doctrine applied in *Chadwick*, but rather that the mobility rationale of the *Carroll* doctrine should be extended to easily movable objects.[45] The Court rejected this argument and stated that they recognized significant differences between automobiles and luggage.[46] The majority noted that inherent mobility was not the only justification for the automobile exception because the Court had sustained warrantless searches of immobile

---

son knowingly exposes to the public, even in his own home or office, is not a subject of fourth amendment protection.' Katz v. United States, 389 U.S. at 351 (1967) . . . This is not to say that no part of the interior of an automobile has Fourth Amendment protection; the exercise of a desire to be mobile does not, of course, waive one's right to be free of unreaonable government intrusion. But insofar as Fourth Amendment protection extends to a motor vehicle, it is the right to privacy that is the touchstone of our inquiry.

Cardwell, 417 U.S. at 590-91.

41. 433 U.S. 1 (1977).

42. 442 U.S. 753 (1979).

43. In Katz v. United States, 389 U.S. 347 (1967), the Court recognized that the fourth amendment protects a person's "reasonable expectation of privacy" associated with the area or object searched. The *Katz* Court held that the warrantless wiretapping of a phone booth was unconstitutional because the petitioner had a reasonable expectation of privacy in his telephone conversation. The search violated this expectation and was therefore invalid. *Id.* at 352-53.

44. In *Chadwick* federal agents had probable cause to believe the defendant's footlocker contained marijuana two days before the footlocker arrived on a train. On arrival, the agents waited until the defendants put the footlocker in their car before arresting them. An hour and a half after taking the car and footlocker to the federal building, the agents searched the footlocker without a warrant. 433 U.S. at 3-5. Prior to *Chadwick* the Court had noted that there was a diminished expectation of privacy where automobiles were concerned. Cardwell v. Lewis, 417 U.S. 583, 590-91 (1974) (scraping paint from the outside of a murder suspect's car, without a warrant, did not violate the fourth amendment.)

45. *Chadwick*, 433 U.S. at 11-12.

46. *Id.* at 12-13. The Court distinguished luggage from cars. The differences are that luggage contents are not open to public view, nor subject to regular inspections and official scrutiny. The primary function of luggage is as a repository of personal effects. *Id.* at 13.

vehicles.[47] The lesser expectation of privacy that exists in automobiles also justified the exception.[48] Chief Justice Burger found that this lesser expectation did not apply to luggage and invalidated the search.[49]

After the *Chadwick* case, much confusion remained among the courts concerning the scope of that holding as applied to searches of luggage found within moving vehicles lawfully detained by police officers.[50] The Supreme Court confronted this issue in *Arkansas v. Sanders*.[51] In *Sanders* the state relied directly on the *Carroll* automobile exception to justify the warrantless search of a closed suitcase believed to contain contraband which was seized from the trunk of a cab.[52] The Supreme Court rejected the state's argument but did consider *Sanders* as an automobile exception search.[53] The plurality then applied *Chadwick*, which was not an automobile exception case, and refused to extend the automobile exception to the warrantless search of one's personal luggage merely because it was located in an automobile lawfully stopped by the police.[54] The

47. *Chadwick*, 433 U.S. at 12. The Court cited South Dakota v. Opperman, 428 U.S. 364, 367 (1976); Texas v. White, 423 U.S. 67 (1975); Cady v. Dombrowski, 413 U.S. 433, 441-42 (1973); Chambers v. Maroney, 399 U.S. 42 (1970); and Cooper v. California, 386 U.S. 58 (1967).

48. United States v. Chadwick, 433 U.S. 1, 12-13 (1977). The Court relied on Cardwell v. Lewis, 417 U.S. 583 (1974) (plurality decision). *See supra* note 42.

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

50. *See, e.g.*, United States v. Stevie, 582 F.2d 1175, 1178-79 (8th Cir. 1978), *cert. denied*, 443 U.S. 911 (1979) (individual's expectation of privacy in luggage, found within an automobile's trunk is entitled to fourth amendment protection). *See also* United States v. Finnegan, 568 F.2d 637, 641 (9th Cir. 1977) (distinguished *Chadwick*, and held the warrantless search of luggage in a trunk was constitutional).

51. 442 U.S. 753 (1979). The Court specifically granted certiorari to resolve doubts regarding the scope of the *Chadwick* decision. *Id.* at 754.

52. *Id.* at 761.

53. *Id.* at 764-65.

54. *Id.* The plurality reasoned that, since luggage is a common repository for one's personal effects and therefore inevitably associated with the expectation of privacy, a suitcase taken from an automobile stopped on the highway is not necessarily attended by any lesser expectation of privacy than is associated with luggage taken from other locations. *Id.* at 761-66. Chief Justice Burger and Justice Stevens concurred in the judgment but argued that this was not an automobile exception search because the police had probable cause to search the suitcase before it was put into the taxi and no probable cause to search the taxi itself. It was argued that this case did not present the question of whether a warrant was required before opening luggage when police had probable cause to believe contraband was located somewhere in the vehicle but were not aware of its location. The concurring judges considered that it would be better to await a case in which the question must be decided. *Id.* at 766-69 (Burger, C. J., concurring). Justice Blackmun and Justice Rehnquist would have upheld the suitcase search under the automobile exception. *Id.* at 769 (Blackmun, J., dissenting).

Court in *Sanders* did indicate that a warrantless search of some containers would be permitted because of the diminished expectation of privacy associated with the container.[55] This led to confusion of the courts in subsequent decisions on the issue of which receptacles could support a legitimate expectation of privacy interest.[56] In *Robbins v. California*[57] the Supreme Court attempted to resolve this issue and redefine the constitutional scope of warrantless searches of containers found during a lawful automobile search.

The facts of *Robbins* closely resembled the facts in *Carroll* and *Chambers* and therefore supported a finding of exigent circumstances since the probable cause developed suddenly.[58] By contrast, in *Chadwick* and *Sanders* the officers had prior knowledge of the suspects' arrival, and they had ample time to obtain a warrant. Also, in *Robbins* the suspicion of the police was directed toward the automobile itself, whereas in *Chadwick* and *Sanders* the suspicion of the police was directed at specific containers.[59] However, the plurality in *Robbins* chose to apply the dicta of the *Chadwick* and *Sanders* container cases and extended them to the warrantless search under the automobile exception.[60] The decision had the effect of further

55. *Id.* at 764-65 n.13.

56. *See, e.g.*, United States v. McGrath, 613 F.2d 361 (2d Cir. 1979) (search of cardboard boxes valid); United States v. Dien, 609 F.2d 1038 (2d Cir. 1979), *aff'd* on rehearing, 615 F.2d 10 (2d Cir. 1980) (search of cardboard boxes invalid); United States v. Rivera, 486 F. Supp. 1025 (N.D. Tex. 1980), *aff'd*, 654 F.2d 1048 (5th Cir. 1981) (warrantless searches of garbage bags are invalid); People v. Pace, 92 Cal. App., 3d 199, 154 Cal. Rptr. 811 (1979) (search of lunchbox invalid); Evans v. State, 368 So.2d 58 (Fla. Dist. Ct. App. 1979) (warrantless search of garbage bag valid); State v. Schrier, 283 N.W.2d 338 (Iowa 1979) (warrantless search of unlatched knapsack valid); Cooper v. Commonwealth, 577 S.W.2d 34 (Ky. Ct. App. 1979) (search of taped electric razor case valid); Pirner v. State, 45 Md. App. 50, 411 A.2d 135 (1980) (warrantless search of duffel bag invalid).

57. 453 U.S. 420 (1980).

58. *See supra* notes 20, 36 and accompanying text.

59. *See supra* notes 44, 53, 55 and accompanying text.

60. The plurality held that all containers are equally protected by the fourth amendment unless their contents are in plain view or are obvious to an observer because of the appearance of the container; therefore, in light of *Chadwick* and *Sanders*, the warrantless search was impermissible. 453 U.S. at 426-29. Justice Powell, concurring in the judgment, noted that there was "some justice" in the dissent's argument that the automobile exception should control a search of containers when probable cause exists to search the automobile, as opposed to probable cause focused on a particular item therein. *Id.* at 435. The position taken by all three dissenting Justices was that the automobile exception should be extended to encompass any items found inside an automobile. *Id.* at 436-37, 439-42, 444-49. Justice Stevens, dissenting, argued that neither *Sanders* nor *Chadwick* precluded application of the automobile exception because neither case truly involved the automobile exception. *Id.* at 445-46. Justice Blackmun, dissenting, also argued that it would have been better for the Court to adopt a "clear-cut" rule that a warrant should not be required to seize and search personal property found in an automobile. *Id.* at 436.

confusing this area of fourth amendment law.

The conflict of opinion in *Robbins* and the conviction that clarification was feasible in this area of the law led the Court to grant certiorari in *Ross v. United States*[61] and address the question of whether the decision in *Robbins* should be reconsidered.[62] The Court in *Ross* squarely addressed the issue of whether the *Carroll* automobile exception or the warrant requirement of container cases controlled the search of a container discovered during the legitimate warrantless search of an automobile.[63] A plurality[64] stated that the answer is determined by the scope of the search authorized by the automobile exception set forth in *Carroll*. The Court, in reversing and remanding the appellate court's decision, held that police officers who had legitimately stopped an automobile and who had probable cause to believe that contraband was concealed somewhere within it, could conduct a warrantless search of the vehicle and its contents, including all containers and packages, as thoroughly as if a magistrate had authorized the search with a warrant.[65]

The Court began with a review of the *Carroll* decision, upon which it relied heavily. The Court noted that the exception to the warrant requirement established in *Carroll* applied only to searches of vehicles based on probable cause. The plurality argued that the rationale justifying a warrantless search of an automobile believed to be carrying contraband applies with equal force to any movable container which might also contain the contraband.[66] However, the Court noted that the same argument was rejected in *United States v. Chadwick* and *Arkansas v. Sanders*. Justice Stevens, writing for the plurality, then distinguished both cases from *Ross* by stating that they were container search cases and not automobile search cases.[67] The officers in *Chadwick* and *Sanders* had probable cause to search the containers before they were placed in the cars.[68]

---

61. 456 U.S. 798.

62. *Id.* at 803-04.

63. In *Ross* the officers had probable cause to stop the vehicle. The automobile exception validated the search of the car.

64. The plurality consisted of Chief Justice Burger and Justices Rehnquist, Stevens and O'Connor. Justice Blackmun and Justice Powell filed concurring opinions. Justice White dissented and filed an opinion. Justice Marshall dissented and filed an opinion in which Justice Brennan joined.

65. 456 U.S. at 823.

66. *Id.* at 804-09.

67. *Id.* at 810-14. "[I]n neither *Chadwick* nor *Sanders* did the police have probable cause to search the entire vehicle or anything within it except the footlocker in the former case and the green suitcase in the latter." *Id.* at 814.

68. *Id.* at 813. "Here [in *Sanders*], as in *Chadwick*, it was the luggage being transported

Justice Stevens reviewed that part of *Robbins v. California* which was relevant to the question in *Ross*; namely, what should have been the scope of the automobile exception to the warrant requirement. In *United States v. Ross*, unlike *Robbins*, the Court squarely addressed the question whether, in the course of a legitimate warrantless search of an automobile, police are entitled to open containers found within the vehicle. And, unlike *Chadwick* and *Sanders*, the police in *Ross* had probable cause to search Ross' entire vehicle.[69]

The Court reasoned that refusing to extend the scope of *Carroll* and *Chambers* to secondary containers found within the car would be illogical.[70] In fact, prior to the decisions in *Chadwick* and *Sanders*, courts routinely had held that containers and packages found during a legitimate warrantless search of an automobile also could be searched without a warrant.[71]

The Court stated that a warrant to search a vehicle would support a search of every part of the vehicle that might contain the object of the search. The individual's expectation of privacy must give way to the magistrate's official determination of probable cause.[72] Therefore, if an officer is given that same probable cause to believe the vehicle is transporting contraband, the individual's privacy interests again must yield to the authority of a search which, in light of *Carroll*, does not require the prior approval of a magistrate.[73] The Court reasoned that the scope of a warrantless search of an automobile is not defined by the nature of the container in which the contraband is secreted, but by the object of the search and the places in which there is probable cause to believe that object may be found.[74] Justice Stevens then concluded that the *Carroll* "automo-

---

by the respondent at the time of the arrest, not the automobile in which it was being carried, that was the suspected locus of the contraband. The relationship between the automobile and the contraband was purely coincidental, as in *Chadwick*." *Id.* at 813.

69. *Id.* at 817.

70. *Id.* at 818. The Court noted in its application of *Carroll* that the Supreme Court in fact has sustained warrantless searches of containers found during a lawful search of an automobile. *E.g.*, Scher v. United States, 305 U.S. 251 (1938); Husty v. United States, 282 U.S. 694 (1931). *See supra* note 26 and accompanying text.

71. 456 U.S. at 818-19. The Court cited several cases in support of this. *Id.* at 819 n.25.

72. *Id.* at 820-21.

73. *Id.* at 823. "The scope of a warrantless search based on probable cause is no narrower—and no broader—than the scope of a search authorized by a warrant supported by probable cause. *Only the prior approval of the magistrate is wavied*; the search otherwise is as the magistrate could authorize." *Id.* (emphasis added).

74. *Id.* at 824. "Just as probable cause to believe that a stolen lawnmower may be found in a garage will not support a warrant to search an upstairs bedroom, probable cause

bile exception" is unquestionably one of the few specific exceptions to the general warrant requirement of the fourth amendment.[75]

In separate concurring opinions, Justices Blackmun and Powell agreed with the plurality in *Ross* and, after expressing their discomfort at recent prior holdings in auto search cases, recognized the importance of Justice Stevens' opinion in establishing an authoritative ruling that should clarify much of the confusion existing in automobile search cases.[76] Justice Powell noted that, given the *Carroll* and *Chambers* decisions, the plurality decision in *Ross* does not depart substantially from fourth amendment doctrine in automobile cases.[77]

The dissenting Justices[78] stated that the plurality, by equating a police officer's estimation of probable cause with a magistrate's, repeals all realistic limits on warrantless searches and the fourth amendment warrant requirement itself.[79] They argued that the plurality's assumption that the scope of the automobile exception was as broad as the "lawful" automobile search authorized by a magistrate has never been the law. Moreover, the dissenters stated, the assumption is contrary to previous Supreme Court cases which established that an on-the-spot determination of probable cause is never the same as a decision by a neutral and detached magistrate.[80] Finally, the dissenting Justices predicted that the Court's decision will have unworkable consequences because police must walk the thin line between having sufficient knowledge to establish probable cause and insufficient knowledge to know exactly where the contraband is located.[81] The dissenters concluded by stating that the only convincing explanation for the plurality's broad ruling is the expediency of the search and that expediency, by itself, can never justify disregard of the fourth amendment.[82]

In the past decade fourth amendment litigation has consumed

---

to believe that undocumented aliens are being transported in a van will not justify a warrantless search of a suitcase. Probable cause to believe that a container placed in the trunk of a taxi contains contraband or evidence does not justify a search of the entire cab." *Id.*

75. *Id.* *See supra* note 36.

76. *Id.* at 825 (Blackmun, J., concurring).

77. *Id.* at 826 (Powell, J., concurring).

78. *See supra* note 65.

79. 456 U.S. at 827 (Marshall, J. and Brennan, J., dissenting).

80. *Id.* at 832-33. Justice Marshall states that, in light of the decisions in *Chadwick*, *Sanders*, and *Robbins*, any movable container found within an automobile deserves the same fourth amendment warrant protection that it would deserve if found at a location outside the automobile. *Id.* at 834.

81. *Id.* at 840.

82. *Id.* at 842. The dissent quotes Mincey v. Arizona, 437 U.S. 385, 393 (1978): "the

too much of the Supreme Court's limited time.[83] During this period the Court has been unsuccessful in producing a clear and consistent rule governing the search of containers in automobiles which may be readily applied by the police and the courts.[84] Finally, that time has come. The plurality in *Ross* has now accomplished an authoritative ruling which should clarify much of the confusion in this troubled area of the law. The decision makes it clear that when police officers have probable cause to believe that a vehicle is transporting contraband, they may conduct a warrantless search of every part of the vehicle and its contents, including all containers and packages, which might conceal the object of the search. Furthermore, the decision will probably have substantial precedential value in future fourth amendment cases. The most unsettling aspect of the *Ross* opinion is that the consequences of the application of this rule by officers in the field could vary from simply opening a container in one's car to literally ripping it apart in the search of contraband.

The officer must remember that in making this probable cause determination he may not rely on subjective good faith, but must have knowledge of objective facts that could justify the issuance of a warrant by a magistrate. Therefore, since the door is now apparently closed on the argument that a warrant is needed to search a container found within an automobile during its lawful probable cause search,[85] the new issue for determination will be the evaluation of an officer's decision about probable cause.

Michael Schneider

---

mere fact that law enforcement may be made more efficient can never by itself justify disregard of the fourth amendment." *Id.*

83. 2 W. LAFAVE, SEARCH AND SEIZURE (1978).

84. 456 U.S. at 817.

85. United States v. Floyd, 681 F.2d 265 (5th Cir. 1982) (held that where police had probable cause to believe defendants' vehicle was transporting contraband, the warrantless opening of containers in that trunk was valid due to the intervening decison of *United States v. Ross*). Rodriquez v. State, No. 81-497 (Supreme Ct. of Minn. July 30, 1982) (LEXIS) (court relied on *Ross* to hold that where police had probable cause to search defendants' trunk, no warrant was needed to search either the trunk or the paper bag found inside the trunk).