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VEHICLE SEARCHES— THE AUTOMOBILE EXCEPTION: THE CONSTITUTIONAL RIDE FROM *CARROLL V. UNITED STATES* TO *WYOMING V. HOUGHTON*

Martin L. O'Connor*

I. INTRODUCTION

With respect to automobile searches, there has been substantial criticism of the Fourth Amendment jurisprudence of the United States Supreme Court.¹ Some commentators suggest that the Court's automobile cases have resulted in a shrinking or eroding of Fourth Amendment protections.² Others have been more critical, suggesting that the Supreme Court's Fourth Amendment agenda is

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¹ See generally, James A. Adams, *The Supreme Court's Improbable Justification for Restriction of Citizens' Fourth Amendment Privacy Expectations in Automobiles*, 47 DRAKE L. REV. 833 (1999); Robert Angell, *California v. Acevedo And The Shrinking Fourth Amendment*, 21 CAP. U. L. REV. 707 (1992); Norma J. Briscoe, *The Right To Be Free From Unreasonable Searches and Warrantless Searches Of Closed Containers in Automobiles*, 36 HOWARD L.J. 215 (1993); Todd P. Guthrie, *California v. Acevedo: Now You See It, Now You Don't—The Supreme Court's Latest Approach To The Fourth Amendment Warrant Requirement*, 45 ARK. L. REV. 397 (1992); Jeffrey O. Himstreet, *The Executive's War On Crime Takes A Bite Out Of Privacy In California v. Acevedo*, 28 WILLIAMETTE L. REV. 195 (1991); Peter C. Prynkiewicz, *California v. Acevedo: The Court Establishes One Rule To Govern All Automobile Searches And Opens The Door To Another "Frontal Assault" On the Warrant Requirement*, 67 NOTRE DAME L. REV. 1269 (1992); Matthew J. Saly, *Wren v. United States: Buckle Up And Hold Tight Because The Constitution Won't Protect You*, 28 PAC. L.J. 595 (1997); Chris K. Visser, *Without A Warrant, Probable Cause, Or Reasonable Suspicion; Is There Any Meaning To The Fourth Amendment While Driving A Car?*, 35 HOUS. L. REV. 1683 (1999).

² Lisa K. Coleman, *California v. Acevedo: The Erosion of the Fourth Amendment Right To Be Free From Unreasonable Searches*, 22 MEMPHIS ST. UNIV. L. REV. 831 (1992).

to justify virtually any and all law enforcement practices, regardless of the cost to individual liberties.³ Many of the criticisms of the Court deal with the application of the “automobile exception” that was created seventy-five years ago in *Carroll v. United States*.⁴

This article is designed to examine the history of the automobile exception. It traces the relatively stable constitutional ride of the automobile exception through its first fifty years and then the subverting of the *Carroll* exigency requirement in *Chambers v. Maroney*,⁵ and the container exception detour that was created by *Chadwick* and *Sanders*.⁶ It follows with an analysis of cases that permitted the Court to emerge from the container exception morass. Finally, the article reviews the demise of the *Carroll* exigency requirement and the rejection of a personal property exception in *Wyoming v. Houghton*.⁷

The Fourth Amendment provides:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.⁸

The United States Supreme Court has said that the basic purpose of the Amendment is to prevent government officials from

³ Craig Hemmens, *The Supreme Court: Lapdog Of Law Enforcement Or Principled Expounder of Constitutional Protections?* 12 JUST. PROF. 356 (1999).

⁴ *Carroll v. United States*, 267 U.S. 132 (1925).

⁵ 399 U.S. 42 (1970).

⁶ See *Arkansas v. Sanders*, 442 U.S. 753 (1979) and *United States v. Chadwick*, 433 U.S. 1 (1977) (holding that closed containers in motor vehicles cannot be searched without a warrant and in effect creating a container exception within an automobile exception).

⁷ 119 S. Ct. 1555 (1999).

⁸ U.S. CONST. amend. IV.

arbitrarily invading the privacy of an individual.⁹ Although the Fourth Amendment mentions warrants, “neither federal nor state courts have established a satisfactory conceptual framework for analyzing the basic issue of when a warrant is required to validate a search.”¹⁰ According to the Supreme Court, there is a cardinal principle that warrantless searches are per se unreasonable and subject only to a few exceptions.¹¹ However, in *Carroll v. United States*, the Supreme Court authorized the police to search mobile vehicles without a warrant and, in so doing, created an extraordinary exception to the Fourth Amendment warrant requirement.¹²

II. THE BIRTH OF THE AUTOMOBILE EXCEPTION

Carroll v. United States (1925)

This case arose during the height of prohibition. George Carroll and a friend were driving on a highway while transporting numerous quarts of whiskey and gin in their automobile in

⁹ *Wolf v. Colorado*, 338 U.S. 25, 27-28 (1949).

¹⁰ Joseph D. Grano, *Rethinking The Fourth Amendment Warrant Requirement*, 64 AM.CRIM. L. REV. 603, 604 (1982).

¹¹ *Katz v. United States*, 389 U.S. 347, 357 (1967); *Mincey v. Arizona*, 437 U.S. 385, 390 (1978).

¹² There are several other exceptions to the warrant requirement such as a search incident to an arrest, *United States v. Robinson*, 414 U.S. 218 (1973); stop and frisk search, *Terry v. Ohio*, 392 U.S. 1 (1968); consent search, *Schneckloth v. Bustamonte*, 412 U.S. 218 (1973); exigent circumstances, *Warden v. Hayden*, 387 U.S. 294 (1967). This listing is not all-inclusive and there is a difference of opinion regarding whether there are a few or many exceptions to the warrant requirement. See *Katz v. U.S.* 389 U.S. 347, 357 (1964) concluding that there are only a “few . . . well-delineated exceptions” to the warrant requirement. But see *California v. Acevedo*, 500 U.S. 565, 582 (1991) (Scalia, J., concurring) Scalia noted that the warrant requirement is “riddled with exceptions.” *Id.* In addition Justice Scalia noted that one commentator catalogued at least twenty exceptions to the warrant requirement. *Id.* at 582-83 citing Craig M. Bradley, *Two Models of the Fourth Amendment*, 83 MICH. L. REV., 1468, 1473-74(1985). See also *Florida v. Hite*, 119 S.Ct. 1555, 1561 (1999) (Stevens, J., dissenting) arguing that the warrant exceptions “have all but swallowed the rule.” *Id.*

violation of the National Prohibition Act (the "Act").¹³ The Act provided that if a law enforcement officer discovers any person unlawfully transporting intoxicating liquors in any automobile or other vehicle, "it shall be his duty to seize the liquor."¹⁴ Law enforcement agents had probable cause to believe that Carroll's vehicle was transporting alcohol in violation of the Act, so they stopped the car.¹⁵ The officers then conducted a warrantless search of the car and tore open the seat cushions, where they found sixty-eight quarts of liquor.¹⁶ Carroll and his associate were arrested and convicted for violation of the Act.¹⁷ Carroll appealed his conviction to the United States Supreme Court contending that he had been the victim of an unreasonable search and seizure because the officers made a warrantless search of his car.¹⁸

At the outset of the Court's opinion, Chief Justice Taft, writing for the majority, stated that the Fourth Amendment should be construed in light of what was deemed an unreasonable search and seizure when the Fourth Amendment was adopted.¹⁹ Chief Justice Taft then carefully examined the legislative history of the National Prohibition Act and found that Congress, via the Act, authorized law enforcement officers to search automobiles without a warrant if the officers had probable cause to believe that the vehicle contained intoxicating liquors.²⁰ In regard to the issue of whether this authority was consistent with the Constitution, the Court, after considering the history of the Fourth Amendment, found that the First, Second and Fourth Congresses, distinguished between the necessity for a search warrant to search for goods concealed in a dwelling house and in a movable vessel.²¹ In addition, the Court noted:

¹³ See *Carroll*, 267 U.S. at 134.

¹⁴ *Id.* at 144.

¹⁵ *Id.* at 162.

¹⁶ *Id.* at 134.

¹⁷ *Id.*

¹⁸ *Id.* at 140.

¹⁹ *Id.* at 149.

²⁰ *Id.* at 147.

²¹ *Id.* at 151.

[T]he Fourth Amendment has been construed, practically since the beginning of the government, as recognizing a necessary difference between a search of a store, dwelling house, or other structure. . . [which require a warrant] . . . and a ship, motor boat, wagon, or automobile for contraband goods, where it is not practicable to secure a warrant, because the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant must be sought.²²

The Court affirmed the judgment of the lower court and held that law enforcement agents were not required to obtain a warrant to search Carroll's automobile.²³ *Carroll* thus gave birth to the "automobile exception," which requires three elements to be satisfied. (1) a mobile vehicle must be involved; (2) probable cause must exist to believe that the vehicle contains evidence of a crime; and (3) it must be impractical for the officers to secure a warrant to search the vehicle in question.²⁴

The dissent in *Carroll*²⁵ believed that the facts known to the officers who arrested George Carroll and his associate did not give rise to probable cause.²⁶ The dissent reasoned that the seizure followed an unlawful arrest and thus became unreasonable.²⁷ There was no discussion by the majority or dissent in *Carroll* suggesting that the officers could have immobilized and secured the vehicle and then made application for a search warrant.²⁸

²² *Id.* at 153.

²³ *Id.* at 162.

²⁴ *Id.* at 159-60.

²⁵ *Id.* at 163-175 (McReynolds, J. dissenting joined by Justice Sutherland).

²⁶ *Id.* at 171. The majority disagreed and concluded that probable cause supported the search of the vehicle. *Id.* at 162.

²⁷ *See id.* at 170. The majority reasoned that the "right to search and the validity of the seizure are not dependent upon the right to arrest but upon the reasonable cause the seizing officer has . . . that the contents of the vehicle offend against the law." *Id.* at 158.

²⁸ Perhaps it was not practical in *Carroll* for the police to impound the vehicle, but in some instances a vehicle may be stopped not far from the police station and it is quite reasonable to have the car removed and secured while officers

Therefore, a major exception to the warrant requirement was created with all of the Justices apparently agreeing that no great Fourth Amendment evil exists if police officers conduct a warrantless search of a motor vehicle. In 1925, and in the succeeding years, there was little academic commentary pertaining to the *Carroll* doctrine.²⁹ The Supreme Court reaffirmed *Carroll* on several occasions with little or no critical commentary³⁰ and after reaffirming the automobile exception for almost fifty years, the Supreme Court was again asked to review the application of the doctrine in *Chambers v. Maroney*.³¹

III. THE REFINEMENT OF THE ORIGINAL JUSTIFICATION: SEIZE THE AUTO AND SEARCH LATER

Chambers v. Maroney (1975)

In *Chambers*, an armed robbery took place at a service station and shortly thereafter probable cause arose giving the police reason to believe that the occupants of a certain vehicle were the individuals who committed the robbery.³² Officers stopped the vehicle. Chambers, an occupant of the vehicle, and the other passengers were placed under arrest for armed robbery.³³ The vehicle was then brought to the police station and searched without a warrant.³⁴ The police conducted a thorough search of the auto

seek a warrant. In addition, many police departments today have contracts with municipal towing companies who routinely impound cars for the police because cars have been abandoned, involved in accidents, or the driver has been arrested and the car must be secured. See *United States v. Ross*, 655 F.2d at 1200 (Wilkey, J. dissenting)(arguing that tow trucks are available everywhere and vehicles can be secured by any police department).

²⁹ See generally, Note, 12 VA. L. REV. 236-39 (1926); Thomas E. Atkinson, Note, 24 MICH. L. REV. 277-81 (1926).

³⁰ See *Husty v. United States*, 282 U.S. 694 (1931); *Scher v. United States*, 305 U.S. 364 (1938); *Brinegar v. United States*, 338 U.S. 60 (1949); *Cooper v. California*, 386 U.S. 58 (1967).

³¹ *Chambers v. Maroney*, 399 U.S. 42 (1970).

³² *Id.* at 46.

³³ *Id.* at 44.

³⁴ *Id.*

and in a compartment under the dashboard found a loaded gun and evidence connecting Chambers and the others to the armed robbery.³⁵ Chambers was convicted of the robbery and appealed arguing that the warrantless automobile search violated his Fourth Amendment rights.³⁶ An issue facing the Supreme Court was whether the exigent circumstances associated with the *Carroll* automobile exception still existed after the police brought the automobile to the police station. The Court held that the search of the car at the police station was justified under the *Carroll* doctrine because the police had probable cause to believe that evidence of a crime was in a mobile vehicle, and even though the police had custody of the car, the auto at the police station was still mobile.³⁷ Justice White, writing for the majority, said that the police had two options: they could conduct an immediate search of the car when it was stopped, or the officers could seize and secure the vehicle while they sought to obtain a warrant.³⁸ In regard to which option constitutes a greater intrusion, the majority concluded that for constitutional purposes there was no real difference between the two choices because, "given probable cause to search, either course is reasonable under the Fourth Amendment . . . and the probable cause factor still obtained at the station house and so did the mobility of the car."³⁹

How an automobile can be considered mobile when it is immobilized at the police station in the exclusive control of the police is a mystery. It has been suggested that this legal fiction eliminated the exigency requirement that undergirded the *Carroll* doctrine.⁴⁰ However, in a footnote, the Court stated that it was not unreasonable in this case to take the car to the police station because all of the occupants of the car were arrested in a dark parking lot and a careful search at this time was impractical and

³⁵ *Id.* Officers found two guns (one loaded with dum dum bullets), a right hand glove containing small change and a credit card bearing the name of a gas station attendant who was robbed a week earlier.

³⁶ *Id.* at 46.

³⁷ *Id.* at 52.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ See, Lewis R. Katz, *Automobile Searches And Diminished Expectations In The Warrant Clause*, 19 AM. CRIM. L. REV. 557, 564 (1982).

perhaps not safe for the officers.⁴¹ Nevertheless, in *Chambers*, the Court permitted the police to seize a car in transit and delay the search of the vehicle until the car was safely impounded at the police station. This position cannot square with a clear element of the *Carroll* doctrine that “[i]n cases where the securing of a warrant is reasonably practicable, it must be used.”⁴² Once a vehicle is immobilized in police custody, it is both practicable and reasonable for the police to secure a search warrant. Justice Harlan in his dissent observed that the majority “concedes that the police could prevent the removal of evidence by temporarily seizing the car for the time necessary to obtain a warrant.”⁴³ Clearly, the *Carroll* exigency requirement was subverted in *Chambers* and doubt was cast upon its future viability. In subsequent cases, the Court upheld warrantless searches of automobiles, even though the possibility of the vehicle being removed or evidence being destroyed was “remote or non-existent,”⁴⁴ and the Court has also noted that justification to conduct a search without a warrant “does not vanish once the car has been immobilized.”⁴⁵ The Fourth Amendment automobile exception was justified in *Carroll* by the mobility of the vehicle on the highway and in *Chambers* by the inherent mobility of the vehicle when it was parked at the police station. However, in later cases the Court provided another rationale for warrantless searches of vehicles when it noted:

[O]ne has a lesser expectation of privacy in a motor vehicle because its function is transportation and it seldom serves as one's residence or a repository of personal effects. A car has little capacity for escaping public scrutiny. It travels public thoroughfares where both its occupants and its contents are in plain view...This is not to say that no part of the interior of an automobile has Fourth Amendment protection . . . [and] . . . the desire to be

⁴¹ *Chambers*, 399 U.S. at 52 n.10.

⁴² *See Carroll*, 267 U.S. at 156.

⁴³ *Id.* at 42 (Harlan, J. dissenting).

⁴⁴ *See Cady v. Dombrowski*, 413 U.S. 433, 441-442 (1973).

⁴⁵ *See Michigan v. Thomas*, 458 U.S. 259 (1982).

mobile does not, of course, waive one's right to be free from unreasonable intrusions.⁴⁶

Approximately twelve months after *Chambers*, the Supreme Court was again confronted with an automobile exception case in *Coolidge v. New Hampshire*.⁴⁷

Coolidge v. New Hampshire (1971)

In *Coolidge*, a fourteen-year-old girl left her home during a heavy snowstorm and did not return. A few days later the police discovered her body. Shortly thereafter, the police obtained an arrest warrant for Edward Coolidge and a search warrant for his automobile.⁴⁸ Coolidge was arrested at his home, and his car, which was parked in his driveway, was towed to the police station where it was searched.⁴⁹ The search of the car revealed that it was highly probable that the deceased girl was in Coolidge's auto before her death.⁵⁰ Before trial, suppression motions were denied and Coolidge was convicted of the girl's death.⁵¹ The conviction of Coolidge was reversed by a deeply divided Supreme Court⁵², which found that the warrants were not issued by a "neutral and

⁴⁶ See *Cady*, 413 U.S. at 441. See also *California v. Carney*, 471 U.S. 386, 391 (1984).

⁴⁷ 403 U.S. 443 (1971)(plurality opinion).

⁴⁸ *Id.* at 445-47.

⁴⁹ *Id.* at 447.

⁵⁰ *Id.* at 448.

⁵¹ *Id.* Coolidge moved to suppress vacuum sweepings and particles of gunpowder taken from his car and also evidence seized from his home.

⁵² Justice Stewart delivered the opinion of the Court and was joined by Justice Douglas, Justice Brennan and Justice Marshall *Id.* at 445. Justice Harlan, in a concurring opinion, noted that the law of search and seizure is "due for an overhauling" and law enforcement must find the uncertain current state of the law to be "intolerable" *Id.* at 490. Chief Justice Burger filed a concurring and dissenting opinion *Id.* at 492. Justice Black filed a concurring and dissenting opinion a portion of which Chief Justice Burger and Justice Blackmun joined. *Id.* at 493. Justice White filed a concurring and dissenting opinion a portion of which Chief Justice Burger joined. *Id.* at 510.

detached magistrate,” and were therefore invalid.⁵³ Nevertheless, the government argued that the *Carroll* doctrine permitted a warrantless seizure and search of the vehicle because there was probable cause to believe that evidence of a crime was in a mobile vehicle.⁵⁴ Justice Stewart, writing for the Court, rejected the government’s contention and reasoned that the application of *Carroll* to this case would extend it beyond its original rationale. The Court noted that in *Carroll* the car was stopped on the highway and the opportunity to search was “fleeting.”⁵⁵ Since Coolidge’s car was parked in a private driveway, the opportunity to search was “not fleeting.”⁵⁶ In his dissent, Justice White argued that this case is clearly covered by the *Carroll* doctrine and “[d]istinguishing the case before us from the *Carroll-Chambers* line of cases further enmeshes Fourth Amendment law in litigation breeding refinements having little relation to reality.”⁵⁷ Three years after *Coolidge*, another deeply divided Supreme Court⁵⁸ was once again confronted with an automobile exception case involving a parked vehicle.

Cardwell v. Lewis (1974)

Arthur Ben Lewis was arrested for murder.⁵⁹ During the investigation the police seized his automobile without a warrant.⁶⁰ His car was towed from a parking lot to a police station because the police had probable cause to believe that Lewis’ car was used

⁵³ *Id.* at 449. The State Attorney General who had personally taken charge of the murder investigation and who served as the chief prosecutor at trial issued the warrants. *Id.* Under New Hampshire law the attorney general was a justice of the peace and all justices of the peace are authorized to issue warrants. *Id.*

⁵⁴ *Id.* at 458.

⁵⁵ *Id.* at 460.

⁵⁶ *Id.*

⁵⁷ *Id.* at 527.

⁵⁸ *Cardwell v. Lewis*, 417 U.S. 583 (1974)(plurality opinion). Justice Blackmun announced the judgment of the Court and was joined by Chief Justice Burger, Justice White and Justice Rehnquist. Justice Powell concurred in the result. *Id.* at 596. Justice Stewart dissented and was joined by Justice Douglas, Justice Brennan and Justice Marshall. *Id.* at 596-599.

⁵⁹ *Id.* at 585.

⁶⁰ *Id.*

in the commission of a crime.⁶¹ At the police station, the police inspected the exterior of the auto. Paint samples and tire impressions were taken and introduced at trial.⁶² Following Lewis' conviction, a habeas corpus proceeding was brought in the district court. The court held that the seizure and examination of Lewis' car violated the Fourth Amendment and the evidence obtained therefrom should be suppressed.⁶³ The Court of Appeals affirmed.⁶⁴ The United States Supreme Court agreed to hear the case and Lewis argued that his case was indistinguishable from the warrantless search and seizure in *Coolidge*.⁶⁵ The Supreme Court reversed, and the plurality opined that the warrantless seizure and examination of the exterior of the car was not unreasonable.⁶⁶ Further, the Court said that even though the police may have obtained a warrant to search the automobile, it "does not negate the possibility of a current situation necessitating prompt police action."⁶⁷ The dissent argued that this is simply a case where a warrant should have been secured to seize and search the car because no exigent circumstances existed.⁶⁸

It is difficult to reconcile *Coolidge* and *Cardwell*. In *Coolidge* the Court seemed to be concerned with the fact that the search and seizure of the automobile was not in transit, and, therefore, a warrantless search of the automobile was unreasonable.⁶⁹ If there

⁶¹ *Id.* at 587.

⁶² *Id.* at 588.

⁶³ 354 F. Supp. 26 (S.D. Ohio 1972).

⁶⁴ 476 F.2d 467 (6th Cir. 1973). The Court of Appeals held that the scraping of paint from the exterior of Lewis' car was a search; that it was not incident to an arrest; and the seizure of the car was not justified on the ground that the vehicle was an instrumentality of a crime in plain view. *Id.* at 588.

⁶⁵ *Id.* at 593.

⁶⁶ *Id.* at 592-593.

⁶⁷ *Id.* at 596.

⁶⁸ *Id.* at 599 (Stewart, J., dissenting) joined by Justice Brennan and Justice Marshall.

⁶⁹ *Coolidge*, 403 U.S. at 460-465. The Court seemed concerned that the police "knew for some time of the probable role of the car in the crime." In addition, the Court said that the vehicle was unoccupied, parked on private property and by no possible stretch of the legal imagination can this be made into a case where "it is not practicable to secure a warrant" citing *Carroll* 267 U.S. at 153.

is any significant distinguishing feature between the two cases, it appears that in *Coolidge* there was an extensive search of the interior of the vehicle;⁷⁰ the *Coolidge* vehicle was in the defendant's driveway, and the seizure of the vehicle required an entry upon private property when no exigent circumstances were present.⁷¹ In *Cardwell*, the vehicle was parked in a public place where access was not meaningfully restricted and police examination was confined to the exterior of the vehicle.⁷²

The *Carroll-Chambers* rule was followed in *Texas v. White*,⁷³ and in *Michigan v. Thomas*⁷⁴ where the Court again noted the mobility of a vehicle as an important underpinning of the automobile exception. By the mid-1970's, the *Carroll* doctrine was well established and clear-cut. If law enforcement officers had probable cause to believe that evidence of a crime was in a mobile vehicle, the officers could search the vehicle on a public highway without a warrant,⁷⁵ search the auto after transporting it to the police station,⁷⁶ seize and search vehicles parked in public places,⁷⁷ and tear open upholstery.⁷⁸ Furthermore, the police could search hidden compartments under the dashboard,⁷⁹ and search wrapped packages.⁸⁰ In addition, various Courts of Appeals permitted the search of footlockers placed in the trunk of automobiles,⁸¹ suitcases placed in a taxicab,⁸² and trunks loaded

⁷⁰ *Id.* at 593 n.9.

⁷¹ *Id.* at 593.

⁷² Although the record reflects that the trunk of the car was also opened by the police and they observed a tire, no evidence from any part of the interior of the vehicle was introduced at trial. *Id.* at 588 n.4.

⁷³ *Texas v. White*, 423 U.S. 67 (1975)(per curiam).

⁷⁴ *Michigan v. Thomas*, 458 U.S. 59 (1982).

⁷⁵ *Carroll*, 267 U.S. at 286.

⁷⁶ *Chambers*, 399 U.S. at 42.

⁷⁷ *Cardwell*, 417 U.S. at 592-593.

⁷⁸ *Carroll*, 267 U.S. at 281.

⁷⁹ *Chambers*, 399 U.S. at 44.

⁸⁰ *Scher v. United States*, 305 U.S. 251, 253 (1938).

⁸¹ *United States v. Evans*, 481 F.2d 990, 993-994 (9th Cir. 1973).

⁸² *United States v. Soriano*, 497 F.2d 147, 150 (5th Cir.1974). The Court stated that the officer who arrested Soriano and his companions "had probable cause to believe the trunk contained contraband, a circumstance justifying an

into the trunk and passenger compartment of an automobile.⁸³ In short, for more than fifty years, law enforcement officers with probable cause to believe that evidence of a crime was in a mobile vehicle could search any part of the vehicle and any container in which it was reasonably believed the evidence was located.⁸⁴ Fifty-two years after the establishment of the automobile exception in *Carroll*, the United States Supreme Court began to question the scope of the search authorized by the *Carroll* doctrine and in so doing made its first major detour on the *Carroll* road and slipped into a container exception morass.

IV. THE CONTAINER EXCEPTION DETOUR

*United States v. Chadwick*⁸⁵ (1977)

In *Chadwick*, railroad officials in San Diego became suspicious when they noticed that a 200-pound footlocker secured with two padlocks was being loaded on a train for Boston and talcum powder was leaking from the footlocker.⁸⁶ The officials noted that talcum powder is often used to mask the odor of marijuana.⁸⁷ Law enforcement agents met the train in Boston where a trained police dog sniff indicated that the footlocker contained a controlled substance.⁸⁸ The agents did not seize the footlocker, but waited for Chadwick and some of his friends to arrive and place the footlocker in the trunk of an automobile.⁸⁹ Before the automobile engine was started, the agents moved in and arrested Chadwick and his associates.⁹⁰ The agents then took the footlocker to the Federal Building in Boston. An hour and a half after the arrest, the

initial incursion into the trunk. Under established law in this circuit and elsewhere, this justification encompassed the search of containers in the vehicle." *Id.* at 149.

⁸³ *United States v. Issod*, 508 F.2d 990, 993 (7th Cir.1974).

⁸⁴ *Robbins v. California*, 453 U.S. 420, 444 (1981)(Stevens, J., dissenting).

⁸⁵ *United States v. Chadwick*, 433 U.S.1 (1977).

⁸⁶ *Id.* at 3 n. 4.

⁸⁷ *Id.* at 3.

⁸⁸ *Id.* at 4.

⁸⁹ *Id.*

⁹⁰ *Id.*

agents searched the footlocker and found a large quantity of marijuana.⁹¹ To the government, the legal issue seemed clear: there was probable cause to believe that evidence of a crime was in a mobile vehicle; therefore, officers could search the vehicle and the footlocker without a warrant pursuant to the *Carroll* doctrine. The government argued that as soon as the footlocker was placed in the automobile, a warrantless search was permissible under the *Carroll* automobile exception.⁹² The District Court saw the relationship between the footlocker and the automobile as “merely coincidental,” so it held that the search was not justified by the *Carroll* automobile exception.⁹³ A divided Court of Appeals found that the government agents had probable cause to search the footlocker and that it had been properly taken into custody.⁹⁴ Nevertheless, the Court of Appeals affirmed the suppression of the seized marijuana, agreeing with the District Court that the search of the footlocker was not justified by the automobile exception.⁹⁵ However, in the Court of Appeals, the government for the first time contended that the search of the footlocker was justified because movable personalty lawfully seized in a public place should be subjected to a warrantless search if there is probable cause to believe it contains evidence of a crime.⁹⁶ The Court of Appeals rejected this contention on the ground that a search of personalty on probable cause alone has not yet been recognized as a valid exception to the Fourth Amendment requirement.⁹⁷ In the Supreme Court, the government did not contend that the search of

⁹¹ *Id.* at 4-5.

⁹² *Id.* at 5. The government also attempted to justify the search of the footlocker as a search incident to an arrest.

⁹³ 393 F. Supp. 763, 771 (Mass. Dist. Ct. 1975). The District Court found that the footlocker had not been transported in the automobile, it was only resting in the trunk of the auto, the car was not running and no one was in the driver's seat. *Id.* at 772. The District Court also held that there was no probable cause to arrest Chadwick. *Id.* at 768.

⁹⁴ *Chadwick*, 433 U.S. at 5.

⁹⁵ *United States v. Chadwick*, 532 F.2d 773,781 (1st Cir. 1976). The Court of Appeals also agreed with the District Court that the search was not justified as a search incident to an arrest.

⁹⁶ *Chadwick*, 433 U.S. at 6.

⁹⁷ *Id.* at 7.

the footlocker was justified by the automobile exception, but argued again that the search was justified because “movable personalty lawfully seized in a public place should be subject to search without a warrant . . . [and] . . . only homes, offices, and private communications implicate interests which lie at the core of the Fourth Amendment.”⁹⁸ The government contended that less significant values are at stake when searching a container, and the reasonableness of the intrusion should depend solely on whether there is probable cause to believe evidence of criminal conduct is present. In response, the Supreme Court examined the history of the Fourth Amendment and conceded “there is little evidence that the Framers intended the Warrant Clause to operate outside the home . . . [but also noted] . . . there is little evidence at all that . . . [the Framers] . . . intended to exclude from the protection of the Warrant Clause all searches occurring outside the home.”⁹⁹ Therefore, the Court concluded that the judicial warrant has a significant role to play in searches and seizures in that it provides the scrutiny of a neutral magistrate, a “more reliable safeguard against improper searches than the hurried judgment of a law enforcement officer.”¹⁰⁰ In addition, the Court said important privacy interests were at stake in this case because by “placing personal effects inside a double-locked footlocker, respondents manifested an expectation that the contents would remain free from public examination . . . [similar to one who] . . . locks the doors of his home against intruders.”¹⁰¹ The Court then noted that it has permitted warrantless searches of automobiles partly because of the automobile’s inherent mobility,¹⁰² which often makes obtaining a judicial warrant impracticable and also because there is

⁹⁸ *Id.* 6-7.

⁹⁹ *Id.* at 8.

¹⁰⁰ *Id.* at 8-9, (citing *Johnson v. United States*, 333 U.S. 10, 14 (1948)).

¹⁰¹ *Id.* at 11.

¹⁰² *Id.* Apparently the Court believed that containers are not as mobile as cars. However, in *Coolidge v. New Hampshire*, 403 U.S. 443, 461 n.18 (1971) (plurality opinion), the Court stated that a “[g]ood number of the containers that the police might discover . . . and want to search are . . . movable e.g., trunks, suitcases, boxes and bags . . . [and although] . . . the automobile has wheels . . . there is little difference in driving the container itself away and driving it away in a vehicle brought to the scene for that purpose.” *Id.*

a diminished expectation of privacy surrounding an automobile.¹⁰³ However, the Court stated that the factors that diminish privacy for the automobile do not apply to the footlocker because the container's contents are not open to public view, not subject to regular inspections and luggage is intended as a repository of personal effects.¹⁰⁴ In dismissing the government argument, the Court found that the police may seize the locker upon probable cause, but reasoned that significant privacy interests protected the locker from being opened until a warrant is secured.¹⁰⁵ The dissent vigorously disagreed with the majority,¹⁰⁶ and noted that the search of the footlocker could have been justified on several grounds: (1) as a search incident to an arrest;¹⁰⁷ (2) as an inventory search;¹⁰⁸ and (3) as the automobile exception provided by *Carroll* if the government agents had postponed the arrest until Chadwick and his associates started to drive away.¹⁰⁹ The dissent appropriately noted that several Courts of Appeals had previously construed the *Carroll* doctrine to include the search of briefcases, suitcases, and footlockers in automobiles.¹¹⁰ Finally, the dissenting justices observed that the law enforcement agents in *Chadwick* were actually following "good police procedure" and decisions like *Chadwick* "make criminal law a trap for the unwary policeman and

¹⁰³ *Id.* at 13.

¹⁰⁴ *Id.* at 11.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.* at 17-24 (Blackmun, J., dissenting).

¹⁰⁷ *Id.* at 23. See also *id.* at 19, (citing *United States v. Robinson*, 414 U.S. 218 (1973), *Gustafson v. Florida*, 414 U.S. 260 (1973); *United States v. Edwards* 415 U.S. 800 (1974) (search incident to arrest cases); *Texas v. White*, 423 U.S. 67 (1975), *Cady v. Dombrowski*, 413 U.S. 433, 439-448 (1973), *Chambers v. Maroney*, 399 U.S. 42, 47-52 (1970), *South Dakota v. Opperman*, 428 U.S. 364 (1976)). (Cases that involved an automobile impoundment). The dissenters argued that a warrant is not required to seize and search movable property in possession of a person arrested in a public place. *Id.*

¹⁰⁸ *Id.* citing *South Dakota v. Opperman*, 423 U.S. 364 (1976).

¹⁰⁹ *Id.* at 22-23.

¹¹⁰ *Id.* at 23 n.4 citing *United States v. Traumunti*, 513 F.2d 1087, 1104-1105 (2d Cir. 1975); *United States v. Issod*, 508 F.2d 990, 993 (7th Cir. 1974); *United States v. Soriano*, 497 F.2d 147 (5th Cir. 1974); *United States v. Aviles*, 535 F.2d 658 (1976); *United States v. Evans*, 481 F.2d 990, 993-994 (9th Cir. 1973).

detract from the important activities of detecting criminal activity and protecting the public safety.”¹¹¹

It is possible to distinguish *Chadwick* from *Carroll* in that the vehicle in *Chadwick* was actually not being operated on a public highway, and the government did not attempt to justify the search pursuant to the automobile exception. However, less than twenty months later, the Court in another automobile case, *Arkansas v. Sanders*,¹¹² demonstrated that the container exception extends well beyond the holding of *Chadwick*.

Arkansas v. Sanders (1979)

In *Sanders*, police in Arkansas had probable cause to believe that Sanders, while exiting a local airport, was carrying a green suitcase full of marijuana.¹¹³ Sanders placed the green suitcase in the trunk of a taxi and drove off. Several blocks from the airport, the police stopped the taxi, opened the trunk and found marijuana in the suitcase.¹¹⁴ The government contended that the *Carroll* doctrine was applicable because there was probable cause to believe that evidence of a crime was in a mobile vehicle, and, unlike *Chadwick*, the auto in *Sanders* was actually being operated on the public highway.¹¹⁵ The trial court denied Sanders motion to suppress and he was convicted.¹¹⁶ The Supreme Court of Arkansas reversed, ruling that *Chadwick* controlled this case and, hence, the marijuana should be suppressed.¹¹⁷ The United States Supreme Court affirmed and stated that the automobile exception set forth in *Carroll* and its progeny, will “not be extended to warrantless searches of one’s personal luggage merely because it was located

¹¹¹ *Id.* at 24.

¹¹² 442 U.S. 751 (1979).

¹¹³ *Id.* at 756.

¹¹⁴ *Id.* at 755.

¹¹⁵ *Id.* at 761.

¹¹⁶ *Id.* at 756.

¹¹⁷ *Id.* The Arkansas Supreme Court held that there was ample probable cause to believe that marijuana was contained in the suitcase but there was no exigent circumstances justifying the officer’s failure to secure a search warrant before searching the luggage.

in an automobile.”¹¹⁸ Following the reasoning in *Chadwick*, the Court stressed the heightened expectation of privacy in luggage and the fact that just because luggage is placed in an automobile does not diminish the owner’s expectation of privacy in such luggage. *Chadwick* and *Sanders* were characterized by the majority as not extending the automobile exception to include containers in automobiles.¹¹⁹ However, in reality, these cases were actually narrowing the scope of the search authorized by *Carroll* and its progeny and creating, in effect, a container exception within an automobile exception. In their dissent, Justice Blackmun and Justice Rehnquist stated that *Sanders* actually “undermines the automobile exception . . . [and] . . . creates . . . difficulties for law enforcement officers . . . prosecutors . . . [and] . . . the courts themselves.”¹²⁰ The dissent¹²¹ noted that they see no reason to impose a distinction between an automobile and luggage in an automobile, and the “expectation of privacy in a suitcase found in a car is probably not significantly greater than the expectation of privacy in a locked glove compartment or trunk.”¹²²

In a footnote in *Sanders*, additional confusion was created when the Court declared “not all containers and packages found by the police during a search will deserve the full protection of the Fourth Amendment.”¹²³ The dissent illustrated the confusion that this worthy/unworthy container comment would create when it suggested that “[s]till hanging in limbo, and probably soon to be litigated, are the briefcase, the wallet, the package, the paper bag, and every other kind of container.”¹²⁴ The dissent was prophetic

¹¹⁸ *Id.* at 763. The Court said, “some containers (for example a kit of burglar tools or a gun case) by their very nature cannot support a reasonable expectation of privacy because their contents can be inferred from their outward appearance. Similarly, in some cases the contents of the package will be open to plain view. . . . There will be difficulties in determining which parcels taken from an automobile require a warrant and which do not.” *Id.*

¹¹⁹ *Id.* at 765.

¹²⁰ *Id.* at 768.

¹²¹ *Id.* (Blackmun, J., dissenting joined by Justice Rehnquist).

¹²² *Id.* at 769. In three years the position of the dissent would become the majority in *United States v. Ross*, 456 U.S. 798 (1982).

¹²³ *Id.* at 764 n.13.

¹²⁴ *Id.* at 768.

and numerous cases were litigated regarding the worthy/unworthy container comment involving an extraordinary variety of containers.¹²⁵ The dissent argued that it would be better to adopt a clear-cut rule that a warrant should not be required to seize and search any personal property found in an automobile because such a policy would simplify criminal procedure without derogating Fourth Amendment values.¹²⁶ Less than two years after *Sanders*, another automobile exception case, *Robbins v. California*,¹²⁷ found its way onto the docket of the United States Supreme Court.

Robbins v. California (1981)

In *Robbins*, police officers stopped a station wagon that was being driven erratically on a public highway.¹²⁸ When Robbins opened the car door, the officers smelled marijuana emanating from the vehicle.¹²⁹ In a subsequent search of the interior of the car, officers found marijuana.¹³⁰ In the tailgate section of the station wagon, the police found two packages wrapped in green opaque plastic.¹³¹ The police opened the packages and discovered fifteen pounds of marijuana in each.¹³² The lower court upheld the search, reasoning that the contents of the packages could have been inferred from their outward appearance, and there was no reasonable expectation of privacy with respect to the contents.¹³³ The United States Supreme Court reversed, and in a plurality decision opined that the automobile exception did not authorize the opening of the packages without a warrant.¹³⁴ The plurality

¹²⁵ In *United States v. Ross*, 665 F. 2d 1159, 1174-1175 nn.3&4 (D.C. Cir. 1981) (en banc) (Tamm, J. dissenting) noted numerous cases that were litigated re the worthy container issue.

¹²⁶ *Sanders*, 442 U.S. at 772.

¹²⁷ 453 U.S. 420 (1981) (plurality opinion).

¹²⁸ *Id.* at 422.

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Id.* at 428.

¹³⁴ *Id.* at 421. Justice Stewart authored the opinion and was joined by Justice Brennan, Justice White and Justice Marshall. Chief Justice Burger concurred in

believed that the search was invalid because *Chadwick* and *Sanders* established that a closed piece of luggage found in a car is protected to the same extent as closed pieces of luggage found anywhere else. The Court said that a “diary and a dish pan are equally protected by the Fourth Amendment.”¹³⁵ The Court rejected the “worthy container” concept and held that all containers except those whose contents are in plain view are equally protected by the Fourth Amendment.¹³⁶

Chadwick, *Sanders* and *Robbins* created a great deal of confusion and raised serious questions about the scope of a search pursuant to the *Carroll* doctrine. In *Carroll*, the police tore open the upholstery,¹³⁷ and in *Chambers*, the police took apart a compartment under the dashboard¹³⁸ to find evidence of a crime, and both of these searches were held to be reasonable within the meaning of the Fourth Amendment. The question that arose was whether there exists a greater expectation of privacy in closed containers than in parts of a vehicle that are clearly hidden from public view. Justice Powell, in his concurring opinion, alluded to this issue when he said that the “[p]lurality’s approach strains the rationales of our prior cases and imposes substantial burdens upon law enforcement without vindicating any significant values of privacy.”¹³⁹ *Chadwick*, *Sanders* and *Robbins* seemed to suggest the following constitutional rules regarding the searches of vehicles. If the police have probable cause to believe that evidence of a crime is in a mobile vehicle, the police are authorized to search every inch of such vehicle without a warrant, which would include tearing apart upholstery and other parts of the auto. However, if the police come upon a closed container (luggage, footlocker, paper bag) in a vehicle in which they have probable cause to believe evidence of a crime is located, the officers must

the judgment *Id.* at 429. Justice Powell filed an opinion concurring in the judgment proclaiming that the law of search and seizure is “intolerably confusing” *Id.* at 430. Justice Blackmun, Justice Stevens and Justice Rehnquist filed dissenting opinions. *Id.* at 436-453.

¹³⁵ *Id.* at 425.

¹³⁶ *Id.* at 427.

¹³⁷ *Carroll*, 267 U.S. at 281.

¹³⁸ *Chambers*, 399 U.S. at 44.

¹³⁹ *Robbins*, 453 U.S. at 429.

cease searching and secure a warrant to authorize the opening of the container.

Further adding to the legal confusion pertaining to vehicle searches was *New York v. Belton*¹⁴⁰ which was decided by the Supreme Court on the same day as *Robbins*. In *Belton*, a police officer in New York stopped a vehicle for speeding. While talking to the driver and passengers, the officer smelled the odor of marijuana emanating from the car and observed an envelope on the floor of the car marked "Supergold," which the officer recognized as a package commonly used to carry marijuana.¹⁴¹ The officer ordered the driver and the passengers out of the car and retrieved the package from the car, opened it, and concluded that it was marijuana.¹⁴² The officer returned to the automobile and conducted a search of a jacket found on the rear seat and discovered cocaine and identification linking the jacket to one of the passengers named Belton.¹⁴³ The occupants of the vehicle were arrested and subsequently challenged the seizure of the evidence.¹⁴⁴ The trial court denied Belton's motion to suppress and the Appellate Division of the New York Supreme Court upheld the constitutionality of the search based upon the view that a lawful arrest justified the search of the immediate area including the interior of the automobile.¹⁴⁵ The New York State Court of Appeals reversed, finding that the search of the closed pockets in the jacket could not be justified as a search incident to an arrest.¹⁴⁶ Justice Stewart, writing for the majority of the Supreme Court reversed, and held that the search incident to arrest rule of *Chimel v. California*,¹⁴⁷ permits a search of the passenger compartment of

¹⁴⁰ 453 U.S. 454 (1981).

¹⁴¹ *Id.* at 455-456.

¹⁴² *Id.* at 456.

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *People v. Belton*, 68 A.D. 2d 198, 201, 416 N.Y.S.2d 922, 925 (4th Dep't 1979).

¹⁴⁶ *People v. Belton*, 50 N.Y. 2d 447, 449 407 N.E.2d 420, 421, 429 N.Y.S.2d 574, 575 (1980).

¹⁴⁷ 395 U.S. 752 (1969).

the vehicle and all containers found within the passenger compartment.¹⁴⁸

Belton thus created a “bright-line” search incident to arrest rule with respect to automobiles. Nevertheless, *Belton* created another anomaly with respect to the search of containers in automobiles. If the police lawfully arrest a motorist pursuant to *Belton*, and the police have no suspicion whatsoever that the motorist has contraband in the passenger compartment, *Belton* authorizes the police to make a warrantless search of the passenger compartment and any containers found therein. However, under *Robbins*, even if the police have “proof beyond a reasonable doubt”¹⁴⁹ that there is evidence of a crime in a container which is located in the trunk of a vehicle, the officers may not search the container without a warrant. A prominent New York State Justice once referred to the general confusion surrounding automobile searches as compelling Courts to “wander endlessly through this labyrinth of judicial uncertainty.”¹⁵⁰ In the following colloquy a criminal justice professional described the problems associated with police academy training of recruits with respect to the rationale and the differences between *Belton* and *Robbins*.¹⁵¹

Recruit No. 1: Sarge, I’m not clear on this at all.
Who sets reasonable expectations of privacy?

Sarge: Well, the Supreme Court says they’re set by
general social norms.

¹⁴⁸ *Id.* at 462-463.

¹⁴⁹ See *California v. Acevedo*, 500 U.S. 565, 597 (1991) (Stevens, J., dissenting) Stevens argued that proof beyond a reasonable doubt does not justify the search of a container in a mobile vehicle and the extent to which the police are certain of the contents of a container has no bearing on the authority to search. *Id.*

¹⁵⁰ *People v. Brosnan*, 32 N.Y.2d 254, 263, 298 N.E.2d 78, 83, 344 N.Y.S.2d 900, 907 (1973) (Wachtler, J., dissenting).

¹⁵¹ James J. Fyfe, *Enforcement Workshop: Robbins, Belton and Ross – The Policeman’s Lot Becomes A Happier One*, 18 CRIM. L. BULL. 461, 464-465 (1982).

Recruit No. 2: But then didn't Belton have a reasonable expectation that his zippered jacket pockets are private?

Sarge: Well, that's different. That was a search pursuant to an arrest.

Recruit No. 3: But aren't searches pursuant to an arrest limited to the area within the immediate control of the suspect? Belton was nowhere near his jacket when it was searched.

Sarge: No, autos are an exception. When you arrest someone in a car you can search everything found in the car.

Recruit No. 4: But you can't go into a concealed luggage compartment, right?

Sarge: No, no. The search of Robbins' luggage compartment was fine. But once they got there, they violated Robbins' reasonable expectation of privacy in the plastic bricks.

Recruit No. 5: You mean that Robbins had no reasonable expectation of privacy in a concealed luggage compartment; but he had a reasonable expectation of privacy in the plastic bricks?

Sarge: Now you've got it. Read Robbins again. It says people can't expect much privacy in a car because it's not used as a residence or a place to store personal effects, and because people and things in cars travel in plain view.

Recruit No. 6: But the two bricks were not in plain view. They were in a concealed luggage compartment. The car companies put those compartments in station wagons specifically so that

people can store things out of sight. In my neighborhood, if you left two plastic bricks or anything else where people could see it in parked cars, the junkies would steal it in a minute. Didn't you tell us in crime prevention class to always advise citizens to put things in the trunks of their cars where they'd be out of sight?

Recruit No. 7: Sarge, how can they possibly say a car's luggage compartment is not a repository for personal effects? I keep a thousand dollar set of golf clubs in my trunk.

What if I was arrested in my car? The cops could search the car, but when they came to the zipper compartment on the side of my golf bag they couldn't open it, is that right?

Recruit No. 8: Yeah, Sarge, what if you arrest a guy in a motor home out on the road? Can you go through all the drawers and kitchen cabinets, but not any plastic bag? What if he's got a coat hanging in the closet? Can you search that? Can you search a medicine cabinet in a motor home?

Sarge: Well, now that we've got that all squared away, let's go on to talk about automobile accidents.¹⁵²

Echoing similar sentiments regarding complex search and seizure rules and the ability of police officers to apply these rules, a commentator opined:

A highly sophisticated set of rules, qualified by all sorts of ifs, ands, and buts and requiring the drawing of subtle nuances and hairline distinctions, may be the sort of heady stuff upon which facile minds of lawyers and judges eagerly feed, but they

¹⁵² *Id.*

may be literally impossible of application by the officer in the field.¹⁵³

One may argue that the difference between the result in *Belton* and *Robbins* was justified because *Belton* involved a search incident to an arrest and *Robbins* involved a search pursuant to the automobile exception;¹⁵⁴ nevertheless, the rationale for the distinction between these two cases decided on the same day is, at best, puzzling. The philosophical underpinnings of *Belton* and *Robbins* are clearly incompatible. The privacy interest in closed containers that was so important in *Chadwick*, *Sanders* and *Robbins* was jettisoned in *Belton* in an effort to create a bright-line search incident to arrest rule with respect to automobiles. In *Robbins*, Justice Powell, in a concurring opinion, suggested that a future case might afford the Court an opportunity to address “the confusion that infects this benighted area of the law.”¹⁵⁵ Hence, it is no wonder that only nine months after deciding *Robbins*, the Supreme Court agreed to hear another automobile exception case.

V. ENDING THE CHADWICK/SANDERS DETOUR

*United States v. Ross*¹⁵⁶ (1982)

A reliable informant told a Washington, D.C. detective that an individual known as “Bandit” was selling narcotics that were kept

¹⁵³ *Belton*, 453 U.S. at 458 quoting Lafave, *Case-by-Case Adjudication versus Standardized Procedures: The Robinson Dilemma*, 1974 SUP. CT. REV. 127, 141.

¹⁵⁴ Katz, *supra* note 40 at 596-597 (arguing that *Belton* and *Robbins* may be reconciled to some extent because they involve different exceptions to the warrant clause and neither *Robbins* nor *Belton* breaks new ground and stare decisis arguably supports both). See also Catherine A. Sheppard, *Search and Seizure: From Carroll to Ross, The Odyssey of the Automobile Exception*, 32 CATH U. L. REV. 221, 243 (1982) arguing that *Belton* and *Robbins* articulate clear and easily applicable rules. But cf. Barry Latzer, *Searching Cars And Their contents: United States v. Ross* 18 CRIM. L. BULL. 399 (1982) arguing that *Belton* is only superficially consistent with *Chimel* and *Robbins* conflicts with *Carroll*.

¹⁵⁵ *Id.*; See also *Robbins* 453 U.S. at 437.

¹⁵⁶ 456 U.S. 798 (1982).

in the trunk of a particular car, and that "Bandit" told the informant that additional narcotics were also in the trunk of the car.¹⁵⁷ The informant described the vehicle and the suspect named "Bandit." The police subsequently saw the suspected vehicle and a license plate check revealed that the car was registered to Albert Ross.¹⁵⁸ The police stopped the car and asked Mr. Ross to get out of the vehicle.¹⁵⁹ The police then searched Ross, observed a bullet on the front seat of the car and found a gun in the glove compartment.¹⁶⁰ A warrantless search of the trunk revealed a brown paper bag that contained heroin and another bag containing \$3,200 in cash.¹⁶¹ The heroin and money were introduced at trial and Ross was convicted of possessing heroin with intent to distribute.¹⁶² The Court of Appeals reversed and held that pursuant to *Sanders*, the police should not have opened either container without first obtaining a warrant.¹⁶³

The United States Supreme Court granted certiorari to review the case and began its opinion by noting that there is, with respect to vehicle searches, "no dispute among judges about the importance of striving for clarification in this area of law."¹⁶⁴ The Court reviewed its previous cases, the extensive history of the automobile exception, and considered the privacy interests protected by *Carroll* and the enormous confusion that the *Chadwick-Sanders* line of cases created.¹⁶⁵ The Supreme Court then reversed the Court of Appeals and stated, "privacy interests in a car's trunk or glove compartment may be no less than those in a movable container . . . [and] . . . if probable cause justifies the search of a lawfully stopped vehicle, it justifies the search of every part of that vehicle and its contents that may conceal the object of the

¹⁵⁷ *Id.* at 800.

¹⁵⁸ *Id.*

¹⁵⁹ *Id.* at 801.

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ *Id.* at 801.

¹⁶⁴ *Id.* at 803.

¹⁶⁵ *Id.* 805-808.

search.”¹⁶⁶ Although the Court did not specifically overrule *Chadwick* and *Sanders*, it rejected the reasoning in *Sanders* and it specifically rejected the precise holding in *Robbins*.¹⁶⁷ Nevertheless, the doctrinal underpinnings of *Chadwick* and *Sanders* were seriously questioned when the Court observed:

During virtually the entire history of our country—whether contraband was transported in a horse drawn carriage, a 1921 roadster, or a modern automobile, it has been assumed that a lawful search of a vehicle would include a search of any container that might conceal the object of the search.¹⁶⁸

The *Ross* Court was clearly attempting to emerge from the container exception morass and return to the principles set forth in *Carroll* and *Chambers*. The exigency issue, which at least one commentator believed was eliminated in *Chambers*,¹⁶⁹ was noted by Justice Marshall in his dissent. Justice Marshall said that *Ross* was a “step toward an unprecedented probable cause exception to the warrant requirement”¹⁷⁰ because the majority stated that the scope of an automobile exception search is as broad as a magistrate could authorize in a warrant to search the automobile.¹⁷¹ Justice Marshall saw this seemingly benign statement as a “sleight of hand,”¹⁷² because a magistrate can order a search on probable cause alone with no exigency regarding the mobility of the vehicle. If an officer has the same authority as a magistrate, then the officer has no exigency restriction when he or she makes a warrantless search pursuant to the *Carroll* doctrine. Subsequent cases would reveal that Justice Marshall was quite prophetic in this

¹⁶⁶ *Id.*

¹⁶⁷ *Id.* at 824.

¹⁶⁸ *Id.* at 820 n.26.

¹⁶⁹ Grano, *supra* note 10.

¹⁷⁰ *Ross* 456 U.S. at 828.

¹⁷¹ *Id.* at 825.

¹⁷² *Id.* at 833.

observation.¹⁷³ In *Ross* the majority further stated that if it was reasonable for government agents to:

[r]ip open the upholstery in *Carroll*, it certainly would be reasonable for them to look into a burlap sack stashed inside; if it was reasonable to open a concealed compartment in *Chambers*, it would have been equally reasonable to open a paper bag crumpled within it. A contrary rule could produce absurd results inconsistent with the decision in *Carroll* itself.¹⁷⁴

The majority in *Ross* purported to distinguish *Chadwick* and *Sanders* by observing that in neither of these cases did the police have probable cause to search the cars in question but only the containers therein.¹⁷⁵ Nevertheless, in effect, the Court was saying that the *Chadwick-Sanders* container exception was a big mistake that has produced absurd results and is inconsistent with the automobile exception. In spite of the Court's rejection of *Robbins* and its substantial return to the *Carroll* doctrine in *Ross*, the scope of the automobile exception continued to be somewhat muddled. In *Oklahoma v. Castleberry*,¹⁷⁶ the Oklahoma courts found that although the police had probable cause to believe that individuals were carrying drugs in a suitcase in the trunk of their car, a warrant was required.¹⁷⁷ The Supreme Court's 4-4 decision resulted in

¹⁷³ See *Pennsylvania v. Labron* 116 S.Ct. 2485, 2487 (1996) (per curiam) in which the Supreme Court held that if a car is readily movable and probable cause exists to believe it contains contraband, the Fourth Amendment thus permits the police to search the vehicle without more. The Court reversed the Supreme Court of Pennsylvania which held that an exigency requirement was necessary. See also, *Florida v. White*, 119 S.Ct. 1555 (1999), in which the Court upheld the warrantless seizure of an automobile even though the police had several months to secure a warrant. In *Maryland v. Dyson*, 119 S.Ct. 2013, 2014 (1999) (per curiam) Justice Thomas cited *Ross* as the case that eliminated the *Carroll* exigency requirement.

¹⁷⁴ *Id.* at 818.

¹⁷⁵ *Id.* at 814.

¹⁷⁶ 471 U.S. 146 (1985).

¹⁷⁷ *Castleberry v. State*, 678 P.2d 720 (Okla. Cr.1984). Police officers had probable cause to believe drugs were in a suitcase and a band aid box in the

affirming the Oklahoma courts. After *Ross* and *Castleberry*, it appeared that automobile search rules were as follows: if the police had probable cause to search a vehicle, then the entire vehicle, including closed containers, could be searched without a warrant.¹⁷⁸ However, if the police had probable cause to search only a container within the vehicle, the police could not search the container without a warrant because the *Chadwick-Sanders* rule would apply.¹⁷⁹ To address this anomaly, the Court agreed to hear another automobile exception case.

VI. The Demise of the Container Exception – A Return to the *Carroll* and *Chambers* – One Rule to Govern Automobile Searches

*California v. Acevedo*¹⁸⁰ (1991)

Police in California had probable cause to believe that Charles Acevedo had placed a bag containing marijuana in the trunk of an automobile.¹⁸¹ Acevedo then started to drive away. Fearing the loss of evidence, officers stopped the car, searched the bag and found marijuana.¹⁸² Acevedo pleaded guilty upon the District Court denying Acevedo's motion to suppress.¹⁸³ The Court of Appeals reversed concluding that although the police had probable cause to believe that the bag contained drugs, the case was controlled by *Chadwick* and the police could seize the package, but could not open it without a warrant.¹⁸⁴ The United States Supreme Court agreed to review the case to specifically reexamine the law applicable to a closed container in an automobile, a subject that the Court noted has "troubled the courts and law enforcement officers

trunk of a vehicle and they made a warrantless search. The Court reasoned that *Chadwick-Sanders* was controlling and suppressed the evidence.

¹⁷⁸ See *United States v. Salazar*, 805 F.2d 1394 (9th 1986)(citing *Ross* and *Castleberry* as controlling authority.).

¹⁷⁹ See *California v. Acevedo*, 500 U.S. 565 (1991).

¹⁸⁰ *Id.*

¹⁸¹ *Id.* at 568.

¹⁸² *Id.* at 567.

¹⁸³ *Id.* at 568.

¹⁸⁴ *Id.*

ever since it was first considered in *Chadwick*.¹⁸⁵ After examining the facts in *Acevedo* and the previous automobile exception cases, the Court concluded that *Ross* had undermined *Sanders* and requiring a warrant to search the car in *Sanders* was a mistake.¹⁸⁶ "[The rule not only has] failed to protect privacy, but it has also confused the courts and police officers and impeded effective law enforcement."¹⁸⁷ The Court then cited examples of how the discrepancy between *Carroll* and the *Chadwick-Sanders* rules had led to confusion.¹⁸⁸ The Supreme Court reversed the Court of Appeals and concluded that *Carroll* provides one rule to govern all automobile searches. The Court held that "[t]he police may search an automobile and the containers within it where they have probable cause to believe contraband or evidence is contained."¹⁸⁹ Hence, in *Acevedo* the Court returned to its previous view of *Carroll-Chambers* and retreated from its forays into the container exception cases of *Chadwick-Sanders*. The Court suggested that its decision in *Acevedo* will not have a great impact upon automobile searches because the police will often be able to search automobiles and containers as an incident to an arrest pursuant to *Belton*,¹⁹⁰ and, since the police have probable cause to seize property under *Chadwick*, a "[w]arrant will be routinely forthcoming in the overwhelming majority of cases."¹⁹¹ The Court was critical of the *Chadwick-Sanders* rule because it permitted fortuitous circumstances to determine the outcome of the search of containers found in an automobile.¹⁹² *Acevedo* rejected the *Chadwick-Sanders* distinction between automobiles and personal property that may be placed in an automobile and in effect held

¹⁸⁵ *Id.* at 568-69.

¹⁸⁶ *Id.* at 576-77.

¹⁸⁷ *Id.*

¹⁸⁸ *Id.* at 577-78.

¹⁸⁹ *Id.* at 580-81.

¹⁹⁰ *Id.*

¹⁹¹ *Id.* at 575.

¹⁹² *Id.* "Until today, this Court has drawn a curious line between the search of an automobile that coincidentally turns up a container and the search of a container that coincidentally turns up an automobile. The protections of the Fourth Amendment must not turn on such coincidences." *Id.*

that the reduced expectation of privacy in an automobile now applies to containers placed in vehicles.¹⁹³

Justice Stevens, vigorously dissenting,¹⁹⁴ argued that no exigency was shown to support the warrantless search,¹⁹⁵ and the majority decision actually “enlarges the scope of the automobile exception.”¹⁹⁶ He also noted that it is anomalous to “prohibit the search of a briefcase while the owner is carrying it exposed on a public street [and] yet permit the search once the owner has placed the briefcase in the locked trunk of a car.”¹⁹⁷ Justice Scalia in his concurring opinion responded by suggesting if a “known drug dealer is carrying a briefcase believed to contain marijuana . . . the police may arrest him and search on the basis of probable cause alone.”¹⁹⁸ Finally, the majority noted the virtue of providing clear and unequivocal guidelines to the law enforcement profession and concluded that it is better to adopt a clear-cut rule to govern automobile searches and eliminate the warrant requirement for closed containers set forth in *Sanders*.¹⁹⁹

VII. Other Cases Adhering to the *Carroll* Doctrine – The Hybrid Vehicle – A Mobile Home

*California v. Carney*²⁰⁰ (1985)

Carney involved a case in which federal agents were watching a fully mobile motor home because they suspected that Charles Carney, the occupant of the mobile home, was using it to sell drugs

¹⁹³ *Id.* at 580.

¹⁹⁴ *Id.* at 585. Justice Stevens dissented and was joined by Justice Marshall. Justice Stevens referred to the majority decision as lending support for the proposition that the “Court has become a loyal foot soldier in the Executive’s fight against crime.” *Id.* at 601.

¹⁹⁵ *Id.* at 587 (Stevens, J., dissenting).

¹⁹⁶ *Id.* at 598.

¹⁹⁷ *Id.*

¹⁹⁸ *Id.* at 584-85. Justice Scalia’s position is that the search of containers outside a building based upon probable cause does not require a warrant.

¹⁹⁹ *Id.* at 579.

²⁰⁰ 471 U.S. 386 (1985).

in return for sex.²⁰¹ Their suspicions were confirmed when a youngster exited the mobile home and reported that he had received drugs in exchange for sexual favors.²⁰² Without a warrant or consent, one of the federal agents entered the mobile home and observed marijuana and drug paraphernalia.²⁰³ A subsequent warrantless search of the mobile home at the police station revealed more marijuana in the cupboards and refrigerator.²⁰⁴ Carney argued that since the vehicle was his home, it should be given Fourth Amendment protection as if it were immobile pursuant to *Payton v. New York*,²⁰⁵ and that law enforcement personnel should not be able to search this vehicle without a warrant.²⁰⁶ The Supreme Court recognized that Carney's vehicle possessed some attributes of a home, but found that the vehicle was mobile by the turn of an ignition key and was subject to the same licensing and regulation requirements as automobiles.²⁰⁷ Therefore it is governed by the *Carroll* automobile exception.²⁰⁸ Three dissenting justices argued that the *Carroll* doctrine should not apply to a vehicle parked in a parking lot a few blocks from a courthouse when there was clearly time to obtain a warrant.²⁰⁹ The majority refused to accept the exigency restriction and held that the

²⁰¹ *Id.* at 387-388.

²⁰² *Id.* at 388.

²⁰³ *Id.*

²⁰⁴ *Id.*

²⁰⁵ *Payton v. New York*, 445 U.S. 573 (1980) where the Court held that the police may not enter a home without a warrant to arrest a person accused of murder unless the police have a warrant, consent or exigent circumstances exist.

²⁰⁶ *Carney*, 471 U.S. at 393.

²⁰⁷ *Id.*

²⁰⁸ *Id.* at 392-93.

²⁰⁹ *Id.* at 395. Justice Stevens with whom Justice Brennan and Justice Marshall joined dissenting stated that warrantless searches of mobile homes are only reasonable when the motor home is traveling on the public streets or highways or when exigent circumstances require an immediate search. *Id.* at 402. The dissenters noted that in this case Carney's home was parked in an off-the-street lot only a few blocks from the courthouse in downtown San Diego where dozens of magistrates were available to entertain a warrant application. *Id.* 404. In addition, in a footnote, the dissenters quoted from the transcript of the suppression hearing where it was noted that a telephonic search warrant could be obtained for "20 cents and the nearest phone booth." *Id.* at 404 n.16.

search was justified within the scope of the *Carroll* automobile exception.²¹⁰ When there is time to get a warrant, the courthouse is nearby, and the parked vehicle has some of the attributes of a home, it would seem that a warrant requirement should not be so easily dispensed with. However, the majority in *Carney* were unwilling to follow this basic requirement of the original *Carroll* doctrine.

VIII. The Demise of the *Carroll* Exigency Requirement

*Pennsylvania v. Labron*²¹¹ (1997)

Labron involved two consolidated cases in which police officers in Pennsylvania conducted warrantless searches of automobiles.²¹² The Pennsylvania Supreme Court held that the Fourth Amendment requires that the police obtain a warrant before searching an automobile unless exigent circumstances are present.²¹³ In *Labron*, the police observed Labron and his associates involved in street drug transactions and the police saw Labron put drugs in the trunk of a car.²¹⁴ The police arrested Labron and his accomplices, and based upon probable cause, searched the trunk of the car and found a bag of cocaine.²¹⁵

In the second case, *Kilgore*, the police with probable cause to believe that drugs were in Randy Kilgore's pick-up truck, searched the truck while it was parked in the driveway of a farmhouse and found cocaine on the floor of the truck.²¹⁶ The Supreme Court of Pennsylvania reversed the convictions of Labron and Kilgore,

²¹⁰ *Id.* at 394-395. The majority was persuaded by the fact that, "[t]he DEA agents had fresh, direct, un-contradicted evidence that the respondent was distributing a controlled substance from the vehicle, apart from the evidence of other possible offenses. The agents thus had probable cause to enter and search the vehicle for evidence of a crime notwithstanding its possible use as a dwelling place." *Id.*

²¹¹ 518 U.S. 938 (1996) (per curiam).

²¹² *Id.*

²¹³ *Id.* at 939.

²¹⁴ *Id.*

²¹⁵ *Id.*

²¹⁶ *Id.*

holding that the police cannot simply search a vehicle upon probable cause and should “obtain a warrant before searching an automobile unless exigent circumstances are present.”²¹⁷ The United States Supreme Court in a per curiam decision reversed and held “[I]f a car is readily mobile and probable cause exists to believe it contains contraband, the Fourth Amendment thus permits police to search the vehicle without more.”²¹⁸ Hence, the Court clearly rejected the exigency element of the *Carroll* doctrine and the doctrine has thus become a one-element rule. If the police have (1) probable cause to believe evidence of a crime is in a vehicle,²¹⁹ the police may search the vehicle even if it would be reasonable and practical to secure a search warrant.

IX. Several Month Delay Before Seizing An Auto – No Warrant Required

***Florida v. White*²²⁰ (1999)**

On numerous occasions police officers observed White using his automobile to deliver cocaine.²²¹ Several months later, believing that White’s car was subject to forfeiture under Florida law, the police seized the car without a warrant.²²² During an inventory search of the vehicle, officers discovered cocaine in the ashtray.²²³ White was arrested and before trial moved to suppress the cocaine as the fruit of an illegal seizure. The trial court denied the motion and White was convicted.²²⁴ A divided Florida Supreme Court held that just because the police develop probable cause to believe

²¹⁷ *Id.*

²¹⁸ *Id.*

²¹⁹ *Id.* The vehicle no longer has to be mobile. It may be secured at the police station. *See also* *Chambers v. Maroney*, 399 U.S. 42 (1970) (holding vehicle may be parked in a public place); *Cardwell v. Lewis*, 417 U.S. 583 (1974) (holding it may be parked in a private driveway.); *Pennsylvania v. Labron* 116 S. Ct. 2485 (1997) (per curiam).

²²⁰ 119 S. Ct. 1555 (1999).

²²¹ *Id.* at 1557.

²²² *Id.*

²²³ *Id.* at 1558.

²²⁴ *Id.*

that a violation of the Forfeiture Act exists, this does not “standing alone . . . justify a warrantless seizure.”²²⁵ In essence, the Florida Court held that absent exigent circumstances, the Fourth Amendment requires the police to obtain a warrant prior to seizing a vehicle.

The Supreme Court granted certiorari and Justice Thomas, writing for the majority, reversed holding that the police do not have to obtain a warrant before seizing an automobile from a public place when the police believe that the vehicle is forfeitable contraband.²²⁶ The several month delay in seizing the auto did not suggest to the majority that the police could easily secure a search warrant to seize the car. Instead, Justice Thomas noted, “our Fourth Amendment Jurisprudence has consistently accorded law enforcement officials greater latitude in exercising their duties in public places.”²²⁷ Justice Souter and Justice Breyer concurred in the decision, subject to the qualification that the holding not be read as a general endorsement of warrantless seizures of anything a State chooses to call contraband.²²⁸ The dissent²²⁹ argued that a warrant should have been obtained not because the “[s]tate offers a weak excuse for failing to obtain a warrant . . . but that it offers no reason at all.”²³⁰ Finally, the dissent noted that the Court professes fidelity to the usual rule that searches without warrants are per se unreasonable, but its decision suggests “that the exceptions have all but swallowed the rule.”²³¹

X. Mobile Vehicle Plus Probable Cause – No Exigency Requirement

*Maryland v. Dyson*²³² (1999)

²²⁵ *Id.*

²²⁶ *Id.* at 1560.

²²⁷ *Id.* at 1559.

²²⁸ *Id.* at 1560.

²²⁹ *Id.* (Stevens, J., dissenting with whom Justice Ginsburg joined).

²³⁰ *Id.* at 1563. The dissent argued “on this record, one must assume that the officers who seized White’s car simply preferred to avoid the hassle of seeking approval from a judicial officer.”

²³¹ *Id.* at 1561.

²³² 119 S. Ct. 2013 (1999) (per curiam).

A Maryland police officer received a tip from a reliable informant that Dyson, a known drug dealer, was in New York purchasing cocaine and would return to Maryland in a rented red Toyota automobile with license number DDY-787.²³³ The officer confirmed that the license number given to him belonged to the Toyota rented by Dyson.²³⁴ Upon Dyson's return to Maryland, officers conducted a warrantless search of the car and found 23 grams of cocaine base in the trunk.²³⁵ Dyson was convicted and the Court of Special Appeals of Maryland reversed, finding that the Fourth Amendment required not only probable cause to search a mobile vehicle, but also a separate finding of exigency precluding the police from obtaining a warrant.²³⁶

In a per curiam decision, the United States Supreme Court reversed, holding that "under our established precedent, the automobile exception has no separate exigency . . . [and] . . . if a car is readily mobile, and if probable cause exists to believe it contains contraband, the Fourth Amendment . . . permits police to search the vehicle without more."²³⁷

XII. Rejection of a Passenger Property Rule Exception to the Carroll Doctrine

***Wyoming v. Houghton*²³⁸ (1999)**

In *Houghton*, police officers stopped an automobile for speeding.²³⁹ During this routine traffic stop, an officer noticed a

²³³ *Id.* at 2013.

²³⁴ *Id.*

²³⁵ *Id.*

²³⁶ *Id.* Applying this standard, the Court of Appeals of Maryland concluded that "although there was abundant probable cause, the search violated the Fourth Amendment because there was no exigency that prevented or even made it significantly difficult for the police to obtain a search warrant." *Id.*

²³⁷ *Id.* at 2014. The precedent referred to by the Court was *United States v. Ross*, 456 U.S. 798, 809 and *Pennsylvania v. Labron*, 518 U.S. 938 (1996) (per curiam). In *Labron*, the Court held that the "automobile exception does not have a separate exigency requirement." *Id.* at 940.

²³⁸ 119 S.Ct.1297 (1999).

hypodermic syringe in the driver's pocket and the officer instructed the driver to get out of the car and place the syringe on the hood of the car.²⁴⁰ The driver complied and when asked why he had the syringe, he said, "he used it to take drugs."²⁴¹ At this point, additional police officers arrived and ordered two female passengers out of the car.²⁴² An officer searched the passenger compartment of the car for contraband and found a purse that passenger Sandra Houghton claimed was hers.²⁴³

The officer found drug paraphernalia in the purse and arrested Houghton.²⁴⁴ The trial court denied Houghton's motion to suppress and held that the officer had probable cause to search the car for contraband and by extension any containers therein that could hold such contraband.²⁴⁵ Houghton was convicted and a divided Wyoming Supreme Court ruled that the search of the purse violated the Fourth Amendment 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 passenger's personal effects."²⁴⁶ The Wyoming Supreme Court thus created a passenger property rule exception to *Carroll*. Upon appeal to the United States Supreme Court, the Court framed the issue as whether police officers violate the Fourth Amendment when they search a passenger's personal belongings inside an automobile that they have probable cause to believe contains contraband.²⁴⁷

Justice Scalia, writing for the majority, reviewed the history of the automobile exception, quoted extensively from *Ross*, and noted that "it is uncontested that the police had probable cause to believe that there were illegal drugs in the car . . . [and] . . . neither *Ross* itself, nor the historical evidence . . . admits of a distinction

²³⁹ *Id.* at 1299.

²⁴⁰ *Id.* at 1298.

²⁴¹ *Id.* at 1299.

²⁴² *Id.*

²⁴³ *Id.* at 1299.

²⁴⁴ *Id.*

²⁴⁵ *Id.* at 1300.

²⁴⁶ *Id.*

²⁴⁷ *Id.* at 1299.

between packages or containers based upon ownership.”²⁴⁸ Justice Scalia was critical of the Wyoming Supreme Court’s passenger property rule exception to *Carroll*, and said that if it became widely known, one would expect that passengers would claim various property as their own and thus the passenger property exception would result in a “bog of litigation . . . civil suits and motions to suppress ...[regarding]...whether the officer should have believed the passenger’s claim of ownership.”²⁴⁹ Justice Breyer in a concurring opinion noted that if the police were required to establish ownership of a container prior to a search of the container the resulting uncertainty would destroy the workability of the bright-line rule set forth in *Ross*.²⁵⁰ Thus the Court concluded that the “sensible rule” which is supported by “history and case law” is that an automobile passenger’s property may be searched whether or not the passenger is present if the police have probable cause to search the car.²⁵¹

The dissent²⁵² argued that the police should have a warrant and individualized probable cause before searching belongings in the custody of a passenger of an automobile.²⁵³ Further, the dissent argued that the Court has always made a distinction between the search of drivers of motor vehicles and the search of passengers of motor vehicles.²⁵⁴ The dissenters were not “persuaded that the mere spatial association between a passenger and a driver provides

²⁴⁸ *Id.* at 1300-01. Justice Scalia noted that even if the historical evidence were equivocal, the Court would find that balancing the relative interests weighs in favor of allowing a search of a passenger’s property because “passengers like drivers possess a reduced expectation of privacy with regard to property they transport in cars.” *Id.* at 1302.

²⁴⁹ *Id.* at 1302.

²⁵⁰ *Id.* at 1304.

²⁵¹ *Id.* at 1303-04.

²⁵² *Id.* at 1304 (Stevens, J., dissenting was joined by Justice Souter and Justice Ginsburg).

²⁵³ *Id.* at 1306. Justice Stevens argues that a rule requiring a warrant and individualized probable cause is every bit as simple as the Court’s rule and it protects privacy. Further, he views the majority decision as extending the automobile exception to allow searches of passenger’s belongings based upon a driver’s misconduct.

²⁵⁴ *Id.* at 1305. The dissent relies upon *United States v. Di Re*, 332 U.S. 581 (1948) for this proposition.

an acceptable basis for presuming that they are partners in crime or for ignoring privacy interests in a purse.”²⁵⁵ One can speculate that the majority in *Houghton*, having recently abandoned the container exception rule of *Chadwick-Sanders*, was quite reluctant to be drawn into a new personal property exception to the automobile exception.

XIII. Conclusion

When the *Carroll* doctrine was created in 1925, it was a three element rule requiring, (1) probable cause, (2) a mobile vehicle, and (3) a requirement that in cases where securing a warrant is practicable the police should not engage in a warrantless search.²⁵⁶ The first fifty years of the *Carroll* journey were relatively straight and stable. However, in *Chambers* when the Supreme Court permitted the warrantless search of a vehicle safely secured at a police station, it seriously undermined the *Carroll* exigency requirement. Subsequently the Court specifically abolished the exigency requirement in *Labron* and this is the most troubling aspect of the *Carroll* journey. If the Court in *Chambers* had decided that officers were not authorized to conduct a warrantless search of a vehicle that was safely secured at a police station, the *Carroll* doctrine may have survived its seventy-five year journey intact. Because the exigency element of the *Carroll* doctrine is so essential to protect privacy interests in vehicles, one would hope that the Supreme Court would reconsider its decision in *Chambers*. However, in light of *Labron*, *Dyson* and *White*, this seems to be wishful thinking. Therefore, each state should, under its state constitution, consider providing greater privacy with respect to automobiles than the protection provided by the Supreme Court.²⁵⁷

²⁵⁵ *Id.*

²⁵⁶ See *supra* notes 23-24 and accompanying text.

²⁵⁷ See generally William J. Brennan, Jr., *State Constitutions and the Protections of Individual Rights*, 90 HARV. L. REV. 489 (1977). See, e.g., *State v. Miller*, 227 Conn. 363 (Conn 1993). This case held that a warrantless automobile search supported by probable cause, but conducted after the automobile has been impounded at the police station violates Article first, section seven of the Connecticut constitution. *Miller* rejects the Supreme Court decision in *Chambers v. Maroney*, 399 U.S. 42 (1970).

The container exception detour created by *Chadwick*, *Sanders* and *Robbins* appeared to represent an attempt by the Court to rein in the “warrantless cat” that was let out of the bag in *Carroll* and *Chambers*. The concept used by the Court to attempt to curb the broad police power authorized by *Carroll-Chambers* was to find greater Fourth Amendment protection for containers in vehicles²⁵⁸ than for the integral parts of a vehicle that may conceal evidence of a crime.²⁵⁹ Certainly, the confusion and anomalous doctrine created by *Chadwick-Sanders* was a motivating factor for the Court in abandoning its container exception approach. However, another important factor was that the automobile exception is well grounded in the history of the Fourth Amendment²⁶⁰ and the container cases of *Chadwick*, *Sanders* and *Robbins* were clearly incompatible with this doctrine.²⁶¹

It is regrettable that the Court jettisoned the exigency requirement and reduced the *Carroll* doctrine to a one-element probable cause rule. Nevertheless, more important than the decisions in *Carroll* and its progeny are the far-reaching implications of the Supreme Court’s recent Fourth Amendment jurisprudence. The automobile exception cases suggest that the Court may have turned against the warrant requirement in many areas outside of a home. In *Chadwick* the government argued that no warrant was necessary to search movable personalty outside the home if the police have probable cause.²⁶² The majority of the Supreme Court quickly rejected this argument stating that warrants provide significant protection from unreasonable government

²⁵⁸ See *Sanders*, 442 U.S. at 751; *Robbins*, 453 U.S. at 420 (1981).

²⁵⁹ See *Carroll*, 267 U.S. at 132 (1925) (finding that it is not unreasonable to search the upholstery of an auto.); See also *Chambers*, 399 U.S. at 42 (1970) (finding that it is not unreasonable to search a compartment under the dashboard of an auto).

²⁶⁰ See *id.* at 147-156. Chief Justice Taft’s analysis of the constitutional basis for the *Carroll* doctrine.

²⁶¹ See *U.S. v. Ross*, 456 U.S. at 818 “[I]f it was reasonable to open a concealed compartment in *Chambers*, it would have been equally reasonable to open a paper bag crumpled within it . . . [and] . . . [a] . . . contrary rule could produce absurd results inconsistent with the decision in *Carroll* itself.” *Id.*

²⁶² *United States v. Chadwick*, 433 U.S. 6 (1977).

intrusions.²⁶³ Justice Brennan called the government argument an “extreme view of the Fourth Amendment.”²⁶⁴ Even Justice Blackmun and Justice Rehnquist in their dissent “found it unfortunate that the Government sought reversal in this case primarily to vindicate “an extreme view of the Fourth Amendment” that would restrict the protection of the Warrant Clause to private dwellings and a few other “high privacy areas.”²⁶⁵ However, after the elimination of the *Carroll* exigency requirement and the broad language of the Court in *White* regarding providing greater Fourth Amendment latitude for the police in public places, this so-called “extreme view of the Fourth Amendment” may find its way back on the docket of the Supreme Court. Several questions that arise as a result of the recent automobile cases are: (1) Does the warrant clause only protect privacy in homes? (2) Does the warrant clause apply to containers outside of vehicles and outside of homes? (3) Does the warrant clause apply at all outside of a home?

The Supreme Court has, on numerous occasions, professed fidelity to the so-called cardinal principle that “searches without warrants are per se unreasonable—subject to a few well delineated exceptions.”²⁶⁶ The Court has said that these exceptions are jealously guarded and carefully drawn,²⁶⁷ and the Court has repeated its endorsement of this principle in recent cases.²⁶⁸ Unfortunately, this rule, however noble and well intended, does not reflect reality. “Despite the recognized intrinsic value of the warrant process, the vast majority of governmental intrusions are

²⁶³ *Id.*

²⁶⁴ *Id.* at 16 (Brennan, J., concurring).

²⁶⁵ *Id.* at 17 (Blackmun, J., dissenting joined by Justice Rehnquist).

²⁶⁶ *Katz v. United States*, 389 U.S. 347, 357 (1964).

²⁶⁷ *Arkansas v. Sanders*, 442 U.S. 753 (1979) citing *Jones v. United States*, 357 U.S. 493, 499 (1958).

²⁶⁸ See *California v. Acevedo*, 500 U.S. 565 (1991), *Florida v. White*, 119 S.Ct. 1555, 1559 (1999). Supposedly these few warrant exceptions are provided where the societal costs of obtaining a warrant, such as danger to law enforcement officers or the risk of loss of destruction of evidence outweighs the reasons for prior recourse to a neutral magistrate. See *Arkansas v. Sanders*, 442 U.S. 751, 759 (1979).

made without warrants.”²⁶⁹ The average police officer in America may never conduct a search without a warrant. Police searches by warrant are the rare exception and not the norm. The so-called “cardinal principle” pertaining to the warrant requirement has been “so riddled with exceptions”²⁷⁰ that the exceptions created by United State Supreme Court decisions “have all but swallowed the rule.”²⁷¹ It remains to be seen whether the Supreme Court in the future will actually acknowledge that its jurisprudence with respect to the *Carroll* doctrine is inconsistent with the “cardinal principle” and is more reflective of a position that the Fourth Amendment “requires reasonableness, not warrants.”²⁷²

²⁶⁹ Katz, *supra* note 40.

²⁷⁰ California v. Acevedo, 500 U.S. 565, 582 (1991) (Scalia, J., concurring).

²⁷¹ Florida v. White, 119 S.Ct 1555, 1561 (1999) (Stevens, J., dissenting).

²⁷² United States v. Rabinowitz, 339 U. S. 56, 65-66 (1950). “A rule of thumb requiring that a search warrant always be procured whenever practicable may be appealing . . . [b]ut we cannot agree that this requirement should be crystallized into a *sine qua non* to the reasonableness of a search It is appropriate to note that the Constitution does not say that the right of the people to be secure in their persons should not be violated without a search warrant [S]earches turn upon the reasonableness under the circumstances and not upon the practicability of procuring a search warrant, for the warrant is not required.” *Id.*