Mercer Law Review

Volume 51
Number 3 *Lead Articles Edition - 1999-2000 Oliver Wendell Holmes Symposium and Lectureship: The Marketplace of Ideas in Cyberspace*

Article 12

5-2000

Wyoming v. Houghton: Passengers' Belongings Subject to Searches Under the "Automobile Exception" to the Fourth Amendment's Warrant Requirements

Theresa H. Hammond

Wyoming v. Houghton: Passengers' Belongings Subject to Searches Under the "Automobile Exception" to the Fourth Amendment's Warrant Requirement

In *Wyoming v. Houghton*[1] the United States Supreme Court addressed the constitutionality of conducting a warrantless search of a container under the "automobile exception" to the Fourth Amendment's warrant requirement. The Court held that when police officers have probable cause to search a vehicle, they may also search any container found in the car, including passengers' belongings, that are capable of concealing the object of the search.[2]

I. FACTUAL AND PROCEDURAL BACKGROUND

While driving during the early morning of July 23, 1995, David Young was stopped by a Wyoming Highway Patrol officer for speeding and driving with a faulty brake light. Young's girlfriend and Sandra Houghton, the respondent, were also in the front seat of the car.[3] The officer saw a syringe in Young's shirt pocket, so he ordered Young to step out of the car and place the syringe on its hood. When Young admitted, "with refreshing candor," that he used the syringe to take drugs, the officer ordered the women out of the car and asked for identification.[4] Houghton claimed to be "Sandra Jones" and said she did not have any identification.[5]

The officer then searched the passenger compartment of the car for contraband. From the back seat, he removed a purse containing

---

1. 526 U.S. 295 (1999).

2. *Id.* at 307.

3. *Id.* at 297-98. Houghton's purse, the object of the search, was on the back seat. *Id.* at 298.

4. *Id.*

5. *Id.* The officer conducted a "pat down" of all three occupants "to see if there were any weapons or anything." Houghton v. Wyoming, 956 P.2d 363, 365 (Wyo. 1998). In dictum the state supreme court questioned the propriety of the search under *Terry v. Ohio*, 392 U.S. 1 (1968), but the issue was not raised on appeal. *Id.* at 365 n.1.

Houghton's driver's license, and Houghton admitted the purse was hers. The officer continued to search the purse and discovered two wallet-like bags containing drugs and drug paraphernalia, some of which Houghton acknowledged to be hers.[6] She was then arrested.[7]

The trial judge denied Houghton's motion to suppress the evidence found in her purse because under *California v. Acevedo*,[8] the officer had probable cause to search the car for contraband and could, therefore, search any container in the car that might conceal contraband. A jury convicted Houghton of felony possession of a controlled substance, and she was sentenced to between two and three years in prison.[9]

On appeal the Supreme Court of Wyoming reversed Houghton's conviction.[10] Without questioning the officer's probable cause to search the vehicle for contraband,[11] the court held that "separate probable cause" is necessary to search a passenger's belongings under the "notice test" it adopted: If the officer "knows or should know that a container is the personal effect of a passenger who is not suspected of criminal activity," the container is not within the permissible scope of the search.[12] Unless the officer had reason to believe an opportunity existed to place the contraband in the passenger's belongings in order to avoid detection, a warrantless search of a passenger's personal possessions was unreasonable and thus violated the Fourth Amendment.[13] The Supreme Court granted certiorari[14] and reversed, holding that police officers who have probable cause to search a vehicle for contraband may also inspect any passengers' belongings that are capable of concealing the targeted contraband.[15]

---

6. 526 U.S. at 298. A brown wallet-type bag contained a syringe, 60 cubic centimeters ("ccs") of methamphetamine, and other drug paraphernalia. Houghton denied knowing how it got into her purse but admitted the black wallet, also containing a syringe, drug paraphernalia, and 10 ccs of methamphetamine, belonged to her. *Id.*

7. *Id.* She was charged under state law with felony possession of methamphetamine in a liquid amount greater than three-tenths of a gram. *Id.*

8. 500 U.S. 565 (1991).

9. 956 P.2d at 365.

10. *Id.* at 372.

11. *Id.* at 366-67. The court cited *United States v. Ross*, 456 U.S. 798, 823 (1982) and *Acevedo*, 500 U.S. at 570, for the proposition that the scope of the search is determined by the probable cause upon which the search is predicated. 956 P.2d at 366.

12. *Id.* at 372.

13. *Id.*

14. Wyoming v. Houghton, 524 U.S. 983 (1998).

15. 526 U.S. at 307.

II. LEGAL BACKGROUND

The so-called "automobile exception" to the Fourth Amendment's[16] warrant requirement has its basis in *Carroll v. United States*,[17] a case involving the transportation of bootleg whiskey in violation of the National Prohibition Act.[18] The Court in *Carroll* held that a warrantless search and seizure of an automobile are valid if the police have reasonable cause, arising from known circumstances, to believe that the vehicle contains illegal contraband that may lawfully be seized and destroyed.[19] While emphasizing that the Fourth Amendment guarantee is to protect against only unreasonable searches or seizures,[20] the Court concluded that this guarantee, "practically since the beginning of the government," has been construed to recognize an essential difference between searches of dwellings and other buildings, which require a warrant, and searches of vehicles "where it is not practicable to secure a warrant."[21] The impracticability of obtaining a search warrant can be attributed to the mobile nature of automobiles, which "can be quickly moved out of the locality or jurisdiction in which the warrant must be sought."[22]

Thus, *Carroll* gave birth to the automobile exception on the basis that the mobility of a vehicle creates an exigent circumstance that evidence of illegal activity may be destroyed if law enforcement officers are required to obtain a warrant before searching. This rationale was extended in *Chambers v. Maroney*,[23] in which evidence was discovered during a warrantless search of a car after it had been taken to the police station following the arrest of its occupants.[24] The Court held that the automobile exception applied because the officers would have been

---

16. The Fourth Amendment reads:

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

U.S. CONST. amend. IV.

17. 267 U.S. 132 (1925).
18. *Id.* at 134.
19. *Id.* at 149.
20. *Id.* at 146.
21. *Id.* at 153.
22. *Id.*
23. 399 U.S. 42 (1970).
24. *Id.* at 44.

justified in conducting an immediate search based on probable cause.[25] Perhaps most significantly, the Court held that the alternative to an immediate warrantless search—seizing the car until a warrant may be obtained—is equally intrusive, and both courses of action are reasonable under the Fourth Amendment.[26]

The Court seemed to recognize the limitations of the exigent circumstance/mobility theory when both the driver and the car are in police custody; thus, in *Cardwell v. Lewis*,[27] the Court announced another rationale for distinguishing the search of an automobile from that of one's person or home—the diminished expectation of privacy a person has in a vehicle.[28] This diminished expectation of privacy exists for several reasons. First, automobiles are forms of transportation and, therefore, "seldom serve[] as one's residence or as the repository of personal effects."[29] Second, automobile travel occurs on "public thoroughfares where both its occupants and its contents are in plain view."[30] Finally, state regulation of automobiles through registration, driver's license, and operation requirements, as well as inspections and situations in which police must take cars into custody in the interest of public safety, also reduce a person's privacy expectations in relation to the vehicle.[31]

This theory became the basis for the Court's decision in *United States v. Chadwick*[32] in which the Court had to determine whether the automobile exception allowing warrantless searches and seizures applied to containers within the vehicle.[33] The Court held that luggage, although mobile, did not involve a diminished expectation of privacy as

---

25. *Id.* at 52. The Court distinguished the warrantless probable cause search from a search incident to arrest stating, "'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 49 (quoting *Carroll*, 267 U.S. at 158-59).

26. *Id.* at 52.

27. 417 U.S. 583 (1974).

28. *Id.* at 590.

29. *Id.*

30. *Id.*

31. South Dakota v. Opperman, 428 U.S. 364, 368 (1976). *See also* Cady v. Dombrowski, 413 U.S. 433, 441 (1973).

32. 433 U.S. 1 (1977), *overruled by* California v. Acevedo, 500 U.S. 565 (1991).

33. *See* 3 WAYNE R. LAFAVE, SEARCH AND SEIZURE: A TREATISE ON THE FOURTH AMENDMENT § 7.2(a), at 461 (3d ed. 1996). The author of this treatise claims that "[i]t was generally assumed that the entire interior of the vehicle was subject to a warrantless search incident to the arrest of the driver" until *Chimel v. California*, 395 U.S. 752 (1969), limited the scope of this rationale. LAFAFE, *supra*. Thus, the "potential reach of the *Carroll* doctrine suddenly became important." *Id.*

did an automobile; thus, the officers' warrantless search of a locked footlocker placed in the trunk of a car was unreasonable.[34]

Two years later, in *Arkansas v. Sanders*,[35] the Court distinguished between warrantless searches of "some integral part of the automobile," such as the glove compartment,[36] trunk,[37] or dashboard,[38] and searches of luggage taken from the vehicle.[39] Although the Court held that a warrantless search of luggage taken from a lawfully stopped vehicle was invalid,[40] it suggested that "[n]ot all containers and packages . . . will deserve the full protection of the Fourth Amendment."[41]

This language quickly became the basis for defending searches of containers based on their nature. The Court in *Robbins v. California*[42] held that because the package containing the brick of marijuana did not "clearly announce its contents . . . [so] that its contents are obvious to an observer," the search was unreasonable.[43] Ironically, in an opinion decided the same day as *Robbins*, the Court upheld the warrantless search of the passenger compartment of a car, specifically the pocket of a passenger's jacket found on the back seat.[44]

At this point, the Court appeared hopelessly fractured in its decisions regarding the extent of the automobile exception. As Justice Powell pointed out in his concurring opinion in *Robbins*, "The Court apparently cannot agree even on what it has held previously, let alone on how these cases should be decided."[45] The difficulty seemed to lie in the overlap among cases involving automobile searches incident to arrest, those in which the officers had probable cause to search a specific container within a vehicle, and those in which probable cause existed to search the vehicle and any containers that happened to be inside.[46]

---

34. 433 U.S. at 13.
35. 442 U.S. 753 (1979), *overruled by Acevedo*, 500 U.S. at 565.
36. 442 U.S. at 763 (citing *Opperman*, 428 U.S. at 366).
37. *Id.* (citing *Cady*, 413 U.S. at 437).
38. *Id.* (citing *Chambers*, 399 U.S. at 44).
39. *Id.*
40. *Id.* at 765.
41. *Id.* at 764 n.13.
42. 453 U.S. 420, 426 (1981) (stating in a plurality opinion, "Once placed within such a [closed, opaque] container, a diary and a dishpan are equally protected by the Fourth Amendment.").
43. *Id.* at 428.
44. New York v. Belton, 453 U.S. 454, 462-63 (1981). The search of defendant's jacket was incident to his arrest for possession of marijuana. *Id.*
45. 453 U.S. at 430 (Powell, J., concurring).
46. *Id.*

The next year, the Court addressed the latter issue in *United States v. Ross*[47] and held that police officers who have probable cause may search a vehicle to the same extent as a warrant would allow, and this search may include "any movable container that is believed to be carrying an illicit substance."[48] The Court distinguished *Chadwick* and *Sanders* on the basis that in neither case did the police have probable cause to search the entire vehicle because they believed the specific container itself held contraband and its placement in the vehicle was merely coincidental.[49]

Further, the Court noted that if it was reasonable for the police in *Carroll* to rip open the car seat during its warrantless search for whiskey, it was reasonable to open a brown paper bag and a leather pouch.[50] Contraband, the Court noted, is "rarely . . . strewn across the trunk or floor of a car."[51] By its nature, it is enclosed in containers to shield it from public view.[52] Because a warrant would allow the police to search any place in the automobile that might hide the object of the search, "nice distinctions between . . . glove compartments, upholstered seats, trunks, and wrapped packages . . . must give way to the interest in the prompt and efficient completion of the task at hand."[53] *Ross* further emphasized that distinctions based on the nature of the container as "worthy" or "unworthy," as suggested by *Sanders*, were improper; rather, the rule regarding the scope of the automobile search "applies equally to all containers."[54]

The Court's failure in *Ross* to overrule *Chadwick* and *Sanders* led to confusion among the lower courts.[55] But in *Acevedo*, the Court rejected the *Chadwick-Sanders* distinction between "a container for which the police are specifically searching and a container which they come across in a car."[56] Such a distinction is based on coincidence[57] and results in less effective law enforcement with no enhanced protection of privacy

---

47. 456 U.S. 798 (1982).
48. *Id.* at 809.
49. *Id.* at 814.
50. *Id.* at 818.
51. *Id.* at 820.
52. *Id.*
53. *Id.* at 821.
54. *Id.* at 822.
55. *See Acevedo*, 500 U.S. at 578 ("The fact that the state courts and the Federal Courts of Appeals have been reversed in their Fourth Amendment holdings 29 times since 1982 further demonstrates the extent to which our Fourth Amendment jurisprudence has confused the courts.").
56. *Id.* at 574.
57. *Id.* at 580.

interests.[58] Thus, the Court held that police may, with probable cause, conduct a warrantless search of an automobile and any containers therein that may conceal the suspected contraband.[59] The broad language of *Ross* and *Acevedo,* which emphasized reasonableness and de-emphasized the need for a warrant,[60] was tested in *Wyoming v. Houghton* in which the container belonged to a passenger.

III. COURT'S RATIONALE

In a six to three majority opinion written by Justice Scalia, the Court reversed the Supreme Court of Wyoming in *Houghton*.[61] Applying both the mobility and the diminished expectation of privacy rationales, the Court held that police officers who have probable cause to search an automobile may search a passenger's belongings found inside the vehicle if the container might conceal the object of the search.[62]

The Court conducted a two-step inquiry for determining whether a governmental action violates the Fourth Amendment: (1) Would the Framers have regarded the particular action as an unlawful search or seizure, and (2) when this cannot be gleaned, does this intrusion upon one's privacy outweigh the legitimate governmental interest promoted by the action under traditional standards of reasonableness?[63]

Applying the reasonableness standard in response to the first inquiry, the majority cited *Carroll* for the proposition that the Framers would have regarded warrantless searches of containers within a vehicle as reasonable if probable cause existed to believe the vehicle contained contraband.[64] The Court relied upon its findings in *Ross* that customs officials would have had to look inside cartons and boxes in their search for smuggled goods rather than relying on the exterior appearance.[65] In addition, the majority noted that *Ross* did not limit the application of

58. *Id.* at 576.

59. *Id.* at 580.

60. Justice Scalia's concurring opinion in *Acevedo* noted that the Fourth Amendment does not require a warrant prior to searches and seizures; rather, it forbids unreasonable searches and seizures. *Id.* at 581 (Scalia, J., concurring). Furthermore, Justice Scalia indicated that in its Fourth Amendment jurisprudence, the Court had wavered between a strict warrant requirement and a reasonableness inquiry. *Id.* at 582-83. The many exceptions to the warrant requirement reveal that tension still exists between the two clauses of the Amendment.

61. 526 U.S. at 307.

62. *Id.*

63. *Id.* at 299-300.

64. *Id.* at 300.

65. *Id.* at 300-01 (citing *Ross*, 456 U.S. at 820 n.26).

its rule to drivers, nor did its historical evidence indicate such a limitation.[66]

After determining that the first prong of its inquiry was satisfied, the Court continued its analysis under the second prong and announced that "the balancing of the relative interests weighs decidedly in favor of allowing searches of a passenger's belongings."[67] Like drivers, passengers have diminished expectations of privacy in an automobile so that an intrusion is relatively minimal.[68] The Court distinguished this intrusion from that which occurs during searches of one's person and concluded that "[s]uch traumatic consequences are not to be expected when the police examine an item of personal property found in a car."[69] Thus, a minimal intrusion is reasonable if based on probable cause.

On the other hand, the majority concluded that a substantial burden would be placed upon law enforcement if passengers' belongings were to be protected from searches for contraband based on probable cause.[70] Although the Court recognized the potential for destroying evidence while the police obtain a warrant, it was more concerned with the passenger's role in secreting the contraband.[71] The Court found that an officer may reasonably assume a passenger is "engaged in a common enterprise with the driver."[72] If the Court did create a "passenger's property" exception to the container search, contraband would never be discovered because the "passenger-confederate" would claim that all containers in the car belong to him rather than to the driver.[73] Even if the passenger is innocent of criminal activity, the driver may still have hidden contraband in the passenger's belongings.[74]

Furthermore, the Court rejected the Wyoming Supreme Court's notice test as being unworkable.[75] As a practical matter, a "passenger exception" would lead to increased litigation regarding the proper basis for determining what an officer should reasonably have known about a passenger's possible ownership of a container within the car.[76]

In a concurring opinion, Justice Breyer agreed with the majority that a notice test would "destroy the workability of the bright-line rule"

---

66. *Id.* at 301.
67. *Id.* at 303.
68. *Id.* (citing *Cardwell*, 417 U.S. at 590).
69. *Id.*
70. *Id.* at 304.
71. *Id.* at 304-05.
72. *Id.* at 304.
73. *Id.* at 305.
74. *Id.* (citing Rawlings v. Kentucky, 448 U.S. 98, 101-02 (1980)).
75. *Id.*
76. *Id.*

articulated in *Ross*, and he emphasized the limited scope of the holding.[77] Justice Breyer also suggested that had Houghton's purse actually been "attached to her person," she would have deserved increased protection for her privacy interest.[78]

In a dissent joined by Justices Souter and Ginsburg, Justice Stevens criticized the majority for "creating" a new rule based on a distinction of where the property was located rather than "adhering to the settled distinction between drivers and passengers."[79] The dissent further indicated that by not requiring probable cause specific to the passenger or her purse, the majority made the unwarranted assumption that a passenger and a driver are "partners in crime" based on "mere spatial association."[80] Furthermore, rather than viewing the privacy intrusion as minimal based on diminished expectations, the dissenting Justices said the intrusion more closely resembled a search of one's person.[81] Thus, the burden placed on law enforcement officers to have probable cause for each item or person searched is reasonable in relation to the serious intrusion of privacy imposed by the warrantless search of a passenger's belongings.[82]

IV. IMPLICATIONS

The Court's decision in *Houghton* is surprising, not because of the result, but because of its quiet brevity. In an opinion spanning merely eight pages, the Court has changed its position, held not long ago, rejecting the "suggestion that this 'automobile exception' somehow justifies the warrantless search of a closed container found inside an automobile."[83] Instead, it announced that police may search a woman's purse if she happens to be riding in a car with a person who, when stopped for a traffic violation, presents police with probable cause to believe he has illegal contraband somewhere in the car.

As with all constitutional issues, the Court must balance the rights of individuals with those of society. The Court has consistently acknowl-

---

77. *Id.* at 307 (Breyer, J., concurring). *See* Official Transcript Proceedings Before the United States Supreme Court at 30-31, 36-37, Wyoming v. Houghton, 526 U.S. 295 (1999) (98-184) (demonstrating the Court's interest in maintaining a simple, bright-line rule that is easily understood and applied).

78. 526 U.S. at 308. *See* United States v. Di Re, 332 U.S. 581, 587 (1948) (holding that a permissible warrantless search of an automobile based on probable cause does not extend to its occupants).

79. 526 U.S. at 309 (Stevens, J., dissenting).

80. *Id.* at 310.

81. *Id.*

82. *See id.* at 310-11.

83. *Robbins*, 453 U.S. at 424.

edged the need to provide law enforcement agents with a clear framework within which they can operate to protect themselves as well as the public.[84] However, in effectively divorcing the warrant requirement from the remainder of the Fourth Amendment and focusing only on the standard of reasonableness in searches involving personal belongings in automobiles, the Court has given law enforcement enormous discretion.[85]

Houghton extends the already widely drawn parameters for searches and seizures without a warrant based on traffic violations, regardless of whether the stop is merely a pretext for investigation of criminal activity.[86] Officers are authorized to order passengers (as well as drivers) out of an automobile even when the officer's safety is not at issue and there is no reasonable suspicion of criminal activity.[87] Therefore, the decision to allow police to search a passenger's purse or other belongings, when probable cause exists to believe the items may hide contraband, is hardly shocking.

Still, *Houghton* raises some interesting questions about individual privacy. As Justice Breyer indicated in his concurring opinion, the Court's decision in this case leaves open the question of whether the police could conduct a search of a woman's purse if it were attached to her person.[88] The location of the container would seem to make a difference. *Houghton* seems to suggest that if a wallet were on the seat next to its owner, the police may search it; however, if it were inside the owner's pocket, a search would be prohibited without particularized probable cause.[89]

Other such questions predominated at the oral arguments in *Houghton*. What if the owner grabbed her purse as she exited the car? What if she dropped it while getting out of the car? Could the police

---

84. *See, e.g.*, Terry v. Ohio, 392 U.S. 1, 27, 30 (1968) (holding that a lesser standard than probable cause—reasonable, articulable suspicion—would suffice for a seizure and a subsequent pat down of outer clothing for weapons).

85. *See* Official Transcript Proceedings Before the United States Supreme Court at 19-20, Wyoming v. Houghton, 526 U.S. 295 (1999) (98-184) (suggesting the Fourth Amendment's reasonableness standard provides an appropriate distinction between searches of persons and those of property).

86. *See* Whren v. United States, 517 U.S. 806, 813 (1996) (holding that the reasonableness of traffic stops is not dependent upon the actual motivation of the officer making the stop).

87. Maryland v. Wilson, 519 U.S. 408, 414-15 (1997) (extending Pennsylvania v. Mimms, 434 U.S. 106 (1977)).

88. 526 U.S. at 308 (Breyer, J., concurring).

89. In such a situation, *Di Re* would be controlling. *See supra* note 81.

order her to leave her purse in the car?[90] And in deciding these issues in future cases, will the Court be led back into the quagmire of distinguishing between worthy and unworthy containers—a wallet or purse attached to the person is protected, but not a briefcase, satchel, or paper bag? When these issues appear before the Court, Justice Breyer's opinion suggests the result will not be another six-three majority.

What becomes abundantly clear from *Houghton* is the Court's belief that having a bright-line test to guide law enforcement activity and to protect police from possible harm is reasonable in relation to the minimal intrusion on individual privacy. How far that line may shift before the intrusion becomes substantial remains uncertain.

THERESA H. HAMMOND

90. *See* Official Transcript Proceedings Before the United States Supreme Court at 5-6, 12-16, 19-24, Wyoming v. Houghton, 526 U.S. 295 (1999) (98-184).

* * *