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Casenotes: Constitutional Law — Scope of a Warrantless Automobile Search Extends to Closed Containers and Is as Broad as a Magistrate Could Authorize in a Warrant. *United States v. Ross*, 102 S. Ct. 2157 (1982)

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CASENOTES

CONSTITUTIONAL LAW — SCOPE OF A WARRANTLESS AUTOMOBILE SEARCH EXTENDS TO CLOSED CONTAINERS AND IS AS BROAD AS A MAGISTRATE COULD AUTHORIZE IN A WARRANT. *United States v. Ross*, 102 S. Ct. 2157 (1982).

During the course of a warrantless search of the defendant's automobile a paper bag found in the trunk was seized and examined by the police. The paper bag contained a quantity of glassine bags holding a substance later identified as heroin. The defendant's automobile was then driven to police headquarters where a second warrantless search of the trunk produced a closed leather pouch containing \$3,200.00. The defendant's motion to suppress the fruits of the warrantless searches was denied, and the heroin and currency were both admitted into evidence at trial. The defendant appealed his subsequent conviction to the United States Court of Appeals for the District of Columbia, where the case was initially heard by a three-judge panel and then by the court en banc.¹ The court of appeals held that the searches of the paper bag and pouch were unlawful and reversed the trial court.² A writ of certiorari was granted³ by the Supreme Court which held that if a police officer has probable cause to search a lawfully stopped vehicle pursuant to the automobile exception to the fourth amendment's warrant requirement,⁴ then the search may encompass any part of the vehicle or its compartments, including any closed containers which may conceal the object of the search. The scope of a warrantless automobile exception search was held to be as broad as that which a magistrate can authorize in a warrant.⁵

The fourth amendment to the Constitution,⁶ which has been held

1. *United States v. Ross*, 655 F.2d 1159 (D.C. Cir. 1981) (en banc), *rev'd*, 102 S. Ct. 2157 (1982).

2. 655 F.2d at 1171.

3. *United States v. Ross*, 454 U.S. 891 (1981).

4. The automobile exception to the general warrant requirement of the fourth amendment to the Constitution upholds warrantless vehicle searches when probable cause exists to believe that the vehicle contains evidence of a crime and when exigent circumstances are present. *See Chambers v. Maroney*, 399 U.S. 42, 51-52 (1970); *Carroll v. United States*, 267 U.S. 132, 158-59 (1925). For a thorough discussion of the automobile exception see C. WHITEBREAD, *CRIMINAL PROCEDURE* §§ 7.01-.06 (1980 & Supp. 1982) [hereinafter cited as WHITEBREAD]; Moylan, *The Automobile Exception: What it is and What it is not — A Rationale in Search of a Clearer Label*, 27 *MERCER L. REV.* 987 (1976) [hereinafter cited as Moylan]; Comment, *The Automobile Exception: A Contradiction in Fourth Amendment Principles*, 17 *SAN DIEGO L. REV.* 933 (1980); Comment, *The Automobile Exception To The Warrant Requirement: Speeding Away from the Fourth Amendment*, 82 *W. VA. L. REV.* 637 (1980).

5. *United States v. Ross*, 102 S. Ct. 2157 (1982).

6. 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

applicable to the states through the fourteenth amendment,⁷ generally requires searches and seizures by government officials to be made pursuant to a warrant issued by a neutral and detached magistrate.⁸ Searches made without a warrant are considered to be unreasonable per se, although a "few specifically established and well-delineated exceptions" exist.⁹ The automobile exception is one of the few judicially recognized exceptions;¹⁰ its purpose is to allow warrantless vehicle searches under certain circumstances.¹¹

The automobile exception originated in the landmark case of *Carroll v. United States*.¹² In *Carroll*, a Prohibition era case, government agents had probable cause to believe the defendants were transporting illegal liquor in their automobile. The government agents stopped the defendants as they were driving their vehicle and conducted a warrantless search, finding 68 bottles of contraband liquor hidden in the upholstery of the car seats. As a result, the defendants were convicted of

Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. CONST. amend. IV.

7. See *Mapp v. Ohio*, 367 U.S. 643, 655-56 (1961). In *Mapp*, the Court held that the exclusionary rule is binding on the states through the fourteenth amendment. The exclusionary rule is a judicial remedy which prohibits the use of evidence at trial if it was unlawfully seized by government officials in violation of the fourth amendment. *Id.* at 655-56.
8. The warrant requirement is considered a protection against governmental intrusions because it substitutes the reasoning of a "neutral and detached magistrate" in making the determination of whether probable cause exists to search and seize for that of a police officer, who is "engaged in the often competitive enterprise of ferreting out crime." *Johnson v. United States*, 333 U.S. 10, 13-14 (1948) (footnote omitted) (citing *United States v. Lefkowitz*, 285 U.S. 454, 464 (1932)). The requirement of prior review limits the power of the executive branch over the individual, in some cases preventing unjustified searches from taking place. See *United States v. United States District Court*, 407 U.S. 297, 317 (1972); *Abel v. United States*, 362 U.S. 217, 252 (1960) (Brennan, J., dissenting). See generally *Shadwick v. Tampa*, 407 U.S. 345, 350-54 (1972) (discussing the "neutral and detached" requirement).
9. *Katz v. United States*, 389 U.S. 347, 357 (1967) (footnote omitted) (citing *Carroll v. United States*, 267 U.S. 132, 153, 156 (1925); *McDonald v. United States*, 335 U.S. 451, 454-56 (1948); *Brinegar v. United States*, 338 U.S. 160, 174-77 (1949); *Cooper v. California*, 386 U.S. 58 (1967); *Warden v. Hayden*, 387 U.S. 294, 298-300 (1967)); see also *Arkansas v. Sanders*, 442 U.S. 753, 760 (1979) (the Court placed the burden on the prosecution to show a need for an exemption from the warrant requirement), *rejected in part*, *United States v. Ross*, 102 S. Ct. 2157 (1982).
10. In addition to the "automobile exception", there are at least five other recognized exceptions to the warrant requirement: (1) search conducted incident to a lawful arrest, *New York v. Belton*, 453 U.S. 454 (1981); *Chimel v. California*, 395 U.S. 752 (1969); (2) emergency situations, *Michigan v. Tyler*, 436 U.S. 499 (1978); (3) stop and frisk, *Terry v. Ohio*, 392 U.S. 1 (1968); (4) hot pursuit, *Warden v. Hayden*, 387 U.S. 294 (1967); and (5) plain view, *Coolidge v. New Hampshire*, 403 U.S. 443 (1971).
11. See *supra* note 4.
12. 267 U.S. 132 (1925).

violating the National Prohibition Act.¹³

On appeal, the Supreme Court was presented with the issues of whether the fourth amendment protected vehicles as well as fixed structures, and if a vehicle was so protected whether a warrantless search of it was permissible.¹⁴ The Court readily found that the fourth amendment applied to automobiles;¹⁵ however, it also recognized that an inherent mobility in vehicles distinguishes them from fixed premises.¹⁶ The Court then held that if probable cause exists¹⁷ to believe the automobile is transporting evidence of a crime, practical considerations justify a warrantless search of the vehicle.¹⁸ The Court had few occasions to examine the *Carroll* doctrine until 1970,¹⁹ when renewed interest developed in it.²⁰ That year, the Court decided *Chambers v. Maroney*,²¹ and expanded the automobile exception by upholding a warrantless vehicle search conducted after the vehicle had been seized and towed to a police station.²² The actual mobility of the vehicle was nonexistent at

13. *Id.* at 134-36.

14. *Id.* at 134, 153.

15. *Id.* at 153.

16. *Id.* at 151. The Court arrived at the distinction between fixed premises and vehicles through historical analysis, reasoning that the distinction was recognized when the fourth amendment was adopted. *Id.*

17. The Court recognized that probable cause had been defined in various ways, before holding that it exists when "the facts and circumstances within [the police officer's] knowledge and of which [he] had reasonably trustworthy information [are] sufficient in themselves to warrant a man of reasonable caution in the belief . . ." that objects subject to seizure may be found at the locus of the search. *Id.* at 162. See generally WHITEBREAD, *supra* note 4, §§ 3.03, 5.03. Thus, probable cause is determined by subjective inferences based upon objective criteria. However, within the context of the automobile exception, probable cause is determined by the police officer rather than a neutral magistrate.

18. *United States v. Carroll*, 267 U.S. 132, 153 (1925). The Court reasoned that the inherent mobility of an automobile justifies an immediate intrusion before the contraband can be transported out of the jurisdiction. *Id.* Another justification is the lack of an opportunity to obtain a warrant since the vehicle is usually encountered unexpectedly. See WHITEBREAD, *supra* note 4, § 7.04 at 117; Moylan, *supra* note 4, at 993, 1004-09.

19. From the time *Carroll* was decided in 1925 until 1970 the automobile exception was examined only three times by the Supreme Court. See *Brinegar v. United States*, 338 U.S. 160 (1949); *Scher v. United States*, 305 U.S. 251 (1938); *Husty v. United States*, 282 U.S. 694 (1931); see also *United States v. Lee*, 274 U.S. 559 (1927) (applying the *Carroll* doctrine to a boat search).

20. One commentator has suggested that between 1925 and 1970, warrantless vehicle searches were generally included in the search incident to an arrest exception. However, the search incident exception was sharply curtailed in *Chimel v. California*, 395 U.S. 752 (1969). See Moylan, *supra* note 4, at 987, 1000-01. Thus, after *Chimel* there was a resurgence in the use of the automobile exception terminology. *Id.*

21. 399 U.S. 42 (1970).

22. *Id.* at 52. The Court held that there was no constitutional distinction between seizing a vehicle until a warrant could be obtained and conducting an immediate search. Therefore, since probable cause and mobility were present at the initial stop both still existed at the stationhouse a short time later. *Id.* at 51-52. The *Chambers* decision has been criticised for allowing the warrantless search to take

the time of the search. Subsequent cases have justified the *Chambers* search in retrospect, not on the grounds of exigency but rather due to the diminished expectation of privacy in an automobile.²³ However, while the Court has accepted warrantless vehicle searches as reasonable in certain instances, it has carefully stressed that a search warrant will be required when possible.²⁴

Although the Court has recognized the automobile exception for over fifty years, confusion has existed concerning the permissible scope of warrantless vehicle searches. The confusion has been caused in a large part by attempts to extend the inherently mobile justification to nonvehicle searches.²⁵ In *United States v. Chadwick*²⁶ the government sought to uphold a warrantless search of a locked footlocker which had been removed from the trunk of a parked vehicle moments after the defendants had loaded it into the vehicle. The government pursued two theories of reasoning. First, it argued that the footlocker was not subject to fourth amendment protection.²⁷ Alternatively, the government claimed that if the footlocker was within the ambit of the fourth amendment, the automobile exception should apply by analogy.²⁸ The Court rejected both contentions and held that the fourth amendment protects all areas where an individual has a reasonable expectation of

place when there appeared to be no actual exigency present. See Comment, *The Automobile Exception: A Contradiction in Fourth Amendment Principles*, 17 SAN DIEGO L. REV. 933, 938-41 (1980); Comment, *Mistating The Exigency Rule: The Supreme Court v. The Exigency Requirement in Warrantless Automobile Searches*, 28 SYRACUSE L. REV. 981, 992-93 (1977); Comment, *The Automobile Exception To The Warrant Requirement: Speeding Away from the Fourth Amendment*, 82 W. VA. L. REV. 637, 643-45 (1980). But cf. Moylan, *supra* note 4, at 1002-04 (the *Chambers* decision may be read as allowing searches at the police station if it is not safe or prudent to conduct an immediate search at the scene of the initial stop).

23. See *United States v. Chadwick*, 433 U.S. 1, 12-13 (1977) (justifying *Chambers* on the basis of a diminished expectation of privacy rationale); *Texas v. White*, 423 U.S. 67, 67-68 (1977) (per curiam) (application of *Chambers* rationale to uphold vehicle search). The diminished expectation of privacy exists because: (1) a vehicle serves as a means of transportation and seldom serves as a residence or a repository of personal effects; (2) a vehicle travels on public thoroughfares subjecting its occupants and contents to plain view; (3) vehicles and their operators are subject to registration and licensing; (4) extensive regulation exists as to the operation of vehicles; (5) vehicles are often subject to periodic inspections; and (6) vehicles may be taken into police custody in the interests of public safety. *United States v. Chadwick*, 433 U.S. 1, 12-13 (1977).
24. See, e.g., *United States v. Ross*, 102 S. Ct. 2157, 2163-64 (1982); *Carroll v. United States*, 267 U.S. 132, 156 (1925).
25. See, e.g., *Arkansas v. Sanders*, 442 U.S. 753 (1979) (search of a suitcase taken from the trunk of a taxicab held invalid as the police officers had control of the luggage and there was no exigency) *rejected in part*, *United States v. Ross*, 102 S. Ct. 2157 (1982); *United States v. Chadwick*, 433 U.S. 1 (1977) (search of a footlocker invalid since the probable cause went not to the vehicle, but to the footlocker which had been put in the vehicle's trunk moments prior to being seized).
26. 433 U.S. 1 (1977).
27. *Id.* at 6-7.
28. *Id.* at 11-12.

privacy.²⁹ The Court then concluded that, unlike an automobile, luggage did not allow a finding of a lesser expectation of privacy.³⁰ The Court also found that there was no exigency present, as the locker was under the control of the government agents who could have held it until a search warrant was obtained.³¹

Following *Chadwick*, the Court decided *Arkansas v. Sanders*.³² In *Sanders*, government agents acting on probable cause observed the defendant place a suitcase, believed to contain narcotics, in the trunk of a vehicle. The agents then allowed the vehicle to be driven several blocks before they stopped it. After stopping the vehicle the agents seized the luggage and conducted a warrantless search, finding contraband.³³ As in *Chadwick*, the Court held that once the luggage was seized the exigency disappeared and the agents were required to obtain a search warrant.³⁴ The Court expressly refused to apply the *Carroll* doctrine and held that the fourth amendment applied to the luggage taken from a vehicle to the same extent it applied to luggage found in some other location.³⁵

Although *Sanders* is more analogous to *Chadwick* than it is to *Carroll*,³⁶ it nevertheless restricted the automobile exception and paved the way for *Robbins v. California*.³⁷ In *Robbins*, a plurality opinion, the Court refused to distinguish searches of containers based on the nature of their physical characteristics.³⁸ In *Robbins* the defendant was stopped by police officers who observed him driving a station wagon in an erratic manner. The police officers observed the defendant fumble with his wallet as he attempted to find his driver's license and vehicle registration card and smelled the odor of marijuana coming from the interior of the car. A search of the passenger compartment produced

29. *Id.* at 7-8, 12-13.

30. *Id.* at 12-13. See *supra* note 23 for a discussion of why there is a diminished expectation of privacy associated with automobiles.

31. *United States v. Chadwick*, 433 U.S. 1, 13 (1977).

32. 442 U.S. 753 (1979) *rejected in part*, *United States v. Ross*, 102 S. Ct. 2157 (1982).

33. 442 U.S. at 755.

34. *Id.* at 765-66.

35. *Id.* at 766.

36. The focus of the search in *Sanders* was on a specific piece of luggage which was suspected of containing contraband, as opposed to *Carroll* where there was probable cause to believe the vehicle was transporting contraband.

37. 453 U.S. 420 (1981) (a plurality opinion consisting of Justices Stewart, Brennan, White, and Marshall), *overruled*, *United States v. Ross*, 102 S. Ct. 2157 (1982).

38. 453 U.S. at 425-26. The argument was advanced by the government that the level of an individual's expectation of privacy turned on the type of container being searched. The government argued that the nature of the container should determine the level of fourth amendment protection; that only containers of a type used to carry personal effects should receive full protection. The plurality rejected the government's argument on two grounds. First, the fourth amendment protects people and their personal, and impersonal, effects. Second, a distinction based upon a worthy or less worthy standard would be impossible to apply. *Id.* at 425-27. A search would be permitted, however, if the container's outward appearance, like a gun case, conveyed the nature of its contents. *Id.* at 427.

marihuana and paraphernalia for using it. The defendant was then arrested and a further search of the rear compartment of the vehicle was conducted, where the officer found two packages wrapped in a green, opaque plastic material.³⁹ The Supreme Court granted certiorari for the purpose of dissipating the uncertainty over whether closed containers found during a lawful, but warrantless, vehicle search could themselves be searched without a warrant.⁴⁰ The plurality held that any container found during a lawful vehicle search could not be searched without first obtaining a warrant.⁴¹

In *United States v. Ross*,⁴² the Court has reversed its position in *Robbins* and rejected a portion of the *Sanders* rationale.⁴³ In its decision, the Court reviewed the *Carroll* doctrine and found warrantless vehicle searches to be reasonable when they are based upon objective facts capable of supporting a warrant.⁴⁴ The Court then examined *Chadwick* and *Sanders*, distinguishing them from true warrantless vehicle searches on the grounds that the probable cause in both focused upon a particular container rather than the automobile.⁴⁵ *Robbins* was distinguished by noting that the precise issue concerning the scope of a lawful, warrantless vehicle search had not been before the Court.⁴⁶ Returning to *Carroll* and its progeny, the Court found it persuasive that nowhere had it been alleged or even suggested that searches of containers found during an automobile exception search required a warrant.⁴⁷ The majority then appraised practical considerations, noting that a criminal rarely leaves his contraband in plain view or strewn about the trunk of the vehicle. Thus, the Court concluded that *Carroll* would largely be nullified if the scope of a warrantless vehicle search did not extend to containers. Next, the majority analogized the scope of searches made pursuant to a search warrant and searches made without warrants. The scope was reasoned to be the same once the right to conduct the search was established.⁴⁸

The majority acknowledged that there are privacy interests associated with closed containers which invoke fourth amendment rights and protections.⁴⁹ However, the majority also recognized that the extent of the privacy interest in a container, and hence the amount of fourth

39. *Id.* at 422.

40. *Id.* at 423.

41. *Id.* at 428-29. For a critical analysis of the Court's opinion in *Robbins*, see Comment, *Fourth Amendment-Of Cars, Containers, and Confusion*, 72 J. CRIM. L. & CRIMINOLOGY 1171 (1981).

42. 102 S. Ct. 2157 (1982).

43. *Id.* at 2172.

44. *Id.*

45. *Id.* at 2166-67.

46. *Id.* at 2168.

47. *Id.* at 2169.

48. The only difference between the two is that the prior probable cause determination is made by a magistrate in search warrant cases.

49. *Id.* at 2171.

amendment protection, varied in different factual settings.⁵⁰ Therefore, even if a privacy interest exists in a vehicle or its contents, it must succumb to a reasonable search when there is probable cause to believe the vehicle is being used to transport contraband.⁵¹ The Court concluded by holding that when probable cause exists, the scope of the search of a lawfully stopped vehicle is as broad as that which a magistrate can authorize in a warrant; such a search extends to all parts of the vehicle, including containers therein that are capable of concealing the object of the search.⁵²

Ross appears to be an effort by the Court to produce yet another "bright-line" rule to aid law enforcement officials in their duties.⁵³ Although it is doubtful that *Ross* stands for the demise of the fourth amendment's warrant requirement, as was proclaimed in the dissenting opinion,⁵⁴ it is subject to several criticisms. First, *Ross* appears to delineate a rule which furthers prompt and efficient law enforcement at the expense of fourth amendment rights and protections.⁵⁵ Second, *Ross* explicitly retained a portion of the rationale set forth in *Sanders* and it is, therefore, highly probable that litigation in the area of automobile searches will continue.⁵⁶ Third, the traditional rationale which supports warrantless vehicle searches does not apply to containers which are easily seized and can be held while a magistrate makes a probable cause determination.⁵⁷ Finally, it has been forecast by commentators that *Ross* may provide a stepping stone which will lead to allowing the search of any moveable container found in a public place on the same grounds which validate warrantless vehicle searches.⁵⁸

50. *Id.* The Court cited the right to search a container of an individual entering the country, pursuant to an arrest without a warrant, and pursuant to a search warrant. In all three situations the privacy interest must yield to the authority to search. *Id.*

51. *Id.* at 2170-71.

52. *Id.* at 2172. The language that the search is limited to containers which "may conceal the object of the search" appears to be the only limitation upon the scope of the search. For example, probable cause to search for a lawnmower in a garage does not justify the search of an upstairs bedroom. *Id.*

53. *See, e.g.,* *New York v. Belton*, 453 U.S. 454 (1981) (establishing a "bright-line" rule in the context of searches incident to the arrests of recent occupants of an automobile). *See generally, LaFave, The Fourth Amendment in an Imperfect World: On Drawing "Bright-lines" and "Good faith,"* 43 U. PITT. L. REV. 307 (1982).

54. *United States v. Ross*, 102 S. Ct. 2157, 2173 (1982) (Marshall & Brennan, J.J., dissenting).

55. *Ross* substitutes a probable cause determination made by a police officer for that of a magistrate, as required in *Johnson v. United States*, 333 U.S. 10, 14 (1948).

56. In the future, however, the focus of the courts will be on whether the officer's probable cause was directed towards the vehicle or towards a particular container only casually connected with a vehicle. *See United States v. Ross*, 102 S. Ct. 2157 (1982) (Marshall & Brennan, J.J., dissenting).

57. *Id.* at 2176.

58. *See* WHITEBREAD, *supra* note 4, at 34-35; *see also* address by Professor Y. Kamisar, Fourth Annual Supreme Court Review and Constitutional Law Symposium (September 24-25, 1982), *reprinted in* 32 CRIM. L. REPTR. 2057-58 (1982).

Despite the criticisms of *Ross*, two developments to the automobile exception doctrine have resulted from the decision. First, *Ross* serves to clarify the scope of automobile searches, an area of law which had become confused due to the incorporation of "container-type" cases into one of the oldest exceptions to the fourth amendment's warrant requirement. Second, by eliminating this confusion, *Ross* has reversed a trend of case law which had severely restricted the practical utility of the automobile exception. However, as a caveat, it remains to be seen whether the rationale supporting the clarification will be extended into nonautomobile searches.

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