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# Recent Developments: California v. Hodari D.: For Purposes of Fourth Amendment, No Seizure Occurred by Mere Showing of Police Authority without Submission by the Suspect

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# Recent Developments

## ***California v. Acevedo*: FOURTH AMENDMENT AUTHORIZES WARRANTLESS SEARCH OF CONTAINER WITHIN AUTOMOBILE WHERE PROBABLE CAUSE TO SEARCH EXISTS ONLY TO THE CONTAINER BUT NOT TO THE AUTOMOBILE ITSELF.**

In *California v. Acevedo*, 111 S. Ct. 1982 (1991), the United States Supreme Court held that police may conduct a warrantless search of a container within an automobile where probable cause existed only as to the container and not as to the vehicle itself. In so doing, the Court overruled the previous warrant requirement established in *United States v. Chadwick*, 433 U.S. 1 (1977) and *Arkansas v. Sanders*, 442 U.S. 753 (1979). The Court found the *Chadwick-Sanders* rule, which required police to hold the container until a warrant was issued, afforded only minimum privacy protection to individuals and impeded effective law enforcement.

On October 28, 1987, a federal drug enforcement agent intercepted a package containing marijuana which was to have been delivered to the Federal Express office in Santa Ana, California. The agent arranged for the Santa Ana police to examine the contents of the package, deliver it to the Federal Express office and arrest the claimant. After police followed the claimant to his apart-

ment and witnessed him throw the box and wrapping that contained the marijuana away, one of the officers left to obtain a search warrant. Shortly thereafter, Charles Acevedo entered the apartment and left with a brown paper bag which was the size of the bags of marijuana that the police had examined. Acevedo placed the bag in the trunk of his car and began to drive away. Officers stopped Acevedo, opened the trunk and the bag, and found marijuana.

Acevedo was charged in state court with possession of marijuana for sale. He moved for suppression of the marijuana found in his car, but the motion was denied. Acevedo then pleaded guilty but appealed the denial of the suppression motion.

The California Court of Appeal reversed and held that because police only had probable cause to suspect the paper bag contained drugs but lacked probable cause to suspect the car itself carried contraband, police could not open the bag without a warrant. *Acevedo*, 111 S. Ct. at 1985. The court concluded that because probable cause was specifically directed at the bag, the case was controlled by *Chadwick*, which held that probable cause to search only the container in an automobile allowed police to seize the container, but not search it without a warrant. The court noted the dichotomy between the *Chadwick* rule and the rule established in

*United States v. Ross*, 456 U.S. 798 (1982). *Acevedo*, 111 S. Ct. at 1985. Under *Ross*, probable cause to search an automobile permitted any container within the automobile to be opened without a warrant.

The state's petition for review was denied by the Supreme Court of California. The United States Supreme Court granted certiorari to reexamine the law applicable to the search and seizure of a container within an automobile.

In an opinion delivered by Justice Blackmun, the Supreme Court first acknowledged the general rule that the Fourth Amendment protects citizens against unreasonable searches and seizures. *Id.* An exception to the search warrant requirement for contraband in a moving vehicle was first established in *Carroll v. United States*, 267 U.S. 132 (1925). The *Carroll* decision held that the warrantless search of an automobile did not violate the warrant clause of the Fourth Amendment when the search was based upon probable cause to believe that the vehicle containing evidence would disappear. *Acevedo*, 111 S. Ct. at 1985-86.

The Court next examined the *Carroll* doctrine as it applied to containers within automobiles. The Court recognized two lines of cases which governed the searches of containers within automobiles. *Ross* clarified the scope of the *Carroll*

doctrine by establishing that containers and compartments could be included in a warrantless search of an automobile, provided the search was supported by probable cause. *Acevedo*, 111 S. Ct. at 1986. *Ross*, however, distinguished the *Carroll* doctrine from the separate rule governing searches of closed containers established in *Chadwick* and *Sanders*. *Id.*

In both *Chadwick* and *Sanders*, police conducted a warrantless search of luggage which was being transported in an automobile. Although police had probable cause to suspect the luggage, they did not have probable cause to suspect that the vehicles were carrying contraband. *Id.* at 1986-87. In both cases, the Court refused to extend the *Carroll* doctrine to include the warrantless search of luggage merely because it happened to be transported in an automobile. *Id.* at 1987. The Court emphasized the heightened privacy interest a person expects in his or her luggage and personal effects, and concluded that this interest was not diminished by the presence of such items in a vehicle. *Id.* at 1986-87.

In overruling the *Chadwick-Sanders* rule, the Court reasoned that the rule afforded minimum privacy protection to individuals and impeded effective law enforcement. *Id.* at 1989. The Court recognized that "a container found after a general search of the automobile and a container found in a car after a limited search for the container are equally easy for the police to store and for the suspect to hide or destroy." *Id.* at 1988. The Court noted that under *New York v. Belton*, 453 U.S. 454 (1981), law enforcement officers could not only seize a container and hold it until a warrant was obtained, but could also search containers without a warrant as a

search incident to a lawful arrest. *Acevedo*, 111 S. Ct. at 1988. Because the *Chadwick-Sanders* rule did not substantially serve privacy interests, the Court held that separate treatment for an automobile search extending only to a container within the vehicle was no longer required under the Fourth Amendment. *Id.* at 1989.

The Court further reasoned that the *Chadwick-Sanders* rule had "confused courts and police officers and impeded effective law enforcement." *Id.* It was not always clear whether there was probable cause to search a package or an entire vehicle. *Id.* at 1989-90. For example, if an officer had probable cause to believe that an automobile contained drugs, began to search the vehicle and immediately discovered a package of drugs, arguably either rule could apply. *Id.*

This confusion was further demonstrated by the fact that since 1982, state courts and federal courts of appeals had been reversed in their Fourth Amendment holdings twenty-nine times. *Id.* at 1990. Because of this confusion, the Court concluded that it was better "to adopt one clear-cut rule to govern automobile searches and eliminate the warrant requirement for closed containers set forth in *Sanders* . . . . The interpretation of the *Carroll* doctrine set forth in *Ross* now applies to all searches of containers found in an automobile." *Id.* at 1991. Thus, police may conduct a warrantless search of an automobile or any container in the automobile as long as the search is supported by probable cause. *Id.*

By its decision in *Acevedo*, the Supreme Court simplified the confusing law surrounding the automobile exception to the warrant clause of the Fourth Amendment. While this may lead to more effective law

enforcement, the privacy interests of the individual may have been compromised. The fact that privacy rights in personal effects are lost immediately as one enters a moving vehicle may lead to an abuse of police power and less protection for the individual.

- *Kim-Haylee Loewenstein Band*

***Florida v. Bostick*: POLICE OFFICERS MAY BOARD BUS AND RANDOMLY ASK PASSENGERS FOR CONSENT TO SEARCH LUGGAGE WITHOUT NECESSARILY VIOLATING FOURTH AMENDMENT.**

In *Florida v. Bostick*, 111 S. Ct. 2382 (1991), the Supreme Court decided that a seizure did not automatically occur when police officers boarded buses and asked passengers for consent to search their luggage. The Court stated that while the Fourth Amendment does prohibit unreasonable searches and seizures, it does not prohibit voluntary co-operation.

During a stopover in Ft. Lauderdale, two police officers boarded a bus and, without reasonable suspicion, requested permission to search the defendant's (Bostick) luggage. The police officers did not use threats, and Bostick was explicitly told that he had the right to refuse consent. Bostick consented to the search which led police to find cocaine in his luggage.

Bostick argued that a seizure took place when police officers boarded the bus and asked for consent to search his luggage. Bostick moved to suppress the evidence on the basis that it was improperly seized in violation of his Fourth Amendment rights. The Florida District Court of Appeal affirmed the trial court's denial of Bostick's motion, but certified the question of seizure to the