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Criminal Procedure - An Expansion of the Automobile Exception Rule to the Warrant Requirement of the Fourth Amendment - California v. Carney

C. Joyce Hall

CRIMINAL PROCEDURE – An Expansion of the "Automobile Exception" Rule to the Warrant Requirement of the Fourth Amendment – *California v. Carney*, 471 U.S. 386 (1985)

FACTS

A Dodge Mini Motor Home parked in a lot in downtown San Diego came under surveillance when Drug Enforcement Administration agent Robert Williams observed Charles Carney approach a youth and enter the motor home. Carney closed the window shades and remained inside with the youth for an hour and fifteen minutes. Previously, Williams had received uncorroborated evidence that the motor home was being used by persons exchanging marihuana for sex. When the youth exited the motor home, the agents stopped and questioned him. The youth admitted to the agents that he had received marihuana for sexual contacts with Carney.

The agents requested that the youth return to the motor home and knock on the door. When Carney stepped out, the agents identified themselves. Without a warrant or consent from Carney, one agent entered the motor home. Observing marihuana, plastic bags, and scales, the agent took Carney into custody and Williams took possession of the motor home. Later the police searched the vehicle at the police station. They discovered additional marihuana in the cupboards and refrigerator.

Carney was charged with possession of marihuana for sale.[1] At the preliminary hearing, he moved to suppress the evidence obtained from the motor home. The magistrate denied the motion, holding that the initial search was justified as a search for other persons and the subsequent search at the police station was justified as a routine inventory search.

The superior court also denied Carney's motion. In upholding the search, the court explained that the search of the motor home came within the automobile exception to the warrant requirement of the fourth amendment. They further held that the motor home could be seized as an instrumentality of the crime.[2]

The California Court of Appeals affirmed the superior court under a similar reasoning, holding that the automobile exception applied to the search of the motor home.[3] However, the California Supreme Court reversed the decision, rejecting the extension of the vehicle exception to motor homes. They stated that the ex-

1. California v. Carney, 471 U.S. 386, 388 (1985).

2. *Id.* at 388-98. Following the Superior Court's holding, Carney pleaded *nolo contendere* to the charges and was placed on probation for three years.

3. *Id.* at 389.

pectation of privacy in a motor home is more like that in a dwelling than in an automobile because the motor home primarily functions as living quarters, not transportation.[4] The United States Supreme Court reversed, holding that the motor home, in this case, fell clearly within the automobile exception to the warrant requirement of the fourth amendment.[5]

BACKGROUND OF THE AUTOMOBILE EXCEPTION

The fourth amendment to the Constitution of the United States 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.[6]

The historical basis for this amendment is rooted in the struggle before and during the War for Independence when the colonists rebelled against intrusions by the British into their homes.[7] The purpose of the amendment is to provide a safeguard for the privacy of individuals against arbitrary invasion from government officials.[8] Therefore, the general rule is that searches of private property without a warrant are unreasonable.[9]

The Supreme Court has established certain exceptions to the general rule requiring a warrant to search private property.[10] The first major exception allows a warrantless search incident to a law-

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4. *Id.* That court reached its decision by concluding that the mobility of a vehicle 'is no longer the prime justification for the automobile exception'; rather, 'the answer lies in the diminished expectation of privacy which surrounds the automobile.'" *Id.* (Quoting the California Supreme Court opinion at 34 Cal. 3d 597, 605, 668 P.2d 807, 811, 194 Cal. Rptr. 500, 504 (1983)).

5. *Id.*

6. U. S. CONST. amend. IV.

7. During the colonial period, revenue officers were issued writs of assistance enabling them, in their discretion, "to search suspected places for smuggled goods." Boyd v. United States, 116 U.S. 616, 625 (1885). This practice was condemned as "the worst instrument of arbitrary power,'" because it "placed 'the liberty of every man in the hands of every petty officer.'" *Id.* at 625. England was undergoing a similar struggle during the same period. General warrants were issued by the secretary of state for searches of private homes to search for and seize books and papers that might be libelous. In Entick v. Carrington, 19 Howell's State Trials 1029, Lord Camden pronounced this action as trespass. The judgment was celebrated in the colonies. *Boyd*, 116 U.S. at 626. Resistance to these practices is the foundation of the fourth amendment and the principle that "a man's house is his castle and not to be invaded by any general authority to search and seize his goods and papers." Weeks v. United States, 232 U.S. 383, 390 (1913). *See also* Stengel, *The Background of the Fourth Amendment To The Constitution of the United States, Part One*, 3 U. RICH. L. REV. 278, 293-96 (1969); D. HUTCHISON, THE FOUNDATIONS OF THE CONSTITUTION 293-98 (1975); SOURCES OF OUR LIBERTIES 304-06, 427 (R. Perry ed. 1959).

8. Camara v. Municipal Court of San Francisco, 387 U.S. 523 (1967). *See also* South Dakota v. Opperman, 428 U.S. 364 (1976).

9. Cady v. Dombrowski, 413 U.S 433 (1973). *See also* Coolidge v. New Hampshire, 403 U.S. 443 (1971).

10. *See generally* 1 W. LAFAVE, SEARCH AND SEIZURE: A TREATISE ON THE FOURTH AMENDMENT § 1.1 (1978).

ful arrest. Only the area within the arrestee's immediate control may be searched. The justification for this exception is to enable the arresting officer to search and seize any nearby weapons or destructible evidence.[11] A second exception allows a warrantless search based on voluntary consent. Here, the warrant requirement is waived by the individual.[12] The presence of exigent circumstances is a third justification for dispensing with the requirement of a warrant. It has been stated that all exceptions to the warrant requirement involve exigent circumstances because some event or condition overrides the necessity of the warrant.[13] The fourth major exception is the one discussed in *Carney* – the automobile exception.[14]

The automobile exception to the general rule requiring warrants was carefully delineated by the Court in 1925 in *Carroll v. United States*.[15] This prohibition-era case involved a search and seizure by federal agents of a car travelling on a public highway. The agents had firsthand information that the car was being used to transport whiskey in violation of the National Prohibition Act.[16] In a landmark decision, the Court distinguished automobiles from "other structures" for purposes of the fourth amendment.

> [T]he guaranty of freedom from unreasonable searches and seizures by the 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 in respect of which a proper official warrant readily may be obtained, and a search of 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.[17]

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11. Chimel v. California, 395 U.S. 752 (1969) (The Court allowed a warrantless search only of the area within the arrestee's immediate control, hence overruling United States v. Rabinowitz, 339 U.S. 56 (1950), which permitted the police to search an entire room as incident to the occupant's arrest.).

12. Katz v. United States, 389 U.S. 347, 358 n.22 (1967) (The Court recognized that a search based on consent was valid.). The consent must be given voluntarily. Voluntariness is decided on the totality of the circumstances involved. However, knowledge of the right to refuse consent is not a prerequisite to voluntary consent, and no warnings need be given. Schneckloth v. Bustamonte, 412 U.S. 218 (1973).

13. J. HALL, JR. SEARCH AND SEIZURE 199-200 (1982).

14. Two other exceptions used by the courts to justify a warrantless search include the stop and frisk doctrine upheld by the Supreme Court in Terry v. Ohio, 392 U.S. 1 (1968), allowing a limited stop and frisk of a suspect on a street encounter under reasonable suspicion that he was armed. The other exception is the plain view doctrine, which allows an area in plain view of the observer to be searched without a warrant provided the initial intrusion by the officer which brings him into plain view of the evidence is legal and it is "immediately apparent" by the officer that the object in plain view is evidence of a crime. This doctrine is discussed in Coolidge v. New Hampshire, 403 U.S. 443 (1971).

15. 267 U.S. 132 (1925).

16. *Id.* at 134. It has been noted that the National Probition Act required a warrant in order to search a private home for illegal whiskey but this restriction was not imposed on searches of moving objects such as an automobile. Therefore, the Court developed the exception around this "mobility concept" by interpreting a statute. However, in the cases following *Carroll*, warrantless searches were upheld by simply citing Carroll. This occurred even when statutory authorization was absent. Scher v. United States, 305 U.S. 251 (1938); Brinegar v. United States, 338 U.S. 160 (1949). *See generally* Miles & Wefing, *The Automobile Search and the Fourth Amendment: A Troubled Relationship*, 4 SETON HALL L. REV. 105, 112 (1972).

17. 267 U.S. at 153.

Emphasis was placed on the quality of the car as "quickly movable." The Court cautioned that persons lawfully within this country have a right to free passage on the highways unless a competent official has probable cause for believing their vehicle is transporting contraband.[18] Probable cause was defined as "a reasonable ground for belief in guilt."[19] This standard implied more than good faith.[20] Given probable cause to believe that the vehicle contains contraband, the Court said that the police have the authority to search it without a warrant whether or not an arrest is made based on the fact that the vehicle can be quickly moved.[21] The Court appeared to qualify the exception by saying that where it is practicable to obtain a warrant, one must be obtained; otherwise the officer operates at his peril if he proceeds without a warrant and cannot show probable cause for the search.[22] Because an automobile is "quickly movable," it is often impracticable to obtain a warrant. The Court held that the agents had probable cause to search the car; therefore, a warrant was not required and the contraband found as a result of the search was admissible evidence at trial.[23]

The next major automobile search case did not come before the Court until thirty-nine years after *Carroll.* Citing *Carroll,* the Supreme Court in *Preston v. United States*[24] held a warrantless search of an automobile unreasonable because the search was too remote in time and place from the arrest of the occupants.[25] Three men were arrested for vagrancy. After the arrest, their car was towed to a garage and subsequently searched by police officers. Items normally used to commit a robbery were found and one of the men confessed to an intended bank robbery. The evidence was introduced at trial over petitioner's objections and the three men were convicted of conspiracy to rob a bank. The Supreme Court reversed, holding that searches of motorcars must be reasonable before evidence obtained will be admissible at trial. However, they said that "what may be an unreasonable search of a house may be reasonable in the case of a motorcar."[26] A warrantless search of an automobile incident to a lawful arrest is

18. *Id.* at 154.

19. *Id.* at 161 *citing* McCarthy v. DeArmit, 99 Pa. St. 63 (1881).

20. *Id.* at 161. *See also* Brinegar v. United States, 338 U.S. 160 (1949)(A warrantless search cannot be at the whim of the police.).

21. 267 U.S. at 153.

22. *Id.* at 156.

23. *Id.* at 162.

24. 376 U.S. 364 (1964).

25. *Id.* at 368.

26. *Id.* at 366-67. ("Common sense dictates, of course, that questions involving searches of motorcars or other things readily moved cannot be treated as identical to questions arising out of searches of fixed structures like houses."). *Id.*

reasonable, but the Court noted under the facts in *Preston* that this justification is absent where the search is remote in time or place from the arrest.[27]

Preston was distinguished on its facts, however, in *Cooper v. California.*[28] Cooper was convicted of selling heroin to a police informant based on evidence seized, without a warrant, from the glove compartment of Cooper's car which police impounded after his arrest. The Court distinguished *Preston* in that it involved a search incident to a valid arrest.[29] In *Cooper,* the Court concluded that the search after the car was impounded was reasonable to look for evidence of the crime for which Cooper was arrested. Therefore, unlike the search in *Preston,* the subsequent search in *Cooper* was closely related to the reason Cooper was arrested.[30] Although the majority found *Preston* not to be applicable, the minority held *Cooper* to be on all fours with *Preston* and considered the warrantless search unreasonable.[31]

The distinguishing factor between the above cited cases is that in *Preston,* the search was found to be unreasonable on the basis of a search incident to arrest. To be reasonable, a search incident to arrest must be made at the time of the arrest and includes a search of only the area within the arrestee's immediate control.[32] In *Carroll* and *Cooper,* however, the search was held reasonable on the basis of probable cause. The searching officer in both cases had probable cause to believe that the area searched contained contraband.[33]

In *Chambers v. Maroney,*[34] the Court carried the *Cooper* holding one step further by justifying a warrantless search of an automobile at the police station after an arrest had been made in another location. The Court again distinguished *Preston* on the basis that the arrest was for vagrancy; therefore, there was no

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27. *Id* at 367. *Preston* was decided solely on the "search incident to arrest" exception to the warrant requirement. *See supra* note 11 and accompanying text. The Court distinguished *Carroll* on the basis that in *Preston* the defendants were under arrest at the police station and the car was in police custody at the garage, so there was no danger that the car would be moved our of their jurisdiction.

28. 386 U.S. 58 (1967).

29. *Id.* at 59-60. Alternatively it was argued that the search was justified because the police had probable cause to believe the car was stolen. However, the arrest was for vagrancy, not theft, so the police had no authority to hold his car on that charge. Therefore, even though the police impounded his car, it was as though it was in the defendant's own or his agent's possession. *Id.* at 60.

30. *Id.* at 61. ("The fact that the police had custody of Preston's car was totally unrelated to the vagrancy charge for which they arrested him."). *Id.*

31. *Id.* at 65. ("[I]n each, [*Preston* and *Cooper*] the search was of a car 'validly' held by officers." Justice Douglas suggests that *Cooper* overrules *Preston sub silentio*). *Id.*

32. *See* Chimel v. California, 395 U.S. 752 (1969).

33. *See supra* text accompanying notes 15 and 21.

34. 399 U.S. 42 (1970).

probable cause to believe the car contained evidence of a crime.[35] The Court held that there was constitutionally no difference between an immediate warrantless search of an automobile upon probable cause and the warrantless seizure and detention of an automobile until the probable cause issue could be presented before a magistrate.[36] Justice Harlan, dissenting, noted that the majority had "discard[ed] the approach taken in *Preston*, and creat[ed] a special rule for automobile searches that is seriously at odds with generally applied Fourth Amendment principles."[37]

The Court applied *Chambers* to the facts in *Texas v. White*.[38] They held that where the police officers had probable cause to search the car at the scene, they could constitutionally search it later at the station without a warrant, because the probable cause factor was still present at the station.[39] This means that no other exigent circumstances are necessary to justify a warrantless search at the police station if the automobile exception applies at the scene. Justice Marshall, dissenting, said that the majority holding was a misstatement of *Chambers*.[40] He construed *Chambers* to hold that it was constitutionally permissible to conduct a warrantless search at the station only when it was reasonable to take the car there in the first place.[41] He distinguished *Chambers* from the case at bar on the the basis that in *Chambers* the occupants of the car were arrested in a dark parking lot where it was not practical or safe for the officers to conduct a search.[42] In the present case, White was arrested in the early afternoon when it was practical and safe to conduct the search immediately.[43] Justice Marshall saw no justification for extending *Chambers* in this way.[44]

In *Coolidge v. New Hampshire*,[45] the Court stressed the requirement that exigent circumstances must exist before an officer is

35. *Id.* at 47. The Court noted that the search could not be justified on the basis of a search incident to arrest because the search took place at the police station. However, there are alternative grounds to justify the search—probable cause.

36. *Id.* at 52. ("Given probable cause to search, either course is reasonable under the Fourth Amendment."). *Id.*

37. *Id.* at 65.

38. 423 U.S. 67 (1975). White was arrested for passing fraudulent checks. The police asked him to pull his car over to the curb. When he parked, a bank employee saw him stuff something between the seats. The officers requested consent to search his car but he refused. They searched it anyway. Four wrinkled checks were discovered and admitted as evidence at trial.

39. *Id.* at 68.

40. *Id.* at 69 (Marshall, J., dissenting).

41. *Id.*

42. *Id.* at 70.

43. *Id.*

44. *Id.* at 72.

45. 403 U.S. 443 (1971) (plurality opinion).

justified in conducting a warrantless search of an automobile.[46] The facts in *Coolidge* differed from the previous automobile exception cases the Supreme Court had decided. Unlike in *Carroll, Cooper,* and *Chambers,* the car searched was parked in the suspect's driveway and not moving on the highway.[47] Nothing indicated that the car would be fleeting or that objects inside would be destroyed because the owner was being arrested.[48] The search could not be justified as one incident to arrest because the arrestee was in his house, where the only justified warrantless search would have been the area in his immediate control or possession.[49] Therefore, the Court refused to extend *Carroll* to permit a warrantless search of an unoccupied vehicle on private property and beyond the scope of a valid search incident to arrest.[50] There were no exigent circumstances to warrant this search. They cautioned that "[t]he word 'automobile' is not a talisman in whose presence the Fourth Amendment fades away."[51]

In *Cady v. Dombrowski,*[52] the Court confronted a similar situation to that found in *Coolidge.* Here, the Court upheld a warrantless search of a vehicle on private property on the justification that the search was pursuant to standard police procedures.[53] The respondent, a Chicago police officer, was involved in a one-car accident as a result of drunken driving. He was arrested and then taken to the hospital. The officers had his car towed to a private garage. After learning that Dombrowski was a police officer and failing to find his revolver on his person, the officers drove to the garage for the purpose of looking for the revolver. This, the officer testified, was standard procedure to insure the public's safety.[54] Upon opening the trunk, the officer found moist blood on several items. He took the items to the police station and confronted the respondent. At trial, this evidence was used to prove that the respondent was responsible for the murder of a body found on the respondent's brother's farm.[55] The Court stressed the standard of reasonableness set forth in the fourth amendment, but noted

46. *Id.* at 468. ("[N]o amount of probable cause can justify a warrantless search or seizure absent 'exigent circumstances.' "). *Id.*

47. *Id.* at 458.

48. *Id.* at 460. Furthermore, the objects in the car were not stolen, contraband, or dangerous. *Id.*

49. *Id.* at 455-57. *See supra* note 11 and accompanying text.

50. *Id.* at 461 n.18.

51. *Id.* at 461.

52. 413 U.S. 433 (1973).

53. *Id.* at 443. The Court again read *Preston* narrowly as standing for the proposition that a search away from the scene cannot be justified as a search incident to arrest. However, other justifications might apply. *Id.* at 444.

54. *Id.* at 437.

55. *Id.* at 436-38. The state's case was based solely on circumstantial evidence, as the Court points out. *Id.* at 439.

the constitutional difference between cars and homes.[56] They also expressed the difference in the type of contact state and local officials have in regulating automobiles on the highways as opposed to the contact federal agents have, which is usually connected to some type of criminal investigation.[57] The Court said that it was reasonable for the officer to believe the trunk contained a gun.[58] Therefore, they held the warrantless search reasonable on the basis that it was standard police procedure to protect the public and it had taken place on private property by the police who ordered it towed.[59]

The routine-procedure justification in *Cady* was extended to inventory searches in *South Dakota v. Opperman.*[60] Here, police impounded an illegally parked car that had been ticketed twice, and searched it in order to inventory the items in the car. The search included opening the unlocked glove compartment whereupon marihuana was found. When the owner came to claim his property, he was arrested for possession of marihuana.[61] The Court held the search, including the search of the glove compartment, reasonable as a standard routine procedure since that is the customary place to keep documents of ownership and registration.[62] The Court noted three reasons justifying the need for inventory searches: "the protection of the owner's property while it remains in police custody, the protection of the police against claims or disputes over lost or stolen property, and the protection of the police from potential danger."[63] Furthermore, the Court emphasized that the issue of probable cause is not relevant to routine inventory searches, because the probable cause inquiry is only related to criminal investigations, not routine inventories.[64] Therefore, inventories pursuant to standard police procedures are reasonable for purposes of the fourth amendment.[65] A strong dissenting opinion objected to holding the search of the closed compartment reasonable because there was no reason to believe it contained any valuable property.[66]

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56. *Id.* at 439-440.

57. *Id.* at 441. State and local officials, more often than federal officials, perform "community caretaking functions." *Id.* That was the initial function performed by the police officers in this case; they towed Dombrowski's car because it was in the way of traffic on the highway. *Id.* at 443.

58. *Id.* at 448.

59. *Id.*

60. 428 U.S. 364 (1976).

61. *Id.* at 365-66.

62. *Id.* at 372.

63. *Id.* at 369. These needs are denominated "caretaking functions" of the police. *Id.* at 368.

64. *Id.* at 370 n.5.

65. *Id.* at 383.

66. *Id.* at 394 (Marshall, J., dissenting). Marshall argued that absent consent to search, a routine inventory search conducted without a warrant may only be upheld upon the fulfillment of two requirements: (1) that

In *Cardwell v. Lewis*,[67] the Court stressed the "lesser expectation of privacy" present in a car to justify a warrantless search of the exterior of Lewis' car.[68] Lewis was arrested for murder. The police impounded his car and searched the exterior to compare tire impressions and paint particles made at the scene of the crime.[69] In upholding the action by the police, the Court stated in dictum that

> One has a lesser expectation of privacy in a motor vehicle because its function is transportation and it seldom serves as one's residence or as the repository of personal effects . . . . 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; the exercise of a desire to be mobile does not, of course, waive one's right to be free of unreasonable government intrusion.[70]

Here, only the exterior part of the vehicle was "searched" where there was no expectation of privacy; therefore, there was no search for purposes of the fourth amendment.[71]

The scope of a warrantless search was a continuing problem for courts and law enforcement officials throughout the development of the automobile exception rule, especially as to closed containers found during the search. In *Robbins v. California*,[72] a plurality opinion, it was held that closed, opaque containers are fully protected by the fourth amendment whether found in a car or anywhere else because the owner has a greater expectation of privacy in its contents.[73] The only exceptions to this rule are when the contents are in plain view or when the contents can be inferred from its outward appearance.[74] Therefore, the Supreme Court held that evidence found when Robbins' car was lawfully searched was inadmissible because the officer wrongfully opened a closed package found in the luggage compartment.[75] However, in *New York v. Belton*,[76] decided the same day, the Court upheld a warrantless search of containers in an automobile on the justification that it was incident to a lawful arrest.[77] Here, police stopped

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the search be necessary to protect the integrity of the *particular* valuable property impounded, and (2) even when the search is appropriate, that it be conducted only after reasonable attempts have been made to identify and reach the owner of the property. Marshall believed that neither of these standards was met in this case, so the search was unreasonable.

67. 417 U.S. 583 (1974).

68. *Id.* at 590.

69. *Id.* at 584.

70. *Id.* at 590-591. The Court noted that the right to privacy is the "touchstone of our inquiry" in fourth amendment analysis of the protection of automobiles. *Id.* at 591.

71. *Id.* at 591.

72. 453 U.S. 420 (1981).

73. *Id.*

74. *Id.* at 426-28. *See supra* note 14 regarding the plain view doctrine.

75. *Id.* at 428. The package was not in plain view nor could the contents be inferred from its outward appearance. *See supra* text accompanying note 74.

76. 453 U.S. 454 (1981).

77. *Id.* at 460.

and arrested occupants of a car for unlawful possession of marihuana. The officer first ordered all of the occupants out of the car. After searching the occupants, the officer proceeded to search the passenger compartment. In the back seat, he discovered cocaine in the pocket of Belton's jacket.[78] The Court stated,

> [W]e hold that when a policeman has made a lawful custodial arrest of the occupant of an automobile, he may, as a contemporaneous incident of that arrest, search the passenger compartment of that automobile.
>
> It follows from this conclusion that the police may also examine the contents of any containers found within the passenger compartment, for if the passenger compartment is within reach of the arrestee, so also will containers in it be within his reach. . . . Such a container may, of course, be searched whether it is open or closed, since the justification for the search is not that the arrestee has no privacy interest in the container, but that the lawful custodial arrest justifies the infringement of any privacy interest the arrestee may have.[79]

The next year, the Court rejected the result in *Robbins*. In *United States v. Ross*,[80] the Court settled the issue of the scope of a warrantless search of closed containers in a vehicle when the warrantless search is based on probable cause.[81] A detective received a call from an informant describing a suspect and his car which were involved in the sale of narcotics. Police officers discovered the car matching the informant's description and pulled it over. The officers searched the interior of the car and found a pistol in the glove compartment. After arresting and handcuffing Ross, the driver of the vehicle, one of the officers took Ross' keys and opened the trunk. He found a closed brown paper bag containing glassine bags of white powder.[82] The car was taken to the police station and searched again. This time a search of the trunk produced a zippered red leather pouch holding $3,200.00 in cash. Ross was charged and later convicted of possession of heroin.[83] The Court considered the question of whether the warrantless search of the containers was reasonable under the fourth amendment.[84] In holding the search reasonable because it was based on probable cause to search the vehicle, the Court stated that, "[t]he scope of a warrantless search based on probable cause is no narrower—and no broader—than the scope of a search authorized by a warrant supported by probable cause. Only the prior approval of the magistrate is waived; the search otherwise is as the magistrate could authorize."[85] The Court further illustrated the scope of the search as being defined by the object of the search, not

78. *Id.* at 456.

79. *Id.* at 460-61.

80. 456 U.S. 798 (1982).

81. *Id.*

82. The powder was later determined by a police laboratory to be heroin. *Id.* at 801.

83. *Id.* at 798.

84. *Id.* at 800-01.

85. *Id.* at 823.

the nature of the container.[86] Justice Powell's concurring opinion praised the majority opinion for giving guidance to this recurring situation.[87] However, Justice Marshall, dissenting, attacked the majority by saying that "it repeals the Fourth Amendment warrant requirement itself."[88] He viewed the majority's opinion as establishing a new "probable cause" exception without regard to the two considerations which originally justified the automobile exception: 1) mobility of the vehicle; and 2) diminished expectation of privacy in an automobile, neither of which he found in the Court's justification for its holding on closed containers found in an automobile.[89]

Finally, in *United States v. Johns*,[90] the Court considered the issue of whether a warrantless search of a vehicle and containers therein which is reasonable if searched immediately is also reasonable if searched three days later.[91] Customs officials had probable cause to search two pickup trucks believed to be involved in drug smuggling.[92] After arresting the occupants of the trucks, officials drove the trucks to the Drug Enforcement Administration headquarters, where they were searched three days later.[93] The Court upheld the search, citing that there is no requirement that the warrantless search occur at the same time as the lawful seizure.[94] Justice Brennan, dissenting, argued that this was an unwarranted extension of *Ross*[95] because there were no circumstances that prevented the officials from obtaining a warrant to search the packages after the trucks were seized.[96]

The "automobile exception" has been extended to vehicles other than automobiles. In *United States v. Sigal*,[97] the Tenth Circuit applied the reasoning of *Carroll*,[98] *Chambers*,[99] and *Cardwell*[100] to hold that a warrantless search of an airplane is reasonable if based on probable cause.[101] The mobility of the plane was a high-

86. *Id.* at 824. The Court further held that when probable cause justifies the search of a vehicle it justifies the search of every part of the vehicle. *Id.* at 825.

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

88. *Id.* at 827 (Marshall, J., dissenting).

89. *Id.* at 830.

90. 469 U.S. 478 (1985).

91. *Id.* at 480.

92. *Id.* at 483.

93. *Id.* at 481.

94. *Id.* at 484. ("[T]he fact that a container is involved does not in itself either expand or contract the well-established exception" *Id.* at 486.)

95. 456 U.S. 798 (1982). *See supra* notes 80-89 and accompanying text.

96. 469 U.S. at 489 (Brennan, J., dissenting).

97. 500 F.2d 1118 (10th Cir. 1974), *cert. denied*, 419 U.S. 954 (1974).

98. 267 U.S. 132 (1925). *See supra* notes 15-23 and accompanying text.

99. 399 U.S. 42 (1970). *See supra* notes 34-37 and accompanying text.

100. 417 U.S. 583 (1974). *See supra* notes 67-71 and accompanying text.

101. 500 F.2d at 1121.

ly significant factor to the court in reaching its decision.[102] In *Sigal,* federal agents followed an airplane suspected of carrying marihuana smuggled from Mexico.[103] Corroborating evidence confirmed their suspicion.[104] Officials arrested Sigal and searched his plane. In doing so, they found 445 pounds of marihuana.[105] The court found probable cause and exigent circumstances to uphold the warrantless search of the airplane.[106]

The question of whether a motor home would qualify as a vehicle under the automobile exception was addressed by the Ninth Circuit in *United States v. Williams.*[107] Border Patrol agents became suspicious of three vehicles travelling together, one of which was a motor home, believing they might be carrying illegal aliens. The agents stopped and searched one of the cars. They found items used in manufacturing PCP.[108] Subsequently, all of the occupants of the vehicles were arrested. Five hours later, the agents searched the motor home[109] and found more items used in PCP manufacture. The occupants, convicted of manufacturing a controlled substance, appealed alleging that the agents obtained the evidence unlawfully since no warrant was secured.[110] The court refused to extend the automobile exception to a motor home on two bases. First, there was no chance that the motor home would be moved or tampered with before the agents could get a warrant because all of the occupants were under arrest.[111] Second, the expectations of privacy in a motor home are greater than in a car due to the fact that people often live in motor homes whereas the same is not true of automobiles; the windows are often tinted or have shades so that the public cannot peer in, and the appointments—beds, bath, etc.—create more of an appearance of a home than a car.[112] The court ultimately upheld the search on the exigent circumstance that the manufacture of PCP created special dangers to the public because of its volatility.[113]

In summary, in order for a warrantless search to be upheld un-

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102. *Id.*

103. *Id.* at 1120.

104. *Id.*

105. *Id.*

106. *Id.* at 1122. *See also* United States v. Rollins, 699 F.2d 530 (11th Cir. 1983), *cert. denied,* 464 U.S. 933 (1983) ("Although these cases may involve automobiles rather than airplanes this court can see no difference between the exigent circumstances of a car and an airplane."). *Id.* at 534.

107. 630 F.2d 1322 (9th Cir. 1980), *cert. denied,* 449 U.S. 865 (1980).

108. *Id.* at 1323. "PCP" is phencyclidine—a controlled substance. *Id.*

109. *Id.* at 1324.

110. *Id.* at 1323-24.

111. *Id.* at 1326.

112. *Id.*

113. *Id.* at 1327. *Cf.* United States v. Gordon, 722 F.2d 112 (5th Cir. 1983)(The court upheld a search of a motor home based upon the reasonable suspicion that the occupants were engaged in criminal activity.).

der the automobile exception before *Carney*, the searching officers must have had probable cause to believe the vehicle contained evidence of a crime,[114] and the vehicle must have been stopped in transit.[115]

INSTANT CASE

In applying the automobile exception to motor homes in *California v. Carney*,[116] the Court emphasized the ready mobility of the motor home, which was one of the original justifications of the exception.[117] But the Court stressed that this element is important whether the motor home is on the highway or is "readily capable" of being used as a vehicle and is not in a place regularly used for residential purposes.[118]

The second element upon which the Court relied to justify extending the exception to include motor homes, was its "lesser expectation of privacy."[119] The Court found this reduced privacy expectation not in the fact that "the area to be searched is in plain view, but from the pervasive regulation of vehicles capable of traveling on the public highways."[120] Homes are not so regulated. Therefore, the Court reasoned that people have a lesser expectation of privacy in moving vehicles than in their homes.

Finally, the Court justified its extension of the exception on the basis that although a motor home is capable of functioning as a home, it was obvious that in this case it was not being used as such.[121] The Court refused to apply the exception on the basis of the size of the vehicle or the quality of its appointments, because application of the exception has historically turned on the "ready mobility" of the vehicle and on the objective presence that the vehicle is being used for transportation.[122]

After concluding that the exception did apply to the motor home in this case, the Court discussed the issue of the reasonableness of the search. The Court held with little discussion that there was abundant probable cause to search and that the search was one which a magistrate could authorize; therefore, it was reasonable.[123]

Justice Stevens, joined by Justices Brennan and Marshall, delivered a lengthy dissent.[124] Justice Stevens characterized the motor

114. *See supra* text accompanying notes 19-21.
115. *See supra* text accompanying notes 39-44.
116. 471 U.S. 386 (1985).
117. *Id.* at 390.
118. *Id.* at 392.
119. *Id.* at 391.
120. *Id.* at 392.
121. *Id.* at 393-94.
122. *Id.*
123. *Id.* at 394-95.
124. *Id.* (Stevens, J., dissenting).

home as a hybrid that placed it somewhere between the privacy interests of a home which requires a warrant to be searched and law enforcement interests which supports warrantless searches of automobiles.[125] He outlined three reasons for his dissent. First, he believed the Court had entered a new area prematurely without thinking through the consequences. If the California court's decision had stood, it would have affected only one state. Now, the decision will affect all fifty states.[126] Secondly, the Court, by extending the exception to motor homes, has given priority to the exception rather than the rule.[127] Finally, Stevens said the majority had abandoned the limits of the exception by allowing the warrantless search of a motor home parked in a lot.[128] Although he would uphold a warrantless search of a motor home travelling on a public highway, he would reach a different result in a case such as this where it was parked in a lot. He considered the motor home more like a dwelling with a higher expectation of privacy than an automobile; therefore, a search of its living quarters without a warrant was unreasonable.[129]

ANALYSIS AND CONCLUSION

The Court is obviously concerned in this case with aiding law enforcement officials in stopping illegal activity. Indeed, the Court stated that "to fail to apply the exception to vehicles such as a motor home ignores the fact that a motor home lends itself easily to use as an instrument of illicit drug traffic and other illegal activity."[130] In fact, the seminal case articulating the vehicle exception involved an automobile used to carry contraband.[131] Because a motor home is capable of being used as a dwelling however, precise guidelines are needed to allow the extension of the automobile exception to motor homes.

This extension portends new problems for law enforcement officials. One of these concerns what bearing the place where the motor home is parked when searched has on the application of the exception. The Court stated that the exception would apply when the vehicle is being used on the highways or is capable of such use and "found stationary in a place *not regularly used for residential purposes—temporary or otherwise.*"[132] Presumably, the exception would not apply to motor homes parked on private

125. *Id.*
126. *Id.* at 399.
127. *Id.* at 402-03.
128. *Id.*
129. *Id.* at 407-08.
130. *Id.* at 393.
131. Carroll v. United States, 267 U.S. 132 (1925). *See supra* notes 15-23 and accompanying text.
132. 471 U.S. at 393 (emphasis added).

property, trailer parks, or even campgrounds since they can be temporary residences. But, the problem arises when motor homes become temporary residences, such as when they are parked for the night or weekend in recreational areas, beaches, roadside parks, etc. As a residence, the motor home would have a greater expectation of privacy; however, these areas are also susceptible to being used in drug trafficking or other criminal activity, thus law enforcement interests are also important. A balancing of interests must take place.

A second problem deals with determining the purpose for which the motor home is being used. The Court said the exception would apply to vehicles "situated such that it is reasonable to conclude that the vehicle is not being used as a residence."[133] They listed some factors in a footnote that might be used in making this determination—readily movable, elevated on blocks, connected to utilities, etc.[134] The problem lies with the fact that when the motor home is being used as a temporary residence, these objective factors may not be present. The Court seemed to have implicitly overruled *Coolidge v. New Hampshire.*[135] In *Coolidge,* the Court refused to extend the exception to the vehicle in question. They found that there was probable cause to search the arrestee's car but no exigent circumstances to justify searching it without a warrant as there was no indication that it was about to be moved.[136] In *Carney,* however, the Court based its ruling on the fact that Carney's vehicle was "readily capable" of being moved even though it was stationary. The Court did make it clear that this motor home was *objectively* not being used as a residence,[137] but neither was Coolidge's car. Are we to assume then, that for a person's home to be protected by the fourth amendment it must look like a home to the court?

Finally, the Court left open the question of whether a warrant must be obtained if it is practical. In *United States v. Ross,*[138] the Court specifically stated that where it is practicable to obtain a warrant, the officer must do so.[139] The majority made no mention of this in its opinion in *Carney.* However, the dissent pointed out that, under the circumstances present in *Carney,* it would have been easy to obtain a warrant since the motor home was

133. *Id.* at 393.

134. *Id.* at 394 n.3.

135. 403 U.S. 443 (1971)(plurality opinion). *See supra* notes 45-51 and accompanying text.

136. 403 U.S. at 463-64. *See supra* notes 45-51 and accompanying text.

137. 471 U.S. 394. In other words, it is not on blocks or hooked up to an electrical pole.

138. 456 U.S. 798 (1982). *See supra* notes 80-89 and accompanying text.

139. 456 U.S. at 807. The Court reiterated this requirement found in *Carroll. See supra* text accompanying note 15.

parked in downtown San Diego.[140] It seems that the exigent circumstance that the vehicle is fleeting, once required to justify a warrantless search, is not as important; hence *Carney* impliedly overrules *Coolidge.*[141]

Following *Carney,* it appears that the only requirement necessary for a vehicle of any type to be searched without a warrant is that the officer have probable cause to believe the vehicle contains evidence of a crime. No other exigent circumstances are necessary. This analysis effectively writes out the original justification for the exception; that the car might be "quickly moved"[142] out of the jurisdiction before a warrant could be obtained, necessitating an immediate warrantless search.

It is readily apparent that a balancing is required between an individual's expectation of privacy (however low) in his vehicle/motor home and law enforcement interests in stopping illegal activity. As a result, the Supreme Court has received many cases seeking interpretation of the automobile exception. This places the Court in the position of what Justice Stevens describes as the "High Magistrate" for every warrantless search and seizure case.[143] The Court's application of the automobile exception to the facts in *Carney* appears to be a natural extension of the rule, given that the motor home *in this case* was functioning as transportation and not as a residence. However, given different facts, this motor home, used for illegal activity, could just as easily have functioned as Carney's home, carrying with it all the privacy rights of any other home. Law enforcement officials need more definite guidelines in applying the automobile exception to motor homes. The Court alluded to such guidelines in *Carney,* but the right to privacy of the home demands more security than was delivered here.[144]

C. Joyce Hall

140. 471 U.S. at 403.

141. Coolidge v. New Hampshire, 403 U.S. at 458 (no exigent circumstances existed because there was no indication the car was fleeting.).

142. *See* Carroll v. United States, 267 U.S. 132 (1925). *See Supra* notes 15-23 and accompanying text.

143. 471 U.S. at 397.

144. Indeed since the initial writing of this Note, the Ninth Circuit in United States v. Hamilton, 792 F.2d 837 (9th Cir. 1986), extended the automobile exception to a motor home parked on private property and connected to electrical utilities. The court's justification for this extension was that the motor home had just been moved the night before the search; therefore, under *Carney* it was "readily capable of use on the highways." *Id.* at 842-43. The court further states that "[t]he fact that the motor home was attached to 'utilities' in the broad sense is not very significant." *Id.*