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Better-Off Walking: Wyoming v. Houghton Exemplifies What Acevedo Failed to Rectify

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BETTER-OFF WALKING: *WYOMING V. HOUGHTON* EXEMPLIFIES WHAT *ACEVEDO* FAILED TO RECTIFY

I. INTRODUCTION

Over the years the United States Supreme Court attempted to produce bright-line rules governing the automobile exception to the Fourth Amendment's warrant requirement. However, the Court's numerous, often confusing decisions in the past eight decades served only to blur those lines. With each attempt to fashion rules that would be workable for both law enforcement in application and lower courts in administration, citizens' Fourth Amendment rights were narrowed.[1] Each time the Court attempted to clarify a rule, it expanded police power to conduct virtually limitless warrantless searches, consistently eviscerating personal privacy rights.[2] The result is an exception originally intended to be narrowly tailored that has strained, then surpassed, its original justifications and now threatens to eliminate the application of the Fourth Amendment's protections within the confines of automobiles.[3]

The Court recently redefined the scope of warrantless automobile searches in *Wyoming v. Houghton*[4] by announcing that police officers who have probable cause to search a car may also inspect all parts of and containers in the vehicle, including passengers' belongings, that are capable of holding the object of the general search.[5] Prior to *Houghton*, the desire was to prevent a situation where police officers' specific probable cause with respect to a single item or individual required them to conduct broader warrantless

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1. *See* California v. Acevedo, 500 U.S. 565, 576 (1991) (stating that the Fourth Amendment does not compel separate treatment for an automobile search that extends only to a container within the vehicle); Dunaway v. New York, 442 U.S. 200, 213-14 (1979) (stating that a single understandable rule is necessary to provide police officers guidance in making quick decisions while carrying out their duties).

2. *See generally Acevedo*, 500 U.S. 565 (holding that "the police may search an automobile and the containers within it, where they have probable cause to believe contraband or evidence is contained"); United States v. Ross, 456 U.S. 798 (1982) (holding that police may conduct a search of an automobile "that is as thorough as a magistrate could authorize in a warrant").

3. *See* Jones v. United States, 357 U.S. 493, 499 (1958) (stating that exceptions to the warrant requirement must be carefully drawn, the purpose of which is to restrain police engaged in the often competitive enterprise of combating crime); *see also* Katz v. United States, 389 U.S. 347, 357 (1967) (holding that warrantless searches were per se unreasonable unless they fit within a well-drawn exception). *Katz* represents the Court's original interpretation of the Fourth Amendment. *See id.*

4. 119 S. Ct. 1297 (1999).

5. *See id.* at 1304.

vehicle searches in order to justify the specific aim of the search.[6] The *Houghton* decision, however, clearly eradicates that sought-after privacy protection by authorizing broad warrantless searches of the entire vehicle and all its contents, regardless of ownership.[7] The decision, the majority felt, was clearly in line with, and moreover, was dictated by, precedent that stretched back to the creation of the automobile exception itself.[8]

This note first discusses the creation and evolution of the automobile exception. Second, it sets out the facts and holding in *Houghton*. Next, it analyzes the holding in light of precedent and its application. Finally, the note discusses the potential ramifications and an actual misapplication of the *Houghton* rule.

II. DEVELOPMENT OF THE AUTOMOBILE EXCEPTION TO THE FOURTH AMENDMENT WARRANT REQUIREMENT

The warrant requirement of the Fourth Amendment[9] was created to act as a prophylactic device, placing a neutral judiciary between police and citizens, restraining police action and protecting citizens' rights under the Fourth Amendment before the intrusion is completed.[10] The prior review requirement by a neutral judiciary places limits on a concentration of executive power over citizens that prevents overly intrusive searches from occurring.[11] Additionally, prior judicial review serves to "prevent hindsight from coloring the evaluation of the reasonableness of a search or seizure."[12] Justice Stewart commented: "we cannot accept the view that Fourth Amendment interests are vindicated so long as 'the rights of the

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6. *See, e.g., Acevedo*, 500 U.S. 565.
7. *See Houghton*, 119 S. Ct. at 1303.
8. *See id.* at 1299-1301.
9. The Fourth Amendment to the Constitution 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; *see also* Boyd v. United States, 116 U.S. 616, 623-24 (1886) (stating that evidence obtained in violation of the Fourth Amendment is inadmissible in court).

10. *See* Franks v. Delaware, 438 U.S. 154, 164 (1978) (stating that the majority of Fourth Amendment protection is within the warrant requirement clause); United States v. Ventresca, 380 U.S. 102, 105-07 (1965) (discussing the main purpose of a search warrant); Beck v. Ohio, 379 U.S. 89, 96 (1964) (explaining the purpose for arrest warrants).

11. *See* United States v. United States Dist. Court, 407 U.S. 297, 317 (1972).

12. United States v. Martinez-Fuerte, 428 U.S. 543, 565 (1976).

criminal' are 'protect[ed] . . . against introduction of evidence seized without probable cause.' The Amendment is designed to prevent, not simply to redress, unlawful police action."[13] As a result, any exceptions to the Amendment were to be narrowly tailored[14] to accomplish the limited societal goals that created the need for exceptions.[15] The burden is on the party seeking application of an exception to show the necessity of its application.[16]

A. *Creation of the Automobile Exception*

In *Carroll v. United States*[17] the Court first recognized a distinction in the requisite evaluation for warrants in homes and in cars resulting in the creation of an exception for automobiles and other movable vessels.[18] The Court found that ready mobility of vehicles

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13. Chimel v. California, 395 U.S. 752, 766 n.12 (1969) (alteration in original) (quoting the dissenting opinion); *see also* California v. Acevedo, 500 U.S. 565, 586 (1991) (Stevens, J., dissenting) (stating that the Court has recognized the importance of the warrant requirement as a "bulwark against police practices that prevail in totalitarian regimes"). Justice Stevens also stated that the warrant requirement reflects sound policy judgment that without exigent circumstances, the decision to intrude on an individual's privacy is best placed in the hands of a neutral third party. *See id.* (Stevens, J., dissenting).

14. *See, e.g.*, Johnson v. United States, 333 U.S. 10, 13-14 (1948). *But see Acevedo*, 500 U.S. at 582 (Scalia, J., concurring) (stating that the law explaining the reasonable expectation of privacy appears to have been developed as a means of creating exceptions to the rules). Justice Scalia noted that one commentator listed close to twenty exceptions, including: searches incident to arrest, border searches, administrative searches of nonregulated businesses, exigent circumstances, search incident to nonarrest if probable cause supported an arrest, boat boarding document checks, welfare searches, inventory and airport searches, as well as school searches. *See id.* (Scalia, J., concurring) (citing Craig M. Bradley, *Two Models of the Fourth Amendment*, 83 MICH. L. REV. 1468, 1473-74 (1985) (footnotes omitted)). The Court has since added two more exceptions: searches of offices of government employees, *O'Connor v. Ortega*, 480 U.S. 709 (1987), and mobile home searches, *California v. Carney*, 471 U.S. 386 (1985).

15. *See* Chapman v. United States, 365 U.S. 610 (1961) (stating that exceptions to the warrant requirement were to extend only as far as necessary to accomplish the limited societal needs that initially created the exception); *see also* Lewis R. Katz, United States v. Ross: *Evolving Standards for Warrantless Searches*, 74 J. CRIM. L. & CRIMINOLOGY 172, 186 n.93 (explaining that limiting warrantless searches was the intent of the Framers who, in constructing the Amendment, were suspicious of government intrusions into the lives of the citizenry absent previous judicial review). For a discussion of the colonial history of the warrant requirement, which is beyond the scope of this note, see Joseph D. Grano, *Rethinking the Fourth Amendment Warrant Requirement*, 19 AM. CRIM. L. REV. 603, 617, 620 (1982).

16. *See* United States v. Jeffers, 342 U.S. 48, 51 (1951).

17. 267 U.S. 132 (1925).

18. *See id.* at 153 (emphasizing the impracticability of obtaining a warrant for a vessel that is readily mobile and can disappear before a warrant is issued); *see also* South Dakota v. Opperman, 428 U.S 364, 367 (1976) (stating that due to ready mobility of vehicles, stringent application of the warrant requirement is practically impossible); Chambers v.

and the exigency of circumstances to search and seize contraband dictated the use of a more relaxed reasonableness standard.[19] This exigency permitted police to conduct warrantless vehicle searches if they had probable cause to stop the vehicle without offending the Fourth Amendment.[20] In subsequent decisions, a majority of the Court observed that there is a reduced expectation of privacy within a vehicle,[21] but remained reluctant to expand that rationale to allow searches of containers within locked compartments in vehicles.[22] While the decision in *Carroll* addressed the general applicability of the exception, it failed to define the proper scope of such a warrantless search in a vehicle.[23]

B. *Expanding the Exception*

1. Container in the Car Searches

The Court eventually grew cognizant of the potential for expansion of the automobile exception beyond its original justifications for

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Maroney, 399 U.S. 42, 51-52 (1970) (explaining that the window of opportunity to search a movable vessel is brief). The vehicle in *Chambers* had been seized prior to the search, removing exigency, but the Court reasoned that there is little difference between seizing and/or detaining a vehicle while waiting for a warrant and conducting an immediate search pending issuance of a warrant. *See id.*

19. *See Carroll*, 267 U.S. at 153. Subsequent cases make clear that *Carroll* was not based on sheer exigency because once a vehicle has been stopped, there is no real danger that the vehicle will exit the jurisdiction and be outside its warrant authority. *See Chambers*, 399 U.S. at 62-64. In *Chambers* the Court wrote:

> For constitutional purposes, we see no difference between on the one hand seizing and holding a car before presenting the probable cause issue to a magistrate and on the other hand carrying out an immediate search without a warrant. Given probable cause to search, either course is reasonable under the Fourth Amendment.

Id. at 52; *see also* Jeffrey O. Himstreet, Note, *The Executive's War on Crime Takes a Bite out of Privacy in* California v. Acevedo, 28 WILLAMETTE L. REV. 195, 197 (1991).

20. *See Carroll*, 267 U.S. at 149, 162 (finding that prohibition officers had probable cause to believe the car contained bootleg liquor and conducted a warrantless search that involved removal of seat upholstery to locate the object of the search).

21. *See* Cardwell v. Lewis, 417 U.S. 583, 590 (1974) (plurality opinion) (stating that the expectation of privacy is reduced in vehicles because the vehicles are used as a method of transportation, rather than as a storage area for personal effects, and because the vehicle travels public roads with its occupants and contents in full view). *But see infra* notes 29 and 32 (explaining that reduced expectation of privacy pertains primarily to the vehicle itself, not to the contents within it).

22. *See* Arkansas v. Sanders, 442 U.S. 753 (1979); United States v. Chadwick, 433 U.S. 1 (1977). Both *Sanders* and *Chadwick* were overruled by *California v. Acevedo*. *See Acevedo*, 500 U.S. at 579.

23. *See* United States v. Ross, 456 U.S. 798, 799-800 (1982).

application. The Court drew a constitutional line in *United States v. Chadwick,*[24] holding that police conducting a warrantless search of a locked container within a vehicle under the authority of the automobile exception violated the Fourth Amendment even though the police had probable cause to believe the container contained contraband.[25] In *Chadwick*, federal narcotics agents had probable cause to believe that a 200 pound double-locked footlocker contained marijuana.[26] The agents, however, developed this probable cause prior to the time the locker was placed in the car.[27] Instead of stopping the suspect and seizing the container, the agents waited to seize and search it after the suspect placed the locker into the trunk of a car.[28] The probable cause in question pertained only to the container and not to the car itself. The majority reasoned that probable cause to search the car was insufficient because there was a heightened expectation of privacy in the luggage in question, more so than the privacy interest in the car itself.[29]

The Court seemed settled in this limitation on the automobile exception when it announced its decision in *Arkansas v. Sanders*,[30] again stating that a warrantless search of a container in an automobile violated the Fourth Amendment since probable cause did not extend to the container.[31] Any sacrifice of privacy pertained only to that expectation in the vehicle, not to the containers within it, regardless of the type of container in question.[32]

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24. 433 U.S. 1 (1977); *see also Sanders*, 442 U.S. at 773 (finding that federal narcotics agents had probable cause to believe that defendant's footlocker, located in car trunk contained marijuana).

25. *See Chadwick*, 433 U.S. at 13-14. Later the Court indicated that the whole vehicle could be searched, just not containers within it. *See Sanders*, 442 U.S. at 766; *see also* South Dakota v. Opperman, 428 U.S. 364, 366 (1978) (finding that search based on probable cause permits search of locked glove compartment); Texas v. White, 423 U.S. 67, 68 (1975) (permitting warrantless search of entire passenger area); Chambers v. Maroney, 399 U.S. 42, 44 (1974) (involving a hidden dash compartment); Cady v. Dombrowski, 413 U.S. 433, 437 (1973) (holding that search of locked trunk of car was not unreasonable); Carroll v. United States, 267 U.S. 132, 136 (1925) (finding that police were permitted to remove seat upholstery while conducting a warrantless search to locate the object of the search).

26. *See Chadwick*, 433 U.S. at 3.

27. *See id.* at 4.

28. *See id.*

29. *See id.* at 12-13; *cf. supra* note 19 (discussing the Court's holding in *Chambers* that once probable cause has attached to search a vehicle, it is reasonable under the Fourth Amendment to search the vehicle immediately or to seize it and wait for a search warrant).

30. 442 U.S. 753 (1979).

31. *See id.* at 763-64.

32. *See id.* at 765 n.13. The Court intimated that all containers did not receive the same level of constitutional protection. For example, the container may not show an expectation of privacy if the contents are determinable by their packaging. Justice Powell predicted this

In *Sanders*, the police had probable cause to believe that the suspect's suitcase contained illegal drugs.[33] Similar to *Chadwick*, the officers waited until the luggage was placed into the trunk of a taxi before stopping the car and searching the suitcase.[34] By the extension of the *Chadwick* rule's privacy protection to a container actually being transported in a vehicle, the container could be seized but not opened without a warrant since the automobile exception does not extend to personal luggage.[35] An expectation of privacy in containers, the majority reasoned, is not diminished by placing them in a car. In fact, in both *Chadwick* and *Sanders*, the Court determined that exigency was lacking when the object of the search was a container that could easily be seized pending the issuance of a search warrant.[36]

The privacy-conscious standard that denied the automobile exception's application to containers located in vehicles, first announced in *Chadwick*, stood for only five years.[37] During that short time, both law enforcement and lower courts found the standard difficult to administer.[38] Furthermore, the Court purported to adhere to the exigency rationale,[39] but there appeared to be a growing willingness to expand the exception.[40]

Shortly after its decision in *Sanders*, the Court added another exception to the warrant requirement, the search incident to arrest,

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rule would result in difficulty in determining which containers were entitled to full protection that would lead to incessant litigation. *See id.*

33. *See id.* at 755.

34. *See id.*

35. *See* Himstreet, *supra* note 19, at 199.

36. *See Sanders*, 442 U.S. at 761; *Chadwick*, 433 U.S. at 12.

37. *United States v. Ross*, 456 U.S. 798 (1982), blurred the *Chadwick-Sanders* rule by announcing that if probable cause attached to search the vehicle, all its contents were searchable. *See id.* at 824. If probable cause attached to a container, a warrant was required to search or open the container. *See id.*

38. *See* United States v. Ross, 655 F.2d 1159, 1174 n.3, 1175 n.4 (D.C. Cir. 1981) (en banc) (Tamm, J., dissenting).

39. *See* Robbins v. California, 453 U.S. 420, 424-25 (1981) (plurality opinion) (explaining that the mobility justification and reduced expectation of privacy are not applicable rationales in reference to containers). Justice Stewart's plurality opinion questioned the applicability of the rationale, since what one may place in a suitcase another may put in a paper sack. *See id.* at 426-27. Despite the fact that *Robbins* extended constitutional protection to paper bags, lower courts were reluctant to implement it. *See* State v. Olsen, 315 N.W.2d 1 (Iowa 1982) (upholding warrantless search of paper sack under *Carroll* rather than applying the unclear precedent from *Robbins*); *see also* Anthony E. Kaplan, Note, *Drawing Lines around the Fourth Amendment:* Robbins v. California *and* New York v. Belton, 10 HOFSTRA L. REV. 483 (1982).

40. *See* United States v. Robinson, 414 U.S. 218 (1973) (holding that police who have probable cause to arrest a suspect may search all areas of an automobile incident to arrest).

when it announced its decision in *New York v. Belton*.[41] According to the Court in *Belton*, the permissible scope of a vehicle search initiated incident to lawful arrest includes any container found in the car.[42] One of the principal rationales supporting car searches incident to arrest is that the arrestee may reach into the car and gain possession of a weapon or other criminal evidence that could be destroyed.[43] In part, the *Belton* decision was based on the understanding that containers found in the narrow confines of the passenger compartment were within the potential control of all the vehicle's occupants, not just the driver.[44]

With this groundwork laid, the Court, in *United States v. Ross*,[45] similarly defined the scope of a warrantless vehicle search. The Court held that warrantless searches, based on probable cause rather than exigency per se, also permitted warrantless searches of containers found in cars if there was probable cause to believe the *vehicle* contained contraband, thereby expanding the exception.[46] The scope of warrantless searches of this kind is neither broader nor narrower than could be judicially authorized in a warrant.[47] The Court concluded that the warrant process would be misdirected if police were permitted to search an automobile from top to bottom until they happened upon a container that more likely than not held the object of their general search, at which point officers would have to obtain a warrant before proceeding.[48] Rather, car searches based on probable cause are designed to prevent the loss or further concealment of criminal evidence.[49]

While the Court abolished *Chadwick*'s container/car distinction,[50] it did not directly overrule *Chadwick* or *Sanders* since a warrant was still required to search a container if probable cause extended

41. 453 U.S. 454 (1981).
42. *See id.* at 460.
43. *See Robinson*, 414 U.S. at 227.
44. *See Belton*, 453 U.S. at 460.
45. 456 U.S. 798 (1982).
46. *See id.* at 800. The Court based its decision on the same factors considered in all vehicle searches: ready vehicle mobility and a reduced expectation of privacy. *See id.* at 806-07, 823-25. *See also* Cardwell v. Lewis, 417 U.S. 583, 590 (1974) (plurality opinion) (finding that the reduced expectation of privacy results from pervasive governmental regulation of vehicles and the privilege of driving them).
47. *See Ross*, 456 U.S. at 825.
48. *See id.* at 815-16, 818 n.21.
49. *See id.* at 806-07.
50. *See id.* at 823.

only to the container.[51] The exigency rationale was not abandoned though, as the *Ross* majority intimated that the same exigency that attached to a movable vehicle also attached to a movable container within that vehicle.[52] In deference to the *Chadwick-Sanders* precedent, the Court chose not to address that issue.[53]

Thus, the decision in *Ross* required interpretation of a confusing line of precedent from which to choose: whether to apply the *Carroll* doctrine that permitted a general vehicle search if police had probable cause to believe that the car contained contraband or the *Chadwick* doctrine that governed luggage-type searches where probable cause only extended to the container. The *Ross* Court took the first crucial step by clarifying that closed containers in vehicles could be searched without a warrant based on their presence in the car.[54] In fact, the *Ross* dissenters, addressing the remnants of *Chadwick*, questioned why a suitcase is per se more private or harder to store, or for any other reason more deserving of warrant requirement protection than containers discovered in a general probable cause search of an entire vehicle.[55] That question was answered in *California v. Acevedo*[56] when the Court took the next crucial step by overruling *Sanders* and the remnants of *Chadwick*.[57]

One of the primary purposes for deciding *Acevedo* was to prevent a situation where police with less probable cause were justified in conducting a more intrusive general search.[58] When the Court specifically addressed the question on facts analogous to *Ross*, the majority "recognized 'the anomalous nature' of the dichotomy" created by the *Ross* and *Chadwick* holdings.[59] In response, the exception was extended to all containers in vehicles.[60] The Court reasoned:

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51. *See id.* at 824. The decision not to wholly overrule *Sanders* may have been an attempt at preserving some aspect of personal privacy. What resulted, though, was confusion as to which precedent applied, *Sanders* or *Ross*. *See* Himstreet, *supra* note 19, at 201.

52. *See Ross*, 456 U.S. at 809.

53. *See id.* at 824; *see also* California v. Acevedo, 500 U.S. 565, 573 (1991).

54. *See Ross*, 456 U.S. at 823; *see also Acevedo*, 500 U.S. at 572.

55. *See Ross*, 456 U.S. at 834 (Marshall, J., dissenting); *see also Chadwick*, 433 U.S. at 20-21 (Blackmun, J., dissenting).

56. 500 U.S. 565 (1991).

57. *See id.* at 579.

58. *See id.* at 575.

59. *Id.* at 568.

60. *See id.* at 574.

> The line between probable cause to search a vehicle and probable cause to search a package in that vehicle is not always clear, and separate rules that govern the two objects to be searched may enable the police to broaden their power to make warrantless searches and *disserve privacy interests*.[61]

Further, the Court saw no benefit to a set of rules where "'fortuitous circumstances . . . control the outcome' of various searches."[62]

The majority stated that *Ross* permitted specific container searches to prevent a situation where police have probable cause to search a container but feel compelled to search the entire car to qualify under the automobile exception.[63] In all vehicle searches, whether the general search reveals a container or whether the container is itself the object of the search, as long as the search was prefaced by probable cause, the search falls within the automobile exception and does not require a search warrant.[64] In a search where probable cause extends *only* to a container found in a vehicle, a warrantless search is permissible if there is specific probable cause to believe that it holds contraband.[65]

Perhaps attempting to lessen the impact of the new rule, the majority reaffirmed that if probable cause was localized to a specific area in the car and a search of that area revealed a container, the search of the container was permitted without a warrant, but the search could go no further than the original probable cause dictated.[66] Nevertheless, the Court felt that in the balance of the need for practical law enforcement rules and citizens' Fourth Amendment rights, the need for the bright-line rule prevailed.[67] That bright-line rule, despite its desire to prevent more intrusive searches, militated in favor of law enforcement.

With the new container rule, the question remained as to whether it would prove a clarification of anomalous precedent and actually limit the scope of warrantless searches in situations where police had specific or individualized probable cause. Previously, each

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61. *Id.* (emphasis added).
62. *Id.* at 578 (quoting *Chadwick*, 433 U.S. at 22).
63. *See id.* at 580.
64. *See id.*
65. *See id.*
66. *See id.*
67. *See id.* at 580-81; Himstreet, *supra* note 19, at 204-05. *But see Acevedo*, 500 U.S. at 587 (Stevens, J., dissenting) (stating it is better for police to be burdened than citizens).

attempt at clarification by the Court seemed to produce more uncertainty as to the application and extent of each rule.[68] Since it was clear to the *Acevedo* majority that past rules had resulted in greater losses of citizens' personal privacy, would the new rule serve to preserve a modicum of personal privacy? Since the new rule permitted warrantless searches of the vehicle and closed containers within it, would this apply to all property belonging to all vehicle occupants? The Court answered these questions with a resounding "yes" when it announced its decision in *Wyoming v. Houghton*.[69]

III. FACTS, LOWER COURT DISPOSITION, AND HOLDING OF *WYOMING V. HOUGHTON*

Wyoming Highway Patrol initiated a lawful traffic stop of a vehicle for speeding and a broken brake light in the early morning hours of July 23, 1995.[70] There were three passengers–the driver, David Young, the driver's girlfriend, and respondent Sandra Houghton.[71] When the officers noticed a syringe in Young's pocket, he admitted that "he used it to take drugs."[72]

All three occupants were ordered out of the car, placed in the custody of another officer, and then "patted down" for weapons and contraband.[73] When the pat down failed to yield any contraband, the police searched the passenger compartment for additional drugs, finding a purse behind the area where Houghton and the other female passenger had been sitting.[74] Houghton admitted that the purse belonged to her.[75] Without further comment, the officer searched the purse and removed a brown pouch that contained drug paraphernalia, a syringe containing liquid, and a black wallet-like

68. *See* cases cited *supra* notes 18 and 22. For example, the vehicle in *California v. Carney*, 471 U.S. 386 (1985), was a mobile home. The Court found the exception extended to searches of such movable vessels because of the same exigency rationale that applied to a two-door sedan. *See id.* at 393-94.

69. 119 S. Ct. 1297 (1999).

70. *See id.* at 1299.

71. *See id.*

72. *Id.*

73. *See* Houghton v. State, 956 P.2d 363, 365 (Wyo. 1998). The Wyoming Supreme Court found that there was "no reasonable basis for the pat down search of the passengers." *Id.* at 365 n.1.

74. *See Houghton*, 119 S. Ct. at 1299.

75. *See id.*

container, also containing drug paraphernalia, a vial, and another syringe.[76]

The officer took custody of the two containers and returned the purse to the car.[77] Houghton was then arrested for possession of a controlled substance and charged with felony possession of methamphetamine.[78] The driver and other passenger were released.[79]

Prior to trial, Houghton filed a motion to suppress all evidence from the purse, alleging the search violated the Fourth and Fourteenth Amendments, arguing that there was no probable cause to search her belongings.[80] The district court, relying on *Acevedo*, denied the motion, finding that the officers had probable cause to search the entire car for contraband, including a search of all containers within it that were capable of concealing the particular contraband.[81] The jury convicted Houghton as charged.[82]

On appeal, the question before the Wyoming Supreme Court was "whether the personal belongings of a passenger may be searched under the 'automobile exception' when probable cause exists to search the automobile, but there is no probable cause to believe the passenger is involved in criminal activity."[83] Houghton asserted that, even though there was probable cause to search the car, "the search of her purse violated her justifiable expectation of privacy in her personal belongings."[84] The State asserted that police have "no duty to determine probable cause as to each container within the car, and consequently the permissible scope of the search included the search of all containers."[85]

The Wyoming Supreme Court reversed the district court, stating that even though the police had probable cause to search the car and thus were entitled to search the containers within, police could not

76. *See id.*
77. *See id.*
78. *See id.*
79. *See id.*
80. *See id.* at 1300.
81. *See id.*
82. *See id.*
83. Houghton v. State, 956 P.2d 363, 366 (Wyo. 1998).
84. *Id.*
85. *Id.*

search such containers if they knew or should have known the container belonged to a nonsuspect passenger unless the driver-suspect had an opportunity to conceal contraband within it.[86] This "notice test," traditionally applied in the context of searches of dwellings, was based on the Supreme Court's preference for individualized suspicion coupled with a balancing of "the legitimate interests of both the individual and law enforcement."[87] Based on this new "passenger's property" rule, the Wyoming Supreme Court found the search violated the Fourth and Fourteenth Amendments because the police knew the purse did not belong to the driver, had no probable cause to suspect Houghton of any criminal activity, and lacked probable cause to believe the driver had placed contraband in the purse.[88]

The United States Supreme Court granted certiorari and reversed the Wyoming Supreme Court.[89] Justice Scalia, writing for the majority, held that a warrantless police search of an automobile based on probable cause permits a search of any "passenger's belongings found in the car that are capable of [holding or] concealing the object of the search" which in this case was drugs.[90]

IV. ANALYSIS

A. *Majority Opinion*

The Supreme Court reached a constitutional crossroad when it again was faced with defining the permissible scope of a search under the automobile exception in *Houghton*: whether the rule in *Ross*, subsequently expanded in *Acevedo*, permits warrantless searches of passengers' belongings "capable of concealing the object of the search" found in an automobile when police have probable cause to search the vehicle.[91] Making its determination, the Court set forth a two-prong analysis to decide whether a government action violates the Fourth Amendment. First, the Court asked whether the search or seizure would have been considered unlawful

86. *See id.* at 372.
87. *Id.* at 369-70.
88. *See id.* at 372.
89. *See* Wyoming v. Houghton, 119 S. Ct. 1297, 1304 (1999).
90. *Id.*
91. *Id.*

at the time the Fourth Amendment was framed.[92] If no answer is found there, an evaluation must be made using traditional reasonableness standards that balance the degree of the act's intrusion on personal privacy against the degree to which the act was necessary to further a legitimate government interest.[93]

The Court, finding the police action in this case passed both prongs of the analysis, decided that the rule in *Ross* also permitted warrantless searches of passengers' belongings in a vehicle.[94] The Court, first examining the roots of the automobile exception in *Carroll*,[95] found that general probable cause existed to believe the car in *Houghton* contained contraband.[96] It also relied on *Ross*'s general rule that "the permissible scope of a warrantless car search 'is defined by the object of the search and the places in which there is probable cause to believe that it will be found.'"[97]

The Court, perhaps unconvinced by the satisfaction of the first prong of this test, went on to the second prong of the analysis–balancing the personal privacy interest against the government interest in effective law enforcement. It found the balance tipped in favor of the government.[98] The Court reasoned that passengers have the same reduced expectation of privacy as do

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92. See *id.* at 1300 (citing Wilson v. Arkansas, 514 U.S. 927, 931 (1995) and California v. Hodari D., 499 U.S. 621, 624 (1991)).

93. *See id.* (citing Vernonia Sch. Dist. 47J v. Acton, 515 U.S. 646, 652-53 (1995)). *But see supra* note 73. The Wyoming Supreme Court found that there was "no reasonable basis for the pat down search of the passengers." Houghton v. State, 956 P.2d 363, 365 n.1 (Wyo. 1998). Thus, it seems uncertain whether the search in *Houghton* actually furthered a legitimate government interest.

94. *See Houghton*, 119 S. Ct. at 1300-01 (discussing the interpretations of *Ross* in California v. Acevedo, 500 U.S. 565, 571-72 (1991), stating that *Ross* applied broadly to all containers, without qualification as to ownership; and United States v. Johns, 469 U.S. 478, 479-80 (1985), stating that *Ross* permitted the search of any containers within a vehicle that may hold the object of the search, based on their presence in the vehicle).

95. *See Houghton*, 119 S. Ct. at 1300 (discussing Carroll v. United States, 267 U.S. 132 (1925)). The *Carroll* court concluded that such a search would have been reasonable at the time of the framing of the Fourth Amendment in light of congressional legislation which gave customs officials authority to conduct warrantless searches of ships if they had probable cause to believe they contained goods subject to a duty. *See Carroll*, 267 U.S. at 151.

96. *See Houghton*, 119 S. Ct. at 1300.

97. *Id.* at 1301 (quoting *Ross*, 456 U.S. at 824).

98. *See id.* at 1302. *But see* Robbins v. California, 453 U.S. 420, 433-34 (1981) (Powell, J., concurring) (finding that police time and expense in procuring a warrant may be justified by the individual privacy interest that is protected as a result, but the sheer number of warrants creates a higher aggregate burden that may not be justified by the protection of sometimes trivial privacy interests).

drivers.[99] The majority found the Wyoming Supreme Court's "passenger's property" rule unacceptable because it placed an impractically high burden on law enforcement and would encourage litigation.[100] In rejecting this analysis, the majority stated that practicalities in administration must be considered and found that such practicalities "militate in favor of the needs of law enforcement, and against a personal-privacy interest that is ordinarily weak,"[101] sounding the virtual death knell for citizens' privacy in an automobile.

1. Search of Passengers' Belongings Is Historically Reasonable

The Court, apparently unwilling to address *Acevedo*'s goal of lessening the intrusive scope of automobile searches, based its decision on *Carroll* and *Ross*. It concluded that probable cause existed to believe that the car contained contraband, so the general search was authorized.[102] Based on the historical evidence those cases relied upon, the majority felt the Framers would have deemed a warrantless search of all containers in that vehicle reasonable.[103] While the majority recognized that *Ross* did not involve a passenger, they found dispositive the fact that *Ross* did not limit its holding to drivers only.[104] As a result, the Court reasoned that "'[t]he critical element in a reasonable search is not that the owner of the property is suspected of crime but that there is reasonable cause to believe that the specific "things" to be searched for and seized are located on the property to which entry is sought.'"[105] Police searches of the type

99. *See Houghton*, 119 S. Ct. at 1302. *But see* Delaware v. Prouse, 440 U.S. 648, 662 (1979) (noting that many automobile travelers feel more secure in cars than in other forms of transportation).

100. *See id.* at 1303.

101. *Id. But see id.* at 1306 (Stevens, J., dissenting) (questioning whether the State's legitimate law enforcement interest can outweigh a serious privacy intrusion).

102. *See id.* at 1300.

103. *See id.*

104. *See Houghton*, 119 S. Ct. at 1301 (stating that if *Ross* was intended to be limited to the facts of that case, involving only the driver, such limitation surely would have been expressed in that holding). *But see id.* at 1305 & n.1 (Stevens, J. dissenting). Justice Stevens expressed concern that the facts in *Houghton* were unlike precedent. Prior cases involved situations where the defendant was the driver or where no question existed as to ownership of the containers to be searched. *See id.*; *see also* California v. Acevedo, 500 U.S. 565 (1991); California v. Carney, 471 U.S. 386 (1985); United States v. Johns, 469 U.S. 478 (1985); United States v. Ross, 456 U.S. 798 (1982); Carroll v. United States, 267 U.S. 132 (1925).

105. *Id.* at 1301 (quoting Zurcher v. Stanford Daily, 436 U.S. 547, 556 (1978)). In *Zurcher*, the issue before the court was the constitutionality of a search warrant directed at premises belonging to one who was not suspected of any crime. The Court stated the most significant

complained of in *Houghton* were likened to early customs searches that did not require individualized probable cause for each package.[106] This reasoning, though, appears strained since customs officials conduct searches under limited circumstances, whereas police searches are not so limited by time, place, or circumstance.

2. Interest in Law Enforcement Outweighs Personal Privacy Interest

The majority, perhaps not convinced by the foregoing historical analysis,[107] balanced the relative interests, finding that the needs of law enforcement must prevail.[108] The Court distinguished the search from personal body searches, which receive heightened Fourth Amendment protection,[109] because traumatic consequences associated with body searches do not result from mere property searches.[110] Thus, the majority believes the expectation of personal

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element of the reasonableness evaluation of a search is not based on suspicion that the owner is a potential criminal, but rather that probable cause exists when the specific things to be searched for are located on the property to be searched. *See Zurcher*, 436 U.S. at 556; *see also Ross*, 456 U.S. at 824 (noting that the scope of the search is defined by the object of the search).

106. *See Houghton*, 119 S.Ct. at 1300-01 (quoting *Ross*, 456 U.S. at 820 n.26); *supra* note 95 (discussing the creation of the exception in *Carroll* that the *Houghton* Court partially relied upon). *But see* Chandler v. Miller, 520 U.S. 305, 308 (1997) (emphasizing individualized suspicion).

107. *See Houghton*, 119 S. Ct. at 1306 n.3 (Stevens, J., dissenting). The dissent argues that

> Either the majority is unconvinced by its own recitation of the historical materials, or it has determined that consideration of additional factors is appropriate in any event. The Court does not admit the former; and of course the latter, standing alone, would not establish uncertainty in the common law as the prerequisite to looking beyond history in Fourth Amendment cases.

Id. (Stevens, J., dissenting).

108. *See id.* at 1303.

109. *See id.* at 1302. The opinion states that

> *United States v. Di Re*, 332 U.S. 581 (1948), held that probable cause to search a car did not justify a body search of a passenger. And *Ybarra v. Illinois*, 444 U.S. 85 (1979), held that a search warrant for a tavern and its bartender did not permit body searches of all the bar's patrons.

Id. (parallel citations omitted).

110. *See id.* The majority states that in *Di Re*, Justice Jackson "was referring *precisely* to 'that distinction between property contained in clothing worn by a passenger and property contained in a passenger's briefcase or purse.'" *Id.* at 1302 n.1. *But see id.* at 1306 n.4 (Stevens, J., dissenting) (speculating that *Di Re* would have been decided the same if the contraband gas coupons at issue had been in a purse rather than a pocket); Marianne Means, *A Purse Is More Than a Container*, SUN SENTINEL (Ft. Lauderdale, Fla.), Apr. 10, 1999, at 13A (arguing that purses should be given more protection against warrantless searches). *See also* Terry v. Ohio, 392 U.S. 1, 24-25 (1968) (indicating that even brief searches of outer clothing may result in fear and humiliation to the person searched).

privacy is less in a purse than in a trouser pocket.[111] In comparison, the governmental interest in effective law enforcement is high.[112] A rule contrary to the Court's holding might appreciably impair the function of law enforcement efforts in combating crime.[113]

3. "Passenger's Property" Rule Is Unacceptable

Though *Houghton* passed both prongs of the Court's test, not all cases will. The majority announced a general rule that is practical in application, thereby rejecting the Wyoming Supreme Court's "passenger's property" rule as placing too high a burden on police efforts in locating evidence and as encouraging litigation by passenger-confederates.[114] The Wyoming Supreme Court's rule would create a "safe zone" in passengers' belongings, subject to abuse "by persons seeking to illegally transport contraband in automobiles.... [T]he contraband would be immune from detection, unless the police also develop probable cause specific to the passenger.... Conversely, non-suspect passengers could... falsely claim[] ownership of the container."[115] The rule announced by the Wyoming Supreme Court impermissibly imposes an additional limitation on the permissible scope announced in *Ross* and "neglect[s] the practical difficulties that police in the field will have drawing additional lines or that courts will have in reviewing the lines they draw."[116] The majority felt this potential for fraud and abuse, along

111. *See supra* note 110 and accompanying text (discussing the *Houghton* majority's distinction between searches of clothing and articles carried on the person).

112. *See Houghton*, 119 S. Ct. at 1302.

113. *See id.* (citing California v. Carney, 471 U.S. 386, 390 (1985) (observing that ready mobility creates risk of losing evidence while obtaining a warrant)). The majority also felt passengers "will often be involved in a common enterprise with the driver." *Id. But see* United States v. Padilla, 508 U.S. 77, 82 (1993) (per curiam) (stating that criminal conspirators retain expectation of privacy, regardless of their involvement in a criminal enterprise, such that the criminality does not add to or detract from that privacy expectation).

114. *See Houghton*, 119 S. Ct. at 1303.

115. Brief of States of Kentucky et al. as Amicus Curiae in Support of Petitioner, 1998 WL 789361, at *9, Wyoming v. Houghton (No. 98-184).

116. *Id.* at *10.

with the heavy burden placed on police, must be considered when making Fourth Amendment determinations of reasonableness.[117]

The Court criticized the dissent's "obviously owned by and in the custody of" rule as "unadministrable" and not protective of personal privacy.[118] Such a rule requires police to divide the car's occupants into suspects and nonsuspects and then remember which container belongs to whom. The practical result is police confusion as to which container to search. If one container within the permissible search is forgotten, and it contained contraband, the contraband may not be seized. In the alternative, another container previously identified as being in the custody of a passenger may inadvertently be searched, and if it contained contraband, the evidence subsequently would be excluded due to the illegality of the search.[119] The more sensible rule, reasoned the majority, permits warrantless container searches regardless of the presence of the owner if there is probable cause to believe a container "may contain the contraband that the officer has reason to believe is in the car."[120]

B. *Concurring Opinion*

Justice Breyer, in his concurring opinion, advocated a modified container-based distinction to be decided on a case-by-case basis.[121] The fact that the purse was found some distance from Houghton reduced the likelihood that she or the driver had the opportunity to place contraband in it.[122] The concurrence likened a search of a purse to a personal body search, advancing the theory that the same rule should be applied to both.[123] If a wallet in a pocket is entitled to

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117. *See Houghton*, 119 S. Ct. at 1303. *But see id.* at 1306 (Stevens, J., dissenting) ("[T]he State's legitimate interest in law enforcement does not outweigh the privacy concerns at issue."); MacDonald v. United States, 335 U.S. 451, 454-55 (1948) (stating that police inconvenience is insufficient to bypass the warrant requirement); Katz, *supra* note 15, at 189 (noting that in a large number of situations obtaining a warrant does not impose a great burden on police or hinder operations).

118. *Houghton*, 119 S. Ct. at 1303 n.2.

119. *See* Brief of States of Kentucky et al., as Amicus Curiae in Support of Petitioner, 1998 WL 789361, at *12, Wyoming v. Houghton (No. 98-184).

120. *Houghton*, 119 S. Ct. at 1304. The holding in *Houghton* was not limited to searches for contraband. *See id.*

121. *See id.* (Breyer, J., concurring).

122. *See id.* (Breyer, J., concurring).

123. *See id.* (Breyer, J., concurring). *But see* Brief of Amicus Curiae National Association of Police Organizations in Support of Petitioner, 1998 WL 778371, at *17 n.4, Wyoming v. Houghton (No. 98-184) (stating that men also carry purses); State v. Fix, 730 P.2d 601 (Or. Ct. App. 1986) (permitting warrantless search of purse on passenger side of vehicle).

heightened protection, the same should apply to a woman's purse. The rule advanced in the concurrence, however, requires difficult line-drawing as to which containers are in fact purses, though it explicitly recognized that the Court previously rejected such a distinction. No claim was made that purses, by status, are entitled to heightened protection.[124] Rather, the protection should be qualified with a requirement that purses are only shielded from warrantless vehicle searches if the purse is attached to the owner's person.[125] In *Houghton*, the purse was not so attached, and thus not entitled to special protection.[126] While the case-by-case determination advocated by the concurrence appears to protect more privacy, police safety could be jeopardized by permitting passengers to keep purses with them when ordered out of a vehicle. Additionally, what qualifies as a purse remains undefined, thus, police would still be faced with making on the spot determinations of what qualified as a purse, even if attached to the person. Would a man's belt pack be entitled to heightened protection?[127] Furthermore, such an exemption for purses could encourage passenger-confederates to hide contraband in the safe haven. Such an untoward result is what the majority sought to prevent.

C. *Dissenting Opinion*

Justice Stevens, who wrote the majority opinion in *Ross,* concluded that automobile passengers' property is entitled to the same heightened protection afforded to body searches.[128] The dissent characterized the majority holding as a misapplication of the *Ross* rule. In *Ross* the Court was concerned with the driver's privacy interest in the integrity of his vehicle,[129] thus arguing that a

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124. *See Houghton*, 119 S. Ct. at 1304 (Breyer, J., concurring).

125. *See id.* (Breyer, J., concurring) (arguing that purses could be considered outer clothing which are entitled to heightened protection from warrantless searches under *Terry v. Ohio*, 392 U.S. 1, 24-25 (1968)).

126. *See id.* (Breyer, J., concurring).

127. *See id.* (Breyer, J., concurring); *see also* Brief of Amicus Curiae National Association of Police Organizations in Support of Petitioner,1998 WL 778371, at *17 n.4, Wyoming v. Houghton (No. 98-184) ("In today's society, one could easily argue that it is not unreasonable to conclude that a male would own a 'purse-like' bag, especially someone hoping to evade a law enforcement search for contraband.").

128. *See Houghton*, 119 S. Ct. at 1305 (Stevens, J., dissenting).

129. *See id.* (Stevens, J., dissenting). Justice Stevens characterized the privacy issue in *Ross* as concerning the driver's interest in the integrity of his vehicle in general, *see id.* (Stevens, J., dissenting), in which there is a lesser expectation of privacy. *See also* United States v. Ross, 456 U.S. 798, 824 (1982).

passenger's privacy interest in his *belongings* in a car is not diminished by the container's mere presence in a car.[130] The government's interest in increased law enforcement efficiency does not outweigh the substantial interest in privacy, thus, the dissent advocated a modified version of the Wyoming Supreme Court's "notice test."[131] The dissent would require either a warrant or individualized probable cause before police may conduct a warrantless search of passengers' belongings.[132]

1. Passenger Searches Are Entitled to Heightened Protection

Justice Stevens felt *Houghton* should have been decided in accord with cases that involved a passenger.[133] In all the cases applying the automobile exception, the defendant was either "the operator of the vehicle and in custody of the object of the search, or no question was raised as to the defendant's ownership or custody."[134] In fact, only one prior case addressed the search of a defendant passenger.[135] In that case, as in *Houghton*, the probable cause information that the search was based upon implicated only the driver.[136] According to Justice Stevens, the purse search at issue in *Houghton* should be characterized as an intrusion of privacy, much like the serious intrusiveness of a body search.[137] The dissent concluded that the majority strayed from the precedential distinction between drivers and passengers advanced in the only case directly on point, creating a new rule that distinguishes between property held *in* a passenger's clothing and the same property when held *within* a container closely analogous to clothing.[138]

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130. *See Houghton*, 119 S. Ct. at 1305-06 (Stevens, J., dissenting).

131. *See id.* (Stevens, J., dissenting); *see also supra* text accompanying notes 86-88 (discussing the Wyoming Supreme Court's proposed notice test).

132. *See Houghton*, 119 S. Ct. at 1306 (Stevens, J., dissenting).

133. *See id.* at 1304-05 (Stevens, J., dissenting).

134. *Id.* at 1305 (Stevens, J., dissenting); *see also* California v. Acevedo, 500 U.S. 565 (1991); United States v. Ross, 456 U.S. 798 (1982); Arkansas v. Sanders, 442 U.S. 753 (1979); United States v. Chadwick, 433 U.S. 1 (1977).

135. *See Houghton*, 119 S. Ct. at 1305 (Stevens, J., dissenting) (citing United States v. Di Re, 332 U.S. 581 (1948) (holding that the automobile exception did not apply to a search of a passenger's person)).

136. *See id.* (Stevens, J., dissenting).

137. *See id.* (Stevens, J., dissenting) (citing *Di Re*, 332 U.S. 581 and *Ex parte* Jackson, 96 U.S. 727 (1878)).

138. *See id.* at 1306 (Stevens, J., dissenting) (stating that the majority creates a new distinction between body searches and property searches, rather than relying on *Di Re*'s distinction between passengers and drivers). *But see id.* at 1301 n.1. The majority

2. Majority Reasoning Misapplied *Ross*

The dissent argued that *Ross* "disapproved of a possible container-based distinction between a man's pocket and a woman's pocketbook," such that if searches of pockets are prohibited, a search of a purse is likewise impermissible.[139] Justice Stevens stressed *Ross*'s conclusion that probable cause must justify the search. If probable cause extends to a specific container and justifies its search, it does not extend to permit a general area search.[140] The dissent fears the majority's expansion of the *Ross* rule is susceptible to law enforcement abuse.[141] The majority's reasoning concerning passenger-confederates is objectionable, Justice Stevens explained, as the mere "spatial association" between passenger and driver does not necessarily mandate that the two are partners in a criminal conspiracy.[142] The real danger in the majority's flawed reasoning is the potential reach of *Houghton*'s application that "would apparently permit a warrantless search of a passenger's briefcase if there is probable cause to believe the taxidriver had a syringe somewhere in his vehicle."[143]

3. Personal Privacy Interest Outweighs Government Interest

According to the dissent, a passenger's privacy interest in his personal belongings is not compromised by the container's presence within the confines of a vehicle.[144] Rather, this presumption of guilt by location refutes the precedential preference for individualized

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characterizes the decision in *Di Re* as a distinction between body and property searches, finding the decision rested on the intrusive nature of the search rather than *Di Re*'s status as a passenger or the importance of individualized suspicion. *See id.*

139. *Id.* at 1305 (Stevens, J., dissenting); *cf. Acevedo*, 500 U.S. 565 (holding that containers in vehicles that may conceal the object of the search are subject to probable cause-based warrantless searches).

140. *See Houghton*, 119 S. Ct. at 1305 (Stevens, J., dissenting) (interpreting *Ross* as disapproval of a pocket/purse distinction).

141. *See id.* (Stevens, J., dissenting). Justice Stevens felt the majority decision permitted an inverse application of *Ross*. Under *Ross* if probable cause was only applied to the container, the police could not search the entire car. *See id.* at 1305-06 (Stevens, J., dissenting).

142. *See id.* at 1305 (Stevens, J., dissenting).

143. *Id.* (Stevens, J., dissenting).

144. *See id.* (Stevens, J., dissenting).

suspicion.[145] Justice Stevens felt police could apply an individualized probable cause rule as easily as they could implement the majority rule.[146] The dissent concluded that the majority's extension of the automobile exception now permits searches of passenger belongings as a result of the driver's misdeeds.[147] For example, such an extension would permit a warrantless search of all passengers in the car if a diabetic driver is stopped for a faulty brake light and police notice a hypodermic needle in his pocket. The police would also be justified in searching all parts of the vehicle and any container in the car capable of holding the object of the search. When probable cause such as this proves unfounded, a passenger has already been subjected to a serious intrusion into his personal privacy for a minor traffic infraction committed by the driver.[148]

V. IMPACT OF THE NEW RULE

When deciding *Wyoming v. Houghton*, the Court faced the question of whether precedent permitted expansion of the automobile exception to the warrant requirement of the Fourth Amendment to allow police to conduct warrantless searches of automobile passengers' belongings. In the past, each time a new, seemingly clear rule was articulated, the practical implications seemed to elude the Court. In each of the cases leading to *Houghton*, the Court fearlessly announced supposed bright-line rules based on limited factual scenarios.[149] What was never taken into consideration, or perhaps was considered but dismissed, was the slippery slope created by each new bright-line rule. The Court, apparently forgetting its goal in *Acevedo* to prevent situations where more specific probable cause information justified a more intrusive search, announced in *Houghton* that a general search of a vehicle and all its contents is permitted, even if probable cause attached to only one person or container.[150] Before *Houghton*, if a police officer had specific probable cause relating to just one bag, that one bag was all he could search.[151] With the new *Houghton* rule, if probable

145. *See id.* at 1306 n.2 (Stevens J., dissenting).
146. *See id.* at 1306 (Stevens, J., dissenting) (stating that "a rule requiring a warrant or individualized probable cause to search passenger belongings is every bit as simple as the Court's rule; it simply protects more privacy").
147. *See id.* at 1307 (Stevens, J., dissenting).
148. *See id.*
149. *See, e.g., id.* at 1304 (citing United States v. Ross, 456 U.S. 798 (1982)).
150. *See id.* at 1303.
151. *See, e.g.,* California v. Acevedo, 500 U.S. 565, 580 (1991); *Ross,* 456 U.S. at 823.

cause exists to believe that one person is transporting drugs, then the scope of the warrantless search includes all the occupants' belongings located within the vehicle.[152] Thus, what was attractive on paper is far less appealing in practice, at least for the common citizen for whom the Fourth Amendment protections were designed.

Without this expansion, law enforcement efforts in combating crime would be hindered, contraband could go undiscovered, and guilty persons could go free. On the other hand, with this expansion, citizens' personal privacy in an automobile is substantially diminished. The Court, balancing the relative interests, found that the needs of law enforcement were greater than the citizens' minimal expectation of privacy in a vehicle.[153] The *Houghton* decision, therefore, has several potential ramifications: law enforcement officers will more effectively execute their duties and already overburdened lower courts will benefit from increased administrative efficiency; citizens' personal privacy in vehicles will be virtually eliminated; and the new rule will raise questions left unanswered by *Houghton* that may create additional practical difficulties for both police and lower courts.

A. *Law Enforcement and Lower Courts*

The expansion of the automobile exception in *Houghton* is touted as a victory for law enforcement officers who face steadily increasing danger from automobile occupants during routine traffic stops.[154] With this new rule, police have a bright-line rule to follow that does not require them to make difficult, split-second determinations concerning individualized probable cause,[155] nor does it require the time and resources involved in procuring warrants.[156] The result is a more efficient use of limited resources that enables police to focus

152. *See Houghton*, 119 S. Ct. at 1303.

153. *See id.* at 1303-04.

154. *See* Brief of Amicus Curiae National Association of Police Organizations in Support of Petitioner, 1998 WL 778371, at *17 n.4, Wyoming v. Houghton (No. 98-184); *see also* Joan Biskupic, *High Court Expands Car Search Authority; Passenger Property May Be Examined*, WASH. POST, Apr. 6, 1999, at A1.

155. *See* Himstreet, *supra* note 19, at 217. *See, e.g.*, Chambers v. Maroney, 399 U.S. 42 (1970).

156. *See* Himstreet, *supra* note 19, at 217 (stating that the rule conserves resources when police do not need a warrant for every search or have to store every container seized).

their efforts on more important issues, such as the war against drugs.[157]

Before the *Houghton* decision, police could order passengers out of a vehicle to ensure the safety of the officer.[158] Moreover, if police were unsure whether they could search all containers found in a general search when the vehicle was occupied by more than one person, they could elect not to search containers of questionable ownership and risk losing evidence.[159] If they chose to detain passengers while awaiting a warrant, however, there was a risk that the detention could amount to an unlawful seizure of the person.[160] The simplicity of the majority rule will thus aid crime-fighting efforts and protect individual officer safety, perhaps at the expense of personal privacy rights.

Lower courts will also benefit from the administrative efficiency of the new rule. Less time will be devoted to reviewing warrant affidavits.[161] Additionally, the clarity of the new rule should result in greater uniformity of decisions, which would be less likely to be reversed, thus eliminating the time and expense required for a new trial on remand.[162]

With the automobile exception again expanded, though, there is an increased possibility of police abuse. As Justice Stewart observed in *Chimel v. California*,[163] the worst scenario results not from the guilty going free, but when the innocent are subjected to unreasonable searches because they were not afforded the protections of the Fourth Amendment.[164]

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157. *See id.*

158. *See* Maryland v. Wilson, 519 U.S. 408, 410 (1997).

159. *See* Brief of States of Kentucky et al., as Amicus Curiae in Support of Petitioner, 1998 WL 789361, at *9, Wyoming v. Houghton (No. 98-184).

160. *See* Rakas v. Illinois, 439 U.S. 128, 169 (1978) (stating that a lengthy detention of a person who is not under arrest may amount to a seizure in violation of the Fourth Amendment).

161. *See* Himstreet, *supra* note 19, at 217. *But see Acevedo*, 500 U.S. at 600-01 (stating that "all society bears the cost of administrative inconvenience, a minuscule price to preserve its freedom").

162. *But cf.* Himstreet, *supra* note 19, at 217 (quoting Arkansas v. Sanders, 442 U.S. 753, 772 (1979) (Blackmun, J., dissenting) (suggesting that "heightened possibilities for error" after *Sanders* would result in many overturned convictions).

163. 395 U.S. 752 (1969).

164. *See* id. at 766 n.12; *see also Sanders*, 442 U.S. at 772 (Blackmun, J., dissenting). In *Sanders*, Justice Blackmun argued for a clear cut rule in order to prevent police uncertainty or abuse. *See id.*

B. *Citizens' Personal Privacy Rights*

Anytime the judiciary is removed from the Fourth Amendment equation, "one of the citizenry's last safeguards against unreasonable police conduct is lost."[165] Police decisions concerning probable cause in automobiles, unlike those made when preparing an affidavit for a judicial warrant to search a home, are often made in an instant, when officers lack the luxury of time to make informed decisions due to the particular exigencies of the circumstances.[166] The less time the officers have to make a decision, the greater the probability for error. The purpose of the Fourth Amendment was to guard against such hurried judgment by interposing a neutral judiciary between heat-of-the-moment police decisions and citizens.[167] Even if a supposed victim of an unconstitutional search may obtain a judicial determination on whether probable cause justified the search, whether the particular state provides for an expedient review of the case may depend on the fortuity of the victim's zip code.[168]

Additionally, the potential for police abuse of this expanded power is significant. The *Houghton* rule only requires that officers rationalize any probable cause belief that the car contains contraband before they initiate a complete search of the vehicle and all its contents.[169] An officer could argue any number of reasons for stopping a vehicle. So long as the car is lawfully stopped, police may then form or fabricate the requisite probable cause to engage in an intrusive search.[170] It seems the only guarantee that police will not apply this expanded power inequitably under certain circumstances is mere good faith on the part of individual officers.[171] Good faith,

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165. Himstreet, *supra* note 19, at 218.

166. *See id.*

167. *See* Johnson v. United States, 333 U.S. 10, 13-14 (1948) (stating that the purpose of the Fourth Amendment is to restrain police by denying them the use of reasonable inference because they are engaged in the competitive venture of combating crime).

168. *See Chimel*, 395 U.S. at 766 n.12 (arguing that not all states provide "speedy" suppression procedures).

169. *See Houghton*, 119 S. Ct. at 1304; David E. Rovella, *Court Broadens Auto Searches*, NAT'L L.J., Apr. 19, 1999, at A6 (stating police can use this ruling as a pretext for searching the entire car).

170. *See* Scott Goldstein, *Defense Bar Vexed by Ruling on Passenger Search*, N.J. LAW., Apr. 12, 1999, at 4 (expressing fear that overly aggressive police may abuse the new rule).

171. *See* United States v. Leon, 468 U.S. 897, 905 (1983) (holding that evidence will not be suppressed under the exclusionary rule when officers act in good faith on reasonable but mistaken belief they were authorized to perform acts). *But see* United States v. Ross, 456 U.S.

however, provides minimal protection against the misapplication of a rule that already substantially interferes with personal privacy rights. Whenever the warrant requirement is waived the force of the Exclusionary Rule is undermined in an area where its purpose–deterrence of bad faith violations of the Fourth Amendment–is clearly justified.

In *Houghton*, an avenue of crime fighting, detection of illegal drugs, was made possible by the automobile exception: probable cause that the driver possessed drugs and the mere presence of a nonsuspect passenger's belongings in the car permit a warrantless drug search of the entire car–a search unrelated to the original probable cause for stopping the car. When the officer developed probable cause that the driver had drugs, he was able to search everyone's belongings in the car without any other justification. The Court, however, only limited the application of *Houghton* to automobiles, and said nothing about what kind of probable cause may justify a warrantless search, nor did it place any specific limitation on the definition of "object of the search" or require a causal connection between the probable cause to search and the object of the search.[172] This leaves the broad language, "object of the search," open to police interpretation.[173] For example, if an officer observed a car making an illegal "U-turn," he could stop the vehicle and request the driver's license. If the driver was unable to produce the license, the officer, interpreting *Houghton*, could order all of the occupants out of the car and proceed to search for the license in the places it could be located in the car. The scope of this search presumably includes any passenger's belongings. Based on *Houghton*, if a search of the passenger's backpack revealed drugs, the contraband would likely be admissible. Thus, since the Court failed to specify or limit the amount of probable cause that justifies a warrantless search, failed to specifically define "object of the search," and did not require a causal connection between the probable cause to search and the object of the search, the misapplication of *Houghton* is likely.

798, 808-09 (1982) (explaining that the automobile exception is only available if objective facts would justify a judicially authorized warrant).

172. *See Houghton*, 119 S. Ct. at 1304.

173. *Id.*

C. *Misinterpretation by a Lower Court*

The likelihood of abuse of the *Houghton* rule by police and the misinterpretation by lower courts was quickly proven when the holding was applied in the context of issuing a parking violation.[174] In *People v. Hart*, police were summoned to a residential neighborhood to investigate a van parked illegally on the side of the road.[175] Police approached the van and asked the defendant to produce identification, so she searched the surrounding area, but was unable to find her purse.[176] The defendant, along with her passenger, was ordered out of the car. Though she objected, police searched her van for her identification.[177] When they found her purse, they opened it and found illegal drugs and paraphernalia as well as her identification.[178]

Relying on *Houghton*, the California Court of Appeal upheld the constitutionality of the search.[179] The majority confirmed that the officers were authorized to require identification from the defendant.[180] The court also concluded that officers were permitted to detain the defendant pursuant to their authority under the California Vehicle Code.[181] With probable cause thus established, the court turned to the defendant's diminished expectation of privacy in her belongings and found that it was outweighed by the officers' concern for their safety.[182] The court reasoned that, under *Houghton*, if the vehicle is searchable, then all containers are searchable, stating that ""[t]he critical element in a reasonable search is not that the owner of the property is suspected of crime but that there is reasonable cause to believe that the specific '*things*' to be searched for and seized are located on the property to which entry is sought.""[183]

The dissent in *Hart* correctly pointed out that the facts known to the officer at the time he searched the defendant's purse did not give

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174. People v. Hart, 86 Cal. Rptr. 2d 762 (Cal. Ct. App. 1999).
175. *See id.* at 764.
176. *See id.*
177. *See id.* at 764-65.
178. *See id.* at 765.
179. *See id.* at 769.
180. *See id.*
181. *See id.* at 767.
182. *See id.* at 768 (citing *Wyoming v. Houghton*, 119 S. Ct. 1297 (1999)).
183. *Id.* at 769 (quoting *Houghton*, 119 S. Ct. at 1301, which is quoting Zurcher v. Stanford Daily, 436 U.S. 547, 556 (1978)) (emphasis added).

rise to a reasonable suspicion that the defendant was dangerous or that she possessed any drugs or weapons.[184] The presumed object of the search was the defendant's identification. The dissent stated,

> the majority holds that, if Bricker *could* search the van for weapons, on that basis alone, he could search for weapons and identification in defendant's purse which was in the van. This, according to the majority, is because "it is well established that containers in a vehicle are searchable if the vehicle is searchable. . . ." But the law of search and seizure has not yet gone that far.[185]

The dissent read a limitation into *Houghton*, though rational and clearly a valid consideration, that an officer's probable cause to search a vehicle is based on police safety.[186] Furthermore, the dissent appears to recognize that the lack of a causal connection between the probable cause to search the car and the object of the search did not invalidate the search.[187] However, the *Houghton* Court did not address either of these issues.

The *Hart* majority, based on its interpretation of *Houghton*, was able to justify the officer's search based on probable cause that the van *could* have contained weapons, even though the object of the search was the driver's identification.[188] The court read *Houghton* as allowing a general vehicle search if an officer *may have* feared for his safety –even if the object of the search had no relation to the *post hoc* safety rationale.

Thus, what is most troubling with the new rule is the virtual limitless nature of and potential circumstances in which it may be applied. The foundations of the automobile exception rested, at a minimum, on the exigency of the situation[189] and required probable cause to believe contraband was located in the vehicle.[190] But the same probable cause justifies an intrusion to search for notably different types of items and contraband, without qualification or

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184. *See id.* at 771 (Hull, J., dissenting).
185. *Id.* at 771 (Hull, J., dissenting) (quoting the majority opinion) (emphasis added) (citation omitted).
186. *See id.* (Hull, J., dissenting).
187. *See id.* at 772 (Hull, J., dissenting).
188. *See id.* at 768.
189. *See supra* notes 18-20 and accompanying text (discussing the exigency rationale for the automobile exception).
190. *See supra* notes 54-67 (discussing the evolution of the probable cause standard of the exception).

relation to the probable cause to search.[191] Perhaps a more sensible standard would be to adopt the *Houghton* dissent's requirement of individualized probable cause,[192] a reasoning endorsed by the Court in *Acevedo*,[193] qualified by permitting warrantless searches of passenger belongings when the object of the search, such as a weapon, poses a threat to the officers. If an officer was to lawfully stop a vehicle and then observe ammunition on the front seat, such probable cause to search the vehicle should extend to all passengers' belongings in the vehicle as a measure of personal safety for the officer. But, if the object of the search is drugs, unless the police have individualized probable cause to believe that passengers' belongings held the *contraband* object of the search, safety would not dictate an immediate warrantless search of passengers' belongings in the car.[194]

Police, in practice, have an assortment of safety measures at their disposal, including authority to order the driver and all passengers out of the car[195] and to conduct a limited frisk of those passengers once outside of the car.[196] Thus, *Houghton* should be modified to apply to situations where the probable cause for the warrantless search of a nonsuspect passenger's belongings is based on a legitimate fear for officer safety where the object of the search is *dangerous* contraband. Such a compromise would still serve the interests of law enforcement, as they can always seek a warrant if they lack individualized probable cause and the object of the search does not pose an immediate threat.[197] More significantly, such a limitation would restore a modicum of personal privacy, at least to passengers. Unfortunately, officer safety does not appear to be the primary motivation of *Houghton* or the precedent upon which its holding was based.

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191. *See Houghton*, 119 S. Ct. at 1306 (Stevens, J., dissenting).

192. *See id.* (Stevens, J., dissenting).

193. *See* California v. Acevedo, 500 U.S. 565, 580 (1991).

194. *See generally* Arkansas v. Sanders, 442 U.S. 753 (1979); United States v. Chadwick, 433 U.S. 1 (1977). Both of these cases were overruled by *Acevedo*. *See Acevedo*, 500 U.S. at 579.

195. *See, e.g.*, Maryland v. Wilson, 519 U.S. 408, 415 (1997) (stating that police may order all occupants, including passengers, out of a vehicle); Michigan v. Long, 463 U.S. 1032, 1047-48 (1983) (stating that police may order driver out of car to protect their safety).

196. *See, e.g.*, Terry v. Ohio, 392 U.S. 1 (1968).

197. *See Houghton*, 119 S. Ct. at 1306 (Stevens, J., dissenting).

VI. CONCLUSION

When it chose to review *Wyoming v. Houghton*, the Supreme Court was faced with the question of whether the scope of a search under the automobile exception to the Fourth Amendment should be expanded. Since its decision in *Ross*, the Court has shown a willingness to expand the exception to apply to situations far beyond its original justifications and intended scope. The Court responded this time by deciding the exception also permitted warrantless searches of automobile passengers' belongings, regardless of owner culpability.

The majority's reasoning was two-fold. First, they determined that such a search would have been historically reasonable.[198] Second, they reasoned that a passenger, like a driver, has a reduced expectation of privacy in her belongings that is less significant than governmental interest in combating crime.[199] This standard affords law enforcement great latitude in combating crime and eases the warrant-issuing burden on lower courts. The most significant impact, however, is the reduction of citizens' privacy in an automobile. Thus, the goal the Court set forth in *Acevedo*–to protect more privacy by permitting warrantless container searches where probable cause attached to only the specific item, rather than requiring a general search in order to justify the search of the container in particular–rings hollow after *Houghton*. Prior to *Houghton*, if the police had probable cause relating to only one passenger and one bag, that was all they needed to search. After *Houghton*, however, that same specific probable cause permits the police to conduct a general area search, even if they know certain items do not belong to the suspect. *Houghton*, therefore, should be modified to permit warrantless searches of nonsuspect passengers' belongings *only* when the probable cause for the search is premised on a legitimate fear for officer safety and the object of the search is *contraband* that could be used to harm police or others. If the probable cause is based on nondangerous contraband then the police should not be allowed to search nonsuspect passenger belongings unless the officer has either probable cause to believe an individual passenger possesses dangerous contraband or if the officer has obtained a search warrant. The question remains: how many

198. *See id.* at 1300.
199. *See id.* at 1302.

innocent passengers must fall victim to the nation's war on drugs before the Court reevaluates its automobile exception jurisprudence? Until this question is addressed, people retain more Fourth Amendment freedom walking.

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