North Dakota Law Review

Volume 76 | Number 4 Article 7

2000

Searches and Seizures - Automobile Exception: The Fourth Amendment Does Not Prevent a Search of Passengers' Containers in an Automobile

Kari M. Knudson

SEARCHES AND SEIZURES—AUTOMOBILE EXCEPTION: THE FOURTH AMENDMENT DOES NOT PREVENT A SEARCH OF PASSENGERS' CONTAINERS IN AN AUTOMOBILE

Wyoming v. Houghton, 526 U.S. 295 (1999)

I. FACTS

On the morning of July 23, 1995, Officer Delane Baldwin of the Wyoming Highway Patrol stopped a car for speeding and driving with a faulty brake light.[1] The car contained three people: the driver, David Young; Young's girlfriend; and Respondent, Sandra Houghton.[2] As Officer Baldwin approached the car, he noticed a hypodermic syringe visible in Young's shirt pocket.[3] Officer Baldwin asked Young why he had the syringe, and Young, with "refreshing candor," replied that he used the syringe to take drugs.[4]

At this point, Officer Baldwin and the other officers at the scene ordered all the occupants out of the car.[5] While Officer Baldwin searched the car, the additional officers asked the passengers their names.[6] Baldwin found a purse on the back seat, and Houghton claimed it was hers.[7] Inside the purse, the officer found a wallet, a brown pouch, and a black wallet-type item.[8] The wallet contained Houghton's driver's license, which correctly identified her as Sandra Houghton.[9] The brown pouch contained drug paraphernalia and a syringe with methamphetamine.[10] The black wallet-type item contained drug paraphernalia and a syringe with methamphetamine.[11] Houghton admitted that the wallet containing her identification and the black wallet-type item belonged to

---

1. *See* Wyoming v. Houghton, 526 U.S. 295, 297 (1999); Petitioner's Brief at 2, *Houghton* (No. 98-184).

2. *See Houghton*, 526 U.S. at 298; *see also* Petitioner's Brief at 2, *Houghton* (No. 98-184). The Petitioner's Brief stated that all the occupants were in the front seat of the car, and Houghton was seated closest to the passenger door. *See* Petitioner's Brief at 2, *Houghton* (No. 98-184).

3. *See Houghton*, 526 U.S. at 298.

4. *See id.*

5. *See id.*

6. *See id.* Houghton falsely identified herself as "Sandra James." *See id.* She later explained that she did this in case "things went bad." *See id.*

7. *See id.* According to Petitioner's Brief, Houghton left her purse on the back seat of the car, and none of the officers told her to leave it there. *See* Petitioner's Brief at 2-3, *Houghton* (No. 98-184). The Amicus Brief submitted by the United States added that the purse was found near the middle of the back seat, a little closer to the driver's side than the passenger's side. *See* United States Amicus Brief at 2-3, *Houghton* (No. 98-184).

8. *See Houghton*, 526 U.S at 298.

9. *See id.*

10. *See id.*

11. *See id.*

her.[12] However, she denied the brown pouch was hers and stated she had no idea how it got into her purse.[13]

As a result of the information obtained from the search of her purse and the observation of fresh needle track marks on her arms, Houghton was placed under arrest.[14] Houghton was the only person charged or arrested at the scene; the driver and the other passenger were released.[15]

The State of Wyoming charged Houghton with felony possession of methamphetamine.[16] Houghton moved to suppress the evidence obtained from the search of her purse as the fruits of an illegal search.[17] The trial court held that there was probable cause to merit the search, and it admitted the evidence using the automobile exception to the warrant requirement.[18] Houghton was convicted of felony possession of a controlled substance.[19] Houghton appealed her case to the Wyoming Supreme Court.[20]

The Wyoming Supreme Court held that the search violated the Fourth Amendment.[21] The Wyoming Supreme Court articulated a rule requiring officers to determine the ownership of items within an automobile.[22] Once ownership was determined, the officers would be allowed to search only the belongings of the persons as to whom there was suspicion of criminal activity.[23] As a result, Houghton's conviction was reversed.[24]

The State of Wyoming then appealed to the United States Supreme Court.[25] The State of Wyoming stated the issue as: whether the automobile exception to the Fourth Amendment allowed law enforcement officials to search a passenger's personal belongings, located inside the passenger compartment of a lawfully stopped vehicle, when there is

---

12. *See id.* The amount of methamphetamine found in the black wallet-type item was not enough for a felony charge. *See id.* For a felony charge of liquid methamphetamine, the amount must be greater than three-tenths of a gram; the black wallet-type item contained only 10 ccs of methamphetamine. *See* WYO. STAT. ANN. § 35–7–1031(c)(i)(B), (c)(iii) (Michie 1999); *Houghton*, 526 U.S. at 298.

13. *See Houghton*, 526 U.S. at 298. The brown pouch contained 60 ccs of methamphetamine, enough for a felony charge. *See id; see also* WYO. STAT. ANN. § 35–7–1031(c)(i)(B), (c)(iii) (Michie 1999).

14. *See id.*

15. *See* Petitioner's Brief at 3, *Houghton* (No. 98-184); *see also* United States Amicus Brief at 3, *Houghton* (No. 98-184).

16. *See Houghton*, 526 U.S. at 298; *see also* WYO. STAT. ANN. § 35-7-1031(c)(iii) (Supp. 1996).

17. *See Houghton*, 526 U.S. at 298-99.

18. *See id.* at 299.

19. *See id.*

20. *See* State v. Houghton, 956 P.2d 363 (Wyo. 1998).

21. *See Houghton*, 526 U.S. at 299 (citing *Houghton*, 956 P.2d at 372).

22. *See id.*

23. *See id.*

24. *See id.*

25. *See id.*

probable cause to allow a search of the automobile, but there is no probable cause specific to the passenger.[26] The United States Supreme Court *held* that "officers with probable cause to search a car may inspect passengers' belongings found in the car that are capable of concealing the object of the search."[27]

II. LEGAL BACKGROUND

The law of search and seizure is guided by the Fourth Amendment. The Fourth Amendment to the United States Constitution states:

> 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 [w]arrants shall issue, but upon probable cause, supported by [o]ath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.[28]

The Fourth Amendment was a reaction to the intrusiveness of general warrants and searches without warrants, which were frequent in pre-Revolutionary America.[29] The purpose of the Fourth Amendment is to protect individuals from unwarranted invasions of their privacy interests.[30]

One such protection the United States Supreme Court has implemented is that "searches of private property be performed pursuant to a search warrant."[31] Originally, searches conducted outside the warrant process were considered per se unreasonable.[32] Thus, it was unusual for law enforcement officials to perform warrantless searches of private property.[33]

However, the Court has created an exception for warrantless searches of automobiles, and thus, warrantless searches of automobiles are common occurrences.[34] Over time, the Court has proffered two justifications for this exception.[35] First, the mobility of automobiles usually makes it impracticable to obtain a warrant for an automobile in advance of a

---

26. *See* Petitioner's Brief at 8, *Houghton* (No. 98-184).

27. *Houghton*, 526 U.S. at 307.

28. U.S. CONST. amend. IV.

29. *See* Catherine A. Shepard, Comment, *Search and Seizure: From Carroll to Ross, the Odyssey of the Automobile Exception*, 32 CATH. U. L. REV. 221, 221 (1982).

30. *See id.*

31. Lewis R. Katz, *Automobile Searches and Diminished Expectations in the Warrant Clause*, 19 AM. CRIM. L. REV. 557, 559 (1982) (citing Arkansas v. Sanders, 442 U.S. 753, 758 (1979)).

32. *See id.* at 559 (citing Katz v. United States, 389 U.S. 347, 357 (1967)).

33. *See* WAYNE R. LAFAVE, SEARCH AND SEIZURE: A TREATISE ON THE FOURTH AMENDMENT § 7.2 (3d ed. 1996) (stating that lawful warrantless searches were unusual events).

34. *See* LAFAVE, *supra* note 33, § 7.2.

35. *See* LAFAVE, *supra* note 33, § 7.2.

search.[36] Second, in the hierarchy of protection, the Fourth Amendment does not provide as much protection for an automobile as it does for a home or other premises because there is a diminished expectation of privacy in automobiles.[37] Each justification has been developed and defined through case law involving the automobile exception to the Fourth Amendment.[38]

A. THE BEGINNING—*CARROLL V. UNITED STATES*

The United States Supreme Court first encountered the question of a warrantless automobile search in a 1925 prohibition-era case.[39] In *Carroll v. United States*,[40] federal prohibition agents stopped two known bootleggers after the agents recognized the bootleggers' automobile.[41] The agents searched the car and found sixty-eight bottles of alcohol hidden behind the upholstery of the back seat of the car.[42] The Court found the search reasonable.[43] The Court held that searches and seizures without a warrant are valid when made upon probable cause with a belief that an automobile or other vehicle contains contraband.[44]

The Court in *Carroll* began by examining legislation from the founding era.[45] This legislation empowered governmental officials to search any ship or vessel without a warrant if they had probable cause to believe it contained goods subject to a duty.[46] The *Carroll* Court also

---

36. *See* LAFAVE, *supra* note 33, § 7.2. This impracticability stems from the fact that "the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant must be sought." LAFAVE, *supra* note 33, §7.2(a), at 459-60 (quoting Carroll v. United States, 267 U.S. 132, 153 (1925)).

37. *See* LAFAVE, *supra* note 33, § 7.2.

38. *See* California v. Carney, 471 U.S. 386, 390-92 (1985); Cardwell v. Lewis, 417 U.S. 583, 590 (1974); Chambers v. Maroney, 399 U.S. 42, 51 (1970); Carroll v. United States, 267 U.S. 132, 153 (1925).

39. *See* LAFAVE, *supra* note 33, § 7.2(a), at 459 (citing *Carroll*, 267 U.S. 132).

40. 267 U.S. 132 (1925).

41. *See Carroll*, 267 U.S. at 135-36. The prohibition agents knew the bootleggers through previous contact and knew the automobile driven by them because of the license plate on the Oldsmobile roadster. *See id.*

42. *See id.* at 136.

43. *See id.* at 162.

44. *See id.* The Court stated "[t]he Fourth Amendment is to be construed in the light of what was deemed an unreasonable search and seizure [at the time the Amendment] was adopted" and the "true rule," based upon reason and authority, was that searches and seizures based on probable cause were valid. *Id.* at 149.

45. *See Carroll*, 267 U.S. at 150-51.

46. *See id.* The *Carroll* case cited the actions of the 1789 Congress which provided:

> [T]hat every collector, naval officer and surveyor, or other person specially appointed by either of them for that purpose, shall have full power and authority, to enter any ship or vessel, in which they shall have reason to suspect any goods, wares or merchandise subject to duty shall be concealed; and therein to search for, seize, and secure any such goods, wares or merchandise; and if they shall have cause to suspect a concealment thereof, in any particular dwelling-house, store, building, or other place, they or either of them shall, upon application on oath or affirmation to any justice of the peace, be entitled to a warrant to enter such house, store, or other place (in the daytime only) and there to

looked to Justice Bradley's 1886 opinion in *Boyd v. United States*,[47] which distinguished contraband from other items.[48] Justice Bradley explained that there was a distinction between the search and seizure of contraband and the search and seizure of private books and papers.[49] The Court reasoned that the government was authorized to seize stolen goods or contraband, but the Fourth Amendment prohibited the government from performing an unreasonable search of a person's private books and papers for use in a criminal prosecution.[50] In *Boyd,* Justice Bradley therefore concluded that the search and seizure of contraband was not unreasonable under the Fourth Amendment.[51]

While the specificity to "contraband" seemed to be an important part of the *Carroll* Court's justification for the warrantless search,[52] some commentators thought the importance of classifying the object of the search as contraband was diminished by the reference later in the opinion to the practicality of obtaining a warrant.[53] In his treatise on the Fourth Amendment, Professor Wayne LaFave noted that the Court diminished the importance of contraband by suggesting that if it were practical to obtain a warrant, the same search must be conducted with a warrant.[54] LaFave further stated that a warrantless search of an automobile for more than contraband would appear to be allowed if it were impracticable to secure a warrant.[55] Consequently, LaFave determined that the *Carroll* Court began with what appeared to be a bright-line rule, that a warrantless search for contraband within an automobile was permissible, and then blurred the line by including the secondary issue, the practicality of obtaining a warrant.[56]

Next, the *Carroll* Court addressed the issue of an automobile's mobility by noting the difference between a search of a store, dwelling house, or other structure and a search of a ship, motor boat, wagon, or

---

> search for such goods, and if any shall be found, to seize and secure the same for trial; and all such goods, wares and merchandise, on which the duties shall not have been paid or secured, shall be forfeited.

Id. (quoting Act of July 31, 1789, 1 Stat. 29, 43).

47. 116 U.S. 616 (1886).

48. *See Carroll*, 267 U.S. at 149-50 (citing Boyd v. United States, 116 U.S. 616, 623 (1886)). In *Boyd*, the Court required the defendant to produce documentary evidence that the prosecution wanted to use against him. *See* 116 U.S. at 618.

49. *See id.* at 623 (stating that the government was entitled to seize contraband, but it was not entitled to seize private books or papers).

50. *See id.* The *Boyd* Court established that when there is probable cause, the search and seizure is valid but that when securing a warrant is practicable, the government must secure a warrant. *See id.*

51. *See id.* (basing the decision upon the fact that the government was allowed, through statute, to seize the contraband).

52. *See Carroll*, 267 U.S. at 156.

53. *See* LAFAVE, *supra* note 33, § 7.2(a), at 460.

54. *See* LAFAVE, *supra* note 33, § 7.2(a), at 460.

55. *See* LAFAVE, *supra* note 33, § 7.2(a), at 460.

56. *See* LAFAVE, *supra* note 33, § 7.2(a), at 460.

automobile.[57] The Court recognized the problems inherent in the latter category of items because they may easily be moved to another location, such as to a location outside the jurisdiction where a warrant could be issued.[58] The Court thus concluded that it was impractical to require a warrant when searching moveable objects.[59]

The *Carroll* Court went on to specify that the right to search was not contingent upon the right to arrest the occupants of the automobile, but rather, it was based upon probable cause to believe that there was contraband within the automobile.[60] Because the officers in *Carroll* did not have a lawful basis for taking the occupants of the automobile into custody,[61] the officers presumably did not have the authority to prevent movement of the vehicle while they obtained a search warrant.[62] Thus, the Court apparently determined that if there was probable cause to search the car, the officers could not be faulted for failing to obtain a warrant, because the officers had no authority to detain the occupants and ensure the automobile was not moved.[63]

For several years, *Carroll* was rarely utilized because searches of automobiles "incident to arrest" allowed for a search of the entire interior of a vehicle once the driver had been arrested.[64] This situation changed after the Supreme Court's decision in *Chimel v. California*,[65] in which the scope of searches incident to arrest was limited to a search of the arrestee and the area under the arrestee's immediate control. Thus, if the arrestee was a driver, only the area in the vehicle under the driver's immediate control would be within the scope of a valid search incident to arrest.[66]

This limitation on searches incident to arrest began the "schizophrenic roller coaster ride" the Supreme Court has taken in an effort to

---

57. *See Carroll*, 267 U.S. at 153; *see also* LAFAVE, *supra* note 33, § 7.2(a), at 459.

58. *See Carroll*, 267 U.S. at 153. The Court acknowledged that it had made a "somewhat extended reference" to statutes recognizing the practical difficulties with obtaining a warrant for a moveable place or things, and acknowledged that the differences were based on the practicability of warrantless searches. *Id.*

59. *See id.*

60. *See id.* at 158-59. The Court rejected the defendants' argument that the seizure could only be justified based upon a valid arrest and held the right to search and the validity of a search is independent of the right to arrest. *See id.* at 157-58.

61. *See id.* at 160 (stating that the officers only had "reasonable cause" to believe the defendants carried liquor in the car).

62. *See* LAFAVE, *supra* note 33, § 7.2(a)(3), at 460.

63. *See* LAFAVE, *supra* note 33, § 7.2(a)(3), at 460-61.

64. *See* LAFAVE, *supra* note 33, § 7.2(a)(3), at 461 (citing the *Harris-Rabinowitz* rule, which allowed the search of the entire interior of a vehicle once the driver was arrested).

65. 395 U.S. 752 (1969).

66. *See* Chimel v. California, 395 U.S. 752, 768 (1969). The Court in *New York v. Belton*, 453 U.S. 454 (1981), subsequently changed the scope of searches incident to arrest to include the passenger compartment of the vehicle.

advance legitimate law enforcement interests without allowing Fourth Amendment protection for automobiles to disappear.[67] It was at this point that the *Carroll* decision came to the forefront of the development of the automobile exception to the Fourth Amendment warrant requirement.[68]

B. EXPANSION OF *CARROLL* —FOCUS ON MOBILITY/EXIGENCY

The Supreme Court's first opportunity to determine the scope and vitality of *Carroll*[69] occurred in *Chambers v. Maroney,*[70] a 1970 case. The Court was faced with the question of whether *Carroll* could be used to uphold the warrantless search of an automobile.[71] The automobile in the *Chambers* case was seized and brought to the police station after the arrest of all the occupants.[72] The Court refused to characterize the search as incident to arrest because the police conducted the search some time later.[73]

The *Chambers* Court permitted the warrantless search of the automobile after it had been seized and moved to another location.[74] The Court spoke of the option between the seizure of the car until a warrant was obtained and a search without a warrant as differing only in the degree of intrusion upon a person's privacy.[75] The *Chambers* Court stated that "[f]or 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."[76] The key for the *Chambers* court

---

67. *See* Katz, *supra* note 31, at 563 (describing the Supreme Court cases since *Carroll* defining the automobile exception).

68. *See* LAFAVE, *supra* note 33, § 7.2(a), at 461.

69. *See* LAFAVE, *supra* note 33, § 7.2(a), at 461 (noting "the continuing vitality and potential reach of the *Carroll* doctrine suddenly became important" after *Chimel* because police officers could no longer search the entire vehicle following a valid arrest).

70. 399 U.S. 42 (1970).

71. *See* Chambers v. Maroney, 399 U.S. 42, 50 (1970); LAFAVE, *supra* note 33, § 7.2(a), at 461 (stating that the Court passed quickly on the claim that the search was incident to arrest primarily because of the time lapse between the arrest and the search).

72. *See Chambers*, 399 U.S. at 44.

73. *See id.* at 47. The *Chambers* Court quoted *Preston v. United States*, 376 U.S. 364, 367 (1964), which held that "once an accused is under arrest and in custody, then a search made at another place, without a warrant, is simply not incident to arrest."

74. *See Chambers*, 399 U.S. at 51-52. The *Carroll* requirement of mobility was lessened by the *Chamber* Court's approval of a search of an automobile after the automobile had been moved to the station house. *See Chambers*, 399 U.S. at 51-52. The Court further observed, in a footnote, that for reasons of officer safety and to enable a careful search, it was not unreasonable to move the automobile from the "dark parking lot" where the arrest was made "in the middle of the night." *Id.* at 52 n.10.

75. *See id.* at 52. The Court characterized the immobilization of the automobile while awaiting a warrant as a "lesser" intrusion and the warrant as the "greater" intrusion. *See id.* at 51.

76. *Id.* at 52.

was not the timing of the search, but the requirement of probable cause to search.[77]

The *Chambers* decision has been criticized as being too broad because the opinion seemed to eliminate the need for a warrant in all automobile searches premised on probable cause.[78] The reason the automobile's mobility received little attention in the *Chambers* case was because the Court expanded the exception to cover the search of even an immobile automobile.[79] Justices later disagreed about how to apply *Chambers* because the decision could not be easily reconciled with the requirement of exigent circumstances, such as mobility, in order for the automobile exception to apply.[80]

The importance of mobility was considered in *Coolidge v. New Hampshire*,[81] which was decided in 1971, one year after *Chambers*. In *Coolidge*, police investigated the defendant for several weeks and, subsequent to the defendant's arrest, seized his car in his driveway.[82] The Court held that the warrantless search of the car violated the Fourth Amendment,[83] even though the search was made incident to arrest,[84] and the search took place at the police station where the car had been towed.[85]

The facts were very similar to those in *Chambers*, but the Supreme Court, in a plurality opinion, distinguished *Coolidge* from *Chambers*.[86] In *Coolidge*, the police did not find any contraband in the car,[87] and the car was not in motion when the police seized it; rather, the car was

77. *See Chambers*, 399 U.S. at 52.

78. *See* Katz, *supra* note 31, at 567.

79. *See* Katz, *supra* note 31, at 565. Professor Katz described *Chambers* as the case that severed the requirement of exigent circumstances from the automobile exception. *See* Katz, *supra* note 31, at 565. LaFave explained that the owner of the car in *Chambers* had been arrested along with the other occupants. *See* LAFAVE, *supra* note 33, § 7.2(a), at 463. Therefore, the owner was not in a position to reclaim the car and move it. *See* LAFAVE, *supra* note 33, § 7.2(a), at 463. Based on these facts, LaFave argued that there were not any exigent circumstances, such as mobility, to justify the Court's departure from the warrant requirement. *See* LAFAVE, *supra* note 33, § 7.2(a), at 463.

80. *See* LAFAVE, *supra* note 33, § 7.2(a), at 463 (stating that the general rule was that the Court required a search warrant for all searches unless there were exigent circumstances).

81. 403 U.S. 443 (1971).

82. *See* Coolidge v. New Hampshire, 403 U.S. 443, 446-47 (1971). The police called a towing company 2 1/2 hours after the arrest, and the car was searched two days after it was seized. *See id.* It was searched again one year after the arrest and one last time three months after the previous search. *See id.*

83. *See id.* at 463-64. The Court noted that the opportunity to search this car was not "fleeting," and thus, a search warrant should have been issued. *See id.* at 460.

84. *See id.* at 455.

85. *See id.* at 456.

86. *See id.* at 458 (citing Chambers v. Maroney, 399 U.S. 42, 42 (1970)).

87. *See id.* at 448. The only evidence obtained from the search of the car was vacuum sweepings containing particles of gunpowder. *See id.* In the *Chambers* case, the search of the car revealed two guns, which the police considered contraband. *See Chambers*, 399 U.S. at 44.

parked in the defendant's driveway.[88] The absence of contraband and the immobility of the automobile prompted the *Coolidge* Court to determine that the opportunity to search the car could not be characterized as "fleeting."[89] The Court stated that "no possible stretch of the legal imagination" could construe this situation as one in which it was impracticable to secure a warrant.[90] Thus, the application of the automobile exception was improper.[91]

Application of *Chambers* in the wake of *Coolidge* further confused courts as to what constituted mobility in the context of the automobile exception.[92] In 1974, in *Cardwell v. Lewis*,[93] the Court was faced with an issue which was factually very different from other Fourth Amendment cases the Court had considered because it involved the search of an automobile's exterior.[94] Law enforcement officials had made a warrantless seizure of Lewis' automobile from a public parking lot, and then the officials removed the vehicle to a police impound-yard to examine the exterior of the vehicle.[95] The police hoped to match paint scrapings taken from a murder victim's car and tire tracks taken from the crime scene in order to connect Lewis to the murder.[96]

The Court in *Cardwell* distinguished the case from *Coolidge* and stated that *Chambers* was controlling.[97] The Court explained that this case presented the similar problem with mobility of the vehicle.[98] In fact, the concern with the car disappearing was more prevalent than it was in *Chambers* since Lewis knew that his car was incriminating evidence.[99]

While the *Cardwell* Court acknowledged that probable cause to search and seize the car existed before Lewis was arrested, the Court held

---

88. *See* Coolidge v. New Hampshire, 403 U.S. 443, 447 (1971). Police officers stopped the car in *Chambers* on a road about two miles from the scene of the crime. *See Chambers*, 399 U.S. at 44.

89. *See Coolidge*, 403 U.S. at 460. The Court noted that after the arrest of Chambers, his wife and children were escorted from the house and police stood guard at the house all night. *See id.*

90. *See id.* at 462 (citing *Carroll*, 267 U.S. at 153).

91. *See id.* at 463. The Court stated that even though the current situation concerned an automobile, an "'automobile' is not a talisman" which makes the Fourth Amendment disappear. *See id.* at 461.

92. *See* LAFAVE, *supra* note 33, § 7.2(a), at 465.

93. 417 U.S. 583 (1974).

94. Cardwell v. Lewis, 417 U.S. 583, 585 (1974).

95. *See id.*

96. *See id.* at 595-96. The paint scrapings taken from the car matched those at the murder scene, and the tire treads also matched those at the murder scene. *See id.* at 588.

97. *See id.* at 593 (stating that the "scope of the search" and the "circumstances of the seizure" were different in *Coolidge*). The Court explained that the *Coolidge* case involved police entering private property since the car was parked in the driveway. *See id.*

98. *See id.* at 594 (stating that the "same arguments and considerations of exigency, immobilization on the spot, and posting a guard" applied in this case).

99. *See id.* at 595 (explaining that Lewis had been interrogated about the crime). Also, there was testimony that Lewis had asked one of his attorneys to get the car to his wife and that the attorney turned over the keys to "avoid a physical confrontation" with police. *Id.* at 595.

that the officers were not bound to obtain warrants at the first practicable moment.[100] Therefore, the Court allowed the warrantless search because the "exigency may arise at any time, and the fact that the police might have obtained a warrant earlier does not negate the possibility of a current situation's necessitating prompt police action."[101] The Court expanded the rule by deciding that exigent circumstances can exist in more situations than just when the driver has been arrested.[102]

The confusion about the mobility/exigency requirement continued in *Texas v. White*,[103] a 1975 case, in which the Court upheld a search of the defendant's car after he was arrested.[104] A majority of the Court accepted the proposition that if officers were able to conduct a legal, warrantless search of the automobile at the scene, they could also conduct a search of the automobile at the police station at a later time.[105] The *White* Court's justification for the warrantless search was based more on the fact that the item to be searched was an automobile, rather than the mobility of the item to be searched.[106] Thus, what began as an exception to the warrant requirement, due to a concern with the fact that contraband may be lost because it was in an automobile,[107] had evolved into an almost automatic assumption of exigent circumstances simply because an automobile was involved.[108]

C. LESSER EXPECTATION OF PRIVACY

While the courts continued to struggle with the meaning of the mobility/exigency factor of the automobile exception, the second factor, lesser expectation of privacy, was also developing.[109] The Court began to articulate the lesser expectation of privacy afforded to individuals

---

100. *See id.*

101. *Id.* at 595-96.

102. *See id.* at 595 ("[E]xigent circumstances with regard to vehicles are not limited to situations where probable cause is unforeseeable and arises only at the time of arrest.").

103. 423 U.S. 67 (1975).

104. *See* Texas v. White, 423 U.S. 67, 68 (1975). The defendant was arrested after attempting to pass fraudulent checks at a drive-up window of a bank. *See id.*

105. *See id.* at 68 (citing Chambers v. Maroney, 300 U.S. 42, 52 (1970)); *see also* LAFAVE, *supra* note 33, § 7.2(b), at 468.

106. *See id.*; *see also* LAFAVE, *supra* note 33, § 7.2(b), at 468-69.

107. *See* Carroll v. United States, 267 U.S. 132, 158-59 (1925) (stating that a warrantless search of an automobile is valid if based on probable cause to believe the automobile contains contraband).

108. *See White*, 423 U.S. at 69 (holding that an automobile may be searched later without obtaining a warrant if there was probable cause to search at the time it was stopped). The *White* Court did not mention mobility or exigency. *See id.*

109. *See generally* Cady v. Dombrowski, 413 U.S. 433 (1973); *see also* LAFAVE, *supra* note 33 § 7.2(b), at 467. The Court in *Cady* noted that originally the justification for treating automobiles differently than houses was based on the mobile nature of automobiles, but the Court recognized that the automobile exception was being applied to warrantless searches of vehicles in circumstances where the possibility of the vehicle being removed or evidence in it destroyed was "remote, if not non-existent." 413 U.S. at 441-42.

while using a motor vehicle to transport their belongings.[110] In *Cady v. Dombrowski*,[111] a 1973 case, the Court expanded the previously noted differences in cars and homes by looking to the expectation of privacy concerned with each.[112] The fact that cars frequently came into contact with local officials in situations where the officials were able to see evidence of crimes or contraband in "plain view" justified, in the Court's eyes, a lesser expectation of privacy.[113] Therefore, the Court in *Cady* noted that the constitutional difference between automobiles and premises stemmed not only from the mobility of automobiles, but also from the extensive, routine contact law enforcement officials have with automobiles.[114]

This lesser expectation of privacy justification was another basis for the Court's holding in *Cardwell*.[115] In *Cardwell*, the Court upheld a search of an automobile's exterior under the automobile exception.[116] The Court stated that a person has a lesser expectation of privacy in an automobile because "its function is transportation and it seldom serves as one's residence or as the repository of personal effects."[117] The Court indicated this lesser expectation of privacy would make a warrantless search, based upon probable cause, reasonable under the Fourth Amendment.[118]

A familiar summation of the lesser privacy interest in automobiles is found in *South Dakota v. Opperman*,[119] decided in 1976:

> Automobiles, unlike homes, are subjected to pervasive and continuing governmental regulation and controls, including periodic inspection and licensing requirements. As an everyday occurrence, police stop and examine vehicles when license plates or inspection stickers have expired, or if other violations, such as exhaust fumes or excessive noise, are noted, or if headlights or other safety equipment are not in proper working order.[120]

---

110. *See* LAFAVE, *supra* note 33, § 7.2(b), at 469.

111. 413 U.S. 433 (1973).

112. *See Cady*, 413 U.S. at 442 (defining the constitutional difference between houses and automobiles).

113. *See id.* at 442.

114. *See id.*

115. *See* Cardwell v. Lewis, 417 U.S. 583, 590 (1974).

116. *See id.* at 592.

117. *Id.* The Court further noted a "car has little capacity for escaping public scrutiny" and "travels public thoroughfares where the occupants and contents are in plain view." *Id.*

118. *See id.* at 592-93. The Court stated that with a "search" limited to the exterior of the car, such as an examination of tire treads and the taking of paint scrapings, no privacy interests are infringed upon. *See id.* at 591.

119. 428 U.S. 364 (1976).

120. South Dakota v. Opperman, 428 U.S. 364, 368 (1976); *accord* LAFAVE, *supra* note 33,

Opperman concerned the validity of an inventory search.[121] The Court referred to the reduced expectation of privacy in automobiles as justification for the warrantless inventory search and held the search was valid.[122]

After *Opperman*, the Court defined the automobile exception to allow warrantless searches of automobiles based upon the mobility/exigency issues and the lesser expectation of privacy inherent in automobiles.[123] Thus, at this point, it was fairly well settled that warrantless searches of automobiles based upon probable cause were permitted.[124] The next major issue facing the Court was the possible extension of the automobile warrant exception to containers found within an automobile.

D. SEARCH OF CONTAINERS FOUND WITHIN AUTOMOBILES

The question concerning the search of containers within a vehicle was first addressed in 1977, in *United States v. Chadwick*.[125] Federal agents had received a tip from Amtrak employees concerning a suspicious footlocker being shipped to Boston.[126] Once the train arrived in Boston, agents observed two men claim the footlocker and load it into the defendant's trunk.[127] While the trunk of the car was still open, but before the engine was started, the three men were arrested.[128] The footlocker was seized and searched later at the Boston Federal Building.[129]

The Court determined that the search was illegal because the law enforcement officers should have obtained a search warrant for the footlocker.[130] The Court stated that the doctrines of mobility and diminished expectation of privacy within the automobile exception did

---

§ 7.2(b), at 469.

121. *See id.* at 366-67. The car in question had been issued two parking tickets within a seven hour period. *See id.* at 365-66. The first parking ticket explained that the car could be towed for the violation. *See id.* at 365. After an officer issued the second ticket, the car was towed. *See id.* at 366. After officers noticed a watch and other personal belongings inside the car, an officer conducted an inventory of all the items in the car. *See id.* The officer used a standard inventory form pursuant to standard police procedure. *See id.* The inventory revealed a plastic bag in the glove compartment containing marijuana. *See id.*

122. *See id.* at 368.

123. *See id.*

124. *See generally* South Dakota v. Opperman, 428 U.S. 364 (1976); Texas v. White, 423 U.S. 67 (1975); Cardwell v. Lewis, 417 U.S. 583 (1974); Cady v. Dombrowski, 413 U.S. 433 (1973); Chambers v. Maroney, 399 U.S. 42 (1971); Carroll v. United States, 267 U.S. 132 (1925).

125. 433 U.S. 1 (1977).

126. *See* United States v. Chadwick, 433 U.S. 1, 3 (1977). The footlocker was unusually heavy for its size and was leaking talcum powder, which was often used to mask the odor of marijuana or hashish. *See id.*

127. *See id.* at 4.

128. *See id.*

129. *See id.* The search of the car disclosed no other evidence. *See id.* The keys for the footlocker were found on one of the defendants. *See id.*

130. *See id.* at 13.

not apply to the footlocker.[131] The Court reasoned that luggage, even when contained in vehicles, was not the same as a vehicle itself.[132] A person's expectations of privacy in the items contained in personal luggage are substantially greater than the expectations of privacy in an automobile.[133] The Court, therefore, concluded that once the footlocker was seized, it was unreasonable to search it without first obtaining a warrant.[134]

Two years after *Chadwick*, the Court addressed another case involving luggage within a car. In *Arkansas v. Sanders*,[135] police officers responded to a tip that the defendant would arrive at the Little Rock Municipal Airport carrying a green suitcase containing marijuana.[136] The defendant arrived at the designated airport with a green suitcase, and the defendant and another man then hailed a taxi, put the green suitcase in the taxi's trunk, and left the airport.[137] The officers then pulled the taxi over and asked the taxi driver to open the trunk.[138] The officers, without the permission of the defendant or the other man, opened the suitcase and discovered 9.3 pounds of marijuana.[139]

The Court in *Sanders* followed the rule set forth in *Chadwick* and held that the search of the suitcase was unconstitutional.[140] The Court stated that the fact the luggage was seized from an automobile did not affect a person's expectation of privacy in the luggage.[141] Therefore, the two reasons for allowing a warrantless search of an automobile, mobility and a lesser expectation of privacy, did not apply to searches of personal luggage taken from automobiles.[142] Thus, at this point, officers were required to obtain a warrant to search luggage found within vehicles.[143]

---

131. *See id.*

132. *See id.*

133. *See id.*

134. *See id.* The Court noted that once the federal agents seized the footlocker, there was no danger that it would be destroyed or its contents removed while a search warrant was obtained. *See id.*

135. 442 U.S. 753 (1979).

136. *See* Arkansas v. Sanders, 442 U.S. 753, 755 (1979). The officers were confident in the accuracy of the tip because the informant had provided law enforcement with reliable tips on previous occasions. *See id.*

137. *See id.*

138. *See id.*

139. *See id.* The marijuana was packaged in 10 plastic bags. *See id.*

140. *See id.* at 763-64. The Court looked to *Chadwick*, in which the Court found the exigent circumstances disappeared once the officers seized the luggage. *See id.* (citing United States v. Chadwick, 433 U.S. 1, 13 (1977)).

141. *See id.* at 764-65. The Court in *Sanders* also noted that, as a general rule, there was no greater need for warrantless searches of luggage simply because it was taken from an automobile. *See id.*

142. *See id.* at 764-65.

143. *See id.* at 766.

In 1982, the Court decided another case involving a container within an automobile, *United States v. Ross*,[144] a watershed case regarding the warrant exception for automobile searches.[145] In *Ross*, the police had probable cause to search the defendant's automobile for drugs.[146] The police found a "brown lunch bag" in the trunk.[147] Even though the police did not have a search warrant, they opened the bag and found smaller bags containing white powder.[148] Police lab results determined the white powder was heroin.[149]

The Court in *Ross* distinguished its holding from *Chadwick* and *Sanders*, because of the presence of probable cause to search the entire automobile, and found its position consistent with *Chambers* and *Carroll*.[150] The scope of a lawful search under the *Chambers-Carroll* rule was broadened and defined in *Ross*.[151] The Court in *Ross* held that "the scope of the warrantless search authorized by [the automobile] exception is no broader and no narrower than a magistrate could legitimately authorize by warrant."[152] Thus, if "probable cause justifies the search of a lawfully stopped vehicle, it justifies the search of every part of the vehicle and its contents that may conceal the object of the search."[153] The Court determined that the *Carroll* decision would be essentially worthless if the scope of a warrantless search of an automobile did not include other containers or packages found inside the automobile.[154]

---

144. 456 U.S. 798 (1982).

145. *See* LAFAVE, *supra* note 33, § 7.2(d), at 496 (citing United States v. Ross, 456 U.S. 798 (1982)).

146. *See Ross*, 456 U.S. at 801. The police had a detailed description of the defendant and his car from a previously reliable informant. *See id.* at 800.

147. *See id.* at 801.

148. *See id.*

149. *See id.*

150. *See id.* at 818; *see also* LAFAVE, *supra* note 33, § 7.2(d), at 493-94. In *Chadwick*, the police only had probable cause to search the footlocker, *see* 433 U.S. at 13, and in *Sanders*, the police only had probable cause to search the green suitcase, *see* 442 U.S. at 764-65. The Court determined the facts of the current case were more in alignment with *Carroll*, where there was probable cause to search the vehicle for contraband. *See Ross*, 456 U.S. at 813-14, 819 (citing Carroll v. United States, 267 U.S. 132, 153 (1925)).

151. *See id.* at 818; *see also* LAFAVE, *supra* note 33, § 7.2(d), at 493. The Court specifically framed the question before it as determining the scope of the exception created by *Carroll*. *See Ross*, 456 U.S. at 809.

152. *Id.* at 825; *accord* LAFAVE, *supra* note 33, § 7.2(d), at 493.

153. *Ross*, 456 U.S. at 825; *accord* LAFAVE, *supra* note 33, § 7.2(d), at 493.

154. *See Ross*, 456 U.S. at 818. The Court in *Ross* reasoned that it would be illogical to assume the quality of the container was the key to the validity of the search; the searches in *Carroll* and *Chambers* would have been valid even if the whiskey in *Carroll* would have been found in a burlap bag instead of the upholstery, and the guns in *Chambers* were inside a crumpled paper bag. *See Ross*, 456 U.S. 819.

Commentators have stated that the decision in *Ross* was shaped by two philosophies of the Court.[155] One view proposed that the automobile exception should be narrowly drawn to show the judicial preference for warrants, and the second view supported broadening the exceptions to promote more effective law enforcement.[156] Commentators pointed to the frequency of plurality opinions and five-to-four decisions as evidence of the difficulty the Court had reconciling these two vastly different philosophies.[157]

The final blow to the view preferring a warrant came in 1991, in *California v. Acevedo*.[158] In *Acevedo*, officers were surveying an apartment known to contain marijuana.[159] The Supreme Court overruled the *Sanders* case[160] and stated that not only had the *Chadwick-Sanders* rule failed to adequately protect privacy interests, but it had also caused confusion for both the courts and law enforcement officers.[161] The Court articulated the new rule as follows: "The police may search an automobile and the containers within it where they have probable cause to believe contraband or evidence is contained."[162] Thus, after *Acevedo*, it would seem the Court had created "one rule to govern all automobile searches."[163]

E. SEARCH OF PERSONS WITHIN AN AUTOMOBILE

Commentators have stated it is important to note that in dealing with the search of automobiles and the containers within, persons inside the automobile are subject to a different set of principles.[164] The Court in *United States v. Di Re*[165] faced the question of whether an occupant of a car could be searched if the items the officers were looking for could be concealed on the person.[166] The Court was not convinced that by one's

---

155. *See* LAFAVE, *supra* note 33, § 7.2(d), at 496.

156. *See* LAFAVE, *supra* note 33, § 7.2(d), at 496; *see also* Katz, *supra* note 31, at 601-02.

157. *See* Shepard, *supra* note 29, at 223 (citing Cardwell v. Lewis, 417 U.S. 583 (1974); Cady v. Dombrowski, 413 U.S. 433 (1973); Coolidge v. New Hampshire, 403 U.S. 443 (1971)).

158. 500 U.S. 565 (1991).

159. *See* California v. Acevedo, 500 U.S. 565, 567 (1991). The officers had intercepted a package containing marijuana and arranged to have the package forwarded to a Federal Express office so that they could arrest the person who claimed the package. *See id.*

160. *See id.* at 576-77 (citing United States v. Chadwick, 433 U.S. 1, 13 (1977); Arkansas v. Sanders, 442 U.S. 753, 770 (1979)).

161. *See id.* at 568-69. The Court stated the *Chadwick-Sanders* rule had also "impeded effective law enforcement" and had been "criticized in the academic community." *Id.*

162. *Id.* at 580.

163. *Id.*

164. *See* LAFAVE, *supra* note 33, § 7.2(e), at 507.

165. 332 U.S. 581 (1947).

166. *See* United States v. Di Re, 332 U.S. 581, 587 (1947). The officers were looking for counterfeit gasoline ration coupons and eventually found 100 coupons in an envelope concealed between the defendant's shirt and underwear. *See id.* at 583.

mere presence in a car, a person should lose the right to be immune from searches of his or her body.[167]

Thus, it is from this winding and twisting road that the current automobile exception emerged, which allows officers to search an automobile and the containers within it when the officer has probable cause to believe the contraband or evidence is inside the container.[168] *Wyoming v. Houghton*[169] was the most recent fork in the road.[170] The Supreme Court was presented with the issue of what effect ownership of the containers had on the automobile exception.[171]

III. ANALYSIS

The Supreme Court's decision in *Houghton* was divided six-to-three.[172] Justice Scalia wrote the majority opinion,[173] Justice Breyer filed a concurrence,[174] and Justice Stevens authored the dissenting opinion.[175]

A. MAJORITY OPINION

The Court began by laying out a two-part test to determine whether the government's action violated the Fourth Amendment.[176] The first step required an inquiry as to whether the action was prohibited under common law at the time the Fourth Amendment was framed.[177] If the first step did not produce an answer, the second step focused on the traditional standard of reasonableness.[178] The traditional standard of reasonableness required a balancing of the degree to which the governmental action intruded upon the individual's Fourth Amendment rights, and the degree to which the action was needed for the support of a legitimate governmental interest.[179]

---

167. *See id.* The Court found no reason to expand the *Carroll* rule to justify the search of persons merely because of their presence in an automobile. *See id.*

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

169. 526 U.S. 295 (1999).

170. *See* Wyoming v. Houghton, 526 U.S. 295 (1999).

171. *See id.*

172. *See id.*

173. *See id.* at 297.

174. *See id.* at 307.

175. *See id.* at 309.

176. *See id.* at 299-300.

177. *See id.* (citing Wilson v. Arkansas, 514 U.S. 927, 931 (1995); California v. Hodari D., 499 U.S. 621, 624 (1991) (defining seizure to mean "taking possession" or bringing an object under physical control)).

178. *See id.* (citing Vernonia Sch. Dist. 47J v. Acton, 515 U.S. 646, 652-53 (1995) (defining the traditional reasonableness test as a balancing of the intrusion of the search on an individual's Fourth Amendment interests against the search's promotion of a legitimate governmental action)).

179. *See id.* at 297.

1. *Part I—Common Law Inquiry*

The Court began its common law analysis by noting that the Wyoming Highway Patrol Officers had probable cause to believe illegal drugs were in the car.[180] The existence of probable cause to search for contraband allowed the Court to analogize the current case to the *Carroll* line of cases.[181] The *Carroll* Court concluded that the framers would have regarded a warrantless search for contraband as reasonable in light of legislation enacted from 1789 to 1799.[182]

Beyond the *Carroll* case, the Court found further historical evidence to show that the framers would have found a warrantless search of the containers within an automobile acceptable.[183] The Court looked to Justice Stevens' opinion in *Ross* for this support.[184] The *Ross* Court had observed that throughout history it had been assumed that a "lawful search of an automobile would include a search of any container which might conceal the object of the search."[185]

The Court next addressed the issue of ownership and found neither *Ross* nor the cases that followed had qualified the automobile exception with respect to ownership.[186] The Court noted that there were no passen-

---

180. *See id.* at 300. The trial court held that the officer had probable cause to search the car and all containers in the car that could hold the contraband. *See id.* at 298.

181. *See id.* (citing Carroll v. United States, 267 U.S. 132 (1925) (noting *Carroll* "involved the warrantless search of a car [that police] had probable cause to believe contained contraband— . . . bootleg liquor")).

182. *See id.* (citing *Carroll*, 267 U.S. at 150-53). The legislation to which the Court referred "empowered customs officials to search any ship or vessel without a warrant if they had probable cause to believe that it contained goods subject to a duty." *Id.*

183. *See id.* at 300.

184. *See id.* at 300-01 (citing United States v. Ross, 456 U.S. 798, 820 n.26 (1982)).

185. *Id.* at 301 (citing *Ross*, 456 U.S. at 820 n.26). The *Ross* Court observed:

> It is noteworthy that the early legislation on which the Court relied in *Carroll* concerned the enforcement of laws imposing duties on imported merchandise . . . . Presumably such merchandise was shipped then in containers of various kinds, just as it is today. Since Congress had authorized warrantless searches of vessels and beasts for imported merchandise, it is inconceivable that it intended a customs officer to obtain a warrant for every package discovered during the search; certainly Congress intended customs officers to open shipping containers when necessary and not merely to examine the exterior of cartons or boxes in which smuggled goods might be concealed. During virtually the entire history of our country—whether contraband was transported in a horse-drawn carriage, a 1921 roadster, or a modern automobile—it has been assumed that a lawful search of a vehicle would include a search of any container that might conceal the object of the search.

Id. at 300-01 (citing *Ross*, 433 U.S. at 820 n.26).

186. *See id.* at 301 (citing California v. Acevedo, 500 U.S. 565, 572 (1991) (stating that the Court in *Ross* "took the critical step of saying that closed containers in cars could be searched without a warrant because of their presence within the automobile"); United States v. Johns, 469 U.S. 478, 479-80 (1985) (stating *Ross* "held that if police officers have probable cause to search a lawfully stopped vehicle, they may conduct a warrantless search of any containers found inside which may contain the object of the search")).

gers in *Ross*.[187] However, the Court stated that if the *Ross* Court had intended to limit its rule with respect to ownership, this substantial limitation would have been expected to be expressed in the *Ross* opinion.[188] Thus, the Court concluded there was no reason to believe ownership limitations were implied in *Ross*.[189]

The Court continued its historical analysis by stating that Houghton's proposal requiring law enforcement officers to distinguish the ownership of containers within an automobile was not consistent with the balance of Fourth Amendment jurisprudence.[190] The Court framed the critical element of permissible scope in terms of probable cause to believe the specific thing being searched for is located in the area to be searched, and whether this scope was limited by ownership of the container.[191]

The Court concluded that the historical evidence relied upon in *Ross* did not distinguish containers based on ownership.[192] The Court stated that "when there is probable cause to search for contraband in a car . . . police officers . . . [may reasonably] examine packages and containers without showing individualized probable cause for each [package or container]."[193] Also, a passenger's personal belongings or containers are the same as the driver's belongings or containers, even the glove compartment, and are all "in" the car.[194] Thus, the warrantless search of Houghton's purse would have been permitted under common law at the time the Fourth Amendment was framed.[195]

2. *Part II—Traditional Reasonableness Balance*

While the Court had satisfied its test by meeting the first part, it nonetheless turned to the second part.[196] The Court stated that an examination of the traditional reasonableness balancing test also yielded an answer in favor of upholding the search.[197] The Court weighed the

187. *See id.* (citing *Ross*, 456 U.S. at 825).

188. *See id.* The Court further stated that such a limitation would have been expected to be "apparent in the historical evidence forming the basis" for the *Ross* decision, but there was no mention of ownership. *Id.* at 302 (citing *Ross*, 456 U.S. at 825).

189. *See id.*

190. *See id.* at 302.

191. *See id.* (citing *Ross*, 456 U.S. at 824). The Court also looked to an earlier Supreme Court case in which the constitutionality of a search warrant was challenged because the warrant was directed at a place owned by someone who was not suspected of the crime. *See id.* (citing Zurcher v. Stanford Daily, 436 U.S. 547, 556 (1978)).

192. *See id.* at 302.

193. *Id.*

194. *See id.*

195. *See id.*

196. *See id.* at 303.

197. *See id.*

degree to which the governmental action intruded upon individual privacy against the degree to which the intrusion advanced legitimate governmental interests.[198]

The Court first turned to the lesser expectation of privacy afforded to automobiles to determine the degree of intrusion on individual privacy interests.[199] The Court cited both *Cardwell* and *Opperman* and decided that passengers, along with drivers, "possess a reduced expectation of privacy" with regard to what they transport within automobiles.[200]

The Court attacked the position taken by the Wyoming Supreme Court concerning the reasonableness of the search.[201] The Wyoming Supreme Court analyzed the search as if it were a search of a person, instead of a search of a container.[202] The Court agreed that searches of individuals are subjected to a higher standard of protection,[203] but it distinguished the current case by stating this heightened protection did not apply to the examination of personal property found inside an automobile.[204]

At this point, the Court inserted a footnote chiding the dissent for its analysis, which was based upon a distinction between drivers and passengers.[205] The Court defended its position that there was a distinction between an item concealed in clothing worn by a passenger and items concealed in a passenger's personal belongings, such as a briefcase or a purse.[206] The Court stated its distinction between searches of property and searches of persons preserved an individual's privacy interests concerning searches of the person.[207] The Court would allow searches of property, such as personal belongings, within an automobile, but it would disallow the search of a person.[208] The Court stated the traumatic

198. *See id.*

199. *See id.*

200. *Id.* (citing South Dakota v. Opperman, 428 U.S. 364, 368 (1976); Cardwell v. Lewis, 417 U.S. 583, 590 (1975)). The Court noted the observations made in *Cardwell* that cars "travel public thoroughfares," and in *Opperman*, that cars "seldom serve as a repository for personal effects and are subject to police stop and examination to enforce extensive automobile regulation," along with the fact that traffic accidents may expose all of an automobile's contents to public scrutiny, as support for its position. *Id.*

201. *See id.* at 303.

202. *See id.* The Court stated that the two cases relied upon by the Wyoming Supreme Court focused on personal privacy and personal dignity and were not conclusive on the issue of the search of a package. *See id.*

203. *See id.* (citing Ybarra v. Illinois, 444 U.S. 85, 96 (1979) (holding that a search warrant for a tavern did not cover body searches of all patrons present when the warrant was executed); United States v. Di Re, 332 U.S. 581, 587 (1948) (holding that a "search of a car did not justify a body search of a passenger")).

204. *See id.* at 303.

205. *See id.* at 303 n.1.

206. *See id.* at 303-04 n.1.

207. *See id.*

208. *See id.*

consequences normally associated with searches of the person were not expected during a search of an individual's personal belongings.[209]

Next, the Court turned to the second part of the balancing test—the degree to which the search is needed for the promotion of legitimate governmental interests.[210] The majority described the governmental interests at stake as substantial.[211] The Court stated that the effectiveness of law enforcement would be substantially hindered by acceptance of the Wyoming Supreme Court's rule.[212] The Court then listed three factors in favor of allowing the search: mobility, common enterprise, and a passenger as an unknowing accomplice.[213]

As support for the mobility concern, the Court cited *California v. Carney*.[214] In its decision, the *Carney* Court recited a litany of cases in which the Supreme Court had relied upon the difference between stationary structures and vehicles as justification for an exception to the Fourth Amendment.[215] In light of the risks of losing evidence created by the mobility of automobiles, the *Houghton* Court determined that the governmental interest in allowing a warrantless search outweighed an individual's privacy concerns.[216]

The Court also recognized that a passenger may be engaged in a common enterprise with the driver.[217] In such a situation, the passenger would have a personal interest in concealing contraband or other evidence.[218] The Court looked to *Maryland v. Wilson*[219] as support for this proposition.[220] The *Wilson* decision extended an officer's authority to request a driver to exit a car after a traffic stop to include allowing the officer to request that passengers get out of the car too.[221] The *Houghton* Court noted that one reason for this rule would be to remove a

---

209. *See id.* at 303.

210. *See id.* at 299-300.

211. *See id.* at 304.

212. *See id.*

213. *See id.* at 304-05.

214. 471 U.S. 386 (1985).

215. *See* Wyoming v. Houghton, 526 U.S. 295, 304 (1999) (citing California v. Carney, 471 U.S. 386, 390-91 (1985) (citing United States v. Ross, 456 U.S. 798, 806 (1982); South Dakota v. Opperman, 428 U.S. 364, 367 (1976); Cardwell v. Lewis, 417 U.S. 582, 588 (1974); Cady v. Dombrowski, 413 U.S. 433, 442 (1973); Chambers v. Maroney, 399 U.S. 42, 52 (1970); Cooper v. California, 386 U.S. 58, 59 (1967))).

216. *See id.* at 304 (stating that, as in all car search cases, the mobility of an automobile created a risk that evidence would be lost while the warrant was obtained).

217. *See id.* at 304-05 (citing Maryland v. Wilson, 519 U.S. 408, 413-14 (1997)).

218. *See id.*

219. 519 U.S. 408 (1997).

220. *See* Wyoming v. Houghton, 526 U.S. 295, 304-05 (1999) (citing *Wilson*, 519 U.S. at 413-14).

221. *See Wilson*, 519 U.S. at 413-14. The Court explained that this rule was based on concern for the officer's safety. *See id.* at 413. For example, if a weapon were concealed in the car, a passenger would have access to it if he or she were allowed to remain in the car after the stop. *See id.* at 414.

barrier to an officer's search when the passengers were involved in a crime with the driver.[222] Thus, the Court found a legitimate governmental interest in allowing a warrantless search of a passenger's belongings because the passenger may be involved in the suspected crime.[223]

The *Houghton* Court noted the final reason supporting substantial governmental interests concerned passengers who become "unwitting accomplices."[224] The Court stated that a driver might have access to a passenger's property for the purposes of concealing contraband as easily as other containers inside the car.[225] The Court looked to *Rawlings v. Kentucky*,[226] in which a defendant dumped drugs in a companion's purse to evade detection by officers.[227] The Court analogized this situation to the current case because Houghton, as one of her defenses, proposed that the contraband in her purse must have been placed there by one of her traveling companions.[228]

The Court acknowledged that these factors may not always be present, but the balancing test required the weighing of general interests versus specific case-by-case interests.[229] The Court stated that if officers had to positively conclude that the driver and passenger were involved in joint criminal activity or believe that the driver had time and opportunity to conceal the objects within the passenger's belongings, a passenger's property would virtually never be searched.[230] The majority anticipated that once this "passenger's property" rule became widely known, drivers and passengers involved in joint criminal activity would pass off all belongings in the car as the passenger's, and enormous amounts of litigation would ensue.[231]

The Court stated that the subsequent litigation would not only be voluminous, it would also be extremely complicated.[232] The "passenger's property" rule would require courts to resolve several questions,

---

222. *See Houghton*, 526 U.S. at 305. The Court stated that if it were to impose a requirement that the police could not search passenger's containers, then a criminal could hide contraband in those containers. *See id.*

223. *See id.* at 304-05.

224. *See id.* at 305 (citing Rawlings v. Kentucky, 448 U.S. 98, 102 (1980)).

225. *See id.*

226. 338 U.S. 98 (1980).

227. *See Rawlings*, 338 U.S. at 100-01. Officers were executing a search warrant at a premises where Rawlings was a visitor. *See id.* One of the residents of the house was asked to empty her purse; she told Rawlings to, "take what is yours" when she dumped several types of illegal drugs out of her purse. *See id.*

228. *See* Wyoming v. Houghton, 526 U.S. 295, 305 (1999). The Court noted that Houghton "testified that most of the seized contraband must have been placed in her purse by traveling companions while she was 'half asleep' in the car." *Id.*

229. *See id.*

230. *See id.*

231. *See id.*

232. *See id.*

including whether: (1) the officer should have believed the passenger's ownership claims; (2) the officer should have concluded the passenger owned the items based on objective factors; (3) the officer had reason to believe the driver and passenger were involved in joint criminal activity; and (4) the driver may have ensnared the passenger as an unknowing accomplice by concealing items in passenger's belongings without the passenger's permission.[233]

Here, the Court again responded to the dissent in a footnote.[234] According to the Court, the dissent placed its confidence in a police officer's ability to know what items were "obviously" owned by the passengers.[235] The Court rebutted by stating, "[I]t seems not at all obvious precisely what constitutes obviousness," and thus, the protection provided by the dissent was "unclear and unadministrable."[236]

The Court determined that after consideration of the government's interests involved, the balancing test tipped in favor of allowing the search of a passenger's belongings.[237] The Court stated that the interests advanced by the government were great, while the personal privacy interests were weak.[238]

The Court then considered the possible exception to the automobile exception set forth by the Wyoming Supreme Court.[239] The Court rejected this exception.[240] The Court concluded that the distinction between passengers and any other person whose property may have been in the car was not reasonable.[241] The Court stated this distinction would provide greater protection for owners of property who are passengers and lesser protection for those who are not.[242] The Court concluded that the issue was not the ownership of the container, but rather that the container was found inside an automobile for which there was probable cause to search for contraband.[243]

---

233. *See id.* at 305-06.

234. *See id.* at 306 n.2.

235. *See id.*

236. *Id.* (characterizing the dissent's protection of passenger's privacy interests as "on-the-cheap").

237. *See id.* at 306 (noting that when balancing the competing interests to determine reasonableness, the Court must take account of practical realities).

238. *See id.*

239. *See id.* The Wyoming Supreme Court's rule required officers to determine the ownership of containers within an automobile. *See* State v. Houghton, 956 P.2d 363, 372 (Wyo. 1998). After determining ownership, then the officers could only search the containers belonging to people the officers suspected of criminal activity. *See id.*

240. *See* Wyoming v. Houghton, 526 U.S. 295, 306 (1999).

241. *See id.*

242. *See id.*

243. *See id.* at 307 ("The sensible rule (and the rule supported by history and caselaw) is that such a package may be searched, whether or not its owner is present as a passenger or otherwise, because it may contain the contraband that the officer has reason to believe is in the car.").

Thus, the rule created by the majority focused on the location of the property, rather than ownership.[244] The majority held that "officers with probable cause to search a car may inspect passengers' belongings found in the car that are capable of concealing the object of the search."[245]

B. JUSTICE BREYER'S CONCURRENCE

Justice Breyer concurred in the majority's decision but pointed out its limitations.[246] He stated that historical analysis is important, but it should not be determinative of whether a Fourth Amendment violation has occurred.[247] He agreed that requiring officers to establish a container's ownership would destroy the bright-line rule set forward in *Ross*.[248] He also stated that in several cases the officer would have probable cause to search all containers, even those of the passengers.[249] Thus, Justice Breyer reasoned that allowing the search of all containers, regardless of ownership, would authorize only a limited number of searches that would otherwise be prohibited.[250]

Justice Breyer further stated that the rule of *Houghton* applies only to automobile searches and does not extend to a search of the person found in the automobile.[251] Justice Breyer agreed that the majority was correct in characterizing the distinction created in *Di Re* regarding searches of a person, even including outer clothing, as different from searches of containers.[252] Thus, Justice Breyer concurred that the decision reached by the majority did not disturb the "significantly heightened protection" afforded searches of a person.[253]

Justice Breyer also pointed out another distinction that could be made in the future.[254] He noted that the item at issue here was a woman's purse, an article that often holds very personal items.[255] Justice Breyer seemed to differentiate between a purse lying on the back seat

---

244. *See id.*
245. *Id.*
246. *See id.* (Breyer, J., concurring).
247. *See id.*
248. *See id.* at 307-08 (citing United States v. Ross, 456 U.S. 798, 825 (1982) (holding that if probable cause justified the search of a lawfully stopped vehicle, it justified the search of every part of the vehicle and its contents that may conceal the object of the search)).
249. *See id.* at 307.
250. *See id.* at 308.
251. *See id.* (stating that the rule "'obviously' applies only to searches of automobiles").
252. *See id.* (citing United States v. Di Re, 332 U.S. 581, 586-87 (1948)).
253. *See id.* (quoting Terry v. Ohio, 392 U.S. 1, 24-25 (1968)).
254. *See id.* (finding it was important that the container in question was a woman's purse).
255. *See id.*

from a purse that may be attached to the person.[256] In the latter case, he argued this circumstance could change the search from a search of property into the search of a person.[257] However, because those were not the circumstances faced in this case, Justice Breyer concurred with the majority.[258]

C. JUSTICE STEVENS' DISSENT

Justice Stevens, writing a dissent joined by Justice Souter and Justice Ginsburg, framed the issue as a matter of ownership rather than a matter of containers.[259] Justice Stevens reasoned that because the driver provided the information prompting the search, the passengers were not individually suspect.[260] Justice Stevens relied upon *Di Re* for the premise that the exception to the warrant requirement does not apply to passengers and subsequently to their belongings.[261] He criticized the majority for "fashioning a new rule that [was] based on the distinction between property contained in clothing worn by a passenger and property contained in a passenger's briefcase or purse."[262] Justice Stevens further stated that, in either case, the property was still in a container, regardless of whether the container was a purse or a pocket.[263] He also stated that an intrusion into a purse or briefcase was just as serious as an intrusion into a passenger's pockets.[264]

Aside from his criticisms of the majority's analysis of *Di Re*, Justice Stevens also criticized the majority's interpretation of *Ross*.[265] He noted that *Ross* rejected the notion that the scope of a search is defined by the nature of the containers to be searched.[266] Rather, *Ross* defined the search in terms of the object of the search and where those items may be

---

256. *See id.* (stating that if a purse were attached to a person then the purse may "amount to a kind of 'outer clothing'").

257. *See id.* (citing Terry v. Ohio, 392 U.S. 1, 24-25 (1968)).

258. *See id.* (stating that when a purse was separate from a person, no one had claimed that the type of container made a difference).

259. *See id.* at 309 (Stevens, J., dissenting). Justice Stevens stated that in all of the prior cases concerning the automobile exception, either the defendant was the operator of the automobile and had custody of the item of the search, or no questions were raised as to ownership or custody. *See id.*

260. *See id.*

261. *See id.* at 309 (stating that in *United States v. Di Re*, 332 U.S. 581 (1948), the only automobile exception case concerning the search of a passenger, the Court held the exception to the warrant requirement did not apply).

262. *Id.* at 309-10.

263. *See id.* at 310.

264. *See id.* (citing New Jersey v. T.L.O., 469 U.S. 325, 339 (1985) (noting that school children often carry highly personal items on their person or in purses); *Ex parte* Jackson, 96 U.S. 727, 733 (1877) (discussing the privacy of a person's papers while in the mail)).

265. *See id.* (citing United States v. Ross, 456 U.S. 798, 823 (1982)).

266. *See id.*

concealed.[267] The *Ross* Court stated that probable cause to search a taxi's trunk did not justify a search of the entire taxi, but the current majority's rule would discard that notion and allow an entire search of the taxi.[268] Thus, Justice Stevens argued that the majority's rule was not consistent with the rule set out by the Court in *Ross*.[269]

Next, Justice Stevens indicated that mere spatial associations were not sufficient to warrant an intrusion into a passenger's privacy interests.[270] He stated that even if there was not individualized suspicion toward Houghton, the officer should have at least had probable cause to search her purse because it obviously did not belong to the driver.[271] He also deferred to the Wyoming Supreme Court's determination that there was not probable cause to search Houghton's purse.[272]

Justice Stevens also disputed the majority's determination that the governmental interests presented in the case outweighed the individual's privacy rights.[273] Justice Stevens stated that he was confident an officer would be able to apply the rule set forth by the Wyoming Supreme Court, which required a warrant or individualized probable cause to search belongings obviously owned by passengers.[274] He argued that the rule adopted by the majority was no less complicated than the one proposed by the Wyoming Supreme Court, and thus it would be better to adopt the Wyoming Supreme Court's rule because it afforded individuals more protection.[275]

Justice Stevens closed by stating that the expansion given to the automobile exception to the warrant requirement was based solely on the

---

267. *See id.* (citing *Ross*, 456 U.S. at 825 (holding that every part of the vehicle and its contents that may conceal the object of the search may be searched)).

268. *See id.* (stating that the rule fashioned by the majority would allow the search of a taxi cab passenger's briefcase if there was probable cause to believe the taxi driver had contraband somewhere in his vehicle).

269. *See id.*

270. *See id.* at 311 n.2; *see also* Chandler v. Miller, 520 U.S. 305, 308 (1997) (emphasizing the need for individualized suspicion); United States v. Padilla, 508 U.S. 77, 82 (1993) (stating that persons involved in a conspiracy did not automatically have lessened privacy interests); Ybarra v. Illinois, 444 U.S. 85, 91, 94-96 (1979) (explaining that a person's mere association to persons suspected of crime did not create probable cause to search that person); United States v. Di Re, 332 U.S. 581, 587 (1948) (holding that mere presence in a suspected automobile did not result in losing immunity from unreasonable searches of a person).

271. *See* Wyoming v. Houghton, 526 U.S. 295, 311 (1999).

272. *See id.*

273. *See id.* In a footnote, Justice Stevens charged the Court with inventing a new approach to Fourth Amendment analysis. *See id.* at n.3. The Court had now put the traditional balancing test of competing privacy and governmental interests in second place to a new analysis. *See id.* The Court stated that it would only apply the balancing test if 18th-century common law did not provide an answer to the Fourth Amendment issue. *See id.* Justice Stevens argued that this restrictive two-step approach was not supported by precedent. *See id.*

274. *See id.*

275. *See id.* at 309, 312.

driver's misconduct instead of on solid Fourth Amendment principles.[276] He was thankful that the majority's holding was limited to the automobile exception, but that limitation did not justify the conclusion.[277]

IV. IMPACT

Since the *Houghton* decision, its holding has been examined multiple times. The United States Supreme Court has had an opportunity to review its decision. Many courts of several levels and of various states have adopted and expanded the *Houghton* decision. Yet other courts have rejected the *Houghton* decision in similar, but not identical, circumstances. North Dakota is one of many states that has not yet had an opportunity to apply or interpret *Houghton*. Along with various courts, many members of the academic community have commented on the *Houghton* decision.

A. AFFIRMING *HOUGHTON*

The United States Supreme Court had an opportunity to reaffirm the approach to Fourth Amendment cases that it articulated in *Houghton*, only a little over a month after its decision in *Houghton*. In *Florida v. White*,[278] the Court examined the validity of an inventory search.[279] The majority opinion, written by Justice Thomas, applied the same historical analysis used in the *Houghton* opinion: "In deciding whether a challenged governmental action violates the Amendment, we have taken care to inquire whether the action was regarded as an unlawful search and seizure when the Amendment was framed."[280] At this point, it seemed that *Houghton* not only clarified the automobile exception, but it also articulated the standard under which questions of Fourth Amendment violations would be analyzed.[281]

The Wyoming Supreme Court has also had an opportunity to comment on the United States Supreme Court's decision in *Houghton*.[282] The Wyoming Supreme Court characterized the United States Supreme

276. *See id.* at 313.
277. *See id.*
278. 526 U.S. 559 (1999).
279. *See* Florida v. White, 526 U.S. 559, 562 (1999). The defendant's car was seized under a forfeiture statute that allowed for the seizure of a vehicle used in the trafficking of illegal drugs. *See id.* at 561 & n.2. Following the seizure, the government performed an inventory search and found cocaine in the car. *See id.* at 562.
280. *Id.* at 563 (quoting Wyoming v. Houghton, 526 U.S. 295, 299 (1999)).
281. *See id.*
282. *See* Vasquez v. State, 990 P.2d 476, 482 (Wyo. 1999).

Court's decision as "virtually eliminating the 'closed container' analysis from automobile exception searches."[283] The Wyoming Supreme Court continued by stating that the view the United States Supreme Court took eliminated warrant protection for automobile searches.[284]

B. CASES FOLLOWING AND EXPANDING *HOUGHTON*

Some cases have applied the precedent set forth in *Houghton*, and in some instances have expanded its holding. The California Court of Appeals applied the *Houghton* decision to another case involving the search of a woman's purse.[285] In *People v. Hart*,[286] a law enforcement officer searched the defendant's purse for her identification after she refused to produce it.[287] The defendant attempted to locate her purse and her identification in the van but was unable to find it.[288] At this point the deputy began to fear for his safety and placed the two occupants of the van into the backseat of his car.[289]

The officer searched the van looking for possible weapons and other persons and found the defendant's purse in the back of the van.[290] Inside the purse, the officer found the defendant's identification along with illegal drugs and drug paraphernalia.[291] The California Court of Appeals followed the rule set forth in *Houghton* and determined that the officer's search of the van for the purpose of retrieving the defendant's identification did not violate the Fourth Amendment.[292] This case applied the rule of *Houghton* to a situation where the law enforcement officer was not looking for any type of contraband.[293]

In *State v. Matejka*,[294] the Wisconsin Court of Appeals declined to differentiate a search based on probable cause from a search based on consent, for purposes of applying the *Houghton* rule.[295] In *Matejka*, a Wisconsin state trooper stopped a van for failure to display a license plate on the front of the vehicle.[296] The defendant was a passenger in

283. *Id.* at 481 & n.1.
284. *See id.* at 482.
285. *See* People v. Hart, 86 Cal. Rptr. 2d 762, 769 (Cal. App. 3d 1999).
286. 86 Cal. Rptr. 2d 762 (Cal. App. 3d 1999).
287. *See Hart*, 86 Cal. Rptr. 2d at 764. The Sheriff's Department had received a call concerning a suspicious van parked in a residential neighborhood, and when the officers arrived on the scene, the defendant did not reveal her identification. *See id.* at 763-64.
288. *See id.*
289. *See id.*
290. *See id.* at 764.
291. *See id.*
292. *See id.* at 768 (citing Wyoming v. Houghton, 526 U.S. 295 (1999)).
293. *See generally id.*
294. No. 99-0070-CR, 1999 WL 682414 (Wis. Ct. App. Sept. 2, 1999).
295. State v. Matejka, No. 99-0070-CR, 1999 WL 682414, at *5 (Wis. Ct. App. Sept. 2, 1999).
296. *See id.* at *1.

the van.[297] After giving the driver a warning for the violation, the trooper asked if there was anything illegal in the van, to which the driver responded that there was not.[298] The driver then consented to a search of the van.[299] The trooper asked the occupants of the van to exit the vehicle before he conducted the search.[300] Because of the weather conditions, the passengers asked for their jackets.[301] The trooper searched each jacket as he handed them to the passengers and found marijuana in the pocket of the coat belonging to the defendant.[302]

The defendant argued that the driver of the van was not authorized to give consent to the trooper to search her jacket.[303] The Wisconsin Court of Appeals rejected this argument and interpreted the rule from *Houghton* as allowing a driver to consent to the search of all the containers, regardless of ownership, in the driver's vehicle.[304] Thus, *Matejka* declined to distinguish *Houghton* based on consent to search rather than probable cause to search.[305]

Another case which has applied the rule set forth in *Houghton* was *State v. Hirning*,[306] a South Dakota Supreme Court opinion. This case involved another traffic stop where illegal drugs were discovered.[307] The vehicle in question was stopped because of an object dangling from the rearview mirror, which was a violation of South Dakota law.[308] As he approached the car, the officer noticed the passenger in the front seat concealing an object underneath the seat.[309] At this point, the officer feared for his safety, and he removed all the passengers from the car to search under the front seat.[310] The search revealed a container with marijuana and methamphetamine inside.[311] The officer asked the driver who the drugs belonged to, and the driver answered that the drugs "belonged

297. *See id.*
298. *See id.*
299. *See id.*
300. *See id.*
301. *See id.*
302. *See id.*
303. *See id.* at *2.
304. *See id.* at *5.
305. *See id.* (stating that the Supreme Court in *Houghton* determined that a search "pursuant to a valid consent is constitutionally permissible," and it allowed a search of "all compartments of the vehicle, including a passenger's belongings found in the car").
306. 592 N.W.2d 600, 604-05 (S.D. 1999).
307. *See* State v. Hirning, 592 N.W.2d 600, 602 (S.D. 1999).
308. *See id.* (citing S.D. CODIFIED LAWS § 32-15-6 (Michie 1998)).
309. *See id.*
310. *See id.*
311. *See id.*

to basically all of them."[312] This admission lead to a search of all the passengers, which revealed other contraband.[313]

The South Dakota Supreme Court determined that once the driver admitted the drugs belonged "to all of them," the officer had probable cause to search the car.[314] The Court referred to *Houghton* when recognizing that passengers and drivers are often involved in the common enterprise of concealing fruits of their wrongdoing.[315] The Court concluded that the "all-embracing admission" by the driver created particularized suspicion to justify the search of each passenger.[316] Thus, the South Dakota Supreme Court upheld the search.[317]

The South Dakota Supreme Court once again cited to the *Houghton* decision in *State v. Steele*.[318] When the officer searched the purse, he found methamphetamine residue in two plastic bags.[319] *Steele* also involved the search of a woman's purse.[320] A police officer pulled over a vehicle, in which Steele was a passenger, for speeding.[321] After the stop, the officer arrested the driver for driving under the influence of alcohol, and the officer subsequently determined that Steele was unable to drive the car because she was also intoxicated.[322] The officer proceeded to search the vehicle.[323] As she was leaving the car, the officer requested Steele to leave her purse on the seat of the car.[324] Steele appealed her conviction, alleging that the search of her purse was unconstitutional.[325]

The South Dakota Supreme Court determined that since the purse was a container "in" the car, it was subject to a search similar to all other containers.[326] While the search in *Steele* was subsequent to an arrest, rather than based on probable cause, it reinforced the *Houghton* decision that all containers within a car were subject to search when the car was searched.[327]

---

312. *See id.*
313. *See id.* The passenger in the back seat had four baggies of methamphetamine in his pockets, and a search of the vehicle uncovered drug paraphernalia, a .22 caliber pistol, ammunition, a "Kershaw" knife, and an M80 firecracker. *See id.*
314. *See id.* at 604.
315. *See id.* at 605 (citing Wyoming v. Houghton, 526 U.S. 295 (1999)).
316. *See id.*
317. *See id.*
318. 613 N.W.2d 825 (S.D. 2000).
319. *See id.*
320. *See* State v. Steele, 613 N.W.2d 825, 825-26 (S.D. 2000).
321. *See id.* at 826.
322. *See id.*
323. *See id.*
324. *See id.*
325. *See id.*
326. *See id.* at 830.
327. *See id.*

A recent Nebraska case also applied the ruling from *Houghton* and interpreted the reasoning of *Houghton* to be valid in a search incident to an arrest context.[328] *State v. Ray*[329] concerned the validity of a search of a defendant's knapsack found within a car, in which the defendant had been a passenger, after the car was searched subsequent to the driver's arrest.[330] In rejecting the argument that the search of the knapsack was illegal, the Nebraska Court of Appeals cited to *Houghton* and stated that its reasoning—that ownership of the container was not relevant—was also applicable in search incident to arrest cases.[331]

A pair of companion cases from Texas also followed the rule set forth in *Houghton*.[332] The cases involved a search of a vehicle following a stop for a seat belt violation.[333] When the officer approached the car, he smelled burnt marijuana coming from the car.[334] The officer then placed the driver in handcuffs and requested that the passenger get out of the car.[335] After failing to find any marijuana in the passenger compartment, the officer requested the keys for the trunk and found a burlap bag containing twelve blocks of green marijuana.[336] The officer then proceeded to search the passenger's purse and found drug paraphernalia and a small amount of marijuana.[337]

Both the passenger and the driver contended that the officer was limited in the scope of his search to the passenger compartment because the odor of burnt marijuana was coming from the passenger compartment.[338] The Texas Court of Appeals rejected this argument, quoted *Houghton,* and determined that once there was probable cause to search the vehicle, the officer could examine all the contents of the car in both the passenger compartment and the trunk.[339] Thus, the Texas Court of Appeals used the *Houghton* decision to allow a search not only of the passenger compartment of an automobile, but of the trunk as well.[340]

---

328. *See* State v. Ray, 609 N.W.2d 390, 396-97 (Neb. Ct. App. 2000).
329. 609 N.W.2d 390 (Neb. Ct. App. 2000).
330. *See Ray*, 609 N.W.2d at 393.
331. *See id.* at 397.
332. *See* Gallegos v. State, No. 05-95-00772-CR, 1999 WL 463369 (Tex. Ct. App. July 9, 1999); Newman v. State, No. 05-95-00773-CR, 1999 WL 463371 (Tex. Ct. App. July 9, 1999).
333. *See Gallegos*, 1999 WL 463369, at *1.
334. *See id.*
335. *See id.*
336. *See id.*
337. *See id.* A later search revealed even more marijuana in the trunk; in total, thirty-nine pounds of marijuana were found in the car. *See id.*
338. *See id.* at *2.
339. *See id.* at *3 (citing Wyoming v. Houghton, 526 U.S. 295 (1999)).
340. *See id.*

C. DISTINGUISHING *HOUGHTON*

However, not all courts have agreed with each other on the application of the *Houghton* decision. The Indiana Court of Appeals, in *State v. Friedel*,[341] ruled that if a search was based on consent rather than probable cause, the law enforcement official would not be allowed to search a passenger's belongings.[342] The decision was premised on the idea that a driver does not have authority to give consent to a search of his or her passenger's belongings.[343]

In *Friedel*, a police officer stopped a vehicle for operating with only one working headlight.[344] The officer ran a check of the driver and found that he had an extensive criminal history, but the check revealed no current outstanding warrants for the driver.[345] The officer then called for back-up and asked the driver if he could search the automobile.[346] The driver consented to the search.[347] While conducting the search, the officer found a black purse on the floor behind the seat where the defendant had been sitting.[348] The officer searched the defendant's purse without her consent and found methamphetamine and marijuana.[349] The defendant contested the search of her purse based on the consent given by the driver to search the automobile.[350]

The Indiana Court of Appeals began its analysis by applying the test set forth in *Houghton*—looking to whether the search would have been regarded as unlawful at the time the Fourth Amendment was framed and then looking to the balance between the degree to which the search intruded on an individual's privacy and the degree to which the search was needed for the promotion of legitimate governmental interests.[351] However, the court concluded that the outcome of *Houghton* was not dispositive in the current case because the officer in *Houghton* had probable cause to search the vehicle, while in *Friedel* the officer was searching only because the driver had given consent.[352] The Indiana Appellate Court determined that the real issue in the case was

341. 714 N.E.2d 1231, 1243 (Ind. Ct. App. 1999).
342. *See* State v. Friedel, 714 N.E.2d 1231, 1243 (Ind. Ct. App. 1999).
343. *See id.* at 1241 (citing United States v. Jaras, 86 F.3d 383, 390 (5th Cir. 1996)).
344. *See id.*
345. *See id.*
346. *See id.* at 1234-35.
347. *See id.* at 1235.
348. *See id.*
349. *See id.*
350. *See id.*
351. *See id.* at 1237 (citing Wyoming v. Houghton 526 U.S. 295, 299-300 (1999)).
352. *See id.* at 1238.

whether the consent given by the driver was valid concerning the passenger's purse, and the court decided it was not valid.[353] Thus, the Indiana court determined that the consent of a driver to search does not automatically trigger the same scope of search allowed under *Houghton's* probable cause search.[354]

D. IMPACT ON NORTH DAKOTA CASE LAW

The *Houghton* case may affect the future interpretation and application of a 1993 North Dakota case. In *State v. Gilberts*,[355] the North Dakota Supreme Court articulated a rule very similar to the rule the Wyoming Supreme Court created.[356] Specifically, the court held that the search and seizure of a passenger's jacket following the arrest of the driver was an unjustifiable invasion of a passenger's rights,[357] when the driver was arrested for a criminal traffic violation,[358] and the officer had no reason to believe the driver had concealed contraband or weapons within the passenger's jacket.[359]

The North Dakota Supreme Court stated that since the officer knew the jacket belonged to the passenger, and not to the driver, the officer was not allowed to search the jacket.[360] The North Dakota Supreme Court used the same reasoning as the Wyoming Supreme Court by finding that there was not an articulable suspicion related to the passenger.[361] Since the officer had no reason to believe the jacket contained contraband, the officer could not search it.[362]

The *Gilberts* decision leaves the automobile searches rule at a crossroads in North Dakota.[363] If the North Dakota Supreme Court had the benefit of the *Houghton* decision at the time that it decided *Gilberts*, there is no guarantee the *Houghton* decision would have been controlling.[364] The North Dakota Supreme Court could have followed the majority rule of *Houghton* and allowed the search without consideration of ownership.[365] But the North Dakota Supreme Court

353. *See id.* at 1243 (holding that the driver did not have actual or apparent authority to consent to the search of the passenger's purse).
354. *See id.* at 1238.
355. 497 N.W.2d 93 (N.D. 1993)
356. *See* State v. Gilberts, 497 N.W.2d 93, 97 (N.D. 1993).
357. *See id.* at 99.
358. *See id.* at 94. The officer arrested the driver for driving with a suspended license. *See id.*
359. *See id.* at 97.
360. *See id.*
361. *See id.*
362. *See id.* at 99.
363. *See id.* (VandeWalle, C.J., concurring).
364. *See id.*
365. *See* Wyoming v. Houghton, 526 U.S. 295, 307 (1999)

could have just as easily ignored the *Houghton* rule because a search of a passenger's jacket could be considered a search of the passenger's person, a situation in which *Houghton* does not apply.[366] Finally, the North Dakota Supreme Court could have justified the same decision it reached in *Gilberts* by finding that the search violated the state constitution.[367]

E. ACADEMIC COMMENTARY

Aside from judicial opinions, others have commented on the decision in *Houghton*. An article written for the *Harvard Law Review* analyzed the most recent Fourth Amendment cases, including *Houghton*, and concluded that the Supreme Court's current trend toward expanding the automobile exception is restricting the constitutional right to travel.[368] Another academic journal characterized *Houghton* as a trend to clarify Fourth Amendment cases for the benefit of law enforcement.[369] Others have determined that the narrowing of individuals' rights has been a direct result of the war on drugs.[370] One periodical stated that the *Houghton* decision has continued the confusion concerning the need for warrants to search containers by noting that containers in automobiles usually do not require warrants but that containers outside of automobiles usually require warrants.[371] Finally, another authority has recognized that the Fourth Amendment analysis standard articulated by the Court in *Houghton* is different from previous standards because of the addition of the historical perspective.[372]

F. UNRESOLVED ISSUE—PUBLIC TRANSPORTATION

The amicus briefs foreshadowed the issue concerning application of the *Houghton* decision to public transportation. The brief filed by the

---

366. *See id.* at 308 (Breyer, J., concurring).

367. *See* State v. Parker, 987 P.2d 73, 90 (Wash. 1999).

368. *See* Search and Seizure–Automobile Exception–Search of Passengers' Belongings, 113 HARV. L. REV. 255, 262 (1999).

369. *See generally* Hon. Daniel T. Gillespie, *Bright-line Rules: Development of the Law of Search and Seizure During Traffic Stops*, 31 LOY. U. CHI. L.J. 1 (1999).

370. *See generally* David Lawrence Burnett, *Fourth and Fourteenth Amendments–Search and Seizure–Police Officers with Probable Cause to Search an Automobile May Inspect Passenger's Belongings that are Found in the Car, Which are Capable of Concealing the Object of the Search, Even Without Reasonable Belief that the Passenger was Engaged in a Common Enterprise or that the Driver Had Time to Conceal Items*–Wyoming v. Houghton, 119 S. Ct. 1297 (1999), 9 SETON HALL CONST. L.J. 1173 (1999).

371. *See* Craig M. Bradley, *Whittling Away the Search Warrant Requirement*, 35 TRIAL 85, 86 (June 1999).

372. *See* Kathryn R. Urbonya, *Supreme Courts 1998-1999 Term: Fourth Amendment Decisions* 219 (PLI Litig. & Admin. Practice Course, Handbook Series No. H0-0044, Oct. 1999).

National Association of Criminal Defense Lawyers (Defense Lawyers) expressed concern with what should happen in situations involving taxicabs and other forms of public transportation.[373] In its brief, the Defense Lawyers set forth the following hypothetical:

> Suppose, for instance, the police stop a taxicab occupied by a lawyer on the way to court. . . . [I]f the officer spied a syringe in the driver's pocket, the police could search a lawyer's briefcase even though the lawyer had no relationship to the driver and had done nothing suspicious.[374]

The Defense Lawyers characterized the rule eventually adopted in *Houghton* as forcing individuals to "forfeit their Fourth Amendment rights every time they step into an automobile driven by another person."[375]

Along a similar vein, the Legal Aid Association's brief pointed to situations involving limousines and car pools.[376] The brief set forward situations involving chauffeurs possessing drugs as well as carpooling circumstances where a member of the carpool may not be aware of illegal substances carried by fellow carpool members.[377] The cases since *Houghton* have yet to contain factual circumstances similar to these hypotheticals and, as a result, at this time it is difficult to determine if the fears of the amici will come to fruition.

V. CONCLUSION

At first it may have appeared that the Court created a bright-line rule in *Houghton*: When there is probable cause to search an automobile, all containers inside it may be searched.[378] However, a closer examination revealed that at least one issue was left unresolved.[379] With at least one issue unresolved, the *Houghton* decision seems destined to become another case along the winding road of cases interpreting the application of the Fourth Amendment to automobiles.

Kari M. Knudson[*]

---

373. *See* Brief of National Association of Criminal Defense Lawyers at 16-17, Wyoming v. Houghton, 526 U.S. 295 (1999) (No. 98-184).

374. *See id.* at 17.

375. *See id.* at 17-18.

376. *See* Brief of the Legal Aid Society of New York City and the National Legal Aid and Defender Association at 14, *Houghton* (No. 98-184).

377. *See id.*

378. *See* Major Walter M. Hudson, *A Few New Developments in the Fourth Amendment*, ARMY LAW., Apr. 1999, at 25, 37.

379. *See supra* Part IV.F.

* I would like to thank my father and mother, Kenard and Loretta, as well as my brother, Kipp, for all of their love and support throughout the writing of this article. I would also like to thank Matt Kipp for his thoughtful assistance in the final editing process of this article.