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SEARCH AND SEIZURE — FOURTH AMENDMENT — THE INCLUSION OF MOTOR HOMES WITHIN THE SCOPE OF THE AUTOMOBILE EXCEPTION TO THE FOURTH AMENDMENT WARRANT REQUIREMENT

On May 31, 1979, Drug Enforcement Administration Agent Robert Williams observed Charles Carney approach a youth in downtown San Diego.[1] A few minutes later, Carney and the youth walked to a nearby public parking lot and entered a Dodge Mini Motor Home parked there.[2] Williams had received uncorroborated information that the motor home was being used by a person exchanging marijuana for sex.[3] On the basis of this information, Williams requested the assistance of additional officers and began surveillance of the motor home.[4] When the youth left the motor home approximately seventy-five minutes later, the agents stopped and questioned him.[5] The youth told the officers that Carney had given him marijuana in exchange for sexual favors.[6] At the officers' request, the youth returned to the motor home and asked Carney to step outside.[7] After identifying themselves as law enforcement officers, one of the agents immediately stepped into the motor home

1. California v. Carney, 105 S. Ct. 2066, 2067 (1985), *rev'g* 34 Cal. 3d 597, 668 P.2d 807, 194 Cal. Rptr. 500 (1983).

2. People v. Carney, 117 Cal. App. 3d 36, ____, 172 Cal. Rptr. 430, 432 (1981), *rev'd,* 34 Cal. 3d 597, 668 P.2d 807, 194 Cal. Rptr. 500 (1983), *rev'd,* 105 S. Ct. 2066 (1985). Shortly after Carney and the youth entered the motor home, Carney closed its curtains, including a curtain across the front windshield, thus shielding all view from the outside. *Id.*

3. 105 S. Ct. at 2067. An organization called WeTip ("We Turn in Pushers") furnished the information that drugs were being dispensed from this particular motor home in exchange for sex. 117 Cal. App. 3d at ____, 172 Cal. Rptr. at 432 & n.2. The organization enables individuals to call and anonymously provide information about drug dealers. *Id.* WeTip then relays this information to nearby law enforcement personnel. *Id.*

4. *See* 105 S. Ct. at 2067. Williams, with the assistance of the other agents, kept the motor home under surveillance the entire time the youth was inside. *Id.*

5. *Id.*

6. *Id.* The boy told the officers that the occupant of the motor home had given him marijuana in exchange for allowing the man to perform oral copulation on him. People v. Carney, 34 Cal. 3d 597, 602, 668 P.2d 807, 809, 194 Cal. Rptr. 500, 502 (1983), *rev'g* 117 Cal. App. 3d 36, 172 Cal. Rptr. 430 (1981), *rev'd,* 105 S. Ct. 2066 (1985).

7. 34 Cal. 3d at 602, 668 P.2d at 809, 194 Cal. Rptr. at 502. When Carney stepped out of the motor home, the agents identified themselves as law enforcement officers. 105 S. Ct. 2067.

and observed marijuana, plastic bags, and "a scale of the kind used in weighing drugs."[8] Agent Williams then arrested Carney and impounded his motor home.[9]

At the preliminary hearing, Carney moved to suppress all evidence seized from the motor home on the grounds that it was the product of an unlawful search and seizure.[10] The magistrate denied Carney's motion.[11] The trial court also denied Carney's motion to suppress the evidence seized during the warrantless search of the motor home.[12] The California Court of Appeal affirmed,[13] concluding that the warrantless search of the motor home was justified under the "automobile exception" to the fourth amendment warrant requirement.[14] The California Supreme Court reversed, holding that the motor home was not subject to the automobile exception and that it should not have been searched without a warrant.[15] The United States Supreme Court reversed the California Supreme Court and *held* that when a motor home is being used for transportation, or "is readily capable of such use and is found stationary in a place not regularly used for residential purposes," a warrantless search of the motor home is justified under the automobile exception.[16] *California v. Carney,* 105 S. Ct. 2066 (1985).

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8. 105 S. Ct. 2067. The agent entered the motor home without a warrant or consent from Carney. *Id.*

9. *Id.* A subsequent warrantless inventory search conducted at the police station revealed additional marijuana in the cupboards and refrigerator of the motor home. 117 Cal. App. 3d at ____, 172 Cal. Rptr. at 433.

10. *See* 34 Cal. 3d at 603, 668 P.2d at 809, 194 Cal. Rptr. at 502. The State opposed the motion, arguing that the initial search of the motor home was justified under the automobile exception to the warrant requirement, and also as a standard "sweep search." *Id.* at 610, 668 P.2d at 814, 194 Cal. Rptr. at 507. A sweep search refers to the exception to the warrant requirement that allows the police to search a premises, after arresting a suspect, to ensure that there are no other people in the premises who may be a threat to the officer's security. Kelder & Statman, *The Protective Sweep Doctrine: Recurrent Questions Regarding the Propriety of Searches Conducted Contemporaneously with an Arrest on or Near Private Premises,* 30 SYRACUSE L. REV. 973, 975, 978 (1979). *See generally* 2 W. LAFAVE, SEARCH AND SEIZURE, § 6.4(c) (1978 & Supp. 1986) (discussing the protective sweep exception). Additionally, the State argued that the later warrantless search at the police station was justified as a standard inventory search. For a discussion of inventory searches, see *infra* note 39.

11. 34 Cal. 3d at 603, 668 P.2d at 809, 194 Cal. Rptr. at 502.

12. 105 S. Ct. at 2068. The trial court held that there was probable cause to arrest Carney, that the warrantless search of the motor home was authorized under the automobile exception to the fourth amendment's warrant requirement, and that the police could seize the motor home itself as an instrumentality of the crime. *Id.*

13. 117 Cal. App. 3d at ____, 172 Cal. Rptr. at 436.

14. 105 S. Ct. at 2068.

15. 34 Cal. 3d at 610, 668 P.2d at 814, 194 Cal. Rptr. at 507 (1983). The California Supreme Court reasoned that motor homes, unlike mere automobiles, are generally designed and used as temporary or permanent residences. *Id.* at 606, 668 P.2d at 812, 194 Cal. Rptr. at 505. Therefore, the court reasoned, the defendant's motor home was entitled to the protections traditionally applicable to conventional homes. *Id.* at 609, 668 P.2d at 814, 194 Cal. Rptr. at 507; *see* Comment, *California v. Carney: Fashioning a "Motor Home Exception" to the Warrant Rule,* 60 NOTRE DAME L. REV. 216 (1984) (examining the California Supreme Court's decision in *Carney* and its practical deficiencies in light of the United States Supreme Court's fourth amendment jurisprudence).

16. 105 S. Ct. at 2070. Even though excepted from the warrant requirement, the Court stated that the fourth amendment still dictates that the search of the motor home must be reasonable. *Id.* at

The fourth amendment to the United States Constitution guarantees the right of "the people" to be secure from unreasonable searches and seizures.[17] An individual is entitled to fourth amendment protection upon demonstrating, first, that he had an actual (subjective) expectation of privacy in a place, object, or activity; and second, that the expectation is one that society recognizes as reasonable.[18] In determining whether a search is reasonable, the United States Supreme Court usually interprets the fourth amendment to require that, prior to conducting a search or seizure, law enforcement officers obtain a search warrant from an impartial and detached judge or magistrate.[19] The Court generally enforces the warrant requirement by declaring warrantless searches and seizures presumptively unreasonable.[20] The Court, however,

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2071. The Court concluded that the search of the motor home was reasonable because the agents had probable cause to believe that there was evidence of a crime in the vehicle. *Id.*

17. *See* U.S. CONST. amend. IV. The fourth amendment provides as follows:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Id. The language of article I, section 8 of the North Dakota Constitution is virtually identical to that of the fourth amendment. The section of the North Dakota Constitution provides as follows:

> 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 warrant shall issue but upon probable cause, supported by oath or affirmation, particularly describing the place to be searched and the persons and things to be seized.

N.D. CONST. art. I, § 8.

18. *See* Katz v. United States, 389 U.S. 347, 361 (1967) (Harlan, J., concurring). In *Katz* FBI agents recorded telephone conversations of a Los Angeles bookmaker who transacted business with out-of-state gamblers over a pay telephone. *Id.* at 348. Katz was charged and convicted of transmitting wagering information by telephone. *Id.* The Court of Appeals for the Ninth Circuit affirmed Katz' conviction, holding that there had not been a search because there was no physical invasion of the telephone booth. *Id.* at 348-49. The United States Supreme Court reversed, holding that "the Fourth Amendment protects people, not places," and that the government's actions violated the privacy that Katz justifiably relied upon while using the telephone booth. *Id.* at 351-53. In his concurring opinion in *Katz,* Justice Harlan stated as follows:

> My understanding of the rule that has emerged from prior decisions is that there is a twofold requirement, first that a person have exhibited an actual (subjective) expectation of privacy and, second, that the expectation be one that society is prepared to recognized as "reasonable." Thus a man's home is, for most purposes, a place where he expects privacy, but objects, activities, or statements that he exposes to the "plain view" of outsiders are not "protected" because no intention to keep them to himself has been exhibited.

Id. at 361 (Harlan, J., concurring).

19. *See, e.g.,* Katz v. United States, 389 U.S. 347, 357 (1967) (except for a few specific situations, the fourth amendment requires police to obtain prior judicial approval before conducting a search); Johnson v. United States, 333 U.S. 10 (1948). In *Johnson* the Court stated that the warrant requirement provides protection by insisting that the existence of probable cause, or the reasonableness of a search, be evaluated by a neutral magistrate rather than by a zealous law enforcement officer who is personally involved "in the often competitive enterprise of ferreting out crime." *Id.* at 13-14.

20. *Katz,* 389 U.S. at 357. In *Katz* the Supreme Court concluded that "searches conducted outside the judicial process, without prior approval by a judge or magistrate, are *per se* unreasonable

recognizes certain exceptions to the warrant requirement.[21]

The court established the automobile exception to the warrant requirement over sixty years ago in *Carroll v. United States.*[22] In *Carroll* the Supreme Court held that, if an officer has probable cause to believe a motor vehicle contains contraband, he may conduct a warrantless search of the vehicle.[23] In explaining its decision, the Court recognized a significant distinction between the search of a home and the search and seizure of a movable vehicle.[24] The Court

under the Fourth Amendment — subject only to a few specifically established and well-delineated exceptions." *Id.*

21. *See, e.g.,* Texas v. Brown, 460 U.S. 730, 735-36 (1983) (discussing various exceptions to the warrant requirement). As noted in *Brown,* the Court has acknowledged the following judicial exceptions to the warrant requirement: hot pursuit, *see, e.g.,* Warden v. Hayden, 387 U.S. 294, 298 (1967) (warrantless entry and search of a home by police in pursuit of a fleeing felon was reasonable under the fourth amendment); exigent circumstances, *see, e.g.,* United States v. Jeffers, 342 U.S. 48, 51-52 (1951) (exceptional circumstances may justify a warrantless search and seizure of a hotel room); automobile search, *see, e.g.,* United States v. Ross, 456 U.S. 798, 809 (1982) (warrantless search of an automobile is not unreasonable if supported by probable cause); search of person and surrounding area incident to an arrest, *see, e.g.,* New York v. Belton, 453 U.S. 454, 462-63 (1981) (warrantless search of defendant's jacket was a valid search incident to a lawful custodial arrest and did not violate the fourth amendment); search at United States border or "functional equivalent," *see, e.g.,* Almeida-Sanchez v. United States, 413 U.S. 266, 272 (1973) (power of the federal government to exclude aliens from the country can be effectuated by routine inspections and searches at the border or functional equivalent); consent, *see, e.g.,* Schneckloth v. Bustamonte, 412 U.S. 218, 219 (1973) (an individual may voluntarily waive his right to privacy under the fourth amendment). *Brown,* 460 U.S. at 735-36. In *Brown* the Court stated that it also recognizes the following "less severe" intrusions as permissible without a warrant: stop and frisk, *see, e.g.,* Terry v. Ohio, 392 U.S. 1, 30 (1968) (an arresting officer is entitled to conduct a limited weapons search of an arrestee for the protection of himself and others in the area); seizure for questioning, *see, e.g.,* United States v. Brignoni-Ponce, 422 U.S. 873, 884 (1975) (officers may stop vehicles and detain persons for questioning without a warrant if the officers have a reasonable suspicion that the vehicles contain illegal aliens); roadblock, *see, e.g.,* Delaware v. Prouse, 440 U.S. 648, 663 (1979) (stopping an automobile, and detaining its occupants for questioning, is not unreasonable under the fourth amendment if there is at least an articulable and reasonable suspicion that the law has been violated). *Brown,* 460 U.S. at 736. *See generally* 2 W. LAFAVE, SEARCH AND SEIZURE § 7.1-7.5 (1978 & Supp. 1986) (discussing the search and seizure of vehicles and the exceptions regarding them).

22. 267 U.S. 132 (1925). In *Carroll* federal prohibition agents unexpectedly encountered the defendants, suspected "bootleggers," traveling in a vehicle thought to contain intoxicating liquor in violation of the National Prohibition Act. Carroll v. United States, 267 U.S. 132, 134-36 (1925). Although the agents had not obtained a warrant they immediately proceeded to conduct a search of the vehicle at the roadside and discovered 68 bottles of illegal liquor concealed inside the vehicle's upholstery. *Id.* The Supreme Court upheld the search, noting that, because of the vehicle's mobility it was not practicable for the agents to secure a warrant before conducting the search. *See id.* at 153. Moreover, the Court concluded that the search was reasonable because the agents had information that would "warrant a man of reasonable caution" to believe that the automobile contained contraband. *Id.* at 162.

23. *Id.* at 149. According to the *Carroll* doctrine two conditions must exist to justify the warrantless search of a vehicle. *See id.* at 153-56. First, an officer must have probable cause to believe that contraband is located in the vehicle. *See id.* at 156. Second, there must be exigent circumstances sufficient to justify dispensing with the warrant requirement. *See id.* at 153. In subsequent decisions, the Court has broadened the *Carroll* doctrine by allowing reasonable searches of vehicles even when there is no possibility of the vehicle being moved. *See, e.g.,* Texas v. White, 423 U.S. 67, 68 (1975) (per curiam). For a discussion of this issue, see *infra* notes 27-33 and accompanying text.

24. *Carroll,* 267 U.S. at 153. In discussing the distinction between the search of a home and the search and seizure of a vehicle, the Supreme Court in *Carroll* stated as follows:

> [T]he guaranty of freedom from unreasonable searches and seizures by the Fourth Amendment has been construed, practically since the beginning of the Government, as recognizing a necessary difference between a search of a store, dwelling house or other structure in respect of which a proper official warrant readily may be obtained, and a search of a ship, motor boat, wagon or automobile, for contraband goods, where it is not practicable to secure a warrant *because the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant must be sought.*

Id. (emphasis added).

reasoned that the mobility of motor vehicles makes it impracticable to secure a warrant because the vehicle could move beyond the reach of the officer before the officer is able to obtain a warrant.[25]

In cases subsequent to *Carroll,* the Supreme Court continued to reaffirm the mobility theory as a justification for warrantless searches and seizures of motor vehicles.[26] In *Chambers v. Maroney,*[27] the Court followed the holding of the *Carroll* decision and determined that, if police officers have probable cause to believe an automobile is carrying contraband, the officers may conduct an immediate roadside search of the automobile before the opportunity to search is lost.[28] The Court further stated that "[o]nly in *exigent* circumstances will the judgment of the police as to probable cause serve as a sufficient authorization for a search."[29]

The Court has, however, sustained warrantless searches of vehicles in cases in which exigent circumstances appear to have been absent.[30] In *Chambers,* which involved the warrantless search of an impounded vehicle under police control, the Court upheld a

25. *Id.*

26. *See, e.g.,* Dyke v. Taylor Implement Mfg. Co., 391 U.S. 216, 221 (1968) (because of their mobility, automobiles may be searched without a warrant upon facts that would not justify a warrantless search of a residence or office); Cooper v. California, 386 U.S. 58, 59 (1967) (warrantless search of movable automobile may be reasonable although the result might be the opposite in a search of a home, store, or other fixed piece of property); Preston v. United States, 376 U.S. 364, 366-67 (1964) (what may be an unreasonable search of a home may be reasonable in the case of a movable automobile); Brinegar v. United States, 338 U.S. 160, 164 (1949) (warrantless search of a vehicle moving on a public highway is valid if probable cause exists for the search); Scher v. United States, 305 U.S. 251, 253-55 (1938) (officers with probable cause to believe automobile was being used to transport bootleg liquor were justified in conducting a warrantless search of the vehicle, notwithstanding vehicle's entry into defendant's garage); Husky v. United States, 282 U.S. 694, 701 (1931) (warrantless search of parked automobile by officers with probable cause not unreasonable because of the car's mobility).

27. 399 U.S. 42 (1970). In *Chambers* police arrested occupants of a vehicle for armed robbery, and then drove the car to the police station where they conducted a warrantless search of the auto. Chambers v. Maroney, 399 U.S. 42, 44 (1970). The Supreme Court held that the search and seizure were reasonable because the arrests took place in a dark parking lot late at night and "a careful search at that point was impracticable and perhaps not safe for the officers." *Id.* at 52 n.10; *see also* Texas v. White, 423 U.S. 67 (1975) (per curiam). In *White* the Court upheld the warrantless search of a car that was stopped in the middle of the day on a main road but was not searched until after it was removed to the police station. *Id.* at 67-68. The Court followed *Chambers,* and concluded that the probable cause existing when the vehicle was initially stopped still existed after the vehicle was impounded and in police custody. *Id.* at 68. Thus, the delayed warrantless search at the station-house was permissible. *Id.* The dissent in *White* contended that *Chambers* was not controlling because there was no showing of a need to impound the car. *Id.* at 70. According to the dissent "there is no indication that an immediate search would have been either impracticable or unsafe for the arresting officers." *Id.* In Professor LaFave's opinion, *White* clearly indicates that the Court will uphold a delayed search of a vehicle whenever, under the same circumstances, it would have upheld a warrantless roadside search. 2 W. LAFAVE, *supra* note 21, § 7.2, at 517.

28. 399 U.S. at 51. The Court in *Chambers* stated that "*Carroll* . . . holds a search warrant unnecessary where there is probable cause to search an automobile stopped on the highway; the car is movable, the occupants are alerted, and the car's contents may never be found again if a warrant must be obtained." *Id.*

29. *Id.* (emphasis added). The Court observed that because of an automobile's mobility, the opportunity to search is "fleeting." *Id.*

30. *See, e.g.,* Cady v. Dombrowski, 413 U.S. 433, 441-42 (1973). In *Cady* the Supreme Court conceded that warrantless searches of vehicles were upheld "in cases in which the possibilities of the vehicle's being removed or evidence in it destroyed were remote, if not nonexistent." *Id.* For a discussion of *Cady,* see *infra* notes 35-38 and accompanying text.

warrantless search even though the actual threat of mobility had subsided.[31] Arguably, in such a situation, there is no real exigency and it is no longer impracticable to secure a warrant.[32]

Recently, the Court acknowledged an additional justification for the motor vehicle exception to the warrant requirement: the diminished expectation of privacy in automobiles.[33] The Court has identified three factors that diminish an individual's expectation of privacy in an automobile, and thus justify less rigorous adherence to the warrant requirement.[34] The Court developed the first of these factors in *Cady v. Dombrowski*.[35] In *Cady* the Court stated that the extensive regulation of motor vehicles and traffic, and the frequency of police-citizen contact involving automobiles,[36]

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31. 399 U.S. at 44, 52. In *Chambers* the occupants of the car were arrested and their car was taken to the stationhouse where the police conducted a warrantless search. *Id.* at 44; *see also* South Dakota v. Opperman, 428 U.S. 364 (1976). In *Opperman* the Supreme Court cited *Chambers* as an example of one case in which the Court "upheld warrantless searches where no immediate danger was presented that the car would be removed from the jurisdiction." *Id.* at 367. For a discussion of *Opperman*, see *infra* notes 38-40 and accompanying text.

32. *See* 2 W. LAFAVE, *supra* note 21, § 7.2, at 514. In Professor LaFave's view, *Chambers* cannot be "convincingly rationalized" on the grounds of exigent circumstances. *Id.*

33. *See* United States v. Chadwick, 433 U.S. 1 (1977). In *Chadwick*, the Court first used the phrase "diminished expectation of privacy." *See id.* at 12. For a discussion of *Chadwick*, see *infra* note 34. In United States v. Ross Justice Marshall explained the importance of the distinction between the mobility theory and diminished expectations of privacy in automobiles. United States v. Ross, 456 U.S. 798, 830 (1982) (Marshall, J., dissenting). In *Ross* Justice Marshall stated as follows:

> In many cases . . . the police will, prior to searching the car, have cause to arrest the occupants and bring them to the station for booking. In this situation, the police can ordinarily seize the automobile and bring it to the station. Because the vehicle is now in the exclusive control of the authorities, any subsequent search cannot be justified by the mobility of the car. Rather, an immediate warrantless search of the vehicle is permitted because of the second major justification for the automobile exception: the diminished expectation of privacy in an autmobile.

Id. (Marshall, J., dissenting).

34. For a discussion of the three factors that lead to diminished expectations of privacy in automobiles, see *infra* notes 35-47 and accompanying text. In Chadwick v. United States the Court collectively addressed the factors that reduce an individual's expectation of privacy in an automobile. United States v. Chadwick, 433 U.S. 1, 12-13 (1977). In *Chadwick* the Supreme Court held the warrantless search of a footlocker, which officers had seized from the trunk of the defendant's car, unreasonable although the police had probable cause to believe that it contained narcotics. *Id.* at 4, 11. Despite the fact that the footlocker was seized from a mobile vehicle, the Court refused to apply the automobile exception because "a person's expectations of privacy in personal luggage are substantially greater than in an automobile." *Id.* at 13.

35. 413 U.S. 433 (1973). In *Cady* police arrested Dombrowski, an off-duty policeman, on a charge of drunken driving following a one car automobile accident in which Dombrowski's rented car was severely damaged. Cady v. Dombrowski, 413 U.S. 433, 435-36 (1973). The police had the car towed to a private garage where a police officer conducted a warrantless search some two and one-half hours later. *Id.* at 436-37. The purpose of the search was to locate the revolver that the arresting officers thought Dombrowski was required to carry. *Id.* at 437. During the course of the search, the police discovered blood-stained objects that led to Dombrowski's conviction for murder. *Id.* at 437-39. The Court held that the warrantless search was not unreasonable since the police had lawfully impounded the car. *See id.* at 447-48. The Court also reasoned that the search for the revolver was justified by the concern for the safety of the general public who might be endangered if the weapon fell into the wrong hands. *Id.* at 447.

36. *Id.* at 441. The Court explained that police-citizen contact involving motor vehicles occurs if a police officer believes the operator has violated traffic laws. *Id.* Therefore, the Court noted, most of the contact between law enforcement officers and automobiles is noncriminal in nature. *Id.* According to the Court, "[l]ocal police officers . . . frequently investigate vehicle accidents in which there is no claim of criminal liability and engage in what . . . may be described as community

strengthens the constitutional distinction between the search of homes and similar structures as compared to the search of vehicles.[37] The Court reasoned that this extensive regulation justifies the warrantless search of vehicles even if the exigency of mobility is remote, or nonexistent.[38] In *South Dakota v. Opperman*[39] the Court expanded upon this rationale and noted that frequent police-citizen contact and pervasive governmental regulation of automobiles diminish privacy expectations in motor vehicles.[40]

The second factor that lessens the expectation of privacy in a motor vehicle is the public nature of automobile travel.[41] In *Cardwell v. Lewis*[42] the plurality opinion observed that diminished privacy expectations in a motor vehicle arise because a car is used for transportation, not as a residence or as a repository of personal effects,[43] and because a car's occupants and contents travel in plain view.[44]

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caretaking functions, totally divorced from the detection, investigation, or acquisition of [criminal] evidence. . . . " *Id.* In *South Dakota v. Opperman* the Court acknowledged that this frequent contact between citizens and police contributes to diminished privacy expectations in motor vehicles. South Dakota v. Opperman, 428 U.S. 364, 367-68 (1976). For a discussion of *Opperman,* see *infra* notes 39-41.

37. 413 U.S. at 442. For a discussion of the constitutional distinction between the search of a home and the search of a vehicle, see *supra* note 24 and accompanying text.

38. *See id.* at 441-42. For a discussion of warrantless searches under nonexigent circumstances, see *supra* note 31 and accompanying text.

39. 428 U.S. 364 (1976). In *Opperman* the defendant's automobile was lawfully impounded for parking violations. South Dakota v. Opperman, 428 U.S. 364, 366 (1976). After impounding the car, the police conducted a routine inventory search of the automobile. *Id.* An inventory search refers to the process in which police search an impounded vehicle for any valuable personal property. *See* 2 W. LAFAVE, SEARCH AND SEIZURE § 7.4 (1978) (discussing inventory searches). The purpose of an inventory search is to protect the vehicle, and property in it, and to protect the police from claims of lost property. *Id.* During the inventory search, police discovered marijuana in the unlocked glove compartment. 428 U.S. at 366. The Supreme Court upheld the warrantless search of the car on the grounds that the inventory search was a routine, reasonable, and necessary aspect of the police caretaking function and was carried out in accordance with standard police procedures. *Id.* at 375-76.

40. *Id.* at 367-68. The Court stated that "[a]utomobiles, unlike homes, are subjected to pervasive and continuing governmental regulation and controls, including periodic inspection and licensing requirements." *Id.* at 368.

41. *Id.* The Court stated that the "obviously public nature of automobile travel" further diminishes the expectation of privacy in an automobile. *Id.* This is not to say, however, that there is no expectation of privacy in an automobile. *See, e.g.,* Delaware v. Prouse, 440 U.S. 648, 662 (1979) (an individual does not lose all expectation of privacy simply because the automobile and its uses are subject to governmental regulation).

42. 417 U.S. 583 (1974) (plurality opinion). In *Cardwell* police had arrested the defendant, towed his car from a public parking lot to a police impoundment lot, and then conducted a warrantless search of the automobile's exterior. Cardwell v. Lewis, 417 U.S. 583, 587-88 (1974) (plurality opinion). A plurality of the Court upheld the search, concluding that the search was based upon probable cause and was therefore reasonable. *Id.* at 592-93. Justice Powell concurred with the plurality decision on the grounds that the petitioner had a full and fair opportunity to raise his fourth amendment claim in state court. *Id.* at 596 (Powell, J., concurring).

43. *Id.* at 590. Although the opinion of the plurality implied that repository areas are afforded a higher degree of constitutional protection than is given to motor vehicles, on numerous occasions the Court has sustained warrantless searches of enclosed repository areas. *See, e.g.,* United States v. Johns, 105 S. Ct. 881 (1985) (sealed packages inside a covered pickup truck); United States v. Ross, 456 U.S. 798 (1982) (package in a car trunk); Cady v. Dombrowski, 413 U.S. 433 (1973) (locked car trunk); Chambers v. Maroney, 399 U.S. 42 (1970) (compartment under the dashboard); Carroll v. United States, 267 U.S. 132 (1925) (behind the vehicle's upholstery).

44. *Cardwell,* 417 U.S. at 590. In *Cardwell* the Court stated as follows:

> One has a lesser expectation of privacy in a motor vehicle because its function is transportation and it seldom serves as one's residence or as the repository of personal

The Court noted the third factor that leads to diminished privacy expectations in motor vehicles in *United States v. Ross*.[45] In *Ross* the Court stated that the public has always been aware that motor vehicles may be stopped and searched without a warrant if a law enforcement officer has probable cause to believe the vehicle contains contraband.[46] The Court, in effect, concluded that an individual's expectation of privacy in a vehicle and its contents must be balanced against the public's concern for effective law enforcement.[47]

Lower courts have applied the automobile exception to vehicles other than automobiles.[48] A few courts have specifically confronted the issue of what protections the fourth amendment should afford a motor home.[49] In *United States v. Williams*[50] the Court of Appeals for the Ninth Circuit held that the automobile exception is inapplicable to a motor home because of the greater

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> effects. A car has little capacity for escaping public scrutiny. It travels public thoroughfares where both its occupants and its contents are in plain view.

Id. As the Court stated in *Katz*, "[w]hat a person knowingly exposes to the public, even in his own home or office, is not subject to Fourth Amendment protection." Katz v. United States, 389 U.S. 347, 351 (1967).

45. 456 U.S. 798 (1982). In *Ross* the Supreme Court considered the scope of warrantless searches permitted under the automobile exception. United States v. Ross, 456 U.S. 798, 800 (1982). The Court described the limits of the search as follows:

> [T]he scope of the warrantless search authorized by . . . [the automobile] exception is no broader and no narrower than a magistrate could legitimately authorize by warrant. 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.

Id. at 825; *see* Comment, *Search and Seizure — Fourth Amendment — The Constitutionally Permissible Scope of Warrantless Automobile Searches*, 59 N.D.L. REV. 97 (1983) (providing an account of the Court's development of the permissible limits of a warrantless search under the automobile exception).

46. 456 U.S. at 806 n.8. The Court commented that "if an individual gives the police probable cause to believe a vehicle is transporting contraband, he loses the right to proceed on his way without official interference." *Id.* at 807 n.9.

47. *See id.* at 823. The Court reasoned that an individual's privacy interests must yield to the authority of an officer to conduct a search if the officer has probable cause to believe that a vehicle is transporting contraband. *Id.*

48. *See, e.g.*, United States v. Nigro, 727 F.2d 100, 107 (6th Cir. 1984) (airplanes); United States v. Weinrich, 586 F.2d 481, 492 (5th Cir. 1978) (boats), *cert. denied*, 440 U.S. 982 (1979); United States v. Miller, 460 F.2d 582, 585-86 (10th Cir. 1972) (self-contained mobile homes).

49. *See, e.g.*, United States v. Holland, 740 F.2d 878, 879-80 (11th Cir. 1984) (per curiam); United States v. Wiga, 662 F.2d 1325, 1329 (9th Cir. 1981), *cert. denied*, 456 U.S. 918 (1982); United States v. Williams, 630 F.2d 1322, 1326 (9th Cir.), *cert. denied*, 445 U.S. 865 (1980). The California Supreme Court characterized the motor home as a "hybrid" which combines "the mobility attribute of an automobile . . . with most of the privacy characteristics of a house." People v. Carney, 34 Cal. 3d 597, 606, 668 P.2d 807, 812, 194 Cal. Rptr. 500, 505. Because of its hybrid character, the issue arises concerning whether a motor home is protected by the warrant requirement of the fourth amendment or whether it falls within the automobile exception. *See id.* at 601-02, 668 P.2d at 808, 194 Cal. Rptr. at 501.

50. 630 F.2d 1322 (9th Cir.), *cert. denied*, 445 U.S. 865 (1980). In *Williams* Narcotics Task Force agents conducted a warrantless search of a motor home after border patrol agents had stopped and detained the defendant who was suspected of transporting illegal aliens. United States v. Williams, 630 F.2d 1322, 1323-24 (9th Cir.), *cert. denied*, 445 U.S. 865 (1980). During the course of the search, agents discovered raw chemicals and other paraphernalia associated with the manufacture of phencyclidine ("PCP"). *Id.* at 1323.

expectations of privacy associated with motor homes.[51] In *United States v. Holland*[52] the Court of Appeals for the Eleventh Circuit also confronted the issue of whether a warrantless search of a motor home is valid under the automobile exception to the warrant requirement.[53] The court in *Holland* determined that the automobile exception applies to motor homes that are being used solely for transportation purposes and not as dwellings.[54] The conflicting decisions in *Williams* and *Holland* reflect the confusion that exists regarding warrantless vehicle searches.[55]

The United States Supreme Court addressed the issue of whether the automobile exception should be extended to warrantless searches of motor homes for the firt time in *California v. Carney*.[56] Prior to reaching the central issue, the Court reaffirmed the automobile exception first enunciated in *Carroll* and stated that the mobility theory[57] and the diminished expectation of privacy in a motor vehicle[58] are the two principal justifications for the exception.[59]

The Court in *Carney* then highlighted some of the factors contributing to reduced privacy expectations in motor vehicles.[60] The Court cited *Cady v. Dombrowski*[61] as one case in which the diminished expectation of privacy was sufficient in itself to invoke the automobile exception, despite the immobility of the vehicle.[62]

51. *Id.* at 1326. The Court reasoned that an individual's expectations of privacy are significantly greater when traveling in a motor home than when traveling in an ordinary car. *Id.; see also* United States v. Wiga, 662 F.2d 1325, 1329 (9th Cir. 1981), *cert. denied,* 456 U.S. 918 (1982). In *Wiga* a Ninth Circuit panel reaffirmed the holding in *Williams,* stating that the automobile exception was inapplicable to motor homes. *Id.* The court went on to uphold the warrantless search of a motor home on the "protective sweep" search incident to arrest doctrine. *Id.* For an explanation of the search incident to arrest exception to the fourth amendment warrant requirement, see *supra* note 21. For a discussion of the protective sweep exception to the warrant requirement, see *supra* note 10.

52. 740 F.2d 878 (11th Cir. 1984) (per curiam). In *Holland* authorities had probable cause to believe that the defendant's two rented Winnebago motor homes were being used to transport marijuana. United States v. Holland, 740 F.2d 878, 879 (11th Cir. 1984) (per curiam). The officers conducted a warrantless search of the motor homes and discovered approximately 1495 pounds of marijuana in plain view inside the motor homes. *Id.*

53. *Id.* The court determined that the issue of whether a motor home falls within the automobile exception could not be decided categorically. *Id.* Instead, the court held that a vehicle's "use," rather than its shape or configuration, controlled the application of the automobile exception. *Id.* at 881.

54. *Id.* at 880-81.

55. *See* Cady v. Dombrowski, 413 U.S. 433, 440 (1973). In *Cady* Justice Rehnquist commented that the Supreme Court's decisions discussing the constitutionality of warrantless searches of vehicles "suggest that this branch of the law is something less than a seamless web." *Id.*

56. 105 S. Ct. 2066 (1985).

57. California v. Carney, 105 S. Ct. 2066, 2069 (1985). The Court has repeatedly recognized that the exigencies caused by vehicular mobility are sufficient to authorize a warrantless search and seizure of an automobile. For a discussion of this theory, see *supra* notes 22-29 and accompanying text.

58. 105 S. Ct. at 2069. For a discussion of the diminished expectation of privacy rationale, see *supra* notes 33-47 and accompanying text.

59. 105 S. Ct. at 2069.

60. *Id.* at 2069-70. For a discussion of the factors that contribute to diminished privacy expectations in motor vehicles, see *supra* notes 35-47 and accompanying text.

61. 413 U.S. 433 (1973). For a discussion of *Cady,* see *supra* notes 35-38 and accompanying text.

62. 105 S. Ct. at 2069.

Additionally, the Court noted that the configuration of a vehicle also contributes to reduced privacy expectations, since a vehicle is relatively open to plain view.[63] The Court observed, however, that it has applied the automobile exception even when "enclosed 'repository' areas" have been the subject of the search.[64] These reduced privacy expectations, the Court explained, resulted not from the fact that the area to be searched was in plain view, but rather, from the pervasive governmental regulation of motor vehicles.[65]

The Court concluded that diminished expectations of privacy, coupled with the exigencies resulting from a vehicle's ready mobility, justify warrantless searches of motor vehicles "so long as the overriding standard of probable cause is met."[66] Thereafter, the Court restated the automobile exception to include the motor home within its application.[67] The Court stated that if a vehicle is being used for transportation, or if it is readily capable of such use and is located in a setting not typically used for residential purposes, then the motor home is subject to the automobile

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63. *Id.* In its analysis of the issue presented in *Carney,* the California Supreme Court emphasized the general distinction between the characteristics of a motor home and an automobile. People v. Carney, 34 Cal. 3d at 608, 668 P.2d at 813, 194 Cal. Rptr. at 506. The court observed as follows:

> [U]nlike a car, the interior and contents of an ordinary motor home are not generally exposed to the public, nor are the occupants, the furnishings or any personal effects in plain view. . . . The interior of a motor home is often fully shielded from view by its design. . . . Moreover, whatever view exists may be blocked by window coverings such as shades, curtains, or blinds.

Id.

The United States Supreme Court rejected this analysis and refused to distinguish between a motor home "either on the public roads and highways, or situated such that it is reasonable to conclude that the vehicle is not being used as a residence," and an ordinary automobile for the purposes of the vehicle exception. 105 S. Ct. at 2070. The Court explained that such a distinction would require it to apply the exception "depending upon the size of the vehicle and the quality of its appointments." *Id.* The Court asserted that it would not distinguish between "worthy" and "unworthy" vehicles in its application of the vehicle exception. *Id.; cf.* United States v. Ross, 456 U.S. 798, 822 (1982) (refusing to distinguish between "worthy" and "unworthy" containers for purposes of fourth amendment analysis).

64. 105 S. Ct. at 2069. For specific examples of cases in which the Court has upheld warrantless searches of repository areas, see *supra* note 43.

65. 105 S. Ct. at 2069. The Court also stated that the public is fully aware that it is afforded less privacy in vehicles. *Id.* at 2070. In *Ross* the Court indicated that this public awareness is a factor that lessens privacy expectations in motor vehicles. United States v. Ross, 456 U.S. 798, 806 n.8 (1982). For a discussion of the public awareness factor, see *supra* note 46 and accompanying text.

66. 105 S. Ct. at 2070. In each of the warrantless automobile search cases that have come before the Supreme Court, the Court has repeatedly stressed the requirement of probable cause. *See, e.g.,* Almeida-Sanchez v. United States, 413 U.S. 266, 269 (1973) (even under the *Carroll* doctrine, there must be probable cause for a valid search);Chambers v. Maroney, 399 U.S. 42, 51 (1970) (referring to the insistence upon probable cause as a minimum requirement for a reasonable search under the fourth amendment).

67. 105 S. Ct. at 2070. The Supreme Court's holding in *Carney* appears to invalidate two fairly recent Ninth Circuit opinions which held that the automobile exception was inapplicable to motor homes. *See* United States v. Williams, 630 F.2d 1322, 1326 (9th Cir.) (greater expectations of privacy associated with motor homes rendered the automobile exception inapplicable), *cert. denied,* 445 U.S. 865 (1980); United States v. Wiga, 662 F.2d 1325, 1329 (9th Cir. 1980) (reaffirming the *Williams* decision), *cert. denied,* 456 U.S. 918 (1982).

exception.[68] The Court acknowledged the "hybrid character" of the motor home,[69] but explained that the application of the vehicle exception does not depend upon the possible uses of a vehicle. Rather, the Court reasoned, the vehicle exception is based upon the ready mobility of the vehicle, and the presence of the vehicle in a setting that objectively indicates that it is being used for transportation.[70] Thus, *Carney* requires the presence of two conditions before a warrantless search of a motor home can be conducted: first, the motor home must be readily mobile, and second, the motor home must be used for transportation, not as a residence.[71]

In dissent, Justice Stevens, joined by Justices Brennan and Marshall, contended that the privacy expectations in a motor home when "parked in a location that is removed from the public highway" are similar to the privacy expectations in a fixed dwelling.[72] The dissent concluded that a warrantless search of a mobile home's interior is " 'presumptively unreasonable absent exigent circumstances.' "[73]

In extending the automobile exception to include motor homes the Court acted consistently with a number of jurisdictions that

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68. 105 S. Ct. at 2070. The Court reasoned that the two justifications for the automobile exception are applicable to the motor home because a motor home is a readily mobile vehicle and is also subject to extensive regulation and inspection. *Id.* The Court stated that such regulation is inapplicable to a fixed dwelling. *Id.*

69. *Id.* For the California Supreme Court's comment regarding the motor home's hybrid character, see *supra* note 49.

70. 105 S. Ct. at 2070-71; *accord* United States v. Holland, 740 F.2d 878, 879 (11th Cir. 1984) (per curiam) (automobile exception applies to a motor home used for transportation purposes). For a discussion of *Holland,* see *supra* notes 52-54 and accompanying text.

The Court in *Carney* declined to discuss whether the outcome would be the same if a motor home was such that an objective observer would have concluded that someone was using it as a residence. *Id.* at 2071 n.3. In a footnote, however, the Court listed several factors that could be relevant in determining whether or not a warrant would be required if a motor home was used as a residence. *Id.* The factors which might be relevant include: "[the motor home's] location, whether the vehicle is readily mobile or instead, for instance, elevated on blocks, whether the vehicle is licensed, whether it is connected to utilities, and whether it has convenient access to a public road." *Id.*

71. 105 S. Ct. at 2070-71. Justice Stevens stated in dissent that [w]arrantless searches of motor homes are only reasonable when the motor home is traveling on the public streets or highways, or when exigent circumstances otherwise require an immediate search without the expenditure of time necessary to obtain a warrant." *Id.* at 2075 (Stevens, J., dissenting).

72. *Id.* (Stevens, J., dissenting). According to Justice Stevens, a motor home "may not be a castle," but it "is usually the functional equivalent of a hotel room, a vacation and retirement home, or a hunting and fishing cabin." *Id.* at 2078 (Stevens, J., dissenting).

73. *Id.* at 2078 (Stevens, J., dissenting) (quoting United States v. Karo, 104 S. Ct. 3296, 3303 (1984)). Justice Stevens also argued that the Court prematurely resolved the issue in *Carney. Id.* at 2073 (Stevens, J., dissenting). Justice Stevens stated as follows:

> Despite the age of the automobile exception and the countless cases in which it has been applied, we have no prior cases defining the contours of a reasonable search in the context of hybrids such as motor homes, house trailers, houseboats or yachts. In this case, the Court can barely glimpse the diverse lifestyles associated with recreational vehicles and mobile living quarters.

Id. (Stevens, J., dissenting).

have considered the issue.[74] It is questionable, however, whether the Court in *Carney* succeeded in articulating a clear standard to guide law enforcement officers attempting to determine whether or not to search a motor home. The majority suggested that a search warrant must be secured whenever an objective observer would conclude that a motor home was being used as a residence, not as a vehicle.[75] The majority holding appears rather vague, however, because motor home owners typically use their motor home for both residential and transportation purposes.[76] The decision may pose difficulties for police officers who, prior to initiating a search, must determine whether a motor home is being used as a residence or as a vehicle.[77]

In prior cases, the Supreme Court stated that the basic purpose of the fourth amendment is to safeguard the privacy and security of individuals against arbitrary and unreasonable police intrusions.[78] The majority in *Carney* stated that its holding achieved a proper balance between the legitimate privacy interests at stake in the warrantless search of a motor home and the societal concern for unhampered law enforcement.[79] Although it is difficult to predict the implications of *California v. Carney,* the Court's holding does expand a law enforcement officer's authority to conduct warrantless searches of motor vehicles.[80]

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74. The following jurisdictions have also applied the automobile exception to motor homes and camper vans: Florida (*see* State v. Francoeur, 387 So. 2d 1063, 1064-65 (Fla. Dist. Ct. App. 1980) (search of vehicle was justified under the automobile exception despite the fact that the vehicle was generally described as a " 'mobile homes,' 'camper homes,' or 'van' ")); Maine (*see* State v. Mower, 407 A.2d 729, 731-32 (Me. 1979) (search of converted school bus/camper was reasonable under the automobile exception despite the fact that the defendant used the vehicle as his home)); Minnesota (*see* State v. Lepley, 343 N.W.2d 41, 42 (Minn. 1984) (motor homes and similar vehicles used as motor vehicles fall within the scope of the vehicle exception)).

75. *See* 105 S. Ct. at 2070.

76. *Cf.* United States v. Cadena, 588 F.2d 100, 102 (5th Cir. 1979) (per curiam) (increased privacy interests in ships designed for use as residences "mandates careful scrutiny both of probable cause for the search and the exigency of the circumstances excusing the failure to secure a warrant"), *aff'g on rehearing* 585 F.2d 1252 (5th Cir. 1978).

77. *See* Comment, California v. Carney: *Fashioning a "Motor Home Exception" to the Warrant Rule,* 60 NOTRE DAME L. REV. 216, 232 (1984). The commentator notes that police will often have problems in determining the apparent use of a particular motor home, and states as follows:

> Rarely will the clear *Carroll-Chambers* scenarios present themselves. More likely, a motor home's "use" will combine both residential and transportation purposes. Then, the question arises how police officers, "engaged in the often competitive enterprise of ferreting out crime," are to balance their own law enforcement needs against the privacy expectations of individuals.

Id. (footnotes omitted).

78. *See, e.g.,* Camara v. Municipal Court, 387 U.S. 523, 528 (1967) ("basic purpose of [the fourth amendment] . . . is to safeguard the privacy and security of individuals against arbitrary invasions by governmental officials").

79. 105 S. Ct. at 2071.

80. In the view of one commentator, *Carney* is not a major decision but "is symptomatic of the Court's recent activity in dispensing with the procedural requirement of search and arrest warrants based on probable cause." Stewart, *On the Road Again: The Vehicular Fourth Amendment,* A.B.A. J., July 1985, 106, 108 (providing a succinct analysis of the Supreme Court's decision in *Carney*).

North Dakota will likely follow the United States Supreme Court's decision in *Carney*.[81] North Dakota's constitutional search and seizure provision is nearly identical to that of the United States Constitution.[82] The North Dakota Supreme Court has adopted the automobile exception to the warrant requirement[83] and has endorsed the Supreme Court's two justifications for the automobile exception: mobility and the lesser privacy expectation concerning vehicles.[84] Further, although the North Dakota Supreme Court has acknowledged its power to apply higher constitutional standards to the state constitution than are mandated by decisions of the United States Supreme Court interpreting the Federal Constitution,[85] it has not yet done so in any case involving the warrantless search of a motor vehicle.[86] Therefore, in all likelihood, the North Dakota Supreme Court will adhere to the holding in *Carney*.

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81. *See* State v. Matthews, 216 N.W.2d 90 (N.D. 1974). In his concurrence in *Matthews*, Chief Justice Erickstad acknowledged the court's obligation to adhere to the decisions of the United States Supreme Court: "Our obligation to apply constitutional law as the majority of the United States Supreme Court has stated it applies to all United States constitutional issues." *Id.* at 105 (Erickstad, C.J., concurring specially).

82. *See* N.D. CONST. art. I, § 8. For the text of article I, section 8, of the North Dakota Constitution, see *supra* note 17.

83. *See, e.g.*, State v. Binns, 194 N.W.2d 756, 759 (N.D. 1972) (warrantless search of automobile is valid if officer has probable cause to believe the vehicle contains contraband).

84. *See* State v. Meadows, 260 N.W.2d 328, 332 (N.D. 1977) (warrantless searches of vehicles are justified because of the inherent mobility of automobiles and the lesser expectation of privacy regarding them).

85. *Matthews*, 216 N.W.2d at 99. In *Matthews* the court stated that [i]t is within the power of this court to apply higher constitutional standards than are required of the States by the Federal Constitution." *Id.*

86. *See, e.g.*, State v. Kottenbroch, 319 N.W.2d 465 (N.D. 1982) (applying principles set forth by the Supreme Court and concluding that, for a valid warrantless search of a vehicle, searching officer must have probable cause to believe the automobile contains contraband, and the search must be of limited scope); State v. Meadows, 260 N.W.2d 328, 332 (N.D. 1977) (following the Supreme Court's analysis in concluding that the warrantless search of a vehicle is justified by the inherent mobility of automobiles and the lesser expectations of privacy regarding them). *But cf.* State v. Thompson, 369 N.W.2d 363, 372 n.5 (N.D. 1985) (noting that the court was intimating no view as to whether "we should chart an independent course under Article I, Section 8, of the North Dakota Constitution with regard to the 'good-faith' exception" to the warrant requirement which the United States Supreme Court adopted in United States v. Leon, 468 U.S. 897 (1984)).