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Search and Seizure - Fourth Amendment - The Constitutionally Permissible Scope of Warrantless Automobile Searches

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CASE COMMENTS

SEARCH AND SEIZURE — FOURTH AMENDMENT — THE CONSTITUTIONALLY PERMISSIBLE SCOPE OF WARRANTLESS AUTOMOBILE SEARCHES

Police officers, acting on information from a reliable informant that an individual was selling narcotics from the back of a certain car at a certain location, drove to the location, found the automobile and the individual, and arrested Albert Ross.[1] One of the officers conducted a warrantless search of the trunk of the automobile.[2] In a closed brown paper bag he found glassine bags containing a white powder.[3] After driving the automobile back to the police station, a second warrantless search of the trunk revealed a zippered red leather pouch containing $3200 in cash.[4] Ross was charged with possession of heroin with intent to distribute.[5] The trial court convicted Ross after it refused his motion to suppress the evidence that was found in the warrantless searches.[6] The court of

1. United States v. Ross, 102 S. Ct. 2157, 2160 (1982). The events took place on the evening of November 27, 1978. The informant, who had been previously reliable, telephoned Detective Marcum of the District of Columbia Police Department. He stated that he had watched an individual known as the "Bandit" (Albert Ross) complete a narcotics sale from the back of a maroon Chevrolet Malibu near 439 Ridge Street in the District of Columbia. The informant further stated that Ross told him that he had additional narcotics in the trunk. *Id.*

Detective Marcum, through a computer check, discovered that the car was registered to Albert Ross, who fit the description of the informant and used the alias "Bandit." Detective Marcum, Detective Cassidy, and Sergeant Gonzales went to the area described by the informant. After some time they found Ross and the automobile and arrested him. *Id.*

2. *Id.* Detective Cassidy took Ross' keys and conducted the search. *Id.*

3. *Id.* The police laboratory later determined that the white powder was heroin. *Id.*

4. *Id.*

5. *Id.* Ross was charged with violating 21 U.S.C. § 841(a). *Id.* Section 841(a) provides:

> Except as authorized by this subchapter, it shall be unlawful for any person knowingly or intentionally—
>
> (1) to manufacture, distribute, or dispense or possess with intent to manufacture, distribute or dispense, a controlled substance; or
>
> (2) to create, distribute or dispense, or possess with intent to create, distribute, or dispense, a counterfeit substance.

21 U.S.C.A. § 841(a) (West 1981).

Ross was also charged with possession of heroin, carrying a pistol without a license, and possessing a firearm after a felony. United States v. Ross, 655 F.2d 1159, 1162 (D.C. Cir. 1981).

6. 102 S. Ct. at 2160.

appeals reversed, holding that neither of the containers found in the trunk of the automobile should have been searched without a warrant.[7] The United States Supreme Court reversed the court of appeals and *held* that when probable cause justifies the search of a lawfully stopped vehicle, a police officer may conduct a warrantless search of every part of the vehicle and its contents that is as thorough as could be authorized by a magistrate.[8] *United States v. Ross,* 102 S. Ct. 2157 (1982).

The fourth amendment to the United States Constitution protects people from unreasonable searches and seizures.[9] The fourth amendment protection arises when an individual demonstates an actual expectation of privacy in an object or activity that society recognizes as reasonable.[10] When an individual demonstrates a reasonable expectation of privacy in an object or activity, the United States Supreme Court has held that a warrantless search into that object or intrusion into that activity is per se unreasonable, even though the search is based on probable cause and is done in a reasonable manner.[11] The Supreme Court

7. *Id.* at 2160-61. A three judge panel of the United States Court of Appeals for the District of Columbia held that only the paper bag, and not the leather pouch, could be searched without a warrant. The court reasoned that because Ross had a reasonable expectation of privacy in the leather pouch, it could not be searched without a warrant. That same privacy interest could not be sustained in a brown paper bag, however, and it could be searched without a warrant. *Id.* at 2160.

After rehearing the case en banc, the United States Court of Appeals for the District of Columbia held that neither container could be searched without a warrant. 655 F.2d at 1171.

8. 102 S. Ct. at 2172. The United States Supreme Court also held that the scope of the search is not defined by the nature of the container in which the contraband is hidden, but is "defined by the object of the search and the places where there is probable cause to believe it might be found." *Id.*

9. U.S. CONST. amend. IV. The fourth amendment provides:

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

Id.

The North Dakota Constitution includes a similar passage, which 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.

10. Katz v. United States, 389 U.S. 347, 361 (1967) (Harlan, J., concurring). Justice Harlan gave the example of a home as a place where an individual has an actual expectation of privacy that society recognizes as reasonable. Justice Harlan contrasted that with the ideas, objects, and activities that an individual puts in plain view of society in which he cannot have a reasonable expectation of privacy. *Id.*

11. *Id.* at 357. The Supreme Court in *Katz* stated that "searches conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment — subject only to a few specifically established and well-delineated exceptions." *Id.*

In *Katz* the government electronically listened to and recorded the petitioner's phone conversations from a public telephone booth. *Id.* at 348. The Court held that the petitioner had a reasonable expectation of privacy in his phone conversations. The Court further held that although the intrusion was based on probable cause and was completed in a reasonable manner, it violated the fourth amendment warrant requirement. *Id.* at 356.

has, however, defined certain exceptions to the warrant requirement.[12]

Under the automobile exception to the warrant requirement, a police officer who lawfully stops an automobile may search it if he has probable cause to believe it contains contraband.[13] The Supreme Court in *Carroll v. United States*[14] justified a warrantless search of an automobile because a "vehicle can be quickly moved out of the locality or jurisdiction in which the warrant must be sought."[15] The Supreme Court in *Chambers v. Maroney*[16] expanded this rationale stating that a warrant is unnecessary to search an automobile on the highway because "the car is moveable, the occupants are alerted, and the car's contents may never be found again if a warrant must be obtained."[17] The automobile exception

12. *See generally* 2 W. LAFAVE, SEARCH AND SEIZURE § 7 (1978 & Supp. 1982) (discussing automobile searches and the warrant exceptions regarding them).

The Supreme Court established the search incident to arrest exception to the warrant requirement in New York v. Belton, 453 U.S. 454 (1981). The *Belton* case involved the warrantless search of an individual and the interior of the automobile in which he was riding. The Supreme Court held that when a passenger of an automobile is arrested, a police officer may search his person, as well as the passenger compartment of the automobile in which he is riding. *Id.* at 460.

The Supreme Court discussed the warrant requirement exception for searches conducted with the suspect's consent in Schneckloth v. Bustamonte, 412 U.S. 218 (1973). Police officers stopped an automobile for a traffic violation and searched it with the consent of the owner. The Supreme Court held that when a search is based on consent, the State must demonstrate from the totality of the surrounding circumstances that the consent was voluntary. *Id.* at 248-49.

The Supreme Court discussed the plain view warrant requirement exception in Coolidge v. New Hampshire, 403 U.S. 443 (1971). When an arresting officer inadvertently comes within plain view of evidence that is not concealed, but is outside the area of the arrestee's immediate control, the officer may seize it, as long as the evidence came into plain view in the course of an appropriately limited search of the arrestee. *Id.* at 467-68. The seizure in *Coolidge* was inappropriate because the officer did not come upon the evidence inadvertently, and he could have obtained a warrant. *Id.* at 472.

The Supreme Court discussed the automobile exception to the warrant requirement in Chambers v. Maroney, 399 U.S. 42 (1970). The Court held that a police officer who lawfully stops an automobile may conduct a warrantless search of the automobile if he has probable cause to believe that it contains contraband. A warrant is unnecessary because of the mobility of the automobile and the fear that the evidence will be lost if not immediately seized. *Id.* at 51.

The Supreme Court discussed the stop and frisk exception in Terry v. Ohio, 392 U.S. 1 (1968). The Court held that a police officer who has reason to believe that an individual is armed and is contemplating a crime may stop the individual and make a reasonable search for weapons. *Id.* at 30. The police officer's search of two people who he suspected were about to complete a robbery was not a violation of the fourth amendment. *Id.*

The Supreme Court discussed the hot pursuit warrant requirement exception in Warden v. Hayden, 387 U.S. 294 (1967). Police officers pursued an armed robbery suspect into his home and, with his wife's permission, searched the home. The Supreme Court held that since the officers were in pursuit of a suspected armed felon, their warrantless entry and search was permitted. *Id.* at 298-300.

13. Carroll v. United States, 267 U.S. 132, 149 (1925).

14. 267 U.S. 132 (1925). In *Carroll* federal agents stopped known bootleggers, who were traveling on a road frequently used by bootleggers. The officers conducted a warrantless search of the vehicle that included ripping open the rumble seat in which contraband was found. *Id.* at 135-36.

15. *Id.* at 153.

16. 399 U.S. 42 (1970). In *Chambers* the police seized the automobile driven by one of four men arrested for armed robbery. The police conducted a warrantless search of the car after it was taken to the police station. Chambers v. Maroney, 399 U.S. 42, 43 (1970). The Court held that there was "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." *Id.* at 52.

17. *Id.* at 51.

to the warrant requirement is further justified because an individual has a lesser expectation of privacy in his automobile than he has in his home.[18]

The United States Supreme Court did not specifically address whether containers found during a search under the automobile exception could be searched without benefit of a warrant until 1981 in *Robbins v. California.*[19] Prior to *Robbins* the Supreme Court had dealt twice with the search of containers found in an automobile, but in each instance there was probable cause to search the container, not the automobile.[20]

In *United States v. Chadwick*[21] federal agents were alerted that certain individuals were arriving by train with a footlocker that contained contraband.[22] The federal agents spotted the footlocker, but they did not seize it immediately.[23] Rather, the agents waited until after the suspects placed the footlocker in the trunk of a car driven by Chadwick.[24] The federal agents took the footlocker to the federal building where they searched it without a warrant.[25] The Supreme Court stated that the defendants were entitled to the protection of a warrant.[26] In doing so the Court rejected both of the rationales for the automobile exception to the warrant requirement as applied to containers. First, unlike a car, police officers easily can control a footlocker while they obtain a warrant.[27] Second, an individual has a greater expectation of privacy in a footlocker than in an automobile.[28]

18. United States v. Chadwick, 433 U.S. 1, 12 (1977). The Court noted that the Supreme Court has upheld warrantless automobile searches, even when there was no concern that the automobiles might be moved, because of the diminished expectation of privacy inherent in an automobile. *Id.*

The *Chadwick* Court reasoned that "[o]ne 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 a repository of personal effects." *Id.* (quoting Cardwell v. Lewis, 417 U.S. 583, 590 (1974)).

19. 453 U.S. 420 (1981). In *Robbins* the Supreme Court held that the warrantless search of containers found during a search under the automobile exception violated the fourth amendment. Robbins v. California, 453 U.S. 420, 428-29 (1981).

20. *See* Arkansas v. Sanders, 442 U.S. 753, 755 (1979) (probable cause to search a green suitcase); United States v. Chadwick, 433 U.S. 1, 3 (1977) (probable cause to search a footlocker).

21. 433 U.S. 1 (1977).

22. *Id.* at 3. The agents in Boston, the location of the eventual arrest, received their information from federal agents in San Diego, who were acting on a tip from railroad officials. *Id.*

23. *Id.* at 4. The agents first verified that the footlocker contained marijuana with a specially trained dog. *Id.*

24. *Id.* Chadwick came to pick up the suspects who had arrived on the train. *Id.*

25. *Id.* The footlocker, which was doublelocked and contained marijuana, was opened without the consent of the defendants. Further, the government conceded that the police officers opened it at a time when there was no risk of losing the evidence and no risk of danger, and that the officers easily could have stored the footlocker until a warrant was obtained. *Id.* at 4-5.

26. *Id.* at 15-16. The *Chadwick* Court stated that it could find no exigency to support the need for a warrantless search. *Id.* at 15.

27. *Id.* at 13. The bases for the automobile exception to the warrant requirement are that a car is highly mobile and that evidence might be lost if the police must wait for a warrant to search. *See* Chambers v. Maroney, 399 U.S. at 51.

28. *Chadwick,* 433 U.S. at 13. The *Chadwick* Court reasoned that unlike a car, the contents of luggage are not open to public inspection. Luggage is more likely to be the repository of personal effects. *Id.*

The facts in *Arkansas v. Sanders*[29] were similar to those in *Chadwick*. In finding the search unconstitutional, the Court reasoned that the rationales that justify a warrantless automobile search were not applicable to container searches.[30] The Court in *Sanders,* however, laid down a broader rule stating that "a warrant is generally required before personal luggage can be searched and the extent to which the Fourth Amendment applies to containers and other parcels depends not at all upon whether they are seized from an automobile."[31]

As Chief Justice Burger noted in his concurring opinion in *Sanders,*[32] neither of the above cases were automobile exception cases.[33] The key distinction, according to the Chief Justice, was that there was probable cause to search the container, rather than the automobile, in each case.[34]

In *Robbins v. California*[35] the police officers did complete a warrantless automobile exception search.[36] During the search the officers opened a sealed container in which they found contraband.[37] In a plurality opinion the Supreme Court held that the warrantless search of the containers found during the lawful search of the automobile violated the fourth amendment.[38] The *Robbins* plurality decision met with almost immediate resistance,[39] and the need for clarification led the Supreme Court to grant certiorari in *United States v. Ross.*[40]

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29. 442 U.S. 753 (1979). A Little Rock, Arkansas, police officer had information that Sanders was arriving at the local airport with a green suitcase containing contraband. Locating Sanders at the airport, the officer waited to seize the suitcase until it was placed in the trunk of a taxi. He searched the suitcase on the scene before obtaining a warrant and found marijuana. Arkansas v. Sanders, 442 U.S. 753, 755 (1979).

30. *Id.* at 763-65. The Court stated that a suitcase, unlike an automobile, is not highly mobile. *Id.* at 763-64. Also, a person has a higher expectation of privacy in a suitcase than he has in an automobile. *Id.* at 764.

31. *Id.* at 764 n. 13. The implication of the rule was that a warrantless search of a container found during an automobile exception search would always violate the fourth amendment. 102 S. Ct. at 2167.

32. 442 U.S. at 766 (Burger, C.J., concurring).

33. *Id.* at 767.

34. *Id.* Chief Justice Burger concluded that "[t]he relationship between the automobile and the contraband was purely coincidental, as in *Chadwick.* The fact that the suitcase was resting in the trunk of the automobile at the time of respondent's arrest does not turn this into an 'automobile' exception case." *Id.*

35. 453 U.S. 420 (1981).

36. Robbins v. California, 453 U.S. 420, 422 (1981). In *Robbins* probable cause existed to search the automobile, which police officers stopped because it was being driven erratically, because the officer smelled marijuana smoke emanating from it. *Id.*

37. *Id.* The containers included two packages wrapped in opaque plastic, each containing fifteen pounds of marijuana. *Id.*

38. *Id.* at 428-29. Justice Stewart emphasized that the defendant exhibited a high expectation of privacy in the contents of the packages because the contents were placed within a closed, opaque container. *Id.* at 426.

39. *See* Virgin Islands v. Rasool, 657 F.2d 582, 590 (3d Cir. 1981). The court of appeals in *Rasool* did not feel bound by *Robbins* because it was a plurality opinion without a single rationale. *Id Rasool* involved the search of a paper bag taken during an automobile exception search. *Id.* at 585.

40. 102 S. Ct. at 2162.

The *Ross* Court extensively analyzed *Carroll v. United States.*[41] The Court concluded that *Carroll* established a limited exception to the warrant requirement, under which a police officer with probable cause to believe an automobile contained contraband could conduct a warrantless search of that automobile.[42] *Carroll* did not establish, however, the scope of a search permitted under the automobile exception to the warrant requirement.[43]

The *Ross* Court noted that while the Court in *Carroll* did not specifically comment on the permissible scope of the search, the *Carroll* Court did not find the search to be unreasonable.[44] The scope of that search, which included ripping out the upholstery of a seat, was "no greater than a magistrate could have authorized by issuing a warrant."[45]

The *Ross* Court then discussed a contemporary automobile exception case, *Chambers v. Maroney,*[46] and again noted that while the *Chambers* Court did not comment on the permissible scope of the search, it did not find the search impermissible.[47] The *Ross* Court concluded, "It would be illogical to assume that the outcome of *Chambers*—or the outcome of *Carroll* itself—would have been different if the police had found the secreted contraband enclosed within a secondary container and had opened that container without a warrant."[48]

The *Ross* Court then noted that a search done under a warrant extends to the entire area in which the object of the search may be found.[49] When a warrant to search a vehicle is issued, it authorizes a search of every part of the vehicle that might contain the object of the search.[50]

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41. *Id.* at 2162-64. In *Carroll* prohibition agents searched, without a warrant, an automobile they had stopped on the highway because they believed it to be carrying contraband. The agents found nothing in plain view, but one of the agents noticed that the back of one seat was hard. When they tore open the upholstery of the seat, the agents found 68 bottles of whiskey and gin. Carroll v. United States, 267 U.S. 132, 136 (1925).

42. 102 S. Ct. at 2164. The Court also stated that a warrantless search of an automobile was not unreasonable if based on facts that would justify the issuance of a warrant. *Id.*

43. *Id.*

44. *Id.* at 2169.

45. *Id.* The scope of the warrantless search was not unreasonable, according to the *Ross* Court, because it could have been authorized by a warrant. *Id.*

46. 399 U.S. 42 (1977). In *Chambers* police officers seized and later searched, without the benefit of a warrant, the automobile driven by four armed robbery suspects. Chambers v. Maroney, 399 U.S. 42, 43 (1970).

47. 102 S. Ct. at 2169. In the search in *Chambers* police found the evidence in a concealed compartment under the dashboard. *Id.*

48. *Id.* at 2169.

49. *Id.* at 2170.

50. *Id.* The *Ross* Court described the limits of a search as follows:

> When a legitimate search is under way, and when its purpose and its limits have been precisely defined, nice distinctions between closets, drawers, and containers, in the case of a home, or between glove compartments, upholstered seats, trunks, and

Further, the Court stated that the privacy interest that an individual has in a container varies with the setting in which it is found.[51] When the container is found within the confines of an automobile, the individual's privacy expectation in the container is not sufficient if there is probable cause to believe that the container contains contraband.[52] The Court concluded that the privacy interests of the individual must give way to the authority to search in some instances.[53] When an automobile search based on probable cause is conducted, the authority to search exists without prior approval of a magistrate.[54] Therefore, "[t]he scope of a warrantless search based on probable cause is no narrower—and no broader—than the scope of a search authorized by a warrant supported by probable cause."[55]

There are some limits to the scope of an automobile exception search. The search is limited by the nature of the object of the search and the places in which that object can be found.[56] The Court pointed out that when police officers search without a warrant on their own assessment of probable cause, the police officers lose the protection from civil damages that a warrant gives them if it is later determined that probable cause did not exist.[57] The Court apparently was trying to indicate that the possibility of a postsearch evaluation of probable cause could be a very real limit on the number of warrantless automobile searches that the police may conduct.[58]

In its decision in *Ross,* the Court rejected the holding in *Robbins v. California*[59] and a portion of the reasoning in *Arkansas v.*

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wrapped packages, in the case of a vehicle, must give way to the interest in the prompt and efficient completion of the task at hand.

Id. at 2170-71.

51. *Id.* at 2171. The Court gave the example of a traveler entering the United States. He does not have a privacy right in his luggage that is protected by the fourth amendment. *Id.*

52. *Id.* The Court noted that the privacy interest in a container was certainly no greater than the privacy interest in a glove compartment or trunk of a car, which could be searched. *Id.*

53. *Id.* at 2172. Fourth amendment analysis requires that a person's actual privacy interest be first tested to see if it is reasonable and then balanced against the public policy reasons for not protecting it in that particular instance. Katz v. United States, 389 U.S. 347, 361 (1967).

54. 102 S. Ct. at 2172.

55. *Id.* The *Ross* Court stated that the only difference between an automobile exception search and a search authorized by a warrant is that in the former prior approval by a magistrate is waived. *Id.*

56. *Id.* The *Ross* Court noted that probable cause to believe undocumented aliens were being transported in a van would not justify a search of a suitcase in that van. A second example indicated that if probable cause was attached to a specific container within the trunk of a vehicle, it would not justify a search of the entire vehicle. *Id.*

57. *Id.* at 2172 n. 32.

58. Justice Marshall argued in his dissent that prior review of probable cause is necessary because a postsearch review may easily be colored by the result of the search. *Id.* at 2174-75 (Marshall, J., dissenting).

59. *Id.* at 2172. The *Robbins* Court held that the warrantless search of a container found during an automobile exception search violated the fourth amendment. Robbins v. California, 453 U.S. 420, 428 (1981).

Sanders.[60] Justice Marshall in his dissent states that the Court's decision should require that both *Sanders* and *Chadwick* be overturned.[61] Justice Marshall's central concern with the holding in *Ross* is that, in his view, it does away with the fourth amendment warrant requirement when applied to automobiles.[62] According to Justice Marshall, the purpose of the warrant requirement is to assure that a neutral magistrate makes the determination of whether probable cause exists.[63] Under *Ross* that decision is left totally to the police officer.

Both the majority[64] and the dissent[65] agree that the decision will have a major impact on law enforcement. The decision expands the power of the police to conduct warrantless automobile searches. When a police officer stops an automobile and has probable cause to believe that the automobile contains contraband, he may conduct a search of every part of the automobile and any container within it that could conceal that type of contraband. It gives to the police officer in this situation power equal to that of a

60. 102 S. Ct. at 2172. Specifically, the *Ross* Court had to reject the language in *Sanders* that indicated that the fourth amendment warrant requirement applied to containers and parcels regardless of whether they were found in an automobile. Arkansas v. Sanders, 442 U.S. 753, 764 n. 13 (1979).

61. 102 S. Ct. at 2180-81 (Marshall, J., dissenting). In his dissent, Justice Marshall stated:

> [T]he Court's attempt to distinguish the holdings in *Chadwick* and *Sanders* is not only unpersuasive but appears to contradict the Court's own theory. The Court suggests that in each case, the connection of the container to the vehicle was simply coincidental, and notes that the police did not have probable cause to search the entire vehicle. But the police assuredly did have probable cause to search the vehicle *for the container*. The Court states that the scope of the permitted warrantless search is determined only by what a magistrate could authorize. . . . Once police found that container, according to the Court's own rule, they should have been entitled to search at least the container without a warrant. There was probable cause to search and the car was mobile in each case.

Id. at 2181 n. 11.

62. *Id.* at 2173-74. Justice Marshall's view that the holding in *Ross* does away with the fourth amendment warrant requirement when applied to automobiles is seemingly a fair assessment. Under the automobile exception after *Ross*, a police officer makes both the determination of probable cause and the determination of the scope of the search, subject only to sanctions after the fact. *Id.*

63. *Id.* Justice Marshall discussed the warrant requirement as follows:

> "The warrant traditionally has represented an independent assurance that a search and arrest will not proceed without probable cause to believe that a crime has been committed and that the person or place named in the warrant is involved in the crime. Thus, an issuing magistrate must meet two tests. He must be neutral and detached, and he must be capable of determining whether probable cause exists for the requested arrest or search. This Court long has insisted that inferences of probable cause be drawn by 'a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime.' "

Id. at 2174 (quoting Shadwick v. City of Tampa, 407 U.S. 345, 350 (1972), which cited Johnson v. United States, 333 U.S. 10, 14 (1948)).

64. 102 S. Ct. at 2161-62. The Court indicated that the purpose of accepting *Ross* for hearing was to clarify this area of the law that affected so many people. *Id.*

65. *Id.* at 2181 (Marshall, J., dissenting). Justice Marshall agreed with the majority that the decision will have a profound effect. He and the majority both noted that numerous vehicles are stopped daily by police officers and that police officers often have probable cause to believe that a stopped automobile contains contraband. *Id.*

magistrate. It remains to be seen whether the police will abuse this new authority.

North Dakota will in all likelihood follow the approach laid down by the Supreme Court. North Dakota has a constitutional search and seizure provision almost identical to the fourth amendment.[66] The North Dakota Supreme Court has stated that it has the power to apply higher constitutional standards than are required by the United States Constitution.[67] The North Dakota Supreme Court has adopted the automobile exception to the warrant requirement,[68] however, and has not adopted a higher standard than mandated by the United States Constitution in any automobile search case.[69] In light of this history, it seems likely that the North Dakota Supreme Court will adhere to the holding in *Ross*.

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66. N.D. CONST. art. I, § 8. For the text of the constitutional provision, see *supra* note 8.

67. *See* State v. Matthews, 216 N.W.2d 90 (N.D. 1974) (the court stated in dicta that it has the power to apply higher standards than those required by the United States Constitution).

68. *E.g.*, State v. Meadows, 260 N.W.2d 328 (N.D. 1977) (officer who sees a defendant simultaneously drinking beer and driving has probable cause to make a warrantless automobile search).

69. *See* State v. Klevgaard, 306 N.W.2d 185 (N.D. 1981) (a warrantless search of an automobile conducted after the arrest of the occupants for reckless driving was upheld due to exigent circumstances of darkness and the automobile being on a public road); State v. Klodt, 298 N.W.2d 783 (N.D. 1980) (sheriff may conduct a warrantless inventory search of an abandoned vehicle before taking it into custody); State v. Meadows, 260 N.W.2d 329 (N.D. 1977) (officer who sees a defendant simultaneously drinking beer and driving has probable cause to make a warrantless automobile search); State v. Stockert, 245 N.W.2d 266 (N.D. 1976) (a warrantless search of an unoccupied vehicle on private property, not in police custody, not suspected of containing contraband, not immediately mobile, and not suspected of containing anything dangerous to the police was not authorized under the automobile exception to the warrant requirement); State v. Binns, 194 N.W.2d 756 (N.D. 1972) (probable cause to search an automobile without a warrant did exist when police officers recognized the odor of marijuana smoke coming from the automobile).