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Search and Seizure - The Automobile Exception: Attempting to Establish a Bright-Line Rule Regarding Searches of Passengers' Containers - Wyoming v. Houghton

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SEARCH AND SEIZURE—The Automobile Exception: Attempting to Establish a Bright-line Rule Regarding Searches of Passengers' Containers. *Wyoming v. Houghton,* 526 U.S. 295 (1999).

INTRODUCTION

On April 5, 1999, the United States Supreme Court issued its ruling in *Wyoming v. Houghton.*[1] The Court's decision clarified a muddled body of search and seizure law and provided the Court with the opportunity to establish a much-needed bright-line rule governing warrantless searches of containers found in automobiles.[2]

In the course of a warrantless search of an automobile, two containers possessed by Sandra Houghton were discovered to contain drugs. Houghton challenged that the warrantless search of her containers was illegal based on the Fourth Amendment.[3] The United States Supreme Court held that a warrantless search based on the automobile exception[4] extends to any container found in the automobile that could hide the object of the search, regardless of ownership.[5]

On July 23, 1995, Sandra Houghton was traveling down a deserted Wyoming highway in an automobile driven by a friend.[6] An officer from the Wyoming Highway Patrol stopped the car for speeding and faulty brake lights at approximately 2:00 am.[7] Noticing a syringe in the driver's pocket, the officer questioned the driver regarding its use.[8] The driver admitted he used the syringe to take drugs, and the officer, believing the car contained contraband, ordered the passengers out of the car and began a search of the passenger compartment.[9]

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1. 526 U.S. 295 (1999).
2. *See* Robert Weissberg, *Special Issue: Foreword, A New Agenda for Criminal Procedure,* 2 BUFF. CRIM. L. REV. 367 (1999):

> In the new case of *Wyoming v. Houghton*, some of the very subtle permutations of cases establishing the power to stop on reasonable suspicion, to search incident to arrest and to search vehicles–permutations that were recently thought of as interesting and open questions, have now been settled as well within the police power. *Id.* at 370 (emphasis added).

3. *Houghton,* 526 U.S. at 299.
4. Carroll v. U.S., 267 U.S. 132, 153 (1925). "[C]ontraband goods concealed and illegally transported in an automobile or other vehicle may be searched for without a warrant." *Id.*
5. *Houghton,* 526 U.S at 295.
6. *Id.* at 297.
7. *Id. See also* Petitioner's Brief at 2, Wyoming v. Houghton, 526 U.S. 295 (1999) (No. 98-184).
8. *Houghton,*526 U.S. at 298.
9. *Id.*

The officer discovered a purse in the back seat that contained Houghton's driver's license, and she admitted the purse was hers.[10] In the purse the officer found a black "wallet-type container" and a brown pouch.[11] Houghton claimed the wallet was hers, but denied ownership of the pouch.[12] The officer searched these items and found ten cc's of methamphetamine and drug paraphernalia in the wallet and also found sixty cc's of methamphetamine in the brown pouch.[13] The officer arrested Houghton and she was subsequently charged with felony possession of a controlled substance based on the methamphetamine found in the brown pouch and the "wallet-type container."[14] At trial Houghton made a motion to suppress the evidence found in the purse under the theory that the search of her purse was a violation of her Fourth and Fourteenth Amendment rights.[15] The court denied this motion, and Houghton was convicted of felony possession of a controlled substance and sentenced to serve no less than two years and no more than three years in the Wyoming Women's Prison.[16]

Houghton appealed the case to the Wyoming Supreme Court, and on April 3, 1998, in a three-to-two decision, the Wyoming Supreme Court reversed the trial court's decision on the motion to suppress and remanded the case for a new trial.[17] The court held that, because Houghton was a passen-

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10. *Id.* Ms. Houghton originally gave a false name to the officers in order to protect herself "in case things went bad" and denied having any identification. *Id.*

11. *Id.*

12. *Id.*

13. *Houghton,* 526 U.S. at 298. It was important for Houghton to deny ownership of the brown pouch and also to attempt to suppress any evidence found within it because the amount of methamphetamine (sixty cc's) found within the brown pouch made its possession a felony under WYO. STAT. ANN. § 35-7-1031(c)(iii) (Supp. 1996). Had she been successful in suppressing the evidence found within the brown pouch she could only have been charged with a misdemeanor under WYO. STAT. ANN. § 35-7-1031(c)(i) (Supp. 1996) because of the small amount of methamphetamine (ten cc's) found in the black "wallet-type" container.

14. *Houghton,* 526 U.S. at 298. *See* WYO. STAT. ANN. § 35-7-1031(c)(iii) (Supp. 1996). This statute states that any person found to have more than 3/10 of a gram of methamphetamine (in liquid form) in their possession is guilty of a felony punishable by imprisonment for not more than 5 years and/or a fine not more than $10,000.

15. *Houghton,* 526 U.S. at 299.

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

U.S. CONST. amend. IV.

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

U.S. CONST. amend. XIV §1.

16. *Houghton,* 526 U.S. at 299. *See* Petitioner's Brief at 305, Wyoming v. Houghton, 526 U.S. 295 (1999) (98-134).

17. Houghton v. Wyoming, 956 P.2d. 363, 372 (Wyo. 1998).

ger and not suspected of any wrongdoing, no probable cause existed to search a container in the vehicle that the searching officer knew belonged to her and not to the driver.[18] Following this decision, the State of Wyoming petitioned for *certiorari* to the United States Supreme Court challenging the Wyoming Supreme Court's decision that the search of Houghton's containers was illegal. On April 5, 1999, the United States Supreme Court, in a six-to-three decision, reversed the Wyoming Supreme Court.[19] The United States Supreme Court held that, if probable cause is present to believe contraband may be contained within an automobile, any container within that automobile may be searched without a warrant and without regard to ownership so long as the contraband could be concealed in the container.[20]

This case note will discuss why the United States Supreme Court was correct in its treatment of the automobile exception as it pertains to closed containers based on both settled law and practical considerations. A decision by the United States Supreme Court limiting the use of the automobile exception would have had severe ramifications to the effectiveness of law enforcement.[21] An affirmation of the Wyoming Supreme Court's ruling by the United States Supreme Court would have left American citizens with no clear expectations as to their rights to privacy and security from unreasonable searches and seizures.[22] This case note will analyze how the Court's heightened protection of personal effects from search and seizure would have prevented a search of Houghton's purse had she not left the purse in the automobile. This case note also will examine the effect the driver-passenger relationship has on the determination of probable cause in an "automobile exception" search. Finally, this case note will hypothesize how the Wyoming Supreme Court would treat a similar fact situation if raised utilizing the protections of the Wyoming Constitution.

BACKGROUND

The Fourth Amendment to the Constitution of the United States 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 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.[23]

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18. *Id.* at 372.
19. *Houghton*, 526 U.S. at 296.
20. *Id.* at 307.
21. *Id.* at 305.
22. *Id.* at 307 (Breyer, J., concurring).
23. U.S. CONST. amend. IV.

Based on the Fourth Amendment, the United States Supreme Court has stated that a warrantless search is "per se unreasonable 'subject to a few specifically established and well delineated exceptions.' "[24] These exceptions allow law enforcement officers to bypass the procedures of obtaining a warrant from a judicial officer.[25] Traditionally, the Court has waived the warrant requirement only when societal interests outweigh the interests of the individual and when any delay in a search would incur great costs to society.[26] Since the development of the warrant requirement, the United Sates Supreme Court has made exceptions including consent,[27] plain view,[28] stop and frisk,[29] emergency,[30] search incident to arrest,[31] and the automobile.[32]

The Automobile Exception

The first case in which the Supreme Court examined the warrantless search of an automobile was *Carroll v. U.S.*, decided in 1925.[33] This case arose following a warrantless search by federal prohibition agents of an automobile.[34] In the automobile, agents discovered a large amount of alcohol.[35] Carroll was convicted of violating the National Prohibition Act after his motion to suppress the evidence found in the search was rejected.[36] Carroll argued that the search was made "upon a mere capricious venture" and was unreasonable under the Fourth Amendment.[37] Relying heavily on the text of the Fourth Amendment, Carroll's appeal concentrated on the fact that the officers did not have a warrant to search and thus did not have the power to initiate the search without knowledge of the commission of a crime.[38]

The Supreme Court opinion, drafted by Chief Justice Taft,[39] became the building block of the "automobile exception."[40] Justice Taft recognized that,

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24. Katz v. U.S., 389 U.S. 347, 357 (1967). *See also* Paul L. Kaminsky, *The "Wrap" on Probable Cause: The Fourth Amendment Contained*, 6 ST. THOMAS L. REV. 449, 451 (1994).

25. *See* Johnson v. United States, 333 U.S. 10, 14-15 (1948).

26. Lewis R. Katz, *Criminal Law: United States v. Ross: Evolving Standards for Warrantless Searches*, 74 J. CRIM. L. & CRIMINOLOGY 172, 185 (1983). *See Katz*, 389 U.S. at 357.

27. Schneckloth v. Bustamore, 412 U.S. 218 (1973).

28. *Katz*, 389 U.S. 347.

29. Terry v. Ohio, 392 U.S. 1 (1968).

30. Warden v. Hayden, 387 U.S. 294 (1967).

31. Chimel v. California, 395 U.S. 752 (1969).

32. Carroll v. U.S., 267 U.S. 132, 153 (1925). *See also* Catherine A. Shepard, *Search and Seizure: From Carroll to Ross, The Odyssey of the Automobile Exception*, 32 CATH. U. L. REV. 221 (1982).

33. 267 U.S. 132 (1925).

34. *Id.* at 160.

35. *Id.*

36. *Id.* at 137.

37. *Id.*

38. *Id.* at 138. The officers based their search on a conversation with the defendant ten weeks beforehand regarding a proposed delivery of alcohol and the fact the route was known for heavy bootlegging traffic. The delivery never occurred. *Id.*

39. *Id.* at 132. This case went directly to the United States Supreme Court based on a writ of error to the District Court of the United States for the Western District of Michigan under Section 238 of the

throughout the nation's history, Congress passed legislation providing exceptions to the warrant requirement, typically dealing with the warrantless searches of moveable vessels.[41] These exceptions usually applied to customs officials and naval officers and arose out of the fear that contraband easily could be "put out of reach of the search warrant."[42] Recognizing precedent in both the case law and federal legislation that warrantless searches were not necessarily prohibited by the Constitution, the Court created its "automobile exception."[43] Justice Taft's majority opinion stated the new rule of law:

> [T]he true rule is that if the search and seizure without a warrant are made upon probable cause, that is upon a belief reasonably arising out of the circumstances known to the seizing officer, that an automobile or other vehicle contains that which by law is subject to seizure and destruction, the search and seizure are valid.[44]

The Court's reasoning in *Carroll* relied mainly on the transportability of contraband found in vehicles.[45] However, the Court also has subsequently relied on another inherent difference between premises searches and automobile searches to justify the automobile exception to the warrant requirement, a person's reduced expectation of privacy in an automobile.[46] As stated in *California v. Carney:*

> When a vehicle is being used on the highways . . . then the automobile exception comes into play, first the vehicle is obviously readily mobile, and secondly there is a reduced expectation of privacy. When this is the case societal interest allows a warrantless search before the vehicle and its occupants become unavailable.[47]

Once the Supreme Court developed the automobile exception, it faced two different scenarios that called for further interpretation of the "automobile exception." One scenario involved a search conducted following the

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Judicial Code. *Id.*.

40. *See* Wyoming v. Houghton, 526 U.S. 295, 300 (1999).

41. Carroll v. U.S., 267 U.S. 132, 151 (1925).

42. *Id.* at 152. *See* Act of 1789, 1 Stat. §24. *See also* Cotzhausen v. Nazro, 107 U.S. 215, 219 (1882); American Fur Co. v. U.S., 27 U.S. 358 (2 Pet. 1829).

43. *Carroll*, 267 U.S. at 146. *See* Boyd v. U.S., 115 U.S. 616 (1885); Weeks v. U.S., 212 U.S. 383 (1908).

44. *Carroll*, 267 U.S. at 149.

45. *Id.* at 149-51.

46. *See* South Dakota v. Opperman, 428 U.S. 364 (1976); U.S. v. Johns, 469 U.S. 478 (1985); Cady v. Dombrowski, 413 U.S. 433 (1972). The readily mobile aspect is obvious in that an automobile may be easily moved and its contents transported away from the purview of law enforcement. The reduced expectation of privacy aspect has arisen from the case law. First stated in *Cardwell v. Lewis*, 417 U.S. 583, 589 (1974), "One has a lesser expectation of privacy in a motor vehicle because its function is transportation and it seldom serves as one's residence or as the repository of personal effects . . . It travels public thoroughfares where both its occupants and it contents are in plain view."

47. California v. Carney, 471 U.S. 386, 392 (1985).

custodial arrest of an individual in an automobile.[48] In a long line of cases, the Court has stated, that if an officer has probable cause to arrest an individual in a stopped automobile, such probable cause suffices to allow an immediate warrantless search of the vehicle's passenger compartment and any containers therein that are under arrestee's control.[49]

The other scenario the Court was forced to examine was the warrantless search of closed containers in an automobile when no custodial arrest occurred or the arrest did not allow the search of a passenger's container. Such warrantless searches were first addressed in *U.S. v. Chadwick*.[50] In this case, Chadwick was arrested following a warrantless search of his car that revealed a locked footlocker federal agents believed contained marijuana.[51] The Supreme Court, in a seven-to-two decision, held that the search in question was unreasonable based on the Fourth Amendment.[52] In this first opinion regarding the searching of closed containers in automobiles, Justice Burger set the bar very high for law enforcement officers.

The Court acknowledged that Chadwick enjoyed a high expectation of privacy in an item such as the footlocker in question and that the footlocker was significantly different from the automobile into which it was placed.[53] Likewise, the Court recognized that following Chadwick's arrest, the footlocker was not rapidly mobile.[54] Chief Justice Burger stated, "[W]hen no exigency is shown to support the need for an immediate search, the Warrant Clause places the line at the point where the property to be searched comes under the exclusive dominion of police authority."[55] Because Chadwick's footlocker sat in the federal building for one and one-half hours following

48. This type of search is otherwise known as a search incident to arrest. Chimel v. California, 395 U.S. 752 (1969).

49. *See* New York v. Belton, 453 U.S. 454 (1981). When a custodial arrest is made, this exception to the warrant requirement is instituted in order to protect the officer conducting the arrest and to preserve evidence. However, once the arrest has occurred and all property is within the exclusive control of the officer a warrantless search is not allowed. *See* Chimel v. California, 395 U.S. 752 (1969); Terry v. Ohio, 392 U.S. 1 (1968); Chambers v. Maroney, 399 U.S. 42 (1970); Cardwell v. Lewis, 417 U.S. 583 (1974). In *Houghton* the stopping officer could likely have carried out a search incident to arrest. Based on the officer's knowledge that the syringe in the driver's pocket was used to take drugs, an arrest could have been made under the theory that probable cause existed to believe the syringe contained residue or trace amounts of illegal drugs. This would have resulted in a search of the passenger compartment of the vehicle in order to protect officer safety and to preserve evidence. This type of search may have been more amenable to the Wyoming Supreme Court as opposed to the search conducted in *Houghton* because the court has already validated the search incident to arrest in *Lopez v. State*, 643 P.2d 682 (Wyo. 1982). However, the Wyoming Supreme Court's decision in *Vasquez v. State*, 990 P.2d 476 (Wyo. 1999) may even call into question a search incident to arrest. *See infra* notes 164-171.

50. 433 U.S. 1 (1977).

51. *Id.* at 3.

52. *Id.* at 15.

53. *Id.* at 11.

54. *Id.* at 12.

55. *Id.* at 15. The court's reliance on "exigent" circumstances simply refers to the ability of an automobile and its contents to be quickly and easily removed from the control of law enforcement. *See* Carroll v. U.S., 267 U.S. 132, 151 (1925); Chambers v. Maroney, 399 U.S. 42, 62-4 (1970).

the arrest, "respondents were therefore entitled to the protection of the Warrant Clause with the evaluation of a neutral magistrate."[56]

In a similar case, *Arkansas v. Sanders*, the Court appeared to further bolster its commitment to protecting the rights granted by the Fourth Amendment.[57] Much like *Chadwick*, police arrested Sanders following a warrantless search of a footlocker found in the trunk of a taxi, which yielded marijuana.[58] Sanders argued that the warrantless search was unreasonable and unconstitutional.[59] The State of Arkansas argued the search was justified under the "automobile exception."[60]

The United States Supreme Court, in a seven-to-two decision written by Justice Powell, agreed with Sanders and overturned his conviction.[61] In its decision, the Court recognized that it had never ruled on "the constitutionality of a warrantless search of luggage taken from an automobile lawfully stopped."[62] Justice Powell elaborated on the inherent qualities of personal luggage as a "repository for personal possessions" and the expectation of privacy that accompanies that distinction.[63] The Court's decision concentrated on the fact that, in this case, as in *Chadwick*, the luggage was lawfully seized by police conducting a lawful traffic stop and the police had no fear of it being moved from their purview.[64] Relying on these conclusions, Justice Powell pronounced:

> In sum, we hold that the warrant requirement of the Fourth Amendment applies to personal luggage taken from an automobile to the same degree it applies to such luggage in other locations. Thus, insofar as the police are entitled to search such luggage without a warrant, their actions must be justified under some exception to the warrant requirement other than that applicable to automobiles stopped on the highway.[65]

Following the *Sanders* decision, searches based on the automobile exception effectively were barred from intruding on closed containers, at least those containers of a "personal" nature such as luggage and purses. However, the Supreme Court did not allow this ruling to remain unmodified for any extended time.

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56. *Chadwick*, 433 U.S. at 15.
57. 442 U.S. 753 (1979).
58. *Id.* at 754.
59. *Id.* at 756.
60. *Id.* at 762.
61. *Id.* at 754.
62. *Id.* at 762.
63. *Id.* at 753.
64. *Id.*
65. *Id.* at 766.

The decision issued in *U.S. v. Ross*,[66] reversed the Courts previous trend by expanding the "automobile exception" significantly, yet the Court did not completely overrule *Sanders*. In *Ross*, police officers received reliable information that Ross was dealing narcotics from his automobile.[67] Police detectives spotted Ross driving in his neighborhood, stopped his car, and conducted a search of Ross and the passenger compartment of his vehicle.[68] The search of the passenger compartment yielded a pistol in the glove compartment.[69] Ross was arrested and an officer opened the trunk of Ross' car where he discovered a closed brown paper bag containing a white powder and a closed zippered pouch containing a large amount of cash.[70] Ross appealed his conviction stating the search of his trunk and the containers therein was unreasonable.[71] The Court of Appeals for the District of Columbia, relying on *Sanders*, overturned his conviction stating that, although a warrant was not necessary to search the car and the trunk, a warrant was necessary to search the closed containers therein.[72] The government appealed the ruling to the Supreme Court, and the Court deviated from its previous approach of limiting police searches of containers in automobiles.

In his opinion, Justice Stevens began by comparing a lawful warrant search to a warrantless automobile search.[73] He stated that a warrant search extends to all parts of the area in which the object searched for may be found and is not limited because of closed doors or closed containers.[74] Likewise, in the interest of a prompt and efficient completion of the search, a warrant to search an automobile allows for every part of the vehicle to be searched that might contain the object in question, without distinction to glove compartments and luggage.[75] After making his point regarding the similarities of the two searches, Justice Stevens continued to elucidate the point that a justifiable warrantless search deserved the same credibility and strength as a warranted search approved by a magistrate:[76]

> The exception recognized in Carroll is unquestionably one that is "specifically established and well delineated." We hold that the scope of the warrantless search authorized by the exception is no broader and no narrower than a magistrate could legitimately authorize by warrant. If probable cause justifies the search of a

66. 456 U.S. 798 (1982).
67. *Id.*
68. *Id.* The search of the passenger compartment was completed after a bullet was observed on the front seat of Mr. Ross' Malibu. *Id.*
69. *Id.*
70. *Id.* The powder was later determined by the police lab to be heroin. *Id.*
71. *Id.*
72. *Id.* at 802.
73. Katz, *supra* note 27, at 183-84.
74. Ross v. U.S., 456 U.S. 798, 820-21 (1982).
75. *Id.*
76. *Id.* at 823

> lawfully stopped vehicle, it justifies the search of every part of the vehicle and its contents that may conceal the object of the search.[77]

The Court's decision did not overrule its previous rulings in *Chadwick* and *Sanders*.[78] Instead, the *Ross* decision simply rejected the Court's reasoning in those cases.[79] The Court distinguished its decision in *Ross* from the decision in *Sanders* because, in *Sanders,* no probable cause existed to search the entire vehicle, probable cause existed only to search a particular container within that vehicle.[80] In situations such as this, the court still believed that it was necessary for an officer to acquire a warrant for the search of an individual container.[81] However, if the officer only had generalized probable cause to believe contraband or evidence was contained in a vehicle, no warrant was necessary and all containers could be searched.[82]

The decision in *Ross* left unanswered the question: what rule should be followed for situations when police officers believe contraband is carried in containers but do not know the exact type or location of the container? Should police adhere to *Sanders,* which severely limits the use of the automobile exception and requires a warrant for these items? Or should the police look to *Ross,* which allows a search of any container in which a contraband item might be secreted? The Supreme Court answered these questions in *California v. Acevedo,*[83] a narcotics case similar to *Ross, Sanders,* and *Chadwick.* The Court recognized the preceding confusion and clearly stated its position that the *Acevedo* decision would be the controlling principle of law, overruling *Sanders* and *Chadwick*:

> Until today, this Court has drawn a curious line between the search of an automobile that coincidentally turns up a container and the search of a container that coincidentally turns up in an automobile. The protections of the Fourth Amendment must not turn on such coincidences. We therefore interpret *Carroll* as providing one rule to govern all automobile searches. The police may search an automobile and the containers within where they have probable cause to believe contraband or evidence is contained.[84]

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77. *Id.* at 825.
78. *See* Robbins v. California, 453 U.S. 420 (1980). In *Robbins* the Supreme Court simply melded *Chadwick* and *Sanders* and stated, "[w]e reaffirm today that such a container [a package wrapped in opaque plastic] may not be opened without a warrant, even if it is found during the course of a lawful search of an automobile." *Id.* at 428.
79. Shepard, *supra* note 33, at 246.
80. *Id.*
81. *Id.*
82. *Id.*
83. 500 U.S. 565 (1991).
84. *Id.* at 580.

Following the Court's pronouncement in *Acevedo*, the law regarding the warrantless searches of vehicles was not revised or revisited by the Supreme Court for a number of years. Lower federal and state courts, however, did not shy away from applying the United States Supreme Court's differing search and seizure doctrine to cases brought before them.[85] These cases resulted in numerous conflicting interpretations of the United States Supreme Court's decisions in warrantless searches of automobiles.[86] In *Houghton v. Wyoming*, the Wyoming Supreme Court applied multiple aspects of search and seizure doctrine to the issue of warrantless searches of containers found in automobiles.[87]

The Wyoming Supreme Court decided *Houghton v. Wyoming* in favor of Houghton, but interestingly, little discussion of *Carroll*, *Ross*, or *Acevedo* is found in the Wyoming Supreme Court's opinion. Instead, the Wyoming Supreme Court discussed cases such as *Ybarra v. Illinois*, [88] *U.S. v. Di Re*,[89] and *U.S. v. Gottschalk*;[90] cases that dealt with premises searches or personal searches. Chief Justice Taylor, writing the majority opinion, used the *Ross* decision to illustrate that any warrantless search should be treated as if a warrant were issued. However, Justice Taylor also stated that the situation in *Houghton* should be likened to a search of a premises in which visitors to the premises are caught up in the search by police.[91] In such a situation, an entirely different body of law applies, governing when an individual can be searched if no probable cause exists regarding that person individually.

The Wyoming Supreme Court's majority opinion based its decision on two cases. The first was a premises search case, *Ybarra v. Illinois*, in which the United States Supreme Court stated that independent probable cause must exist to search the person of an individual encountered in a premises search.[92] The second case was *U.S. v. Di Re* in which the United States Supreme Court stated that, even if probable cause exists to search an automobile, an individual found in that automobile does not lose immunities from searches of his person.[93] Both cases advocated heightened scrutiny for searches of people associated with suspects, yet not suspected themselves. Using these decisions, the Wyoming Supreme Court treated the search in

85. *See* Wesley D. Dupont, *Automobile Searches and Judicial Decision-Making Under State Constitutions; State v. Miller*, 27 CONN. L. REV. 699 (1998).

86. *See* U.S. v. McSween, 53 F.3d 684 (5th Cir. 1995); State v. Claus 594 N.W. 2d 685 (Neb. 1999); McDaniel v. State, 990 S.W. 2d 515 (Ark. 1999).

87. Houghton v. Wyoming, 956 P.2d. 363 (Wyo. 1998).

88. 444 U.S. 85 (1979).

89. 332 U.S. 581 (1948).

90. 915 F.2d 1459 (1990).

91. *Houghton*, 956 P.2d at 367.

92. *Id.*

93. *Di Re*, 332 U.S. at 587. "A person's mere propinquity to others independently suspected of criminal activity does not, without more, give rise to probable cause to search that person." *Id.*

Houghton as a premises search and analogized Houghton's purse as an "extension of her person."[94]

Using this logic, the Wyoming court was forced to examine the case from an entirely different perspective than an automobile search, adopting a test known as the "notice test" to determine if the search of Houghton's purse was reasonable.[95] The "notice test" is developed from a Tenth Circuit Court of Appeals decision, *U.S. v. Gottschalk*,[96] in which the Tenth Circuit Court of Appeals stated that a search is reasonable if an officer reasonably believes the item searched belongs to the owner of the premises.[97] If the officer has reason to know, or has "notice," that the item is not the property of the owner, the officer must obtain a warrant before any search is conducted.[98] Because the Wyoming Highway Patrol officer knew that the pouch and the purse did not belong to the driver, the search failed the "notice test" adopted by the Wyoming Supreme Court.[99] With this failure, the Wyoming Supreme Court decided that the search was patently unreasonable.[100]

The dissenting opinion, authored by Justice Golden and joined by Justice Thomas, agreed with the analysis eventually adopted by the United States Supreme Court. The dissent argued that this case should be treated as an automobile search, and suggested the precedent set in *Ross* should be followed.[101] Justice Golden also proposed that Houghton relinquished her expectation of privacy, which had been central to the majority's opinion, by leaving her purse in the car when she exited the vehicle stating: "In my judgment the passenger's act of leaving her purse behind as she exited the automobile demonstrates an absence of a reasonable expectation of privacy in that purse."[102] The dissent also stressed that the majority's decision enhanced the ability of wrongdoers to escape punishment by allowing them to simply transfer contraband between occupants of a stopped car in order to prevent its discovery in a search.[103] Following the Wyoming Supreme Court decision in *Houghton v. Wyoming,* the United States Supreme Court granted the state of Wyoming's petition for *certiorari*.[104]

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94. *Houghton*, 956 P.2d at 369.
95. *Id.*
96. 915 F.2d 1459 (10th Cir. 1990).
97. *Houghton*, 956 P.2d. at 369.
98. *Id.*
99. *Id.* at 370.
100. *Id.* at 371.
101. *Id.* at 372 (Golden, J., dissenting).
102. *Id.*
103. *Id.* at 373.
104. *See* case cited *supra* note 18.

PRINCIPAL CASE

The majority opinion of the United States Supreme Court in *Wyoming v. Houghton*, written by Justice Scalia, began its analysis by examining the historical background of vehicle search and seizures.[105] The Court first examined whether or not the search would be unlawful under the common law at the time the Fourth Amendment was drafted.[106] The Court stated that this inquiry yielded no answer to the question and that the case would need to be examined using the reasonableness standards developed through case law.[107] Using the previous decisions in *Carroll* and *Ross,* the Court reiterated its conclusion that the Framers of the Constitution would consider warrantless searches of automobiles reasonable under the Fourth Amendment.[108] The Court then moved to the issue of whether the rule of law in *Ross* and *Acevedo* extended to a passenger's container.[109]

Houghton's brief argued that neither decision mentioned any extension of the automobile exception to containers belonging to passengers, and, therefore, the Court should not extend the decisions.[110] In response to these arguments, the Court opined that not only was there no historical evidence to limit the scope of the exception, but if the previous Courts' decisions had meant to restrict expansion of the scope of the automobile exception, they would have made the limits expressly clear.[111] According to Justice Scalia, "if the rule of law that *Ross* announced were limited to contents belonging to the driver, or contents other than those belonging to passengers, one would have expected that substantial limitation to be expressed."[112] Since the Court in *Ross* had not expressed any limitation, Justice Scalia's opinion stated that the automobile exception did apply in this case and that the warrantless search of Houghton's containers was constitutional.[113]

When there is probable cause to search for contraband in a car, it is reasonable for police officers–like customs officials in the Founding Era—to examine packages and containers without a showing of individualized probable cause for each one. A passenger's personal belongings, just like the driver's belongings or containers attached to the car like a glove compartment, are "in" the car and the officer has probable cause to search for contraband in the car.[114]

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105. Wyoming v. Houghton, 526 U.S. 295, 299-300 (1999).
106. *Id.* at 299.
107. *Id.* at 300.
108. *Id.* at 300-01.
109. *Id.* at 301.
110. *Id.* at 302.
111. *Id.*
112. *Id.* at 301.
113. *Id.* at 302.
114. *Id.*

The United States Supreme Court's majority opinion also addressed new principles developed by the Wyoming Supreme Court. The Wyoming Supreme Court relied on premises and personal search doctrine to conclude that Houghton's search was not justified. Rejecting the Wyoming Supreme Court's proposition that the extent of a search is defined by probable cause and ownership, the United States Supreme Court reiterated the principle set down in *Ross* that the "permissible scope of a warrantless search is defined by the object of the search and the places in which there is probable cause to believe that it may be found."[115] Justice Scalia also discredited the Wyoming Supreme Court's use of premises search cases and body search cases in its reasoning, noting that those cases involved the search of one's person, an act against which an individual receives heightened protection compared to a container search.[116]

Justice Scalia also discussed the ramifications to law enforcement if the Wyoming Supreme Court's decision was upheld. According to his opinion, law enforcement would be severely hampered if the ability of officers to search passengers' belongings in automobiles was reduced.[117] Stating that practical realities must be taken into account in determining the reasonableness of searches, the Court's decision placed the needs of law enforcement above the diminished personal-privacy interest of the individual.[118] A different decision, according to Justice Scalia, would lead to a "bog of litigation" and a dramatic reduction in the seizure of contraband and evidence.[119] For these reasons, the majority opinion overturned the Wyoming Supreme Court's decision.[120]

The dissenting opinion for the United States Supreme Court, written by Justice Stevens and joined by Justices Souter and Ginsburg, expressed the conviction that the privacy interest of the individual is all-important and that the new rule adopted by the United States Supreme Court was unreasonably intrusive.[121] The dissenting opinion instead supported a rule, like that of the Wyoming Supreme Court, which would require a police officer to have individualized probable cause before searching a passenger's container.[122] The dissenters believed that simply because Houghton was in the car, her relationship was not such that she should have been suspected of being a "partner in crime" with the driver.[123] In response to the majority's claims that litigation would run rampant if individualized probable cause was re-

115. *Id.*
116. *Id.* at 303.
117. *Id.* at 304-05.
118. *Id. See also* California v. Carney, 471 U.S. 386, 392 (1985).
119. *Houghton*, 526 U.S. at 304-05.
120. *Id.* at 307.
121. *Id.* at 311 (Stevens, J., dissenting).
122. *Id.*
123. *Id.* at 310-11.

quired, Justice Stevens stated, "[m]oreover, a rule requiring a warrant or individualized probable cause to search passenger belongings is every bit as simple as the Court's rule; it simply protects more privacy."[124]

ANALYSIS

The United States Supreme Court's decision to overrule the Wyoming Supreme Court in *Wyoming v. Houghton* was correct. In reaching its opinion, the Court recognized, the fundamental differences between searches of automobiles and searches of premises or persons. The United States Supreme Court also recognized the danger of establishing a "passenger exception" and the need for a bright-line standard for both law enforcement and the general public in determining what containers in automobiles may be searched without a warrant. However, numerous questions still are left unanswered by the Court's decision in *Houghton.* An issue not addressed by the Court is how heightened protections placed on "personal effects" would have changed the decision if Houghton had not left her purse in the car, but instead had taken it with her when she exited the vehicle. The Court also did not address the extent to which the driver-passenger relationship affects the probable cause to search containers in an automobile, and whether the character of that relationship could change the nature of probable cause. Finally, the question remains: how would the Wyoming Supreme Court treat the search of a passenger's container in an automobile using the protections of the Wyoming Constitution?

The United States Supreme Court's Recognition of the Fundamental Differences Between Automobile Searches and Premises or Person Searches

The United States Supreme Court's decision in *Wyoming v. Houghton* recognized fundamental differences between the searches of containers, as in *Houghton,*[125] and the searches of premises or person, as found in *Di Re*[126] and *Ybarra.*[127] Both legal scholars and the Court have consistently maintained that, once an automobile is added to a situation, completely different rules and considerations apply regarding the legality of the search.[128] Aside from considering the exigent circumstances already discussed in previous case law, the United States Supreme Court correctly determined that the *Di Re* and the *Ybarra* cases were decided not on a driver/passenger or a visitor/resident basis, but instead, on an intrusiveness basis.[129] Personal searches always have received greater protection from the Court because of their

124. *Id.* at 312.
125. 526 U.S. 295 (1999).
126. 332 U.S. 581 (1948).
127. 444 U.S. 85 (1979).
128. *See* Shepard *supra* note 33; 1 WAYNE LAFAVE, SEARCH AND SEIZURE: A TREATISE ON THE FOURTH AMENDMENT 443 (1996); Carroll v. U.S., 267 U.S. 132 (1925); Chambers v. Maroney, 399 U.S. 42 (1970); South Dakota v. Opperman, 428 U.S. 364 (1976); Agnello v. U.S., 269 U.S. 20 (1925).
129. *Houghton*, 526 U.S. at 303.

intrusive nature into the most "private" of containers, one's clothes and body. Because of the exceedingly intrusive nature of the searches in *Di Re* and *Ybarra*, the police officer's actions were determined to be unreasonable.[130]

The Wyoming Supreme Court's choice to take decisions dealing with personal searches and apply them to a search of a container found in an automobile is dubious at best, as shown by the *Di Re* decision. In his dissent from the United States Supreme Court's majority opinion in *Houghton*, Justice Stevens (agreeing with the Wyoming Supreme Court's majority) stated that, he did not believe the intrusive nature of the search in *Di Re* was a factor, and therefore, should not be considered in the *Houghton* case. "That the search of a safe or violin case would be less intrusive than a strip search does not, however, persuade me that the *Di Re* case would have been decided differently if Di Re had been a woman and the gas coupons had been found in her purse."[131] However, an examination of the *Di Re* decision demonstrates otherwise. Justice Steven's analogy falls short because the search of *Di Re* did not deal with a safe, a violin case, or even a purse left in an automobile. Instead the search dealt with Di Re's shirt pockets and the space between his pants and his underwear,[132] an area of the person significantly more private than any container left behind in an automobile. In fact, the decision in *Di Re* considered the search of the automobile a non-factor and even assumed that a search of the vehicle would have been reasonable.[133] In deciding the *Di Re* search was unreasonable the Court simply dealt with the search of Di Re's person.[134]

The "Passenger Exception" and the Need for A Bright-line Standard

The United States Supreme Court decision in *Houghton* correctly expressed the problems associated with the development of a so called "passenger exception." To allow a "passenger exception" to an automobile search would hamstring law enforcement officers. Contraband and evidence easily could be removed from the purview of law enforcement with its placement in a container belonging to a passenger, thereby preventing the evidence from being discovered.[135] This loophole would force police officers to make judgments regarding whether passenger and driver were confederates in a criminal act, or whether a driver had the opportunity to

130. The search in *Ybarra* included a frisking and an intrusion into his pants pocket. *Ybarra*, 444 U.S. at 87.

131. *Houghton*, 526 U.S. at 313, n.4.

132. *Di Re*, 332 U.S. at 583.

133. *Id.* at 586.

134. *Id.* at 587.

135. *See* Craig M. Bradley, *Article: Two Models of the Fourth Amendment*, 83 MICH. L. REV. 1468 (1985). "The reason that all of these exceptions [to the warrant requirement] have grown up is simple: the clear rule that warrants are required is unworkable and to enforce it would lead to exclusion of evidence in many cases where the police activity was essentially reasonable." *Id.* at 1475.

conceal contraband in the passenger's belongings, either with or without consent.[136] Similarly, officers would be placed in the difficult position of deciding who owned what property in an automobile. Unless individuals truthfully volunteered such information, officers would be forced to decide instantly, using only supposition as a guide. As Justice Breyer stated in his concurring opinion in *Houghton,* "[i]f the police must establish a container's ownership prior to the search of that container, the resulting uncertainty will destroy the workability of the bright-line rule set forth in *United States v. Ross*, 456 US 798 (1982)."[137]

These types of judgments would not only place an enormous burden on police officers and open the floodgates of civil litigation, but also would prevent citizens from understanding their rights and privacy expectations. The United States Supreme Court's decision in *Houghton* sets a necessary bright-line standard regarding the ability of a law enforcement officer to search passengers' containers in automobiles.[138]

The United States Supreme Court has repeatedly stressed the importance of bright-line standards when dealing with the adjudication of citizen's rights.[139] The rule set out in *Houghton* allows citizens to have a clear understanding of their own expectations of privacy and their rights to be secure in their possessions while traveling in an automobile. If the United States Supreme Court adopted a different rule, like that suggested by the Wyoming Supreme Court, passengers would have no understanding of their rights because the suggested rule relied on too many subjective factors.[140]

The *Houghton* decision provides clear guidelines for law enforcement officers and citizens. This bright-line standard eliminates much of the guesswork from a policeman's daily routine.[141] The *Houghton* decision allows police officers to rely on a standard by which to judge their actions as opposed to using their own discretion to decide issues as volatile and open-ended as those presented in any search and seizure case.[142] The standard

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136. Wyoming v. Houghton, 526 U.S. 295, 305 (1999).

137. *Id.* at 307 (Breyer, J., concurring) (emphasis added).

138. Honorable Daniel T. Gillespie, *Bright-line Rules: Development of the Law of Search and Seizure During Traffic Stops*, 31 LOY. U. CHI. L.J. 1, 7 (1999); Mark Tushnet, *Leading Cases I: Constitutional Law - Continued*, 113 HARV. L. REV. 255, 264 (1999).

139. *See* New York v. Belton, 453 U.S. 454, 459-60 (1980). "When a person cannot know how a court will apply a settled principle to a recurring factual situation, that person cannot know the scope of his constitutional protection, nor can a policeman know the scope of his authority." *Id.*

140. Citizens would be forced to speculate how an officer would determine ownership of containers: would the officer take occupants at their word, search for identification within purses and bags, or simply assume all belonged to the driver barring conclusive evidence?

141. *See* Gillespie, *supra* note 141, at 24-25. "Robert T. Scully, Executive Director of the National Association of Police Organizations . . . praised the Court 'for giving officers the tools they need to do their jobs. Officers must be free of unreasonable confusing and unworkable restrictions on what may be searched.'" *Id.*

142. *See* Dunaway v. New York, 443 U.S. 200, 213-214 (1978). "A single, familiar standard is essential to guide police officers, who have only limited time and expertise to reflect on and balance the

suggested by the Wyoming Supreme Court is impractical and unrealistic. Therefore the United States Supreme Court properly denied the standard's implementation.[143]

Protections Afforded To Personal Effects

Amongst the issues left unanswered by the United States Supreme Court's opinion is: what would have occurred had Houghton not left her purse in the car, but instead, kept it with her when she exited the automobile? Under the protections granted by the Fourth Amendment to the Constitution and the United States Supreme Court's decisions in *U.S. v. Di Re* and *Terry v. Ohio*, Houghton's purse no longer would have fallen under the "automobile exception," and a search likely would not have been permitted.[144] In *Di Re*, Justice Jackson, writing the majority opinion, stated that he was "not convinced that a person, by his mere presence in a suspected car loses his immunities from search of his person to which he would otherwise be entitled."[145] As Justice Breyer discussed in his concurring opinion in *Houghton*, the United States Supreme Court and other courts have extended the heightened scrutiny directed towards searches of a person to highly personal effects such as wallets and purses.[146] Justice Breyer also correctly distinguishes the facts of *Houghton* from the hypothetical, that *Houghton's* purse was deliberately left behind in the car and not carried by Houghton. "But I can say that it would matter if a woman's purse, like a man's billfold, were attached to her person. It might then amount to a kind of 'outer clothing' which under the Court's cases would properly receive increased protection."[147] For this reason, the search of Houghton's purse likely would be unreasonable because no individualized probable cause existed to conduct a search of her person.[148]

The unreasonable nature of this type of search protects wrongdoers by allowing them to prevent discovery of contraband or evidence by simply placing any contraband on their person or in their purse. Realizing that a loophole is present to prevent discovery of evidence or contraband, the Model Code of Pre-Arraignment Procedure gives some guidance to the

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social and individual interests involved in the specific circumstances they confront." *Id. See also* Gillespie, *supra* note 141, at 3.

143. Wayne LaFave, *"Case by Case Adjudication" versus "Standardized Procedures": The Robinson Dilemma*, 1974 SUP. CT. REV. 127, 141(1974). "A highly sophisticated set of rules, qualified by all sorts of ifs, ands and buts and requiring the drawing of subtle nuances and hairline distinctions, may be the sort of heady stuff upon which the facile minds of lawyers and judges eagerly feed, but they may be literally impossible of application in the field." *Id.*

144. United States v. Di Re, 332 U.S. 581, 585-86 (1948).

145. *Id.*

146. Wyoming v. Houghton, 526 U.S. 295, 308 (1999) (Breyer, J. concurring). *See* State v. Andrews, 549 NW.2d 210 (Wis. 1996); U.S. v. Giwa, 831 F.2d 538 (5th Cir. 1987).

147. *Houghton*, 526 U.S. at 308 (Breyer, J. concurring).

148. *See* Tushnet, *supra* note 138, at 259.

courts and police officers.[149] The Code states that a search of a person may be conducted if 1) the items searched for in the car have not been found and are of the size that they can be concealed on the person; and 2) if the searching officer has a reasonable suspicion the occupants of the vehicle have the item that is being searched for concealed on their person.[150] This approach to searches provides a step-by-step decision making process for the police officer to decide if a search of a person would be reasonable. Much like the decision in *Houghton*, the Model Code of Pre-Arraignment Procedure sets a bright-line standard that can be relied upon by law enforcement and citizens alike.

Driver-Passenger Relationship –Should It Matter?

The United States Supreme Court, in the *Houghton* decision, did not address the significance of the character of the driver-passenger relationship on the determination of probable cause to search containers in an automobile. An example of this situation occurs when the relationship between passenger and driver is business related (e.g. taxi driver-customer, limousine driver-customer, bus driver-customer). Would the *Houghton* decision allow law enforcement officers to search the belongings of a passenger in this situation if the only probable cause to believe criminal activity is occurring or there is contraband present is based on the driver?[151]

In a taxi, bus, or limousine less presumption exists that the driver and the passenger are partners in any criminal activity or that they are in collusion to commit some criminal act. There is less of a possibility that a passenger in a bus, taxi, or limousine would attempt to aid a driver in the hiding of contraband by placing the contraband in a container belonging to the passenger in order to prevent its discovery in a search. Instead, the presumption is that a passenger in a bus, taxi, or limousine would be unaware of, and not a party to, any criminal activity engaged in or contraband in possession of the driver. The collective courts of the states and the federal government have yet to rule on this issue; however, with the rate at which automobile search and seizure law is developing this is only a matter of time.

149. MODEL CODE OF PRE-ARRAIGNMENT PROCEDURE § 260.3(2) (1975).

150. *Id. See also* 3 WAYNE LAFAVE, SEARCH AND SEIZURE: A TREATISE ON THE FOURTH AMENDMENT, 76 which states: ". . .it seems absurd to say that the occupants can take the narcotics out of the glove compartment and stuff them in their pockets, and drive happily away after the vehicle has been fruitlessly searched." *Id.*

151. Based on the *Houghton* decision, this type of relationship would likely preclude a search because the factors justifying a *Houghton* search are not present.

Scrutiny Based on the Wyoming Constitution for a Search of a Passenger's Container

Although a moot point now for Houghton, the question still remains: what might be the result in the future if the Wyoming Supreme Court faces similar issues to those raised in *Houghton* but relies solely on the Wyoming State Constitution? The Federal Constitution is a benchmark that sets a minimum standard by which all states must abide in protecting the individual rights of their citizens.[152] However, the individual states have the ability to go beyond these minimum protections simply by drafting and interpreting their own state constitutions to provide more protection than the federal constitution.[153] This ability to augment federal rights would allow the State of Wyoming to provide more protection from searches and seizures than that provided by the United States, even to the point of eliminating the automobile exception.[154]

The Wyoming Supreme Court did not follow this course and use the Wyoming Constitution to augment federal rights in their decision in *Houghton*.[155] Because the Wyoming Supreme Court based its decision on the United States Constitution and the precedents set by the United States Supreme Court, its decision necessarily had to be overturned. The Wyoming Supreme Court's interpretation of the controlling precedent departed from normal conventions of law relating to warrantless searches of automobiles, as stated by the United States Supreme Court. The decision to rely on the Federal Constitution and federal case law prevented any greater protection from being granted than the minimum provided by the Fourth Amendment.

If a case similar to *Houghton* were to be argued in front of the Wyoming Supreme Court, but this time relying on the protections granted by the Wyoming State Constitution, the Court's treatment of the issues would be difficult to predict because of the Wyoming Supreme Court's decision in *Houghton* and both previous and subsequent case law. Based on the Wyoming Supreme Court's majority opinion the argument would be that very little would change from the *Houghton* decision. The court again would adopt the notice test and deem the search of Houghton's purse unreasonable

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152. U.S. CONST. art. VI, cl. 2. *See* State v. Chaisson, 486 A.2d 297, 301 (N.H. 1984); Large v. Superior Ct., 714 P.2d 399, 405 (Ariz. 1986); *See also,* Ken Gormley, *State Constitutions and Criminal Procedure: A Primer for the 21st Century,* 67 OR. L. REV. 689, 697 (1988). "[F]ederal law sets a minimum floor of rights below which state courts cannot slip." *Id. See also,* William J. Brennan, Jr., *State Constitutions and the Protection of Individual Rights,* 90 Harv. L. Rev. 489, 491 (1977).

153. *See* Dupont *supra* note 86; Brennan *supra* note 155.

154. Vasquez v. Wyoming, 990 P.2d 476 (Wyo. 1999). *See also,* Brennan, *supra* note 155, at 491.

155. This issue was not addressed in the Wyoming Supreme Court's original opinion because "[a]lthough Houghton's claims rely on both federal and state constitutional mandate, she does not distinguish the protection afforded by the Wyoming Constitution from that of its federal counterpart." Houghton v. Wyoming, 956 P.2d 363, 366 n.2 (Wyo. 1998).

once the police officer realized it belonged to an individual whom he had no probable cause to believe was involved in criminal activity. This decision would be within the court's power to interpret the state constitution as it sees fit and add to the protections of individual rights; however, a decision of this nature would not comport with previous Wyoming case law or interpretations of the Wyoming state constitution.

Although Art I, §4 of the Constitution of the State of Wyoming differs slightly from Fourth Amendment to the United States Constitution, the Wyoming Supreme Court has rarely independently interpreted this search and seizure provision.[156] The Wyoming Supreme Court's recent search and seizure decisions have consistently stated that Art. I, §4 of the Constitution of the State of Wyoming is "virtually identical to that found in the [Fourth Amendment to the] Federal Constitution."[157] The court also has established that not only does it "treat the scope of the state provisions the same as the scope of the federal provision,"[158] but the court also "adheres to them [the federal interpretations of the Fourth Amendment] absent some contrary direction from the legislature of the State of Wyoming."[159] Based on case law preceding *Houghton*, the Wyoming Supreme Court's application of premises search doctrine to the search of an automobile would be contrary to expectation.[160] The Wyoming Supreme Court has consistently used the "automobile exception" in its jurisprudence, agreeing with the United States Supreme Court in every ruling which reduced the expectation of privacy and allowed police officers to search automobiles without warrants.[161] If this case law is applied to a situation similar to *Houghton,* but instead the court relies on the protections provided by the Wyoming State Constitution, the logical conclusion appears obvious. The Wyoming Supreme Court should abandon its position in its original *Houghton v. Wyoming* decision and subscribe to the reasoning the United States Supreme Court adopted in its *Wyoming v. Houghton* decision. However, a Wyoming Supreme Court decision issued subsequent to the *Wyoming v. Houghton* decision, may cast doubt on this presumption.

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156. WYO. CONST. art. I, §4: "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 affidavit, particularly describing the place to be searched or the person or thing to be seized. *See also* State v. Peterson, 194 P. 342, 346 (Wyo. 1920). Although the requirement of an affidavit in Wyo. Const. art. I, §4, has been interpreted to make the state provision stronger than the federal provision, this has not influenced recent decisions. *Id.;* Vasquez v. State, 990 P.2d 476, 483 (Wyo. 1999).

157. Saldana v. State 846 P.2d 604 (Wyo. 1993).

158. Gronski v. State 910 P.2d 561, 565 (Wyo. 1996).

159. *Saldana*, 846 P.2d at 604.

160. *See* Callaway v. State, 954 P.2d 1365 (Wyo. 1998); Hunter v. State, 704 P.2d 713 (1985).

161. *See* Callaway v. State, 954 P.2d 1365 (Wyo. 1998); Saldana v. State 846 P.2d 604 (Wyo. 1993); Hunter v. State, 704 P.2d 713 (Wyo. 1985); Neilson v. State, 599 P.2d 1330 (Wyo.1979); and Kelly v. State, 268 P.2d 571 (Wyo. 1928).

In *Vasquez v. State*,[162] the Wyoming Supreme Court upheld a search undertaken incident to arrest, but in so doing laid the foundation for an important divergence from its previous interpretations of Art. I, §4.[163] The Wyoming Supreme Court began its discussion in *Vasquez* by explaining that the recent proclivity for broad interpretation of the Fourth Amendment and establishment of bright-line rules by the United States Supreme Court was a motive for renewed interest in independent interpretation of state constitutions.[164]

The Wyoming Supreme Court decided, based on prior case law and the arguments presented by Vasquez and prior case law, that the Wyoming Constitutional provision relating to search and seizure must be interpreted independently from the Federal Constitution.[165] In reviewing the case law and the historical background of the state provision, the court determined that the Wyoming decisions, in contrast to those of the United States Supreme Court, required a search to be "reasonable under all the circumstances."[166] The Wyoming court determined that interpretation of the Federal provision was distinctly tailored to "effectively apply to the vast, national citizenry with which the United States Supreme Court must be concerned . . . but *Belton's* national citizenry rationale does not apply in Wyoming."[167] Because this "national citizenry rationale" is not applicable to Wyoming, the Wyoming Supreme Court declared that it "eschews a bright-line rule and maintains a standard that requires a search be reasonable under all the circumstances as determined by the judiciary."[168] This decision to break with the United States Supreme Court on the use of bright-line rules is a critical clue that the Wyoming Supreme Court may no longer continue to interpret Wyo. Const. Art I, §4 in the same manner as the Fourth Amendment.

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162. 990 P.2d 476 (Wyo. 1999).

163. The validity of a search incident to arrest was established by *Chimel v. California*, 395 U.S. 752 (1969). The U.S. Supreme Court addressed its application to persons arrested in automobiles in *New York v. Belton*, 453 U.S. 454 (1981).

164. *Vasquez*, 990 P.2d. at 484. The Wyoming Supreme Court asserted that it would consider independent interpretation of the state constitution, but a litigant must "provide a precise, analytically sound approach when advancing an argument to independently interpret the state constitution [search and seizure provision]." *Id. See also* State v. Parker, 987 P.2d 73 (Wash. 1999) (adopting the Wyoming Supreme Court's reasoning in *Houghton* and rejecting the bright-line rule in *New York v. Belton*, 453 U.S. 454 (1981)). The *Parker* court stated: "We hold the arrest of one or more vehicle occupants does not without more, provide the authority of law under article I, section 7 of out state constitution to search other, non-arrested passengers, including personal belongings clearly associated with such non-arrested individuals. In determining whether an item within a vehicle is clearly and closely associated with a non-arrested passenger, we adopt the test recently annunciated by the Wyoming Supreme Court in *Houghton v. State*." *Id.* at 83.

165. *Vasquez*, 990 P.2d at 486.

166. *Id.* at 487. The recent bright-line rules established by the United States Supreme Court are the basis for this interpretation that reasonableness is no longer a factor in determining validity of a search. *Id. See also* Ohio v. Robinette, 519 U.S. 33 (1996), which casts doubt on this theory.

167. *Vasquez*, 990 P.2d at 489.

168. *Id.* at 476.

There is no clear answer to the question: what might be the result if in the future the Wyoming Supreme Court faces similar issues to those raised in *Houghton* but relies solely on the Wyoming State Constitution? If the decision in *Vasquez* is any indication, the Wyoming Supreme Court would likely deviate from past history and find the search invalid. A closing comment in the majority opinion in its previous *Houghton* decision is directly on point, "[w]e cannot agree that the automobile exception removes from judicial review all searches of all containers . . . [t]o so rule would provide a wholesale surrender of Fourth Amendment protection upon entering an automobile."[169]

CONCLUSION

Exigent circumstances associated with a highly mobile society have led to what is called the automobile exception to constitutional warrant requirements, an exception that allows warrantless searches of automobiles based on probable cause. Although at times unclear and filled with minute rules and procedures, this exception has been extended through case law to include containers found within the automobile. *Wyoming v. Houghton* forced the United States Supreme Court to face the issue of closed containers once more, this time dealing with containers belonging to a passenger. In its decision, the United States Supreme Court reversed an inconsistent and problematic decision of the Wyoming Supreme Court. The Court stated that a search may be conducted of containers within the vehicle with no regard to ownership so long as the contraband searched for could be concealed within the container. The United Supreme Court's decision established a bright-line rule and closed a gaping loophole that would have been used to circumvent the laws and facilitate criminal activity. Previous case law and practical law enforcement issues in this case mandate the conclusion reached by the United States Supreme Court.

Although the Wyoming Supreme Court's decision in *Houghton v. Wyoming* was overturned, the court has not been swayed in its attempts to provide Wyoming citizens with greater constitutional protections from unreasonable searches and seizures. In *Vasquez v. State*, the Wyoming Supreme Court laid the groundwork for stricter independent interpretation of Art. I, §4 of the Wyoming State Constitution. The court's decision to infuse the reasonableness standard into the scrutiny of all searches is in direct response to the United States Supreme Court's reliance on bright-line rules. These bright-line rules, which facilitate law enforcement and make clear citizens rights, have been dismissed by the Wyoming Supreme Court because there is no national citizenry to cater to and the court believes it is able to judge each case individually. Based on the Wyoming Supreme

169. Houghton v. Wyoming, 956 P.2d 363, 371 (Wyo. 1998).

Court's *Vasquez* and *Houghton* decisions, a further "eschewing" of the bright-line rules associated with the "automobile exception" in the State of Wyoming would not be an unexpected action.

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