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DISAVOWING THE WARRANT PRESUMPTION: HAVE THE
EXCEPTIONS FINALLY SWALLOWED THE RULE?

Florida v. White, 119 S. Ct. 1555 (1999)

*Lawrence A. Dany**

Petitioner, the State of Florida, seized Respondent's automobile without a warrant¹ under the Florida Contraband Forfeiture Act² several months³ after police observed the car being used to deliver illegal narcotics.⁴ A routine post-seizure inventory search of the car's interior produced two pieces of crack cocaine which were subsequently used to charge respondent with possession of a controlled substance.⁵ At trial, Respondent filed a motion to suppress the evidence discovered during the inventory search⁶ arguing that the warrantless seizure of his car violated the Fourth Amendment to the United States Constitution.⁷ Initially, the trial court

* For my mother, my first and greatest teacher.

1. See *Florida v. White*, 119 S. Ct. 1555, 1557 (1999). Local authorities seized Respondent's automobile from the parking lot of his place of employment. See *White v. State*, 710 So. 2d 949, 950 (Fla. 1998).

2. See Florida Contraband Forfeiture Act, FLA. STAT. §§ 932.701-.707 (1999). The Act provides, in relevant part, as follows:

Any contraband article, vessel, motor vehicle, aircraft, other personal property, or real property used in violation of any provision of the Florida Contraband Forfeiture Act, or in, upon, or by means of which any violation of the Florida Contraband Forfeiture Act has taken or is taking place, may be seized and shall be forfeited. . . .

FLA. STAT. § 932.703(1)(a).

3. "Personal property may be seized [under the Act] at the time of the violation or subsequent to the violation" so long as the person entitled to notice is notified at the time of the seizure. FLA. STAT. § 932.703(2)(a).

4. See *White*, 119 S. Ct. at 1557. Police observed Respondent using his car to deliver cocaine on three separate occasions. See *id.* Respondent was arrested prior to the seizure on unrelated charges. See *id.*

5. See *id.* at 1558.

6. See *id.*

7. See *id.*; see also U.S. CONST. amend. IV. The amendment provides as follows:

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

reserved ruling on the motion, and ultimately denied the motion when the jury returned a guilty verdict.⁸ Affirming the judgment of the trial court, the First District Court of Appeals held that the warrantless seizure of respondent's automobile did not violate the Fourth Amendment because the seizure was based upon probable cause as required by the Forfeiture Act.⁹ However, because neither the Florida Supreme Court nor the Supreme Court of the United States had directly addressed the issue, the First District certified to the Florida Supreme Court the question whether, absent exigent circumstances, the warrantless seizure of an automobile under the Forfeiture Act violated the Fourth Amendment.¹⁰ On review, a divided Florida Supreme Court answered the question in the affirmative, concluding that, absent exigent circumstances, the Fourth Amendment requires police to obtain a warrant prior to seizing property which has been used in violation of the Forfeiture Act.¹¹ The United States Supreme Court granted certiorari, and in reversing the decision of the Florida Supreme Court, HELD that the Fourth Amendment does not require police to obtain a warrant before seizing an automobile from a public place where there was probable cause to believe that it was forfeitable contraband.¹²

The Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures. . . ."¹³ Historically, it has been a rule of constitutional law that searches and seizures conducted without a warrant are per se unreasonable under the Fourth Amendment, subject to only a few specific and well-

Id.

Although the case raised issues of Florida constitutional law, see *White v. State*, 710 So. 2d 949, 950 (Fla. 1998), article I, section 12 of the Florida Constitution expressly holds that it "shall be construed in conformity with the 4th Amendment to the United States Constitution, as interpreted by the United States Supreme Court." FLA. CONST. art. I, § 12; see also *White*, 710 So. 2d at 950 n.3 (stating that the State of Florida is "bound to follow the interpretations of the United States Supreme Court with relation to the fourth amendment and provide no greater protection than those interpretations") (citation omitted).

8. See *White*, 119 S. Ct. at 1558.

9. See *White*, 680 So. 2d at 552; see also FLA. STAT. § 932.703(2)(c) (establishing probable cause as the standard for seizing subject contraband under the Act).

10. See *White*, 680 So. 2d at 555. In certifying the question, the district court noted the split in federal circuit court decisions concerning the issue. See *id.* See, e.g., *United States v. Decker*, 19 F.3d 287 (6th Cir. 1994) (per curiam); *United States v. Pace*, 898 F.2d 1218 (7th Cir. 1990); *United States v. Valdes*, 876 F.2d 1554 (11th Cir. 1989); *United States v. One 1978 Mercedes Benz*, 711 F.2d 1297 (5th Cir. 1983); *United States v. Kemp*, 690 F.2d 397 (4th Cir. 1982); *United States v. Bush*, 647 F.2d 357 (1981). But see *United States v. Dixon*, 1 F.3d 1080 (10th Cir. 1993); *United States v. Lasanata*, 978 F.3d 1300 (2d Cir. 1992); *United States v. Linn*, 880 F.2d 209 (9th Cir. 1989).

11. See *White*, 710 So. 2d at 954-55.

12. See *White*, 119 S. Ct. at 1560.

13. U.S. CONST. amend. IV.

delineated exceptions.¹⁴ Among the exceptions to the rule that a warrant must be secured before a search is undertaken is the so-called “automobile exception.”¹⁵ In general, the automobile exception states that vehicles have a diminished degree of protection under the Fourth Amendment because of their inherent mobility¹⁶ and pervasive governmental regulation.¹⁷

The Supreme Court first recognized an exception to the general warrant requirement for moving vehicles in *Carroll v. United States*.¹⁸ In *Carroll*, the Court considered the admissibility into evidence of contraband seized during the warrantless search of an automobile stopped on an open highway.¹⁹ The issue in *Carroll* was whether the warrantless search of the defendant’s automobile violated the Fourth Amendment, thus rendering the evidence seized during the search inadmissible at trial.²⁰

In affirming the district court’s conviction, the Court held that contraband concealed and transported in an automobile may be searched for without warrant, provided that there is probable cause to believe the car contains contraband articles which the police are entitled to seize.²¹ The *Carroll* court reasoned that the inherent mobility of automobiles creates an immediate danger in that vehicles whose contents are subject to seizure will be removed from the jurisdiction before a warrant can be obtained, thus making rigorous enforcement of a general warrant requirement impracticable.²²

The mobility of vehicles was, by the Court’s own admission, the basis of the holding in *Carroll*.²³ In reaching its conclusion, the *Carroll* court expressly considered the findings of the First, Second, and Fourth Congresses which, when they drafted the Fourth Amendment, distinguished between the need for a warrant to search a structure and a moveable vessel.²⁴ The Court relied upon this historical evidence in

14. See *United States v. Plamondon*, 407 U.S. 297, 318 (1972) (citing *Katz v. United States*, 389 U.S. 347, 357 (1967)). In general, the exceptions to the warrant requirement exist to protect law enforcement officers and preserve evidence from destruction. See *id.*

15. See, e.g., *California v. Carney*, 471 U.S. 386, 390 (1985) (surveying the long-recognized distinction between stationary structures and automobiles under the Fourth Amendment).

16. See, e.g., *Carroll v. United States*, 267 U.S. 132, 153 (1925) (establishing exception to warrant requirement for inherently mobile vehicles).

17. See, e.g., *South Dakota v. Opperman*, 428 U.S. 364, 367-68 (1976) (holding that governmental regulation of vehicles for public safety reduces expectations of privacy in automobiles, and serves as a basis to invoke the automobile exception).

18. 267 U.S. at 153.

19. See *id.* at 160.

20. See *id.* at 143.

21. See *id.* at 156.

22. See *id.* at 153.

23. See *id.* at 151.

24. See *id.* The *Carroll* court noted that “[w]e have made a somewhat extended reference to these [early] statutes to show that the guaranty of freedom . . . by the Fourth Amendment has been

establishing probable cause, in lieu of a warrant, as the minimum requirement for a reasonable search of an automobile subject to seizure.²⁵ Subsequent decisions of the Court have reaffirmed this historical approach, holding that where a car is readily mobile and probable cause exists to believe it contains contraband, the Fourth Amendment permits police to search the vehicle without a warrant.²⁶

Although mobility was the original justification for the automobile exception, the Court later refined the principle in *South Dakota v. Opperman*.²⁷ In *Opperman*, the respondent appealed his conviction for possession of marijuana, arguing that the drugs seized during the warrantless inventory search of his car,²⁸ conducted after the car had been impounded,²⁹ violated the Fourth Amendment.³⁰ Disagreeing with the judgment of the state supreme court,³¹ the *Opperman* court held that the search was constitutional, even though there was no probable cause to believe that the car contained contraband, and no risk that the vehicle would leave the jurisdiction before a warrant could be obtained.³²

In denying the respondent relief, the *Opperman* court ruled that less rigorous warrant requirements govern searches of automobiles because, in addition to their inherent mobility, automobiles provide individuals a lesser expectation of privacy than a home or office.³³ The Court reasoned that automobiles are subject to pervasive and continuing governmental regulation, namely inspection and licensing requirements,³⁴ and that this regulation therefore diminished expectations of privacy through frequent,

construed, practically since the beginning of the government, as recognizing a necessary difference between . . . [a] structure . . . [and an] automobile . . .” *Id.* at 153.

25. *See id.* at 155-56.

26. *See, e.g.,* *Wyoming v. Houghton*, 119 S. Ct. 1297, 1300-01 (1999) (applying original intent analysis to the automobile exception); *Carney*, 471 U.S. at 390-91 (surveying Court precedent upholding the automobile exception); *Opperman*, 428 U.S. at 367 (recognizing ready mobility as the original basis for the automobile exception); *Chambers v. Maroney*, 399 U.S. 42, 52 (1970) (holding that the automobile exception is rooted in the inherent mobility of vehicles).

27. 428 U.S. at 364.

28. *See id.* at 366. The incriminating evidence was found in the unlocked glove compartment of the car during an inventory search. *See id.*

29. *See id.* The respondent’s car was impounded for multiple parking violations. *See id.* All violations were non-criminal in nature. *See id.*

30. *See id.* Presumably, the Fourth Amendment was the basis for the respondent’s motion to suppress and subsequent appeal. *See id.*

31. *See id.* at 367. The state supreme court reversed petitioner’s conviction on the grounds that the routine inventory search of the automobile was invalid under the Fourth Amendment. *See id.*

32. *See id.* at 373.

33. *See id.* at 367.

34. *See id.* at 368. The Court noted that such pervasive regulations were promulgated in the interest of public safety, and for the efficient movement of vehicular traffic. *See id.*

though non-criminal, contact with law enforcement.³⁵ The *Opperman* court based its reasoning on the fact that police, on a daily basis, seize and examine vehicles operating in public areas for non-compliance with regulations.³⁶ In light of these findings, the Court concluded that where an automobile is located in public, and where there is probable cause,³⁷ police may search an automobile without a warrant.³⁸

The Court would later apply the same principles underlying *Opperman* to justify the warrantless seizure of a car in *G.M. Leasing Corp. v. State*.³⁹ At issue in *G.M. Leasing* was whether internal revenue agents violated the Fourth Amendment when they seized several automobiles without warrant in satisfaction of income tax liabilities.⁴⁰ In rejecting the petitioner's claim for wrongful levy,⁴¹ the Court deferred to the appellate court's determination that agents had probable cause to believe that the vehicles held by the petitioner were subject to seizure.⁴² Based on a prior finding of probable cause, the Court held that the seizures, which occurred in public streets, parking lots, and other open spaces, involved no invasion of the owner's privacy.⁴³ The *G.M. Leasing* court concluded that, because there was probable cause and no invasion of privacy, the warrantless seizures did not violate the Fourth Amendment.⁴⁴

Similarly, the Supreme Court in the instant case upheld the warrantless seizure of an automobile on the basis that the police had probable cause to believe that the vehicle was subject to seizure.⁴⁵ A majority of the instant court ruled that police may seize a vehicle without warrant for the same reasons—mobility, diminished privacy interests, location in a public

35. *See id.* at 368-69.

36. *Id.* at 369.

37. Although there was no probable cause to believe that petitioner's car contained contraband at the time of the seizure, the *Opperman* court held that there was probable cause to perform a routine search of petitioner's impounded automobile. *Id.* The court held that the authority of police to seize and remove vehicles from the streets for violations of public law is beyond challenge. *See id.*

38. *See id.*

39. 429 U.S. 338 (1977).

40. *Id.* at 351. The *G.M. Leasing* court found that the seizure was executed pursuant to an earlier tax assessment, at which time the owner lost both possessory and privacy interest in the automobiles prior to the seizures by way of official judgement. *See id.* at 352 n.18.

41. *See id.* at 346. Petitioner, G.M. Leasing Corporation, argued that the vehicles were wrongfully seized for the failure of the individual defendant, general manager of the corporation, to pay taxes. *See id.*

42. *See id.* at 351. Although the cars were registered in the name of the corporation run by the defendant, the seizing officers had cause to believe that the petitioner corporation was the alter ego of the defendant. *See id.*

43. *See id.*

44. *See id.* at 352.

45. *See White*, 119 S. Ct. at 1559.

space—that the Court has given in recognizing broad police powers to search a car without a warrant.⁴⁶ In reversing the judgement of the Florida Supreme Court, the instant court held that there is no distinction between seizing a car that contained contraband, and seizing a car that was itself contraband.⁴⁷

In deciding whether the seizure violated the Fourth Amendment, the instant court determined that the proper inquiry was whether the action was regarded as unlawful when the Amendment was framed.⁴⁸ In attempting to grasp the original intent of the Framers, the instant court found that, contemporaneous with the adoption of the Amendment, Congress had authorized federal officers to conduct warrantless searches of vessels whose contents were subject to seizure.⁴⁹ Consistent with this practice, the instant court concluded that the seizure of Respondent's car would not have been unlawful when the Amendment was adopted.⁵⁰ To augment its historical analysis, the instant court also relied upon prior Court precedent which stated that where federal officers have probable cause to believe that an automobile contains contraband, the warrantless search of the vehicle to seize the contraband does not offend the Constitution.⁵¹

In a strong dissent, Justice Stevens argued that the facts of the instant case failed to justify the seizure of Petitioner's vehicle under the automobile exception.⁵² Justice Stevens noted that the seminal cases establishing the automobile exception all involved searches of automobiles for contraband, or temporary seizures to facilitate such searches.⁵³ In contrast, the objective of the instant seizure was to arrest the "criminal" vehicle, not to facilitate a search for contraband.⁵⁴ Justice Stevens further asserted that the warrantless seizure could not be justified by the automobile exception because there was no risk that the car would leave the jurisdiction while the owner of the vehicle was in police custody.⁵⁵ Moreover, an exception based on a reduced expectation of privacy also failed to justify the instant seizure, since the governmental regulatory

46. *See id.* at 1559-60.

47. *See id.* at 1559.

48. *See id.* at 1558.

49. *See id.* at 1558-59. The instant court emphasized its jurisprudence of original intent the instant analysis, stating that "we have taken care to inquire whether the action was regarded as an unlawful search and seizure when then the Amendment was framed." *Id.* at 1558.

50. *See id.* at 1560.

51. *See id.* at 1558.

52. *See id.* at 1561 (Stevens, J., dissenting).

53. *See id.* at 1561.

54. *See id.* at 1561-62 (Stevens, J., dissenting); *see also* *California v. Carney*, 471 U.S. 386, 388 (1985) (search for narcotics); *Chambers v. Maroney*, 399 U.S. 42, 47-48 (1970) (search for weapon); *Carroll v. United States*, 267 U.S. 132, 156 (1925) (search for contraband liquor).

55. *See White*, 119 S. Ct. at 1561 (Stevens, J., dissenting).

schemes upon which cases like *Opperman* were based did not contemplate permanent deprivation of property.⁵⁶ Justice Stevens concluded that, without a legitimate application of the automobile exception, the presumption that warrantless seizures are per se unreasonable under the Fourth Amendment should prevail.⁵⁷

The trend from *Carroll* to the instant case suggests that the automobile exception has all but swallowed the general warrant requirement for vehicular searches and seizures.⁵⁸ In holding that a car can be lawfully seized at any time after police develop probable cause, the instant Court has expanded the automobile exception beyond the exigent circumstances of mobility as described in *Carroll*,⁵⁹ and even beyond the general concerns of privacy enunciated in *Opperman*,⁶⁰ and *G.M. Leasing*.⁶¹ The automobile exception no longer requires the warrant of an impartial magistrate to validate the seizure of a car; rather, such seizures have become subject to the discretion of law enforcement officers.⁶² In making this determination, the instant Court reaffirmed that there is, indeed, a greatly diminished expectation of privacy in moveable vehicles, and has brought Court precedent in line with the majority of state and federal courts that have considered the issue.⁶³

As a result of the instant holding, the constitutional standard for seizure of personal property has become significantly more lenient than the

56. See *id.* at 1562 (Stevens, J., dissenting).

57. See *id.* at 1563 (Stevens, J., dissenting).

58. Justice Stevens' dissent alluded to *Coolidge v. New Hampshire*, 403 U.S. 443, 479 (1971), when, in evaluating the applicability of the automobile exception, it stated that: "it is but a short step to the position that it is never necessary for the police to obtain a warrant before searching and seizing an automobile, provided that they have probable cause." *Id.*

59. Although the instant court held that police may seize an automobile without warrant several months after police developed probable cause, the court claimed it expressed no opinion about whether excessive delay prior to a seizure could invalidate the probable cause required for a reasonable seizure under the Fourth Amendment. See *White*, 119 S. Ct. at 1559 n.4. But see, e.g., *Chambers*, 399 U.S. at 52 (holding that where police have probable cause to perform an immediate search of a car for contraband, they may also perform a later search without warrant based upon the probable cause developed at the time of the seizure). Nevertheless, the holding of the instant case suggests, at a minimum, that the exigent circumstance of mobility is not necessary for a warrantless seizure to pass constitutional muster.

60. The issues of privacy raised in *Opperman* were related to the State's regulatory regime for road safety. 428 U.S. 364, 367-68 (1976). In the instant case, vehicular ordinances were not in question, but rather a state forfeiture statute that was not intended to promote safe operation of vehicles. See *White*, 119 S. Ct. at 1558 n.1.

61. See *supra* notes 39-44 and accompanying text. In the instant case, the police acted at their own discretion, and the respondent's privacy was not compromised until the time of the seizure. See *White*, 119 S. Ct. at 1557.

62. See *White*, 119 S. Ct. at 1560.

63. See *supra* note 10 and accompanying text.

standard for the seizure of real property.⁶⁴ Unlike the instant case involving personal property, the Supreme Court has held that before real property may be seized, the seizing authorities must secure a warrant and provide notice and opportunity to the property owner to be heard before the seizure is executed.⁶⁵ While the Court has consistently recognized Fourth Amendment protection against governmental intrusion into the home,⁶⁶ the instant court has concluded that the warrant presumption is all but irrelevant with respect to forfeitable personal property such as the automobile, leaving claimants with only a post-seizure hearing to protect their interests.⁶⁷ As Justice Stevens noted, this reliance on post-seizure hearings to protect claimants' interests is problematic given the pecuniary interests of law enforcement in the forfeiture of property.⁶⁸

With respect to civil forfeiture proceedings, the instant case limits the Fourth Amendment as a defense for claimants seeking to recover seized property.⁶⁹ This limitation on Fourth Amendment protection forces claimants to rely on other constitutional provisions to protect against the seizure of personal property for the purpose of civil forfeiture.⁷⁰ In light of the Court's prior holdings that the applicability of one constitutional amendment does not pre-empt the guarantees of another,⁷¹ claimants will likely couch their defenses within the protections afforded by other amendments.⁷²

64. Compare *United States v. James Daniel Good Real Property*, 510 U.S. 43, 55-56 (1993) (holding that compliance with the Fourth Amendment, alone, is insufficient to justify the seizure of real property) with *White*, 119 S. Ct. at 1559 (recognizing probable cause as the standard for constitutionality of warrantless seizures under the Fourth Amendment). See generally FLA. STAT. § 932.703 (2)(a)-(b) (1997) (establishing different standards for the seizure of real and personal properties).

65. See, e.g., *Good*, 510 U.S. at 55-56 (holding that compliance with the Fourth Amendment, alone, is insufficient to justify the seizure of real property).

66. See *id.*

67. See FLA. STAT. § 932.703(2)(a).

68. See *White*, 119 S. Ct. at 1562 (Stevens, J., dissenting); see FLA. STAT. § 932.7055(a)-(8); see also *Connally v. Georgia*, 429 U.S. 245, 250-51 (1977) (holding invalid a seizure where authority issuing its probable cause had a pecuniary interest in issuing a warrant).

69. See *supra* note 7 and accompanying text.

70. Although the Court has held that Fourth Amendment protection applies to forfeiture proceedings, see *One 1958 Plymouth Sedan v. Pennsylvania*, 380 U.S. 693, 696 (1965), the instant court failed to evaluate the impact of the instant holding on court precedent.

71. See, e.g., *Good*, 510 U.S. at 49 ("We have rejected the view that the applicability of one constitution pre-empts the guarantees of another."); *Soldal v. Cook County*, 506 U.S. 56, 70 (1992) ("Certain wrongs affect more than a single right and, accordingly, can implicate more than one of the Constitutions commands.").

72. See, e.g., *Good*, 510 U.S. at 62 (holding seizure invalid under the Fifth Amendment's Due Process Clause); *Austin v. United States*, 509 U.S. 602, 622 (1993) (holding seizure invalid under the Eighth Amendment's Excessive Fines Clause).

Within the criminal context,⁷³ the instant holding suggests that the Fourth Amendment can no longer serve as a basis for suppressing evidence produced after the warrantless seizure of a vehicle, so long as the seizure was based upon probable cause.⁷⁴ In order to suppress evidence in such a case, a defendant must now rely upon state constitutional equivalents protecting against warrantless searches and seizures for relief.⁷⁵ This protection, however, may be more perceived than real in states that interpret their constitutions in light of the federal Constitution, and defer to the Supreme Court in its interpretation.⁷⁶ For these states, the instant holding suggests that there is no constitutional basis, state or federal, to argue for the exclusion of evidence produced during the warrantless seizure of an automobile, where the seizure was based upon probable cause.⁷⁷

Consistent with the Court's historically broad interpretation of the automobile exception, the instant court once again ruled against the need for police to secure a warrant prior to seizing a vehicle. In holding that probable cause alone, without proof of the exigent circumstance, justifies the warrantless seizure of an automobile, the instant court has taken the automobile exception to its logical conclusion: that there is little—if any—Fourth Amendment protection for a vehicle located in a public area. While the instant holding has significant consequences for defendants in both the criminal and civil contexts, the ultimate victim of the instant court's decision may be the Constitution itself.

73. Although seizures executed pursuant to forfeiture statutes are civil in nature, any contraband discovered during an inventory search of the seized vehicle may lead to criminal prosecution. *See, e.g., White*, 119 S. Ct. at 1557-58.

74. *But cf. One 1958 Plymouth Sedan*, 380 U.S. at 696 (holding that the exclusionary rule under the Fourth Amendment applies to civil forfeiture).

75. *See, e.g., FLA. CONST. art. I, § 12* (adopting the language of U.S. CONST. amend. IV).

76. *See supra* note 7 and accompanying text.

77. *See id.*

