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February 2, 2009

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Report RL30316

*SEARCH AND SEIZURE IN THE VEHICULAR
CONTEXT: FOURTH AMENDMENT ISSUES*

T.J. Halstead, American Law Division

Updated September 15, 1999

Abstract. This report discusses the Fourth Amendment as it relates to vehicular searches and traffic detentions conducted by law enforcement officers. An overview of exceptions to the warrant and probable cause requirements prescribed under the Constitution is provided, outlining the range of permissible police activity in this area. A particular emphasis is placed on recent Supreme Court decisions, including the validity of pretextual stops and consent based searches, which illustrate the balancing approach used by the Court to weigh personal privacy interests against the legitimate safety and investigatory needs of law enforcement, and serves to clarify the extent of police power in the vehicular context.

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Search and Seizure in the Vehicular Context: Fourth Amendment Issues

September 15, 1999

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ABSTRACT

This report discusses the Fourth Amendment as it relates to vehicular searches and traffic detentions conducted by law enforcement officers. An overview of exceptions to the warrant and probable cause requirements prescribed under the Constitution is provided, outlining the range of permissible police activity in this area. A particular emphasis is placed on recent Supreme Court decisions, including the validity of pretextual stops and consent based searches, which illustrate the balancing approach used by the Court to weigh personal privacy interests against the legitimate safety and investigatory needs of law enforcement, and serve to clarify the extent of police power in the vehicular context.

Search and Seizure in the Vehicular Context: Fourth Amendment Issues

Summary

The Fourth Amendment to the Constitution of the United States provides that "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." The Supreme Court has interpreted this language as imposing a presumptive warrant requirement on all searches and seizures predicated upon governmental authority, and has ruled that any violations of this standard will result in the suppression of any material or information derived therefrom.

However, the Court has also recognized that certain circumstances render the obtainment of a warrant impractical or unnecessary, and, accordingly, has crafted exceptions to an otherwise inflexible constitutional standard. Among the various exceptions established by the Court are warrantless searches based on exigent circumstances, plain view seizures, searches incident to a valid arrest, and searches where law enforcement needs surpass the warrant requirement. Some of the most pervasive and controversial exceptions recognized by the Court have centered on law enforcement authority to conduct warrantless searches and investigatory detentions in the vehicular context. Recent Court decisions in this area have imbued law enforcement officers with greater authority to act without a warrant during traffic stops, based upon the previously established automobile exception and the need for adequate protective measures to ensure police safety. This apparent expansion of police power has led many commentators to assert that Fourth Amendment protections have been essentially eviscerated in the automobile and traffic stop setting. Upon examining the scope of law enforcement authority subsequent to these decisions, however, it appears that basic Fourth Amendment privacy strictures still pertain to traffic detentions, with the recent Court rulings simply applying previously established rationales to new factual scenarios.

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Search and Seizure in the Vehicular Context: Fourth Amendment Issues

Introduction

In its past few terms, the Supreme Court of the United States has exhibited a renewed interest in Fourth Amendment issues surrounding law enforcement practices in the traffic detention, search, and seizure contexts. In the majority of these cases, the Court has determined that the state action at issue is either presumptively valid, or that the public interest in the deterrence and detection of criminal activity outweighs any potential intrusion upon asserted personal liberty and privacy interests. This paper addresses the dynamics and scope of law enforcement authority in the traffic detention context in light of these recent decisions, with an analytical focus on the extent to which they impact fundamental Fourth Amendment principles.

The Fourth Amendment

The Fourth Amendment to the Constitution of the United States establishes that a search or seizure conducted by a governmental agent must be reasonable, and that probable cause support any judicially granted warrant.¹ Originally, the Supreme Court interpreted this provision as imposing a presumptive warrant requirement, declaring that "searches conducted outside the judicial process without prior approval by judge or magistrate are per se unreasonable under the Fourth Amendment - subject only to a few specifically established and well delineated exceptions."² The Court has eschewed this approach at times, determining that "a warrant is not required to establish the reasonableness of all government searches; and when a warrant is not required...probable cause is not invariably required either."³ In the criminal setting,

¹U.S. Const., Amend. IV. In full, the Fourth Amendment provides: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." The probable cause standard for a valid governmental search has been interpreted by the Supreme Court as "a fair probability that contraband or evidence of a crime will be found in a particular place."*Illinois v. Gates*, 462 U.S. 213, 238 (1983). In the arrest context, probable cause to obtain a warrant to arrest or to effectuate a warrantless arrest requires that the authorities have, at the moment of arrest, knowledge of facts and circumstances sufficient to warrant a reasonable belief that an offense has been, or is being, committed. *See Wong Sun v. United States*, 371 U.S. 471, 479 (1963).

²*Katz v. United States*, 389 U.S. 347, 357 (1967).

³*Vernonia School District 47J v. Acton*, 515 U.S. 646, 653 (1995). This standards has generally been applied to administrative searches, but has been used in the criminal context.

(continued...)

however, this warrant requirement traditionally has been viewed as a protective mechanism, placing the authority to determine probable cause in the hands of a neutral magistrate as opposed to law enforcement authorities, who are "engaged in the often competitive enterprise of ferreting out crime."⁴ In instances where the interests of the public outweigh those of private individuals, however, the Court has recognized "specifically established exceptions" to the warrant and probable cause requirements of the Fourth Amendment.⁵ Indeed, such exceptions have been recognized for searches incident to a valid arrest, plain view seizures, vehicle searches, investigatory detentions, and exigent circumstances, among others.⁶

The Automobile Exception

In *Carroll v. United States*, the Supreme Court determined that automobiles are inherently mobile, creating exigent circumstances which render the obtainment of a warrant impractical.⁷ Specifically, the Court found it significant that, unlike a building or a house, a vehicle, and any contraband therein, could be readily removed from a jurisdiction pending the issuance of a warrant.⁸ As such, the Court held that law enforcement authorities need not obtain a warrant to search an automobile when there is probable cause indicating illegal activity.⁹ The Supreme Court has further buttressed the automobile exception by declaring that there is a reduced expectation in the privacy of automobiles, given that they are rarely used as a repository for personal effects, their occupants and contents are generally in plain view, and are subject to extensive state regulation.¹⁰

Regarding the proper scope of searches conducted pursuant to the automobile exception, the Supreme Court has held that when police have probable cause to believe that a vehicle contains contraband, they may conduct a thorough warrantless search, including any containers which may conceal the object of the search.¹¹

³(...continued)

See Illinois v. Rodriguez, 497 U.S. 177 (1990).

⁴*Johnson v. United States*, 333 U.S. 10, 13-14 (1948).

⁵*Camara v. Municipal Court*, 387 U.S. 523, 539-540 (1967).

⁶For a thorough exposition of warrant and probable cause exceptions, see Twenty-Eighth Annual Review of Criminal Procedure: Warrantless Searches and Seizures, 87 Geo. L.J. 1124 (1999).

⁷*Carroll v. United States*, 267 U.S. 132, 153 (1925).

⁸*Id.* at 153-154.

⁹*Id.* at 149. *See also, Chambers v. Maroney*, 399 U.S. 42 (1970) (warrantless search deemed constitutional where probable cause existed to believe vehicle contained evidence of recently committed robbery).

¹⁰*United States v. Chadwick*, 433 U.S. 1, 12-13 (1977). Similarly, the Court has pointed to public operation and servicing as factors which further diminish the expectation of privacy in an automobile. *See California v. Carney*, 471 U.S. 386, 392 (1985).

¹¹*United States v. Ross*, 456 U.S. 798, 825 (1982). In *Ross*, the Court declared that a search under the automobile exception may extend as far as "a magistrate could legitimately (continued...)

The Supreme Court recently clarified the extent to which police officers may search belongings in a vehicle in *Wyoming v. Houghton*.¹² There, the Court held that police officers with probable cause to search a car may inspect a passenger's personal belongings inside the vehicle in instances where those items are capable of concealing the object of the search, irrespective of whether the passenger is under suspicion.¹³ In reaching this conclusion, the Court pointed to several factors. First, the Court noted that there was a strong body of law empowering government agents with probable cause to conduct warrantless searches of vessels for contraband, including the automobile exception as delineated in *Carroll*, and clarified in *Ross*.¹⁴ Also, the Court found that none of these cases indicated that the scope of such searches rested upon a "distinction among packages or containers based on ownership."¹⁵

Balancing the relative governmental interests against individual privacy in this scenario, the Court determined that passengers have a reduced expectation of privacy in property transported in automobiles, and that search of such property is minimally intrusive. Conversely, the Court found that the governmental interests at stake were substantial. Specifically, the Court held that law enforcement efforts would be impaired if authorities were unable to search a passenger's belongings "when there is reason to believe contraband or evidence of criminal wrongdoing is hidden in the car," given that the mobility of an automobile creates a risk that evidence will be lost while a warrant is obtained.¹⁶ Also, the Court found it significant that car passengers "will often be engaged in a common enterprise with the driver, and have the same interest in concealing the fruits or the evidence of their wrongdoing."¹⁷ In view of these factors, the Court ruled that such searches were permissible.

Investigatory Detentions

In *Terry v. Ohio*, the Supreme Court held that a police officer may stop and question an individual who is reasonably suspected of engaging in criminal activity, as well as perform a limited frisk to ascertain whether the individual in question is armed.¹⁸ Specifically, the Court addressed a factual scenario where an officer, lacking both a warrant and probable cause, detained three individuals after observing them loitering near a store in a suspicious manner. The officer stopped the individuals in order to ascertain their identities, and, fearing that they might be armed, patted down the outside of their clothing. This frisk resulted in the discovery of two revolvers.

¹¹(...continued)
authorize by warrant." *Id.*

¹²119 S.Ct. 1297 (1999).

¹³*Id.*

¹⁴*Id.* at 1300.

¹⁵*Id.* at 1301.

¹⁶*Id.* at 1302.

¹⁷*Id.* at 1302-1303. The Court further noted that criminals might conceal contraband in the belongings of a passenger surreptitiously, and that passenger confederates could simply claim all belongings in the car as their own.

¹⁸392 U.S. 1, 22-24 (1968).

Noting that the state action at issue was governed by the Fourth Amendment, the Court stated that the constitutional validity of "stop and frisk" hinged upon a reasonableness inquiry as opposed to a probable cause analysis.¹⁹ As such, the Court determined it necessary to balance "the need to search (or seize) against the invasion which the search or seizure entails."²⁰ Accordingly, the Court identified two factors which it deemed essential to a valid investigative detention.

First, law enforcement officers may initiate an investigative detention only when there is a "reasonable articulable suspicion" criminal activity. Thus, for a stop to be valid, a law enforcement officer "must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion."²¹ Second, the scope of law enforcement activity resulting from an investigative detention must be reasonably related to the circumstances supporting the initial stop. If these factors are present, according to the Court, a brief investigative detention may be justified in light of significant governmental interests, even where probable cause is lacking.

This analysis has been applied in the vehicular context as well. Specifically, while the Supreme Court has ruled that even a brief traffic detention constitutes a seizure under the Fourth Amendment, the Court has also determined that traffic stops are less onerous than formal custodial detentions.²² As such, traffic stops are equivalent to traditional *Terry* stops, requiring that law enforcement action be predicated upon a reasonable, articulable suspicion of criminal conduct and that ensuing police activity be reasonably related in scope to the initial basis of the stop.²³

Pretextual Stops

Whereas the stop and frisk rationale delineated in *Terry* can be of great utility to police in the traffic detention context, it must be remembered that an officer must have a "reasonable articulable suspicion" of illegal activity to justify an initial stop. To surmount this potential impediment, law enforcement authorities have engaged in the controversial practice of stopping individuals for minor offenses as a pretext to search for evidence of other criminal wrongdoing. Generally speaking, a "pretextual traffic stop" occurs when police effectuate a stop based on probable cause that a violation has occurred while, in actuality, the primary motivation for the detention is to

¹⁹*Id.* at 20. Specifically, the Court explained that a "stop and frisk" encounter involves "an entire rubric of police conduct--necessarily swift action predicated upon the on-the-spot observations of the officer on the beat--which historically has not been, and as a practical matter could not be, subjected to the warrant procedure. Instead, the conduct in this case must be tested by the Fourth Amendment's general proscription against unreasonable searches and seizures." *Id.* at 20.

²⁰*Id.* at 21.

²¹*Id.* at 21. Accordingly, inarticulable hunches or generalized suspicions cannot serve as the basis for an investigative detention. *Id.* at 22.

²²*Berkemer v. McCarty*, 468 U.S. 420, 439 (1984).

²³*See United States v. Sharpe*, 470 U.S. 675, 682 (1985); *Delaware v. Prouse*, 440 U.S. 648, 661(1979)

investigate the possibility that more egregious criminal activity is being committed.²⁴ In *United States v. Whren*, the Supreme Court considered the constitutionality of this practice.

In *Whren*, two plainclothes vice officers of the District of Columbia Metropolitan Police Department were patrolling an area of high drug activity in an unmarked car. The officers passed a dark Nissan Sentra Pathfinder with temporary license plates occupied by two young males, and observed that the driver of the vehicle was looking toward the lap of the passenger. The officers noticed that the vehicle had paused at a stop sign for an abnormal period of time. As the officers executed a U-turn towards the vehicle, the Nissan made a sudden right turn without signaling and accelerated from the intersection at an "unreasonable" speed. The officers subsequently stopped the vehicle and observed two large bags of crack cocaine in the defendant's hands. The defendants were arrested, and an ensuing search resulted in the discovery of other illegal drugs.

The defendants were indicted on four counts of federal drug law violations. The defendants moved to suppress the evidence, maintaining that the traffic stop was not predicated on probable cause or reasonable suspicion, and, as such, was violative of the Fourth Amendment. The district court denied the motion, stating that the stop conformed with normal traffic enforcement procedures. The defendants were ultimately convicted, and the disposition of their case was affirmed by the Court of Appeals for the District of Columbia. In regards to the suppression argument, the court of appeals held that "regardless of whether a police officer subjectively believes that the occupants of an automobile may be engaging in some other illegal behavior, a traffic stop is permissible as long as a reasonable officer in the same circumstances could have stopped the car for the suspected traffic violation."

In its subsequent consideration of the case, a unanimous Supreme Court adopted an objective test, declaring that "the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred."²⁵ In reaching this conclusion, the Court rejected the contention that prior precedent established that law enforcement should not be permitted "to use valid bases of action against citizens as pretexts for pursuing other investigatory agendas."²⁶ Specifically, the Court noted that the cases in question dealt with searches in the administrative and inventory contexts which were conducted without probable cause. Accordingly, the Court determined that such decisions gave no support to the "principle that ulterior motives can invalidate police conduct that is justifiable on the basis of probable cause to believe that a violation of law has occurred."²⁷ Further clarifying this point, the Court stated: "Not only have we never held, outside the context of inventory search or administrative inspection..., that an officer's motive

²⁴Thus, under this definition, a pretextual stop is an objectively reasonable and valid exercise of police power, as opposed to the notion that an officer may simply fabricate an underlying justification for a stop. See *United States v. Whren*, 517 U.S. 806, 812 (1996).

²⁵517 U.S. at 810.

²⁶*Id.* at 811.

²⁷*Id.* at 811.

invalidates objectively justifiable behavior under the Fourth Amendment; but we have repeatedly held and asserted the contrary."²⁸

In view of this case law, the Court held that there was no constitutional basis for hinging the validity of a traffic stop on the actual motivations of the officers involved. Indeed, the Court went on to state that adoption of a subjective test would require case-by-case assessment of particular police actions at particular times, compromising the invariable nature of Fourth Amendment search and seizure protections.²⁹

Addressing the argument that pretextual stops might be employed in an intentionally discriminatory fashion by authorities, the Supreme Court noted that it is well settled that "the Constitution prohibits selective enforcement of the law based on considerations such as race." The Court declared, however, that the proper constitutional basis for such biased police action is the Equal Protection Clause as opposed to the Fourth Amendment. The Court concluded its consideration of the issue by declaring that "subjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis."³⁰

Many commentators have decried the *Whren* decision, arguing that the Court has essentially bestowed unbridled authority on law enforcement officers to detain any individual upon the merest of suspicions.³¹ In particular, it has been argued that, given the pervasive and arcane nature of traffic laws, a police officer will invariably be able to effectuate an investigatory stop upon an "inarticulable hunch," as opposed to valid reasonable suspicion. As such, these commentators maintain, the Supreme Court has departed from the spirit, if not the letter, of the *Terry* standard. While *Whren* indeed imbues officers with yet another tool with which they may investigate individuals of whom they are suspicious, a strong case can be made that the Court's decision does not reflect a substantial change in Fourth Amendment precepts. Specifically, it is important to note that officers conducting a stop under the *Whren* standard must still possess probable cause to initially stop a vehicle, which necessarily requires that a valid traffic law has been violated. Furthermore, the *Whren* decision does not abrogate Fourth Amendment strictures which limit police power after an initial stop. Indeed, officers must still satisfy probable cause and reasonable suspicion standards before

²⁸*Id.* at 812. See *United States v. Villamonte-Marquez*, 462 U.S. 579, 584, n.3 (1983) (Customs Service officer's warrantless boarding of vessel not rendered invalid by underlying suspicion that contraband was on board); *United States v. Robinson*, 414 U.S. 218 (1973) (arrest for traffic violation not rendered invalid due to the fact that it was a pretext for a narcotics search); *Scott v. United States*, 436 U.S. 128, 138 (1978) (subjective intent, standing alone, does not render otherwise lawful conduct illegal or unconstitutional).

²⁹*Id.* at 815. Specifically, the Court stated "police enforcement practices, even if they could be practicably assessed by a judge, vary from place to place and from time to time. We cannot accept that the search and seizure protections of the Fourth Amendment are so variable."

³⁰*Id.* at 813.

³¹See David A. Harris, "Driving While Black" and All Other Traffic Offenses: The Supreme Court and Pretextual Traffic Stops, 87 J. Crim. L. & Criminology 544, 545-546 (1997); Chris K. Visser, Without a Warrant, Probable Cause, or Reasonable Suspicion: Is There Any Meaning to the Fourth Amendment While Driving a Car?, 35 Hous. L. Rev. 1683, 1708-1709 (1999).

impinging upon a detainee's rights beyond the scope of the original objective purpose for the stop.

Furthermore, the Court recognized the potential that pretextual traffic stops could be made in an intentionally discriminatory fashion, and ruled that the proper remedy for such an offense would be an equal protection claim. This holding is consistent with Supreme Court precedent which mandates that objectively reasonable enforcement measures should not be prohibited due to the possibility of unconstitutional application. Rather, the proper remedy in such a circumstance is for the aggrieved party to file suit. Accordingly, it seems that while the *Whren* decision sanctions objective reasonable police action based upon underlying motivations, the ruling comports with traditional constitutional principles fashioned by the Court.

Having established the main avenues by which law enforcement officers may conduct a valid vehicular seizure or investigatory detention, it is now necessary to ascertain the scope of and nature of permissible police activity subsequent to a traffic stop.

Post-Stop Conduct

As noted above, the reasonableness clause of the Fourth Amendment, as interpreted in *Terry*, requires that any search or seizure subsequent to a traffic stop "be reasonably related in scope to the circumstances which justified the interference in the first place."³² However, employing the officer safety rationale which supported the stop and frisk at issue in *Terry*, the Court has expanded the range of protective measures officers may take in the traffic stop context. Recognizing that "investigative detentions involving suspects in vehicles are especially fraught with danger," the Court has ruled that law enforcement officers may order individuals to exit a vehicle, search passenger compartments, and frisk individuals for weapons in certain circumstances.³³

Protective Searches. In *Pennsylvania v. Mimms*, the Supreme Court held that law enforcement officers may order a driver to exit an automobile during a traffic stop, and may conduct a frisk if there is a reasonable belief that the detained individual is armed.³⁴ In *Mimms*, two police officers observed the defendant driving with an expired license plate. Upon stopping the vehicle, one of the officers directed the defendant to exit the vehicle and produce his license and registration. As the defendant exited the vehicle, one of the officers noticed a large bulge under the defendant's clothing. Fearing that the bulge could be a weapon, the officer frisked the defendant and discovered a loaded .38 caliber pistol. A passenger was subsequently discovered to be in possession of a .32 caliber pistol. The defendant was arrested and later convicted of unlawful possession of a firearm.³⁵

³²*Sharpe*, 470 U.S. at 682 (quoting *Terry*, 392 U.S. at 20).

³³*See Michigan v. Long*, 463 U.S. 1032, 1047-1048 (1983).

³⁴434 U.S. 106, 110 (1977).

³⁵*Id.* at 107.

Analyzing the constitutionality of the order requiring the defendant to exit the vehicle, the Court noted that there is an "inordinate risk confronting an officer as he approaches a person seated in an automobile," and that a significant portion of police shootings involve suspects seated in automobiles.³⁶ Furthermore, the Court determined that asking a driver to exit a vehicle could also lessen the danger posed by nearby moving traffic. Balancing these factors with the intrusiveness of an exit request, the Court found that ordering an individual from a vehicle subsequent to a lawful stop constitutes a de minimis imposition on personal liberty. In particular, the Court explained that after being initially detained, the additional requirement that a driver exit a vehicle exposes "little more of his person than is already exposed," and does not constitute a "serious intrusion upon the sanctity of the person."³⁷ In light of this minimal intrusion, the Court declared that "a mere inconvenience cannot prevail when balanced against legitimate concerns" for officer safety.³⁸ Accordingly, the Court held that law enforcement officers may order a driver to exit his vehicle pursuant to a lawful traffic detention.³⁹

The Court also determined that the frisk at issue was constitutionally valid. In reaching this determination, the Court explained that, pursuant to *Terry*, the bulge observed under the defendant's jacket provided a sufficient basis to suspect the presence of a firearm. As such, the Court deemed the ensuing frisk to be a reasonable action to ensure officer safety.⁴⁰

Recently, in *Maryland v. Wilson* the Supreme Court extended upon its ruling in *Mimms*, declaring that law enforcement officers could order passengers, as well as drivers, to exit a vehicle detained in a valid traffic stop.⁴¹ In *Wilson* a police officer pulled over a vehicle in which three persons were traveling. Upon noticing that the front seat passenger was sweating and "appeared extremely nervous," the officer ordered him out of the car. When the passenger exited the vehicle, crack cocaine fell to the ground. The passenger was arrested and subsequently convicted of possession of cocaine with intent to distribute.

Addressing the issue of whether passengers could be subjected to such police action pursuant to a traffic detention, the Court pointed to the same officer safety factors considered dispositive in *Mimms*.⁴² While acknowledging that, in the case of passengers, the danger posed by incoming traffic would be lessened, the Court determined that the presence of multiple occupants increased the danger posed to an officer.⁴³ The Court noted that passengers possessed a slightly stronger personal liberty interest during a stop than does a driver, in that while probable cause may exist

³⁶*Id.* at 109-110.

³⁷*Id.* at 111.

³⁸*Id.* at 111.

³⁹*Id.* at 111.

⁴⁰*Id.* at 112.

⁴¹519 U.S. 408, 415 (1997).

⁴²*Id.* at 413.

⁴³*Id.* at 413.

to detain a driver, there is generally no justifiable cause to stop or detain passengers. Noting that, as a practical matter, passengers were already stopped as a result of the vehicle detention, the Court determined that an exit order constituted a minor intrusion, as it would simply place a passenger outside of a vehicle which was already detained.

Pursuant to this characterization, the Court determined that the safety concerns at issue prevailed, since passengers ordered out of a vehicle would be denied access to weapons concealed in the interior of the passenger compartment. This factor was deemed especially pertinent by the Court, which surmised that a potential violent encounter would not stem from the traffic stop itself, but, rather, from more sinister criminal activity which might be uncovered by such a detention.⁴⁴ Having determined that the danger posed to an officer during a traffic stop is greater when passengers are present, the Court held that an exit order constituted a minimal intrusion, allowing officers conducting such stops to order passengers from vehicles pending completion of the detention.⁴⁵

The *Wilson* decision has also been criticized as an unreasonable extension of police authority by potentially increasing the impact of the plain view exception and encouraging arbitrary police action. Indeed, it has even been argued that the *Wilson* decision will ultimately lead to the Court sanctioned detention of individuals upon a general traffic stop.⁴⁶ While the decision does indeed increase police authority in this context, it is not apparent that any substantial Fourth Amendment rights have been impinged. Indeed, the Court noted that the intrusion of an exit order appears minimal when compared to concerns of officer safety.⁴⁷ Also, it does not seem that the notion that *Wilson* will expand the plain view doctrine is of any substantial significance in search and seizure analysis, given that, by its nature, the plain view exception is outside the purview of the Fourth Amendment.⁴⁸ Rather, in the doctrinal sense, it seems that *Wilson*, like *Whren*, serves mainly to illustrate the Court's preference for objective Fourth Amendment standards. Furthermore, given the Court's matter-of-fact analysis, *Wilson* could be regarded merely as the application of preexisting constitutional standards to a new factual scenario.

The Supreme Court has also extended the *Terry* standard to permit protective searches of the interior of an automobile in certain instances. In *Michigan v. Long*, for instance, the Court held that limited protective searches are permissible in circumstances where an officer reasonably believes that there may be a safety risk from weapons potentially located within the vehicle and accessible by the detainee. In *Long*, two police officers observed a car which was traveling erratically and at excessive speed. As the officers observed the vehicle turn down a side road, it swerved off into a ditch. Upon stopping to investigate, the officers were met by Long, the only occupant, at the rear of the vehicle. The vehicle was projecting from the ditch onto the road, and the driver's side door of the vehicle was open. Long failed

⁴⁴*Id.* at 414.

⁴⁵*Id.* at 414-415.

⁴⁶See Visser, *supra* n. 28, at 1726.

⁴⁷*Id.* at 413-414.

⁴⁸See n. 48, *infra*, and accompanying text.

to respond initially when the officers requested his license, but ultimately complied. When the officers then asked repeatedly to see his registration, Long again failed to respond. After the officers made another production request, Long, whom the officers now suspected of being under the influence, turned away from the officers and began to walk toward the open door of the vehicle. The Officers followed Long and observed a large knife on the floorboard of the driver's side of the vehicle. The officers stopped Long from approaching the car and conducted a *Terry* frisk, which revealed no weapons.

One of the officers stood with Long as the other visually inspected the interior of the vehicle for other weapons. Upon noticing an item protruding from under the armrest of the front seat, the officer knelt in the vehicle and lifted the armrest. The item under the armrest was an open pouch, and, upon flashing a light into the pouch, the officer determined that it contained marijuana. Long was then arrested. A subsequent search of the vehicle's trunk revealed approximately 75 pounds of marijuana.

Considering the question of whether the safety considerations of a *Terry* search extended to a search of the passenger compartment of vehicle pursuant to a lawful investigatory stop, the Supreme Court held that police protection principles compelled the conclusion that such a search "is permissible if the police officer possesses a reasonable belief based on 'specific and articulable facts which, taken together with the rational inferences from those facts, reasonably warrant' the officers in believing that the suspect is dangerous and the suspect may gain immediate control of weapons."⁴⁹

In reaching this determination, the Court reiterated its holdings in *Mimms* and other cases which established that officers could conduct a constitutional stop and frisk if a reasonable suspicion of potential danger existed. Given this standard, the Court concluded that the same safety considerations adhered to interior areas of a vehicle which might harbor weapons.⁵⁰ The Court also made it clear that such a search was justified, even though the suspect was, ostensibly, under the control of the officers at the time of the protective search. Specifically, the Court explained that, during the course of any investigative detention, a suspect is under police control only "in the sense that he 'may be briefly detained against his will...'"⁵¹ As such, the Court explained that a detained individual may still produce a weapon from his clothing, or may break away from police control long enough to retrieve a weapon from the interior of an automobile. Furthermore, the Court noted that a detained individual could have access to weapons inside a car after the investigate stop is completed absent a protective sweep of the interior.⁵² In light of these factors, the Court again emphasized that safety considerations outweighed any potential Fourth Amendment considerations stemming from such a sweep.

⁴⁹*Id.* at 1049 (quoting *Terry*, 392 U.S. at 21).

⁵⁰*Id.* at 1051. Furthermore, the Court stated that any contraband discovered in the course of a protective search of an automobile's interior would be subject to seizure. *Id.* at 1050.

⁵¹*Id.* at 1051 (quoting *Terry*, 392 U.S. at 34).

⁵²*Id.* at 1051-1052.

Seizure of Items in Plain View. Another well established exception to the warrant and probable cause requirements of the Fourth Amendment dictates that an officer, acting pursuant to constitutional authority, may seize contraband or other evidence of criminal activity which is in plain view.⁵³ This exception applies not only to the seizure of items in plain view, but also provides that the "mere observation of an object without its seizure may contribute to the probable or reasonable suspicion necessary to seize the object."⁵⁴ Also, it has been determined that items exposed to plain view are not within the ambit of Fourth Amendment protection. As such, upon the inadvertent discovery of contraband pursuant to the plain view exception, no warrant requirement adheres to its ensuing seizure.⁵⁵

Given this dynamic, the impact of this exception in the traffic detention context is substantial. The discovery of contraband in such a fashion imbues law enforcement officers with the authority to effectuate a seizure, and may also provide probable cause for a warrantless search.⁵⁶ Furthermore, this exception has also been adapted to allow for "plain touch" and "plain smell" seizures when illegality is immediately apparent.⁵⁷

Consent Searches. Law enforcement officers may also conduct a warrantless search after obtaining voluntary consent, irrespective of probable cause or reasonable suspicion.⁵⁸ Consent so obtained may be either express or implied, and does not necessarily have to be knowing and intelligent.⁵⁹ Pursuant to this standard, the Supreme Court has ruled that an officer is not required to inform a lawfully detained driver that he is free to leave prior to requesting permission to search.⁶⁰

In *Ohio v. Robinette*, a police officer stopped a vehicle for exceeding the speed limit. During the course of the stop, the officer requested that the driver exit the vehicle, whereupon the driver was given a warning and his license and registration were returned. After this exchange, the officer asked the detainee if there was any illegal contraband in the vehicle. The officer then explicitly requested permission to search, and received consent. Upon conducting a search of the vehicle, the officer

⁵³*Coolidge v. New Hampshire*, 403 U.S. 443 (1971).

⁵⁴*Texas v. Brown*, 460 U.S. 730, 738 (1983).

⁵⁵*Id.* at 740; *See also, Katz v. United States*, 389 U.S. 347, 361 (1967) (establishing that items in plain view are not subject to the Fourth Amendment).

⁵⁶*See Maryland v. Wilson; Michigan v. Long, supra.*

⁵⁷*See United States v. Downs*, 151 F.3d 1301 (10th Cir. 1998).

⁵⁸*Schneekloth v. Bustamonte*, 412 U.S. 218, 219 (1973).

⁵⁹*Id.* at 241. As opposed to waiver of rights in a trial setting, consent to a search and seizure may be given unintentionally and without specific knowledge of the right to deny a search request. *Id.* at 235-236. *See Twenty-Eighth Annual Review of Criminal Procedure: Warrantless Searches and Seizures*, 87 Geo. L.J. 1124 (1999).

⁶⁰*Ohio v. Robinette*, 519 U.S. 33, 33-34 (1996).

discovered illegal narcotics. The driver was subsequently arrested and charged with possession of a controlled substance.⁶¹

The Supreme Court of Ohio had ruled that the search was violative of the Fourth Amendment. In particular, the Ohio court determined that the legitimate traffic stop concluded upon the issuance of the warning and return of the driver's license and registration, rendering any further detention illegal.⁶² The Ohio Supreme Court found that the subsequent search request could not be construed as a consensual encounter, since most individuals believe they are still in custody "as long as the officer continues to interrogate them."⁶³ Accordingly, Ohio established a bright line rule, stating that when the purpose of an initial stop is completed, the officer involved must inform the individual that he or she is "legally free to go."⁶⁴

The Supreme Court of the United States reversed, declaring that law enforcement officials do not have a constitutional duty under the Fourth Amendment to inform individuals as to whether a particular police encounter is consensual. Specifically, the Court explained that the central focus of any inquiry into such an encounter must center on reasonableness, "measured in objective terms by examining the totality of the circumstances."⁶⁵ Furthermore, the Court stressed that it "eschewed bright-line rules" of the sort proposed by Ohio, finding it more appropriate to focus on the "fact specific nature" of a reasonableness inquiry in the Fourth Amendment context.⁶⁶

Illustrating this approach, the Court discussed *Schneckloth v. Bustamonte*, where it held that the validity of an individual's consent to a vehicle search did not require that the defendant know of his right to refuse such a request. Specifically, the Court stated that "while knowledge of the right to refuse consent is one factor to be taken into account, the government need not establish such knowledge as the sine qua non of an effective consent."⁶⁷ The Court further explained that it "would be thoroughly impractical to impose on the normal consent search the detailed requirements of an effective warning."⁶⁸ Applying this rationale to the case at hand, the Court in *Robinette* declared that it would be "unrealistic to require police officers to always inform detainees that they are free to go before a consent to search may be deemed voluntary."⁶⁹ The Court concluded its discussion by stressing again that the Fourth

⁶¹*Id.* at 35-36.

⁶²*State v. Robinette*, 653 N.E.2d 695, 697 (Ohio 1995), *rev'd*, 519 U.S. 33 (1996)).

⁶³*State v. Robinette*, 653 N.E.2d at 698-699.

⁶⁴*State v. Robinette*, 653 N.E.2d at 699.

⁶⁵*Ohio v. Robinette*, 519 U.S. 33, 39 (1996) (citing *Florida v. Jimeno*, 500 U.S. 248, 250 (1991)).

⁶⁶*Robinette*, 519 U.S. at 39.

⁶⁷*Schneckloth v. Bustamonte*, 412 U.S. 218, 227 (1973).

⁶⁸*Id.* at 227.

⁶⁹*Robinette*, 519 U.S. at 40.

Amendment test for valid search consent is whether such consent was voluntary, as determined by a factual inquiry focusing on a totality of the circumstances.⁷⁰

Search Incident to Arrest. The Supreme Court has also established that, subsequent to a lawful custodial arrest, police may conduct a warrantless search of an arrestee, irrespective of probable cause and reasonable suspicion to indicate the presence of either weapons or evidence.⁷¹ Unlike the limited focus of a *Terry* stop and frisk, police may make a full search for weapons and evidence in a search conducted incident to a valid arrest.⁷² Furthermore, in *Chimel v. California*, the Supreme Court ruled that police could also search the area within the immediate control of an arrestee, explaining that the scope of such a search was necessary to ensure officer safety and maintain evidence integrity.⁷³ In *New York v. Belton*, the Court extended the scope of its ruling in *Chimel*, holding that a custodial arrest imbued police with the power to conduct a search of the passenger compartment of an automobile. Specifically, the Court declared that authorities may search the passenger compartment and any containers located therein, even after establishing exclusive custody over the vehicle and arrestee.⁷⁴

From the aforementioned cases, it is evident that the Supreme Court has placed significant weight on officer safety considerations in delineating the scope of police power to conduct searches and seizures in the traffic stop context. As noted these decisions have led many legal scholars to the conclusion that the Court has established a strong law enforcement preference in Fourth Amendment issues, impinging upon personal liberty interests guaranteed under the Constitution. While these may be valid concerns, it is important to note that the Court continues to operate within traditional Fourth Amendment parameters. This is illustrated in the search incident to arrest context in the recent case of *Knowles v. Iowa*.⁷⁵

In *Knowles v. Iowa*, the United States Supreme Court overturned a ruling from the Supreme Court of Iowa, which had validated a police officer's warrantless search of an automobile stopped for a traffic violation, even though the driver was not arrested for the offense, but, rather, had merely been issued a citation. The Iowa Supreme Court validated the search on the basis that "so long as the arresting officer had probable cause to make a custodial arrest, there need not in fact have been a

⁷⁰*Id.*

⁷¹*New York v. Belton*, 453 U.S. 454 (1981); *United States v. Robinson*, 414 U.S. 218 (1973).

⁷²*See Robinson*, 414 U.S. at 229.

⁷³395 U.S. 752, 763 (1969).

⁷⁴*Belton*, 453 U.S. at 460. According to the Court, the term container refers to any object capable of holding another object, including "closed or open glove compartments, consoles or other receptacles located anywhere within the passenger compartment, as well as luggage, boxes, bags, clothing and the like." *Id.* The Court clarified the scope of its holding, noting that authority to search did not extend to the trunk of an automobile. *Id.* However, a search of the hatch area of an automobile has been upheld due to the accessibility of such an area from the passenger area. *See United States v. Doward*, 41 F.3d 789, 794 (1st Cir. 1994).

⁷⁵119 S.Ct. 484 (1998).

custodial arrest."⁷⁶ The Supreme Court of the United States, noting that none of the justifications supporting searches incident to arrest adhere to a typical traffic stop, held that the police action was violative of the Fourth Amendment. Specifically, the Court explained that the officer safety rationale was not applicable, in that the threat posed by the issuance of a traffic citation is substantially less than in the custodial arrest context, which is of special concern given "the extended exposure which follows the taking of suspect into custody and transporting him to the police station."⁷⁷ Clarifying this point, the Court stated that while safety concerns are present in a routine traffic stop, they do not justify the significant intrusion effected by a full search. Rather, the Court found it significant that officers possess other means by which they may protect themselves, such as ordering individuals to exit vehicles, and to conduct *Terry* frisks and searches where justified.⁷⁸ Furthermore, the Court declared that a "search incident to citation" exception to the Fourth Amendment could not be justified by a need to preserve evidence, since once an individual is stopped and issued a citation, "all evidence necessary to prosecute that offense has been obtained."⁷⁹ The Court also declared that such a search could not be justified on the basis that an individual stopped for a traffic offense might destroy evidence of another crime, noting that the possibility of discovering evidence unrelated to a traffic offense was too remote.⁸⁰

Conclusion

In light of the aforementioned cases, it is evident that the Supreme Court has crafted significant exceptions to the warrant and probable cause requirements of the Fourth Amendment in the traffic detention context. As has been shown, recent decisions in particular have arguably expanded the scope of law enforcement power leading some commentators to declare that the Fourth Amendment has been all but abrogated in the vehicular context.

However, while cases such as *Whren* and *Wilson* show that the Court has indeed clarified and sanctioned greater protective and investigative police authority in the traffic context, it is important to remember that these rulings have been predicated upon well settled constitutional principles. Furthermore, the Court's decision in *Knowles* establishes that the same rationales supporting extensions of law enforcement authority also serve to circumscribe police power. As such, it seems that while police officers do indeed possess broad authority under these decisions, the Court's rulings have adhered to the basic principles which fostered the initial development of the exceptions discussed above. As such, rather than forging new doctrinal interpretations of Fourth Amendment boundaries and exceptions, it appears that the Court has applied settled constitutional principles to previously unencountered factual scenarios, expanding police power in certain respects, while restricting it in others.

⁷⁶*Id.* at 487.

⁷⁷*Id.* at 488 (quoting *United States v. Robinson*, 414 U.S. 218, 234-235 (1973)).

⁷⁸*Knowles*, 119 S.Ct. at 488.

⁷⁹*Id.* at 488.

⁸⁰*Id.* at 488.