Comments

CRIMINAL PROCEDURE

UNITED STATES V. MAZZONE: THE SEVENTH CIRCUIT ATTEMPTS TO CLARIFY *UNITED STATES V. ROSS*

Individual privacy interests in the contents of containers located within automobiles have been the subject of many United States Supreme Court decisions. The Court's attempt to clarify the proper bounds for police searches of such containers and vehicles has resulted in limited success.

In *United States v. Mazzone*[1] the United States Court of Appeals, Seventh Circuit, held that where a container is the primary focus of police attention, and the container is placed in a vehicle, if there is any reason for searching beyond the container the police may make a full warrantless search of the vehicle. As part of their search the police may open and search the container itself.[2] The court concluded that the officer's reason for searching beyond the container may be speculative[3] and reasoned that merely because a particular container is the most important reason for the search of a vehicle, the search itself is no less a vehicle search. This is so provided there is some other reason to search the rest of the vehicle.[4] This Comment will analyze the *Mazzone* decision and explore some of the possible ramifications of its loosening of the warrant requirement.

In *Mazzone*, agents conducting a surveillance observed one of the defendants place a container into a van.[5] It was not disputed that the agents had probable cause to believe the container held contraband.[6] Mazzone drove away in the van and the agents followed. After stopping the van, agents arrested Mazzone and conducted a warrantless search for the container. The container was located and found to contain the narcotics which were used against Mazzone at trial. Mazzone and others were con-

1. 782 F.2d 757 (7th Cir. 1986).
2. *Id.* at 761.
3. *Id.* The court found that the agents had reason to believe that Mazzone was engaged in illegal drug trafficking. This information, along with probable cause to believe the container placed in the van contained contraband, gave the agents reason to believe that a search of the van might turn up contraband other than that in the container. Such additional contraband may have consisted of additional drugs, drug paraphernalia, or proceeds of drug sales. The existence of more contraband in the van was no more than speculation supported by the belief that drugs were in the container. *Id.* The court found this speculation sufficient to allow the warrantless search of the van as well as the container. *Id.* at 761. *See also infra* notes 44-48 and accompanying text.
4. *Mazzone*, 782 F.2d at 761.
5. The facts are as discussed in *Mazzone*, 782 F.2d at 759.
6. *Id.* at 759.

victed of various drug crimes. Mazzone's appeal to the Seventh Circuit attacked the constitutionality of the warrantless searches of the van and container.[7]

SEARCHES OF CONTAINERS FOUND IN VEHICLES

In *Carroll v. United States*,[8] the Supreme Court established the "automobile exception"[9] to the warrant requirement of the fourth amendment.[10] For many years following the Court's decision in *Carroll*, the constitutionality of searching containers found within a vehicle being searched under the automobile exception was not questioned.[11] Courts routinely held that containers and packages found during legitimate warrantless searches of vehicles could also be searched without a warrant.[12]

The law began to evolve when the Supreme Court decided *United States v. Chadwick*,[13] holding that a warrant was required for the search of luggage found within a vehicle.[14] *Chadwick* was not argued as an "automobile ex-

7. *Id.* An additional issue, not discussed in this Comment, involved remarks made by the prosecutor in the rebuttal portion of his closing argument. The court found that, while the prosecutor's remarks were improper, the defendants received a fair trial and no reversible error was committed. *Id.* at 764.

8. 267 U.S. 132 (1925). In *Carroll*, federal prohibition agents had evidence that led them to believe that Carroll was a "bootlegger." The agents had additional information that Carroll transported the illegal alcohol between Grand Rapids and Detroit in an Oldsmobile Roadster. The agents saw Carroll driving the car on the road between the two cities and stopped him. The agents did not see any contraband in plain view. They opened the rumble seat and felt hard objects under the upholstery. The agents tore open the seat and found 68 bottles of liquor inside. The warrantless search of the seat was upheld. *Id.* at 162.

9. *Id.* at 153-54. The "automobile exception" allows the warrantless search of a vehicle when probable cause exists to believe the vehicle contains contraband or evidence of a crime. The exception is predicated on the inherent mobility of the vehicle and the exigencies created thereby. *See infra* notes 31-33 and accompanying text. *See also*, 2 W. LAFAVE, SEARCH AND SEIZURE, § 7.2 (1978).

10. The fourth amendment to the United States Constitution establishes:

> 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.

11. *See* United States v. Ross, 456 U.S. 798, 819 (1984).

12. *See, e.g.*, United States v. Soriano, 497 F.2d 147, 149-50 (5th Cir. 1974); United States v. Vento, 533 F.2d 838, 867 n.101 (3d Cir. 1976); United States v. Tramunti, 513 F.2d 1087, 1104 (2d Cir. 1975); United States v. Evans, 481 F.2d 990, 994 (9th Cir. 1973); United States v. Bowman, 487 F.2d 1229, 1231 (10th Cir. 1973).

13. 433 U.S. 1 (1977).

14. *Id.* at 15. In *Chadwick*, police had probable cause to believe that a footlocker being transported on a train contained narcotics. When the train arrived at its destination police were on hand with a dog trained to detect marijuana. Police identified the suspects travelling with the footlocker and kept them under surveillance while the dog confirmed the presence of contraband in the footlocker. Police watched as the suspects claimed the footlocker and were joined by Chadwick who helped them load the footlocker into the trunk of his car. Chadwick and the other suspects were arrested before the trunk was closed and before the car was driven away. Police seized Chadwick's car and the footlocker and transported them to the police station. The footlocker was later opened and searched without a warrant. The Court ruled that the diminished expectation of privacy in an automobile does not extend to the contents of luggage which are concealed from view. The Court affirmed the lower court's suppression of the evidence found in the footlocker. *Id.* at 16. The Court reasoned that the luggage could be seized to alleviate the fear that it would be removed and a warrant could later be obtained prior to searching it. *Id.* at 13. Notwithstanding *Chadwick*, many courts continued to rule that containers and packages found during a legitimate warrantless search

ception" case, however, the "automobile exception" was an issue in *Arkansas v. Sanders*.[15] In *Sanders* a taxi was stopped after being driven from the site of a police surveillance. Police had reason to believe that a suitcase seen being placed in the trunk of the cab held contraband. The driver opened the trunk at the request of police who then conducted a warrantless search of the suitcase. The Supreme Court held that the "automobile exception" did not apply to the warrantless search of personal luggage found in the vehicle.[16] The Court affirmed the reversal of Sanders' conviction, ruling the search of the suitcase unconstitutional as no exigent circumstances existed to justify foregoing the requirement of a warrant.[17]

In *Robbins v. California*,[18] the Court broadened the scope of the rule laid down in *Sanders*. In *Sanders* the rule's protection was limited to personal luggage.[19] *Robbins* went further and held the contents of any closed container carried in a vehicle are protected by the fourth amendment and may not be searched without a warrant.[20] The Court concluded the fourth amendment protects a person's effects regardless of whether the effects are classified as personal or impersonal.[21] Robbins placed contraband in closed opaque containers, as had Chadwick and Sanders, and the Court found that this action created an expectation of privacy deserving of fourth amendment protection.[22]

Less than one year later the Supreme Court overruled *Robbins* in *United States v. Ross*,[23] holding where probable cause exists to search a vehi-

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of an automobile could also be searched without a warrant. *See, e.g.*, United States v. Milhollan, 599 F.2d 518, 526-27 (3d Cir. 1979); United States v. Gualtney, 581 F.2d 1137, 1144-45 (5th Cir. 1978); United States v. Finnegan, 568 F.2d 637, 640-41 (9th Cir. 1977). However, the view that the "automobile exception" of *Carroll* applied whenever a container in a vehicle was believed to contain contraband was soon qualified by Arkansas v. Sanders, 422 U.S. 753 (1979), *see infra* notes 15-17 and accompanying text. Courts then began to properly suppress evidence following the *Chadwick* and *Sanders* precedents.

15. 442 U.S. 753 (1979). In *Sanders*, the police received information from a reliable informant that Sanders was to arrive at the Little Rock airport and that he would be in possession of a suitcase containing marijuana. Upon arriving, Sanders retrieved the suitcase from the baggage claim area and entered a taxi after placing the suitcase in the trunk. Police followed as the cab drove away and stopped it several blocks from the airport. *Id.* at 755.

16. *Id.* at 766.

17. *Id.*

18. 453 U.S. 420 (1981). Robbins was stopped by California Highway Patrol officers for driving erratically. When he opened his car door, the officers smelled marijuana smoke inside of the car. The officers' search of the passenger compartment of the car turned up marijuana and paraphernalia for its use. Robbins was placed in the officers' patrol car while they continued their search of the car. Robbins' car was a station wagon in which there was a recessed compartment for luggage. The officers opened the lid of this compartment and found two packages wrapped in green opaque plastic. The officers unwrapped the packages and found each contained several pounds of marijuana. The Court held that since the marijuana was in a closed, opaque container, it should not have been opened without a warrant. *Id.* at 428.

19. *Sanders*, 442 U.S. at 764-65.

20. *Robbins*, 453 U.S. at 428-29.

21. *Id.* at 426.

22. *Id.* at 426-27.

23. 456 U.S. 798 (1982). In *Ross*, an informant told detectives he had just observed a subject nicknamed "Bandit" make a sale of narcotics from the trunk of a particular car in a neighborhood of Washington, D.C. The detectives drove to the area and located the vehicle. The driver matched the description given by the informant and the detectives stopped the car. The driver, later identified as Ross, was arrested after police found a gun in the glove compartment. Police used Ross' keys to conduct a warrantless search of the trunk of the car where they found a closed paper bag. The detectives opened the bag and found what was later determined to be heroin. A further warrantless

cle, police may conduct a warrantless search of all parts of the vehicle and its contents, including all containers and packages that may conceal the object of the search.[24] The Court concluded that the scope of a warrantless search under the automobile exception is no more broad nor more narrow than a search pursuant to a judicially approved warrant. Probable cause therefore justifies the search of every part of a lawfully stopped vehicle including the contents which may conceal the contraband sought.[25]

Although the *Ross* decision overruled *Robbins*,[26] the Court retained that portion of the *Robbins* opinion which refused to recognize a constitutional distinction between different kinds of containers.[27] The Court concluded that although neat distinctions between containers of a particular character may be desirable, an interest in efficient and effective law enforcement dictates that a rule should apply equally to all containers.[28]

In addition to overruling *Robbins*, the decision in *Ross* severely limits the precedential value of *Chadwick* and *Sanders*. These cases now control only those situations in which the "relationship between the automobile and the contraband [is] purely coincidental."[29] The decision of the Seventh Circuit in *Mazzone* indicates that even where the relationship between the container and the vehicle is coincidental the police may, under certain circumstances, conduct a warrantless search of the container.[30] The *Mazzone* decision is thus a contravention of the United States Supreme Court holdings in *Chadwick* and *Sanders*.

ANALYSIS OF *MAZZONE*

In *Mazzone*, the agents had probable cause to believe that the van contained contraband. This fact did not conclude the case because the fourth amendment creates a presumption that a warrantless search is unreasonable.[31] Relying on this presumption Mazzone complained that the search of

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search, conducted after detectives took the car to the police station, revealed a zipper bag which was opened and found to contain $3,200 in cash. *Id.* at 801.

24. *Id.* at 825.

25. *Id.*

26. *Id.* at 824.

27. *Id.* at 822.

28. *Ross*, 456 U.S. at 821. The Court explained though a distinction between "worthy" and "unworthy" containers (those which deserve fourth amendment protection and those which do not) could perhaps evolve in a series of cases in which paper bags are placed on one side of the line, and locked suitcases on the other, the fourth amendment forecloses such a distinction. *Id.*

29. *Id.* at 812-14. In *Chadwick* and *Sanders*, police focused exclusively on the containers which were believed to hold contraband. It was pure happenstance that the containers came to be placed in a vehicle. This fortuity alone cannot provide police with the authority to conduct a warrantless search of the containers under the automobile exception. *Id.*

30. *Mazzone*, 782 F.2d at 762.

31. Katz v. United States, 389 U.S. 347, 357 (1967). ("[S]earches 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.") *See also*, Mincey v. Arizona, 437 U.S. 385, 390 (1978). The original Framers of the Constitution adopted the fourth amendment to counter the abuses of the British general warrant, issued without probable cause and used to seize books considered to be offensive to the state, and the writ of assistance, which gave authority to search for smuggled goods. Stewart, *The Road to* Mapp v. Ohio *and Beyond: The Origins, Development and Future of the Exclusionary Rule in Search-and-Seizure Cases*, 83 COLUM. L. REV. 1365, 1369-70 (1983).

the container found in his van violated the fourth amendment and thus evidence obtained through the search should be excluded.[32] From thorough analysis of the warrant requirement of the fourth amendment, the court concluded that the search complained of was proper based on the exceptions to the requirement found in *Carroll* and *Ross*.[33]

The court reasoned that the exceptions found in *Carroll* and *Ross* reject an argument that police must obtain a warrant before searching a container found during an otherwise valid search of a vehicle.[34] The court noted, how-

32. *Mazzone*, 782 F.2d at 759. Evidence obtained through a search proscribed by the fourth amendment is subject to the exclusionary rule. The exclusionary rule is a court-made sanction developed for protection against unreasonable searches and seizures. *See* United States v. Calandra, 414 U.S. 338, 348 (1974); Stone v. Powell, 428 U.S. 465, 482 (1976). The rule originated from the exclusion of evidence obtained in violation of the fifth amendment proscription of compulsory testimony. *See* Boyd v. United States, 116 U.S. 616, 630-32 (1886). For an outline of the development of the rule through 1961 *see* Stewart, *supra* note 31, at 1372-80. In 1961, the United States Supreme Court decided Mapp v. Ohio, 367 U.S. 643 (1961), which completed the development of the rule. Since *Mapp*, all evidence obtained by unconstitutional searches and seizures is inadmissible in state and federal courts. *Id.* at 655.

33. *Mazzone*, 782 F.2d at 762. Several exceptions to the warrant requirement of the fourth amendment have been recognized in varied situations. The exceptions exist because the fourth amendment proscribes only unreasonable searches. *See supra* note 10. Searches incident to the exceptions have been found to be reasonable under the fourth amendment.

The exceptions are numerous and apply in varied situations. The "automobile exception" noted in *Carroll*, discussed *supra* notes 8 and 9, is one. *See also*, State v. Bustamante, 11 Ariz. App. 129, 462 P.2d 822 (1970). The "emergency" exception allows police to enter a dwelling without a warrant where they reasonably believe there is someone within that needs immediate aid or assistance. Mincey v. Arizona, 437 U.S. 385 (1978). *See also*, State v. Mincey, 130 Ariz. 389, 636 P.2d 637 (1981), *cert. denied*, 455 U.S. 1003 (1982); State v. Mata, 125 Ariz. 233, 609 P.2d 48 (1980). The "exigent circumstances" exception allows police to conduct a warrantless search in situations where the delay in obtaining a warrant threatens the destruction of evidence. Schmerber v. California, 384 U.S. 757 (1966). The "hot pursuit" exception allows police officers to enter a dwelling while in the immediate pursuit of a dangerous felon. Warden v. Hayden, 387 U.S. 294 (1967). *See also*, State v. Cook, 26 Ariz. App. 198, 547 P.2d 50 (1976), *reversed in part*, 115 Ariz. 188, 564 P.2d 877 (1977). The "stop and frisk" exception permits a limited search for weapons where an officer has reason to believe that the individual he has lawfully detained may be armed. Terry v. Ohio, 392 U.S. 1 (1968). *See also*, State v. Doyle, 117 Ariz. 174, 571 P.2d 671 (1977); State v. Nichols, 26 Ariz. App. 455, 549 P.2d 235 (1976). The "search incident to arrest" exception allows the search of a lawfully arrested individual, as well as the area within his immediate control, to remove weapons which may present a danger to the officer or to prevent the destruction of evidence by the arrestee. Chimel v. California, 395 U.S. 752 (1969). *See also*, State v. Sardo, 112 Ariz. 509, 543 P.2d 1138 (1975); State v. Raymond, 21 Ariz. App. 116, 516 P.2d 58 (1973). The "inventory" exception allows police to inventory the contents of a vehicle in their possession and to use what is found as the basis for criminal prosecution. South Dakota v. Opperman, 428 U.S. 364 (1976). *See also*, State v. Walker, 119 Ariz. 121, 579 P.2d 1091 (1978); State v. Floyd, 120 Ariz. 358, 586 P.2d 203 (1978). The "plain view" exception permits the seizure of items of obvious evidentiary value inadvertently discovered by a police officer, in a place where the officer is lawfully present. Coolidge v. New Hampshire, 403 U.S. 443 (1971). *See also*, State v. Cook, 115 Ariz. 188, 564 P.2d 877 (1977); State v. Kelly, 130 Ariz. 375, 636 P.2d 153 (1981). The "consent" exception allows police to conduct searches pursuant to the consent of a party with the authority to grant such consent. United States v. Matlock, 415 U.S. 164 (1974); Schneckloth v. Bustamonte, 412 U.S. 218 (1973). *See also*, State v. Tucker, 118 Ariz. 76, 574 P.2d 1295 (1978); State v. Lynch, 120 Ariz. 584, 587 P.2d 770 (1978). The "good faith" exception provides that the exclusionary rule should not bar the admission of evidence obtained by officers acting in reasonable reliance on a search warrant issued by a detached and neutral magistrate but ultimately found to be invalid. United States v. Leon, 468 U.S. 897 (1984). An exception to the warrant requirement also exists for certain searches conducted at United States borders. *See*, Almeida-Sanchez v. United States, 413 U.S. 266 (1973); United States v. Ortiz, 422 U.S. 891 (1975). *See also*, State v. Castro, 27 Ariz. App. 323, 554 P.2d 919 (1976). For a review of the history of border search legislation, see Barnett, *A Report on Search and Seizure at the Border*, 1 AM. CRIM. L.Q. 36 (1963).

34. *Mazzone*, 782 F.2d at 760.

ever, that such a conclusion is qualified by the unwillingness of the Supreme Court to overrule *Chadwick* with its decision in *Ross*.[35] In its analysis the *Mazzone* court identified the need for reconciliation of the two holdings and found guidance in the Supreme Court decision of *United States v. Johns*.[36]

In *Johns*, United States Customs agents conducting a surveillance followed two trucks to a remote private airstrip.[37] A small aircraft landed soon after the trucks arrived. Approaching the trucks to investigate, the agents detected the odor of marijuana. When the agents reached the trucks they saw that packages, wrapped in dark green plastic and sealed with tape, were loaded in the trucks. From their experience the agents concluded that the marijuana they smelled was in the packages. The suspects were arrested and the trucks driven to Drug Enforcement Administration headquarters in Tucson, Arizona. The packages were removed from the trucks and stored in a warehouse. Without first obtaining a warrant, agents opened some of the packages and found they indeed contained marijuana.

The Ninth Circuit, ruling the search violated the fourth amendment, suppressed the introduction of the marijuana as evidence.[38] The United States Supreme Court reversed, holding that although the agents believed the marijuana was concealed in the packages, they had probable cause, based on the odor, to believe that the truck itself contained the contraband.[39] The warrantless search was found to be proper under *Ross*.[40]

In light of *Johns*, the court in *Mazzone* recognized that it makes a difference whether police are interested only in a specific container in a vehicle, or if they have probable cause to search the entire vehicle.[41] In the former, *Chadwick* would control and a search warrant would be required. In the latter, *Ross* controls and police may search without a warrant. The court reasoned that to make a decision based on either *Ross* or *Chadwick* alone may result in an anomaly.[42] An anomaly would occur because specific knowledge could only be acted on with a warrant while general knowledge could be acted on without a warrant. For instance, in *Johns* the agents knew that marijuana was commonly transported in packages similar to those found in the trucks. Once the agents saw the packages, they were interested in the packages alone. This is evidenced by their failure to search the truck itself.[43] If the Supreme Court had predicated its decision in *Johns* on *Chadwick* alone, it would have found that a warrant was required for the search of the packages. As the court in *Mazzone* pointed out, such a decision would have punished the agents for being observant and knowledgeable. Had the agents not been aware that marijuana was commonly transported in such

35. *Id.*
36. 105 S. Ct. 881 (1985).
37. The facts are as described in *Johns*, 105 S. Ct. at 883-84 (1985).
38. 707 F.2d 1093 (1984).
39. *Johns*, 105 S. Ct. at 884 (1985).
40. *Id.*
41. *Mazzone*, 782 F.2d at 760-61.
42. *Id.* at 761.
43. *Johns*, 105 S. Ct. 881 (1985). The Court stated the fact that the search of the truck was limited to the removal of the packages did not affect their holding that the search was proper under the automobile exception. *Id.* at 885.

packages, and had they believed that the marijuana they smelled was simply somewhere in the truck, *Ross* would have controlled and a warrant would not have been necessary. This result would have operated to reward the agents' lack of knowledge.[44]

The *Mazzone* court used the above reasoning to conclude the warrantless searches of the van and the container found inside were proper.[45] The court stated a rule for vehicle searches which it found to flow from the same reasoning: "if there is some reason to believe that a full search may turn up more than is just in the sealed container, the police can make the full search and as part of it open and search the container itself."[46] A contrary rule would allow the police to conduct a warrantless search if they have probable cause to believe that contraband is simply "somewhere" within a vehicle, but would require a warrant when police have acquired more specific information that contraband is confined to a particular container or containers within a vehicle. Such a result would be, as the court pointed out, anomalous.[47]

The *Mazzone* opinion indicates it was speculation that the van might contain drugs other than those police had probable cause to believe were in the container.[48] It was this speculation which permitted the search of the van and, as part of it, a search of the container.[49] Although this speculation alone did not amount to probable cause, the court found that it, along with probable cause that the container held drugs, was sufficient to bring the searches into the *Ross* exception.[50] The absence of such reasonable speculation would have meant that police were interested in the container alone and *Chadwick* would have precluded a warrantless search.[51]

SCOPE AND EVALUATION

Following the Supreme Court decision in *Ross*, commentators expressed concern over the limited clarification the Court afforded in the area of vehicle searches.[52] The *Mazzone* rule is the Seventh Circuit's attempt to provide the police with simple and readily applicable guidelines to lawful searches of vehicles.[53] This goal is an important one in light of the considerable confusion in this area over the years.[54] Commentators also anticipated

44. *Mazzone*, 782 F.2d at 761.
45. *Id.*
46. *Id.* at 762.
47. *Id.* at 761.
48. *Id.*
49. *Id.* at 761-62.
50. *Id.*
51. *See supra* notes 13, 14 and accompanying text.
52. *See, e.g.*, Comment, *Erasing Bright Lines to Expand the Constitutional Scope of Warrantless Automobile Searches:* United States v. Ross, 20 HOUS. L. REV. 1253 (1983); Note, *Search and Seizure of Containers in Autos—Broadening the Scope of the Auto Exception in* United States v. Ross, 27 ST. LOUIS U.L.J. 745 (1983).
53. *Mazzone*, 782 F.2d at 762.
54. Because the fourth amendment is directed at law enforcement officers and the exclusionary rule is intended to serve as a deterrent to police misconduct, fourth amendment doctrine needs to be expressed clearly so that police officers may readily apply it. *See* LaFave, *The Fourth Amendment in an Imperfect World: On Drawing "Bright Lines" and "Good Faith,"* 43 U. PITT. L. REV. 307, 320-21 (1982).

that *Ross* would result in inconsistent holdings by lower courts as they attempt to reconcile *Ross* with *Chadwick* and *Sanders*.[55] That such inconsistent holdings have resulted is evidenced by the courts resolving cases similar to *Mazzone* by concluding the particular case was either more like *Chadwick* or more like *Ross*.[56] Courts following the lead of the Seventh Circuit can avoid inconsistent results by finding some reason for the vehicle search other than the fact that a container within is believed to hold contraband. The *Mazzone* opinion indicates this other reason may be mere reasonable speculation that the vehicle holds more contraband than that believed to be in the container.[57]

The *Mazzone* rule limits even more of the precedential value of *Chadwick* and *Sanders* than *Ross* did by permitting the warrantless search of a vehicle supported only by speculation that the vehicle contains more contraband than that believed to be in the container which is the focus of the interest of the police.[58] In so doing the rule broadens the application of *Ross* and operates to prevent exclusion of evidence in a larger number of warrantless search cases. The *Mazzone* decision thus signals judicial movement toward a further loosening of the warrant requirement. While such a trend provides police more tools with which to accomplish their legitimate goals, it also operates to affect the balance between efficient law enforcement and individual privacy interests. The Seventh Circuit has canted the scales heavily toward law enforcement. Although the *Mazzone* decision is but a step in a perceived trend, the entire trip could result in a probable cause exception to the warrant requirement.

The fourth amendment requires that the determination whether a search is reasonable be made "by a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime."[59] Interestingly, the *Mazzone* court stated that the "effective neutrality and independence of magistrates in *ex parte* proceedings for the issuance of search warrants may be doubted. . . ."[60] The court did not offer a substitute for the magistrate, nor did it suggest a body that would be more effectively neutral and independent. Instead the court stated that the practical rational for the warrant requirement is that it forces the police to make a record of their investigation before the search is conducted.[61] This suggests that a magistrate is not needed at all. The police need only make a record of their investigation prior to the search then conduct the search. Implicit in the court's loosening of the warrant requirement, and in its rationale for preserving what is left of the requirement, is a suggestion that it is unneeded.

55. *See, e.g.*, Comment, *supra* note 52; Casenote, *The Bright Line Rule of* United States v. Ross: *New Light on the* Carroll *Automobile Exception?*, 36 ARK. L. REV. 293 (1983).

56. *See, e.g.*, United States v. Shephard, 714 F.2d 316 at 323 (1983) ("We believe that the case before us is more akin to *Ross* than to *Chadwick* and *Sanders*.") (footnote omitted). *See also*, Mancini v. State, 448 So. 2d 573 (Fla. Dist. Ct. App. 1984); Castleberry v. State, 678 P.2d 720 (Okla. Crim. App. 1984).

57. *See supra* notes 3 and 48-50 and accompanying text.

58. *See supra* notes 2-4, 29, 30 and 46-50 and accompanying text.

59. Johnson v. United States, 333 U.S. 10, 14 (1948).

60. *Mazzone*, 782 F.2d at 759.

61. *Id.*

CONCLUSION

The *Mazzone* opinion provides a clear statement of what the law is, in the Seventh Circuit, regarding vehicle searches involving containers. Although the decision allows police to conduct warrantless searches in a broader spectrum of cases, it also limits the fourth amendment protection of individual privacy interests in the contents of containers placed in automobiles. Inconsistent holdings resulting from the United States Supreme Court decision in *Ross*[62] have been addressed in the Seventh Circuit and, in light of the Seventh Circuit decision, a Supreme Court clarification of *Ross* may be forthcoming.

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62. *See supra* note 56 and accompanying text.