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Will You "Waive" More Than Your Hand When Hailing a Cab?: An Affirmative Rethinking of Vehicle Passengers' Rights

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WILL YOU "WAIVE" MORE THAN YOUR HAND WHEN HAILING A CAB?: AN AFFIRMATIVE RETHINKING OF VEHICLE PASSENGERS' RIGHTS

[W]e must care about the principles applied by the [United States] Supreme Court in assessing our right to be secure against the government because the drafters recognized that the danger to a free society begins with a misguided or, potentially, a malevolent government.[1]

I. INTRODUCTION

On a hot, humid summer afternoon, Krista Connick emerged from her downtown Chicago office toting her purse and monogrammed briefcase.[2] She hailed a cab, hopped in the back seat, and gave the driver her destination: "One IBM Plaza, please." The taxi pulled away from the curb and Krista removed some work from her briefcase. As the driver wove his way in and out of the heavy downtown traffic, Krista examined the marketing projections she was about to present at her afternoon meeting and paid no attention to the driver or his actions. The sound of sirens startled her out of her contemplations. She glanced through the cab's rear window and her speculation was quickly confirmed; her driver began to pull over. As two Chicago police officers approached the stopped taxi, Krista quietly hoped that this ill-timed interruption would not take long. Her presentation started in only twenty minutes. She listened as the officers informed the driver that, due to his erratic driving, they suspected him of driving his cab under the influence. One officer saw an empty alcohol bottle on the floor of the front seat.[3] The

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[1] James A. Adams, *The Supreme Court's Improbable Justifications for Restriction of Citizens' Fourth Amendment Privacy Expectations in Automobiles*, 47 DRAKE L. REV. 833, 838 (1999).

[2] The following hypothetical situation is based very loosely on the facts of *New York v. Belton* and *Wyoming v. Houghton*. *See* Wyoming v. Houghton, 526 U.S. 295 (1999); New York v. Belton, 453 U.S. 454 (1981). The hypothetical situation presented was created by the author of this Note and is not intended to represent an actual event. Also, *Sykes v. Greenville*, currently pending in United States District Court, addresses issues surrounding taxicab passengers' rights. *See* Sykes v. Greenville, No. 4:99CV127-P-B, 1999 U.S. Dist. LEXIS 19637, at *1-*2 (N.D. Miss. Dec. 10, 1999) (mem. op.). A police officer pulled over a taxicab in which the defendant was riding as a passenger. *Id.* at *1. The police ordered the two taxicab passengers out of the cab, handcuffed them, and forced them to lie on the ground while the officer searched their bodies and clothing without their consent. *Id.*

[3] At this point, the officers have the authority to conduct a search based on the *Carroll* doctrine. *See* Carroll v. United States, 267 U.S. 132 (1925); *see also infra* notes 42, 45-53, 105-

police ordered the driver to exit the cab, and then asked Krista to get out. After hastily grabbing her purse and placing it over her shoulder, she complied with the officer's request.

The officers searched through the taxicab's entire passenger compartment and all of the driver's belongings left within the vehicle. During the search, the officers discovered drug paraphernalia on the passenger's side of the front seat. The officers then placed the driver under arrest for driving under the influence and for possession of drug paraphernalia.[4] The first officer then reached inside the cab for Krista's briefcase and asked for her purse. They indicated that her person was also subject to search. She objected, but the officers insisted. She thought to herself: "Can the officers search my person, my purse, or my possessions left within the vehicle without probable cause to search me?"

As dusk approached that muggy summer evening, two African-American youths named Billy and Mike hailed a different taxicab on the South Side of Chicago, a less reputable and more dangerous part of town. Each teenager carried a backpack. Billy and Mike slid into the cab's back seat and gave the driver their destination, a corner about one mile away. While the teenagers talked about their plans for the evening, the driver began to dart through the area's streets to his passengers' intended drop-off location. When the driver heard the police sirens, he pulled over. The officers smelled alcohol on the driver's breath. They informed the cab driver that they suspected him of operating the cab under the influence, and ordered him out of the taxi.[5] The officers also ordered Billy and Mike to exit the vehicle. They complied, but Billy

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53, and 160-89 and accompanying text explaining the *Carroll* doctrine. Such a search may occur when the officers possess probable cause that crime-connected items are located within the car. *Carroll*, 267 U.S. at 156. Because the driver in the hypothetical situation is suspected of driving under the influence and the officers observed an empty alcohol bottle which may be connected to his erratic driving, the officers may conduct a search to determine whether the car contains items related to their reasonable suspicion that the taxicab driver was driving while under the influence. *Id.*

[4] After placing the driver under arrest, the officers are now empowered to conduct a search incident to arrest under the *Belton* doctrine. *See* New York v. Belton, 453 U.S. 454 (1987). A *Belton* search occurs incident to a full custody arrest, and authorizes the police to search the entire passenger compartment of a vehicle in the interest of officer safety. *See* New York v. Belton, 453 U.S. 454 (1981). *See also infra* notes 41-43, 54-67, 160-61, 190-99 and accompanying text for a discussion of the *Belton* doctrine.

[5] At this point, the officers can again conduct a *Carroll* search of the taxicab, based on the probable cause that crime-connected items are contained within the vehicle. *See* Carroll v. United States, 267 U.S. 132 (1925). *See also infra* notes 42, 45-53, 105-53, and 160-89 and accompanying text; *supra* note 3.

inadvertently left his bookbag in the cab. Mike put his bag over his shoulder and the two teenagers stood next to the vehicle.

The officers searched through the taxicab's entire passenger compartment and all of the driver's belongings in the front part of the cab, as well as the trunk. During the search, the officers discovered drug paraphernalia in the front seat and arrested the driver.[6] One officer reached into the cab to obtain and search Billy's bookbag, while the other officer asked Mike for his bag. The officers also indicated that Billy's and Mike's persons were subject to search. They stopped and commented to each other: "We weren't doing anything wrong. Can the officers really do this?"

While a warrant is generally required to conduct a valid search, police officers enjoy great latitude when conducting warrantless vehicle searches.[7] The primary justification for this latitude is the strong societal interest in ensuring officer safety.[8] The general police power to search persons without a warrant in the interest of officer safety stems from *Terry v. Ohio*.[9] Under *Terry*, "stop and frisk" patdowns, also known as

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[6] The full-custody arrest again empowers the police to conduct a *Belton* search of the entire passenger compartment. *See* New York v. Belton, 453 U.S. 454 (1981). *See also infra* notes 41-43, 54-67, 160-61, 190-99 and accompanying text; *supra* note 4.

[7] *See generally* Wyoming v. Houghton, 526 U.S. 295 (1998); Maryland v. Wilson, 519 U.S. 408 (1997). *See also infra* notes 29-38 and accompanying text discussing the warrant requirement and situations in which warrants are not constitutionally required.

[8] Terry v. Ohio, 392 U.S. 1, 23 (1968) (acknowledging that when weighing the competing interests at stake the officer safety portion of the required balance weighs heavier than the considerations regarding the intrusion upon the individual). *See also* Thomas Fusco, Annotation, *Permissibility Under Fourth Amendment of Detention of Motorist by Police, Following Lawful Stop for Traffic Offense, to Investigate Matters not Related to Offense*, 118 A.L.R. FED. 567, 573 (1994) (stating that *Terry* permits the search of an individual, provided the officer has reasonable suspicion, based on articulable facts which tend to lead a rational person to infer that criminal activity may be occurring or imminent).

[9] 392 U.S. 1, 30 (1968) (holding that police officers may pat down an individual to search for weapons when they reasonably suspect that a person is preparing to commit a crime). *See also* Fusco, *supra* note 8, at 573 (asserting that *Terry* permits law enforcement officers to stop persons and briefly detain them, even in the absence of probable cause, to investigate their reasonable suspicion that the individuals are involved in criminal activity). In *Terry*, the Court articulated a two part test to determine the stop's reasonableness. *Terry*, 392 U.S. at 20-22. First, the stop must be reasonable at its inception. *Id. at* 20-21. The officer must justify the intrusion on articulable facts, not just hunches. *Id.* at 21. Second, the scope must be narrowly tailored to the circumstances. *Id.* This two-part test has also been applied to vehicle stops. *See* 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, 1689 (1999). *See also* Kathryn R. Urbonya, *Justice on the Run*, A.B.A. J., Oct., 1999, at 38.

"*Terry* stops," are permissible to ensure officer safety.[10] Vehicle drivers may also be subjected to similar "patdowns" when operating a vehicle lawfully stopped by law enforcement officers.[11] *Terry* requires that a "patdown" search be narrowly tied to and justified by the circumstances authorizing it.[12] Such authorizing circumstances exist and include the

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[10] Terry v. Ohio, 392 U.S. 1, 26 (1968). *Terry* concerned the behavior of two individuals whose actions led police officers to believe that they were planning a robbery. *Id.* at 6. The Court noted that these searches, which later became known as "*Terry* stops," do not require probable cause. *Id.* at 22-24. The Court considered three principles. *Id.* First, the nature and extent of the state's interest, namely the prevention and detection of crime, benefit society as a whole and thus supported the constitutionality of *Terry* stops. *Id.* at 22. Second, officer safety provided a strong justification for permitting the "stop and frisk." *Id.* at 23. Last, the resulting intrusion on individual rights, while important, was outweighed by the first two considerations. *Id.* at 24. After weighing these three factors, the Court held that patdowns were constitutional. *Id.* at 30-31. The warrant requirement has subsequently been expanded from the momentary detention involved in a *Terry* "stop and frisk" to permit over twenty hours of detention in a border search. SHELVIN SINGER & MARSHALL J. HARTMAN, CONSTITUTIONAL CRIMINAL PROCEDURE HANDBOOK 288 (1986). In a memorandum to Chief Justice Earl Warren while the Court contemplated *Terry*, Justice William J. Brennan expressed his concerns about the Court affirming the *Terry* decision. Memorandum from Justice William J. Brennan to Chief Justice Earl Warren on *Terry v. Ohio* (Mar. 14, 1968), *in* 2 DAVID M. O'BRIEN, CONSTITUTIONAL LAW AND POLITICS 811-12 (2d ed. 1995). Justice Brennan asserted his concern that affirming the lower court's decision in *Terry* would be interpreted as the Court approving of expanding aggressive surveillance techniques. *Id.* at 812. Justice Brennan also asserted that affirming the lower court's decision would completely eliminate the requirement that the police first establish probable cause to arrest an individual prior to the arrest. *Id.* Rather, Justice Brennan worried that mere police suspicion would replace probable cause as the acceptable standard. *Id.* The Court very recently determined that one basis for conducting a *Terry* stop includes temporarily detaining an individual who is present in a high crime area and flees from the police without provocation. Illinois v. Wardlow, 120 S. Ct. 673 (2000). While the individual's presence in a high crime area is not sufficient justification alone, the Court stated that a location's characteristics are relevant in determining whether the situation warrants further investigation. *Id.* at 676. In addition, the unprovoked evasion heightened the officers' suspicion, and that behavior can be considered as another factor in determining reasonable suspicion. *Id.*

[11] *See generally* New York v. Belton, 453 U.S. 454 (1981) (stating that the driver's person may be searched incident to a full custody arrest); Chimel v. California, 395 U.S. 752 (1969) (authorizing searches of the arrestee's person based on the probable cause generated by the full custody arrest). *See also* DANIEL E. HALL, CRIMINAL PROCEDURE AND THE CONSTITUTION 119 (1997) (stating that a motorist may be stopped and patted down if the officer possesses reasonable suspicion to do so); Visser, *supra* note 9, at 1689.

[12] *See Terry*, 392 U.S. at 19. Although this requirement seems straightforward, courts have experienced difficulty in applying the rule in specific cases. Wayne R. LaFave, *"Case-by-Case Adjudication" Versus "Standardized Procedures": The Robinson Dilemma*, 1974 SUP. CT. REV. 127, 142 (1974) (noting that police require a familiar standard to apply in the myriad of situations they encounter on a daily basis). The impossibility of police officers effectively balancing all of the rights in question at a particular traffic stop is evident, and thus officers require and benefit from a set of rules which can be applied in their day-to-day encounters. *Id. See also* Audrey Benison et al., *Warrantless Searches and Seizures*, 87 GEO. L.J. 1124, 1135

warrantless search of an arrestee's person, a vehicle driver's person, the area within the driver's control, and the passenger property left within the vehicle, if the property is capable of concealing the object of the search.[13] The police may conduct the property search based on the *Carroll* doctrine, provided the general probable cause to stop the vehicle is properly supplemented by the circumstances.[14]

Warrantless searches are generally considered unreasonable, but exceptions to the warrant requirement exist and appropriately include the automobile exception as well as several other situations concerning automobiles.[15] The Court created the automobile exception, and then expanded it to include situations that impact passengers' rights.[16] However, the extension of this warrant exception, to passengers' persons and their property is based on flawed logic.[17] The flaws in the reasoning are greatly magnified when challenging the premises that underlie the current scheme and when focusing on taxicabs as an example.[18]

(1999) (stating that the officer must possess a reasonable belief that the detainee poses a threat to either officer safety or the safety of others to justify the patdown).

[13] *See* Wyoming v. Houghton, 526 U.S. 295 (1999) (allowing the police to search a passenger's property left within a legally-stopped vehicle when the occupants exit, provided that the property is capable of concealing the object(s) of the search). The Court articulated a limit to this searching authority in *Knowles v. Iowa*, 525 U.S. 113 (1998). In *Knowles*, the Court made clear that merely issuing a traffic citation does not give rise to adequate probable cause to search the vehicle or its occupants. *Id.* at 116-117. *See also Belton*, 453 U.S. at 459, 462-63 (authorizing the warrantless search of the driver's person and his or her property within the vehicle); *Chimel*, 395 U.S. at 762-63 (permitting the warrantless search of one's person incident to a full custody arrest).

[14] *Houghton*, 526 U.S. at 307; Carroll v. United States, 267 U.S 132 (1925).

[15] *See, e.g.*, Mich. Dep't of State Police v. Sitz, 496 U.S. 444 (1990) (stating that administrative search patterns, namely sobriety checkpoints, are valid warrantless searches); New York v. Belton, 453 U.S. 454 (1981) (extending warrantless search ability to include searches incident to a full-custody arrest); United States v. Martinez-Fuerte, 428 U.S. 543 (1976) (stating that administrative searches conducted without a warrant to detect illegal aliens in vehicles are constitutional); South Dakota v. Opperman, 428 U.S. 364 (1976) (permitting warrantless inventory searches when vehicles are impounded); Carroll v. United States, 267 U.S. 132 (1925) (establishing the vehicle exception to the warrant requirement). *See also* ROLANDO V. DEL CARMEN, CRIMINAL PROCEDURE LAW AND PRACTICE 225 (3d ed. 1995) (stating that automobile searches do not require warrants in certain circumstances).

[16] *See infra* notes 26-101 and accompanying text for a discussion of the background of the vehicle passengers' rights problem.

[17] *See generally infra* notes 68-101 and accompanying text for an explanation of the manner in which passengers' persons and property are implicated by the expansion of the warrant exception.

[18] *See generally infra* notes 105-99 and accompanying text for a discussion of the assumptions that underlie the *Carroll* doctrine and the pivotal role probable cause plays in the analysis.

This Note will evaluate the current status of vehicle passengers' rights, focusing on those of taxicab passengers.[19] Section II of this Note examines the creation of the vehicle exception to the warrant requirement and analyzes the present status of vehicle passengers' rights.[20] Section III discusses several flaws in the current reasoning that may prove to be problematic in the future if the same logic is extended and applied to taxicabs.[21] To remedy these anticipated problems, Section IV of this Note proposes model judicial reasoning that explains and applies an Individualized Taxicab Passenger and Passenger Property rule.[22] The proposed rule is applicable when considering taxicab passengers' rights.[23] Specifically, this Individualized Taxicab Passenger and Passenger Property rule requires the presence of individualized probable cause to legally search a taxicab passenger and his or her property.[24] This model reasoning provides a single, uniform framework addressing the manner in which taxicab passengers' Fourth Amendment claims should be analyzed.[25]

II. LEGAL BACKGROUND OF THE VEHICLE PASSENGERS' RIGHTS PROBLEM

Before analyzing the current state of vehicle passengers' rights under the Fourth Amendment, one must understand the general framework used to analyze automobile searches.[26] Section II.A traces the history of the automobile exception to the warrant requirement from its inception.[27] Section II.B examines the expansion of this warrant requirement exception and notes the manner in which its broadening impacts passengers' rights.[28]

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[19] *See infra* notes 26-213 and accompanying text for analysis of the current status of vehicle passengers' rights, as well as the unique situation presented by taxicab passengers.

[20] *See infra* notes 26-101 and accompanying text for a description of the background of this issue.

[21] *See infra* notes 105-213 and accompanying text for a discussion of the potential future effects of applying the current reasoning in the taxicab context.

[22] *See infra* notes 214-35 and accompanying text for a description of the rule and its application to the two hypothetical situations described in notes 1-7 and accompanying text.

[23] *See infra* notes 214-35 and accompanying text.

[24] *See infra* notes 214-35 and accompanying text.

[25] *See infra* notes 214-35 and accompanying text.

[26] *See infra* notes 27-101 and accompanying text for an explanation of this framework.

[27] *See infra* notes 29-67 and accompanying text for a description of the history of the automobile exception to the warrant requirement.

[28] *See infra* notes 68-101 and accompanying text for an explanation of the impact that the Court's expansion of the warrant requirement exception has on vehicle passengers' rights.

A. The Creation of the Vehicle Exception to the Warrant Requirement

In a majority of circumstances, the Fourth Amendment prohibits the police from conducting a search unless they first convince a neutral magistrate that probable cause exists to do so.[29] The police officer must

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[29] The Fourth Amendment states:

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

U.S. CONST. amend. IV.

Similar language is mirrored in state constitutions as well. *See, e.g.*, ILL. CONST. art. I, § 6; IND. CONST. art. I, § 11; MICH. CONST. art I, § 11. The Fourth Amendment originally applied only to actions of the federal government, but now applies to the states also as a result of incorporation through the Fourteenth Amendment. U.S. CONST. amend. XIV § 1 ("No State shall make or abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law."); Mapp v. Ohio, 367 U.S. 643 (1961) (applying the Fourth Amendment to the states). *See also* New York v. Belton, 453 U.S. 454 (1981) (discussing the long-standing applicability of the Fourth Amendment to states); LAWRENCE F. ROSSOW & JACQUELINE A. STEFKOVICH, SEARCH AND SEIZURE IN THE PUBLIC SCHOOLS 2-3 (2d ed. 1995) (stating that the Fourth Amendment's protections extend to state actions). The Federal Rules of Criminal Procedure require a showing of probable cause before a warrant can be issued, and even provide a procedure for requesting a warrant over the telephone. FED. R. CRIM. P. 41 (governing federal search warrants and regulating the circumstances surrounding their issuance, content, and execution); FED. R. CRIM. P. 41(c) (requiring probable cause); FED. R. CRIM. P. 41(c)(2)(A) (permitting warrants to be issued based on telephone or facsimile communications). *See also* 725 ILL. COMP. STAT. 5/108-1 (1999) (prohibiting searches without a warrant, unless the search is conducted incident to a lawful arrest); 725 ILL. COMP. STAT. 5/108-3 (1999) (stating that a judge who issues a search warrant may do so only upon written complaint of a person under oath which sufficiently sets forth probable cause and which describes the place or person to be searched in detail); IND. CODE § 35-33-5-1 (1999) (requiring warrants, supported by oath or affirmation, to lawfully search any place, which includes locations where property may be "secreted or hidden, including buildings, persons, or vehicles"); MICH. COMP. LAWS § 780.651 (1999) (describing the circumstances and requirements for the issuance of a search warrant); MICH. COMP. LAWS § 780.654 (1999) (stating the specificity required by a valid search warrant). The Fourth Amendment's common law roots are identifiable in the Magna Carta and are later manifested in the Virginia Bill of Rights. *See generally* PAGE SMITH, THE CONSTITUTION: A DOCUMENTARY AND NARRATIVE HISTORY 19 (1980); KERMIT HALL ET AL, AMERICAN LEGAL HISTORY 4 (2d ed. 1996). The Magna Carta, a landmark of European Constitutional development, forbade debtors from arbitrarily seizing lands, and included a promise from King John not to unlawfully arrest or seize the parties to the agreement. SMITH, *supra* at 19. In 1215, the King agreed that "no freeman shall be taken or imprisoned or disseised, or outlawed, or exiled, or in any way destroyed...except by the lawful judgment of his peers or by the law of the land." *Id.* The Framers of the Virginia Bill of Rights adopted this idea five hundred sixty-one years later:

> That general warrants, whereby an officer or messenger may be commanded to search suspected places without evidence of an act

generally obtain a valid search warrant for the premises before proceeding with the search.[30] Without a warrant, the ensuing search is illegal and the Exclusionary Rule forbids using the illegally obtained evidence at trial.[31] While the Fourth Amendment requires that searches be reasonable, based on probable cause, and conducted pursuant to a valid warrant, it permits warrantless searches within certain well-defined exceptions.[32] Under some circumstances, the "exigencies of the

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committed, or to seize any person or persons not named, or whose offence [sic] is not particularly described and supported by evidence, are grievous and oppressive, and ought not to be granted.

Va. Bill of Rights, Provision 10, *in* SMITH, *supra* at 58.

These ideas manifested themselves in the Bill of Rights' Fourth Amendment to the United States Constitution, adopted in 1789. U.S. CONST. amend. IV.

[30] New York v. Belton, 453 U.S. 457 (1981); Benison, *supra* note 12, at 1124 (stating that every search and seizure by an agent of the government must be reasonable).

[31] *See* Mapp v. Ohio, 367 U.S. 643, 655-57 (1961) (holding that all evidence obtained in searches inconsistent with the Constitution is inadmissible as evidence in state court proceedings); SINGER & HARTMAN, *supra* note 10, at 176-79 (describing the history of the Exclusionary Rule). Originally, the Supreme Court created the federal exclusionary rule, which forbade the admission into evidence at a federal trial any evidence obtained illegally. Weeks v. United States, 232 U.S. 383 (1914). However, the Court refused to extend this requirement to the states. Wolf v. Colorado, 338 U.S. 25 (1949). After two-thirds of the states refused to adopt a version of the exclusionary rule at the state level, the Supreme Court determined that the exclusionary rule must apply in all state proceedings in state courts as well as in the federal arena. *Mapp*, 367 U.S. at 643; SINGER & HARTMAN, *supra* note 10, at 177.

[32] *See generally Belton*, 453 U.S. at 457 (noting that while the Fourth Amendment usually requires the police to obtain a warrant before executing a valid search, *Chimel* presented the first exception to the warrant requirement and *Belton* explained the long-standing reasoning behind the decision); Terry v. Ohio, 392 U.S. 1, 9-14 (1968) (noting basic considerations of Fourth Amendment jurisprudence and establishing police officers' authority to "stop and frisk" individuals in certain defined circumstances). *See, e.g.*, Arizona v. Hicks, 480 U.S. 321 (1987) (explaining that warrantless searches are permitted when the police are legitimately on the premises, discover an item they believe is evidence of a crime, see such evidence in plain view, and have probable cause to believe that the item is evidence of a crime); California v. Carney, 471 U.S. 386, 389 (1985) (holding that searches of motor homes are valid, even if conducted without a search warrant, because their ready mobility brings them under the *Carroll* automobile exception to the warrant requirement); United States v. Robinson, 414 U.S. 218 (1973) (stating that a search of the arrestee's person conducted incident to a full custody arrest is lawful and reasonable under the Fourth Amendment). *See also* Carroll v. United States, 267 U.S. 132, 147 (1925) (stating that "the Fourth Amendment does not denounce all searches or seizures, but only such as are unreasonable"); Daniel A. Klein, Annotation, *Validity, Under Federal Constitution, of Warrantless Search of Motor Vehicle-Supreme Court Cases*, 89 L. Ed. 2d 939 (1997) (listing five general areas in which warrantless searches are permitted: *Belton* searches incident to arrest, those based on probable cause, searches justified by the need to maximize officer safety, impound inventories, and those in which valid consent to search is given); SINGER & HARTMAN, *supra* note 10, at 253 (listing the following situations as illustrations of circumstances in which the warrant requirement does not apply: searches incident to

situation"[33] create instances in which exceptions to the warrant requirement are "imperative."[34] Automobiles constitute one such exception.[35] Of the many situations which can give rise to the lawful stop of automobiles, several justify warrantless searches.[36] For example,

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arrest, hot pursuit, plain view, open fields, and emergencies). Also, searches of automobiles fall into the category of situations in which warrants may not be required, due to the presence of general probable cause to stop the vehicle. SINGER & HARTMAN, *supra* note 10, at 253.

[33] *Belton*, 453 U.S. at 457 (*quoting* McDonald v. United States, 335 U.S. 451, 456 (1948)) (stating that in order to justify the privacy invasion caused by the warrantless search, the circumstances must be such that conducting the search immediately and without a warrant must be of the utmost importance). In *McDonald*, the Court did not find the presence of such exigent circumstances. *McDonald*, 335 U.S. at 456. The police conducted a warrantless search of the house in which McDonald was renting a room, because their surveillance indicated that he may be running a gambling operation from the house. *Id.* at 452-53. These circumstances were insufficient to justify a warrantless search. *Id.* at 456.

[34] *Belton*, 453 U.S. at 457 (*quoting McDonald*, 335 U.S. at 456) (explaining that such deviations from constitutional mandates must be the only available course of action). *See also* Benison, *supra* note 12, at 1150 (recognizing that exigent circumstances justify some intrusions); *Search and Seizure-Automobile Exception-Search of Passengers' Belongings*, 113 HARV. L. REV. 255, 263 (1999) [hereinafter *Search and Seizure*] (stating the Court's unequivocal establishment of the *Carroll* automobile exception to the warrant requirement).

[35] Carroll v. United States, 267 U.S. 132 (1925). *See* Klein, *supra* note 32, at 942 (1997). *See, e.g.*, Wyoming v. Houghton, 526 U.S. 295 (1999); Maryland v. Wilson, 519 U.S. 408 (1997); New York v. Belton, 453 U.S. 454 (1981); South Dakota v. Opperman, 428 U.S. 364 (1976); United States v. Martinez-Fuerte, 428 U.S. 543 (1976). *See also* DEL CARMEN, *supra* note 15, at 225; Daniel T. Gillespie, *Bright-Line Rules: Development of the Law of Search and Seizure During Traffic Stops*, 31 LOY. U. CHI. L.J. 1 (1999) (noting that different rules govern people in transit); DEL CARMEN, *supra* note 15, at 226 (noting that the automobile exception is justified by five considerations).

[36] *See generally* Adams, *supra* note 1, at 837 (stating that the *Carroll* automobile exception to the warrant requirement originally constituted one in three exceptions, and that number of exceptions has now grown to over thirty). In addition to the two areas discussed in this Note's text, warrantless vehicle searches are allowed in three other circumstances. *Id.* First, impounded vehicles subject to routine inventory searches may be searched in accordance with *South Dakota v. Opperman*, 428 U.S. 364 (1976). Three needs justify the inventory search: to protect the owner's property while in police custody, to protect the police against claims of lost or stolen property, and to protect the police from potential danger. *Opperman*, 428 U.S. at 369 (1976). Inventory searches are constitutional, provided they are not pretext for conducting an investigation of the vehicle. *Id.* Further, the searches should be motivated by the presence of valuables in plain view. *See id.*; SINGER &. HARTMAN, *supra* note 10, at 263-64 (discussing *Opperman*'s circumstances, holding, and reasoning). Second, warrantless searches are constitutional when conducted as part of an administrative search pattern, such as a sobriety checkpoint or border search. *See* Michigan Dep't of State Police v. Sitz, 496 U.S. 444 (1990) (stating that sobriety checkpoints, established in accordance with clear state-sanctioned guidelines, constituted a minimal, constitutionally-permitted intrusion.); United States v. Martinez-Fuerte, 428 U.S. 543 (1976) (stating that the border control checkpoints, established for the purpose of detecting illegal aliens in vehicles, withstood constitutional muster because the officers routinely stopped every vehicle for their clearly established, particular purpose); SINGER & HARTMAN, *supra* note 10, at 269-73

the Constitution permits warrantless searches when law enforcement officials impound a vehicle and inventory its contents, and also when the warrantless search occurs as part of an administrative search pattern such as a sobriety checkpoint or a search at an immigration checkpoint.[37] Each of these methods of conducting warrantless vehicle searches each constitute a portion of an intricate warrantless search framework.[38] *Carroll v. United States*[39] and *New York v. Belton*[40] form the basis for two lines of cases which resulted from expanding the warrant requirement exception to include vehicles.[41] *Carroll* creates the foundation for cases

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(discussing border searches as an exception to the warrant requirement). Last, the driver may voluntarily consent to a warrantless search. United States v. Matlock, 415 U.S. 164 (1974); Schenecloth v. Bustamonte, 412 U.S. 218 (1973); SINGER & HARTMAN, *supra* note 10, at 284-86 (describing the precise circumstances that constitute providing valid consent); O'BRIEN, *supra* note 10, at 803 (noting that the police may legally conduct a valid search of persons and their property after being given the person's consent). Searching property without either a warrant or probable cause is valid under the Fourth Amendment, provided that voluntary, valid consent is given. *See* United States v. Matlock, 415 U.S. 164 (1971); Schenecloth v. Bustamonte, 412 U.S. 218 (1973); Caralyn Miller Ross, Annotation, *When Is Consent Voluntarily Given So As To Justify Search Conducted on Basis of That Consent - Supreme Court Cases*, 148 A.L.R. FED. 271 (1998). Instead of utilizing a bright-line rule, courts must apply a "totality of the circumstances" balancing test to determine whether the consent was valid and voluntary. *See* United States v. Matlock, 415 U.S. 164 (1974); Schneckloth v. Bustamonte, 412 U.S. 218 (1973); Ross, *supra* at 271. While the Supreme Court has expanded the vehicle exception to the warrant requirement to include the previously-mentioned circumstances, it refused to extend warrantless search authority to searches incident to citation. Knowles v. Iowa, 525 U.S. 113 (1998). Iowa permitted police officers to search a vehicle incident to issuing a traffic citation, but the Supreme Court determined that this did not comport with the probable cause requirement. *Id.* at 115, 119. The two primary justifications given to authorize searches incident to arrest, namely the concern for officer safety and the preservation of evidence, fail to adequately support searches in these circumstances. *Id.* at 118-19. In *Knowles*, the Court placed a rare limit on the police's vehicle search authority. *Id.*; Craig M. Bradley, *Protection for Motorists-With a Loophole*, TRIAL, Feb. 1999, at 85 [hereinafter Bradley, *Protection*] (discussing the Court's opinion in *Knowles*); Charles F. Williams, *Red and Blue Light Specials*, A.B.A. J., Jan. 1999, at 36.

[37] *See* Mich. Dept. of State Police v. Sitz, 496 U.S. 444 (1990) (explaining why sobriety checkpoints constitute legal warrantless searches); South Dakota v. Opperman, 428 U.S. 364 (1976) (establishing the constitutionality of impound inventory searches); United States v. Martinez-Fuerte, 428 U.S. 543 (1976) (upholding the constitutionality of border control checkpoints).

[38] *See generally* Adams, *supra* note 1.

[39] 267 U.S. 132 (1925).

[40] 453 U.S. 454 (1981).

[41] New York v. Belton, 453 U.S. 454 (1981); Carroll v. United States, 267 U.S. 132 (1925). These two particular cases lay the foundation for two separate lines of cases concerning police ability to search cars and their contents. New York v. Belton, 453 U.S. 454 (1981); Carroll v. United States, 267 U.S. 132 (1925). In *Carroll*, the Court determined the validity of warrantless auto searches based on the presence of the general probable cause that crime-connected items were in the vehicle. *Carroll*, 267 U.S. at 149, 158-59. In contrast, the officers

which require probable cause but not a warrant.[42] Those traceable to *Belton* require neither independently-generated probable cause nor a warrant since the searches occur during a full custody arrest.[43] Both lines of cases apply specifically to automobiles.[44]

Carroll, a 1925 decision, establishes the basis for the first line of cases.[45] In *Carroll*, the Supreme Court first recognized an automobile exception to the warrant requirement.[46] Police officers gained the ability

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in *Belton* had only probable cause generated by the arrest. *Belton*, 453 U.S. at 454. Thus, subsequent cases whose searches require probable cause are founded in *Carroll*, and those which occur incident to a lawful arrest trace back to *Belton*. *See infra* notes 160-213 and accompanying text for a full discussion of the kinds of probable cause required by the two lines of cases.

[42] United States v. Carroll, 267 U.S. 132 (1925). Several cases followed *Carroll* which relied on its mandate that probable cause must exist to conduct a warrantless search of a vehicle. *See, e.g.*, United States v. Ross, 456 U.S. 798, 804-09 (1982) (engaging in a lengthy analysis of *Carroll* and stating that *Carroll*'s applicability only to vehicle searches which are supported by probable cause forms the context within which *Ross* was decided); California v. Acevedo, 500 U.S. 565, 569-81 (1991) (discussing *Ross*'s foundation in *Carroll* and that the *Acevedo* decision is rooted in both of these cases which permit warrantless vehicle searches, given the presence of probable cause). *See also* 3 CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE CRIMINAL § 668 (2d ed. 1999) (stating that an automobile's ready mobility creates a heightened risk that valuable evidence will be lost or destroyed while an officer obtains a warrant); SINGER & HARTMAN, *supra* note 10, at 258 (noting that in *Ross*, the Court relied on *Carroll* as precedent); SINGER & HARTMAN, *supra* note 10, at 262 (acknowledging the existence of the *Carroll* line of cases and providing a circumstance in which it is applicable).

[43] Michigan v. Long, 463 U.S. 1032 (1983); Robbins v. California, 453 U.S. 420 (1981). *See also* DEL CARMEN, *supra* note 15, at 233 (stating that searches conducted incident to a lawful arrest are valid, even in the absence of probable cause).

[44] *See, e.g.*, California v. Acevedo, 500 U.S. 565 (1991); Michigan v. Long, 463 U.S. 1032 (1983); United States v. Ross, 456 U.S. 798 (1982); New York v. Belton, 453 U.S. 454 (1981); Robbins v. California, 453 U.S. 420 (1981); United States v. Carroll, 267 U.S. 132 (1925).

[45] *See, e.g., Acevedo*, 500 U.S. at 569 (discussing *Carroll*'s holding, which established the vehicle exception to the warrant requirement); *Ross*, 456 U.S. at 799-800 (upholding and expanding the *Carroll* doctrine).

[46] United States v. Carroll, 267 U.S. 132 (1925). *Carroll* concerned alcohol illegally transported in an automobile during the Prohibition Era, in violation of the National Prohibition Act. *Id.* at 134. Three federal prohibition agents "set up" George Carroll and co-defendant John Kiro by arranging a purchase of alcohol. *Id.* at 134-35. The defendants failed to appear at the pre-arranged location. *Id.* at 135. Three months later, the agents stopped and searched Carroll and Kiro's Oldsmobile roadster when they spotted it on the highway during a routine patrol. *Id.* They suspected that it carried illegal alcohol, and their prior interaction with these men and this vehicle formed the requisite probable cause. *Id.* at 135-36. *See also* LESTER BERNHARDT ORFIELD, CRIMINAL PROCEDURE FROM ARREST TO APPEAL 42-43 (1947) (noting that *Carroll* permits a search of the immediate surroundings of the arrested person, such as the vehicle in which the arrestee is found). Also, it is interesting to note that the vehicle exception to the warrant requirement was created seventeen years after Henry Ford began manufacturing an affordable automobile, the

to search a car without a warrant, provided probable cause exists to suspect that the car's occupants are transporting illegal goods at the time of the search.[47] The requisite probable cause to search consists of a belief that the vehicle is carrying contraband or evidence of a crime.[48] The vehicle's mobility creates the requisite exigent circumstance.[49] The Supreme Court reasoned that since a vehicle can quickly and easily be moved from one jurisdiction to another, the police must be able to search it without engaging in the time-consuming process of obtaining a warrant.[50] Any time lost prior to the search may result in complete loss

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Model T. 14 ENCYCLOPAEDIA BRITANNICA 775 (15th ed. 1992) (stating that Ford first produced the Model T in 1908). While various European manufacturers developed the automobile decades before Ford, Ford's innovations led to the proliferation of cars and made owning an automobile feasible for more than just the upper class. *Id.* at 772-75; 1 ENCYCLOPAEDIA BRITANNICA 727 (15th ed. 1992).

[47] *Carroll*, 267 U.S. at 153, 158-59 (stating that officers do not need a warrant to legally search a vehicle for concealed, illegally transported goods provided probable cause for that belief exists). The right to search and the seizure's validity both depend on the officer's reasonable cause for believing that the automobile contains illegal items. *Id.* The Court noted that probable cause sufficient to support a legal search requires more than mere good faith. *Id.* at 161-62. The officer's good faith must be supplemented by factual knowledge that makes the faith reasonable. *Id.* In making this decision, the Court deemed the common law rule inapplicable in such circumstances. *Id.* at 156-57. At common law, a police officer possessed the authority to arrest a person the officer reasonably believed to have committed a felony without a warrant. *Id.* In contrast, an officer could effect a warrantless arrest of someone who committed a misdemeanor only if the misdemeanor was committed in the officer's presence. *Id.* The Supreme Court rejected this common law approach, because under the common law rule the alcohol could only be seized if it were detected from its concealed position in the car, as the auto quickly drove past the officers. *Id.* at 157. Given the absurdity of such a requirement, the Court held that the common law approach did not apply in the automobile context. *Id.* *See generally* SINGER & HARTMAN, *supra* note 10, at 254 (discussing the facts and reasoning discussed in *Carroll*).

[48] *Carroll*, 267 U.S. at 162 (holding that the facts and circumstances known to the officers sufficiently warranted a reasonable man to believe that the defendants transported alcohol in the vehicle to be searched). *See* Klein, *supra* note 32, at 942. *See generally* SINGER & HARTMAN, *supra* note 10, at 254 (stating that the officers' actions in *Carroll* were justified basesd on the ambulatory nature of the automobile).

[49] *Carroll*, 267 U.S. at 153. *See* Adams, *supra* note 1, at 841 (stating that *Carroll* suggested that a long-standing distinction exists between searching a store or dwelling and searching a mode of transportation). Adams also asserts that the Court applied the exigent circumstances analysis to the reasonableness clause of the Fourth Amendment, relying on the vehicle's mobility to create the exigent circumstance. *Id.* at 839. *See also* SINGER & HARTMAN, *supra* note 10, at 254 (asserting that the vehicles are mobile and thus may be searched without a warrant, while homes are stationary and thus a warrant must be obtained before a valid house search may be conducted).

[50] *Carroll*, 267 U.S. at 153. *See* Adams, *supra* note 1, at 839 (stating that the vehicle can be quickly moved from the jurisdiction while the police obtain a warrant and that this possibility justifies the exception to the warrant requirement). *See also* SINGER & HARTMAN, *supra* note 10, at 254 (stating that an automobile's ambulatory nature requires creating an exception to the warrant requirement).

of the ability to search the vehicle and to seize any illegal goods it may contain.[51] Based on this reasoning, the Court created the automobile' exception.[52] The Court thus laid the foundation for future vehicle searches, requiring probable cause but not a search warrant to lawfully search a vehicle .[53]

In 1969, the Supreme Court expanded the scope of reasonable warrantless searches to include those made incident to a full custody arrest, thus creating the second area where warrantless vehicle searches are constitutional.[54] In *Chimel v. California*,[55] the Court held that the person of an arrestee and the area within his immediate control could

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[51] *See generally* Carroll v. United States, 267 U.S. 132 (1925) (asserting generally that to require a warrant in such situations would unduly frustrate the function of police officers, namely to effectively enforce the laws). Because the vehicle's mobility places it in unique circumstances, cars are treated differently in Fourth Amendment jurisprudence. *Id.* at 153. *See* Adams, *supra* note 1, at 835. *See also* SINGER & HARTMAN, *supra* note 10, at 254 (noting that a car may easily exit the county before law enforcement can obtain a warrant).

[52] *Carroll*, 267 U.S. at 153 (holding that the police may conduct warrantless searches of a vehicle in some circumstances). *See also* Gillespie, *supra* note 35, at 2 (stating that the Court initially fashioned the automobile exception to the warrant requirement during Prohibition).

[53] *Carroll*, 267 U.S. at 153, 159-61. *See, e.g.*, California v. Acevedo, 500 U.S. 565, 569-81 (1991) (stating that *Ross* and *Carroll* form the foundation for the *Acevedo* decision); United States v. Ross, 456 U.S. 798, 804-09 (1982) (stating that *Ross* is founded in the *Carroll* doctrine).

[54] *See* New York v. Belton, 453 U.S. 454 (1981) (holding that warrantless searches of the area immediate within an arrestee/driver's control, namely the entire passenger compartment, are constitutional); Chimel v. California, 395 U.S. 752, 768 (1969) (holding that the area within an arrestee's immediate control may constitutionally be searched without a search warrant). *See also* Craig M. Bradley, *Two Models of the Fourth Amendment*, 83 MICH. L. REV. 1468, 1478 n.67 (1985) [hereinafter Bradley, *Two Models*] (stating that the *Chimel* decision constitutes the definitive statement of the scope of searches incident to arrest); Robert R. Rigg, *The Objective Mind and "Search Incident to Citation,"* 8 B.U. PUB. INT. L.J. 281, 287 (1999) (discussing *Chimel* and searches incident to arrest).

[55] 395 U.S. 752 (1969). *Chimel* required the Court to determine whether searches incident to a lawful, full-custody arrest received constitutional protections. *Id.* This case concerned the permissible scope of a search incident to a lawful arrest, and the area in question was the defendant's home. *Id.* at 753. After being arrested in his home for burgularizing a coin shop, Chimel refused to consent to a search of his home. *Id.* The police informed him that on the basis of his lawful arrest, they could search in the absence of a search warrant. *Id.* at 753-54. The officers searched the entire three-bedroom home, including the garage, attic, and small workshop. *Id.* The Court disagreed with this wide search scope, and limited the permissible search area to the area within the arrestee's immediate control at the time of the arrest. *Id.* at 768. *See also* SINGER & HARTMAN, *supra* note 10, at 240 (explaining the facts of *Chimel* in detail); Bradley, *Two Models*, *supra* note 54, at 1478 (discussing the events which transpired in *Chimel*); Rigg, *supra* note 54, at 287 (explaining that the officers chose to execute the search warrant while the defendant was in his home).

reasonably be searched.[56] The Court provided two justifications for this expansion.[57] First, a concern for officer safety compelled the Court to permit the search of any area from which the arrestee may reasonably obtain a weapon, namely his person and the area within his immediate control.[58] Second, the Court recognized the high value of preserving evidence found in the area within the arrestee's control which could be tainted or destroyed if not immediately discovered.[59] Any area outside of the arrestee's immediate control, however, was deemed impermissible to search without a warrant.[60]

In 1981, police officers gained the ability to search the driver's person, the area within his or her control, and the car's passenger compartment in *Belton*, thus establishing the doctrine permitting vehicle searches incident to full-custody arrests.[61] In *Belton*, the Court applied

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[56] *Chimel*, 395 U.S. at 768 (holding that the permissible search area included only the arrestee's person and the area from within which he may have reached evidence that could have been destroyed or used to threaten the officer's safety). *See also* SINGER & HARTMAN, *supra* note 10, at 239-41 (noting that the Court in *Chimel* adopted the "wingspread rule," permitting the police to search only that area in which the arrestee could possibly reach by spreading his or her arms).

[57] *Chimel*, 395 U.S. at 762-63 (implying that either reason alone would have been sufficient to justify a search of the defendant's person and the area within his immediate control). *See also* Rigg, *supra* note 54, at 287 (explaining the Court's reasons for its decision); Visser, *supra* note 9, at 1693 (describing the Court's reliance on two justifications for its decision).

[58] *Chimel*, 395 U.S. at 762-63 (noting, however, that these two justifications do not extend to a routine search of an entire home incident to a lawful arrest). According to the *Chimel* Court, searching an entire home requires a search warrant. *Id.* at 763. *See also* SINGER & HARTMAN, *supra* note 10, at 240 (stating that forbidding the officers to conduct any search at all could place their lives in jeopardy).

[59] *Chimel*, 395 U.S. at 763 (explaining that the preservation of any potentially destructible evidence within Chimel's immediate control outweighs any other restriction). *See also* Rigg, *supra* note 54, at 287.

[60] *Chimel*, 395 U.S. at 760. In *Chimel*, the police arrested the defendant in his home. *Id.* at 753. The arresting officers proceeded to search the entire house, not just the area in which the arrest occurred. *Id.* The Supreme Court held that only the particular area in which the police arrested Mr. Chimel could be reasonably searched without a warrant. *Id.* at 768. Searching any other area of the home was improper, given the Court's justifications. *Id. See generally* Rigg, *supra* note 54, at 287.

[61] New York v. Belton, 453 U.S. 454, 460 (1981) (stating that when a police officer effects a lawful, custodial arrest of an automobile's occupants, that officer may search the entire passenger compartment) In addition, the search and ensuing privacy invasion was justified by the lawful custodial arrest, not by a lack of privacy interest in the container. *Id.* at 461. In *Belton*, the police required four passengers to exit the vehicle in which they were riding. *Id.* at 455-56. After the police spotted a wrapper marked "Supergold," often used to make marijuana cigarettes, the officer conducted a search of the interior of the car and discovered marijuana. *Id.* at 456. He also found cocaine in one of the pockets of a leather jacket within the vehicle. *Id.* *See also* Klein, *supra* note 32; Visser, *supra* note 9, at 1694

and extended the logic behind its reasoning in *Chimel*.[62] Since the search in *Belton* occurred incident to a full custody arrest, officers were empowered to conduct searches in the absence of either a warrant or general probable cause unrelated to the arrest.[63] The Court expanded the area in the driver's immediate control, specifically the entire passenger compartment, to include any open or closed containers within the car.[64] The lawful custodial arrest independently creates the probable cause to search the vehicle, and justifies the vehicle search as well as any privacy infringement that may ensue in the interest of protecting the officer's safety.[65] Together, *Chimel* and *Belton* resulted in the police's ability to search the driver's person, the car's passenger compartment, and its contents when conducting a full custody arrest during a traffic stop.[66] *Chimel* and *Belton* form the foundation for later cases that require neither a warrant nor independently-generated probable cause to conduct a legal vehicle search, commonly known as the *Belton* doctrine.[67]

B. *The Expansion of the Exception to the Warrant Requirement: Impact Upon Passengers' Rights*

The Supreme Court expanded the *Carroll* automobile exception to the warrant requirement to affect certain aspects of passengers' rights.[68]

(explaining that the Court's holding that the police can permissibly search the entire passenger compartment of a vehicle incident to arresting its occupants).

[62] Chimel v. California, 395 U.S. 752 (1969); *Belton*, 453 U.S. at 457-61. *See* SINGER & HARTMAN, *supra* note 10, at 256 (stating that the *Belton* Court applied the *Chimel* doctrine to automobiles).

[63] *See Belton*, 453 U.S. at 460; DEL CARMEN, *supra* note 15, at 233.

[64] In describing why it opted to expand the search ability of police officers, the Court explained that "articles inside the relatively narrow compass of the passenger compartment of an automobile are in fact generally, even if not inevitably, within 'the area into which an arrestee might reach in order to grab a weapon or evidentiary ite[m].'" *Belton*, 453 U.S. at 460 (*quoting* Chimel v. California, 395 U.S. 752, 763 (1969)). *See also* J. Tim Thomas, *Belton Is Not Welcome: Idaho's Rejection and Subsequent Adoption of the Belton Rule in* State v. Charpentier, 35 IDAHO L. REV. 125, 134 (1999) (asserting that the area of the passenger compartment includes any containers within the vehicle, open or closed, locked or unlocked).

[65] *Belton*, 453 U.S. at 462-63. *See generally* Visser, *supra* note 9, at 1694-95 (noting that the need to secure weapons and evidence justified the search).

[66] *See Belton*, 453 U.S. at 459-60. *Cf.* Chimel v. California, 395 U.S. 752 (1969). *See also* Visser, *supra* note 9, at 1693-95 (discussing *Belton* Court's reliance on the holdings in *Chimel* and *Belton*).

[67] *See* Michigan v. Long, 463 U.S. 1032 (1983); Robbins v. California, 453 U.S. 421 (1981).

[68] *See* Wyoming v. Houghton, 526 U.S. 295 (1999); Maryland v. Wilson, 519 U.S. 408 (1997); Pennsylvania v. Mimms, 434 U.S. 106 (1977). *See also* SINGER & HARTMAN, *supra* note 10, at 224 (stating that traffic arrests constitute one of the areas into which the *Terry* reasoning was expanded).

Pennsylvania v. Mimms[69] formed the foundation for later decisions implicating passengers' rights.[70] *Mimms*, a 1977 decision, addressed whether police officers could compel the driver of a vehicle to exit the car when the officers possessed probable cause to pull the car over.[71] The Court explained that a constant concern with the reasonableness, under all circumstances, of the government intrusion into a citizen's personal security constructs the framework for its Fourth Amendment analyses.[72] The Court pronounced that the appropriate balancing test weighs the public interest in officer safety against the individual's right to be free from arbitrary police interference.[73]

The public interest involved in *Mimms*, officer safety, greatly outweighed the private interest.[74] The other side of the balancing test required the Court to consider the individual's rights being jeopardized.[75] Because the vehicle had already been lawfully stopped in this situation, simply requesting that the driver exit the car constituted a

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[69] 434 U.S. 106 (1977).

[70] Wyoming v. Houghton, 526 U.S. 295, 304-05 (1999); Maryland v. Wilson, 519 U.S. 408, 411-12 (1997). *See* Visser, *supra* note 9, at 1691-92.

[71] *Mimms*, 434 U.S. at 109. *Mimms* concerned a driver lawfully detained due to his expired license plate. *Id.* at 107. After the driver exited the vehicle the two officers noticed a bulge in his jacket. *Id.* The search which ensued resulted in the seizure of a .38 caliber gun from Mr. Mimms' possession. *Id. Mimms* is seen as an example of the police naturally attempting to stretch the *Terry* stop and frisk test to its limits. SINGER & HARTMAN, *supra* note 10, at 224-25 (asserting that the Court relied heavily on *Terry* when deciding to expand the stop and frisk test in *Mimms*). *See also* O'BRIEN, *supra* note 10, at 835 (noting that the bulge in the driver's pocket led the officer to conduct the patdown); DEL CARMEN, *supra* note 15, at 120 (noting that *Mimms* permits the police to order the driver out of the car following a routine traffic stop, even in the absence of a reasonable suspicion that the driver threatens officer safety). *See also* Visser, *supra* note 9, at 1691 (noting that after a legitimate stop, the officer may conduct a protective search of the driver).

[72] *Mimms*, 434 U.S. at 108-09 (*quoting* Terry v. Ohio, 392 U.S. 1, 19 (1968)).

[73] *Mimms*, 434 U.S. at 109 (*quoting* United States v. Brignoni-Ponce, 422 U.S. 873 (1975)). *See* Bradley, *Protection*, *supra* note 36, at 85 (discussing the balancing test employed).

[74] *Mimms*, 434 U.S. at 110-11 (noting that "it [was] 'too plain for argument' that th[e] state's proffered justification—officer safety—is both 'legitimate and weighty'"). The Court noted that merely standing next to the driver's door, in the path of oncoming traffic, placed the officer at an "appreciable" risk of danger). *Id.* The Court also emphasized the importance of preserving officer safety in *Michigan v. Long*, 463 U.S. 1032 (1983). *See also* Bradley, *Protection*, *supra* note 36, at 85 (discussing that the danger to the officer easily outweighed the minimal intrusion to the driver); SINGER & HARTMAN, *supra* note 10, at 225 (stating that extending the *Terry* stop and frisk doctrine to a vehicle as well as one's person protects the officer from what could be a very grave threat to his or her safety); Visser, *supra* note 9, at 1691-92 ("[T]he justification for the driver search is to protect the officer.").

[75] *Mimms*, 434 U.S. at 111; SINGER & HARTMAN, *supra* note 10, at 224 (noting that intrusion upon an individual's rights constitutes one side of the balance considered by the Court).

slight interference at the most.[76] The Court thus recognized for the first time that asking the driver to exit the car did constitute a brief invasion into the driver's personal liberty, but that this minimal intrusion was acceptable, given the circumstances.[77] The concerns for officer safety outweighed the minimal intrusion into the driver's individual rights, thus justifying the police request.[78]

In the 1997 case *Maryland v. Wilson*,[79] the Supreme Court applied the *Mimms* logic and extended police officers' authority to include demands that passengers exit a vehicle.[80] The Court directly implicated passengers' rights for the first time.[81] The Court held that an officer making a traffic stop could order the passengers to exit the car, pending completion of the stop.[82] The *Mimms* Court held that the police possess the authority to order people, namely drivers, out of a car; *Wilson* extended that ability to vehicle passengers.[83] The authority to make the

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[76] *Mimms*, 434 U.S. at 111 (categorizing the request as a "mere inconvenience"). *See also* Visser, *supra* note 9, at 1691-92 (stating that the protective search is reasonable).

[77] *Mimms*, 434 U.S. at 111 (calling the intrusion "de minimis"). *See also* MICHELE G. HERMANN, SEARCH AND SEIZURE CHECKLISTS, 3E, 10E, 10F (1992 ed.) (excerpting *Mimms* as a leading case permitting some restrictions on freedom of movement and also as supporting the police's authority to take reasonable actions to protect themselves after lawfully stopping a motor vehicle).

[78] *Mimms*, 434 U.S. at 111; SINGER & HARTMAN, *supra* note 10, at 224 (stating that in *Mimms*, the Court stressed the minimal intrusion upon the driver and the protection this holding afforded police officers).

[79] 519 U.S. 408 (1997).

[80] Maryland v. Wilson, 519 U.S. 408, 410-11 (1997). In *Wilson*, the police pulled over the car in which passenger Mr. Wilson traveled, because the driver exceeded the speed limit. *Id.* Wilson's apparent nervousness made the officers suspicious, and Officer Hughes ordered Wilson out of the car. *Id.* at 411. Upon exiting the car, cocaine fell to the ground. *Id.* The officers charged him with possession of cocaine with intent to distribute. *Id.* This case concerned his motion to suppress the cocaine as evidence obtained illegally. *Id. See also* Visser, *supra* note 9, at 1725 (discussing the facts of *Wilson* in detail and stating that in *Wilson*, the Court revisited *Mimms* and determined whether its rationale was equally applicable when the commands were directed at the passenger instead of the driver).

[81] *Wilson*, 519 U.S. at 410, 413 n.1 (holding that the *Mimms* rule permitting police officers to order the driver out of a vehicle as a matter of course extends to passengers as well). *See also* Pennsylvania v. Mimms, 434 U.S. 1066 (1977).

[82] *Wilson*, 519 U.S. at 415 (holding that an officer making a traffic stop may order passengers out of the car until the stop is completed). *See also* J. Ketscher, *Constitutional Law – The United States Supreme Court Holds That Police Officers May Order Passengers Out of a Lawfully Stopped Vehicle Without Reasonable Suspicion of Criminal Activity*, 33 LAND & WATER L. REV. 715, 722-23 (1998); David G. Savage, *Privacy Rights Pulled Over*, A.B.A. J., June 1999, at 42, 44.

[83] *Wilson*, 519 U.S. at 412. Maryland argued that this issue was decided previously in *Michigan v. Long*. *Id.* In that case, the Court indicated that *Mimms* permitted the police to order persons out of an automobile during a stop for traffic violations. Michigan v. Long, 463 U.S. 1032, 1047-48 (1983). In *Long*, the Court took the stop and frisk doctrine further,

passengers exit the car stemmed from the minimal nature of the intrusion upon them.[84] The Court again relied on officer safety to justify its decision.[85] The presence of passengers in the vehicle heightened the jeopardy to police officer safety.[86] Forcing the passengers to wait outside of the car denies them access to any possible weapons that may be stored within the car.[87] The Court based its opinion in part on passengers' equal tendency to utilize violence as a means to prevent the discovery of another more serious crime.[88]

Additionally, the Court acknowledged that the personal liberty side of the balancing test weighed heavier for passengers than for drivers.[89]

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permitting a valid search to occur even when the police do not observe a bulge in a driver's jacket. *Id.*; SINGER & HARTMAN, *supra* note 10, at 225. However, the search authorized by *Long* should be limited to areas in the passenger compartment where a weapon may be found or hidden. DEL CARMEN, *supra* note 15, at 121. The Court used the opportunity presented in *Wilson* to uphold *Mimms*, enunciate a bright-line test, and decide the issue clearly. *Wilson*, 519 U.S. at 412-15. The Court acknowledged that it usually eschews bright-line tests in the Fourth Amendment context. *Id.* at 413, n.1. However, it stated that *Mimms* drew a bright line, and that the principles applied in that decision apply to passengers as well. *Id.* The bright-line rule enunciated in *Wilson* permitted officers to order passengers to exit the car pending completion of the traffic stop. *Id.* at 415. *See also* Ketscher, *supra* note 82, at 721-22 (discussing the Court's holding in *Wilson*).

[84] *Wilson*, 519 U.S. at 414-15 (observing that since the passengers were already being detained, ordering them out of the car changes their circumstances very little as a practical matter). *See also* Ketscher, *supra* note 82, at 722-24 (discussing the minimal nature of the intrusion the request places on the passenger and explaining that ordering the passengers out constitutes a mere byproduct of the stop); Visser, *supra* note 9, at 1726 (reiterating the Court's language explaining that the additional intrusion upon the passenger in this case is minimal).

[85] *Wilson*, 519 U.S. at 413 (noting that officers were assaulted five thousand six hundred seventy two times during traffic stops in 1994, and that eleven stops resulted in officer death). *See also* Chimel v. California, 395 U.S. 752, 763 (1969) for a discussion of the high value the Court places on officer safety in another context; Visser, *supra* note 9, at 1725-26 (discussing the balancing test the Court used in making its decision which weighed officer safety against the passenger's Fourth Amendment rights).

[86] *Wilson*, 519 U.S. at 414; Ketscher, *supra* note 82, at 721-23 (discussing the officer safety justification relied on by the Court)

[87] *Wilson*, 519 U.S. at 414. The Court also noted that a routine speeding violation stop would not likely lead to a violent encounter. *Id.* However, the possibility of having evidence of a more serious crime within the vehicle may lead to a more violent reaction. *Id. See also* Ketscher, *supra* note 82, at 721-23.

[88] *Wilson*, 519 U.S. at 414. "The motivation of a passenger to employ violence to prevent apprehension of such a crime is every bit as great as that of the driver." *Id.*

[89] *Id.* at 413. Also, "the right of privacy is not absolute; it is relative" to the degree of the search of the place being searched and the person conducting the search. ROSSOW & STEFKOVICH, *supra* note 29, at 3. *See also* Ketscher, *supra* note 82, at 725 (explaining that the Court directly applied the *Mimms* balancing test to passengers, even though it acknowledged that the passenger's interests are stronger than those of the driver).

Probable cause gives police the authority to stop the vehicle and detain the driver.[90] Usually, no such justification for detaining or stopping the passengers exists.[91] Passengers are necessarily detained when the police stop the car in which they are riding.[92] The Court commented, however, that only a minimal intrusion resulted from this temporary detainment.[93] The Court held that an officer conducting a legitimate *Carroll* traffic stop may order passengers to exit the car.[94]

The Court further implicated passengers' rights in its 1999 decision *Wyoming v. Houghton*.[95] The *Houghton* Court held that passengers' property left within the vehicle falls within the permissible *Carroll* warrantless search scope.[96] Because probable cause to search the vehicle existed, the police constitutionally searched the passenger property left inside the car without a warrant.[97] To make its determination, the Court again applied the *Mimms* balancing test and weighed the public interest

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[90] *Wilson*, 519 U.S. at 413 (discussing the definite existence of probable cause to stop the automobile). *See also* Visser, *supra* note 9, at 1725-26.

[91] *Id.* at 413 (acknowledging that probable cause exists to believe that the driver committed a minor vehicular offense, but that no such probable cause exists for the passengers). *See also* Visser, *supra* note 9, at 1726.

[92] *Wilson*, 519 U.S. at 413-14 (noting that traffic stops necessarily and unavoidably detain the passengers as well as the driver). *See also* Ketscher, *supra* note 82, at 725 (discussing the inevitable nature of the detention of passengers).

[93] *Wilson*, 519 U.S. at 413-14 (stating that, while probable cause to stop passengers does not exist, asking them to exit the vehicle constitutes a minimal further intrusion). *See also* Visser, *supra* note 9, at 1725-26 (stating that the additional intrusion upon the passengers was minimal).

[94] *Wilson*, 519 U.S. at 415 (stating the Court's holding). *See also* Visser, *supra* note 9, at 1725 (acknowledging that through the *Wilson* holding, the *Mimms* bright-line rule extended to passengers).

[95] 526 U.S. 295 (1999). In *Houghton*, police officers pulled over Mr. Young's vehicle for speeding and asked the two passengers, including Houghton, to exit the vehicle. *Id.* at 297-98. After discovering drug paraphernalia on Mr. Young, the police asked Ms. Houghton her name and she falsely identified herself. *Id.* at 298. She told the police that the purse left in the car was hers only after they discovered identification within it. *Id.* During their search they also found drug paraphernalia in her purse. *Id.* The defense unsuccessfully challenged the admissiblity of the items found within her purse. *Houghton*, 526 U.S at 299. *See also* Leonard N. Niehoff, *The Contraband You Keep*, 78 MICH. B.J. 720 (1999) (stating that *Houghton*'s facts read like a law school examination); Savage, *supra* note 82, at 42 (providng a summary of the facts in *Houghton*).

[96] *Houghton*, 526 U.S. at 307 (holding that police officers with probable cause to search a car may examine passengers' belongings left within the car, as long as the items are capable of concealing the object of the search). *See also* Adams, *supra* note 1, at 843 (discussing the Court's holding in *Houghton*); Savage, *supra* note 82, at 42 (stating that the Court's decision clearly permits a warrantless search of passenger property left within the vehicle).

[97] *Houghton*, 526 U.S. at 307 (holding that the existence of probable cause created a valid warrantless search). *See also* Savage, *supra* note 82, at 42.

against the individual rights at stake.[98] The officers' justification for searching the passenger's purse in this case rested on the probable cause generated by the discovery of illegal contraband on the driver's person.[99] *Carroll* searches have long included containers within the vehicle, and *Houghton* made clear that it is irrelevant whether the driver or passenger actually owns the items in question.[100] Through *Houghton*, the police gained the ability to search a passenger's property left within a lawfully stopped vehicle when the police order the car's occupants out of the vehicle.[101]

Under the Carroll doctrine, vehicles may be searched without a warrant provided the officer has probable cause to believe that a crime connected item or items are within the car. [102] Belton searches, by contrast, occur incident to a full-custody arrest and thus are supported by both the probable cause to effectuate the arrest and the strong interest in protecting officer safety.[103] To determine the extent to which the Court may extend the logic used to determine passengers' rights, several problems with the current analysis must be analyzed and discussed.[104]

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[98] *Houghton*, 526 U.S. at 299-300 (noting that the proper inquiry involves "traditional standards of reasonableness . . . the degree to which it intrudes upon an individual's privacy and . . . the degree to which [the search] is needed for the promotion of legitimate governmental interests").

[99] *Id. See also* Craig M. Bradley, *Whittling Away the Search Warrant Requirement*, TRIAL, June, 1999 at 85 [hereinafter Bradley, *Whittling Away*] (discussing the probable cause generated by the discovery of a syringe on the driver's person); Linda Greenhouse, *Search of Car Passenger's Belongings Upheld*, LEXINGTON HERALD-LEADER, Apr. 6, 1999, at A3 (stating that the requisite probable cause existed, because of the syringe the police saw in the driver's shirt pocket); Savage, *supra* note 82, at 43.

[100] *Houghton*, 526 U.S at 300-02. The *Houghton* Court relied heavily on *United States v. Ross*. *Houghton*, 526 U.S. at 300-01; United States v. Ross, 456 U.S. 798, 820 (1982). *Ross* failed to recognize a distinction based on ownership, and the Court used that rationale to further justify its decision in *Houghton*. *Houghton*, 526 U.S. at 300-01; *Ross*, 456 U.S. at 824. *See also* Savage, *supra* note 82, at 42 (noting that the Court rejected an individualized general passenger property exception and explaining the three dissenting Justices' opposition to that decision).

[101] *Houghton*, 526 U.S at 307. *See also* Savage, *supra* note 82, at 42 (discussing the reasoning and potential ramifications of the Court's decision); Adams, *supra* note 1, at 843 (discussing the Court's holding in *Houghton*); Gillespie, *supra* note 35, at 18 (stating that *Houghton* demonstrated the Court's willingness to stretch bright-line rules).

[102] *See supra* notes 105-213 and accompanying text for an analysis of the history of the *Carroll* doctrine.

[103] *See supra* notes 61-67 and accompanying text for a discussion of the *Belton* doctrine.

[104] *See infra* notes 105-213 and accompanying text for a discussion of the flaws in the Court's current reasoning and the illogical application of the reasoning to taxicab passengers.

III. LEGAL ANALYSIS: FLAWS IN THE CURRENT STATUS OF ANALYZING VEHICLE PASSENGERS' RIGHTS

"The word 'automobile' is not a talisman in whose presence the Fourth Amendment fades away and disappears."[105]

"[T]he Fourth Amendment protects people, not places."[106]

This Section analyzes several aspects of the Supreme Court's current foundations for analyzing warrantless vehicle searches.[107] First, it examines two assumptions upon which the Court's *Carroll* doctrine consistently relies: a failure to recognize a distinction based on ownership to determine an item's "searchability", as well as an assumption of cooperation between the driver and passenger to conceal illegal items within the car.[108] However, these *Carroll* assumptions are inapplicable to an analysis of taxicab passengers' rights, because they do not logically pertain to the specific taxicab context.[109] Second, this Section discusses the types of probable cause which is currently required to validly search a vehicle passenger's property.[110] The Court presently applies the *Carroll* line of cases to situations involving vehicle passengers.[111] However, the analysis would likely yield a different result if the Court were to analyze taxicab passengers' rights under the *Belton* doctrine, which requires a different kind of probable cause to validate the search: that generated by a full custody arrest.[112] Deciding taxicab passengers' rights under *Belton* would also maximize the privacy rights

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[105] Rigg, *supra* note 54, at 281 (quoting Coolidge v. New Hampshire, 403 U.S. 443, 461-62 (1971)).

[106] Katz v. United States, 389 U.S. 347, 351 (1967); *see also* Daniel A. Farber, *The Misleading Nature of Public Forum Analysis: Content and Context in First Amendment Adjudication*, 70 VA. L. REV. 1219, 1234-35 (1984).

[107] *See generally infra* notes 107-213 and accompanying text for a discussion of these foundations.

[108] *See generally infra* notes 113-53 and accompanying text for an analysis of these two assumptions.

[109] *See infra* notes 154-59 and accompanying text for an explanation of how these assumptions render the *Carroll* doctrine inapplicable to taxicab passengers.

[110] *See infra* notes 160-213 and accompanying text for an analysis of the role of probable cause.

[111] *See infra* notes 162-89 and accompanying text for a discussion of *Carroll*'s current applicability to warrantless vehicle searches.

[112] *See infra* notes 190-99 and accompanying text for an analysis of the type of probable cause required to conduct a valid *Belton* search.

implicated in warrantless vehicle searches.[113] This search ability should not be extended to taxicab passengers or their property.[114]

A. *Current Reliance on Two Assumptions Which are Inapplicable to Taxicab Passengers*

The Supreme Court's present warrantless vehicle search analysis is based on the *Carroll* doctrine and rests on two assumptions, neither of which is applicable to taxicab passengers.[115] First, the Court's opinions fail to acknowledge a distinction based on ownership when considering whether particular items of property inside the vehicle may be searched.[116] Second, the decisions assume that the driver and passenger wish to cooperate to conceal illegal evidence within the vehicle.[117] Potential reliance on these two assumptions to justify searching taxicab passengers and their property highlights a flaw in the current status of vehicle passengers' rights.

1. Lack of Distinction Based on Property Ownership

Currently, warrantless vehicle search and seizure jurisprudence fails to recognize a distinction based on property ownership when considering whether property may be searched, thus treating driver property and passenger property identically.[118] The Court's language in *Carroll* focused solely on the vehicle's driver when creating the vehicle exception to the warrant requirement and lacked consideration of the owner of the property.[119] From the language used by the Court, it can be inferred that the car's *owner* could demand the return of property wrongfully seized from an automobile, regardless of whether that person owned the property.[120] The *driver* was the only person entitled to its

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[113] *See infra* notes 200-13 and accompanying text for comment on the privacy concerns implicated.

[114] *See infra* notes 113-213 and accompanying text for a discussion of the different reasons the Court should create an exception for taxicab passengers and their property.

[115] *See generally infra* notes 114-59 and accompanying text for a detailed description of these two assumptions and their inapplicability to taxicab passengers.

[116] *See generally infra* notes 116-43 and accompanying text for an explanation of the Court's reliance on this failure to distinguish.

[117] *See generally infra* notes 145-53 and accompanying text for a discussion of this assumption of cooperation.

[118] *See* WRIGHT & MILLER, *supra* note 42, at § 668.

[119] *See* Carroll v. United States, 267 U.S. 132, 156 (1925) (stating that the vehicle's owner possesses the right to have illegally seized property, such as an automobile, returned). *See generally* SINGER & HARTMAN, *supra* note 10, at 254; Klein, *supra* note 32, at 939.

[120] *See Carroll*, 267 U.S. at 156 (stating that the car's driver had the right to have the property restored to him). *See also* SINGER & HARTMAN, *supra* note 10, at 254.

return, and the Court's reasoning failed to require any questioning regarding to whom the property belonged.[121] Rather, it assumed that the driver owned all property within the vehicle.[122]

Also, the Supreme Court mentioned that if the police discover illegal goods in a vehicle, the police should hold the car's *driver* responsible for possession of the contraband within the car, regardless of whether he or she owned it.[123] The Court again assumed that the driver owned all of the property within the vehicle and thus bore sole responsibility for it.[124] This assumption that the driver owned all of the car's contents demonstrates a disregard for the responsibility of the property's owner, either the driver or a passenger.[125] The Court never indicated that the owner of the illegal property could or must be arrested if neither the car owner nor the driver owned the property.[126] While a passenger may admit to owning the illegal property, the current analysis does not require inquiry into the property's ownership.[127] The Court failed to indicate whether the property's ownership bore any relation to the person to whom the property would be returned.[128] This failure to recognize a distinction based on ownership permeates the entire line of cases decided under the *Carroll* doctrine.[129]

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[121] *See Carroll*, 267 U.S. at 156 (asserting that the person in charge of the automobile could recover the seized property).

[122] *See id.* (failing to distinguish between multiple possible owners). *See also* SINGER & HARTMAN, *supra* note 10, at 254.

[123] *See Carroll*, 267 U.S. at 156 (stating that "the person in charge of the automobile" would be responsible for and could be arrested due to the presence of any illegal substances, such as liquor during Prohibition).

[124] *See generally Carroll*, 267 U.S. at 156 (utilizing "the person in charge of the automobile" language which precluded consideration of someone other than the driver owning the property).

[125] *See generally* Pennsylvania v. Mimms, 434 U.S. 106, 110-11 (1977); Visser, *supra* note 9, at 1691-92 (discussing *Mimms'* holding that the justification for the *driver* search is officer safety).

[126] *See generally* Carroll v. United States, 267 U.S. 132 (1925).

[127] *Id.* Not requiring such an inquiry has potentially dangerous consequences. For example, a hypothetical back seat passenger in a private vehicle could throw marijuana cigarettes into the front seat when the police pull the car over. The police could assume that the illegal drugs belong to the driver, even though they are the passenger's property. The driver's knowledge of the drugs in his car is irrelevant, because he may be held responsible for their presence in his vehicle.

[128] *See generally id.*; SINGER & HARTMAN, *supra* note 10, at 254 (discussing the Court's holding and reasoning).

[129] *See, e.g.*, California v. Acevedo, 500 U.S. 565 (1991) (furthering the *Carroll* doctrine and clearly basing its holding on *Ross* and *Carroll*); United States v. Ross, 456 U.S. 798 (1982) (building on the *Carroll* doctrine and expanding it without requiring a distinction based on

Several years later in *United States v. Ross*,[130] the Court again considered the constitutionality of searching a vehicle's contents, without considering to whom the contents belonged.[131] The Court analyzed whether police may examine the contents of closed containers found within a vehicle regardless of whether the driver or passenger owned them.[132] The object of the search and the locations in which the object may be found determined the scope of a warrantless search.[133] The nature of the container in which the object may be located is not considered.[134] This method of determining the scope of a search appropriately gives the police the authority to search closed containers within the vehicle, but it ignores the possible relevance of the property's ownership.[135] Similar search authority presently exists for all open and closed containers found within a vehicle, and no inquiry into a

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ownership); Carroll v. United States, 267 U.S. 132 (1925) (creating the vehicle exception to the warrant requirement without requiring a distinction based on ownership).

[130] 456 U.S. 798 (1982).

[131] *Ross*, 456 U.S. at 816-24 (holding that police officers who legitimately stop a car and possess probable cause to believe that illegal goods are hidden within the car may search the vehicle to the same extent as if a warrant had been issued to authorize the search). In *Ross*, an informer told the police that "Bandit" sold narcotics from the trunk of his car. *Id.* at 800. The informer described where the vehicle was parked, the defendant's appearance, and the car's appearance. *Id.* The police arrived at the location, ordered the defendant out of the car described by the informer, and found a bullet and a pistol within the vehicle's passenger compartment. *Id.* at 801 Ross was arrested, and then the police took his keys and searched the trunk. *Id.* The trunk contained a large paper bag that contained several small bags of heroin. *Id* A later search of the vehicle resulted in the discovery of $3,200 in cash. *Id. Ross* is significant because it further defines the scope of police authority to search vehicles, and greatly expanded the scope of permissible warrantless vehicle searches, limiting them only by what is reasonable in consideration of the items sought. *Ross*, 456 U.S. at 816-24; DEL CARMEN, *supra* note 15, at 235; SINGER & HARTMAN, *supra* note 10, at 257-58.

[132] *Ross*, 456 U.S. at 816-24 (discussing the circumstances surrounding permissible searches of closed containers by the police). *See also* Bradley, *Two Models*, *supra* note 54, at 1476 (discussing the Court's holding and reasoning in *Ross*); Bradley, *Whittling Away*, *supra* note 99. *See also Search and Seizure*, *supra* note 34, at 257 (discussing the *Ross* decision). Justice Scalia assumed that the distinction based on ownership does not exist because such a "substantial limitation" was not expressed, as one would have expected if the Court wished to acknowledge such a distinction. *Id.* (quoting *Houghton*, 526 U.S. at 301).

[133] *Ross*, 456 U.S. at 824. *See also* SINGER & HARTMAN, *supra* note 10, at 258-59 (explaining that the Court distinguished *Ross* from earlier cases by asserting that the scope of a warrantless search is defined by the object of the search and the places in which probable cause exists to believe that it may be found).

[134] *Ross*, 456 U.S. at 824. *See also* Niehoff, *supra* note 95, at 720 (discussing that the Court's analysis does not take into account the kind of container in question, even if that item is a woman's purse); SINGER & HARTMAN, *supra* note 10, at 258-59 (explaining that the Court distinguished *Ross* from earlier cases by asserting that the nature of the container is irrelevant to determine whether it can be searched).

[135] *See* Ross v. United States, 456 U.S. 798 (1982).

container's ownership is required when conducting a valid warrantless search.[136]

More recently, the Supreme Court determined that the Fourth Amendment does not require police to obtain a warrant prior to searching a paper bag in a car trunk, again without acknowledging or requiring consideration of the property's ownership.[137] The Court relied heavily on its *Ross* decision.[138] The *Acevedo* decision focused primarily on whether the object in the trunk could be searched, and failed to make a possible distinction based on whether the driver owned the property.[139]

Recently, the Court expressly acknowledged that a distinction based on property ownership does not exist.[140] While the Court concluded that such a distinction is unnecessary when probable cause to search the vehicle exists, its opinion failed to recognize the vital importance of such

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[136] *See id.*; Bradley, *Two Models*, *supra* note 54, at 1476 (stating the Court's holding and discussing the police's ability to search open and closed containers).

[137] California v. Acevedo, 500 U.S. 565 (1991) (stating that the warrantless search of a paper bag found in an automobile trunk was permissible, because it was based on probable cause that the bag contained illegal drugs). *See also* DEL CARMEN, *supra* note 15, at 236 (stating that the police do not need a search warrant to search a container within a vehicle, even when they lack probable cause to search the whole car but possess probable cause to believe that only the container itself contains contraband or evidence). In *Acevedo*, the police conducted surveillance on an apartment in which they knew marijuana was present. *Acevedo*, 500 U.S. at 566-67. Mr. Acevedo entered the apartment, exited about ten minutes later carrying a paper bag, and put the bag in his car trunk. *Id.* at 567. The officers feared the loss of the evidence and pulled Mr. Acevedo over. *Id.* During the warrantless search of his car trunk the officers opened the closed paper bag and found marijuana in it. *Id.*

[138] *Acevedo*, 500 U.S. at 569-81 (discussing the Court's reasons for permitting the search and discussing *Ross* in particular detail). *See also* Gillespie, *supra* note 35, at 19 (discussing the Court's reliance on *Ross*).

[139] California v. Acevedo, 500 U.S. 565 (1991). *See* DEL CARMEN, *supra* note 15, at 237 (noting that *Acevedo*'s significance comes from it reversal of two prior cases addressing essentially the same issue, namely Arkansas v. Sanders and United States v. Chadwick). *See also* Arkansas v. Sanders, 442 U.S. 753 (1979) (stating the warrantless search of a closed container within a vehicle was unconstitutional when the police possessed probable cause to search the vehicle, but not the container); United States v. Chadwick, 433 U.S. 1 (1977) (permitting the police to seize movable luggage or other closed containers but not search them without a warrant, given an individual's heightened expectation of privacy in such containers, despite their presence in a car).

[140] Wyoming v. Houghton, 526 U.S. at 295, 301-02 (1999) (noting that neither *Ross* nor its historical evidence involved or required a distinction based on ownership). *See also* Gillespie, *supra* note 35, at 25 (stating that some critics suggest that *Houghton* represents a trend where traditional police power to enforce safety laws is quickly turning into license to freely search for drugs on the roadways); Savage, *supra* note 82, at 42 (discussing the Court's holding as well as the dissent's disapproval of failing to recognize a passenger property exception).

a differentiation in the context of taxicabs.[141] It is imperative that the Court create such a distinction to remedy such situations where failing to distinguish between the driver's property and passenger's property could lead to violations of taxicab passengers' constitutional rights.[142] The Supreme Court's repeated and constant refusal to acknowledge the importance of this issue illustrates one of the flaws in its considerations of vehicle passengers' rights.[143] The Court discussed why such a distinction lacks applicability to general vehicle passengers' rights, but taxicab passengers' rights can only be protected by acknowledging such a distinction.[144] Moreover, disregarding such a distinction for taxicab passengers heavily infringes upon their constitutional rights.[145]

2. Assumption of Cooperation Between Driver and Passenger

"Keep No Bad Company."[146]

The current analysis of vehicle passengers rights includes an assumption of cooperation between the car's driver and passengers.[147] The clearest example of this assumption is found in the Court's *Wilson* decision.[148] In its discussion of whether the *Mimms* rule enabling police

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[141] *See Houghton*, 526 U.S at 301-02. *See also* Niehoff, *supra* note 95 at 720-21 (noting that constitutional interpretation often develops through the honing of fine distinctions, such as the difference between a purse and a pocket, and the distinction between the purse you hang on your shoulder and the one you toss onto the seat next to you and leave there); Savage, *supra* note 82 at 42 (discussing the dissenting Justice's dissatisfaction with failing to recognize the differing interests of passengers); *Search and Seizure*, *supra* note 34, at 255 (stating that individualized probable cause is no longer required by the Court).

[142] *See, e.g.*, United States v. Woodrum, 202 F.3d 1 (1st Cir. 2000); Sykes v. Greenville, No. 4:99CV127-P-B, 1999 U.S. Dist. LEXIS 19637 (N.D. Miss. Dec. 10, 1999) (Mem. Op.). Both cases involve possible infringements upon taxicab passengers' rights. *Woodrum*, 202 F.3d at 6; *Sykes*, 1999 U.S. Dist. LEXIS 19637, at *2.

[143] *See* Wyoming v. Houghton, 526 U.S. 295 (1999); Savage, *supra* note 82, at 42 (explaining the Court's refusal to recognize a passenger property exception in *Houghton*).

[144] *See infra* notes 154-59 and accompanying text for a discussion of the manner in which taxicab passengers' rights may be implicated by failing to recognize such an ownership distinction.

[145] *See infra* notes 154-59 and accompanying text for an analysis of how taxicab passengers' constitutional rights are impacted by the current analysis of vehicle passengers' rights under the Fourth Amendment.

[146] Niehoff, *supra* note 95, at 720 (quoting King Charles I).

[147] *See generally* Maryland v. Wilson, 519 U.S. 408 (1997); Emilie F. Short, Annotation, *Conviction of Possession of Illicit Drugs Found In Automobile of Which Defendant Was Not Sole Occupant*, 57 A.L.R. 3D. 1319 (1999) (analyzing whether some or all passengers can be guilty of possession of drugs in an automobile when the car contains several people and there is no evidence that the drugs were discovered on the person of any of the passengers). *See also* Ketscher, *supra* note 82, at 722-23.

[148] *Wilson*, 519 U.S. at 413-14. *See also* Ketscher, *supra* note 82, at 722-23.

officers to order drivers out of their vehicles extended to passengers as well, the Court weighed the public interest against the personal liberty at stake.[149] In *Mimms* the public interest involved, officer safety, far outweighed the driver's interest.[150] The possibility of a violent encounter initiated by the driver justified the intrusions into the driver's personal liberty.[151] However, in *Wilson* the Court acknowledged that slightly different considerations exist when passengers' rights are involved.[152] The personal liberty portion of the balancing test involved passengers' private interests, and those interests are greater and require stronger protection than the driver's interests.[153] The Court asserted that the possibility of a violent encounter initiated by the passenger is just as great if not higher, because a passenger's motivation to prevent detection of a serious crime is just as great as the driver's motivation.[154] This crucial assumption that the passenger and driver share a common goal underlies the Court's opinion and contributed strongly to its decision.[155] While the unquestionable need for the officer safety justification exists, assuming a common purpose between driver and passenger overextends the logic necessary to uphold the justification.

3. Future Problem Involving Taxicabs: Questioning the Assumptions' Applicability to Taxicab Passengers

It is very likely that a future problem will arise concerning taxicabs that will question the validity of the two preceding assumptions.[156] First,

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[149] *Wilson*, 519 U.S. at 413-14 (discussing the balancing test employed). *See also* Ketscher, *supra* note 82, at 725 (explaining how the Court balanced the interests at stake).

[150] *Mimms*, 434 U.S. at 111. *See also* Ketscher, *supra* note 82, at 725.

[151] *See Wilson*, 519 U.S. at 411-12; *Mimms*, 434 U.S. at 111. *See also supra* note 85 and accompanying text for comment on the *Mimms* and *Wilson* description of officer safety.

[152] *Wilson*, 519 U.S. at 413-14. *See also* Ketscher, *supra* note 82, at 725 (describing the difference in considerations when passengers' rights are at stake).

[153] *Wilson*, 519 U.S. at 413-14. *See also* Ketscher, *supra* note 82, at 725 (asserting that the passengers' interests at stake are much higher than those of drivers); SINGER & HARTMAN, *supra* note 10, at 224 (reiterating this balancing test, which is rooted in the *Mimms* decision); Visser, *supra* note 9, at 1725-1726 (discussing the balancing test utilized by the Court).

[154] *Wilson*, 519 U.S. at 414. *See generally* Ketscher, *supra* note 82, at 725; Niehoff, *supra* note 95, at 720 (advising that people should keep good company, and if they cannot do so, then they should at least keep their contraband).

[155] *See generally* Maryland v. Wilson, 519 U.S. 408 (1997). *See also* Short, *supra* note 147, at §2 (questioning the logic of inferring passenger wrongdoing from driver behavior).

[156] Bruce G. Berner, Criminal Law Update (1999): Synopsis of Selected Cases 9 (1999) (unpublished Ind. Continuing Legal Education report, on file with Professor Bruce G. Berner at Valparaiso University School of Law) (explaining the questions raised by Justice Breyer's concurring opinion in *Houghton* and Justice Stevens' dissenting opinion in *Houghton*). *See also Sykes*, 1999 U.S. Dist. LEXIS 19637, at *1-*2. That case, which is

the ownership of the property left within the taxicab is of great significance.[157] The Supreme Court has dismissed this highly important distinction in the context of *Carroll* general car searches.[158] However, the need to recognize such a distinction for taxicabs is paramount. Property clearly not belonging to a taxicab driver should not be searched without individualized probable cause.[159] In order to make such a determination, it is necessary to distinguish between the driver's property and that of the taxicab passenger. Without making such a determination, taxicabs passengers' rights will be unnecessarily eroded. For example, if the police officers in Krista Connick's hypothetical situation or Billy's and Mike's circumstances choose to proceed with the search of briefcase, purse, or bookbags, they would be doing so based only on the probable cause to search the driver.

Second, the assumption of cooperation between driver and passenger is logically inapplicable in the taxicab context. Taxicab drivers are rarely acquainted with their passengers, and most passengers lack the motivation to engage in a scheme with the driver to assist him or her in criminal activity. For example, neither Krista Connick, Billy, nor Mike were acquainted with their taxicab drivers, and presumably would not be inclined to jeopardize their interests by scheming with the drivers to prevent the discovery of the drivers' possible criminal behavior.[160] Assuming that the passenger and driver share a common goal is illogical. Both assumptions discussed are currently relied on by the Court when evaluating the scope of warrantless vehicle searches under the *Carroll* doctrine, and neither apply to taxicabs.[161] In addition to its reliance on the two assumptions discussed, the *Carroll* doctrine features a reliance on the presence of probable cause.

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currently pending, arose after the police stopped a taxicab and then proceeded to make the passengers lie on the ground handcuffed while the officers searched their persons. *Id.*

[157] Berner, *supra* note 156, at 9 (explaining why such a distinction is crucial to the analysis of taxicab passengers' rights).

[158] *Houghton*, 526 U.S. at 306-07 (discussing the Court's opinion that a passenger property exception is not required).

[159] *See infra* notes 214-35 and accompanying text for discussion of the proposed Individualized Taxicab Passenger and Passenger Property rule.

[160] *See generally supra* notes 1-6 and accompanying text for a description of the hypothetical and the brief nature of Krista's, Billy's, and Mike's interactions with their taxicab drivers, thus making the passengers logically disinclined to join in a criminal scheme with their drivers.

[161] *See supra* notes 113-58 and accompanying text for a discussion of the assumptions as well as the reasons why the current reasoning is inapplicable to taxicab passengers.

B. The Pivotal Role of Probable Cause

While probable cause is currently required under the *Carroll* doctrine to make a valid warrantless search of drivers, the passenger compartment, the open and closed containers within the passenger compartment, and passenger property left within the vehicle, no such requirement exists for searches conducted pursuant to *Belton*'s search incident to arrest doctrine.[162] While the Court is likely under its current analysis to apply the *Carroll* doctrine to taxicab searches, the Supreme Court should apply the *Belton* doctrine to warrantless searches of taxicabs, because the assumptions which underlie the Court's analysis under *Carroll* do not apply to taxicab passengers.[163] Thus, even though each case's facts dictate which doctrine the Court should apply, analysis under the *Belton* doctrine will better protect the unique interests of taxicab passengers and will safeguard the privacy rights at stake as well.

1. The Current Analysis Relies on the Presence of Probable Cause

The current analysis used to evaluate vehicle passengers' rights in warrantless automobile searches falls into the *Carroll* line of cases.[164] These require probable cause generated independently of a full custody arrest.[165] Searches fall within the *Carroll* automobile exception to the

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[162] Wyoming v. Houghton, 526 U.S. 295 (1999) (permitting the warrantless search of the passenger's property left within the vehicle); United States v. Ross, 456 U.S. 798 (1982) (permitting the warrantless search of open and closed containers within a vehicle); New York v. Belton, 453 U.S. 454 (1981) (allowing the police to search the passenger compartment of a vehicle without a warrant when the driver is subject to a full custody arrest); Chimel v. California, 395 U.S. 752 (1969) (permitting the warrantless search of the area within the arrestee's immediate control); Terry v. Ohio, 392 U.S. 1 (1968) (empowering police officers to conduct "patdowns"). *See also* Fusco, *supra* note 8, at 572-75; Visser, *supra* note 9, at 1689. Warrantless searches are permitted under *Belton* only when the person is subject to a full custody arrest. *Belton*, 453 U.S. at 460.

[163] *See generally supra* notes 154-59 and accompanying text for a discussion of why the *Carroll* assumptions are inapplicable to taxicab passengers.

[164] *See supra* notes 26-101 and accompanying text for a discussion of the *Carroll* doctrine.

[165] *See, e.g.*, California v. Acevedo, 500 U.S. 565 (1991); United States v. Ross, 456 U.S. 798 (1982); Carroll v. United States, 267 U.S. 132 (1925). *See also* David Lawrence Burnett, *Fourth and Fourteenth Amendments-Search and Seizure-Police Officers with Probable Cause to Search an Automobile May Inspect Passenger's Belongings that are Found in the Car, which are Capable of Concealing the Object of the Search, Even Without Reasonable Belief that the Passenger was Engaged in a Common Enterprise or that the Driver had Time to Conceal Items-Wyoming v. Houghton*, 9 SETON HALL CONST. L.J. 1173 (1999) (asserting that police officers with probable cause to search an automobile may also inspect the passengers' belongings left within the car that are capable of concealing the objects of the search); Respondent's Brief at *2-*3, Wyoming v. Houghton, 526 U.S. 295 (1999) (No. 98-184) (explaining that several prior rulings, including *Acevedo*, *Ross*, and *Carroll*, require probable cause before a warrantless search of a passenger's personal belongings may be conducted).

warrant requirement if the officers base their search on general probable cause to stop the vehicle supplemented by the officer's belief that crime-connected items are located within the vehicle.[166] The requisite probable cause to stop the vehicle can be generated by various traffic offenses observed by an officer, such as exceeding the speed limit or failing to use a turn indicator.[167] Good faith is an inadequate basis to then search, however.[168] The *Carroll* line of cases has generated voluminous case law, and the cases that follow *Carroll* require general probable cause that crime connected items are in the vehicle to conduct a warrantless vehicle search.[169] The *Carroll* line of cases permits searches of a driver's person, the entire passenger compartment, any open or closed containers within the vehicle, and any passenger property left within the vehicle.[170] In addition, the police may order the driver and passengers out of the vehicle.[171] A primary concern in fashioning all of these police powers is maximizing officer safety.[172]

The Supreme Court permits warrantless automobile searches, provided probable cause exists.[173] According to the Court, an officer's legitimate, good faith does not provide a strong enough foundation for a

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[166] *Carroll*, 267 U.S. at 149 (explaining that the warrantless search must be based on probable cause to be valid). *See also* DEL CARMEN, *supra* note 15, at 225-26 (explaining that the existence of probable cause is key to *Carroll* searches).

[167] *See, e.g.*, Wyoming v. Houghton, 526 U.S. 295, 297-98 (1999) (explaining that the vehicle was pulled over by the police because the driver was speeding and the car's lights were faulty); Maryland v. Wilson, 519 U.S. 408 (1997) (concerning a car which was pulled over because the driver was speeding and the car's license plate tag was missing); Ohio v. Robinette, 519 U.S. 33 (1996) (explaining that the driver was speeding); Pennsylvania v. Mimms, 434 U.S 106 (1977) (discussing a situation in which the driver was pulled over because his automobile's license plate expired).

[168] *See Carroll*, 267 U.S. at 161-62 (explaining that good faith is not enough to create the requisite probable cause).

[169] *See, e.g.*, California v. Acevedo, 500 U.S. 565 (1991) (requiring probable cause to conduct a warrantless vehicle search); United States v. Ross, 456 U.S. 798 (1982); Carroll v. United States, 267 U.S. 132 (1925).

[170] *See* Benison, *supra* note 12, at 1173 (discussing the permissible scope of warrantless vehicle searches under *Carroll*); *see also supra* note 161.

[171] *See Wilson*, 519 U.S. at 414-15 (permitting the police to order passengers out of a lawfully stopped vehicle); *Mimms*, 434 U.S. at 111-12 (authorizing the police to order a vehicle's driver out of the car in the interest of officer safety).

[172] *See supra* notes 10, 74, 78, 85-88 and accompanying text for an explanation of the premium put on preserving officer safety.

[173] *See* Carroll v. United States, 267 U.S. 132, 161-162 (1925). *See also id.* at 159 (noting that the character of the offense is irrelevant in determining the validity of the seizure); *Id.* at 149 (stating that a valid search and seizure must be founded on probable cause); Benison, *supra* note 12, at 1170-71 (discussing the *Carroll* automobile exception to the warrant requirement); *supra* notes 45-53 and accompanying text.

search.[174] Rather, good faith must be supplemented by facts within the officer's knowledge that makes the search reasonable.[175] When the officer possesses probable cause, the warrantless vehicle search is valid.[176] Probable cause to believe that the vehicle contained contraband was also required in *Ross*.[177] The reasoning in *Ross* directly discussed *Carroll* and specifically relied on *Carroll*'s probable cause requirement to uphold the search in *Ross*.[178] The *Ross* decision also chronologically traces several cases based on *Carroll* and roots the *Ross* decision in this long-standing exception to the warrant requirement.[179] The requisite probable cause to search a vehicle was established as a vital necessity in *Carroll*, and the Court clearly reaffirmed this requirement in *Ross*.[180]

Warrantless searches were again required to be based on probable cause in *California v. Acevedo*.[181] The Court based its *Acevedo* holding on

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[174] *See Carroll*, 297 U.S. at 161 (stating that good faith alone is inadequate to form the basis for a legal warrantless search). Rather, the *Carroll* Court asserted that "reasonably trustworthy information [is] sufficient." *Id.* at 162.

[175] *See id.* at 161 (*quoting* McCarthy v. De Armit, 99 Pa. 63 (Pa. 1917)) (noting that the Supreme Court of Pennsylvania defines probable cause as "the substance of all the definitions is a reasonable ground for belief of guilt").

[176] *See, e.g.*, California v. Acevedo, 500 U.S. 565 (1991); United States v. Ross, 456 U.S. 798 (1982); Carroll v. United States, 267 U.S. 132 (1925).

[177] United States v. Ross, 456 U.S. 798 (1982). *See also* Bradley, *Whittling Away*, *supra* note 99 (stating that, after *Ross*, the police may fully search a vehicle and all containers within it provided they possess probable cause to suspect that a vehicle contains evidence of a crime); Norma J. Briscoe, *The Right to Be Free From Unreasoable Searches and the Warrantless Searches of Closed Containers in Automobiles*, 36 HOW. L.J. 215 (1993) (noting that the search authority is dependent upon the presence of probable cause); Kent S. Ray, *Supreme Court Review: Fourth Amendment - Overextending the Automobile Exception to Justify the Warrantless Search of Closed Containers in Cars: United States v. Ross, 102 S. Ct. 2157 (1982)*, 73 J. CRIM. L. & CRIMINOLOGY 1430, 1433-34 (1982) (discussing the Court's requirement that probable cause be present to validate the search).

[178] *Ross*, 456 U.S. at 804-09 (reviewing the facts, holding, and reasoning, and emphasizing the probable cause requirement). *See also* Ray, *supra* note 177, at 1433 (discussing the similarities between the cases).

[179] *See Ross*, 456 U.S. at 804-09. *See also* Ray, *supra* note 177, at 1433 (tracing the history discussed by the Court in the *Ross* opinion).

[180] *See Ross*, 456 U.S. at 809; Carroll v. United States, 267 U.S. 132 (1925). *See also* Bradley, *Whittling Away*, *supra* note 99; Burnett, *supra* note 165, at 1178 (stating that the Court eroded Fourth Amendment rights in *Ross* by defining the parameters of search and seizure requirements by the federal government's zealous war against drugs).

[181] 500 U.S. 565, 580 (1991) (holding that warrantless vehicle searches may include a paper bag in the vehicle's trunk). *See also* Bradley, *Whittling Away*, *supra* note 99, at 85-86 (stating that the Court held that containers found within a car could be searched without a warrant, regardless of whether the probable cause was limited to the container or applied to the car as a whole); Briscoe, *supra* note 177, at 219 (asserting that the police do not require a warrant to search containers within a vehicle if they have probable cause to search the vehicle).

Carroll and *Ross*.[182] The Court's reasoning included a lengthy review of both *Carroll* and *Ross*, and discussed the evolution of the doctrine requiring probable cause to search a vehicle without a warrant.[183] After discussing the *Carroll* line of cases, the Court extended that doctrine by holding that searches of closed containers in vehicle trunks must be based on the presence of general probable cause to search the vehicle.[184]

Both decisions which directly implicate passengers' rights, *Wilson* and *Houghton*, are based on *Carroll*'s probable cause rule.[185] *Wilson* requires the existence of probable cause to order passengers out of a stopped vehicle.[186] The Court also determined that searching passengers' property left within the vehicle is reasonable under the Fourth Amendment, provided probable cause exists.[187] According to the Court in *Houghton*, probable cause to search a vehicle is required to search a container left within the car, even if it clearly does not belong to the driver.[188]

All warrantless vehicle searches decided under the *Carroll* doctrine must be based on probable cause that crime connected items are in the car.[189] Furthermore, if taxicab passengers' rights are determined

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[182] *Acevedo*, 500 U.S. at 569-72 (discussing both cases in detail).

[183] *Id.* at 569-72 (discussing *Carroll*, *Ross*, and the history of the warrantless vehicle search doctrine).

[184] *Id.* at 580 (concluding the Court's opinion by asserting its holding). *See also* Benison, *supra* note 12, at 1174 (discussing *Ross*'s container search reasoning); Bradley, *Whittling Away*, *supra* note 99, at 85-86 (noting that warrantless searches of containers are permitted provided the searching officers have probable cause); Briscoe, *supra* note 177, at 225 (stating that goods will no longer be protected from invasion by placing them in a closed container within a vehicle); Burnett, *supra* note 165, at 1178 (explaining that the Court's *Acevedo* decision continued to disintegrate Fourth Amendment rights by placing a higher priority on the government's war against illegal drugs than on Fourth Amendment rights).

[185] *See* Wyoming v. Houghton, 526 U.S. 295 (1999) (discussing *Carroll* as the foundational case); Maryland v. Wilson, 519 U.S. 408 (1997) (basing its holding on *Carroll* and its progeny). *See also* Burnett, *supra* note 165, at 1175 (stating that the *Houghton* Court relied on *Carroll*); Ketscher, *supra* note 82, at 722-23 (discussing the history of the *Wilson* decision).

[186] *Wilson*, 519 U.S. at 414-15. *See also* Ketscher, *supra* note 82, at 722-23 (discussing the holding and reasoning in *Wilson*).

[187] *Houghton*, 526 U.S. at 307. *See also* Savage, *supra* note 82, at 42.

[188] *Houghton*, 526 U.S. at 307. *See also* Burnett, *supra* note 165, at 1178 (noting that despite *Houghton*'s simplicity, the Court further eroded Fourth Amendment rights); Savage, *supra* note 82, at 42. *See also Search and Seizure*, *supra* note 34, at 255 (stating that probable cause is not required to search the belongings of those persons not individually suspected of any crime traveling in a lawfully stopped automobile, so long as one of their traveling companions has committed an offense justifying the search).

[189] *See Houghton*, 526 U.S. at 307 (requiring probable cause to search passenger property left within the vehicle); *Wilson*, 519 U.S. at 414-15 (requiring the police to have probable cause to stop the vehicle, and permitting them to order the vehicle's passengers out of the car in

under *Carroll*, it is likely that the Supreme Court would continue its trend to expand police officers' warrantless search authority.[190] The Court would probably extend its current passenger considerations to taxicab passengers without recognizing the inherent differences, thus allowing the general *Carroll* probable cause to search the car for crime related items to satisfy the probable cause requirement.[191]

2. A Different Result May Ensue If the *Carroll* Probable Cause Requirement Is Replaced By *Belton*'s Probable Cause Generated By a Full Custody Arrest

The current analysis clearly rests on the existence of general probable cause to search the vehicle for crime-connected items.[192] However, if this kind of probable cause were removed from the equation and replaced by the probable cause for a search generated by a full custody arrest, a very different result may ensue. *Belton* and the cases which follow it

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such circumstances); California v. Acevedo, 500 U.S. 565 (1991) (requiring probable cause to conduct a warrantless search of a paper bag within a vehicle's trunk); United States v. Ross, 456 U.S. 798 (1982) (stating that the police may search open and closed containers within a lawfully stopped vehicle without a warrant, provided probable cause exists); Carroll v. United States, 267 U.S. 132 (1925) (requiring probable cause to search a vehicle without a warrant).

[190] *See* United States v. Woodrum, 202 F.3d 1, 5-6 (1st Cir., 2000) (applying the logic which supports the search of private automobiles to taxicabs). *Woodrum* concerned a taxicab passenger whose behavior made the police suspicious. *Id.* at 4-5. In accordance with a Boston Police Department's Taxi Inspection Program (TIPS), police are empowered to search a taxicab to maximize taxi driver's safety. *Id.* at 4. The Court permitted the warrantless search of the passenger's person, and based the search authority on *Terry* and the consent doctrine. *Id.* at 6-14. The patdown of the passenger's person was authorized by *Terry*, and the taxicab company owner's consent to participate in the program extended to consent to search the taxicab's passengers. *Id.* *See also* Gerald L. Neuman, *The Nationalization of Civil Liberties, Revisited*, 99 COLUM. L. REV. 1630, 1637 (1999) (discussing the Court's sporadic willingness to adapt individual rights to new threats); *Search and Seizure, supra* note 34, at 255 (noting that the Court's *Houghton* decision continued its recent trend toward expanding the *Carroll* "automobile exception" to the warrant requirement).

[191] *See, e.g.*, *Woodrum*, 202 F.3d at 14; *Sykes*, 1999 U.S. Dist. LEXIS 19637, at *1-*2 (describing two situations in which the courts are infringing upon taxicab passengers' rights). *See also* Bradley, *Protection, supra* note 36, at 85 (stating that the Court's interest in automobiles is not in driving them but rather in searching them); *Search and Seizure, supra* note 34, at 255 (noting that the Court has recently abandoned the traditional requirement of individualized probable cause in the context of automobile travel). *See also id.* at 264-65 (stating that certain factors in automobile travel may justify a less stringent interpretation of the Fourth Amendment's requirements).

[192] *See* Wyoming v. Houghton, 526 U.S. 295 (1999); Maryland v. Wilson, 519 U.S. 408 (1997); California v. Acevedo, 500 U.S. 565 (1991); United States v. Ross, 456 U.S. 798 (1982); Carroll v. United States, 267 U.S. 132 (1925). *See also supra* note 188.

authorize warrantless vehicle searches incident to a full custody arrest.[193] The Court limits this search authority to the person under arrest and the entire passenger compartment of the car he or she operates.[194] The *Belton* search authority, based on the probable cause generated by searches incident to full custody arrest, has not been extended to persons within the vehicle such as passengers who are not subject to arrest.[195]

If considered under the *Belton* doctrine, it is unlikely that the police would be empowered to search taxicab passengers or their property, provided the passenger is not under arrest.[196] Unless the taxicab passenger were subject to a full custody arrest, the *Belton* doctrine would not authorize a search of his or her person or property.[197] Based on this likelihood, proponents of taxicab passengers' rights should argue that decisions pertaining to such passengers in particular should be decided under the *Belton* doctrine whenever the facts permit.[198] Cases decided

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[193] *See, e.g.*, New York v. Belton, 453 U.S. 454 (1981) (permitting warrantless vehicle searches incident to a full custody arrest). *See also* Benison, *supra* note 12, at 1185 (discussing the levels of probable cause required); Bradley, *Whittling Away*, *supra* note 99, at 85-86 (discussing the holding in *Belton* and stating that the result of this line of cases is that a vehicle may be fully searched without a warrant based on probable cause); Thomas, *supra* note 64, at 132 (discussing *Belton*'s holding which authorized warrantless searched incident to a full custody arrest).

[194] *Belton*, 453 U.S. at 462-63 (limiting the search to the person under arrest and the area within their immediate control, the vehicle's passenger compartment). *See also* Bradley, *Two Models*, *supra* note 54, at 1478 (asserting that the entire passenger compartment is inevitably all within reach of an arrestee); Bradley, *Two Models*, *supra* note 54, at 1498 (explaining that the Court in *Belton* attempted to simplify the analysis by enunciating a bright-line rule to apply); Bradley, *Whittling Away*, *supra* note 99 at 86 (stating that the permissible warrantless search scope includes the vehicle and the clothes of the person subject to arrest). *Cf. Search and Seizure*, *supra* note 34, at 255 (asserting that individualized probable cause is no longer required to conduct a warrantless search under *Carroll*).

[195] *Belton*, 453 U.S. at 457 (discussing only the person incident to arrest as the one whom the police are authorized to search). *See also* Bradley, *Whittling Away*, *supra* note 99, at 86 (discussing the limits to the *Belton* doctrine); Thomas, *supra* note 64, at 134 (noting that the lawful custodial arrest justifies an intrusion into the arrestee's privacy, but not that of others not under arrest).

[196] *Belton*, 453 U.S. at 460 (allowing warrantless searches only when they occur incident to a full custody arrest). Analyzing taxicab passengers' rights in this manner ensures that the passengers would not be searched based only on their drivers' misconduct. *See generally id.* at 461-62. *See also* Bradley, *Protection*, *supra* note 36, at 86 (discussing that abandoning *Belton* altogether is one way to stop the Court's "shenanigans"); Thomas J. Foltz, *Car Not Always a Car; House Not Always a Home*, CRIM. JUST., Spring, 1999, at 45 (discussing the differing probable cause standards applicable to warrantless vehicle searches).

[197] *Belton*, 453 U.S. at 460 (permitting a warrantless search of only those people subject to incident to a full custody arrest).

[198] *Belton*, 453 U.S. at 460 (permitting searches incident to full custody arrests). Because the *Belton* doctrine authorizes warrantless searches only when they occur incident to a full custody arrest, taxicab passengers would benefit from analyzing their rights in this fashion.

under *Belton* do not require independently-generated probable cause, because the search occurs incident to a full custody arrest, which creates the probable cause required in the interest of protecting officer safety.[199] Thus, in order to search the person or property of taxicab passengers, each passenger must be subject to a full custody arrest.[200] Without an arrest pending, the police would be forbidden to search taxicab passengers' property under the search incident to arrest doctrine.[201]

3. A Comment on Possible Privacy Implications

While two features of the current analysis of vehicle passengers' rights include a reliance on *Carroll*'s assumptions that are inapplicable to taxicabs and the pivotal role of probable cause, privacy concerns also play a notable role.[202] The Court has repeatedly noted that individuals possess a reduced expectation of privacy when traveling in a car.[203] Requiring a warrant protects the privacy of America's citizens better than warrantless searches.[204] The Fourth Amendment focuses on protecting people, not places such as vehicles.[205] Requiring a warrant

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See generally id at 461-62. This type of analysis would ensure that the passengers would not be subject to search based solely on their drivers' transgressions. *See generally id.* at 461-62

[199] *Belton*, 453 U.S. at 460. *See also* Bradley, *Protection*, *supra* note 36, at 85 (describing the probable cause criterion); Thomas, *supra* note 64, at 134.

[200] *Belton*, 453 U.S. at 460; Bradley, *Whittling Away*, *supra* note 99, at 85-86 (discussing the results of the *Belton* line of cases); Craig Hemmens & Rolando Del Carmen, *Major Criminal Law Decisions of the United States Supreme Court: 1998-99 Term*, N.J. LAW., Dec. 1999, at 29 (discussing Justice Stevens' dissenting opinion in *Houghton*, in which he asserted that the police should be required to establish an individualized probable cause before searching items which clearly do not belong to the driver).

[201] *See generally Belton*, 453 U.S. at 460; Thomas, *supra* note 64, at 134.

[202] *See* William J. Stuntz, *The Distribution of Fourth Amendment Privacy*, 67 GEO. WASH. L. REV. 1265, 1289 (1999) (stating that infringing on valued privacy interests is bad); *supra* notes 105-99 and accompanying text for a discussion of the two assumptions and the role of probable cause.

[203] Burnett, *supra* note 165, at 1173 (stating that automobile passengers have a reduced expectation of privacy); Stuntz, *supra* note 202, at 1276 (discussing that the Fourth Amendment doctrine exaggerates privacy differences by granting higher privacy protection to car passengers than bus passengers).

[204] United States v. Watson, 423 U.S. 411, 445 (1976) (Marshall, J., dissenting). *See also* Bradley, *Two Models*, *supra* note 54, at 1493 (stating that a traditional warrant requirement is better than an oral one when protecting individual rights); Rigg, *supra* note 54, at 282 (asserting McDonald's comment that the right to privacy is too precious to entrust to the discretion of those empowered with detecting criminal activity); Stuntz, *supra* note 202, at 1267 (discussing the nature of citizens' privacy protections).

[205] *Watson*, 423 U.S. at 445 (Marshall, J., dissenting) (quoting Katz v. United States, 389 U.S. 347 (1967)). *See also* Bradley, *Whittling Away*, *supra* note 99, at 86 (discussing the Court's requirement that police obtain a warrant to place a bugging device on a phone booth). *Katz* did not fit neatly into the Court's "indoor/outdoor" dichotomy which the Court formerly

stems from a concern for individual privacy, not from property concerns.[206] However, when balancing the competing interests involved in the warrant requirement exception for vehicles, an individual's privacy interest must be subordinate to a greater societal concern, that of officer safety.[207] The Court has not indicated whether limits exist to this important justification.[208]

The Supreme Court currently finds the concern for officer safety great enough to permit the warrantless search of a driver's person, the passenger compartment of a vehicle, and passenger property left within the vehicle.[209] Given the failure to indicate whether boundaries exist for the officer safety justification, this reasoning may extend to taxicab passengers and thus eliminate their privacy rights as well.[210] The potential exists to require taxicab passengers to sacrifice their privacy

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employed. Bradley, *Whittling Away*, *supra* note 99, at 86. *See generally* Foltz, *supra* note 196, at 45 (discussing the Court's greater leeway given to automobiles when compared to homes); Gillespie, *supra* note 35, at 1 (discussing the greatly diminished degree of privacy protection vehicles receive vis-à-vis homes); Rigg, *supra* note 54 at 299 (discussing that officers must be mindful of individuals' privacy rights and must justify additional intrusions upon that right); Stuntz, *supra* note 202, at 1265 (stating that the Fourth Amendment prevents the police from seeing or hearing things without sufficiently good reason); Wanda Ellen Wakefield, Annotation, *Search and Seizure: Suppression of Evidence Found In Automobile During Routine Check of Vehicle Identification Number (VIN)*, 27 A.L.R. 4th 549 (1984) (stating that given the nature of a vehicle, the portions of a car not shielded from searching eyes are not protected by the Fourth Amendment).

[206] *Watson*, 423 U.S. at 445 (Marshall, J., dissenting); Katz v. United States, 389 U.S. 347 (1967). *See also* Briscoe, *supra* note 177, at 223-24 (discussing society's strong interest in individuals' privacy); Rigg, *supra* note 54, at 299 (discussing the intense concern for protecting individuals' privacy).

[207] *See* Gillespie, *supra* note 35, at 3 (stating that there is an evolving tension between state interests and the right to individual privacy); Hemmens & Del Carmen, *supra* note 200, at 29 (stating that passengers' privacy rights were clearly implicated in *Houghton*); Stuntz, *supra* note 202, at 1266 (stating that we as citizens should worry about the ways in which privacy is defined). *See supra* notes 10, 74, 78, 85-88 for a discussion of various aspects of the emphasis on officer safety.

[208] *See* Gillespie, *supra* note 35 at 6 (stating that bright-line rules often promote effective law enforcement but provide less attention to individual rights); Thomas, *supra* note 64, at 135-43 (discussing the various ways some states have protected additional privacy rights for their citizens than the federal law does).

[209] *See supra* note 162.

[210] *See Search and Seizure*, *supra* note 34, at 264-65 (stating that the Court's automobile exception jurisprudence consistently fails to consider whether some situations may require the application of different standards than others); Stuntz, *supra* note 202, at 1271 (discussing reduced expectations of privacy); Thomas, *supra* note 64, at 157 (stating that the Court prefers enunciating a bright-line rule, even when doing so requires sacrificing passengers' privacy rights). *See* Hemmens & Del Carmen, *supra* note 200, at 29 (asserting that passengers possess no reasonable expectation of privacy when riding in a car belonging to another that is being driven on the public roads).

interests to the greater societal interest in officer safety.[211] However, taxicab passengers' privacy rights can be preserved to an appropriate extent by analyzing them under the *Belton* doctrine when applicable.[212] *Belton* would authorize the warrantless search and resulting privacy invasion when a full custody arrest of a taxicab passenger occurs.[213] Preventing a search of taxicab passengers' property under *Belton* would maximize the currently minimized passengers' privacy interests.[214] To require individualized probable cause to search taxicab passengers incident to a full custody arrest would also ensure the preservation of the passengers' rights without jeopardizing officer safety.[215] In an attempt to maximally preserve taxicab passengers' rights, the next Section proposes an Individualized Taxicab Passenger and Passenger Property rule.

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[211] *See* Rigg, *supra* note 54, at 300 (stating that officer safety has become a battle cry for those who have declared a war on crime, and that the first casualty in this war is the Fourth Amendment). Such justifications have been used to erode individual privacy rights further and further. *Id. See also* Briscoe, *supra* note 177, at 216 (stating that some privacy rights are sacrificed when stepping into a vehicle); Burnett, *supra* note 165, at 1179 (asserting that the *Houghton* decision reiterates drivers' and passengers' nonexistent expectation of privacy on the roads); Ketscher, *supra* note 82, at 728 (discussing the Wyoming Supreme Court's recognition of a greater privacy interest for vehicle passengers); Robert Weisberg, *Foreword: A New Agenda for Criminal Procedure*, 2 BUFF. CRIM. L. REV. 367, 374-75 (mentioning sweeping government powers that reduce individual privacy rights in the interest of identifying criminal defendants).

[212] New York v. Belton, 453 U.S. 454 (1925) (establishing the *Belton* doctrine, which requires individualized probable cause because the search is conducted incident to a full custody arrest). Debra Livingston, *Police, Community Caretaking, and the Fourth Amendment*, 1998 U. CHI. LEGAL F. 261, 265 (1998) (stating that the Court can still protect privacy if it takes action); Rigg, *supra* note 54, at 299 (requiring the police to justify intruding upon privacy rights). *See also supra* notes 61-67 and accompanying text for a discussion of the *Belton* doctrine.

[213] New York v. Belton, 453 U.S. 454 (1981) (permitting warrantless vehicle searches incident to a full custody arrest). *See also* Bradley, *supra* note 54, at 1500-01 (praising the benefits of easy rules for the police to follow).

[214] New York v. Belton, 453 U.S. 454 (1981) (permitting searches to be conducted incident to a full custody arrest). *See also* Rigg, *supra* note 54, at 299 (noting that individual privacy rights are served best by requiring the officers to justify privacy invasions); *Search and Seizure*, *supra* note 34, at 264 (stating that under the *Carroll* doctrine, the passenger's privacy interests in her purse were insignificant, thus minimizing the passenger's privacy rights).

[215] New York v. Belton, 453 U.S. 454 (1981). *See also* Livingston, *supra* note 212, at 313 (stating that the police's actions can still lend coherence to the Fourth Amendment cases where the police have intruded on privacy); Weisberg, *supra* note 211, at 368 (addressing state power versus the individual).

IV. MODEL JUDICIAL REASONING: AN INDIVIDUALIZED TAXICAB PASSENGER AND PASSENGER PROPERTY RULE

While the Supreme Court deems it unnecessary to use an individualized passenger and passenger property rule when analyzing general car searches, it is imperative that such a rule be employed when considering taxicab passengers' rights.[216] The proposed Individualized Taxicab Passenger and Passenger Property rule [rule] would state:

> When conducting a warrantless taxicab search, police officers who search a taxicab passenger must either 1) possess individualized probable cause to search that passenger or 2) the taxicab passenger must be subject to a lawful full custody arrest. In addition, officers must inquire into the ownership of each item they wish to search to determine whether it belongs to the taxicab driver or passenger.

The rule clearly features two key elements: the presence of individualized probable cause to search a taxicab passenger's person or property, as well as specific inquiry into an item's ownership before the police search it.[217] The individualized probable cause requirement forces the police to focus on an individual passenger's misconduct, not the driver's, when establishing the necessary probable cause. Because the rule requires the police to inquire into an item's ownership before searching it, police officers would be unable to search some items in some circumstances. When the taxicab driver's misconduct prompts the lawful vehicle stop, the driver's property can unquestionably be searched.[218] However, the rule forbids the search of the taxicab passenger's property in such a situation. His or her property can be searched only if his or her particular actions give police probable cause

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[216] Wyoming v. Houghton, 526 U.S. 295, 307 (1999) (holding that, for general car searches under the *Carroll* doctrine, a passenger's property may be searched regardless of whether the driver or passenger owns it). In addition, the rule could be applied in two recent cases concerning taxicab passengers' rights in order to ensure that their rights are protected as much as possible. *See* United States v. Woodrum, 202 F.3d 1 (1st Cir.), *reh'g denied*, 208 F.3d 8 (2000); *Sykes*, 1999 U.S. Dist. LEXIS 19637, at *1-*2.

[217] *See generally* Houghton v. Wyoming, 956 P.2d 363 (Wyo. 1998), *rev'd*, 119 S. Ct. 1297 (1999). The rule is based loosely on the individualized passenger focus enunciated by the Wyoming Supreme Court in the *Houghton's* lower court decision.

[218] *See supra* notes 29-101 and accompanying text for a discussion of the police's ability to search the driver and his or her property.

to search him or her. The rule, applicable only to taxicab passengers, requires that the passenger's conduct independently create the probable cause required, regardless of the driver's behavior.[219] Through the rule's requirements, it strives to strike a balance between preserving officer safety and maximizing individual privacy rights. The rule's purpose is not to impede law enforcement. Rather, it aims to fashion a bright-line rule, rare in Fourth Amendment jurisprudence, to herald the circumstances under which a constitutional search of a taxicab passenger's person or belongings may occur.

Applying the rule in taxicab situations eradicates several of the problems which could arise if the stop and possible search were analyzed without the rule.[220] First, when the Court extended warrantless search authority to passengers' property under *Carroll*, it did so based on the driver's misconduct.[221] The rule does not rest on either of the assumptions underlying the *Carroll* doctrine, because both are inapplicable to taxicab passengers.[222] The rule acknowledges a distinction based on ownership and actually requires inquiry into an item's ownership before the police search it.[223] In addition, the rule recognizes that the taxicab driver and passenger do not share a common goal to further a criminal scheme.[224] The rule thus eliminates the assumption of cooperation inherent in the *Carroll* doctrine.

Second, the rule acknowledges the pivotal role probable cause plays in the analysis of taxicab passengers' rights. It does not encourage consideration of taxicab passengers' rights under the *Carroll* doctrine. Under *Carroll*, the probable cause to search the driver, based on his or

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[219] *Woodrum*, 202 F.3d at 4-5 (constituting an example of a situation in which the taxicab passenger's behavior generated the probable cause required to search).

[220] *See, e.g., id.* at 5-8, 14; *Sykes*, 1999 U.S. Dist. LEXIS 19637 at *1-*2. The rule could be used to analyze both of these cases concerning taxicab passengers. *Woodrum*, 202 F.3d at 4-5 (explaining the facts of the case and that Woodrum was indeed a taxicab passenger); *Sykes*, 1999 U.S. Dist. LEXIS 19637 at *1-*2.

[221] *See supra* notes 29-101 and accompanying text for a discussion of the *Carroll* line of cases; *supra* notes 107-53 and accompanying text for a discussion of the assumptions which underlie the doctrine.

[222] *See Sykes*, 1999 U.S. Dist. LEXIS 19637, at *1-*2 (describing facts in which no cooperation between taxicab passenger and driver existed but the passengers' rights were violated nonetheless). *See generally supra* notes 105-59 and accompanying text for a discussion of the two assumptions and their inapplicability to taxicab passengers.

[223] *See supra* notes 116-43 and accompanying text for a discussion of the importance of such a distinction.

[224] *See supra* notes 145-53 and accompanying text for an explanation of this assumption and why it is inapplicable to taxicabs.

her behavior, extends to all passenger property left within the vehicle.[225] Analyzing taxicab passengers' rights under the *Belton* doctrine, however, would yield a very different outcome. The *Belton* doctrine only permits warrantless vehicle searches incident to a full custody arrest.[226] This doctrine and the rule share similar characteristics. The rule can be applied to an analysis of taxicab passengers' rights consistent with *Belton*'s requirements. In both circumstances, a particular person's actions generate the probable cause.[227] Warrantless search authority does not extend to anyone for whom probable cause does not exist to search.[228] The Court's application of a particular doctrine is based on the facts of the case; they cannot simply choose which doctrine to apply. However, given the inapplicability of the assumptions which underlie the *Carroll* doctrine to taxicab passengers, applying the *Belton* doctrine best protects their rights. The rule requires the probable cause to be specific to each individual, just as the *Belton* doctrine does. Passengers who are not under arrest may not be searched incident to the arrest of the driver.[229] Thus, the rule similarly recognizes that the key to conducting a valid warrantless search which protects taxicab passengers' rights as much as possible lies in requiring probable cause focused on each individual.[230]

Third, requiring individualized probable cause to search a passenger or his or her property provides greater protection for an individual's privacy interests.[231] To a certain extent, an individual's privacy rights must be subordinate to the societal interest in ensuring the safety of police officers.[232] However, extending that justification to taxicab passengers who have not engaged in any of the behaviors which

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[225] *See* Wyoming v. Houghton, 526 U.S. 295 (1999) (permitting the search of passengers' property left within a general vehicle). *See also supra* notes 160-89 and accompanying text for a discussion of the role probable cause plays in the *Carroll* doctrine.

[226] New York v. Belton, 453 U.S. 454 (1981).

[227] *See id.* (permitting warrantless vehicle searches when they are conducted incident to a full custody arrest).

[228] *Id. See also Sykes*, 1999 U.S. Dist. LEXIS 19637, at *1-*2 (explaining that in this case, a police officer searched two taxicab passengers' persons and clothing without either probable cause or their consent).

[229] New York v. Belton, 453 U.S. 454 (1981).

[230] *Sykes*, 1999 U.S. Dist. LEXIS 19637, at *1-*2 (describing a situation in which taxicab passengers' rights were violated). This approach is uniquely suited to taxicab passengers, however, due to the logical inapplicability of the court's assumptions to taxicab passengers. *See supra* notes 154-59 and accompanying text.

[231] *See id. See also supra* notes 200-13 and accompanying text for a discussion of the privacy interests at stake.

[232] *See supra* notes 200-13 and accompanying text for an analysis of the privacy interests involved.

traditionally support the justification exceeds acceptable limits.[233] Passengers should not be forced to sacrifice their rights to privacy based on their drivers' transgressions.

Applying the rule to Krista Connick's hypothetical situation and to Billy and Mike's circumstances highlights its benefits. In their particular situations, the reasons the Chicago Police pulled over the taxicabs are critical to the analysis. The existence of probable cause, based on police suspicion and the driver's erratic driving, authorizes a search of the driver's person and the passenger compartment. Since the police suspected the driver of driving under the influence, any indicators confirming that suspicion, such as an alcohol bottle spotted in the cab or the smell of alcohol, would authorize the search. Assuming that probable cause to search Krista, Billy, or Mike does not exist, the rule would permit the search of the driver's property, but not that of any of the passengers. It would also permit the search of the driver's belongings, but not of those belonging to Krista, Billy, or Mike. Any probable cause which exists to search the taxi driver will not extend to the passengers. In Krista's situation, the police would be unable to search her person, briefcase, or purse. The police would similarly be unable to search Billy's or Mike's bookbags. The rule requires the probable cause to be specific to the passengers, which is consistent with the *Belton* doctrine. Since they are not under arrest, the police may not conduct a search incident to arrest.[234] The key to conducting a valid warrantless search of the taxicab's passenger is the individualized probable cause.[235]

The rule does not authorize the police to search Krista's person, her briefcase, or her purse, nor can they search Billy or Mike's persons or bookbags. The Court has not recognized circumstances in which the person of a passenger, taxicab or otherwise, may be searched without a warrant or probable cause. Therefore, their persons cannot be searched. Assuming that the three passengers take no affirmative action to cause the police to suspect them of any wrongdoing, the police will also be unable to search the items left within the cab: Krista's briefcase or Billy's

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[233] *See Sykes*, 1999 U.S. Dist. LEXIS 19637, at *1-*2 (discussing a situation in which the taxicab passengers were not suspected of wrongdoing but were searched nonetheless).
[234] *See* New York v. Belton, 453 U.S. 454 (1981) (permitting searches incident to arrest).
[235] *See Sykes*, 1999 U.S. Dist. LEXIS 19637, at *1-*2 (discussing a situation in which taxicab passengers' rights were violated).

bookbag.[236] The rule requires the officers to inquire into ownership of the briefcase and bookbag, and it only permits them to search each item if either of them belongs to the driver. Their ownership cannot be assumed; they are in the passenger area of a taxicab and seem to be clearly left there by the passenger. Upon inquiry, the officers will discover that the briefcase belongs to Krista and that the bookbag belongs to Billy. Since they lack probable cause to search the passenger or their belongings, neither the briefcase nor the bookbag left within the vehicle can be searched. Because Krista's purse belongs to her and not the driver, the rule does not authorize the police to search it either.[237] The facts of the two hypothetical situations prevent the searches of the three passengers' persons, Krista's briefcase and purse, and the two bookbags when analyzing the situations using the proposed Individualized Taxicab Passenger and Passenger Property rule.

Applying the Individualized Taxicab Passenger and Passenger Property rule focuses on the individual's conduct, not that of the driver. The rule remedies the problems encountered when analyzing the current state of vehicle passengers' rights by recognizing that the taxicab drivers and passengers are not necessarily acting in concert, requiring both individualized probable cause, and mandating a specific inquiry into an item's ownership before the police conduct a warrantless taxicab search.

V. CONCLUSION

A distinction must be recognized between taxicab passengers and general passengers in private vehicles. This Note examined the current state of vehicle passengers' rights and explains several reasons that the present analysis robs taxicab passengers of their Fourth Amendment rights. The assumptions that underlie the *Carroll* doctrine do not logically apply to taxicab passengers. A distinction between taxicab driver, taxicab passenger, and their respective property is imperative but has not yet been recognized as necessary by the Supreme Court. In addition, assuming that the driver and passenger share a common goal defies logic. Given the inapplicability of these two foundational

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[236] *See* Wyoming v. Houghton, 526 U.S. 295, 310 (Stevens, J., dissenting) (stating that it would be absurd to conduct a warrantless search of a taxicab passenger's briefcase based only on the probable cause to believe that the driver may have contraband in the taxi).

[237] *See Houghton*, 526 U.S. at 308 (Breyer, J. , concurring) (expressing his concern that a woman's purse should be treated as a "special container," despite the fact that the purse itself does not make a legally operative difference currently); Burnett, *supra* note 165, at 1177 (discussing Justice Breyer's concern that ladies' purses constitute a "special container" that should not be automatically subjected to a warrantless search in a seized car).

assumptions to taxicab passengers, the Court should analyze taxicab passengers' rights under the *Belton* doctrine whenever possible. Thus, a full custody arrest would be required to effectuate a search of the taxicab passenger's person or property. Adequately protecting taxicab passengers' rights necessarily involves examining the privacy implications at stake as well. While an individual's privacy interests must succumb to the societal interest in guarding officer safety in most circumstances, searching a taxicab passenger's property without probable cause exceeds acceptable boundaries. The Individualized Taxicab Passenger and Passenger Property rule proposed by this Note remedies those problems and adequately protects the interests and rights of taxicab passengers without placing too great a burden on law enforcement. Applying the rule to the two hypothetical situations highlights its benefits. As a result of its application, the officers would be unable to search Krista's person, her purse, or her briefcase. It would also prevent searches of Billy and Mike's persons or bookbags. Recognizing the need for individualized probable cause ensures that taxicab passengers will not waive more than their hands when hailing a cab.

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