# SUPREME COURT OF THE UNITED STATES

No. 98–184

WYOMING, PETITIONER *v.* SANDRA HOUGHTON

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF WYOMING

[April 5, 1999]

JUSTICE STEVENS, with whom JUSTICE SOUTER and JUSTICE GINSBURG join, dissenting.

After Wyoming's highest court decided that a state highway patrolman unlawfully searched Sandra Houghton's purse, the State of Wyoming petitioned for a writ of certiorari. The State asked that we consider the propriety of searching an automobile *passenger's* belongings when the government has developed probable cause to search the vehicle for contraband based on the *driver's* conduct. The State conceded that the trooper who searched Houghton's purse lacked a warrant, consent, or "probable cause specific to the purse or passenger." Pet. for Cert. i. In light of our established preference for warrants and individualized suspicion, I would respect the result reached by the Wyoming Supreme Court and affirm its judgment.

In all of our prior cases applying the automobile exception to the Fourth Amendment's warrant requirement, either the defendant was the operator of the vehicle and in custody of the object of the search, or no question was raised as to the defendant's ownership or custody.[1] In the

[1] See, *e.g.*, *California* v. *Acevedo*, 500 U. S. 565 (1991); *California* v. *Carney*, 471 U. S. 386 (1985); *United States* v. *Johns*, 469 U. S. 478 (1985); *United States* v. *Ross*, 456 U. S. 798 (1982); *Carroll* v. *United States*, 267 U. S. 132 (1925); 3 W. LaFave, Search and Seizure §7.2(c), pp. 487–488, and n. 113 (3d ed. 1996); *id.*, §7.2(d), pp. 506 n. 167.

only automobile case confronting the search of a passenger defendant– *United States* v. *Di Re*, 332 U. S. 581 (1948)– the Court held that the exception to the warrant requirement did not apply. *Id.*, at 583–587 (addressing searches of the passenger's pockets and the space between his shirt and underwear, both of which uncovered counterfeit fuel rations). In *Di Re*, as here, the information prompting the search directly implicated the driver, not the passenger. Today, instead of adhering to the settled distinction between drivers and passengers, the Court fashions a new rule that is based on a distinction between property contained in clothing worn by a passenger and property contained in a passenger's briefcase or purse. In cases on both sides of the Court's newly minted test, the property is in a "container" (whether a pocket or a pouch) located in the vehicle. Moreover, unlike the Court, I think it quite plain that the search of a passenger's purse or briefcase involves an intrusion on privacy that may be just as serious as was the intrusion in *Di Re*. See, *e.g.*, *New Jersey* v. *T. L. O.*, 469 U. S. 325, 339 (1985); *Ex parte Jackson*, 96 U. S. 727, 733 (1878).

Even apart from *Di Re*, the Court's rights-restrictive approach is not dictated by precedent. For example, in *United States* v. *Ross*, 456 U. S. 798 (1982), we were concerned with the interest of the driver in the integrity of "his automobile," *id.*, at 823, and we categorically rejected the notion that the scope of a warrantless search of a vehicle might be "defined by the nature of the container in which the contraband is secreted," *id.*, at 824. "Rather, it is defined by the object of the search and the places in which there is probable cause to believe that it may be found." *Ibid.* We thus disapproved of a possible container-based distinction between a man's pocket and a woman's pocketbook. Ironically, while we concluded in *Ross* that "[p]robable cause to believe that a container placed in the trunk of a taxi contains contraband or evidence does not

justify a search of the entire cab," *ibid.*, the rule the Court fashions would apparently permit a warrantless search of a passenger's briefcase if there is probable cause to believe the taxidriver had a syringe somewhere in his vehicle.

Nor am I persuaded that the mere spatial association between a passenger and a driver provides an acceptable basis for presuming that they are partners in crime or for ignoring privacy interests in a purse.[2] Whether or not the Fourth Amendment required a warrant to search Houghton's purse, cf. *Carroll* v. *United States*, 267 U. S. 132, 153 (1925), at the very least the trooper in this case had to have probable cause to believe that her purse contained contraband. The Wyoming Supreme Court concluded that he did not. 956 P. 2d 363, 372 (1998); see App. 20–21.

Finally, in my view, the State's legitimate interest in effective law enforcement does not outweigh the privacy concerns at issue.[3] I am as confident in a police officer's

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[2] See *United States* v. *Di Re*, 332 U. S. 581, 587 (1948) ("We are not convinced that a person, by mere presence in a suspected car, loses immunities from search of his person to which he would otherwise be entitled"); *Chandler* v. *Miller*, 520 U. S. 305, 308 (1997) (emphasizing individualized suspicion); *Ybarra* v. *Illinois*, 444 U. S. 85, 91, 94–96 (1979) (explaining that "a person's mere propinquity to others independently suspected of criminal activity does not, without more, give rise to probable cause to search that person," and discussing *Di Re*); *Brown* v. *Texas*, 443 U. S. 47, 52 (1979); *Sibron* v. *New York*, 392 U. S. 40, 62–63 (1968); see also *United States* v. *Padilla*, 508 U. S. 77, 82 (1993) *(per curiam)* ("Expectations of privacy and property interests govern the analysis of Fourth Amendment search and seizure claims. Participants in a criminal conspiracy may have such expectations or interests, but the conspiracy itself neither adds to nor detracts from them").

[3] To my knowledge, we have never restricted ourselves to a two-step Fourth Amendment approach wherein the privacy and governmental interests at stake must be considered only if 18th-century common law "yields no answer." *Ante*, at 3. Neither the precedent cited by the Court, nor the majority's opinion in this case, mandate that approach. In a later discussion, the Court does attempt to address the contemporary privacy and governmental interests at issue in cases of this na-

ability to apply a rule requiring a warrant or individualized probable cause to search belongings that are– as in this case– obviously owned by and in the custody of a passenger as is the Court in a "passenger-confederate[']s" ability to circumvent the rule. *Ante*, at 8. Certainly the ostensible clarity of the Court's rule is attractive. But that virtue is insufficient justification for its adoption. *Arizona* v. *Hicks*, 480 U. S. 321, 329 (1987); *Mincey* v. *Arizona*, 437 U. S. 385, 393 (1978). Moreover, a rule requiring a warrant or individualized probable cause to search passenger belongings is every bit as simple as the Court's rule; it simply protects more privacy.

I would decide this case in accord with what we *have* said about passengers and privacy, rather than what we *might have* said in cases where the issue was not squarely presented. See *ante*, at 5. What Justice Jackson wrote for the Court fifty years ago is just as sound today:

> "The Government says it would not contend that, armed with a search warrant for a residence only, it could search all persons found in it. But an occupant of a house could be used to conceal this contraband on his person quite as readily as can an occupant of a car. Necessity, an argument advanced in support of this search, would seem as strong a reason for searching guests of a house for which a search warrant had issued as for search of guests in a car for which none had been issued. By a parity of reasoning with that on which the Government disclaims the right to search occupants of a house, we suppose the Govern-

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ture. *Ante*, at 7–10. Either the majority is unconvinced by its own recitation of the historical materials, or it has determined that considering additional factors is appropriate in any event. The Court does not admit the former; and of course the latter, standing alone, would not establish uncertainty in the common law as the prerequisite to looking beyond history in Fourth Amendment cases.

ment would not contend that if it had a valid search warrant for the car only it could search the occupants as an incident to its execution. How then could we say that the right to search a car without a warrant confers greater latitude to search occupants than a search by warrant would permit?

"We see no ground for expanding the ruling in the *Carroll* case to justify this arrest and search as incident to the search of a car. We are not convinced that a person, by mere presence in a suspected car, loses immunities from search of his person to which he would otherwise be entitled." *Di Re*, 332 U. S., at 587; accord *Ross*, 456 U. S., at 823, 825 (the proper scope of a warrantless automobile search based on probable cause is "no broader" than the proper scope of a search authorized by a warrant supported by probable cause).[4]

Instead of applying ordinary Fourth Amendment principles to this case, the majority extends the automobile warrant exception to allow searches of passenger belong-

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[4] In response to this dissent the Court has crafted an imaginative footnote suggesting that the *Di Re* decision rested, not on Di Re's status as a mere occupant of the vehicle and the importance of individualized suspicion, but rather on the intrusive character of the search. See *ante*, at 7–8 n.1. That the search of a safe or violin case would be less intrusive than a strip search does not, however, persuade me that the *Di Re* case would have been decided differently if Di Re had been a woman and the gas coupons had been found in her purse. Significantly, in commenting on the *Carroll* case immediately preceding the paragraphs that I have quoted in the text, the *Di Re* Court stated: "But even the National Prohibition Act did not direct the arrest of all occupants but only of the person in charge of the offending vehicle, though there is better reason to assume that no passenger in a car loaded with liquor would remain innocent of knowledge of the car's cargo than to assume that a passenger must know what pieces of paper are carried in the pockets of the driver." *United States* v. *Di Re*, 332 U. S. 581, 586–587 (1948).

ings based on the driver's misconduct. Thankfully, the Court's automobile-centered analysis limits the scope of its holding. But it does not justify the outcome in this case.

I respectfully dissent.