No. 98-223

In the Supreme Court of the United States

OCTOBER TERM, 1998

FLORIDA, PETITIONER

v.

TYVESSEL TYVORUS WHITE

ON WRIT OF CERTIORARI
TO THE SUPREME COURT OF FLORIDA

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONER

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QUESTION PRESENTED

Whether the Fourth Amendment permits the warrantless seizure and subsequent inventory search of an automobile based on probable cause to believe that the vehicle is subject to forfeiture pursuant to a state statute authorizing such seizures, the Florida Contraband Forfeiture Act, Fla. Stat. Ann. §§ 932.701 *et seq.* (West 1996 & Supp. 1999).

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INTEREST OF THE UNITED STATES

The seizure in this case was effected pursuant to the Florida Contraband Forfeiture Act, Fla. Stat. Ann. §§ 932.701 *et seq.* (West 1996 & Supp. 1999). A similar federal statute provides for forfeiture of, *inter alia*, any vehicle that is used or intended for use in transporting or in any manner facilitating the transportation, sale, receipt, possession, or concealment of various described property, including controlled substances. 21 U.S.C. 881(a)(4). The federal statute specifically authorizes the seizure of property without prior judicial process when "the Attorney General has probable cause to believe that the property is subject to civil forfeiture under this subchapter." 21 U.S.C. 881(b)(4). Because the Court's

decision in this case will likely affect the ability of federal law enforcement officers to exercise the authority conferred by Section 881(b)(4), the United States has an interest in the outcome of this case.[1]

STATEMENT

1. The Florida Contraband Forfeiture Act, Fla. Stat. Ann. §§ 932.701 *et seq.* (West 1996 & Supp. 1999), establishes substantive and procedural rules for the forfeiture of, *inter alia*, property used in the commission of a felony. The Act defines the term "[c]ontraband article" to include "[a]ny controlled substance as defined in chapter 893," *id.* § 932.701(2)(a)1 (Supp. 1999), as well as "any vessel, aircraft, * * * [or] vehicle of any kind, * * * which was used or was attempted to be used as an instrumentality in the commission of, or in aiding or abetting in the commission of, any felony," *id.* § 932.701(a)5 (Supp. 1999). The Act makes it unlawful to transport any contraband article "by means of any vessel, motor vehicle, or aircraft," *id.* § 932.702(1) (1996); "[t]o conceal or possess any contraband article," *id.* § 932.702(2) (1996); to use any real or personal property "to facilitate the transportation, carriage, conveyance, concealment, receipt, possession, purchase, sale, barter, exchange, or giving away of any contraband article," *id.* § 932.702(3) (1996); or to "use any contraband article as an instrumentality in the commission of

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[1] As a matter of policy, particularly in light of the fact that the federal courts of appeals have reached differing conclusions as to the propriety of warrantless seizures of forfeitable property (see note 3, *infra*), the Department of Justice encourages the use of prior seizure warrants whenever practical. See Asset Forfeiture & Money Laundering Section, U.S. Dep't of Justice, *Asset Forfeiture Law and Practice Manual*, Ch. 2, at 20-21 (June 1998). The federal statute, however, contains no such requirement.

or in aiding or abetting in the commission of any felony or violation of the Florida Contraband Forfeiture Act," *id*. § 932.702(4) (1996).

The Florida Contraband Forfeiture Act states:

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

Fla. Stat. Ann. § 932.703(1)(a) (West Supp. 1999). The Act provides that "[a]ll rights to, interest in, and title to contraband articles * * * shall immediately vest in the seizing law enforcement agency upon seizure," *id.* § 932.703(1)(c) (Supp. 1999), though the seizing agency is prohibited from using the seized property until its susceptibility to forfeiture has been finally determined, see *id.* § 932.703(1)(d) (Supp. 1999). Under the Act, "[p]ersonal property may be seized at the time of the violation or subsequent to the violation," so long as the person from whom the property is seized is promptly notified of his right to a post-seizure hearing. *Id.* § 932.703(2)(a) (Supp. 1999). The Act also provides that "[p]roperty may not be forfeited under the Florida Contraband Forfeiture Act unless the seizing agency establishes by a preponderance of the evidence that the owner either knew, or should have known after a reasonable inquiry, that the property was being employed or was likely to be employed in criminal activity." *Id.* § 932.703(6)(a) (Supp. 1999). The Act contains no provision requiring that seizures of contraband articles be authorized by a judicial warrant.

2. On October 14, 1993, respondent Tyvessel Tyvorous White was arrested at his workplace on a charge of selling a controlled substance (a charge unrelated to the instant case). After he was taken into custody and the police obtained the keys to his car, the arresting officers seized respondent's automobile from the parking lot at his place of employment. The officers had not obtained a judicial warrant for the seizure. The basis for the seizure was the officers' belief, based on police eyewitnesses and videotapes, that the car had been used in the delivery and sale of cocaine on three previous occasions in July and August 1993. The car was transported to police headquarters, where an inventory search revealed two pieces of crack cocaine in the ashtray. Respondent was then charged with possession of cocaine. Pet. App. A2-A3 & n.2, A25-A26.

Respondent moved to suppress the cocaine. The trial court reserved ruling on the motion to suppress until after the jury had rendered its verdict. After the jury found respondent guilty, the court denied the motion. Pet. App. A26.

3. The Florida First District Court of Appeal affirmed respondent's conviction. Pet. App. A24-A45. The court first held that the warrantless seizure was consistent with the Florida Contraband Forfeiture Act. *Id.* at A27-A29. The court explained that "the only pre-seizure procedural requirement under the Forfeiture Act is the giving of a notice of the right to a subsequent hearing," and that respondent did not allege a violation of that requirement. *Id.* at A27-A28. The court also rejected respondent's contention that the seizure was invalid because the seizing officers did not have probable cause to believe that the vehicle contained contraband at the time the seizure occurred. Rather, the court explained, "[u]nder the Forfeiture Act, the

seizing agency is required only to have probable cause to believe that the property sought to be seized 'was used, is being used, was attempted to be used, or was intended to be used' in violation of the Forfeiture Act." *Id.* at A28 (quoting Fla. Stat. Ann. § 932.703(2)(c) (1993)). The court of appeal also observed that "[n]othing in the Forfeiture Act requires the obtaining of a warrant or court order before seizing a vehicle." *Ibid.*

The court next held that the warrantless seizure of respondent's automobile did not violate the Fourth Amendment. The court principally relied on the Eleventh Circuit's decision in *United States* v. *Valdes*, 876 F.2d 1554 (1989), which upheld a warrantless seizure conducted pursuant to the federal forfeiture statute (see note 1, *supra*) on the ground that "[i]f federal law enforcement agents, armed with probable cause, can arrest a drug trafficker without repairing to the magistrate for a warrant, we see no reason why they should not also be permitted to seize the vehicle the trafficker has been using to transport his drugs." *Id.* at 1559-1560 (quoted at Pet. App. A31).[2] The district court of appeal stated that it was "also influenced in [its] holding by the fact that the property seized here was a motor vehicle, a type of property found by the Supreme Court to have less Fourth Amendment protection against warrantless searches and seizures under the so-called 'automobile exception.'" Pet. App. A31. The court also held that

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[2] The Eleventh Circuit in *Valdes* placed substantial reliance on this Court's decision in *United States* v. *Watson*, 423 U.S. 411 (1976), which held that the Fourth Amendment permits warrantless arrests in public places, where the arresting officer has probable cause to believe that an individual has committed a felony. See 876 F.2d at 1558-1559.

"[b]ecause * * * the police properly seized the [respondent's] vehicle under the Forfeiture Act, * * * the subsequent inventory search was reasonable and, thus, the cocaine seized in the vehicle was properly admitted at trial." *Id.* at A32. Noting that the federal courts of appeals were in conflict as to the propriety of warrantless seizures under the federal forfeiture statute,[3] the district court of appeal certified to the Florida Supreme Court the question whether the warrantless seizure in this case complied with the Fourth Amendment. See *id.* at A33.

4. The Florida Supreme Court reversed. Pet. App. A1-A22. The court held that in the absence of exigent circumstances, the Fourth Amendment requires that the seizure of property pursuant to the state Forfeiture Act must be preceded by an ex parte preliminary hearing before a neutral magistrate. *Id.* at A4-A8. The court found the "automobile exception" to be inapplicable to this case because the seizing officers did not have probable cause to believe that the vehicle con-

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[3] Six courts of appeals have concluded that the Fourth Amendment permits the warrantless seizure, pursuant to the federal forfeiture statute, of vehicles found in public areas. See *United States* v. *Dixon*, 1 F.3d 1080, 1084 (10th Cir. 1993) (finding warrant requirement generally applicable, but holding that warrantless seizure of vehicle left in public place was justified under "plain view" exception to warrant requirement); *United States* v. *Pace*, 898 F.2d 1218, 1241-1242 (7th Cir.), cert. denied, 497 U.S. 1030 (1990); *Valdes*, 876 F.2d at 1558-1560 & n.14; *United States* v. *$29,000–U.S. Currency*, 745 F.2d 853, 856 (4th Cir. 1984); *United States* v. *One 1978 Mercedes Benz, Four-Door Sedan*, 711 F.2d 1297, 1299-1303 (5th Cir. 1983); *United States* v. *Bush*, 647 F.2d 357, 368-370 (3d Cir. 1981). Two courts of appeals have issued contrary decisions. See *United States* v. *Lasanta*, 978 F.2d 1300, 1303-1306 (2d Cir. 1992); *United States* v. *Linn*, 880 F.2d 209, 214-215 (9th Cir. 1989).

tained contraband at the time of the seizure. *Id.* at A8-A11. The court also noted that there were no exigent circumstances that might have made it impractical to obtain a warrant. *Id.* at A11. The court relied heavily on the Second Circuit's decision in *United States* v. *Lasanta*, 978 F.2d 1300 (1992), which concluded that a judicial warrant is constitutionally required in order to effect a seizure of property under the federal forfeiture statute. See Pet. App. A4-A6 & n.4, A10-A11. The court also relied on *Coolidge* v. *New Hampshire*, 403 U.S. 443 (1971), for the proposition that "absent exigent circumstances, police must secure a warrant for the search and seizure of an automobile." Pet. App. A13 n.8.[4]

Two justices dissented, noting that the weight of authority supports the view that no warrant is needed for a seizure of a vehicle when there is probable cause to believe that the vehicle is subject to forfeiture. Pet. App. A14-A21.

SUMMARY OF ARGUMENT

1. Because a seizure of property affects the owner's possessory interest, while a search intrudes upon expectations of privacy, this Court has recognized that the standards of reasonableness governing the two forms of government action are not equivalent. The Court has repeatedly held that warrantless seizures

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[4] The Florida Supreme Court rejected the district court of appeal's conclusion that "since a defendant's person can be seized without a warrant his property should be no different." Pet. App. A12. The court stated that "[i]f we were to follow that reasoning to its logical conclusion we would, in essence, amend the Fourth Amendment out of the Constitution and do away with the requirement of a warrant entirely for the search and seizure of property." *Ibid.*

based on probable cause are presumptively constitutional, so long as law enforcement officers are legally present at the site and the seizure is effected in a manner that does not involve any unauthorized intrusion on privacy interests. When this Court has invalidated warrantless probable-cause seizures of property, it has done so on the ground that the seizure in question was facilitated by an unauthorized search. The Court has applied the same principles to seizures of the person, permitting warrantless felony arrests in public places, but holding that the intrusion on privacy inherent in a home arrest requires a judicial warrant.

2. In *Horton* v. *California*, 496 U.S. 128 (1990), this Court set forth the criteria governing warrantless seizures of property based on probable cause. Such seizures are permissible if (a) the seizing officers are lawfully present at the vantage from which they view the relevant items, (b) the requisite probable cause is "immediately apparent" without a search of the items themselves, and (c) the officers have a lawful right of access to the seized objects. The seizure at issue in this case satisfies those requirements. Because respondent's automobile was seized from the parking lot of respondent's place of employment, rather than from a location where respondent possessed a reasonable expectation of privacy, no judicial warrant was required for the officers to view or approach the vehicle. And because no intrusion into the car itself was necessary to establish the requisite probable cause, the automobile's susceptibility to forfeiture was "immediately apparent" within the meaning of this Court's decisions.

3. The absence of exigent circumstances does not invalidate the seizure of respondent's automobile. This Court has not suggested that a warrantless seizure of property found in plain view must be supported by a

case-specific showing of exigent circumstances. The Florida Supreme Court's suggestion that such a showing is required improperly conflates the constitutional rules governing seizures with those that apply to searches. In *United States* v. *Watson*, 423 U.S. 411 (1976), this Court specifically rejected the contention that a warrantless felony arrest in a public place requires exigent circumstances, and the *Watson* Court's reasoning is equally applicable to seizures of property.

4. So long as the seizing officers had probable cause to believe that respondent's automobile had previously been used to facilitate narcotics trafficking, the seizure was valid. The vehicle's susceptibility to forfeiture did not depend on proof that the car contained contraband at the time it was seized; use for illicit purposes at any time in the past suffices under the Florida forfeiture law. The propriety of the seizure therefore did not depend on whether the police had probable cause to believe that the car contained drugs at the time it was seized.

5. Inventory searches of vehicles taken into police custody are not subject to the warrant and probable cause requirements that ordinarily apply to searches. Those searches are reasonable so long as they are conducted pursuant to standardized criteria that adequately constrain police discretion in individual cases. The Florida district court of appeal upheld the post-seizure search of respondent's vehicle as a permissible inventory search. The Florida Supreme Court did not suggest that the search was impermissible under this Court's inventory search jurisprudence; its suppression of the evidence discovered during the search was based on the perceived impropriety of the earlier seizure. Assuming that the search was conducted pursuant to appropriate standardized criteria, the evidence seized

from the vehicle was properly admitted at respondent's criminal trial.

ARGUMENT

THE FOURTH AMENDMENT PERMITS A WARRANTLESS SEIZURE AND SUBSEQUENT INVENTORY SEARCH OF PROPERTY BASED ON PROBABLE CAUSE TO BELIEVE THAT THE PROPERTY IS SUBJECT TO FORFEITURE, SO LONG AS THE SEIZURE INVOLVES NO INTRUSION ON PRIVACY RIGHTS

The Fourth Amendment forbids both unreasonable "searches" and unreasonable "seizures." U.S. Const. Amend. IV. This Court has recognized, however, that "the interest protected by the Fourth Amendment injunction against unreasonable searches is quite different from that protected by its injunction against unreasonable seizures." *Arizona* v. *Hicks*, 480 U.S. 321, 328 (1987). "A 'search' occurs when an expectation of privacy that society is prepared to consider reasonable is infringed. A 'seizure' of property occurs when there is some meaningful interference with an individual's possessory interests in that property." *United States* v. *Jacobsen*, 466 U.S. 109, 113 (1984); accord *Soldal* v. *Cook County*, 506 U.S. 56, 62-63 (1992); *Horton* v. *California*, 496 U.S. 128, 133 (1990).

Seizures may be undertaken by means of or in conjunction with searches, but that is not always the case. The seizure of respondent's automobile from the parking lot of his place of employment, for example, involved no intrusion on any constitutionally protected privacy interest. See, *e.g.*, *Minnesota* v. *Dickerson*, 508 U.S. 366, 377 (1993) ("The seizure of an item whose identity is already known occasions no further invasion of privacy."); *Horton*, 496 U.S. at 133 ("If an article is

already in plain view, neither its observation nor its seizure would involve any invasion of privacy."). The sole immediate effect of the seizure was an intrusion on possessory interests.

Even where (as here) a seizure is effected in a manner that involves no intrusion on privacy, it remains subject to the Fourth Amendment's reasonableness requirement. See *Soldal*, 506 U.S. at 62-66 (rejecting contention that seizures involving no intrusion on privacy or personal liberty are immune from scrutiny under the Fourth Amendment). To satisfy that requirement, such seizures must generally be supported by probable cause. See *id.* at 66; *Hicks*, 480 U.S. at 326-327. But this Court has repeatedly recognized that a warrant is not required for a seizure based on probable cause, so long as the seizure is effected in a manner that involves no intrusion on privacy rights.

A. This Court Has Repeatedly Upheld Warrantless Seizures Based Upon Probable Cause, So Long As The Seizure Is Effected In A Manner That Does Not Involve Any Intrusion On Privacy Interests

In a broad variety of circumstances, this Court has recognized that warrantless seizures based on probable cause are presumptively constitutional, so long as law enforcement officers are legally present at the site and the seizure is effected in a manner that does not involve any unauthorized intrusion on privacy interests. In *Payton* v. *New York*, 445 U.S. 573 (1980), the Court stated that it is:

> well settled that objects such as weapons or contraband found in a public place may be seized by the police without a warrant. The seizure of property in plain view involves no invasion of privacy and is presumptively reasonable, assuming that

> there is probable cause to associate the property with criminal activity.

Id. at 586-587. In *Jacobsen*, the Court referred to the "well settled" rule "that it is constitutionally reasonable for law enforcement officials to seize 'effects' that cannot support a justifiable expectation of privacy without a warrant, based on probable cause to believe they contain contraband." 466 U.S. at 121-122. In *Dickerson*, the Court explained that "if police are lawfully in a position from which they view an object, if its incriminating character is immediately apparent, and if the officers have a lawful right of access to the object, they may seize it without a warrant." 508 U.S. at 375. See also, *e.g.*, *Illinois* v. *Andreas*, 463 U.S. 765, 771 (1983) (seizure authorized if officer has some prior Fourth Amendment justification for presence and "has probable cause to suspect that the item is connected with criminal activity"); *Texas* v. *Brown*, 460 U.S. 730, 739 (1983) (plurality opinion) (this Court's "decisions have come to reflect the rule that if, while lawfully engaged in an activity in a particular place, police officers perceive a suspicious object, they may seize it immediately"); *id.* at 748 (Stevens, J., concurring in judgment) ("if an officer has probable cause to believe that a publicly situated item is associated with criminal activity, * * * [t]he officer may * * * seize it without a warrant").

The Court has applied that principle in a variety of circumstances: to a boat seized on public waters, where Coast Guard officers had probable cause to believe that revenue laws were being violated so as to render the vessel subject to forfeiture, *United States* v. *Lee*, 274 U.S. 559, 563 (1927); to evidence found in an impounded car in the course of securing the vehicle, *Harris* v.

United States, 390 U.S. 234, 235-236 (1968); to items found in a private place where a third party had given consent to search, *Frazier* v. *Cupp*, 394 U.S. 731, 740 (1969); to cars found in public streets or parking lots, when officers had probable cause to believe that the cars were subject to seizure for satisfaction of tax assessments, *G.M. Leasing Corp.* v. *United States*, 429 U.S. 338, 351-352 (1977); to a package containing illegal drugs when private parties had already opened the package and revealed the suspicious substance, *Jacobsen*, 466 U.S. at 120-122; and to evidence found in plain view in a house being searched pursuant to a warrant, *Horton*, 496 U.S. at 131, 139-141.

When this Court has invalidated warrantless seizures of property, it has not suggested that a seizure *qua* seizure—*i.e.*, a deprivation of possessory interests unaccompanied by any intrusion on privacy—itself requires a judicial warrant. Rather, it has explained that the seizure in question was facilitated by an unauthorized "search."[5] Thus, in *Dickerson*, a police

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[5] In *United States* v. *Place*, 462 U.S. 696, 701 (1983), this Court stated that "[i]n the ordinary case, the Court has viewed a seizure of personal property as *per se* unreasonable within the meaning of the Fourth Amendment unless it is accomplished pursuant to a judicial warrant issued upon probable cause and particularly describing the items to be seized." That statement might appear to be in tension with the Court's frequent assertions (see pp. 11-12, *supra*) that a seizure of property does not require a judicial warrant because it implicates possessory rather than privacy interests. Any tension, however, is semantic rather than real. The Court in *Place* noted that a warrantless seizure is permitted if a "recognized exception to the warrant requirement is present," and it gave as an example of such an exception the established rule that "objects such as weapons or contraband found in a public place

officer conducted a weapons patdown (see *Terry* v. *Ohio*, 392 U.S. 1 (1968)) near a building known to be a site of cocaine trafficking. See 508 U.S. at 368-369. The state supreme court found that, although the patdown was initially justified, the officer continued to probe the contents of the suspect's pocket even after ascertaining that it did not contain a weapon. See *id.* at 378. The officer ultimately discovered and seized a lump of crack cocaine. *Id.* at 369. This Court held that the seizure would have been lawful if the cocaine's identity as contraband had become apparent during the authorized *Terry* search. See *id.* at 375-376. The Court held, however, that because the officer had violated the Fourth Amendment by continuing the search after determining that the suspect did not possess a weapon, the subsequent warrantless seizure of the cocaine was unconstitutional. *Id.* at 379. Similarly in *Hicks*, the Court invalidated the seizure of stolen stereo equipment because the seizing officers had obtained

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may be seized by the police without a warrant." *Ibid.* (quoting *Payton*, 445 U.S. at 587).

The thrust of this Court's "plain-view" cases is that a seizure does not require a judicial warrant so long as it is effected in a manner that involves no intrusion on privacy interests. The Court in *Place* characterized that principle as an exception to a general rule that warrantless seizures of property are prohibited. Alternatively, one might say that a warrant is not required for a seizure of property *qua* seizure, but only for the *search* that frequently facilitates a seizure. Cf. *Brown*, 460 U.S. at 737-739 (plurality opinion). On that view, if a police officer's course of conduct involves both a search and seizure, and the officer neither obtains a warrant nor acts pursuant to an exception to the warrant requirement, the seizure is unreasonable because it is accomplished by means of an unlawful warrantless search. Compare *Dickerson*, 508 U.S. at 379. The difference between the two formulations, however, has no substantive significance.

probable cause to believe that the equipment was stolen only after conducting an unauthorized search. 480 U.S. at 324-329; see *Dickerson*, 508 U.S. at 378-379 (discussing *Hicks*).[6]

The Court has applied the same principles to seizures of the person. Consistent with the Fourth Amendment, officers may arrest an individual in a public place without a warrant based on probable cause to believe that the person has committed a felony. See *United States* v. *Watson*, 423 U.S. 411, 416-424 (1976). A warrant is presumptively required for a felony arrest within the home, however. See *Payton*, 445 U.S. at 583-590. The *Payton* Court explained that such an arrest involves a substantial intrusion into an individual's "zone of privacy." See *id.* at 587-590. The Court relied, by way of analogy, on the established "distinction between a warrantless seizure [of property] in an open area and such a seizure on private premises,"

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[6] The Florida Supreme Court erred in relying (see Pet. App. A13 n.8) on *Coolidge* v. *New Hampshire*, 403 U.S. 443 (1971), for the proposition that any warrantless seizure of property from a public place is presumptively unconstitutional. To begin with, "Justice Stewart's analysis of the 'plain-view' doctrine did not command a majority" of the *Coolidge* Court. *Horton*, 496 U.S. at 136. In any event, *Coolidge* is distinguishable from this case in two significant respects. First, "in *Coolidge*, the [seized] cars were obviously in plain view, but their probative value remained uncertain until after the interiors were swept and examined microscopically." *Horton*, 496 U.S. at 137. In this case, no search of respondent's automobile was necessary to establish probable cause that it was susceptible to forfeiture. Second, "the seizure of the cars [in *Coolidge*] was accomplished by means of a warrantless trespass on the defendant's property." *Ibid.* Respondent's vehicle, by contrast, was seized from his place of employment in a manner that involved no intrusion on respondent's privacy interests.

concluding that "this distinction has equal force when the seizure of a person is involved." *Id.* at 587.[7]

B. The Seizure At Issue In This Case Satisfied The Requirements Set Forth In This Court's Decision In *Horton* v. *California*

This Court's decision in *Horton* sets forth the criteria governing warrantless seizures. The seizure of respondent's automobile satisfies the requirements announced in that opinion.

In *Horton*, a police officer obtained a warrant to search the home of a person suspected of involvement in an armed robbery. The warrant issued by the magistrate authorized a search for the proceeds of the crime, including three specifically described rings. 496 U.S. at 131. The officer conducting the search did not find the stolen property. In the course of performing the search, however, the officer found in plain view weapons resembling those used in the robbery, as well as other

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[7] The Florida Supreme Court rejected the analogy between seizures of the person and seizures of property, stating that to treat the two similarly "would, in essence, amend the Fourth Amendment out of the Constitution and do away with the requirement of a warrant entirely for the search and seizure of property." Pet. App. A12. The court's apparent premise was that searches of property should logically be subject to the identical constitutional constraints as seizures of property. That analysis overlooks this Court's repeated recognition that because the burden imposed by a seizure of property (deprivation of the owner's possessory interest) is different in kind from the invasion of privacy caused by a search, the Fourth Amendment reasonableness of those two types of government action must be assessed according to different criteria. The state court's rejection of the analogy between seizures of property and seizures of the person is especially ill-considered since this Court expressly relied on that analogy in holding that a warrant is presumptively required for an arrest within the home. See *Payton*, 445 U.S. at 586-587.

items linking the homeowner to the crime. See *ibid.* Those items were introduced into evidence at trial, and Horton was convicted. *Ibid.*

This Court held that the officer had acted properly in seizing the items found in plain view during the course of the search, even though no judicial warrant authorized the seizure. The Court found that the officer had probable cause to believe that the seized items inculpated Horton in the armed robbery. 496 U.S. at 142. In addition to the probable cause requirement, the Court identified three prerequisites to warrantless seizures of property under the Fourth Amendment:

> [1] It is, of course, an essential predicate to any valid warrantless seizure of incriminating evidence that the officer did not violate the Fourth Amendment in arriving at the place from which the evidence could be plainly viewed. There are, moreover, two additional conditions that must be satisfied to justify the warrantless seizure. [2] * * * [N]ot only must the item be in plain view; its incriminating character must also be "immediately apparent." [*Coolidge* v. *New Hampshire*, 403 U.S. 443, 466 (1971)]; see also *Arizona* v. *Hicks*, 480 U.S., at 326-327. Thus, in *Coolidge*, the cars were obviously in plain view, but their probative value remained uncertain until after the interiors were swept and examined microscopically. [3] * * * [N]ot only must the officer be lawfully located in a place from which the object can be plainly seen, but he or she must also have a lawful right of access to the object itself. As the United States has suggested, Justice Harlan's vote in *Coolidge* may have rested on the fact that the seizure of the cars was accomplished by means of a warrantless trespass on the defendant's property.

Id. at 136-137 (footnote omitted). The seizure conducted in this case satisfies each of those requirements.

1. The first requirement articulated in *Horton* is that the officer conducting the seizure must lawfully be present at the vantage from which the seized item is viewed. That requirement may generally be satisfied in either of two ways. In some instances (as in *Horton* itself), officers may lawfully be present in a non-public place, pursuant to (for example) a judicial warrant or the consent of the resident. See *Brown*, 460 U.S. at 738 n.4 (plurality opinion). "Alternatively, police may need no justification under the Fourth Amendment for their access to an item, such as when property is left in a public place." *Ibid.*

The officers in this case were lawfully present at the location from which the seized car was viewed. Respondent's automobile was seized not from a place (such as a residential garage) that was inaccessible to the public generally, but from the parking lot of respondent's employer. Neither of the courts below suggested that the police, in ascertaining the location of the vehicle and in effecting the seizure, intruded on any location where respondent (or anyone else) had a legitimate expectation of privacy.

2. The automobile's susceptibility to seizure was "immediately apparent" within the meaning of this Court's decisions. That requirement is satisfied so long as an item's susceptibility to seizure can be ascertained "without conducting some further search of the object." *Dickerson*, 508 U.S. at 375. See also *id.* at 378-379; *Hicks*, 480 U.S. at 324-329 (seizure of stereo equipment from private residence was not justified by "plain view" doctrine, since officers obtained probable cause to be-

lieve the item was stolen only as a result of an unauthorized search).[8]

In this case, the police had probable cause, "based on police eyewitnesses and videotape," to believe that respondent's car had been used in drug trafficking activity and was therefore subject to forfeiture. See Pet. App. A25-A26. Neither of the courts below suggested that any intrusion into the car itself was required in order to establish the requisite probable cause. Because the susceptibility of the car to seizure was established without resort to any Fourth Amendment "search," that susceptibility was "immediately apparent" to the seizing officers.

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[8] The requirement that an item's susceptibility to seizure be "immediately apparent" does not require a level of certainty greater than probable cause. See *Brown*, 460 U.S. at 741-742 (plurality opinion); see also *id.* at 746 (Powell, J., concurring in judgment) (applying probable cause standard); *id.* at 748 (Stevens, J., concurring in judgment) (same). Susceptibility to seizure may be "immediately apparent," moreover, even if close scrutiny or artificial illumination is required in order to verify the existence of probable cause, so long as the officers' scrutiny of what is in plain view does not involve a "search" within the meaning of the Fourth Amendment. See *id.* at 739-740 & n.5 (plurality opinion); *Lee*, 274 U.S. at 563; compare *Hicks*, 480 U.S. at 329 (contrasting a "search" with "close observation of what lies in plain sight").

Finally, an item's susceptibility to seizure may be "immediately apparent" even if the propriety of seizure depends in part on preexisting information that cannot be gleaned purely from observation of the object itself. In *Horton*, for example, the incriminating character of the relevant items was immediately apparent because those items matched descriptions given by witnesses to the crime for which the homeowner was investigated. See 496 U.S. at 130-131. Similarly in *Brown*, the finding of probable cause was based in part on the seizing officer's expertise concerning the manner in which narcotics are customarily packaged. See 460 U.S. at 742-743 (plurality opinion); *id.* at 746 (Powell, J., concurring in judgment).

3. For essentially the same reason that the police in this case were lawfully at the location where they viewed respondent's car, the officers "ha[d] a lawful right of access to the object itself." *Horton*, 496 U.S. at 137. Because the car was located in a public place, its seizure did not involve an official intrusion into any area protected by the Fourth Amendment.[9] The seizure of respondent's automobile therefore satisfied each of the three requirements for a warrantless seizure set forth in this Court's opinion in *Horton*.

C. The Absence Of Exigent Circumstances Does Not Invalidate The Seizure Of Respondent's Automobile

The Florida Supreme Court's decision in this case rests in part on its determination that no exigent circumstances prevented the police from obtaining a judicial warrant. See Pet. App. A11, A12-A13 & n.8. In upholding warrantless seizures of property found in

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[9] Situations may occasionally arise in which the first *Horton* requirement has been satisfied—*i.e.*, "the officer did not violate the Fourth Amendment in arriving at the place from which the evidence could be plainly viewed," 496 U.S. at 136—but the officer nevertheless lacks "a lawful right of access to the object itself," *id.* at 137. For example, in *Taylor* v. *United States*, 286 U.S. 1 (1932), prohibition officers were able to smell whiskey coming from a garage on private property and could see through an opening in the garage "many cardboard cases which they thought probably contained jars of liquor." *Id.* at 5. Although the Court's opinion is not altogether clear on this point, the agents appear to have been lawfully situated in a public area at the time they made their observations. (The Court described the garage as being located "on the corner of a city lot," *ibid.*, and it indicated that the agents' observations could have formed the predicate for the issuance of a warrant and a subsequent lawful search, *id.* at 6.) The Court nevertheless held that the agents' seizure of whiskey was unlawful, since it was effected by means of a warrantless entry into the garage itself. *Id.* at 5-6; see *Horton*, 496 U.S. at 137 n.7.

open view, however, this Court has not suggested that such a seizure must be supported by a case-specific showing of exigent circumstances. The Florida court's analysis improperly conflates the constitutional rules governing seizures with those that apply to searches, in derogation of this Court's repeated recognition that the two forms of government action implicate different private interests and are accordingly subject to different constraints.

In *Watson*, this Court specifically rejected the contention that the propriety of a warrantless felony arrest in a public place depends on a showing of exigent circumstances. See 423 U.S. at 415. The Court acknowledged that "[l]aw enforcement officers may find it wise to seek arrest warrants where practicable to do so, and their judgments about probable cause may be more readily accepted where backed by a warrant issued by a magistrate." *Id.* at 423. The Court nevertheless "decline[d] to transform this judicial preference into a constitutional rule" that might "encumber criminal prosecutions with endless litigation with respect to the existence of exigent circumstances." *Ibid.*[10] The same analysis applies here.

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[10] The Court in *Watson* relied in part on the fact that "Congress ha[d] plainly decided against conditioning warrantless arrest power on proof of exigent circumstances." 423 U.S. at 423. The Court noted the "strong presumption of constitutionality due to an Act of Congress, especially when it turns on what is 'reasonable.'" *Id.* at 416 (quoting *United States* v. *Di Re*, 332 U.S. 581, 585 (1948)). As we explain above (see pp. 1-2, *supra*), Congress has specifically authorized the seizure of property without prior judicial process where the Attorney General concludes that there is probable cause to believe that the property is subject to forfeiture.

D. So Long As The Police Had Probable Cause To Believe That Respondent's Vehicle Had Previously Been Used To Facilitate Narcotics Trafficking, The Seizure Of The Automobile Was Valid

Respondent's automobile was seized "on the grounds that, based on police eyewitnesses and videotape, it had been used in the delivery and sale of cocaine." Pet. App. A25-A26. The seizure occurred on October 14, 1993; the alleged trafficking activities occurred on July 26, 1993, and August 4 and 7, 1993. *Id.* at A2 & n.2. Based on police testimony given in the trial court, the district court of appeal concluded that "the police had probable cause to believe [respondent's] vehicle had been used to facilitate the sale of cocaine." *Id.* at A43 n.3.

Although the Florida Supreme Court did not suggest that the seizing officers lacked probable cause to believe that respondent's automobile had previously been used in drug trafficking activities, it attached significance to the fact that "the government had no probable cause to believe that contraband was present in [respondent's] car" at the time the seizure occurred. Pet. App. A9. The absence of probable cause to believe that the automobile presently contained contraband would indeed have precluded the officers from *searching* the vehicle before its seizure. For a search to be reasonable, officers must generally have probable cause "to believe that the specific 'things' to be searched for and seized are located on the property to which entry is sought." *Zurcher* v. *Stanford Daily*, 436 U.S. 547, 556 (1978).[11] See also *Andresen* v. *Maryland*, 427 U.S. 463,

[11] Although the "automobile exception" to the Fourth Amendment warrant requirement authorizes warrantless searches of movable vehicles, a search conducted pursuant to that exception

478-479 n.9 (1976) (where significant delay occurs between events giving rise to probable cause and actual search of offices, search is reasonable if items sought are of a type that would typically be held for an extended period of time).

The susceptibility of respondent's automobile to forfeiture, however, does not depend on whether it contained narcotics at the time of its seizure. The Florida Contraband Forfeiture Act defines "[c]ontraband article" to include "any vessel, aircraft, * * * [or] vehicle of any kind, * * * which was used or was attempted to be used as an instrumentality in the commission of, or in aiding or abetting in the commission of, any felony." Fla. Stat. Ann. § 932.701(a)5 (West Supp. 1999). If respondent had in fact used the car to facilitate the sale of narcotics, as the officers reasonably believed, the subsequent removal of the drugs from the vehicle would not have immunized the car from forfeiture. And so long as the seizing officers had probable cause to believe that the automobile was subject to forfeiture based on its prior unlawful use, the propriety of the seizure did not depend on any likelihood that the car presently contained drugs or other incriminating evidence. See *United States* v. *Kemp*, 690 F.2d 397, 401 (4th Cir. 1982) (probable cause to believe that property has previously been used in violation of the drug laws is sufficient to justify seizure under the federal forfeiture statute; "[t]his type of probable cause can never

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must be based on probable cause. See *California* v. *Carney*, 471 U.S. 386, 392 (1985). As we explain below (see pp. 24-26, *infra*), however, the search of respondent's automobile was conducted after the car was taken into police custody, and its validity turns on the applicability of the "inventory search" exception to the Fourth Amendment's warrant and probable cause requirements.

dissipate as probable cause for a search warrant may become stale").

Indeed, even the Florida Supreme Court did not dispute that respondent's vehicle could lawfully have been seized based on probable cause to believe that the car had previously been used to facilitate narcotics crimes. The court simply held that the requisite finding of probable cause must be made by a neutral magistrate. For the reasons set forth in Parts A-C above, that holding is not consistent with this Court's precedents.

E. So Long As The Inventory Search Of Respondent's Car Was Conducted Pursuant To Appropriate Standardized Criteria, The Evidence Found During The Search Was Properly Admitted At Respondent's Trial

Inventory searches of vehicles taken into police custody are not subject to the warrant and probable cause requirements that ordinarily apply to searches. See, *e.g.*, *Colorado* v. *Bertine*, 479 U.S. 367, 371-372 (1987); *South Dakota* v. *Opperman*, 428 U.S. 364, 369-376 (1976). Inventory searches further the government's interests in "the protection of the owner's property while it remains in police custody; the protection of the police against claims or disputes over lost or stolen property; and the protection of the police from potential danger." *Id.* at 369 (citations omitted). Those searches are reasonable so long as they are conducted pursuant to "standardized criteria" that adequately constrain the discretion of officers in individual cases. *Florida* v. *Wells*, 495 U.S. 1, 4 (1990).[12]

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[12] Those standardized criteria may appropriately leave room for a degree of police discretion "so long as that discretion is exercised * * * on the basis of something other than suspicion of evidence of criminal activity." *Bertine*, 479 U.S. at 375.

In *Cooper* v. *California*, 386 U.S. 58 (1967), the Court upheld an inventory search against Fourth Amendment challenge in circumstances closely resembling those presented here. In *Cooper*, police officers seized and impounded a vehicle pursuant to a state statute authorizing the forfeiture of vehicles used to facilitate the commission of narcotics offenses. *Id*. at 60. Police subsequently conducted a warrantless search of the vehicle and seized incriminating evidence that was introduced in the petitioner's trial for heroin distribution. *Id*. at 58.[13] The Court held that the search did not violate the Fourth Amendment, explaining that "[i]t would be unreasonable to hold that the police, having to retain the car in their custody for [an extended] length of time, had no right, even for their own protection, to search it." *Id*. at 61-62.[14]

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[13] The Court's opinion in *Cooper* does not discuss the question whether the officers who searched the vehicle had probable cause to believe that it contained contraband. The State apparently did not seek to demonstrate that probable cause existed, and this Court has subsequently described *Cooper* as a case in which "probable cause to search for the contraband in the vehicle had not been established." *Opperman*, 428 U.S. at 373. The Court's opinion in *Cooper* appears to assume, but does not discuss, the propriety of the earlier warrantless seizure of the automobile.

[14] The Court's decision in *Horton* confirms that an inventory search may properly be conducted following the warrantless seizure of a vehicle found in a public place. The Court in *Horton* stated the general rule that "the seizure of an object in plain view does not involve an intrusion on privacy." 496 U.S. at 141. In a footnote, the Court then explained that "[e]ven if the item is a container, its seizure does not compromise the interest in preserving the privacy of its contents because it may only be opened pursuant to either a search warrant, or one of the well-delineated exceptions to the warrant requirement." *Id*. at 141 n.11 (citations omitted). Immediately following its reference to the "well-delineated exceptions to the warrant requirement," the Court cited

In this case, the district court of appeal upheld the search of respondent's vehicle as a permissible inventory search. Pet. App. A32. The court of appeal noted the requirement that an inventory search must be conducted "pursuant to standard police procedures," and it evidently concluded that the search of respondent's automobile satisfied that requirement. *Ibid.* The Florida Supreme Court did not suggest that the search was impermissible under this Court's inventory search jurisprudence; its suppression of the evidence discovered during the search was based on the perceived impropriety of the earlier seizure. Assuming that the search of the car was conducted pursuant to standardized criteria that adequately constrained police discretion, the evidence seized from the vehicle was properly admitted at respondent's criminal trial.

Bertine (see *ibid.*), which explains and reaffirms the standards governing inventory searches of vehicles in police custody. The Court thus clearly contemplated that a vehicle seized in plain view may properly be made the subject of an inventory search.

CONCLUSION

The judgment of the Supreme Court of Florida should be reversed.

Respectfully submitted.

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JANUARY 1999