SUPREME COURT OF THE UNITED STATES

No. 98–223

FLORIDA, PETITIONER *v.* TYVESSEL TYVORUS WHITE

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

[May 17, 1999]

JUSTICE STEVENS, with whom JUSTICE GINSBURG joins, dissenting.

During the summer of 1993, Florida police obtained evidence that Tyvessel White was engaged in the sale and delivery of narcotics, and that he was using his car to facilitate the enterprise. For reasons unexplained, the police neither arrested White at that point nor seized his automobile as an instrumentality of his alleged narcotics offenses. Most important to the resolution of this case, the police did not seek to obtain a warrant before seizing White's car that fall– over two months after the last event that justified the seizure. Instead, after arresting White at work on an unrelated matter and obtaining his car keys, the officers seized White's automobile without a warrant from his employer's parking lot and performed an inventory search. The Florida Supreme Court concluded that the seizure, which took place absent exigent circumstances or probable cause to believe that narcotics were present, was invalid. 710 So. 2d 949 (1998).[1]

– – – – – –

[1]The Florida Supreme Court's opinion could be read to suggest that due process protections in the Florida Constitution might independently require a warrant or other judicial process before seizure under the Florida Contraband Forfeiture Act. See 710 So. 2d, at 952 (discussing *Department of Law Enforcement* v. *Real Property*, 588 So. 2d

In 1971, after advising us that "we must not lose sight of the Fourth Amendment's fundamental guarantee," Justice Stewart made this comment on what was then settled law:

> "'[T]he most basic constitutional rule in this area is that 'searches conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment– subject only to a few specifically established and well-delineated exceptions.' The exceptions are 'jealously and carefully drawn,' and there must be 'a showing by those who seek exemption . . . that the exigencies of the situation made that course imperative.' '[T]he burden is on those seeking the exemption to show the need for it.'" *Coolidge* v. *New Hampshire,* 403 U. S. 443, 453, 454–455 (footnotes omitted).

Because the Fourth Amendment plainly "protects property as well as privacy" and seizures as well as searches, *Soldal* v. *Cook County*, 506 U. S. 56, 62–64 (1992), I would apply to the present case our longstanding warrant presumption.[2] In the context of property seizures by law

– – – – – –

957 (1991)). However, the certified question put to that court referred only to the Fourth Amendment to the United States Constitution. 710 So. 2d, at 950. Thus, a viable federal question was presented for us to decide on certiorari, but of course we have no authority to determine the limits of state constitutional or statutory safeguards.

[2] *E.g., United States* v. *United States Dist. Court for Eastern Dist. of Mich.*, 407 U. S. 297, 315–318 (1972) ("Though the Fourth Amendment speaks broadly of 'unreasonable searches and seizures,' the definition of 'reasonableness' turns, at least in part, on the more specific commands of the warrant clause"); *Coolidge* v. *New Hampshire,* 403 U. S. 443, 454–455 (1971); *Katz* v. *United States*, 389 U. S. 347, 357 (1967); *Johnson* v. *United States*, 333 U. S. 10, 13–14 (1948); *Harris* v. *United States*, 331 U. S. 145, 162 (1947) (Frankfurter, J., dissenting) ("[W]ith minor and severely confined exceptions, inferentially a part of the Amendment, every search and seizure is unreasonable when made without a magistrate's authority expressed through a validly issued warrant"), overruled in

enforcement authorities, the presumption might be overcome more easily in the absence of an accompanying privacy or liberty interest. Nevertheless, I would look to the warrant clause as a measure of reasonableness in such cases, *United States* v. *United States Dist. Court for Eastern Dist. of Mich.*, 407 U. S. 297, 315 (1972), and the circumstances of this case do not convince me that the role of a neutral magistrate was dispensable.

The Court does not expressly disavow the warrant presumption urged by White and followed by the Florida Supreme Court, but its decision suggests that the exceptions have all but swallowed the general rule. To defend the officers' warrantless seizure, the State points to cases establishing an "automobile exception" to our ordinary demand for a warrant before a lawful search may be conducted. Each of those cases, however, involved searches of automobiles for contraband or temporary seizures of automobiles to effect such searches.[3] Such intrusions comport with the practice of federal customs officers dur-

– – – – – –

part by *Chimel* v. *California*, 395 U. S. 752 (1969); see also *Shadwick* v. *Tampa*, 407 U. S. 345, 348 (1972) (noting "the now accepted fact that someone independent of the police and prosecution must determine probable cause"); *Wong Sun* v. *United States*, 371 U. S. 471, 481–482 (1963).

[3] See, *e.g.*, *Carroll* v. *United States*, 267 U. S. 132, 153 (1925) (where the police have probable cause, "contraband goods concealed and illegally transported in an automobile or other vehicle may be searched for without a warrant"); *United States* v. *Ross*, 456 U. S. 798, 820, n. 26, 825 (1982) ("During virtually the entire history of our country– whether contraband was transported in a horse-drawn carriage, a 1921 roadster, or a modern automobile– it has been assumed that a lawful search of a vehicle would include a search of any container that might conceal the object of the search"); *Wyoming* v. *Houghton*, 526 U. S. __, __ (1999) (slip op., at 3–5); *Pennsylvania* v. *Labron*, 518 U. S. 938, 940 (1996) *(per curiam)* ("If a car is readily mobile and probable cause exists to believe it contains contraband, the Fourth Amendment thus permits police to search the vehicle without more").

ing the Nation's early history on which the majority relies, as well as the practicalities of modern life. But those traditions and realities are weak support for a warrantless seizure of the vehicle itself, months after the property was proverbially tainted by its physical proximity to the drug trade, and while the owner is safely in police custody.

The stated purposes for allowing warrantless vehicle searches are likewise insufficient to validate the seizure at issue, whether one emphasizes the ready mobility of automobiles or the pervasive regulation that diminishes the owner's privacy interests in such property. No one seriously suggests that the State's regulatory regime for road safety makes acceptable such unchecked and potentially permanent seizures of automobiles under the State's criminal laws. And, as the Florida Supreme Court cogently explained, an exigent circumstance rationale is not available when the seizure is based upon a belief that the automobile may have been used at some time in the past to assist in illegal activity and the owner is already in custody.[4] Moreover, the state court's conclusion that the warrant process is a sensible protection from abuse of government power is bolstered by the inherent risks of hindsight at post-seizure hearings and law enforcement agencies' pecuniary interest in the seizure of such property. See Fla. Stat. §932.704(1) (1997); cf. *United States* v. *James Daniel Good Real Property*, 510 U. S. 43, 55–56 (1993).

– – – – – –

[4] 710 So. 2d 949, 953–954 (Fla. 1998) ("There simply was no concern presented here that an opportunity to seize evidence would be missed because of the mobility of the vehicle. Indeed, the entire focus of the seizure here was to seize the vehicle itself as a prize because of its alleged prior use in illegal activities, rather than to search the vehicle for contraband known to be therein, and that might be lost if not seized immediately"). The majority notes, *ante*, at 5, n. 4, but does not confront, the argument that the mobility of White's vehicle was not a substantial governmental concern in light of the delay between establishing probable cause and seizure.

Were we confronted with property that Florida deemed unlawful for private citizens to possess regardless of purpose, and had the State relied on the plain-view doctrine, perhaps a warrantless seizure would have been defensible. See *Horton* v. *California*, 496 U. S. 128 (1990); *Arizona* v. *Hicks*, 480 U. S. 321, 327 (1987) (citing *Payton* v. *New York*, 445 U. S. 573 (1980)). But " [t]here is nothing even remotely criminal in possessing an automobile,' " *Austin* v. *United States*, 509 U. S. 602, 621 (1993) (quoting *One 1958 Plymouth Sedan* v. *Pennsylvania*, 380 U. S. 693, 699 (1965)); no serious fear for officer safety or loss of evidence can be asserted in this case considering the delay and circumstances of the seizure; and only the automobile exception is at issue, 710 So. 2d, at 952; Brief for Petitioner 6, 28.[5]

In any event, it seems to me that the State's treatment of certain vehicles as "contraband" based on past use provides an added reason for insisting on an appraisal of the evidence by a neutral magistrate, rather than a justification for expanding the discretionary authority of the police. Unlike a search that is contemporaneous with an officer's probable-cause determination, *Horton*, 496 U. S., at 130–131, a belated seizure may involve a serious intrusion on the rights of innocent persons with no connection to the earlier offense. Cf. *Bennis* v. *Michigan*, 516 U. S. 442 (1996). And a seizure supported only by the officer's conclusion that at some time in the past there was prob-

---

[5] There is some force to the majority's reliance on *United States* v. *Watson*, 423 U. S. 411 (1976), which held that no warrant is required for felony arrests made in public. *Ante*, at 6. With respect to the seizures at issue in *Watson*, however, I consider the law enforcement and public safety interests far more substantial, and the historical and legal traditions more specific and engrained, than those present on the facts of this case. See 423 U. S., at 415–424; *id.*, at 429 (Powell, J., concurring) ("[L]ogic sometimes must defer to history and experience").

able cause to believe that the car was then being used illegally is especially intrusive when followed by a routine and predictable inventory search– even though there may be no basis for believing the car then contains any contraband or other evidence of wrongdoing.[6]

Of course, requiring police officers to obtain warrants in cases such as the one before us will not allay every concern private property owners might have regarding government discretion and potentially permanent seizures of private property under the authority of a State's criminal laws. Had the officers in this case obtained a warrant in July or August, perhaps they nevertheless could or would have executed that warrant months later; and, as the Court suggests, *ante*, at 5, n. 4, delay between the basis for a seizure and its effectuation might support a Fourth Amendment objection whether or not a warrant was obtained. That said, a warrant application interjects the judgment of a neutral decisionmaker, one with no pecuni-

---

[6] The Court's reliance on *G. M. Leasing Corp.* v. *United States*, 429 U. S. 338 (1977), is misplaced. The seizure in that case was supported by an earlier tax assessment that was "given the force of a judgment." *Id.*, at 352, n. 18 (internal quotation marks omitted). We emphasized that the owner of the automobiles in question lacked a privacy interest, but he had also lost any possessory interest in the property by way of the prior judgment. In this case, despite plenty of time to obtain a warrant that would provide similar pre-seizure authority for the police, they acted entirely on their own assessment of the probative force of evidence relating to earlier events. In addition, White's property interests in his car were apparently not extinguished until, at the earliest, the seizure took place. See Fla. Stat. §§932.703(1)(c)–(d) (1997) (the State acquires rights, interest, and title in contraband articles at the time of seizure, and the seizing agency may not use the seized property until such rights, interest, and title are "perfected" in accordance with the statute); §932.704(8); *Soldal* v. *Cook County*, 506 U. S. 56, 63–64 (1992). This statutory scheme and its aims, see Fla. Stat. §932.704(1) (1997), also distinguish more mundane and temporary vehicle seizures performed for regulatory purposes and immediate public needs, such as a tow from a no-parking zone. No one contends that a warrant is necessary in that case.

ary interest in the matter, see *Connally* v. *Georgia*, 429 U. S. 245, 250–251 (1977) *(per curiam)*, before the burden of obtaining possession of the property shifts to the individual. Knowing that a neutral party will be involved before private property is seized can only help ensure that law enforcement officers will initiate forfeiture proceedings only when they are truly justified. A warrant requirement might not prevent delay and the attendant opportunity for official mischief through discretionary timing, but it surely makes delay more tolerable.

Without a legitimate exception, the presumption should prevail. Indeed, the particularly troubling aspect of this case is not that the State provides a weak excuse for failing to obtain a warrant either before or after White's arrest, but that it offers us no reason at all. The justification cannot be that the authorities feared their narcotics investigation would be exposed and hindered if a warrant had been obtained. *Ex parte* warrant applications provide neutral review of police determinations of probable cause, but such procedures are by no means public. And the officers had months to take advantage of them. On this record, one must assume that the officers who seized White's car simply preferred to avoid the hassle of seeking approval from a judicial officer. I would not permit bare convenience to overcome our established preference for the warrant process as a check against arbitrary intrusions by law enforcement agencies "engaged in the often competitive"– and, here, potentially lucrative– "enterprise of ferreting out crime." *Johnson* v. *United States*, 333 U. S. 10, 14–15 (1948).

Because I agree with the Florida Supreme Court's judgment that this seizure was not reasonable without a warrant, I respectfully dissent.