

**"CLEARLY ANNOUNCING ITS CONTENTS:" AN EVALUATION OF THE SINGLE-  
PURPOSE CONTAINER EXCEPTION TO THE FOURTH AMENDMENT**

**INTRODUCTION**

The Fourth Amendment<sup>1</sup> serves as a safeguard to citizens' security and privacy in two distinct, yet important, ways.<sup>2</sup> First, it provides people with the right to be "secure in their persons, houses, papers, and effects, against unreasonable searches and seizures."<sup>3</sup> Additionally, the Supreme Court has interpreted the Warrant Clause<sup>4</sup> to require that police searches be made pursuant to a warrant issued by a neutral and detached judge or magistrate upon a showing of probable cause.<sup>5</sup> Thus, police searches must ordinarily be reasonable and carried out with a warrant issued in accordance with the Warrant Clause.<sup>6</sup>

Due to the need for flexibility, there are "a few specifically established and well-delineated exceptions"<sup>7</sup> where the protections of the Warrant Clause may be suspended.<sup>8</sup> In these circumstances, the societal costs<sup>9</sup> of obtaining a warrant outweigh the rationale behind seeking the impartial opinion of a magistrate.<sup>10</sup> However, the Supreme Court has explicitly stated that these are "jealously and carefully drawn"<sup>11</sup> exceptions, which are, accordingly, limited to accomplish no more than is necessary.<sup>12</sup>

One contentious exception to the Warrant requirement is the single-purpose container<sup>13</sup> exception. This exception provides that "some containers ... by their very nature cannot support

any reasonable expectation of privacy because their contents can be inferred from their outward appearance.”<sup>14</sup> Thus, law enforcement officers may search a container, even if opaque and closed, if it “so clearly announce[s] its contents” that they are obvious to the officer.<sup>15</sup> The basis of the exception is whether an individual has demonstrated a reasonable expectation of privacy in the contents of the container.<sup>16</sup>

Application of the single-purpose container exception has proven to be troublesome for both the courts and law enforcement officers due to the fact-intensive nature of an inquiry and the diverse circumstances giving rise to alleged violations of the Warrant Clause.<sup>17</sup> Compounding this issue has been the lack of uniformity in the interpretation of the single-purpose container exception by the courts.<sup>18</sup> Presently, there is a split in the Circuit courts and case law has taken divergent paths.<sup>19</sup>

Part I of this Comment details the background and advancement of the Fourth Amendment, the importance and role of a magistrate in obtaining a warrant, and the origin and development of the single-purpose container exception. Part II presents the Circuit split and details the two predominant positions currently in place. Specifically, this section will focus on how faithful each approach is to the protections of the Fourth Amendment, what burden each interpretation places on executive officers, and, finally, why each approach falls short. Part III proposes a hybrid interpretation of the single-purpose

container exception, evaluates the hybrid test, and analyzes existing case law using the hybrid test.

#### **I: HISTORY AND DEVELOPMENT OF THE FOURTH AMENDMENT**

When drafting the Fourth Amendment, the Founding Fathers contemplated their own Colonial experiences and troubles with police searches of their homes by British law enforcement prior to America's independence.<sup>20</sup> They were cognizant of the temptation and possibility of persistent abuse by executive officers if given an unchecked power to search the homes of citizens.<sup>21</sup> Consequently, the Fourth Amendment includes the requirement for a neutral and detached magistrate to determine if there is probable cause and, upon a showing of probable cause, to issue a limited search warrant.<sup>22</sup>

The Supreme Court has repeatedly reiterated the importance and power of the constitutional protection provided by the Warrant Clause.<sup>23</sup> Thus, the warrant requirement is not just an inconvenience or formality that can be balanced against the possibility of increases in police efficiency.<sup>24</sup> Rather, the requirement of a warrant "serves a high function" and absent some exception to the Fourth Amendment, a police officer must seek a warrant.<sup>25</sup> This buffer, between the government and its citizens, was inserted to require a neutral, detached, and objective party to draw the inferences necessary to decide if there is a need to invade a person's privacy to enforce the law.<sup>26</sup>

Under normal circumstances, the burden imposed by the Fourth Amendment on law enforcement officers to seek a warrant from a magistrate is justified by the Amendment's exceedingly important protections.<sup>27</sup> An impartial, neutral party best weighs the competing concerns of the Fourth Amendment's protection of privacy and the enforcement of laws.<sup>28</sup> To allow police officers to make the final determination of whether probable cause exists for a search would effectively ensure that each warrant was rubber stamped.<sup>29</sup> Furthermore, the prerequisite of a warrant provides a number of protections that an after-the-fact judicial evaluation of probable cause does not including the prevention of hindsight distorting the review of the reasonableness of a search.<sup>30</sup> In addition, the Supreme Court has stated that it is "firmly establish[ed] that on-the-spot determination of probable cause is never the same as a decision by a neutral and detached magistrate."<sup>31</sup> Finally, limiting the power held by executive officers over an individual will aid in the prevention of overbroad and unjustified searches.<sup>32</sup>

At times, public interest demands flexibility in the application of the Fourth Amendment and, consequently, the Supreme Court has "jealously and carefully" drawn exceptions.<sup>33</sup> These exceptions account for the situations during which societal interests, such as the safety of law enforcement officers, overshadow the reasons for seeking the decision of an impartial magistrate.<sup>34</sup> Furthermore, these exceptions are context-specific, thus the privacy protection that an individual

receives in one setting might not be the same in a different setting.<sup>35</sup> As a result, determining the applicability of an exception has been problematic for the courts due to the dynamic, fact-intensive nature of an inquiry of what is considered a reasonable invasion of privacy.<sup>36</sup>

Footnote 13 of the Supreme Court's opinion in *Sanders* marked the creation of the single-purpose container exception to the Fourth Amendment.<sup>37</sup> The Supreme Court stated that not all containers found by police during a search will receive the full protection of the Fourth Amendment and, "[t]hus, some containers ... by their vary nature cannot support any reasonable expectation of privacy because their contents can be inferred from their outward appearance."<sup>38</sup> In addition, the Court commented that "[s]imilarly, in some cases the contents of a package will be open to "plain view," thereby obviating the need for a warrant."<sup>39</sup>

In *Robbins*, the Court furthered expanded upon the single-purpose exception and noted that it was nothing more than another variation on the "plain view" exception because if the distinctive configuration of a container proclaims its contents, it is in the officer's plain view.<sup>40</sup> In the process, the Court modified the test to determine if a container was in plain view. Now, in order to qualify for the exception, a "container must so clearly announce its contents, whether by its distinctive configuration, its transparency, or otherwise, that its contents are obvious to an observer."<sup>41</sup> Furthermore, determination of a

reasonable expectation of privacy is established by general social norms.<sup>42</sup> In conclusion, *Robbins* established that in order to search the contents of a container without a warrant, a high degree of certainty about the contents must be ascertained from the nature of the container.<sup>43</sup>

Subsequent to the decisions in *Sanders* and *Robbins*, the Supreme Court revisited the Warrant Clause and its exceptions in *Ross*.<sup>44</sup> The holding in *Ross* explicitly overturned *Robbins*; however, it did so on grounds relating to the automobile exception<sup>45</sup> to the Fourth Amendment and not the single-purpose exception.<sup>46</sup> Thus, *Ross* did not alter the principles underlying the single-purpose container.<sup>47</sup> Furthermore, in *Brown*, Justice Stevens provided additional guidance on the disposition of the single-purpose container exception asserting that to satisfy the exception there must be a "virtual certainty" regarding the contents and containers which satisfied this exception were "rare."<sup>48</sup> Under this direction from the Supreme Court, lower courts and law enforcement officers have been using the single-container exception to search containers that would otherwise be protected by the Fourth Amendment. However, the results have been mixed as courts have taken divergent paths regarding the application and interpretation of the exception and, as a result, the Circuits are now split.<sup>49</sup>

## **II. ANALYSIS OF THE CIRCUIT SPLIT**

Currently, there are two prevalent interpretations of the single-purpose container exception.<sup>50</sup> This section will discuss

each of the interpretations focusing on their commitment to the Fourth Amendment protections, the burden on executive officers, and, ultimately, why each of the interpretations falls short.

**A. Analysis Using the "In a Vacuum"<sup>51</sup> Approach**

The predominant interpretation of the single-purpose container exception is the "in a vacuum" approach which is found in a number of cases including *Gust*.<sup>52</sup> This analysis uses the test laid out by the Supreme Court in *Robbins*<sup>53</sup>. Hallmarks of the "in a vacuum" analysis are: (1) the evaluation of the nature of the container from the objective viewpoint of a layperson, rather than a subjective viewpoint of a police officer; and (2) a strict interpretation of the "clearly announce its contents ... [so] [they] are obvious to an observer" with a refusal to place sole reliance on the circumstances of the container's discovery.<sup>54</sup>

Justification for evaluating the container from the position of a layman is found in *Ribbons*, where the Court stated that expectations of privacy are established by "general social norms."<sup>55</sup> Thus, an invasion of privacy must be evaluated in terms of how society as a whole views the container.<sup>56</sup> If a layman recognizes a container that by its very nature makes its contents immediately apparent, then police are authorized to search the container without a warrant.<sup>57</sup> For example, in *Smith* an officer, due to his experience, noticed a suspected drug box, "a one-hitter box," and without a warrant searched the box.<sup>58</sup> The court found that if a container, otherwise indistinctive in

appearance, is only known to some segments of society, its contents should remain fully protected by the Fourth Amendment provided the container is closed and opaque.<sup>59</sup>

Additionally, allowing the circumstances to dictate whether a warrant was required would ignore the plurality's analysis in *Robbins* and could potentially become the "exception that swallowed the rule."<sup>60</sup> In *Robbins*, the plurality did not permit the incriminating circumstances<sup>61</sup> obscure the fact that the contents of the packages were not immediately apparent from their outward appearance.<sup>62</sup> Finally, the "exception could swallow the rule" as police would be permitted to search any container, even innocuous ones, without a warrant provided the surrounding circumstances were such that officers could subjectively believe the contents were "clearly announced;" however, this would be based on the circumstances and not nature of the container.<sup>63</sup> This would essentially "end run" the Warrant Clause, and renders it a practical nullity as officers would no longer have an incentive to seek a warrant.

Evaluating the "in a vacuum" analysis in terms of Fourth Amendment values reveals that it has remained quite dutiful to the protection of privacy. The analysis explicitly follows the Supreme Court's commitment to the Warrant Clause by requiring a neutral and detached magistrate to make the decision on whether to search the contents of a container. Additionally, requiring officers to evaluate the nature of a container as an objective layman ensures that individuals' reasonable expectations of

privacy are not infringed. Finally, the "in a vacuum" analysis ensures that the single-purpose container exception does not allow police officers to perform warrantless exploratory searches until something incriminating is found.<sup>64</sup>

Now, moving to the burden imposed on the police officers. First, the "in a vacuum" analysis requires a police officer to perform the difficult task of deciding if a container qualifies for the exception without taking into account the officer's experience or the circumstances.<sup>65</sup> Additionally, the punishment for failure to secure a search warrant for a container can lead to the suppression of highly relevant evidence.<sup>66</sup> Nonetheless, the burden on law enforcement officers is not excessive as they are able to seize the container and then apply for a warrant, thus, preserving the privacy of the contents.<sup>67</sup> Additionally, while there is a burden to seeking a warrant, there has been a historical commitment by the government to bear that burden.<sup>68</sup>

Ultimately, the "in a vacuum" analysis fails to be the preferred interpretation of the single-purpose container because it is too restrictive. There are situations in which the analysis requires a warrant when there is no reasonable expectation of privacy since the contents of the container are a "foregone conclusion." This was shown in *Gust* case, when a police officer asked a suspect what was in a container to which the suspect replied a gun.<sup>69</sup> This admission was a waiver of privacy, which effectively placed the gun in plain view as the officer was "virtually certain" of the contents of the

container. Accordingly, the admission should have justified the use of the single-purpose exception to search the gun case.

**B. Analysis Using the "Under the Circumstances"<sup>70</sup> Approach**

The "under the circumstances" interpretation of the single-container exception is shown in the *Williams* case.<sup>71</sup> Once again, the *Robbins* test is used to evaluate whether the single-purpose exception applies. The characteristics of the "under the circumstances" analysis are: (1) the evaluation of the nature of the container from the perspective of a police officer accounting for the officer's training, expertise, and experience; and (2) factoring in the circumstances under which an officer discovers the container in determining whether the contents of the container are a "foregone conclusion."<sup>72</sup>

An example of the typical "under the circumstances" analysis is found in *Williams*, where luggage was opened at an airport and heavily wrapped packages fell out.<sup>73</sup> Other contents of the suitcase were dirty blankets, towels and a shirt.<sup>74</sup> In determining that the contents of the package were a "foregone conclusion," and thus allowing a warrantless search, the investigating officer used his experience, the circumstances of discovery, including the bag's unusual contents, and also the packaging.<sup>75</sup> Therefore, a substantial factor contributing to the decision that the contents of the package were "in plain view" was the subjective analysis of the law enforcement officer. On the contrary, the *Gust* "in a vacuum" analysis would have proceeded much differently. The circumstances and experience of

the officer would have provided more probable cause for a neutral and detached magistrate to determine if an invasion of privacy was justified, rather than being decisive.

Justification for the "under the circumstances" approach is the notion that the Fourth Amendment does not protect expectations of privacy that society does not consider to be reasonable.<sup>76</sup> This argument maintains that devoting police officers' time and other resources is a burden that does not defend any Fourth Amendment right because the circumstances prescribe the contents are a "foregone conclusion." Additionally, there is support for this argument from several Circuits and the Supreme Court.<sup>77</sup>

Judging the "under the circumstances" interpretation of the single-container exception in terms of Fourth Amendment protection illustrates that it is a very relaxed standard with potential for abuse. The risk of erroneous, warrantless searches will significantly increase as police officers use the circumstances to decide whether a container's contents are a "foregone conclusion."<sup>78</sup> This is due to the strong inferences that police officers will be making based on the circumstances. Moreover, the value of a neutral and detached magistrate is underestimated. The Warrant Clause placed the magistrate between citizen and government to ensure the intrusion of privacy was justified and as a check on the Executive branch of government.<sup>79</sup> Also, allowing police officers to take into account the circumstances moves closer to an unparalleled

"probable cause" exception and the complete evisceration of the Warrant Clause.<sup>80</sup> Under this scenario, police could search any container, even the indistinct and innocuous, provided the circumstances gave the officer probable cause.<sup>81</sup> Furthermore, if probable cause relieved officers of the requirement to obtain a warrant, then a warrant would never be sought.<sup>82</sup> Also, it is difficult to make after-the-fact judicial decisions as hindsight can influence whether a search was reasonable.<sup>83</sup>

Additionally, allowing officers to factor in the circumstances and their experience in determining whether a container clearly announced its contents would run counter to the rationale of the exception.<sup>84</sup> The exception bases an individual's reasonable expectation of privacy in regard to general social norms, rather than the combination of the circumstances of discovery and the experience of an individual police officer.<sup>85</sup> In sum, allowing officers to take into account their experience and the circumstances offers significantly less protection under the Fourth Amendment than the "in a vacuum" interpretation.

Now, evaluating the "under the circumstances" analysis on the burden that it places on police officers. This approach provides a great deal of flexibility to law enforcement. Decisions regarding whether a container clearly announced its contents are more easily made when officers are able to factor in their experience and the circumstances surrounding the discovery of the container. Overall, executive productivity and

efficiency should increase as less time and resources are devoted to seeking warrants.<sup>86</sup>

At the end of the day, the "under the circumstances" approach also fails to be the selected form of analysis for the single-purpose container exception. This interpretation is unsuccessful because executive officers are given too much power. The potential for abuse and possibility of an evolution into a "probable cause" exception are too great. Furthermore, the diminished role of the magistrate reduces the barrier between the government and its citizens, and interposes a subjective officer's opinion for that of an objective, neutral, and detached magistrate.

### **III. THE HYBRID TEST: AN ALTERNATE FORM OF ANALYSIS**

As the Supreme Court noted in *Sanders*, an evaluation of a Fourth Amendment violation can be considered a "line-drawing process, [but] it must be guided by established principles."<sup>87</sup> The same can be said for the development of a solution to the Circuit split regarding the single-purpose container exception, where one must balance the interests at stake. Hence, the solution must remain faithful to the Fourth Amendment protections without unduly burdening law enforcement. If the line is drawn too far in favor of the Fourth Amendment, there are substantial burdens on law enforcement without protecting significant privacy values. Consequently, the hybrid test attempts to carefully draw the line using the established Fourth Amendment principles.

The hybrid test is the same test that the Supreme Court laid out in *Robbins*;<sup>88</sup> however, the interpretation is a combination of the "in a vacuum" analysis and Justice Stevens' analysis in *Brown*. The hybrid test would require law enforcement officers to determine if the nature of the container clearly announces its contents as viewed by a layman, without taking into account their experience or the circumstances, and additionally accounts for circumstances in which there is a "virtual certainty"<sup>89</sup> as to the contents of a container such as a suspect's admission. The addition of the "virtual certainty" provision addresses situations where there is no reasonable expectation of privacy since the suspect has already waived that right. With these changes, the hybrid test offers more flexibility, but overall still serves as a strong protector of privacy and a significant check on executive officers.

Upon balancing Fourth Amendment protections with the burden on law enforcement, this approach was selected because it was more of a middle ground between the "in a vacuum" and the "under the circumstances" interpretations, though still favoring the protection of privacy. In large part, concerns of the single-purpose container exception turning into the "probable cause" exception with officers opening up innocuous containers compelled erring on the side of Fourth Amendment protections. Other factors were the Supreme Court's textual demonstration of the narrowness of the exception.<sup>90</sup> Furthermore, the Supreme Court's interpretation of the Warrant Clause has placed great

importance on a neutral and detached magistrate making the decision as to whether to invade the privacy of a citizen.<sup>91</sup> Finally, the small inconvenience associated with obtaining a warrant and the government's historical commitment to bear that burden coupled with the fact that the police may seize the container prior to applying for a warrant.<sup>92</sup>

Applying the hybrid test to case law reveals that the outcome in cases would have changed by either giving police more flexibility in a warrantless search or reversing the outcome of the case altogether.<sup>93</sup> For example, in *Gust* the court suppressed evidence, even though the suspect informed officers of the contents of the container, because the nature of the container did not announce its evidence and the resulting search was unconstitutional.<sup>94</sup> Using the hybrid test, *Gust* would have been decided differently because the container's contents were known to a "virtual certainty" eliminating the need for a warrant. Overall, the hybrid test is the favored approach because of its flexibility and strong protection of Fourth Amendment values.

### **CONCLUSION**

The present Circuit split on the interpretation of the single-purpose container exception requires a novel solution, which is rooted in longstanding Fourth Amendment principles. Accordingly, the hybrid test meets these requirements and should be considered as the preferred approach in all future cases involving the single-purpose container exception.

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<sup>1</sup> U.S. Const. amend. IV (“[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issues, 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”).

<sup>2</sup> *Tex. v. Brown*, 460 U.S. 730, 747 (1983) (Stevens, Brennan, & Marshall JJ., concurring); *Ark. v. Sanders*, 442 U.S. 753, 757-758 (1979).

<sup>3</sup> U.S. Const. amend. IV.

<sup>4</sup> *Id.* (“no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized”).

<sup>5</sup> *Sanders*, 442 U.S. at 758.

<sup>6</sup> *Id.*

<sup>7</sup> *U.S. v. Ross*, 456 U.S. 798, 825 (1982) (“[t]he Fourth Amendment proscribes all unreasonable searches and seizures, and it is a cardinal principle that ‘searches conducted outside the judicial process, without prior approval by a judge or magistrate, are *per se* unreasonable under the Fourth Amendment - - subject only to a few specifically established and well-delineated exceptions’”).

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<sup>8</sup> *Sanders*, 442 U.S. at 759.

<sup>9</sup> See *Id.* (“danger to law [enforcement] officers or “destruction of evidence”).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 760.

<sup>13</sup> *Robbins v. Cal.*, 453 U.S. 420, 427 (1981) (noting that the “single-purpose container exception” is part of the “plain view” exception); *Id.* at 764.

<sup>14</sup> *Robbins*, 453 U.S. at 427.

<sup>15</sup> *Id.* at 428.

<sup>16</sup> *Id.* at 429 (Burger C.J. & Powell J., concurring) (stating the “central purpose of the Fourth Amendment is to safeguard reasonable expectations of privacy”).

<sup>17</sup> *Sanders*, 442 U.S. at 757; see e.g. *U.S. v. Banks*, 514 F.3d 769, 775 (8th Cir. 2008) (noting that single-purpose containers vary in characteristics requiring each container to be evaluated); *U.S. v. Bonitz*, 826 F.2d 954, 956 (10th Cir. 1987) (indicating the difficulty in resolving whether a gun case quality for single-purpose container exception).

<sup>18</sup> *U.S. v. Tejada*, 524 F.3d 809, 813 (7th Cir. 2008) (commenting that whether the contents of a container were in “plain view” is an issue that has divided the Circuits).

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19 *Id.*

20 *Bonitz*, 826 F.2d at 958; see *Sanders*, 442 U.S. at 759  
(commenting that colonists' resentment of English writs of  
assistance led to the Fourth Amendment).

21 See *Bonitz*, 826 F.2d at 958.

22 *Sanders*, 442 U.S. at 759.

23 See *Brown*, 460 U.S. at 735-736; *Ross*, 456 U.S. at 828-829  
(Marshall & Brennan JJ., dissenting); *Robbins*, 453 U.S. at 423;  
*Sanders*, 442 U.S. at 758.

24 *Sanders*, 442 U.S. at 758.

25 *Bonitz*, 826 F.2d at 958.

26 See *Ross*, 456 U.S. at 829 (Marshall & Brennan JJ.,  
dissenting); see *id.*

27 See *Ross*, 456 U.S. at 827-828 (Marshall & Brennan JJ.,  
dissenting).

28 See *id.* at 829.

29 *Sanders*, 442 U.S. at 758-759; see *id.* (noting that it is a  
"startling assumption that the policeman's determination of  
probably cause is the functional equivalent of the determination  
of a neutral and detached magistrate").

30 *Ross*, 456 U.S. at 829.

31 *Id.* at 833-834.

32 *Id.* at 829.

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<sup>33</sup> *Brown*, 460 U.S. at 735-736 (listing several exceptions to the Warrant requirement of the Fourth Amendment including: hot pursuit, exigent circumstances, automobile search, search at border, and consent).

<sup>34</sup> *See Sanders*, 442 U.S. at 759.

<sup>35</sup> *Ross*, 456 U.S. at 823 (showing what a reasonable intrusion of privacy is under different circumstances from a border search to an automobile search).

<sup>36</sup> *Sanders*, 442 U.S. at 757.

<sup>37</sup> *Id.* at 764.

<sup>38</sup> *Id.*; *U.S. v. Donnes*, 947 F.2d 1430, 1435 (10th Cir. 1991) (stating that in order to receive Fourth Amendment protection there has to be a reasonable expectation of privacy in the contents of the container).

<sup>39</sup> *Sanders*, 442 U.S. at 764.

<sup>40</sup> *Robbins*, 453 U.S. at 427.

<sup>41</sup> *Id.* at 428.

<sup>42</sup> *Id.*

<sup>43</sup> *See id.* (indicating that the package could be searched without a warrant if it "could only" contain marijuana).

<sup>44</sup> *Ross*, 456 U.S. at 803-804.

<sup>45</sup> *Id.* at 825 (automobile exception states that "[i]f probable cause justifies the search of a lawfully stopped vehicle, it

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justifies the search of every part of the vehicle and its contents”).

<sup>46</sup> *Id.*

<sup>47</sup> *U.S. v. Miller*, 769 F.2d 554, 559 (9th Cir. 1985).

<sup>48</sup> *Brown*, 460 U.S. at 751 (Stevens, Brennan, & Marshall JJ., concurring).

<sup>49</sup> *Tejada*, 524 F.3d at 813.

<sup>50</sup> *See U.S. v. Gust*, 405 F.3d 797 (9th Cir. 2005); *U.S. v. Williams*, 41 F.3d 192 (4th Cir. 1994).

<sup>51</sup> Currently, the term “in a vacuum” has not been adopted by any of the courts as the name of this interpretation to the single-purpose container exception. “In a vacuum” will be used throughout this Comment to refer to the analysis that is typical of the court in *Gust*. 405 F.3d 797.

<sup>52</sup> *Id.*; *Donnes*, 947 F.2d 1430; *U.S. v. Sylvester*, 848 F.2d 520 (5th Cir. 1988); *Bonitz*, 826 F.2d 954; *Miller*, 769 F.2d 554; *Crawford v. Fla.*, 980 So. 2d. 521 (Fla. 2d Dist. App. 2007); *Or. v. Walker*, 173 Ore. App. 46 (2001); *Ill. v. Smith*, 103 Ill. App. 3d 430 (3d Dist. 1982).

<sup>53</sup> 453 U.S. at 428 (a “container must so clearly announce its contents, whether by its distinctive configuration, its transparency, or otherwise, that its contents are obvious to an observer”).

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<sup>54</sup> See *Gust*, 405 F.3d at 801-802.

<sup>55</sup> 453 U.S. at 428.

<sup>56</sup> *Gust*, 405 F.3d at 801-802; *Miller*, 769 F.2d at 559; 103 Ill. App. 3d at 433 (must evaluate a container in terms of whether society as a whole would recognize it as one commonly used to carry drugs).

<sup>57</sup> See *Gust*, 405 F.3d at 801-802.

<sup>58</sup> 103 Ill. App. 3d at 431.

<sup>59</sup> *Id.* at 433.

<sup>60</sup> *Gust*, 405 F.3d at 802.

<sup>61</sup> 453 U.S. at 422 (erratic driving, smell of marijuana smoke, and marijuana in car).

<sup>62</sup> *Id.* at 427-428.

<sup>63</sup> See *Miller*, 769 F.2d at 561 (concurring) (commenting that circumstances and experience only give rise to more probable cause to be evaluated by a magistrate, and it does not allow for a warrantless search).

<sup>64</sup> *Id.* at 557-558.

<sup>65</sup> See *Gust*, 405 F.3d at 802.

<sup>66</sup> See *Tejada*, 524 F.3d at 813.

<sup>67</sup> *Williams*, 41 F.3d at 197.

<sup>68</sup> *Brown*, 460 U.S. at 750-751 (Stevens, Brennan, & Marshall JJ., concurring).

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<sup>69</sup> 405 F.3d at 798.

<sup>70</sup> Currently, the term “under the circumstances” has not been adopted by any of the courts as the name of this interpretation to the single-purpose container exception. “Under the circumstances” will be used throughout this Comment to refer to the analysis that is typical of the court in *Williams*. 41 F.3d 192.

<sup>71</sup> *Id.*; *Bonitz*, 826 F.2d 954 (dissenting); *U.S. v. Stevens*, 635 F. Supp. 1356 (W.D. Mich. 1986); *N.M. v. Miles*, 108 N.M. 556 (N.M. App. 1989).

<sup>72</sup> *Williams*, 41 F.3d at 197-198.

<sup>73</sup> *Id.* at 194.

<sup>74</sup> *Id.*

<sup>75</sup> *Id.* at 198.

<sup>76</sup> *See Robbins*, 453 U.S. at 433-434 (Burger C.J. & Powell J., concurring).

<sup>77</sup> *See id.* at 437-444 (Rehnquist J., dissenting); *U.S. v. Cardona-Rivera*, 904 F.2d 1149, 1155 (7th Cir. 1990); *Bonitz*, 826 F.2d at 959 (dissenting).

<sup>78</sup> *Miller*, 769 F.2d at 560.

<sup>79</sup> *See Brown*, 460 U.S. at 735-736; *Ross*, 456 U.S. at 828-829 (Marshall & Brennan JJ., dissenting); *Robbins*, 453 U.S. at 423; *Sanders*, 442 U.S. at 758.

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<sup>80</sup> See *Gust*, 405 F.3d at 802.

<sup>81</sup> *Id.*

<sup>82</sup> *Donnes*, 947 F.2d at 1439.

<sup>83</sup> *Ross*, 456 U.S. at 829-830 (Marshall & Brennan JJ., dissenting).

<sup>84</sup> *Miller*, 769 F.2d at 560.

<sup>85</sup> *Id.*

<sup>86</sup> *Sanders*, 442 U.S. at 758.

<sup>87</sup> *Id.* at 757.

<sup>88</sup> 453 U.S. at 428 ("container must so clearly announce its contents, whether by its distinctive configuration, its transparency, or otherwise, that its contents are obvious to an observer").

<sup>89</sup> *Brown*, 460 U.S. at 750-751 (Stevens, Brennan, & Marshall JJ., concurring) (stating there must be a "virtual certainty" regarding the contents of the "rare" single-purpose container, and that a "virtual certainty" is more meaningful indicator than visibility).

<sup>90</sup> *Id.* (warrantless search requires a "virtual certainty" for the "rare" single-purpose containers); *Robbins*, 453 U.S. at 428 (allowed to search container if it "could only" contain marijuana).

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<sup>91</sup> *Robbins*, 453 U.S. at 423 (“[t]his Court has held that a search is *per se* unreasonable, and thus violates the Fourth Amendment, if the police making the search have not first secured from a neutral magistrate a warrant that satisfies the terms of the Warrant Clause of the Fourth Amendment”).

<sup>92</sup> *Brown*, 460 U.S. at 750-751 (Stevens, Brennan, & Marshall JJ., concurring); *Donnes*, 947 F.2d at 1436 (maintaining that probable cause will justify a warrantless seizure, so that law enforcement officers may preserve the evidence for the time necessary to obtain a warrant).

<sup>93</sup> *Gust*, 405 F.3d 797; In *U.S. v. Corral*, undercover officers working on a staged drug deal asked the dealer if she had brought the cocaine to which she held up a package and handed it to the undercover officers who then cut a slit into the package revealing white powder. 970 F.2d at 722-723. Evaluating *Corral* using the hybrid test displays that police were justified in searching the package as they knew to a “virtual certainty” the contents of the package. *Id.*; Additionally in *Cardona-Rivera*, the hybrid test would have given police officers more flexibility by justifying a warrantless search of a package after the suspect admitted that the contents were “coke.” 904 F.2d at 1152.

<sup>94</sup> *Gust*, 405 F.3d at 798.