COMMENT

SINGLE-PURPOSE CONTAINERS: THE CIRCUIT SPLIT PRESENTS A BATTLE BETWEEN VALUES AS DISPARATE AS GENERAL AND SPECIFIC WARRANTS*

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I. INTRODUCTION

Imagine the unfortunate but common airline passenger whose luggage is "accidentally" opened by airline employees.[1] For most, this invasion of privacy may be of little consequence.[2] Indeed, luggage opened by an airline is generally not actionable.[3] However, from some travelers' point of view, these privacy invasions have led to highly unfortunate discoveries[4] because when unusual or suspicious looking packages are discovered within luggage, they can be reported to the police.[5]

Whether police are allowed to open separate packages within luggage depends entirely on the jurisdiction where the unlucky traveler's luggage arrives. For example, if an accidentally opened piece of luggage contained sparse articles of clothing and a cellophane-wrapped package, a police officer could use the surrounding circumstances and his subjective knowledge as justification for search and seizure in the Fourth Circuit.[6] However, in the First, Ninth, and Tenth Circuits, an objective standard determines whether a container is a single-purpose

1. *See* United States v. Williams, 41 F.3d 192, 194 (4th Cir. 1994) (discussing how an airline employee opened a defendant's luggage due to an airline baggage claim mistake); United States v. Miller, 769 F.2d 554, 555 (9th Cir. 1985) (discussing how a defendant's airline luggage was "accidentally opened when airline baggage workers attempted to dislodge it from a baggage conveyor belt").

2. *See* Shane Harris, *Giving in to the Surveillance State*, N.Y. TIMES, Aug. 23, 2012, at A25 (averring that public disdain for breaches of personal privacy has declined in response to increased government surveillance).

3. *See* United States v. Jacobsen, 466 U.S. 109, 117 (1984) ("It is well settled that when an individual reveals private information to another, he assumes the risk that his confidant will reveal that information to the authorities, and if that occurs the Fourth Amendment does not prohibit governmental use of . . . the now nonprivate information . . . .").

4. *See infra* Parts IV.A, C (noting that the discovery of suspicious items led to criminal charges being filed against the defendants in *Miller* and *Williams*). The luggage that was accidentally opened in *Miller* and *Williams* contained packages that appeared suspicious to airline employees. *Williams*, 41 F.3d at 194; *Miller*, 769 F.2d at 555.

5. *Williams*, 41 F.3d at 194; *Miller*, 769 F.2d at 555.

6. *See Williams*, 41 F.3d at 197 ("In determining whether the contents of a container are a foregone conclusion, the circumstances under which an officer finds the container may add to the apparent nature of its contents." (citing Blair v. United States, 665 F.2d 500, 507 (4th Cir. 1981))).

container.[7] This inconsistency is spurred by a history of Fourth Amendment case law that has often been described as confusing and unclear.[8]

This Comment will describe the current state of Fourth Amendment protection over warrantless searches of sealed containers, demonstrate a current circuit split over the issue, and propose a solution to the disagreement. The proposed solution unifies the original purpose of the Fourth Amendment and balances the legitimate interests of the government against individual privacy interests by suggesting an objective perspective should control the determination of what constitutes a single-purpose container, but the circumstances of each individual case should be taken into account.[9]

Part II of this Article examines the historical creation of the Fourth Amendment and its subsequent jurisprudential evolution relating to closed containers.[10] Part III discusses the single-purpose container exception to the Fourth Amendment's general warrant requirement, which is itself an exception to the plain view doctrine that allows warrantless searches when the criminal nature of an object is immediately apparent.[11] Part IV describes the current circuit split over how and when to apply the single-purpose container exception. Lastly, Part V proposes adoption of an objective reasonable person standard that takes into account the circumstances of the police officer but is in no way subjective.

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7. *See* United States v. Gust, 405 F.3d 797, 801 (9th Cir. 2005); United States v. Meada, 408 F.3d 14, 18–19 (1st Cir. 2005); United States v. Bonitz, 826 F.2d 954, 956–57 (10th Cir. 1987).

8. *See* Anthony G. Amsterdam, *Perspectives on the Fourth Amendment*, 58 MINN. L. REV. 349, 349 (1974) ("For clarity and consistency, the law of the [F]ourth [A]mendment is not the Supreme Court's most successful product."); Roger B. Dworkin, *Fact Style Adjudication and the Fourth Amendment: The Limits of Lawyering*, 48 IND. L.J. 329, 329 (1973) ("The [F]ourth [A]mendment cases are a mess!").

9. *See infra* Part IV (discussing the viability of a test that determines what constitutes a single-purpose container from an objective perspective that takes into account extrinsic evidence).

10. Histories of the Fourth Amendment germane to law review articles have been criticized as having tried to "condense the complexity and ambiguity of life into something 'made to seem simple.'" Morgan Cloud, *Searching Through History; Searching for History*, 63 U. CHI. L. REV. 1707, 1709 (1996) (citing Alfred H. Kelly, *Clio and the Court: An Illicit Love Affair*, 1965 SUP. CT. REV. 119, 144). For a more thorough account of the history of the Fourth Amendment from the perspective of a professional historian, see generally WILLIAM J. CUDDIHY, THE FOURTH AMENDMENT: ORIGINS AND ORIGINAL MEANING (1990) (Ph.D. dissertation, History, Claremont Graduate School).

11. Robbins v. California, 453 U.S. 420, 427 (1981), *overruled on other grounds by* United States v. Ross, 456 U.S. 798, 824 (1982); *see also infra* Part III (examining the history and current state of the plain view doctrine).

II. BACKGROUND

Examining a brief history of the Fourth Amendment is necessary to understand the current circuit split and debate over the proper legal test for determining the application of extensions to the plain view doctrine.

A. History of the Fourth Amendment

The Fourth Amendment states that:

> The 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 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.[12]

The Fourth Amendment works to limit the government's authority to conduct warrantless intrusions upon personal privacy.[13] While violations of the guarantees of the Fourth Amendment by peace officers may result in civil and sometimes criminal liability,[14] the primary method of enforcing the Fourth Amendment is the exclusionary rule.[15] The exclusionary rule is "a judicially fashioned doctrine that excludes the products of unreasonable searches and seizures from admission into evidence against those whose rights have been violated."[16] The importance of the Fourth Amendment cannot be overstated.[17] The rights guaranteed by it are "basic to a free society" and implicit in "the concept of ordered liberty."[18] It is often easy to overlook its

12. U.S. CONST. amend. IV.

13. *See* Camara v. Mun. Ct. of S.F., 387 U.S. 523, 528 (1967) ("The basic purpose of this Amendment, as recognized in countless decisions of this Court, is to safeguard the privacy and security of individuals against arbitrary invasions by government officials."); *see also* Thomas Y. Davies, *Recovering the Original Fourth Amendment*, 98 MICH. L. REV. 547, 577 (1999) (noting that "historical evidence . . . demonstrates that the Framers believed that the orderly and formal processes associated with specific warrants . . . provided the best means of preventing violations of the security of person or house").

14. Amsterdam, *supra* note 8, at 360. Although statutory requirements often make such suits difficult to maintain, it appears as though both federal and state officers may be individually sued for damages and injunctions. *Id.* at 447–48 n.137. The Fourth Amendment applies equally to state actors as it does to federal actors by incorporation into the Fourteenth Amendment. Ker v. California, 374 U.S. 23, 30–31 (1963).

15. Amsterdam, *supra* note 8, at 360.

16. *Id.*

17. *See* Wolf v. Colorado, 338 U.S. 25, 27 (1949) (discussing the importance of the guarantees of the Fourth Amendment to a free society), *overruled in part on other grounds by* Mapp v. Ohio, 367 U.S. 643, 654–55 (1961).

18. *Id.*

integral role in securing individual liberty because Americans today are not subject to the same types of searches that early Americans were.[19]

The Fourth Amendment was drafted in response to the English practice of general warrants.[20] General warrants, unlike specific warrants, allow for the search of any person or place suspected of being material to either a specific crime or a general category of crime.[21] With the exception of Massachusetts, which adopted the specific warrant in 1756,[22] "[t]he general warrant, or something resembling it, was the usual protocol of search and arrest everywhere in colonial America."[23]

One example that served as an impetus for revolution and ultimately the Fourth Amendment itself is known as the "Malcom Affair."[24] The Malcom Affair is "the most famous search in colonial America[n]" history.[25] British officers "received a tip that brandy and other liquors had just been smuggled into the cellar of Malcom, a prominent merchant."[26] Acting upon a general warrant issued the previous year, British officers entered Malcom's home and began searching it for illegal liquors.[27] At first, Malcom allowed the British officers to search his home, his shed, and two cellars.[28] However, when the British officers noticed a locked third cellar, Malcom refused to allow them entry.[29] He protested his innocence, acquired his pistol and

19. *See* Amsterdam, *supra* note 8, at 400 ("I find that sense of danger [associated with general searches] all the more striking because so many of us in this country today have lost it."). Although, recent events surrounding potential privacy invasions by the NSA's surveillance practices have spurred renewed debate over the proper role of the government's search and seizure of private information. Jennifer Stisa Granick & Christopher Jon Sprigman, Op-Ed., *The Criminal N.S.A.*, N.Y. TIMES, June 27, 2013, http://www.nytimes.com/2013/06/28/opinion/the-criminal-nsa.html?pagewanted=all&_r=0.

20. *See* CUDDIHY, *supra* note 10, at 518 ("English customs officers enforced promiscuous searches vigorously and often in the American colonies. Those searches, and strenuous colonial opposition to them, were fresh in the memories of the Fourth Amendment's framers when they rejected general warrants in 1789.").

21. *See id.* at 463 ("A sample warrant for stolen sheep . . . told the constable to 'diligently search every suspected House and Place within your Parish, which you and the . . . [owner of the sheep] shall think convenient to search.'" (alteration in original)).

22. *Id.* at 733–34. For a thorough history of Massachusetts's move toward requiring specific warrants, see *id.* at 693–756.

23. *Id.* at 468.

24. *See id.* at 1017, 1028 (noting that the search "generated even more compelling evidence of a deepening antagonism towards promiscuous search and seizure").

25. *Id.* at 1017.

26. *Id.*

27. *Id.* at 1017–18.

28. *Id.* at 1018.

29. *Id.* (noting that Malcom proclaimed his innocence and claimed that a key to the third cellar was not available).

sword, and threatened to "blow the brains out of the first person who broke a lock or door."[30] A standoff between Malcom and the British officers ensued, lasting an entire day.[31] Ultimately, Malcom was successful in fending off the British officers, and he "depicted his principal motive as an altruistic defense of the principle that an innocent man's house was his castle."[32] The British officers "retorted that such glowing rhetoric masked the greedy profit motive of a guilty smuggler."[33] The British officers' use of a tangentially related general warrant from a previous year angered the colonies and contributed to the ultimate disavowal of general warrants altogether.[34]

As a result of often vigorous enforcement of broad grants of government search authority, the drafters of the Bill of Rights rejected general warrants in 1789.[35] Justice Jackson described the Bill of Rights as "the maximum restrictions upon the power of organized society over the individual that are compatible with the maintenance of organized society itself."[36] Given the experiences of the American colonies with general warrants, it is not a stretch to call the Bill of Rights a "profoundly anti-government document[]."[37] In regard to the Fourth Amendment in particular, Justice Frankfurter stated that "the Amendment's proscription of 'unreasonable searches and seizures' must be read in light of 'the history that gave rise to the words'—a history of 'abuses so deeply felt by the Colonies as to be one of the potent causes of the Revolution.'"[38] The drafters of the Fourth Amendment felt so strongly that general warrants were inappropriate in a free society that their conviction was one reason for revolution.[39]

The protections of the Fourth Amendment are implicated only when a "search" or "seizure" has occurred.[40] The text itself

30. *Id.* at 1019.

31. *See id.* at 1017–24 (discussing the course of events lasting from early morning until early evening).

32. *Id.* at 1026–27.

33. *Id.* at 1027.

34. *Id.* at 1017, 1028 (noting growing antagonism in the colonies).

35. *Id.* at 518. Indeed, general warrant searches carried out in colonial America were often violent and resulted in significant public resentment. *Id.* at 520.

36. Watts v. Indiana, 338 U.S. 49, 61 (1949) (Jackson, J., concurring in part and dissenting in part) (emphasis added).

37. Amsterdam, *supra* note 8, at 353.

38. Chimel v. California, 395 U.S. 752, 760–61 (1969) (citing United States v. Rabinowitz, 339 U.S. 56, 69 (1950) (Frankfurter, J., dissenting)), *abrogated in part on other grounds by* Arizona v. Gant, 556 U.S. 332 (2009).

39. *See* CUDDIHY, *supra* note 10, at 526–27 (noting that many of the founders were outraged by general warrants and believed "that promiscuous searches and seizures were unreasonable").

40. *See* United States v. Mendenhall, 446 U.S. 544, 554–55 (1980) (concluding that

does not explain or define what law enforcement acts qualify as a search or seizure, nor does it describe the type of situation where a warrant is required.[41] The amendment itself has long been subject to conflicting interpretations.[42] One interpretation is that the amendment is considered as two separate clauses.[43] The first clause prohibits "unreasonable searches and seizures"—the "Reasonableness Clause"—and the second clause provides the requirement of specific warrants over general warrants—the "Warrant Clause."[44] Alternatively, the amendment can be interpreted by reading the two clauses together.[45] Under this interpretation, a search is considered reasonable only when it is undertaken pursuant to a warrant issued upon a showing of probable cause.[46]

The Supreme Court has, in the past, oscillated between these two interpretations of the amendment.[47] Sometimes the Court has required a warrant based on probable cause, and at other times the Court has focused primarily on the reasonableness clause.[48] But regardless of which view the Supreme Court uses, the Court interprets the amendment to mean that a search or seizure occurs when a reasonable person in the defendant's shoes would have a reasonable expectation of privacy in the face of the governmental action.[49] More recently,

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a person has not been "seized" if a reasonable person in the position of the defendant would understand themselves to be free to leave the presence of the police officers). They are terms of limitation. *See* Amsterdam, *supra* note 8, at 356 (discussing how the terms "search" and "seizure" limit government's authority to intrude on individual privacy and property rights).

41. *See* Tracey Maclin, *The Central Meaning of the Fourth Amendment*, 35 WM. & MARY L. REV. 197, 201–02 (1993) (laying out support for the Supreme Court's current Fourth Amendment jurisprudence).

42. *Id. See generally* Fabio Arcila, Jr., *In the Trenches: Searches and the Misunderstood Common-Law History of Suspicion and Probable Cause*, 10 U. PA. J. CONST. L. 1, 6–7 (2007) (including a detailed discussion of the two historically opposed views of the Fourth Amendment: first, that the amendment is broken into two separate and distinct clauses, the "Reasonableness Clause" and the "Warrant Clause," and second, that the two clauses are interrelated).

43. Maclin, *supra* note 41, at 202–03.

44. *Id.*

45. John M. Copacino, *Suspicionless Criminal Seizures After* Michigan Department of State Police v. Sitz, 31 AM. CRIM. L. REV. 215, 222–23 (1994).

46. *Id.*

47. *See generally* WAYNE LAFAVE, SEARCH AND SEIZURE § 4.1(a) (2d ed. 1987) ("[D]espite [the] Court's repeated statements that warrants are generally required, current doctrine concerning permissible warrantless searches is confused.").

48. *Id.*

49. Katz v. United States, 389 U.S. 347, 351 (1967). Prior to the *Katz* opinion, the Court used the "constitutionally protected area" doctrine, which protected persons and certain places within their perimeter "to the degree [the places] were closed to the public." Amsterdam, *supra* note 8, at 357. This doctrine has fallen into relative

the Court has interpreted the Fourth Amendment to prohibit warrantless searches when a defendant's expectation of privacy is *reasonable*.[50] Unless an exception applies, the Constitution requires 'that the deliberate, impartial judgment of a judicial officer . . . be interposed between the citizen and the police . . . .'"[51] Therefore, the modern interpretation of the Fourth Amendment requires a warrant for searches that infringe upon reasonable expectations of privacy.[52]

Whether a "search" or "seizure" is reasonable is determined by the reasonable expectation of privacy test.[53] The test originated in *Katz v. United States*.[54] In *Katz*, the Court took an expansive view of the Fourth Amendment's reasonableness requirement.[55] The Court determined that conversations held by private citizens in public telephone booths may be due some level of Fourth Amendment protection.[56] Although the majority took an expansive view of Fourth Amendment protection, the test used today was actually offered by Justice Harlan in his concurring opinion.[57]

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obscurity with the rise of the reasonableness doctrine. *See id.* at 358 (noting the movement toward the reasonableness doctrine over the constitutionally protected areas doctrine).

50. Amsterdam, *supra* note 8, at 383.

51. Wong Sun v. United States, 371 U.S. 471, 481–84 (1963).

52. *Katz*, 389 U.S. at 357 ("Over and again this Court has emphasized that the mandate of the [Fourth] Amendment requires . . . that searches conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment . . . ." (alteration in original) (citation omitted) (internal quotation marks omitted)); *see also* Amsterdam, *supra* note 8, at 358–60 (discussing the rare exceptions to the warrant requirement).

53. *See* United States v. Knotts, 460 U.S. 276, 280–81 (1983) ("[T]his Court uniformly has held that the application of the Fourth Amendment depends on whether the person invoking its protection can claim a 'justifiable,' a 'reasonable,' or a 'legitimate expectation of privacy' that has been invaded by government action." (quoting Smith v. Maryland, 442 U.S. 735, 740 (1979))).

54. *Katz*, 389 U.S. at 357; Amsterdam, *supra* note 8, at 383 (describing the holding of *Katz* as "the basis of a new formula of [F]ourth [A]mendment coverage").

55. *Katz*, 389 U.S. at 350 (rejecting the notion of a strict interpretation of the Fourth Amendment and holding that the "Amendment protects individual privacy against certain kinds of governmental intrusion, but its protections go further, and often have nothing to do with privacy at all"). Prior to *Katz*, the Court had a "strict textualist construction of the Fourth Amendment[,] typical of the Court," that was often considered merely a general right to privacy. Christian M. Halliburton, *How Privacy Killed* Katz*: A Tale of Cognitive Freedom and the Property of Personhood as Fourth Amendment Norm*, 42 AKRON L. REV. 803, 871 (2009); *see also Katz*, 389 U.S. at 350–51.

56. *See Katz*, 389 U.S. at 357–59 ("Wherever a man may be, he is entitled to know that he will remain free from unreasonable searches and seizures.").

57. *Id.* at 360–62 (Harlan, J., concurring). Numerous opinions by the appellate courts show how Justice Harlan's formulation of the test survives today. *E.g.*, In re U.S. for Historical Cell Site Data, 724 F.3d 600, 615 (5th Cir. 2013); United States v. Marquez, 605 F.3d 604, 610 (8th Cir. 2010).

Justice Harlan interpreted the majority opinion as requiring (1) "that a person have exhibited an actual (subjective) expectation of privacy," and (2) "that the expectation be one that society is prepared to recognize as 'reasonable.'"[58] Despite the two-prong test, most courts and commentators have focused more on the reasonableness of the expectation of privacy than on the defendant's subjective state of mind.[59]

The totality of the circumstances test further refines the reasonableness of a given search.[60] This test weighs the search's intrusion upon individual privacy against the government's legitimate interests in conducting the search.[61] Courts use the totality of the circumstances test as a tool to determine whether a search conducted without a warrant or individualized suspicion is sufficiently reasonable to be constitutional.[62] Thus, one side of the scale weighs the individual's interest in privacy, and the other side of the scale weighs the government's legitimate interests in conducting the search without a warrant.[63]

Some may disagree over whether the reasonable expectation of privacy test is the correct formulation of the Fourth Amendment, or even of the Katz majority opinion.[64] This Comment does not address those issues. For the purposes of this Comment, there are two main concepts to remember. First, the Fourth Amendment was drafted as a revolt to the general warrants of colonial America and designed to safeguard individual liberty against overzealous government

58. *Katz*, 389 U.S. at 361.

59. Stephen P. Jones, *Reasonable Expectations of Privacy: Searches, Seizures, and the Concept of Fourth Amendment Standing*, 27 U. MEM. L. REV. 907, 923 (1997); *see also* Amsterdam, *supra* note 8, at 384 ("An actual, subjective expectation of privacy obviously has no place in a statement of what *Katz* held or in a theory of what the [F]ourth [A]mendment protects.").

60. *See* United States v. Knights, 534 U.S. 112, 118–19 (2001) (citing Wyoming v. Houghton, 526 U.S. 295, 300 (1999)) (taking into account the degree of intrusion, the government's legitimate interests, the plaintiff's status as a probationer, among other considerations); Charles J. Nerko, Note, *Assessing Fourth Amendment Challenges to DNA Extraction Statutes After* Samson v. California, 77 FORDHAM L. REV. 917, 926 (2008).

61. *Knights*, 534 U.S. at 118–19.

62. *Id.*

63. *Id.* at 118–20.

64. *See* Davies, *supra* note 13, at 60 (arguing that the reasonable expectation of privacy test is fundamentally at odds with the intent of the founding fathers because no conventional summary of the Fourth Amendment has "ever identified any evidence of a broad reasonableness standard regarding arrests or searches in the historical record"). *But see* Amsterdam, *supra* note 8, at 401 ("[H]istory is a standoff: there is certainly nothing in it to suggest, let alone require, a narrow or static view of the [F]ourth [A]mendment's broad language.").

infringement.[65] And second, all searches and seizures must be reasonable.[66]

In sum, the general rule requires a warrant for searches and seizures of persons or property.[67] Courts balance the interests of the individual against legitimate state interests to determine whether a warrant should issue.[68] However, there are a few "jealously and carefully drawn" exceptions to the general rule.[69] Subpart II.B will analyze the "plain view doctrine," from which the single-purpose container exception is derived.

B. Plain View Doctrine

The plain view doctrine, an exception to the general warrant requirement of the Fourth Amendment, assumes that an individual has no reasonable expectation of privacy when police officers identify incriminating evidence in an individual's possession.[70] The rationale behind the theory is that the government's legitimate interest in sparing the inconvenience of a warrant, and possibly preventing criminal conduct, outweighs the individual's interest in privacy.[71] Under specific circumstances, the plain view doctrine allows for legitimate government seizure of private property without a warrant.[72] The circumstances required to invoke the exception have changed over time.[73] Early in the doctrine's evolution, discovery of illicit evidence was required to be "inadvertent" in order to fall under the exception.[74]

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65. *See* Amsterdam, *supra* note 8, at 396–97 (noting that the Fourth Amendment acts as "the principal check designed against the arbitrary discretion of executive officers to search and seize").

66. Illinois v. McArthur, 531 U.S. 326, 330 (2001).

67. *Id.*

68. RONALD JAY ALLEN ET AL., COMPREHENSIVE CRIMINAL PROCEDURE 462–550 (2d ed. 2005).

69. Jones v. United States, 357 U.S. 493, 499 (1958). *See generally* David E. Steinberg, *The Drive Toward Warrantless Auto Searches: Suggestions from a Back Seat Driver*, 80 B.U. L. REV. 545, 554–59 (2000) (discussing in turn "searches incident to lawful arrest," "inventory searches," "plain view searches," consensual searches, and "checkpoint" searches).

70. Horton v. California, 496 U.S. 128, 133–34 (1990) (stating that, "[i]f an article is already in plain view, neither its observation nor its seizure would involve *any* invasion of privacy" (emphasis added)).

71. *Id.* at 137–39.

72. As the Court said in *Payton v. New York*, "[t]he 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." Payton v. New York, 445 U.S. 573, 587 (1980).

73. *Horton*, 496 U.S. at 134–39 (abandoning some of the historical limitations on the plain view requirement).

74. *Id.* (detailing the origin of the "inadvertence requirement" before ultimately rejecting it); Coolidge v. New Hampshire, 403 U.S. 443, 466 (1971) (setting forth the inadvertence requirement).

In *Coolidge v. New Hampshire*, the Court, perhaps unsuccessfully, attempted to answer questions created by its previous rulings.[75] *Coolidge* concerned the seizure of two cars located in the defendant's driveway.[76] The cars were in plain view of officers who were lawfully located to question the defendant's wife.[77] The officers seized the cars without a warrant, and though they yielded incriminating evidence, the Court held that their seizure violated the Fourth Amendment because the officers had sufficient time to request a warrant to seize the cars.[78] Their discovery was not inadvertent.[79] In reaching its decision, the Court announced three requirements to the plain view doctrine: (1) the officers must be in a lawful position to observe the items; (2) the incriminating nature of the items must be immediately apparent; and (3) the discovery of the items must be inadvertent.[80]

However, the inadvertence requirement was subsequently removed from the analysis in *Horton v. California*, where the Court reasoned that "evenhanded law enforcement is best achieved by the application of objective standards of conduct, rather than standards that depend upon the subjective state of mind of the officer."[81] In *Horton*, police officers entered a defendant's home pursuant to a warrant that authorized only a search for stolen property.[82] While searching the home, the police officers spotted in plain view several weapons that were allegedly used in a robbery.[83] Even though the warrant did not proscribe searching for weapons, the Court eventually held that the exclusionary rule would not apply because inadvertence was not a legitimate requirement of the plain view doctrine.[84] Thus, whether officers subjectively know that a criminal item is present is no longer determinative of whether the plain view doctrine is satisfied.[85]

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75. *Coolidge*, 403 U.S. at 464–70.

76. *Id.* at 447–48.

77. *Id.* at 488, 495.

78. *Id.* at 472–73. The Court explained the rationale for the inadvertence requirement as follows: "a plain-view seizure will not turn an initially valid (and therefore limited) search into a 'general' one." *Id.* at 469–70. The Court seemed to expect officers to obtain a warrant when "discovery [of incriminating evidence] is anticipated." *Id.* at 470.

79. *Id.* at 447–48, 458.

80. *Id.* at 465–70.

81. Horton v. California, 496 U.S. 128, 138 (1990).

82. *Id.* at 131.

83. *Id.*

84. *Id.* at 130, 141–42.

85. *Id.* The Court went on to note that although inadvertence "is not a necessary condition" to a plain view seizure, it "is a characteristic of most legitimate" seizures. *Id.* at 130.

Additionally, the requirement that the officer be lawfully located in a place to observe the plain view evidence was subsequently refined into two separate parts.[86] The officer must be lawfully located, and the officer must have a lawful right to access the object itself.[87] In sum, the Court delivered the current test required to satisfy the exception, which consists of three elements.[88] First, the evidence must be in plain view.[89] To be in plain view, the officer must be located in a place where the evidence is openly visible to passersby.[90] Second, the officer "must also have a lawful right of access to the object itself."[91] And third, the "incriminating character [of the evidence] must be 'immediately apparent.'"[92] Put simply, it must be clear "that an incriminating object is on premises belonging to a criminal suspect."[93]

If any of the three elements are left unsatisfied, a search does not meet the reasonableness requirement of the Fourth Amendment.[94] The individual elements of the plain view doctrine must also be satisfied for the single-purpose container exception to apply.[95] The single-purpose container exception allows seizure of containers that, from their outward appearance, proclaim their

86. *See id.* at 137 (distinguishing the lawful location requirement in *Coolidge* by noting that "lawful right of access to the object itself" is also required).

87. *Id.*

88. *Id.* at 136–39. Because the Fourth Amendment only protects against "unreasonable" searches and seizures, the requirements of *Horton* for the plain view exception means that if the elements are satisfied, then the search is per se not unreasonable. *Cf.* Robert Eyer, *The Plain View Doctrine After* Horton v. California*: Fourth Amendment Concerns and the Problem of Pretext*, 96 DICK. L. REV. 467, 470–71 (1992).

89. *Horton*, 496 U.S. at 136.

90. *Id.* Prior to the *Horton* decision, the plain view doctrine required that the discovery of evidence be "inadvertent." Coolidge v. New Hampshire, 403 U.S. 443, 465–68 (1971). In *Horton*, the Court reassessed the "inadvertence" requirement and held that "inadvertence is not a necessary requirement for a plain view seizure, even though inadvertence is a common element of most legitimate plain view seizures." John A. Mack, Note, Horton v. California*: The Plain View Doctrine Loses Its Inadvertency*, 24 J. MARSHALL L. REV. 891, 896 (1991).

91. *Horton*, 496 U.S. at 136–37.

92. *Id.* (citing *Coolidge*, 403 U.S. at 466). In *Brown* the court referred to the term "immediately apparent" as "an unhappy choice of words, since it can be taken to imply that an unduly high degree of certainty as to the incriminatory character of evidence is necessary for an application of the 'plain view' doctrine." Texas v. Brown, 460 U.S. 730, 741 (1983). The Court indicated that "immediately apparent" is analogous to the "flexible common-sense standard" of probable cause. *Id.* at 741–42.

93. *Horton*, 496 U.S. at 137–38 & n.7 (citing Taylor v. United States, 286 U.S. 1 (1932)).

94. Steven T. Atneosen & Beverly J. Wolfe, *The "Plain Feel" Exception: Is the Standard Sufficiently Plain?*, 20 WM. MITCHELL L. REV. 81, 86 (1994) (citing Arizona v. Hicks, 480 U.S. 321, 328 (1987)).

95. Robbins v. California, 453 U.S. 420, 427 (1981), *overruled on other grounds by* United States v. Ross, 456 U.S. 798, 824 (1982).

contents.[96] Each of the elements has been the subject of different interpretations, and at times, inconsistent application.[97] To explain these inconsistencies, the remainder of this Subpart addresses each of the three elements in turn.

1. The Officer Must Be Lawfully in a Location Where the Evidence Is in Plain View to Passersby. The first element of the plain view doctrine is that the officer who discovers the incriminating evidence must be lawfully in a location where the evidence is in plain view to passersby.[98] Lawful entry into a location may be satisfied by a variety of mechanisms. It may occur when contraband is in an open area, "when there is compelling need for official action and no time to secure a warrant," and when the officer is in "hot pursuit."[99] In other words, the officer's arrival at the location where the plain view evidence is discovered must not itself be a violation of the Fourth Amendment.[100]

For example, an officer may be lawfully in a location where evidence is in plain view when an item is left in a public place,[101] when an officer enters a burning building,[102] or when an officer discovers evidence while in "hot pursuit" of a defendant.[103] In *Coolidge*, the Court explained that once the officer is lawfully in the location where the evidence is in plain view, and the other elements are satisfied, then the individual's interest in the officer

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96. Texas v. Brown, 460 U.S. 730, 735–36 (1983) (majority opinion). Justice Stevens used the "single-purpose container" label to describe this exception. *Id.* at 750–51 (Stevens, J., concurring).

97. *See, e.g.*, P. Kevin Brobson, Note, Minnesota v. Dickerson*: The Plain-Feel* Terry *Frisk Is No Longer Limited to a Protective Search for Weapons*, 3 WIDENER J. PUB. L. 951, 962 (1994) (recognizing inconsistent application of the inadvertency of the plain view doctrine); Susanne W. MacIntosh, *Fourth Amendment—The Plain Touch Exception to the Warrant Requirement:* Minnesota v. Dickerson*, 113 S. Ct. 2130 (1993)*, 84 J. CRIM. L. & CRIMINOLOGY 743, 763–64 (1994) (elaborating on inconsistencies in interpreting the "lawful access" element).

98. *Horton*, 496 U.S. at 136–37.

99. Michigan v. Tyler, 436 U.S. 499, 509 (1978) ("Our decisions have recognized that a warrantless entry by criminal law enforcement officials may be legal when there is compelling need for official action and no time to secure a warrant."); G.M. Leasing Corp. v. United States, 429 U.S. 338, 354 (1977) ("It is one thing to seize without a warrant property resting in an open area or seizable by levy without an intrusion into privacy, and it is quite another thing to effect a warrantless seizure of property, even that owned by a corporation, situated on private premises to which access is not otherwise available for the seizing officer."); Warden v. Hayden, 387 U.S. 294, 310 (1967) (Fortas, J., concurring) ("Searches may be made . . . in the course of hot pursuit." (internal quotation marks omitted)).

100. *See Horton*, 496 U.S. at 135–36.

101. Payton v. New York, 445 U.S. 573, 586–87 (1980).

102. *Tyler*, 436 U.S. at 509.

103. *Hayden*, 387 U.S. at 310.

first obtaining a warrant is outweighed by "major gain in effective law enforcement."[104]

2. The Officer Must Have a Lawful Right to Access the Object Itself. The second requirement, that the officer must have a lawful right to access the object itself, is merely a limitation on the first element.[105] Thus, there may be situations where the first element is satisfied and the second is not. For example, an officer may spy drug paraphernalia through a cracked window of a home where he is investigating a 911 call of domestic disturbance. The officer would be lawfully located outside the home due to the call; however, he would not have the legal right to access the suspected paraphernalia itself.[106] Thus, absent some other Fourth Amendment exception, the officer would need to first obtain a warrant before entering the home and seizing the suspected paraphernalia.

3. The Criminal Nature of the Object Must be "Immediately Apparent." The third element of the plain view doctrine is that the criminal nature of the object must be immediately apparent.[107] This requirement is a significant restriction on the plain view doctrine and serves to avoid use of the plain view doctrine as justification for promiscuous general searches.[108] Whether an object's criminal nature is immediately apparent is, after the Supreme Court's decision in *Arizona v. Hicks*, analogous to whether there is probable cause.[109]

III. SINGLE-PURPOSE CONTAINER EXCEPTION

Generally, searches of closed containers require a warrant because there is a reasonable expectation of privacy, established as a social norm, that the contents of containers will not be searched.[110] "Searches" of packages or objects fall

104. Coolidge v. New Hampshire, 403 U.S. 443, 514–16 (1971).

105. *Horton*, 496 U.S. at 136–37 (asserting that the officer must "have a lawful right of access to the object itself.").

106. *See id.* ("[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 have a lawful right of access to the object itself.").

107. *Id.*

108. *See Coolidge*, 403 U.S. at 466 ("[T]he plain view doctrine may not be used to extend a general exploratory search from one object to another until something incriminating at last emerges." (internal quotation marks omitted)).

109. Arizona v. Hicks, 480 U.S. 321, 326–27 (1987). Referring to the plain view doctrine, the Court stated, "We now hold that probable cause is required." *Id.*

110. *See* Arkansas v. Sanders, 442 U.S. 753, 762 (1979) (noting that because "luggage is a common repository for one's personal effects . . . [it] is inevitably associated with the

under the "papers" and "effects" language of the Fourth Amendment, and similar to searches of persons, they normally require a warrant.[111] Generally, unless an exception is present, any governmental opening of a package or object and any physical handling that discloses its contents is a search requiring a warrant.[112]

However, the Court is willing to allow searches of closed containers when the elements of the plain view doctrine are met.[113] In effect, the Court extended the plain view doctrine to also exempt single-purpose containers from the general warrant requirement.[114] The exception grew from humble beginnings.[115] The impetus was a footnote in *Arkansas v. Sanders* meant to temper the Court's holding that luggage searches during automobile traffic stops require a warrant.[116] The footnote reads as follows:

> Not all containers and packages found by police during the course of a search will deserve the full protection of the Fourth Amendment. Thus, some containers (for example a kit of burglar tools or a gun case) by their very nature cannot support any reasonable expectation of privacy because their contents can be inferred from their outward appearance. Similarly, in some cases the contents of a package will be open to "plain view," thereby obviating the need for a warrant.[117]

Since the Court's holding in *Sanders*, a single-purpose container has been interpreted to mean one which "by [its] very nature cannot support any reasonable expectation of privacy because [its] contents can be inferred from [its] outward appearance."[118] The container must "proclaim[] its contents" to the world as if the container was transparent.[119] Because it is as

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expectation of privacy"), *overruled in part on other grounds by* California v. Acevedo, 500 U.S. 565, 576 (1991).

111. Corngold v. United States, 367 F.2d 1, 6–7 (9th Cir. 1966).

112. Hernandez v. United States, 353 F.2d 624, 626–27 (9th Cir. 1965).

113. Robbins v. California, 453 U.S. 420, 427 (1981), *overruled on other grounds by* United States v. Ross, 456 U.S. 798, 824 (1982).

114. *Id.*

115. *See* Albert W. Alschuler, *Bright Line Fever and the Fourth Amendment*, 45 U. PITT. L. REV. 227, 278 (1984) (averring that the single-purpose container exception began as a footnote meant to limit the Supreme Court's holding that a warrant is generally required in order to search luggage stored in an automobile).

116. *Id.*

117. Arkansas v. Sanders, 442 U.S. 753, 764–65 n.13. (1979), *overruled in part on other grounds by* California v. Acevedo, 500 U.S. 565, 576 (1991).

118. Texas v. Brown, 460 U.S. 730, 750–51 (1983) (Stevens, J., concurring) (quoting *Sanders*, 442 U.S. at 764–65 n.13).

119. Wayne R. LaFave, *Being Frank About the Fourth: On Allen's "Process of*

if the container is transparent, the elements of the plain view doctrine apply.[120]

In *Robbins v. California*, the Supreme Court took the view that the single-purpose container exception is "little more than another variation of the 'plain view' exception."[121] Understood best, the single-purpose container exception is an outgrowth of the plain view doctrine subject to the same requirements.[122] The officer who encounters a package must lawfully be in the location where it is found, the officer must have a lawful right to access the package, and the criminal nature of the package's contents must be immediately apparent.[123] Additionally, just as probable cause applies to ordinary application of the plain view doctrine, it also applies to a package that proclaims its contents.[124] The Court took significant care in *Robbins* by noting that the "circumstances in which a container is found or the searching officer's 'generalized factual assertions' as to what a container likely contains would expand the exception beyond what was intended by the Court."[125]

Historically, the single-purpose container exception is built upon the Supreme Court's decision in *Katz*.[126] *Katz* established that society's reasonable expectations of privacy determine the constitutionality of seizure under the plain view doctrine and search under the single-purpose container exception.[127] The plain

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'Factualization' in the Search and Seizure Cases," 85 MICH. L. REV. 427, 476 (1986) (quoting Robbins v. California, 453 U.S. 420, 427–28 (1981)).

120. *See id.* at 476–78 (discussing the requirement that the contents of a package must be known with "virtual certainty").

121. Robbins v. California, 453 U.S. 420, 427 (1981), *overruled on other grounds by* United States v. Ross, 456 U.S. 798, 824 (1982); Daniel Kegl, *The Single-Purpose Container Exception: A Logical Extension of the Plain View Doctrine Made Unworkable by Inconsistent Application*, 30 N. ILL. U. L. REV. 237, 248 (2009) (quoting United States v. Gust, 405 F.3d 797, 800 (9th Cir. 2005)).

122. *See* United States v. Miller, 769 F.2d 554, 556–57 (9th Cir. 1985) (analyzing the seizure of a container whose contents were believed to be apparent through the elements of the plain view doctrine).

123. *Id.*

124. Texas v. Brown, 460 U.S. 730, 735–44 (1983) (discussing the "flexible, common-sense" probable cause standard in relation to the plain view doctrine and finding that the requirements to seize the objects in plain view requires only "that certain items may be contraband or stolen property or useful as evidence of a crime").

125. Kegl, *supra* note 121, at 248 (citing Robbins v. California, 453 U.S. 420, 428 (1981)). With respect to searches of packages in automobiles, the Court later overruled *Robbins*. California v. Acevedo, 500 U.S. 565, 578–79 (1991). Thus, when searches of automobiles are concerned, "police may conduct a warrantless search of a container . . . when they have probable cause . . . regardless of whether the probable cause extended specifically to the particular container." United States v. Donnes, 947 F.2d 1430, 1435 n.7 (10th Cir. 1991).

126. Kegl, *supra* note 121, at 245.

127. *See* Katz v. United States, 389 U.S. 347, 351–52 (1967) (declaring that privacy is determined by the reasonable expectations of society); *Miller*, 769 F.2d at 556–57

view doctrine only allows seizures,[128] so only through a warrant or the application of the single-purpose container exception can a container seized under the plain view doctrine be subsequently searched.[129] However, this limitation on the plain view doctrine does not prevent officers from searching an item any time the single-purpose container exception is satisfied.[130]

Circuit courts across the country have recognized the single-purpose container exception as a valid extension of the plain view doctrine.[131] However, what constitutes a single-purpose container has been the subject of significant disagreement.[132]

IV. THE CIRCUIT SPLIT

The disagreement among the circuits is fundamentally a disagreement over the extent to which the government's legitimate interest in preventing crime outweighs individual interests in privacy.[133] Because only single-purpose containers that "proclaim their contents" may be searched under the exception, the question of whether a container is in fact a single-

(distinguishing between the application of the plain view doctrine to seizures and the application of the single-purpose container exception to searches and seizures).

128. United States v. Jacobsen, 446 U.S. 109, 114 (1984); United States v. Williams, 41 F.3d 192, 197 (4th Cir. 1994).

129. *Jacobsen*, 446 U.S. at 114; *Williams*, 41 F.3d at 197.

130. United States v. Corral, 970 F.2d 719, 725 (10th Cir. 1992); *Donnes*, 947 F.2d at 1437; *see Miller*, 769 F.2d at 556–60 (analyzing the use of the single-purpose container exception).

131. *See, e.g.*, *Williams*, 41 F.3d at 196 ("Under certain circumstances, the police may seize the contents of a container found in a lawfully accessed place, without a warrant, if the contents are in plain view."); United States v. Bonitz, 826 F.2d 954, 960 (10th Cir. 1987) ("Certainly, where the contents of a container are apparent from the very nature of the container itself, there is no reasonable expectation of privacy as to those contents.").

132. United States v. Tejada, 524 F.3d 809, 813 (7th Cir. 2008) (noting that what constitutes a package that proclaims its contents "is an issue that has divided the circuits"). However, when a container is labeled, the circuits are in general agreement that it may be searched, assuming that all the requirements of the plain view doctrine are met. *See, e.g.*, United States v. Banks, 514 F.3d 769, 775–76 (8th Cir. 2008) (finding a label on the side of a case of "PHOENIX ARMS" to provide "information about the contents and purpose of the container"); United States v. Meada, 408 F.3d 14, 23 (1st Cir. 2005) (holding that a case labeled "Gun Guard" was a single-purpose container). *But see* United States v. Villarreal, 963 F.2d 770, 776 (5th Cir. 1992) ("The fact that the exterior of a container purports to reveal some information about its contents does not necessarily mean that its owner has no reasonable expectation that those contents will remain free from inspection by others.").

133. ALLEN ET AL., *supra* note 68, at 462–550. The two competing policy objectives are explained equally well by two opposing historic legal figures. Judge Learned Hand admonished, "What we need to fear is the archaic formalism and the watery sentiment that obstructs, delays, and defeats the prosecution of crime." United States v. Garsson, 291 F. 646, 649 (S.D.N.Y. 1923). In contrast, Justice Frankfurter felt that "[t]he history of liberty has largely been the history of observance of procedural safeguards." McNabb v. United States, 318 U.S. 332, 347 (1943).

purpose container is closely tied to the requirement that the criminal purpose of the package's contents be immediately apparent.[134] After all, not every single-purpose container is subject to the exception; only those containers whose contents, supposedly in "plain view," that have an immediately apparent criminal purpose can be searched under the single-purpose container exception.[135]

The tension between the circuit courts is focused on the requirement that a package's criminal purpose be immediately apparent.[136] The Fourth Circuit has taken the position that the determination of whether a container is a single-purpose container should take into account the subjective viewpoint of the officer and the circumstances surrounding the encounter.[137] However, the First, Ninth, and Tenth Circuits have reached the opposite conclusion.[138] These three circuits ignore the circumstances of the encounter and the officer's subjective expertise and instead judge containers through the lens of a reasonable layman.[139] The law in the Seventh and Eighth Circuits remains uncertain, and the Supreme Court has yet to expressly rule on the issue.[140]

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134. *See, e.g.*, *Banks*, 514 F.3d at 782 (Loken, C.J., concurring) (noting the substantial overlap between the normal plain view requirements and the requirement of the package's contents being immediately apparent). One commentator speculates that the Supreme Court may have been "distinguishing between the act of determining whether a container is a single-purpose container and the act of deciding whether the criminal nature is immediately apparent." Allison M. Lucier, Comment, *You Can Judge a Container by Its Cover: The Single-Purpose Container Exception and the Fourth Amendment*, 76 U. CHI. L. REV. 1809, 1821 (2009) (citing *Miller*, 769 F.2d at 559) ("The most relevant requirement to the single-purpose container exception is whether the criminal nature is immediately apparent.").

135. *See Banks*, 514 F.3d at 774 (majority opinion) ("If we allow police to open any single-purpose container they lawfully come across we would be authorizing exploratory searches of containers where a reasonable person would rightfully expect privacy . . . .").

136. Kegl, *supra* note 121, at 251–52.

137. *See* United States v. Williams, 41 F.3d 192, 198 (4th Cir. 1994) (holding that a package wrapped in cellophane was a single-purpose container based on the circumstances of the discovery and the police officer's experience); Kegl, *supra* note 121, at 251–52.

138. Kegl, *supra* note 121, at 251–52; *see infra* Part IV.C (discussing the holdings of the First, Ninth, and Tenth Circuits that reject subjective determination of what constitutes a single-purpose container).

139. *See* United States v. Gust, 405 F.3d 797, 801–03 (9th Cir. 2005) (deciding that circumstantial evidence and police officer experience was irrelevant to the determination of whether a package is a single-purpose container); United States v. Bonitz, 826 F.2d 954, 956–57 (10th Cir. 1987) (holding that hard shell gun cases could not be considered single-purpose containers, despite the fact that police officers and gun experts would recognize the container as a gun case); Kegl, *supra* note 121, at 251–52.

140. Kegl, *supra* note 121, at 251–52; *see* Wayne A. Logan, *Constitutional Cacophony: Federal Circuit Splits and the Fourth Amendment*, 65 VAND. L. REV. 1137, 1195 (2012) (noting that a circuit split emerged over application of the single-purpose container

A. The Fourth Circuit

The Fourth Circuit addressed the issue in *United States v. Williams,* holding that subjective interpretation of circumstantial evidence and an officer's personal knowledge and experience can be determinative factors for the purpose of deciding whether a particular item is a single-purpose container.[141] In that case, an airline employee opened the defendant's luggage due to an airline baggage claim mistake.[142] Upon opening the bag, the airline employee noticed that the contents were "very unusual" and contained five packages wrapped heavily in cellophane.[143] Shortly afterwards, a police officer searched the cellophane-wrapped packages and discovered that they contained cocaine.[144] The issue was only whether the contents of the packages were a "foregone conclusion."[145] The question of whether contents are a foregone conclusion is the equivalent of whether the contents are immediately apparent.[146] The remaining two elements were satisfied because the officers had a legal right to the location and to access the package.[147] The airline itself had destroyed William's privacy interest in the package when they opened it.[148]

The court reasoned that "[i]n determining whether the contents of a container are a foregone conclusion, the circumstances under which an officer finds the container may

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exception in 2005 and that the split remains unresolved); *infra* Part IV.B (discussing the state of the law concerning the determination of single-purpose containers in the Seventh and Eighth Circuits).

141. *Williams*, 41 F.3d at 197–98. Although the Fourth Circuit referred to the single-purpose container exception as the plain view container doctrine, the names are synonymous. *See, e.g.*, United States v. Luke, 686 F.3d 600, 605 (8th Cir. 2012) (showing how the two doctrines are one in the same); Kegl, *supra* note 121, at 248 n.93 (noting the circuit split in the doctrine's naming conventions).

142. *Williams*, 41 F.3d at 194.

143. *Id.*

144. *Id.*

145. *Id.* at 197. It appears that the court drew a distinction between application of the plain view doctrine in its traditional form, which only allows the seizure of evidence, and the application of the single-purpose container exception. *See id.* ("Having concluded that the warrantless seizure of the packages was lawful, we must now resolve whether the warrantless search of the packages was likewise lawful . . . .").

146. *See id.* at 196 ("Williams challenges the search of the five opaque wrapped packages found in his suitcase . . . . He contends that the plain view exception to the warrant requirement cannot support the search because the contents of the five packages were not a foregone conclusion.").

147. *Id.* (citing United States v. Jacobsen, 466 U.S. 109, 115 (1984)).

148. *Id.*; *see Jacobsen*, 466 U.S. at 117 ("It is well settled that when an individual reveals private information to another, he assumes the risk that his confidant will reveal that information to the authorities, and if that occurs the Fourth Amendment does not prohibit governmental use of . . . . the now nonprivate information . . . .").

add to the apparent nature of its contents."[149] In reaching its conclusion, the court relied heavily on dicta from the Supreme Court's decision in *Texas v. Brown*.[150] In that case, the Supreme Court found a defendant guilty of drug possession when the officer searched a balloon containing heroin.[151] The Court noted, "[T]he distinctive character of the [package] itself spoke volumes as to its contents—particularly to the trained eye of the officer."[152]

In *Williams*, the Fourth Circuit took the dicta from *Brown* to a logical conclusion.[153] Thus, the Fourth Circuit has adopted the view that circumstantial evidence and an officer's subjective state of mind can be taken into account when determining whether a container is a single-purpose container that so proclaims its contents as to make them a "foregone conclusion" and effectively in plain view.[154]

B. The Seventh and Eighth Circuits

The Eighth Circuit has remained explicitly undecided on the use of circumstantial evidence and subjective police knowledge in the determination of whether a container is a single-purpose container.[155] In *United States v. Banks*, the Eighth Circuit encountered a case where a gun was seized after its container was searched by an officer without a warrant.[156] Although the court ultimately concluded that the police had probable cause to search the container, the court did not reach the question of whether a subjective or objective perspective is necessary because the result would have been the same under either rule.[157]

While the outcome would have been the same in *Banks* regardless of the test used, the case does not discredit the need

149. *Williams*, 41 F.3d at 197 (citing Blair v. United States, 665 F.2d 500, 507 (4th Cir. 1981)).

150. *See id.* (weaving the Supreme Court's dicta in *Brown* into the court's analysis).

151. Texas v. Brown, 460 U.S. 730, 735, 743–44 (1983).

152. *Id.* at 743.

153. *Williams*, 41 F.3d at 197–98. The circumstances under which an officer's encounter with a package and that officer's interpretation of the package appear to be a valid factor for consideration if the Court's dicta in *Brown* is read alone. *See supra* notes 124, 127 and accompanying text.

154. *Williams*, 41 F.3d at 198.

155. United States v. Banks, 514 F.3d 769, 774–75 (2008); Kegl, *supra* note 121, at 251–52.

156. *Banks*, 514 F.3d at 772.

157. *See id.* at 774–75 (declining to decide whether a subjective or objective approach should be used to determine whether a container is a single-purpose container because the facts of the case would lead to the same result regardless of which test was used).

for a consistent standard.[158] Despite the fact that the law in the Eighth Circuit is uncertain, whether a subjective interpretation may be used to determine a person's reasonable expectation of privacy is of profound importance and may have far-reaching implications.[159] Reasonable expectations of privacy are supposed to be based on "societal norms."[160] Societal norms contemplate what an objectively reasonable person would expect to be private.[161]

The law providing what constitutes a single-purpose container is also uncertain in the Seventh Circuit.[162] In *United States v. Tejada*, Judge Posner recognized a circuit split over the issue but did not answer the question.[163] Though, in *United States v. Cardona-Rivera*, an earlier case, the Seventh Circuit noted that it believed a "majority" of Supreme Court Justices would support a subjective determination that took into account the circumstances of the encounter.[164]

C. The First, Ninth, and Tenth Circuits

The First, Ninth, and Tenth Circuits have taken the position that the determination of whether a container proclaims its contents, and is thus a single-purpose container, should be made from the perspective of a reasonable layman. The First Circuit, in *United States v. Meada*, favorably noted the district court's invalidation of the search of an ammunition can that held several grenades.[165] The court reasoned that the can's "outward appearance did not reveal [its contents]," even though the police officer identified the can as a container commonly used to hold ammunition.[166]

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158. *See* Amsterdam, *supra* note 8, at 353–54 (discussing the consequences to democracy and individual liberty that may occur when inconsistent or conflicting interpretations of the Constitution exist).

159. *See id.* at 403 (discussing how the protections provided by the Fourth Amendment are central to a democratic society and necessary for individual liberty and freedom); Kegl, *supra* note 121, at 251–52.

160. *See* Robbins v. California, 453 U.S. 420, 428 (1981) ("Expectations of privacy are established by general social norms, and . . . its contents [must be] obvious to an observer."), *overruled on other grounds by* United States v. Ross, 456 U.S. 798, 824 (1982).

161. *Id.* at 424–28.

162. United States v. Tejada, 524 F.3d 809, 813 (7th Cir. 2008) ("Whether, though the bag itself did not reveal its contents, those contents could be thought in 'plain view' because known with certainty, is an issue that has divided the circuits . . . .").

163. *See id.* (noting that the Seventh Circuit currently refuses to take a stance on whether the subjective or objective test should be used for the purpose of determining whether a package proclaims its contents).

164. United States v. Cardona-Rivera, 904 F.2d 1149, 1155–56 (7th Cir. 1990).

165. United States v. Meada, 408 F.3d 14, 19, 24 (1st Cir. 2005).

166. *Id.* at 19.

The Ninth Circuit went further in *United States v. Miller* and held, "Law enforcement officers should not be permitted under the single-purpose container rule set out in *Sanders* footnote 13 to conduct warrantless searches of containers that, though unrevealing in appearance, are discovered under circumstances supporting a strong showing of probable cause."[167] The facts of *Miller* are surprisingly analogous to the facts of the Fourth Circuit *Williams* case. In *Miller*, the defendant's airline luggage was "accidentally opened when airline baggage workers attempted to dislodge it from a baggage conveyor belt."[168] From his luggage fell "[a] clear plastic bag, partially wrapped in masking tape," and when it landed a "[w]hite powder spilled out of the puncture hole."[169] After the airline turned the bag over to the police, a field officer opened the bag, and it tested positive for cocaine.[170] Despite the factual similarities between *Miller* and *Williams*, the Ninth Circuit held that the bag did not "announce to the observer that it contained a controlled substance."[171] Most importantly, the Court said, "[T]he extent to which a container's exterior reveals its contents should not be solely determined either by the circumstances of its discovery, or by the experience and expertise of law enforcement officers."[172] In addition to ruling opposite to the Fourth Circuit, the Ninth Circuit also said that the use of officers' subjective knowledge "would increase significantly the risk of erroneous police decisions on whether there is sufficient certainty to permit a warrantless search."[173]

In *United States v. Bonitz*, the Tenth Circuit also interpreted the footnote in *Sanders* to require an objective determination of what constitutes a single-purpose container.[174] In that case, police officers entered the home of the defendant under a valid warrant to arrest him for providing false information in connection with the purchase of

167. United States v. Miller, 769 F.2d 554, 560 (9th Cir. 1985).

168. *Id.* at 555.

169. *Id.*

170. *Id.*

171. S*ee id.* at 560 (holding that a clear plastic bag that fell from a defendant's airline luggage did not proclaim its contents).

172. *Id.*

173. *Id.* (quoting 2 WAYNE R. LAFAVE, SEARCH AND SEIZURE: A TREATISE ON THE FOURTH AMENDMENT § 7.2(e), at 257 (Supp. 1986)).

174. *See* United States v. Bonitz, 826 F.2d 954, 957–58 (10th Cir. 1987) (noting that while there was "probable cause to seek a search warrant from a detached and neutral magistrate, the circumstances do not excuse the actions of law enforcement officials when they undertook a search and seizure without obtaining such a warrant").

a firearm.[175] Without a warrant and without consent, the officers spent two and a half hours searching and seizing a number of weapons and firearms from the defendant's bedroom.[176] In reaching the conclusion that the Fourth Amendment prohibits such searches, the court reasoned as follows:

> The point of the Fourth Amendment, which often is not grasped by zealous officers, is not that it denies law enforcement the support of the usual inferences which reasonable men draw from evidence. Its protection consists in requiring that those inferences be drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime.[177]

In reaching its decision, the Tenth Circuit also considered the history of the Fourth Amendment.[178] Indeed, the court concluded that the single-purpose container determination should be made from the perspective of a detached magistrate.[179] The court seemed to warn of the dangers of general warrants.[180] When the subjective judgment of the police officer is allowed to circumvent that of an objectively reasonable person, then there is no container for which a citizen may demand a reasonable level of privacy.[181]

In a subsequent case, *United States v. Donnes*, the Tenth Circuit again found a search of a container based on circumstances and officer experience a violation of the Fourth Amendment.[182] In that case, a camera-lens case found in a hand glove that also contained a syringe was found not to be a container that displayed its contents such that they were

175. *Id.* at 955.

176. *Id.*

177. *Id.* at 958.

178. *See id.* ("Into the writing of the [F]ourth [A]mendment was poured the living experiences of early Revolutionaries struggling for independence. Deeply troubled by police searches of homes and offices, and realizing the inherent temptations and persistent dangers of abuse, the Founding Fathers placed the [F]ourth [A]mendment into the Constitution." (citing Davis v. United States, 328 U.S. 582, 603–06 (1946) (Frankfurter J., dissenting))).

179. *Id.* at 957–58; *see* CUDDIHY, *supra* note 10, at 518 (discussing the outrage felt by colonial America at the imposition of general warrants, which allowed individual officers to make the sole determination of when, whether, and how to search and how that outrage contributed to the Revolutionary War).

180. *See Bonitz*, 826 F.2d at 958 ("The presence of a search warrant serves a high function. Absent some grave emergency, the Fourth Amendment has interposed a magistrate between the citizen and the police.").

181. *See id.*

182. United States v. Donnes, 947 F.2d 1430, 1436–37 (10th Cir. 1991).

essentially in plain view.[183] The court feared that expanding the single-purpose container exception to include qualities independent of the container would permit officers to conduct a "warrantless search of any container found in the vicinity of a suspicious item."[184]

The Supreme Court's interpretation of the *Sanders* footnote in *Robbins v. California* seems to support the holdings of the First, Ninth, and Tenth Circuits.[185] *Robbins* involved the search and seizure of containers of marijuana.[186] Despite testimony that the police officer recognized the packaging of the container to be indicative of marijuana, the Court stated, "Expectations of privacy are established by general social norms, and to fall within the [*Sanders* footnote] 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."[187]

However, despite this seemingly clear statement by the Court that appears to preclude the use of circumstantial and subjective evidence in the determination of what constitutes a single-purpose container, ambiguity arises when *Robbins* is compared to *Brown*. In *Brown*, the Court allowed the knowledge of the police officer to be a factor in allowing the seizure of a balloon filled with heroin.[188] Though, the differences between the two opinions may be explained by the fact that *Brown* authorized police knowledge for the *seizure* of a package, and *Robbins* disallowed police knowledge for *search and seizure*.[189] While this may be the distinction the Supreme Court intended in its *Brown* and *Robbins* decisions, the Court has not explicitly stated when circumstantial evidence and subjective police knowledge may be used and when it may not.[190]

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183. *Id.* at 1435–36.

184. *Id.* at 1438; *see* Kegl, *supra* note 121, at 248 (noting that the "Supreme Court concluded that considering the circumstances" of an officer's assertions "would expand the exception beyond" *Sanders*).

185. Robbins v. California, 453 U.S. 420, 427 (1981), *overruled on other grounds by* United States v. Ross, 456 U.S. 798, 824 (1982).

186. *Id.* at 422.

187. *Id.* at 428.

188. Texas v. Brown, 460 U.S. 730, 734, 742–44 (1983).

189. *Compare Brown*, 460 U.S. at 734, 736–37 (permitting seizure of a package based on an officer's personal knowledge), *with Robbins*, 453 U.S. at 428 (refusing to allow police knowledge to justify a warrantless search and seizure).

190. *See* United States v. Tejada, 524 F.3d 809, 813 (7th Cir. 2008) ("Whether, though the bag itself did not reveal its contents, those contents could be thought in 'plain view' because known with certainty, is an issue that has divided the circuits . . . .").

In sum, the Fourth Circuit has taken the position that a container's designation as a single-purpose container may be based on circumstantial evidence and the subjective knowledge of law enforcement officers. In contrast, the First, Ninth, and Tenth Circuits have held that the determination should be made from the perspective of an objectively reasonable person.

V. AN OBJECTIVE PERSPECTIVE THAT TAKES INTO ACCOUNT THE CIRCUMSTANCES OF THE ENCOUNTER SHOULD DETERMINE WHAT IS A SINGLE-PURPOSE CONTAINER

Any answer to the question of how single-purpose containers should be determined must keep in mind the history and framework of the Fourth Amendment.[191] Many of the founding fathers were outraged by general warrants and believed "that promiscuous searches and seizures were unreasonable."[192] Over time, the Fourth Amendment has been interpreted to mean that searches and seizures of private property are generally unreasonable absent a warrant.[193] Furthermore, the determination of whether an expectation of privacy is reasonable is based on "social norms" and a balancing of legitimate government interests against the individual's interest in privacy.[194]

It is clear that the Supreme Court and the circuit courts agree that the single-purpose container exception, as a concept, is constitutional.[195] While some commentators have hinted at abandoning the exception altogether,[196] the Supreme Court is unlikely to do so.[197] The exception will most likely remain.[198] However, what does hang in the balance is the weight given to the government's interest in preventing crime when compared to

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191. *See* Amsterdam, *supra* note 8, at 363 ("[A] fundamental question about the [F]ourth [A]mendment is what method should be used to identify the range of law enforcement practices that it governs and the abuses of those practices that it restrains.").

192. CUDDIHY, *supra* note 10, at 526–27.

193. *See* Katz v. United States, 389 U.S. 347, 361 (1967) (Harlan, J., concurring) (interpreting the majority holding as requiring a warrant when there is a subjective expectation of privacy and that expectation is one which "society is prepared to recognize as 'reasonable'").

194. *See Robbins*, 453 U.S. at 428 ("Expectations of privacy are established by general social norms . . . .").

195. *See* Kegl, *supra* note 121, at 251 ("The circuits do not disagree as to the constitutionality of the exception, but rather in determining when to classify a given container as a single-purpose container.").

196. *See id.* at 250 ("The solution is to eliminate, or at least limit, the exception and require law enforcement officers to get a search warrant.").

197. *See Robbins*, 453 U.S. at 427 (citing Arkansas v. Sanders, 442 U.S. 753, 764–65 n.13 (1979), *overruled in part on other grounds by* California v. Acevedo, 500 U.S. 565, 576 (1991)) (endorsing the doctrine).

198. *See id.*

individual privacy.[199] While allowing a subjective interpretation is convenient to fighting crime, doing so is analogous to the allowance of the general warrants partly responsible for the Revolutionary War.[200] Recall that a year-old general warrant permitted British officers to enter Mr. Malcom's home without any judicial review.[201] Similarly, permitting a subjective determination of the single-purpose container exception replaces the impartial objectivity of the court with the preferences of the police.[202]

Courts should conduct the determination of what constitutes a single-purpose container from the perspective of an objectively reasonable person.[203] However, the circumstances surrounding the encounter should also be taken into account, yet still from an objective perspective.[204] Reasonable expectations of privacy are based upon social norms. Thus, if society at large finds it reasonable to expect privacy in a given container, then a warrant should be required to search or seize that container.[205] However, rather than divorcing the judgment of a container from the officer's subjective knowledge *and* the circumstances surrounding the encounter, only the officer's subjective knowledge should be excluded.[206]

The circumstances surrounding a police encounter with a container can be judged from the perspective of an objectively

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199. United States v. Knights, 534 U.S. 112, 118–19 (2001) (citing Wyoming v. Houghton, 526 U.S. 295, 300 (1999)).

200. *See* CUDDIHY, *supra* note 10, at 524 (discussing specific instances where general warrants that allowed officers to use complete discretion in searching for the perpetrator of a crime caused the revolutionary founders great strife and contributed to the cause of the Revolutionary War).

201. *See supra* notes 24–34 and accompanying text (discussing the Malcom affair).

202. *Cf.* CUDDIHY, *supra* note 10, at 518 (discussing how general warrants allowed individual officers to supplant the decision of an impartial magistrate with their own).

203. *See supra* note 200–202 and accompanying text (averring that subjective determinations do not result in evenhanded law enforcement).

204. This conclusion would naturally follow the Court's findings in *Robbins v. California* that are consistent with its earlier precedent in *Katz*. *See* Robbins v. California, 453 U.S. 420, 427 (1981) ("Expectations of privacy are established by general social norms . . . ."), *overruled on other grounds by* United States v. Ross, 456 U.S. 798, 824 (1982); Katz v. United States, 389 U.S. 347, 361 (1967) (Harlan, J., concurring) (noting that when the government acts outside of reasonable expectations of privacy based on social norms, then a warrant is required).

205. *Katz*, 389 U.S. at 361.

206. *See* Horton v. California, 496 U.S. 128, 138 (1990) ("[E]venhanded law enforcement is best achieved by the application of objective standards of conduct, rather than standards that depend upon the subjective state of mind of the officer."); United States v. Gust, 405 F.3d 797, 803 (9th Cir. 2005) ("[C]ourts should assess the nature of a container primarily 'with reference to general social norms' rather than 'solely . . . by the experience and expertise of law enforcement officers.'" (quoting United States v. Miller, 769 F.2d 554, 560 (9th Cir. 1985))).

reasonable person.[207] It is unlikely that societal norms would require that the circumstances under which a package is discovered be divorced from the determination of whether its contents are effectively in plain view.[208] Thus, circumstances surrounding the officer's encounter with the object can be taken into account; however, they should be taken into account from an objective rather than subjective perspective.

This solution strikes a balance between the government's legitimate interests and individual privacy interests.[209] The government's interest in effectively fighting crime is furthered by allowing some circumstantial evidence to be a factor in determining whether a package is a single-purpose container.[210] Indeed, because the circumstances surrounding the officer's encounter with a package may be taken into account, the final outcome of any given case would not likely leave those such as the late Learned Hand displeased.[211] Crime would be deterred; however, individual liberties would simultaneously be protected because a clear procedural standard would be in place.[212] Such a standard overcomes criticisms leveled at the interpretation followed in the Fourth Circuit.[213] With the proposed test, decisions would be uniform regardless of what an individual officer believes about a given package.[214] Indeed, it is also an easy standard to communicate to the law enforcement community.[215]

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207. *See* United States v. Cardona-Rivera, 904 F.2d 1149, 1155 (7th Cir. 1990) (noting that several Supreme Court Justices believe "that if the shape or other characteristics of the container, *taken together with the circumstances in which it is seized* . . . proclaim its contents unambiguously, there is no need to obtain a warrant" (emphasis added)).

208. *See id.* at 1156.

209. *See* United States v. Knights, 534 U.S. 112, 118–19 (2001) (noting that the reasonableness of a search is determined by weighing the legitimate interests of the government against individual privacy interests).

210. *See* United States v. Williams, 41 F.3d 192, 197 (4th Cir. 1994) (noting that the circumstances surrounding an officer's encounter with the package may be a factor in the package proclaiming its illegal contents).

211. Judge Hand admonished that "[w]hat we need to fear is the archaic formalism and the watery sentiment that obstructs, delays, and defeats the prosecution of crime." United States v. Garsson, 291 F. 646, 649 (S.D.N.Y. 1923).

212. Justice Frankfurter felt that "[t]he history of liberty has largely been the history of observance of procedural safeguards." McNabb v. United States, 318 U.S. 332, 347 (1943).

213. *See, e.g.*, Kegl, *supra* note 121, at 256 (claiming that allowing subjective police knowledge as a factor may contribute to police misconduct and unjust outcomes).

214. *See* United States v. Miller, 769 F.2d 554, 560 (9th Cir. 1985) (noting that if police subjectivity is disallowed, then the significant "risk of erroneous police decisions" is avoided).

215. *See* Kegl, *supra* note 121, at 261–62 (noting that the ease of administrability should be taken into consideration when determining what standard should be used for determining what constitutes a single-purpose container).

At least one commentator has advocated using a two-step approach to determine whether a package proclaims its contents by subjectively determining the "criminal nature of the single-purpose container" and then objectively applying the elements of the plain view doctrine.[216] Such an approach would likely be unwieldy in the law enforcement field. An approach that is objective, but takes into account circumstances, would be both easy to communicate and easy to administer. Additionally, requiring the determination to be made from the perspective of a neutral and detached magistrate encourages public confidence in the legal system and avoids the hazards associated with general warrants.[217]

In situations where officers subjectively feel that a given package contains contraband, but realize that it would fail an objective test, there are still other options. For example, drug- or bomb-sniffing dogs could be used to establish probable cause.[218] Or, as always, a warrant could be sought.[219] Thus, although this Comment's proposed solution puts more weight on the scale in favor of individual privacy, the scales are not so weighted in the individual's favor as to force the government to forego crime prevention in most circumstances.[220]

Another alternative would be to allow subjective officer knowledge and circumstances to be a factor in situations of seizure but not in circumstances of a search. However, such a conclusion would mean citizens have no reasonable expectation that their belongings cannot be seized by the government whenever a police officer subjectively believes the citizen's package harbors some form of illegality.[221] It makes little sense

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216. *See* Lucier, *supra* note 134, at 1825–26, 1834–35 (advocating a two-step process where subjective police knowledge is allowed in determining the criminal nature of the single-purpose container, and in the second step applying the requirements of the plain view doctrine through an objective lens).

217. *See* CUDDIHY, *supra* note 10, at 1402–03 (noting that a primary impetus for constitutionally requiring specific warrants was to encourage public confidence in the integrity of the judiciary).

218. *See* Mark E. Smith, Comment, *Going to the Dogs: Evaluating the Proper Standard for Narcotic Detector Dog Searches of Private Residences*, 46 HOUS. L. REV. 103, 111 (2009) ("[A] dog sniff conducted during a concededly lawful traffic stop that reveals no information other than the location of a substance that no individual has any right to possess does not violate the Fourth Amendment." (quoting Illinois v. Caballes, 543 U.S. 405, 410 (2005))).

219. U.S. CONST. amend. IV.

220. *See* United States v. Banks, 514 F.3d 769, 774–75 (8th Cir. 2008) (noting that most cases will not turn on what standard is used to determine what constitutes a single-purpose container).

221. *See* Texas v. Brown, 460 U.S. 730, 734, 736–37 (1983) (noting that under certain circumstances seizure of a package based on an officer's personal knowledge may be permissible).

for seizure to be rational under a subjective theory when search is not. The police will almost certainly obtain a warrant once the property is seized, and thus seizure would be the functional equivalent of search *and* seizure.[222] Indeed, the general rule is that seizure of property is justified only in circumstances where there is a likelihood that the property would be out of law enforcement's reach if time is taken to first obtain a warrant.[223]

Thus, this second alternative would give definite meaning to the Supreme Court's holdings in *Brown* and *Robbins* with respect to their specific factual situations.[224] However, it would still replace individual privacy based on "societal norms" with individual privacy based on the government's preferences.[225] For this reason, it should not be adopted over an objective standard for both search and seizure that allows circumstances to be taken into account from an objective perspective.

An objective standard for determining what constitutes a single-purpose container that takes into account the circumstances of the officer's encounter with the container, but not the officer's unique knowledge, is the most rational way of solving the current circuit split.[226] This objective approach that considers the circumstances of an encounter protects both legitimate government interests and individual privacy.[227] It maintains the primary rule of *Katz* by continuing to base reasonableness on social norms and prevents searches and seizures based on subjective interpretation.[228] Further, promiscuous searches with uncanny similarity to the general warrants that spurred the founding fathers toward revolution

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222. *See* Brian J. Serr, *Great Expectations of Privacy: A New Model for Fourth Amendment Protection*, 73 MINN. L. REV. 583, 592 (1989) (pointing to the ease with which seized items may be subsequently searched pursuant to a warrant).

223. Amsterdam, *supra* note 8, at 359 (describing an exception to the warrant requirement for "fast-developing" situations that could likely result in the loss of an opportunity to later search or seize an item after first acquiring a warrant).

224. In *Brown*, the Court allowed extrinsic evidence for the purpose of a seizure. *Brown*, 460 U.S. at 735–36. In *Robbins*, the Court disallowed extrinsic evidence for the purpose of a search and seizure. Robbins v. California, 453 U.S. 420, 427 (1981), *overruled on other grounds by* United States v. Ross, 456 U.S. 798, 824 (1982).

225. *See supra* notes 131–133 and accompanying text (discussing a second alternative that would continue to allow circumstantial evidence to be evaluated from a subjective perspective).

226. *See* Horton v. California, 496 U.S. 128, 138 (1990) ("[E]venhanded law enforcement is best achieved by the application of objective standards of conduct, rather than standards that depend upon the subjective state of mind of the officer.").

227. *See* United States v. Knights, 534 U.S. 112, 119 (2001) (citing Wyoming v. Houghton, 526 U.S. 295, 300 (1999)) (requiring a balancing of legitimate state interests against individual privacy interests).

228. *Robbins*, 453 U.S. at 427–28.

would be avoided.[229] This standard would be easy to implement and enforce, and it would provide consistency in courtrooms across the country, regardless of what an individual officer believed at the time of search and seizure.

VI. CONCLUSION

The single-purpose container exception to the general warrant requirement that allows police officers to search and seize certain containers without a warrant is valid under the Fourth Amendment.[230] What remains unclear is whether the determination of what constitutes a single-purpose container should allow the subjective knowledge of police officers to be a deciding factor. While the First, Ninth, and Tenth circuits have held that the determination should be made based on the objectively reasonable person,[231] the Fourth Circuit has held that subjective police knowledge can be determinative.[232] Some circuits remain uncertain, and the Supreme Court has yet to rule explicitly on the issue.[233]

All Fourth Amendment determinations should be made in light of the history of its creation, specifically the founders' distaste for general warrants over specific ones.[234] Case law has interpreted the reasonable expectation of privacy requirement to be based on social norms.[235] Thus, the determination of whether police may search or seize any container absent a warrant must meet the standard of reasonableness.[236]

This Comment advocates that the determination of what constitutes a single-purpose container should be based on the objectively reasonable person, but that circumstances surrounding the officer's encounter with the container should be

229. Chimel v. California, 395 U.S. 752, 760–61 (1969) (Frankfurter, J., dissenting)) (noting that general warrants resulted in "a history of 'abuses so deeply felt by the Colonies as to be one of the potent causes of the Revolution'" (quoting United States v. Rabinowitz, 339 U.S. 56, 69 (1950)), *abrogated in part on other grounds by* Arizona v. Gant, 556 U.S. 332 (2009).

230. *See* Texas v. Brown, 460 U.S. 730, 741–44 (1983) (finding that the plain view exception encompasses single-purpose containers).

231. *See supra* Part IV.C.

232. United States v. Williams, 41 F.3d 192, 198 (4th Cir. 1994) (holding that a package wrapped in cellophane was a single-purpose container based on the circumstances of the discovery and the police officer's experience).

233. *See supra* Part IV.

234. *See* CUDDIHY, *supra* note 10, at 526–27 (noting that many of the founders were outraged by general warrants and believed "that promiscuous searches and seizures were unreasonable").

235. Robbins v. California, 453 U.S. 420, 428 (1981), *overruled on other grounds by* United States v. Ross, 456 U.S. 798, 824 (1982).

236. Texas v. Brown, 460 U.S. 730, 731 (1983).

taken into account and measured objectively.[237] Such a rule would balance the legitimate interests of the government and individual privacy interests, and it would be simple to implement.[238] The Supreme Court abandoned the inadvertency requirement for plain view searches in *Horton* because "evenhanded law enforcement is best achieved by the application of objective standards of conduct, rather than standards that depend upon the subjective state of mind of the officer."[239] The same reasoning should be applied to the current circuit split over what constitutes a single-purpose container.

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237. *See supra* Part V (discussing the Comment's proposed solution).

238. *See supra* Part V.

239. Horton v. California, 496 U.S. 128, 138 (1990).