[J-5-2013]
IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

CASTILLE, C.J., SAYLOR, EAKIN, BAER, TODD, McCAFFERY, ORIE MELVIN, JJ.

COMMONWEALTH OF PENNSYLVANIA,	:	No. 26 EAP 2012
	:	
Appellant	:	Appeal from the Order of the Superior
	:	Court, No. 3080 EDA 2010
	:	
v.	:	29 A.3d 804 (Pa.Super. 2011)
	:	
	:	ARGUED: March 5, 2013
SHIEM GARY,	:	
	:	
Appellee	:	

OPINION ANNOUNCING THE JUDGMENT OF THE COURT

MR. JUSTICE McCAFFERY **DECIDED: April 29, 2014**

In this case, we again address the requirements in this Commonwealth for a warrantless search of a motor vehicle. After consideration of relevant federal and state law, we now hold that with respect to a warrantless search of a motor vehicle that is supported by probable cause, Article I, Section 8 of the Pennsylvania Constitution affords no greater protection than the Fourth Amendment to the United States Constitution. Accordingly, we adopt the federal automobile exception to the warrant requirement, which allows police officers to search a motor vehicle when there is probable cause to do so and does not require any exigency beyond the inherent mobility of a motor vehicle.

On January 15, 2010, Philadelphia Police Officers Baker and Waters were on patrol in their marked car in the area of North 58th Street and Florence Avenue when

they observed Sheim Gary (Appellee) driving an SUV with heavily tinted windows. Believing that the level of tint in the windows violated Pennsylvania's Motor Vehicle Code, the officers stopped and approached the SUV. As they did so, they noticed the smell of marijuana emanating from the passenger and driver sides of the vehicle. When Officer Baker asked Appellee if there was anything in his vehicle that the officers "need [to] know about," Appellee responded that there was some "weed." The officers removed Appellee from the SUV, placed him in the police cruiser, and summoned the canine unit. As Police Officer Snyder and his dog, Leo, began to walk around the SUV, Appellee got out of the police cruiser and started running from the scene. With Leo's help, the officers apprehended Appellee and returned him to the police cruiser. The search of Appellee's SUV yielded approximately two pounds of marijuana, found under the front hood in a bag lodged next to the air filter. Opinion of Court of Common Pleas, dated 12/15/10, at 2; Notes of Testimony ("N.T.") Suppression Hearing, 4/28/2010, at 6-11; N.T. Hearing, 6/4/10, at 11-13 (Municipal Court summary of facts of the case). Appellee was arrested and charged with possession of a controlled substance and possession with intent to deliver.[1]

In Philadelphia Municipal Court, Appellee moved to suppress the marijuana recovered from his vehicle, arguing that the warrantless search was illegal because it was not supported by probable cause and was not necessitated by exigent circumstances. The court conducted a hearing on Appellee's suppression motion on April 28, 2010, and on June 4, 2010, the court held that the warrantless search was valid because it was justified by both probable cause and exigent circumstances. More specifically, the court held that probable cause was "strong" based on the "plain smell" of the marijuana emanating from Appellee's SUV. With respect to exigent

[1] Respectively, 35 P.S. §§ 780-113(a)(16) and (a)(30).

circumstances, the court found that police had no advance warning that Appellee's vehicle would be stopped or that there would be probable cause to search the vehicle for contraband. The court also determined that Appellee was in custody and that the police were in control of his vehicle at the time of the search, but these determinations did not undermine the court's finding of exigency. N.T. Hearing, 6/4/10, at 13-15. Accordingly, the municipal court denied Appellee's suppression motion, and the marijuana was admitted into evidence. Following a stipulated trial, Appellee was found guilty of both charges and was sentenced to four years' reporting probation.

Appellee filed a petition for a writ of certiorari with the court of common pleas. Following oral argument on September 28, 2010, the court denied the writ. The court observed that a warrantless search of an automobile is permissible where there is both probable cause to search and exigent circumstances necessitating a search. Opinion of Court of Common Pleas, dated 12/15/10, at 3 (citing Commonwealth v. Casanova, 748 A.2d 207, 211 (Pa.Super. 2002)). In finding probable cause to search, the common pleas court noted the "plain smell" of the marijuana emanating from the vehicle, as well as Appellee's flight from the scene. Id. at 5-6. In addition, the court concluded that the following factors constituted exigent circumstances: (1) the lack of advance warning to police that Appellee's vehicle would be stopped and would be part of a criminal investigation; (2) the need for the officers to act quickly to seize contraband from the vehicle; and (3) the determination that Appellee was not under arrest before the search occurred and thus might have been permitted to return to his vehicle and drive away with the contraband. Id. at 6.

Appellee appealed to the Superior Court, contending that the warrantless search of his vehicle was unlawful because it was conducted in the absence of any recognized exception to the warrant requirement. Appellee's Statement of Matters Complained of

on Appeal, dated 11/22/10, at 1.[2] The Superior Court reversed the order denying Appellee's petition for writ of certiorari, and remanded for a trial without the admission of the seized marijuana. Commonwealth v. Gary, 29 A.3d 804, 808 (Pa.Super. 2011). Citing the municipal court's finding that Appellee was in police custody prior to the search, the Superior Court concluded that "the circumstances in this case did not evidence an imperative need for prompt police action; neither the lack of advance warning of criminal activity nor any other factor of record resulted in a threat of danger or dissipation of evidence." Id. at 808.

This Court granted the Commonwealth's petition for allowance of appeal to address the following issues, as stated by the Commonwealth:

> a. Were the police permitted to conduct a warrantless search of defendant's SUV for marijuana where, during a traffic stop, they could smell marijuana emanating from the vehicle, defendant informed police that he had marijuana in the SUV, and the officers had not had the opportunity to obtain a warrant prior to stopping the vehicle?
>
> b. Should this Court adopt the federal automobile exception to the warrant requirement?

Commonwealth v. Gary, 44 A.3d 1146 (Pa. 2012) (per curiam).

In a case such as this where the trial court denied a suppression motion, our standard of review is well-established.

> We may consider only the Commonwealth's evidence and so much of the evidence for the defense as remains uncontradicted when read in the context of the record as a whole. Where the record supports the factual findings of the trial court, we are bound by those facts and may reverse

[2] The Superior Court clarified that Appellee challenged only the trial court's finding of exigent circumstances, not the finding of probable cause. Commonwealth v. Gary, 29 A.3d 804, 807 (Pa.Super. 2011).

> only if the legal conclusions drawn therefrom are in error. An appellate court, of course, is not bound by the suppression court's conclusions of law.

Commonwealth v. Russo, 934 A.2d 1199, 1203 (Pa. 2007) (citations omitted).

The issues presented implicate the Fourth Amendment to the United States Constitution and Article I, Section 8 of the Pennsylvania Constitution, which provide, respectively, as follows:

> 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.

U.S. Constitution, Amend. IV.

> The people shall be secure in their persons, houses, papers and possessions from unreasonable searches and seizures, and no warrant to search any place or to seize any person or things shall issue without describing them as nearly as may be, nor without probable cause, supported by oath or affirmation subscribed to by the affiant.

PA Constitution Art. I, § 8.

The primary objective of the Fourth Amendment to the U.S. Constitution and Article I, Section 8 of the Pennsylvania Constitution is the protection of privacy. Warden v. Hayden, 387 U.S. 294, 304 (1967) (stating that the "principal object of the Fourth Amendment is the protection of privacy"); Jones v. United States, 357 U.S. 493, 498 (1958) ("The decisions of this Court have time and again underscored the essential purpose of the Fourth Amendment to shield the citizen from unwarranted intrusions into his privacy."); Commonwealth v. Waltson, 724 A.2d 289, 292 (Pa. 1998) (citing

Commonwealth v. Edmunds, 586 A.2d 897-98 (Pa. 1991) for the proposition that "this Court has held that embodied in Article I, Section 8 is a strong notion of privacy, which is greater than that of the Fourth Amendment"); Commonwealth v. Gordon, 683 A.2d 253, 257 (Pa. 1996) (reiterating that legitimate expectations of privacy are protected by Article I, Section 8); Commonwealth v. Blystone, 549 A.2d 81, 87 (Pa. 1988) (reiterating that "Article I, § 8 creates an implicit right to privacy in this Commonwealth"), grant of habeas corpus on a separate issue affirmed by Blystone v. Horn, 664 F.3d 397 (3d Cir. 2011); Commonwealth v. Mangini, 386 A.2d 482 (Pa. 1978) ("[T]he acknowledged touchstone of the Fourth Amendment [is] to protect one's reasonable expectations of privacy.").

As a general rule, for a search to be reasonable under the Fourth Amendment or Article I, Section 8, police must obtain a warrant, supported by probable cause and issued by an independent judicial officer, prior to conducting the search. This general rule is subject to only a few delineated exceptions, including the existence of exigent circumstances. See Horton v. California, 496 U.S. 128, 134 n.4 (1990) ("[I]t is a cardinal principle that searches conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment -- subject only to a few specifically established and well-delineated exceptions.") (citations and quotation marks omitted); United States v. Ross, 456 U.S. 798, 825 (1982) (same); Terry v. Ohio, 392 U.S. 1, 20 (1968) ("We do not retreat from our holdings that the police must, when practicable, obtain advance judicial approval of searches and seizures through the warrant procedure, or that in most instances failure to comply with the warrant requirement can only be excused by exigent circumstances.") (internal citations omitted); Commonwealth v. Petroll, 738 A.2d 993, 998-99 (Pa. 1999) (reiterating that Article I, Section 8 and the Fourth Amendment generally prohibit

warrantless searches unless an exception such as exigent circumstances applies); Commonwealth v. Holzer, 389 A.2d 101, 106 (Pa. 1978) (citing an exception to the warrant requirement when exigent circumstances exist, such as where there is a need for prompt police action to preserve evidence or to protect an officer from danger to his or her person).

One exception to the warrant requirement, the precise parameters of which have evolved over time based on decisional law from the U.S. Supreme Court and from this Court, concerns searches and seizures of automobiles. See, e.g., California v.Carney, 471 U.S. 386, 390-91 (1985). There is no question that automobiles are not per se unprotected by the warrant requirements of the Fourth Amendment and Article I, Section 8. See, e.g., Cady v. Dombrowski, 413 U.S. 433, 439-40 (1973) (stating that "vehicles are 'effects' within the meaning of the Fourth Amendment [even though] for the purposes of the Fourth Amendment there is a constitutional difference between houses and cars"); Commonwealth v. Baker, 541 A.2d 1381, 1383 (Pa. 1988), overruled on other grounds, Commonwealth v. Rosario, 648 A.2d 1172 (Pa. 1994) ("It is well established that automobiles are not per se unprotected by the warrant requirements of the Fourth Amendment, and of Art. I, § 8 [ ]."); Holzer, supra at 106 ("[C]onstitutional protections are applicable to searches and seizures of a person's car," although the need for a warrant to search a car "is often excused by exigent circumstances."); Commonwealth v. Cockfield, 246 A.2d 381, 384 (Pa. 1968) ("And certainly an automobile is not per se unprotected by the warrant procedure of the Fourth Amendment."). However, as we develop infra, the precise parameters of these protections have been difficult not only for this Court, but also for the U.S. Supreme Court to articulate and apply consistently. We first examine the development of the

automobile exception to the warrant requirement under federal law, and we then consider the concurrent development of the exception in this Commonwealth.

At the outset, it is important to recognize that this Court may extend greater protections under the Pennsylvania Constitution than those afforded under the U.S. Constitution. However, we should do so only where our own independent state constitutional analysis indicates that a distinct standard should be applied. Commonwealth v. Edmunds, 586 A.2d 887, 894-95 (Pa. 1991) (stating that "it is both important and necessary that we undertake an independent analysis of the Pennsylvania Constitution, each time a provision of that fundamental document is implicated" and setting forth "certain factors to be briefed and analyzed by litigants in each case hereafter implicating a provision of the Pennsylvania [C]onstitution"); Commonwealth v. Russo, 934 A.2d 1199, 1213 (Pa. 2007) (holding, after conducting an Edmunds analysis, that the Fourth Amendment and Article I, Section 8 of the Pennsylvania Constitution are coextensive with regard to the open fields doctrine, and concluding that "there is nothing in the unique Pennsylvania experience to suggest that we should innovate a departure from common law and from federal law and reject [this doctrine]"); Commonwealth v. Glass, 754 A.2d 655, 660 (Pa. 2000) (quoting Commonwealth v. Cleckley, 738 A.2d 427, 431 (Pa. 1999), for the proposition that we should apply the prevailing federal constitutional standard to our state constitutional provisions "where our own independent state analysis does not suggest a distinct standard"). We have also concluded that, "[w]hile we can interpret our own [C]onstitution to afford defendants greater protections than the federal constitution does, there should be a compelling reason to do so." Commonwealth v. Gray, 503 A.2d 921, 926 (Pa. 1985) (citation omitted).

The automobile exception was first set forth by the United States Supreme Court in Carroll v. United States, 267 U.S. 132 (1925). In Carroll, federal prohibition agents unexpectedly encountered two suspected "bootleggers" in a car traveling on a public road. The agents stopped the car and searched it without a warrant, finding numerous bottles of gin and whiskey. Looking to the early days of Fourth Amendment jurisprudence, the Carroll Court cited the historically recognized "necessary difference between a search of a store, dwelling house, or other structure in respect of which a proper official warrant readily may be obtained[,] and a search of a ship, motor boat, wagon, or automobile, … **where it is not practicable to secure a warrant**, because the vehicle can be quickly moved out of the locality or jurisdiction … ." Id. at 153 (emphasis added).

Carroll emphasized the constancy of the requirement for a finding of probable cause to search, but permitted law enforcement officers to make that determination under certain circumstances.

> In cases **where the securing of a warrant is reasonably practicable, it must be used** … . In cases where seizure is impossible except without warrant, the seizing officer acts unlawfully … unless he can show the court probable cause.

Id. at 156 (emphasis added).

Subsequent cases from the high Court made explicitly clear that the impracticability of obtaining a warrant to search an automobile in transit with illicit goods constituted the basis for Carroll's holding. See California v. Carney, 471 U.S. 386, 390 (1985) (recognizing that "[t]he capacity to be 'quickly moved' was clearly the basis of the holding in Carroll"); United States v. Ross, 456 U.S. 798, 806-07 (1982) (stating that "the impracticability of securing a warrant in cases involving the transportation of contraband goods … viewed in historical perspective, [ ] provided the basis for the

Carroll decision"). However, numerous post-Carroll cases have expanded the application of the federal automobile exception to circumstances where there was no immediate danger that the vehicle in question might be moved or the evidence contained therein might be lost.

For example, in the oft-cited case Chambers v. Maroney, 399 U.S. 42 (1970), the warrantless vehicular search in question was conducted after police had stopped the vehicle, arrested the occupants for a robbery that had occurred a short time earlier, and then moved the vehicle to the police station. In upholding the search, the Court reasoned as follows:

> Neither Carroll, supra, nor other cases in this Court require or suggest that in every conceivable circumstance the search of an auto even with probable cause may be made without the extra protection for privacy that a warrant affords. But the circumstances that furnish probable cause to search a particular auto for particular articles are most often unforeseeable; moreover, the opportunity to search is fleeting since a car is readily movable. Where this is true, as in Carroll and [in Chambers], if an effective search is to be made at any time, either the search must be made immediately without a warrant or the car itself must be seized and held without a warrant for whatever period is necessary to obtain a warrant for the search.

Chambers, supra at 50-51.

After determining that the car "could have been searched on the spot when it was stopped since there was probable cause to search and it was a fleeting target for a search," the Chambers Court concluded that "there is little to choose in terms of practical consequences between an immediate search without a warrant and the car's immobilization until a warrant is obtained." Id. at 52. "Given probable cause to search, either course is reasonable under the Fourth Amendment." Id. at 52.

The high Court relied on and further clarified Chambers's holding in Michigan v. Thomas, 458 U.S. 259 (1982) (per curiam), where police stopped the defendant's car for a motor vehicle violation, observed an open bottle of malt liquor on the floorboard, and then arrested him for possession of open intoxicants in a motor vehicle. Pursuant to departmental policy, an officer searched the vehicle prior to towing and impounding it, and found marijuana in the unlocked glove compartment. A second officer then conducted a more thorough search of the car and found a loaded revolver in the air vents under the dashboard. Id. at 259-60. After the defendant was convicted of possession of a concealed weapon, he moved for a new trial, contending that the firearm was found pursuant to an illegal search and seizure. Id. at 260. Although the trial court denied the motion, the Michigan Court of Appeals reversed, concluding, inter alia, that there were no exigent circumstances justifying the warrantless search because both the car and the occupant were in police custody. Id. at 260-61. Reversing the Michigan appellate court and upholding the warrantless search, the high Court stated as follows:

> In Chambers [ ], we held that when police officers have probable cause to believe there is contraband inside an automobile that has been stopped on the road, the officers may conduct a warrantless search of the vehicle, even after it has been impounded and is in police custody. We firmly reiterated this holding in Texas v. White, 423 U.S. 67, 96 S.Ct. 304, 46 L.Ed.2d 209 (1975). See also United States v. Ross, 456 U.S. 798, 807, n.9, 102 S.Ct. 2157, 2163, n.9, 72 L.Ed.2d 57 (1982). It is thus clear that the **justification to conduct such a warrantless search does not vanish once the car has been immobilized; nor does it depend upon a reviewing court's assessment of the likelihood in each particular case that the car would have been driven away, or that its contents would have been tampered**

> **with, during the period required for the police to obtain a warrant.**

Thomas, 458 U.S. at 261 (emphasis added).

Thus, while a vehicle's ready mobility was the original justification for the automobile exception to the warrant requirement, the U.S. Supreme Court subsequently broadened this justification to encompass those situations where the vehicle was in police custody and thus was immobilized.

To support further its broadened automobile exception, the U.S. Supreme Court articulated a second justification for the warrantless search of a motor vehicle, to wit, the diminished expectation of privacy in a motor vehicle as compared to a residence or office, due to the pervasive governmental regulation of, and local law enforcement's extensive contact with, motor vehicles. See, e.g., Cady v. Dombrowski, 413 U.S. 433, 442 (1973) (recognizing that the original justification for treating motor vehicles differently from houses with regard to warrantless searches had been expanded, and reasoning that "[t]he constitutional difference between searches of and seizures from houses and similar structures and from vehicles stems both from the ambulatory character of the latter and from the fact that extensive, and often noncriminal contact with automobiles will bring local officials in 'plain view' of evidence, fruits, or instrumentalities of a crime, or contraband"). In California v. Carney, 471 U.S. 386, 391 (1985), the high Court explained further the two justifications permitting warrantless searches of motor vehicles.

> [A]lthough ready mobility alone was perhaps the original justification for the vehicle exception [to the warrant requirement], our later cases have made clear that ready mobility is not the only basis for the exception. The reasons for the vehicle exception … are twofold. Besides the

> element of mobility, less rigorous warrant requirements govern because the expectation of privacy with respect to one's automobile is significantly less than that relating to one's home or office.
>
> Even in cases where an automobile was not immediately mobile, the lesser expectation of privacy resulting from its use as a readily mobile vehicle justified application of the vehicular exception.
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> * * * * *
>
> These reduced expectations of privacy derive … from the pervasive regulation of vehicles capable of traveling on the public highways.
>
> * * * * *
>
> The public is fully aware that it is accorded less privacy in its automobiles because of this compelling governmental need for regulation. … . In short, the pervasive schemes of regulation, which necessarily lead to reduced expectations of privacy, and the exigencies attendant to ready mobility justify searches without prior recourse to the authority of a magistrate so long as the overriding standard of probable cause is met.

Carney, supra at 391-92 (internal citation and quotation marks omitted).

The Carney Court invoked both the ready mobility and the reduced privacy justifications to hold that a warrantless search, based on probable cause, of a fully mobile motor home parked in a public lot did not violate the Fourth Amendment, explaining its reasoning as follows:

> [Whether] a vehicle is being used on the highways, or if it is readily capable of such use and is found stationary in a place not regularly used for residential purposes -- temporary or otherwise -- the two justifications for the vehicle exception come into play. First, the vehicle is obviously readily mobile by the turn of an ignition key, if not actually

> moving. Second, there is a reduced expectation of privacy stemming from its use as a licensed motor vehicle subject to a range of police regulations inapplicable to a fixed dwelling.

Id. at 392-93 (footnote omitted).

The high Court relied upon both justifications to reach its holding in South Dakota v. Opperman, 428 U.S. 364 (1976), a case in which the defendant challenged the warrantless, but routine and standard inventory search of his vehicle which had been lawfully impounded for violations of municipal parking ordinances. Reversing the Supreme Court of South Dakota, the high Court held that the search did not violate the Fourth Amendment bar against unreasonable searches and seizures based on the following rationale.

> First, the inherent mobility of automobiles creates circumstances of such exigency that, as a practical necessity, rigorous enforcement of the warrant requirement is impossible. … [Second,] the expectation of privacy with respect to one's automobile is significantly less than that relating to one's home or office.

Id. at 367 (internal citations omitted).

More recently, the high Court has made it expressly and unmistakably clear that application of the automobile exception to the requirement for a search warrant requires **only** a finding of probable cause and **not** a separate, distinct, or additional finding of exigency. In other words, the only exigency required under federal law for application of the automobile exception is the inherent ready mobility of a motor vehicle. See Maryland v. Dyson, 527 U.S. 465, 466-67 (1999); Pennsylvania v. Labron, 518 U.S. 938, 940 (1996) (per curiam).

As will be discussed in more detail, infra, the high Court in Labron corrected a misconception of this Court that, under the Fourth Amendment, the automobile

exception was limited to cases in which "unforeseen circumstances involving the search of an automobile are coupled with the presence of probable cause." Labron, 518 U.S. at 940 (quoting Commonwealth v. Labron, 669 A.2d 917, 924 (Pa. 1995)). Correcting this Court's error, the high Court explained the automobile exception as follows:

> If a car is readily mobile and probable cause exists to believe it contains contraband, the Fourth Amendment [ ] permits police to search the vehicle without more.

Id. at 940.

Similarly, in Maryland v. Dyson, 527 U.S. 465 (1999), the high Court reversed the Maryland Court of Special Appeals, which had held that application of the automobile exception required not only probable cause but also exigent circumstances that prevented the police from obtaining a warrant. Id. at 466 (citing 712 A.2d 573 (Md.App. 1988)). The high Court explicitly stated that under its precedent, "the 'automobile exception' has no separate exigency requirement," but rather requires only a finding of probable cause. Id. at 466-67. The high Court briefly reviewed and explained its precedent as follows:

> As we recognized nearly 75 years ago in Carroll [ ], there is an exception to [the warrant requirement of the Fourth Amendment] for searches of vehicles. And under our established precedent, the "automobile exception" has no separate exigency requirement. We made this clear in United States v. Ross, 456 U.S. 798, 809, 102 S.Ct. 2157, 72 L.Ed.2d 572 (1982), when we said that in cases where there was probable cause to search a vehicle "a search is not unreasonable if based on facts that would justify the issuance of a warrant, even though a warrant has not been actually obtained." In … [Labron, supra at 940], we repeated that the automobile exception does not have a separate exigency requirement: "If a car is readily mobile and probable cause exists to believe it contains contraband, the

> Fourth Amendment permits police to search the vehicle without more."

Dyson, supra at 466-67 (emphasis omitted).

Thus, there has been an evolution of the high Court's jurisprudence concerning the automobile exception to the warrant requirement. While the early holdings of Carroll and Chambers relied on the impracticability of obtaining a warrant for a motor vehicle in transit with contraband or evidence of a crime, more recent cases from the high Court have made clear that the impracticability of obtaining a warrant, unforeseen events, or any other exigent circumstances -- beyond the inherent ready mobility of a motor vehicle -- are not required for application of the automobile exception to the warrant requirement. As the high Court stated in Dyson, supra at 466-67 (see excerpt quoted in text, supra), since 1982, the **only** requirement for application of the automobile exception, permitting warrantless search of a motor vehicle under federal law, is a finding of probable cause.

We turn now to Pennsylvania jurisprudence concerning the automobile exception. In some cases from this Court, the defendant's challenge to a vehicular search and/or seizure was raised only under the Fourth Amendment. In other cases, it is not clear from our opinions whether the defendant's challenge was grounded in the Fourth Amendment or Article I, Section 8 of the Pennsylvania Constitution, or both. As we develop infra, the unmistakable implication from our cases until the mid-1990's is that this Court considered the federal and state Constitutions coterminous with regard to application of the automobile exception to the warrant requirement. See Commonwealth v. Perry, 798 A.2d 697, 708-11 (Pa. 2002) (Castille, J., concurring) (characterizing Commonwealth v. White, 669 A.2d 896 (Pa. 1995), as having "decided the automobile exception question by employing the same coterminous, Fourth Amendment-based construct this Court had developed and followed for years").

In an early case from this Court, Commonwealth v. Cockfield, 246 A.2d 381 (Pa. 1968), decided two years before the U.S. Supreme Court rendered its decision in Chambers, supra, police discovered a murder suspect's automobile parked on the street in his neighborhood, searched it without a warrant, and found incriminating evidence. Although the trial court admitted the incriminating evidence, this Court reversed, holding that it should have been excluded because no exigent circumstances justified the warrantless vehicular search. Id. at 384. In reaching this holding, we reasoned as follows:

> [C]ertainly an automobile is not per se unprotected by the warrant procedure of the Fourth Amendment. Although it sometimes may be reasonable to search a movable vehicle without a warrant, the movability of the area to be searched is not alone a sufficiently "exigent circumstance" to justify a warrantless search. Other circumstances, for instance a serious possibility that the movable vehicle may, in fact, be moved before a warrant can be obtained, are necessary. In this case, the possibility that [the defendant-appellant's] car would be moved is purely conjectural.

Id. at 384 (emphasis in original). Importantly, this Court's holding in Cockfield was grounded solely in the Fourth Amendment and interpretative precedent from the U.S. Supreme Court; neither the Pennsylvania Constitution nor precedent from this Court was even mentioned in Cockfield.

Another early Fourth Amendment case, Commonwealth v. Smith, 304 A.2d 456, 458 (Pa. 1973) (plurality), was decided three years after the U.S. Supreme Court decided Chambers, and had a very similar fact pattern. Specifically, in Smith, police stopped a vehicle within minutes of a robbery/shooting, arrested the suspects therein, seized the vehicle, and drove it to the police station where they conducted a warrantless

search and found incriminating evidence. Relying on the U.S. Supreme Court's holdings in Chambers and Carroll, we upheld the search as constitutional.

> For constitutional purposes, we see no difference between on the one hand seizing and holding a car before presenting the probable cause issue to a magistrate and on the other hand carrying out an immediate search without a warrant. Given probable cause to search, either course is reasonable under the Fourth Amendment.

Smith, supra at 459 (quoting Chambers, 399 U.S. at 52); see id. at 459-60 (quoting Coolidge v. New Hampshire, 403 U.S. 443, 463 (1971) (plurality) for the understanding that Chambers "held only that, where the police may stop and search an automobile under Carroll, they may also seize it and search it later at the police station").[3]

Twelve years later, in a case explicitly decided under the Fourth Amendment, Commonwealth v. Milyak, 493 A.2d 1346, 1348 & n.3 (Pa. 1985) (unanimous), police saw two suspects in a robbery, which had taken place only hours before, drive their van into a parking lot and then enter an adjoining restaurant. Observing incriminating evidence of the robbery in plain view by looking into the van windows, police arrested the suspects, placed them in a police car, and then seized the evidence from the van --

[3] Smith presaged the difficulties this Court has experienced to this day in considering the automobile exception. The Opinion of the Court in Smith, authored by Justice O'Brien, was joined by only one justice; two justices concurred in the result without opinion; and three justices dissented, with one authoring a dissenting opinion. See Commonwealth v. Smith, 304 A.2d 456, 461, 462 (Pa. 1973) (Roberts, J., dissenting, joined by Nix, J.) (concluding that the warrantless search at issue violated the Fourth Amendment because police had had ample opportunity to procure a warrant, the automobile was safely in police custody at the station, and there was no danger that the accused or their confederates would move the automobile or remove evidence therein). Disagreement as to the legal and factual relevance of the practicability of obtaining a warrant has been a continuing thread in this Court's automobile exception jurisprudence, as we develop in the text, infra.

all without a warrant. Upholding the search and seizure under the Fourth Amendment, we summarized our understanding of the federal automobile exception as follows: "where there exists probable cause related to the vehicle or its occupants, a search of the vehicle is permissible." Id. at 1349 (citing, inter alia, Chambers).[4]

As mentioned above, Cockfield, Smith, and Milyak were decided under the Fourth Amendment. However, from the 1970's through the 1990's, this Court decided several automobile exception cases in which we made no distinction between the protections provided by or the analysis required under the Fourth Amendment and under Article I, Section 8. For example, in Commonwealth v. Holzer, 389 A.2d 101 (Pa. 1978), a case in which the defendant-appellant challenged the warrantless seizure by police of his vehicle, the constitutional guarantees against unreasonable search and seizure under the Fourth Amendment and Article I, Section 8 were discussed simultaneously, with federal and state citations for the same principles; no distinction was drawn between the protections conferred by the federal and the state Constitutions. Id. at 105-07 & n.4. Pursuant to the undisputed facts of Holzer, several hours after the defendant-appellant had been arrested for murder, police officers found his car on a public street, and impounded it while they made application for a search warrant. Following issuance of the warrant, police searched the car and found incriminating evidence. In upholding the seizure of the vehicle, we recognized that "in considering the reasonableness of a given search or seizure of an automobile, the need for a warrant is often excused by exigent circumstance," and we cited two reasons for this exception to the warrant requirement, to wit, the mobility of a vehicle, and the lesser expectation of privacy with respect to an automobile as compared to a home or office.

[4] Although Milyak was a unanimous opinion, Justice Zappala wrote that he was "compelled to join" the majority because of the appellant's failure to challenge the search on state constitutional grounds. Milyak, supra at 1351 (Zappala, J., concurring).

Id. at 106 (citing U.S. Supreme Court opinions in Chambers, supra, and Opperman, supra, as well as our opinions in Smith, supra, and Commonwealth v. Mangini, 386 A.2d 482 (Pa. 1978)). We held that the warrantless seizure of the vehicle was proper because it was reasonable "for police to seize and hold a car until a search warrant can be obtained, where the seizure occurs after the user or owner has been placed into custody, where the vehicle is located on public property, and where there exists probable cause to believe that evidence of the commission of a crime will be obtained from the vehicle." Id. at 106 (footnote omitted). We also recognized the possibility that, even though the suspect himself was in custody, "the car could easily have been removed from the area and its evidence lost." Id. at 107.

In another case apparently decided under both the Fourth Amendment and Article I, Section 8, this Court upheld the warrantless search of a vehicle driven by the defendant-appellant, which police officers had stopped just thirty minutes after receiving reliable information that he had assaulted an individual with a firearm. Commonwealth v. Baker, 541 A.2d 1381, 1383 (Pa. 1988) (unanimous), overruled on other grounds, Commonwealth v. Rosario, 648 A.2d 1172 (Pa. 1994). Police found a revolver in the vehicle and then arrested the defendant-appellant. Id. at 1382-83. This Court held that, "[i]nasmuch as the requirement of probable cause was satisfied, the exigencies of the mobility of the vehicle and of there having been inadequate time and opportunity to obtain a warrant rendered the search proper." Id. at 1383. "In short, this case presents a typical scenario where exigent circumstances made it not reasonably practicable to obtain a warrant prior to stopping a vehicle that contained evidence of a crime." Id. at 1384. Citing Milyak, supra, we also noted that, as an alternative to the immediate search of the defendant-appellant's car, police could have immobilized it while they secured a warrant. Baker, supra at 1383. However, because "it is not clear that the

intrusion arising from immobilization of an automobile is less than the intrusion of searching it[,] immobilization has been held to be an alternative, not a requirement. Id. (citing Milyak, supra at 1349-51).

Three years later, in Commonwealth v. Rodriguez, 585 A.2d 988 (Pa. 1991), a case decided under the Fourth Amendment, we relied on Baker's analysis to hold that another vehicular search, with yet again very different circumstances, was proper. In Rodriguez, police had received reliable information that the defendant-appellant would be delivering drugs in York on a particular day, but because she had used several different vehicles when delivering drugs on prior occasions, police did not know which vehicle she would be using on the day in question. Id. at 989-91. Police observed the defendant-appellant in one of her vehicles on the appointed day in York County, stopped the vehicle, conducted a warrantless search of the vehicle, found cocaine and a large amount of cash therein, and then arrested her. Id. at 989. We upheld the search, concluding that "where police do not have advance knowledge that 'a particular vehicle carrying evidence of crime would be parked in a particular locale, the exigencies of the mobility of the vehicle and of there having been inadequate time and opportunity to obtain a warrant rendered the search without a warrant proper'." Id. at 991 (emphases in original) (quoting Baker, supra at 1383).[5]

Thus, in Holzer, Baker, and Rodriguez, this Court's analysis of the applicability of the automobile exception to the warrant requirement was similar, revealing no apparent distinction between the Fourth Amendment and Article I, Section 8 with respect to the

[5] In Rodriguez, Justice Flaherty authored a dissent joined by two other justices, in which he opined that a "warrant could plainly have been issued to allow a search of whatever vehicle appellant might be driving into the York vicinity on [the day in question]." Rodriguez, supra at 992, 994 (Flaherty, J., dissenting). Accordingly, the dissent would have held that the warrantless search was improper and the evidence was inadmissible.

elements of that exception. This approach continued in three cases decided within days of each other in late 1995. See Commonwealth v. White, 669 A.2d 896 (Pa. 1995); Commonwealth v. Labron, 669 A.2d 917 (Pa. 1995) ("Labron I"), rev'd and remanded, Pennsylvania v. Labron, 518 U.S. 938 (1996), prior order reinstated, 690 A.2d 228 (Pa. 1997) (Opinion Announcing the Judgment of the Court) ("Labron II"); Commonwealth v. Kilgore, 677 A.2d 311 (Pa. 1995) ("Kilgore I"), rev'd and remanded, Pennsylvania v. Labron, 518 U.S. 938 (1996), prior order vacated, Commonwealth v. Kilgore, 690 A.2d 229 (Pa. 1997) (Opinion Announcing the Judgment of the Court) ("Kilgore II").

In each of these cases, police conducted a warrantless search of the defendant's motor vehicle and found illegal drugs. In each of these cases, the defendant sought to exclude the drugs from the trial proceedings, and the Commonwealth argued that they were admissible as evidence under the automobile exception to the warrant requirement. White, supra at 898-901; Labron I, supra at 918-20; Kilgore I, supra at 312-13. In each of these cases, although there was no issue as to the existence of probable cause, this Court held that the warrantless search was illegal and the evidence had to be suppressed because no exigent circumstances prevented the police from securing a warrant. White, supra at 900-01 (holding that the automobile exception was not applicable because there were no unforeseen circumstances, and explaining that police had had ample time and opportunity to secure a warrant for the search of the defendant's car, just as they had secured warrants for the search of his residence and person); Labron I, supra at 923-25 (citing, inter alia, White, in holding that exigent circumstances did not exist and the automobile exception was therefore inapplicable because police knew well in advance of the challenged warrantless search that a particular vehicle, carrying evidence of a drug-related crime, would be parked in a particular location); Kilgore I, supra at 313 (citing, inter alia, Labron I, in holding that the

automobile exception did not apply to the challenged warrantless vehicular search because there were no exigent circumstances to justify the failure to obtain a warrant, and explaining that the defendant-appellant was in custody and one of the three police officers on the scene "[c]learly … could have secured the vehicle while a search warrant was obtained").

Thus, very importantly, the determinative principle upon which Kilgore I, Labron I, and White all relied was the same (and was also consistent with the holdings of Baker and Rodriguez), to wit, that application of the automobile exception to the warrant requirement required both probable cause **and** exigent circumstances beyond the mobility of the vehicle, which had prevented the police from securing a warrant prior to conducting the search. In Kilgore I, Labron I, and White, this Court concluded that exigent circumstances were lacking, and therefore the automobile exception was inapplicable and the evidence in question had to be suppressed.

Despite the factual, analytical, and legal similarities in White, Labron I, and Kilgore I, the challenges in each case and the decisions rendered were not grounded in the same constitutional provisions. White, supra at 899, was decided under Article I, Section 8; Kilgore, supra at 314, was decided under the Fourth Amendment; and the basis for Labron's decision required a trip to the U.S. Supreme Court to clarify, as we discuss immediately below.

The Commonwealth sought review by the U.S. Supreme Court in Kilgore and in Labron.[6] The high Court granted certiorari and reversed in both cases, determining that this Court's "holdings rest[ed] on an incorrect reading of the automobile exception to the

[6] The Commonwealth did not seek review of White by the U.S. Supreme Court. See Pennsylvania v. Labron, 518 U.S. 938, 942 (1996) (Stevens, J., dissenting). Presumably, this was because, as we have discussed in the text, supra, White explicitly stated that the appellant's challenge was grounded in the Pennsylvania Constitution.

Fourth Amendment's warrant requirement." Pennsylvania v. Labron, 518 U.S. 938, 938-39 (1996). As we have already discussed in the text, supra, the high Court made explicitly clear that the federal automobile exception has no exigency requirement beyond the inherent mobility of a vehicle. See Labron, 518 U.S. at 940 ("If a car is readily mobile and probable cause exists to believe it contains contraband, the Fourth Amendment thus permits police to search the vehicle without more.").

On remand from the U.S. Supreme Court, this Court vacated the Kilgore I order which had reversed the Superior Court's affirmance of the defendant-appellant's judgment of sentence. We merely reiterated that Kilgore I had been decided under Fourth Amendment law, as the defendant-appellant had not preserved a claim under the Pennsylvania Constitution, and we recognized that the U.S. Supreme Court had "reversed our previous decision as an improper interpretation of federal law." Kilgore II, 690 A.2d at 229-30.

In contrast, in the Labron remand, in a one-page opinion, a plurality of this Court merely stated that our holding in Labron I had been based on Article I, Section 8 of the Pennsylvania Constitution, and therefore reinstated the previous order, which had upheld the order to suppress the evidence. Labron II, 690 A.2d at 228. The Opinion Announcing the Judgment of the Court did not conduct an analysis based on the Pennsylvania Constitution, but merely "explicitly note[d]" that Labron I had been decided on state constitutional grounds and relied exclusively on White. Labron II, supra at 228.

The propriety of the reliance on White by Labron II and subsequent cases has been strongly questioned, primarily because White did not conduct **any** analysis of the automobile exception specifically under the Pennsylvania Constitution. See Commonwealth v. Perry, 798 A.2d 697, 708-13 (Pa. 2002) (Castille, J., concurring). Although the White Court stated that it was considering the automobile exception under

the Pennsylvania Constitution, it cited only U.S. Supreme Court cases and Pennsylvania cases that had relied on federal precedent.[7] At no point in its opinion did the White Court provide **any** analysis of the contours of the automobile exception specifically under the Pennsylvania Constitution. Rather, the White Court began its analysis as follows:

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[7] For example, White, supra at 900, cited Commonwealth v. Milyak, 493 A.2d 1346 (Pa. 1985), but as we have discussed in the text, supra, Milyak was decided solely under the Fourth Amendment.

White, supra at 900-01, also discussed Commonwealth v. Ionata, 544 A.2d 917 (Pa. 1988) (plurality), which, as the product of an evenly divided Court, affirmed the Superior Court's order affirming the trial court's grant of a motion to suppress evidence discovered in a warrantless search of the defendant's automobile. In Ionata, police had secured a search warrant for the person and residence of the defendant based on reliable information from two individuals that he was dealing in illegal drugs; however, police had not sought a search warrant for his automobile. When the defendant drove up to his residence and parked his car, police officers approached him, noticed glassine bags protruding from the lid of a box on the front seat of the car, searched his car, found therein numerous bags of illegal drugs and paraphernalia used in the drug trade, and then arrested him. Id. at 918-19 (Opinion in Support of Affirmance, Flaherty, J.) ("OISA"); id. at 921-22 (Opinion in Support of Reversal, Papadakos, J.) ("OISR"). In the OISA, id. at 920-21, three justices concluded that suppression of the evidence seized from the car was "entirely proper" because there were no exigent circumstances and "obtaining a warrant would certainly have been practicable." The OISA, id. at 920, reasoned that "police had, through oversight or lack of planning, failed to obtain a warrant to search a vehicle that they knew [at least four] hours in advance would be parked at [the defendant's] apartment after it had been used to transport contraband."

In two separate Opinions in Support of Reversal, three justices strongly disagreed. See id. at 921 (OISR, McDermott, J.) ("[T]his decision trivializes the fourth amendment."); id. (OISR, Papadakos, J.) (relying on Milyak, supra, to conclude that the warrantless search was proper because police had independent probable cause).

To the extent that White relied on Ionata, the reliance is misplaced, as Ionata was a plurality decision. See Hoy v. Angelone, 720 A.2d 745, 750 (Pa. 1998) (stating that a plurality decision has no precedential value).

> The so-called "automobile exception" to the requirement for a search warrant is perhaps best articulated in Chambers v. Maroney[, 399 U.S. 42 (1970)]:
>
> "In enforcing the Fourth Amendment's prohibition against unreasonable searches and seizures, the Court has insisted upon probable cause as a minimum requirement for a reasonable search permitted by the Constitution. As a general rule, it has also required the judgment of a magistrate on the probable-cause issue and the issuance of a warrant before a search is made. *Only in exigent circumstances will the judgment of the police as to probable cause serve as a sufficient authorization for a search.* Carroll, supra, holds a search warrant unnecessary where there is probable cause to search an automobile stopped on the highway; the car is movable, the occupants are alerted, and the car's contents may never be found again if a warrant must be obtained. Hence an immediate search is constitutionally permissible." [Chambers,] 399 U.S. 42, 51, 90 S.Ct. 1975, 1981, 26 L.Ed.2d 419, 428 (1970) (Emphasis added).
>
> In sum, the general rule is that a search warrant is required before police may conduct any search. As an exception to this rule, police may search a vehicle without a warrant where: (1) there is probable cause to believe that an automobile contains evidence of criminal activity; (2) unless the car is searched or impounded, the occupants of the automobile are likely to drive away and contents of the automobile may never again be located by police; (3) police have obtained this information in such a way that they could not have secured a warrant for the search, i.e., *there are exigent circumstances*.

White, supra at 899-900 (emphasis in original).

The White Court then summarized its understanding of the automobile exception as follows:

> [A]lthough the Fourth Amendment generally requires probable cause to be determined and a warrant to be issued by a magistrate before a search may be conducted, unforeseen circumstances involving the search of an

> automobile coupled with the presence of probable cause, may excuse the requirement for a search warrant.

Id. at 901.

Although White quoted the Edmunds factors, White did not conduct an analysis based on any of the factors; did not discuss Article I, Section 8 or any other provision of the Pennsylvania Constitution; and did not consider, much less determine, that some unique aspect of Pennsylvania's constitutional experience required a divergence from federal law with regard to application of the automobile exception. See Perry, supra at 710-11 (Castille, J., concurring) ("nothing in White remotely suggested that the Pennsylvania Constitution commanded a fundamentally different approach to the automobile exception than is employed under the Fourth Amendment"). Rather, the most logical reading of White, as well as of Labron I, is that the Court considered the Fourth Amendment and Article I, Section 8 to be coterminous regarding application of the automobile exception, and interpreted the Fourth Amendment to require, for application of the automobile exception, not just probable cause, but also the exigent circumstance of unforeseeability.[8]

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[8] The Opinion Announcing the Judgment of the Court in Labron II did not correctly characterize White's holding and analysis. Specifically, it stated as follows:

> In White, we discussed the automobile exception and noted that, "this Court, when considering the relative importance of privacy as against securing criminal convictions, has struck a different balance than has the United States Supreme Court, and under the Pennsylvania balance, an individual's privacy interests are given greater deference than under federal law." [White,] 669 A.2d at 902. Following this citation to White, we concluded in Labron [I] that "this Commonwealth's jurisprudence of the automobile exception has long required both the existence of probable cause and the presence of exigent circumstances to justify a warrantless search." [Labron I,] 669 A.2d at 924.

(…continued)

However, as we have discussed supra, this Court's articulation of the automobile exception in White, Labron I, and Kilgore I constitutes neither an accurate expression of the federal automobile exception as it exists today, nor as it existed in December 1995, when White was decided. See Perry, supra at 708-13 (Castille, J., concurring) (discussing White's "misapprehension" of federal law). We recognize that the language of some early U.S. Supreme Court cases that initially set forth the automobile exception certainly did suggest the requirement for an unexpected and unforeseeable development of probable cause in order to uphold the warrantless search of a motor vehicle. But it is now beyond cavil that the unexpected and unforeseeable development of probable cause is **not** required for application of the exception under federal law -- and has not been since 1982.[9] As the U.S. Supreme Court stated in Dyson, supra, decided in 1999,

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(continued…)

Labron II, supra at 228.

Two points must be made here which strongly call into question the above reasoning from Labron II. First, the White quotation, supra, upon which Labron I was said to rely, did **not** appear in the context of a discussion of the automobile exception in White. Rather the quotation appeared in the context of an analysis of whether the challenged vehicular search in White could be justified as a search incident to arrest. See White, supra at 902. Second, Labron I did not quote White -- or any other precedent -- for the principle that this Court has afforded greater deference than has the U.S. Supreme Court to an individual's privacy interests. See Perry, supra at 710 (Castille, J., concurring) (raising the same two points about Labron II's erroneous characterization of Labron I and White).

[9] We note that, more than two years before White was decided, the Superior Court set forth a clearer and more accurate interpretation of federal law regarding the automobile exception.

> We note the discrepancy between some of the Commonwealth's past cases and federal cases which speak

(…continued)

> [U]nder our established precedent, the "automobile exception" has no separate exigency requirement. We made this clear in [Ross, supra at 809, decided in 1982], when we said that in cases where there was probable cause to search a vehicle "a search is not unreasonable if based on facts that would justify the issuance of a warrant, even though a warrant has not been actually obtained."

Dyson, 527 U.S. at 466-67 (emphasis omitted).

In sum, it is difficult to read objectively this Court's precedent, especially the White, Labron, and Kilgore decisions, and not conclude that, at least until 1995, this Court continued to consider the Fourth Amendment of the U.S. Constitution and Article I, Section 8 of the Pennsylvania Constitution to be coextensive with regard to the automobile exception to the warrant requirement. Most importantly, this Court concluded that an exigency beyond the mobility of the vehicle was a requirement for application of the automobile exception under early U.S. Supreme Court precedent, and this Court maintained and applied that view of the automobile exception for many decades. There is certainly language in early U.S. Supreme Court automobile exception cases to suggest an exigency requirement related to unforeseeability or potential loss of evidence. However, while the federal automobile exception evolved to

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(continued…)

> to automobile searches … . United States Supreme Court decisions clearly indicate[ ] that there exists an "automobile exception" to the warrant requirement. This [exception] under federal law has developed close to a per se rule that whenever the police stop a suspect with probable cause to believe his automobile contains evidence of crime, they may legally search the vehicle without a warrant.

Commonwealth v. Camacho, 625 A.2d 1242, 1247 n.2 (Pa.Super. 1993) (internal citations omitted).

require only probable cause to search an automobile, our decisional law did not so evolve, but rather maintained its adherence to the original formulation of the exception. See Perry, supra at 720 (Saylor, J., concurring) (stating that "the United States Supreme Court eventually broadened the [automobile] exception by eliminating the exigency requirement, see California v. Carney, 471 U.S. 386, 393 [ ] (1985), while this Court has adhered to the original formulation"). Unfortunately, it is undeniable that at no point did this Court conduct an Edmunds analysis -- or any other analysis for that matter -- to probe and delineate the elements of the automobile exception mandated specifically under the Pennsylvania Constitution, to determine whether our departure from the evolution of federal law in this area is justified by our unique state constitutional experience. The lack of a thorough, state-specific constitutional analysis has contributed to the confusion and disagreement with regard to the automobile exception that have continued after White, Labron, and Kilgore -- and indeed persist to this date, as is well-illustrated by examination of several cases decided within the past eleven years.

In Commonwealth v. Perry, 798 A.2d 697 (Pa. 2002), the six-justice Court that heard the case generated four opinions. In Perry, the defendant-appellants were in an automobile when they shot at two men in another vehicle, wounding one of them. Responding to the victim's call for help and his description of the assailants, police stopped the defendant-appellants' vehicle moments after the shooting. After the victim identified the defendant-appellants as his assailants, police handcuffed them and placed them in police vehicles. The victim also told police that the defendant-appellants had two guns, one of which he thought was an automatic weapon. An officer returned to the defendant-appellants' vehicle, which was still running and blocking one of two southbound lanes of the road, and conducted a search for weapons. The officer found

two firearms, removed them from the vehicle, and drove the vehicle to a police impoundment area. Id. at 697-99. Before their trial for attempted murder and related charges, the defendant-appellants challenged the warrantless search of their vehicle and seizure of the guns. The trial court granted the suppression motion, finding that no exigent circumstances justified the warrantless search. Id. at 699. The Superior Court reversed, determining that there were exigent circumstances with regard to police and public safety. Id. This Court granted allowance of appeal to determine whether exigent circumstances excused the warrantless search of the defendant-appellants' automobile.

In a single-justice Opinion Announcing the Judgment of the Court ("OAJC"), then-Justice Cappy relied on White for his statement of Pennsylvania law regarding the automobile exception to the warrant requirement: "there must be a showing of both probable cause and exigent circumstances" for a warrantless search of a motor vehicle to be valid. Perry, supra at 700 (OAJC) (citing White, supra at 900). Although Justice Cappy recognized that the police had not had the opportunity to obtain a warrant prior to stopping the defendant-appellants' automobile, he nevertheless declined to find exigency on this basis, noting that the defendant-appellants were in police custody and "there was no danger of the automobile leaving with the contents therein," even though the car "was in the middle of a lane of traffic with its engine running." Id. at 702-03. However, Justice Cappy held that the exigency of "great potential for deadly harm to the police" rendered the warrantless search of the automobile constitutionally reasonable. Id. at 703. In two separate concurring opinions, three justices agreed that the warrantless search was proper, but based this determination on different exigencies. See Perry, supra at 718-719 (Castille, J., concurring) (concluding that the warrantless search was proper under our decisional law because of the exigency of the unexpected development of probable cause and the resulting lack of an opportunity to secure a

warrant prior to the search); id. at 720 (Saylor, J., concurring) (stating that with regard to the automobile exception, this Court's decisional law has indicated that "sufficient exigency is present where, because of the attending circumstances, it was not reasonably practicable for the police to obtain a warrant," and concluding that the facts of this case presented such a situation). Two justices dissented, determining that there was no danger to police, who "clearly could have secured the scene [with the car running in the middle of the road] and waited with the car while a search warrant was obtained." Id. at 722 (Nigro, J., dissenting).

Not surprisingly, Perry did not provide guidance, much less precedent, for the next case implicating the automobile exception to come before this Court, Commonwealth v. McCree, 924 A.2d 621 (Pa. 2007) (Opinion Announcing the Judgment of the Court), the facts of which were as follows. During an undercover investigation of illegal prescription drug sales, two police officers approached the defendant-appellant sitting in his automobile, and one of the officers observed him shove an amber container, which the officer believed to be a pill bottle, under the front seat cushion. After asking the defendant-appellant to step outside the vehicle, the officer reached under the cushion and recovered a bottle of pills later determined to be Xanax. The officer also saw two more pill bottles, later determined to contain OxyContin and Percocet, respectively, in the front door pocket on the driver's side. Prior to trial on possession charges, the defendant-appellant filed a motion to suppress the drugs, which the trial court denied, reasoning that the plain view exception to the warrant requirement allowed the officer to seize the pill bottles. Id. at 624-25. The defendant-appellant was convicted of possession with intent to deliver Xanax. Id. at 624. On appeal, the Superior Court affirmed. Id. at 625.

This Court granted allowance of appeal for the purpose of clarifying the plain view exception to the warrant requirement. Id. at 623. After reviewing decisional law from this Court and from the U.S. Supreme Court, the McCree OAJC held that the plain view exception to the warrant requirement requires, inter alia, a determination of whether the police had a lawful right of access to the object seen in plain view. McCree, supra at 628. The OAJC then concluded that the "limited automobile exception" adopted by this Court provided the necessary authorization for police to access the interior of the defendant-appellant's vehicle, and the plain view exception authorized the seizure of the pill bottles. Id. at 631. In applying the "limited automobile exception," the OAJC relied on two determinations: 1) the officers had probable cause to search the defendant-appellant's vehicle; and 2) there was no advance warning that he or his vehicle would be the target of an investigation. Id.

With regard more generally to this Court's adoption of a "limited automobile exception," the OAJC explained as follows:

> We have described two reasons why exigent circumstances allow a warrantless search or seizure of a vehicle under Article I, § 8: (1) a vehicle is mobile and its contents may not be found if the police could not immobilize it until a warrant is secured; and (2) one has a diminished expectation of privacy with respect to a vehicle. Holzer, [supra] at 106. Thus, even though privacy protections are implicated under Article I, § 8, the heightened privacy concerns involved in a seizure from an individual's person are not present where an object is seized from a vehicle.

McCree (OAJC), supra at 630.[10]

[10] The OAJC in McCree was authored by Justice Eakin and joined by Justices Saylor and Fitzgerald.

In a concurring opinion, then-Justice Castille reiterated his view that our holdings with regard to the automobile exception "at most suggest that, if Article I, Section 8 requires an exigency to justify a probable cause-based warrantless entry of a vehicle … all that is required is that the probable cause 'arose unexpectedly, i.e., in circumstances that prevented police from securing a warrant before probable cause to search the vehicle arose.'" McCree, supra at 635 (Castille, J., concurring) (quoting Perry, supra at 717 (Castille, J., concurring)).[11] Thus, although there was not a majority opinion in McCree, four justices agreed that, to justify a warrantless search of a motor vehicle, Article I, Section 8 required at most only that probable cause arise unexpectedly.

In a separate concurring opinion in McCree, then-Chief Justice Cappy[12] declined to address the applicability of the automobile exception, pointing out that "the automobile exception in Pennsylvania is the subject of continued controversy," and suggesting that the lead opinion "fail[ed] to acknowledge or critically discuss the differing viewpoints concerning the existence or parameters of such an exception to the warrant requirement." McCree, supra at 633 (Cappy, C.J., concurring). Then-Chief Justice Cappy concluded that, under the facts of McCree, the search incident to arrest exception to the warrant requirement was applicable and authorized the police to access the immediate interior of the defendant-appellant's vehicle as they were removing him from the vehicle and arresting him.

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[11] Then-Justice Castille also reiterated his "inclin[ation] to hold that our approach [to the issue of warrantless motor vehicle searches] should be coextensive with the federal approach under the Fourth Amendment." McCree, supra at 635 (Castille, J., concurring) (citing Perry, supra (Castille, J., concurring)).

[12] Then-Chief Justice Cappy's concurring opinion was joined by Justices Baer and Baldwin.

In Commonwealth v. Hernandez, 935 A.2d 1275 (Pa. 2007), the Court returned to the issue of threat of harm to police officers or others as a potential exigency, and a majority of the Court recognized a threat of harm as an exigent circumstance that can support application of the automobile exception. In Hernandez, a freight shipping manager alerted police to a shipment of many boxes of marijuana. Police stopped the U-Haul truck containing the marijuana, which was driven by the defendant, and directed him to get out of the vehicle. One of the officers opened the rear roll-up door of the truck to see if there was someone else in the truck. The officer observed an open box containing packaging consistent with narcotics. The defendant admitted to police that he had been paid to pick up the shipment, which he knew contained controlled substances. Police then sought and obtained a warrant to search the truck, finding more than 400 pounds of marijuana. Id. at 1277-79. Prior to his trial on possession with intent to deliver marijuana, the defendant moved to suppress the admission of the marijuana, asserting that the officer's warrantless entry into the rear of the truck was unlawful, and thus the subsequently obtained warrant, which relied in part on the officer's visual check of the truck's rear compartment, was constitutionally defective. The trial court denied the suppression motion, concluding that the limited search of the back of the truck was reasonable in light of the potential danger to police. Id. at 1280. The Superior Court reversed. The Commonwealth sought allowance of appeal in this Court, which we granted to determine whether police were authorized to conduct a warrantless search of the truck based on potential danger to the officers. Id.

The Hernandez Court began its legal analysis by stating that, in Pennsylvania, "we have not adopted the full federal automobile exception under Article I, Section 8." Hernandez, supra at 1280 (quoting McCree, supra at 629). Rather, "[w]arrantless vehicle searches in this Commonwealth must be accompanied not only by probable

cause, but also by exigent circumstances beyond mere mobility." Id. We acknowledged the difficulty that this Court has had in determining precisely what satisfies the exigency requirement. Id. at 1280-81 (discussing Perry, supra). We then held "without equivocation, that where there is potential danger to police or others in the context of a vehicle stop, exigency has been established for purposes of a warrantless search." Id. at 1282. However, in Hernandez, because the Commonwealth had not offered any supporting evidence for the police claim of danger from another person in the truck, this Court held that the search was not supported by exigent circumstances and thus was unlawful. Id. at 1283. Nevertheless, this Court concluded that the officer's observations of the rear compartment of the truck were not required to support probable cause for the subsequently obtained warrant. Accordingly, this Court held the evidence was admissible.

Then-Justice Castille concurred in the result only, concluding that the search at issue was justified under the automobile exception simply because probable cause arose unexpectedly, and hence it was not reasonably practicable for police to obtain a warrant prior to stopping the defendant's truck. Id. at 1285, 1286, 1290 (Castille, J., concurring). The concurring opinion also pointed out that this Court had never conducted "a candid and responsible Edmunds-style state constitutional analysis" to establish "what is demanded by Article I, Section 8 respecting automobile searches." Id. at 1286-87. Justice Saylor, joined by Justice Eakin, also filed a concurring opinion in which he joined the majority opinion "[s]ubject to the understanding that [it] addresses itself only to a subset of the circumstances that can reasonably be deemed 'exigent' for purposes of the automobile exception to the warrant requirement as it pertains in Pennsylvania." Id. at 1290 (Saylor, J., concurring).

We have reviewed our jurisprudence in the area of automobile searches in such detailed manner in order to reinforce the point that this Court has been unable to articulate a consistent, clear, and readily applicable majority expression of the automobile exception to the warrant requirement. Consequently, local and state police officers have not received essential guidance from this Court as to the circumstances in which the warrantless motor vehicle search, which is a common and important aspect of law enforcement, is permissible in this Commonwealth. Based on the Fourth Amendment, the U.S. Supreme Court has set forth a bright line rule for the automobile exception: police officers may search a motor vehicle if they have probable cause for the search. To begin to alleviate the confusion surrounding the automobile exception in this Commonwealth, we are convinced at this juncture, however belated it may be, that it is essential for us to conduct an Edmunds analysis, which focuses on unique aspects of our state constitutional experience, to determine if our state Constitution mandates a stricter standard for warrantless automobile searches than that set forth by the U.S. Supreme Court under the Fourth Amendment.

An Edmunds analysis encompasses at least the following four factors:

> 1) text of the Pennsylvania constitutional provision; 2) history of the provision, including Pennsylvania case-law; 3) related case-law from other states; [and] 4) policy considerations, including unique issues of state and local concern, and applicability within modern Pennsylvania jurisprudence.

Edmunds, 586 A.2d at 895.

For the reasons set forth infra, we hold, based on our analysis of the Edmunds factors, that with regard to the warrantless searches of motor vehicles, Article I, Section 8 provides no greater protection than does the Fourth Amendment.[13]

In addressing the first Edmunds factor, we must consider the text of Article I, Section 8, which, as we have often observed, is very similar to the text of the Fourth Amendment. See Commonwealth v. Russo, 934 A.2d 1199, 1205 (Pa. 2007); Commonwealth v. Chase, 960 A.2d 108, 117 (Pa. 2008) (plurality); Commonwealth v. Gray, 503 A.2d 921, 926 (Pa. 1985). While textual similarity does not demand identical interpretation, see, e.g., Commonwealth v. Waltson, 724 A.2d 289, 291 (Pa. 1998), there is nothing in the text of Article I, Section 8 to suggest that it confers greater protection than does the Fourth Amendment with regard to a warrantless search of a motor vehicle.

For the second Edmunds factor, we must consider the history of and decisional law concerning Article I, Section 8, as it may be relevant to automobile searches. There is no question that this Court has repeatedly emphasized the strong notion of privacy

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[13] We note that our Superior Court in Commonwealth v. Rosenfelt, 662 A.2d 1131, 1132, 1138, 1140-46 (Pa.Super. 1995), conducted an Edmunds analysis concerning the automobile exception to the warrant requirement, in a case in which the trial court had ruled that an illegal substance found in the trunk of the defendant's car was inadmissible as the product of a warrantless, illegal search. The Rosenfelt court concluded that Article I, Section 8 afforded our citizens a greater expectation of privacy than did the Fourth Amendment. Id. at 1141. Based on this general "great expectation of privacy" as well as on this Commonwealth's strong preference for warrants, the Rosenfelt court held that exigency beyond the mobility of the vehicle was necessary for application of the automobile exception to the warrant requirement under Article I, Section 8. Id. at 1145-46.

We are unable to agree with Rosenfelt's analysis for all the reasons discussed in the text, infra, and express disapproval of its holding.

embodied in that provision of our state Constitution. See, e.g., Edmunds, supra at 897. Based substantially on the paramount concern for individual privacy, this Court has, in certain limited circumstances, afforded greater protections under Article I, Section 8 than are afforded under the Fourth Amendment. See, e.g., Theodore v. Delaware Valley School District, 836 A.2d 76, 84, 88 (Pa. 2003) (in the context of a challenge to a school district's policy of suspicionless testing of certain students for drug and alcohol use, rejecting the U.S. Supreme Court's Fourth Amendment jurisprudence in favor of a distinct approach under Article I, Section 8, which recognizes "a strong notion of privacy … greater than that of the Fourth Amendment"); Commonwealth v. Hawkins, 692 A.2d 1068, 1069-71 & n.1 (Pa. 1997) (rejecting the decisions of several federal circuit courts to hold that, under Article I, Section 8, an anonymous tip that a man of a particular description at a particular location was carrying a gun does not constitute sufficient justification for police to conduct a stop and frisk pursuant to Terry v. Ohio, 392 U.S. 1 (1968)); Commonwealth v. Matos, 672 A.2d 769 (Pa. 1996) (rejecting the U.S. Supreme Court's Fourth Amendment-based reasoning in California v. Hodari, 499 U.S. 621 (1991), and holding that, pursuant to the privacy rights guaranteed under Article I, Section 8, pursuit by a police officer without probable cause or reasonable suspicion constitutes a seizure, and accordingly requires suppression of contraband discarded by the defendant during the chase); Edmunds, supra (rejecting the good faith exception to the exclusionary rule set forth in United States v. Leon, 468 U.S. 897 (1984), based on the protection conferred under Article I, Section 8 of individual privacy rights and of the requirement for a warrant issued upon probable cause); Commonwealth v. Melilli, 555 A.2d 1254 (Pa. 1989) (relying on the privacy interests protected under Article I, Section 8 to hold that police must obtain a court order based on probable cause prior to installing a pen register, and thus declining to follow U.S. Supreme Court Fourth

Amendment precedent); Commonwealth v. Grossman, 555 A.2d 896, 899-900 & n.3 (Pa. 1989) (stating that the requirement for specificity with regard to the items to be seized under a warrant is more stringent under Article I, Section 8 than it is under the Fourth Amendment, based on the text of the two constitutional provisions, and holding that the warrant at issue was deficient in this regard under Article I, Section 8); Commonwealth v. Sell, 470 A.2d 457 (Pa. 1983) (relying on Article I, Section 8 to retain the doctrine of automatic standing, and thus declining to follow U.S. Supreme Court Fourth Amendment precedent); Commonwealth v. DeJohn, 403 A.2d 1283 (Pa. 1979) (based on the privacy protections implicit under Article I, Section 8, declining to follow U.S. Supreme Court precedent, and holding that a warrant supported by probable cause was required to access bank records).

However, neither this Court's holdings in the above-listed cases, nor a generally enhanced concern for individual privacy, translates into a conferral of increased privacy protection in every context in which it is asserted under Article I, Section 8. As we have made clear, we do not reflexively find "in favor of any new right or interpretation asserted" under Article I, Section 8. Russo, supra at 1210 (citation omitted). Rather, in numerous cases, this Court has concluded that Article I, Section 8 and the Fourth Amendment provide comparable protections, and has accordingly followed the prevailing federal standard. See, e.g., Russo, supra at 1200, 1205-13 (after conducting a detailed Edmunds analysis, concluding that the open fields doctrine is equally applicable under the Fourth Amendment or Article I, Section 8); Commonwealth v. Duncan, 817 A.2d 455, 459, 469 (Pa. 2003) (distinguishing DeJohn, supra, in holding that the defendant-appellant had no reasonable expectation of privacy under Article I, Section 8 in the name and address information provided by his bank to the police); In re D.M., 781 A.2d 1161, 1163 (Pa. 2001) (concluding that there was "no reason at this

juncture to embrace a standard other than that adhered to by the United States Supreme Court" for stop and frisk cases); Commonwealth v. Glass, 754 A.2d 655 (Pa. 2000) (consistent with federal law and the law of most states, holding that anticipatory warrants are not categorically prohibited by Article I, Section 8); Commonwealth v. Cleckley, 738 A.2d 427 (Pa. 1999) (applying the federal standard of voluntariness to the question of a consensual search and concluding that Article I, Section 8 does not suggest a distinct standard); Commonwealth v. Waltson, 724 A.2d 289 (Pa. 1998) (declining to conclude that Article I, Section 8's enhanced privacy rights limit the scope of a lawful search of a single unit residence more than does the Fourth Amendment); Commonwealth v. Hawkins, 718 A.2d 265, 268-69 (Pa. 1998) (maintaining, under Article I, Section 8, a bar on derivative standing, consistent with federal Fourth Amendment jurisprudence); Commonwealth v. Williams, 692 A.2d 1031, 1039 (Pa. 1997) (in the context of a challenge to a warrantless search of a parolee's bedroom, concluding that the same standard for the legality of the search applies under Article I, Section 8 or the Fourth Amendment).

Our review of the factual circumstances in the precedential cases summarized above does not suggest that the search of a motor vehicle falls into the category of situations where this Court has required greater protection under Article I, Section 8 than is required under the Fourth Amendment.[14] Furthermore, we reemphasize that our generalized enhanced concern for privacy under Article I, Section 8 is not determinative

[14] We are not ignoring decisions such as Labron II, supra; McCree, supra; and White, supra, which did suggest greater protections under Article I, Section 8 than under the Fourth Amendment with respect to warrantless automobile searches. We have already discussed these cases in detail in the text, supra; indicated that none of them conducted any analysis remotely similar to an Edmunds-style analysis or specifically addressed the requirements of the Pennsylvania Constitution in any way; and explained our rationale for concluding that they are of limited precedential or persuasive value to the case before us. See text, supra.

of the outcome of any specialized assertion of privacy under the particular circumstances of any individual case.

A precedent that **is** highly relevant to our analysis of the second Edmunds factor is this Court's adoption of the federal Fourth Amendment test to determine the scope of protection afforded under Article I, Section 8:

> [I]n determining the scope of protection afforded under Article I, Section 8, this Court employs the same two-part test employed by the United States Supreme Court to determine the sweep of the Fourth Amendment of the U.S. Constitution. That test requires a person to demonstrate: (1) a subjective expectation of privacy; and (2) that the expectation is one that society is prepared to recognize as reasonable and legitimate.

Russo, supra at 1211 (internal citation and quotation marks omitted).

This Court has long held that, although the scope of Article I, Section 8's privacy protections extends to a motor vehicle, the protections are diminished therein. Chase, 960 A.2d at 119; McCree, 924 A.2d at 630 (summarizing that "even though privacy protections are implicated under Article I, § 8, the heightened privacy concerns involved in a seizure from an individual's person are not present where an object is seized from a vehicle"); Commonwealth v. Rogers, 849 A.2d 1185, 1191 (Pa. 2004) ("While many in our society have a great fondness for their vehicles, it is too great a leap of logic to conclude that the automobile is entitled to the same sanctity as a person's body."); Commonwealth v. Holzer, 389 A.2d 101, 106 (Pa. 1978) ("[O]ne's expectation of privacy with respect to an automobile is significantly less than that relating to one's home or office.") (emphasis in original).

This Court's determination that the reasonable and legitimate expectation of privacy is diminished in one's motor vehicle, as compared to one's residence or person,

is entirely consistent with federal Fourth Amendment jurisprudence. Furthermore, we discern no distinction between the rationale for the reduced expectation of privacy in a motor vehicle set forth by this Court and that set forth by the U.S. Supreme Court. See California v. Carney, 471 U.S. 386, 392 (1985) (stating that "the reduced expectations of privacy [in motor vehicles] derive … from the pervasive regulation of vehicles capable of traveling on the public highways"); South Dakota v. Opperman, 428 U.S. 364, 367-68 (1976) (explaining that the diminished expectation of privacy in a motor vehicle stems from the "pervasive and continuing governmental regulation and controls, including periodic inspection and licensing requirements" as well as "the obviously public nature of automobile travel"); Cardwell v. Lewis, 417 U.S. 583, 590 (1974) (plurality) (explaining that "one has a lesser expectation of privacy in a motor vehicle because its function is transportation … [and it] has little capacity for escaping public scrutiny [as] it travels public thoroughfares"); Cady v. Dombrowski, 413 U.S. 433, 441-42 (1973) (explaining that local and state police officers have "extensive, and often noncriminal contact with automobiles" due to the extensive regulation of motor vehicles, the frequency with which they can become disabled or involved in an accident on public roads, and the need for officers to investigate automobile accidents); Rogers, 849 A.2d 1191 (explaining that "the exterior of a vehicle is exposed to the public, and is not considered an intimate space"); Holzer, 389 A.2d at 106 (citing Opperman, 428 U.S. at 367, to support the principle that the expectation of privacy is diminished in an automobile compared to a home or office); Commonwealth v. Timko, 417 A.2d 620, 623 (Pa. 1980) (citing United States v. Chadwick, 433 U.S. 1 (1977), when explaining that there is a diminished expectation of privacy in automobiles "because of their open construction, their function, and their subjection to a myriad of state regulations").

Thus, it is undisputable that, under Article I, Section 8, as well as under the Fourth Amendment, there is a diminished expectation of privacy in motor vehicles as compared to a residence, office, or person. No decisions from this Court have suggested that there is a different rationale behind this diminished expectation of privacy under state versus federal law, and, in fact, we have relied upon U.S. Supreme Court opinions in explaining the reasons for it. Given the clearly stated determination by this Court that there is a diminished expectation of privacy in motor vehicles -- and no indication that a unique aspect of Pennsylvania constitutional experience requires that somehow this diminished expectation of privacy is not quite as diminished under state law as under federal law -- we must conclude that the second Edmunds factor does not militate in favor of conferring greater protection under Article I, Section 8 for automobile searches.

The third Edmunds factor requires a consideration of related case law from other jurisdictions. As the Commonwealth addresses, and Appellee concedes, most states have adopted the federal automobile exception. See Commonwealth's Brief at 32-35 & n.8; Appellee's Brief at 28-31. We consider first the experience of several states that have adopted the federal automobile exception under their own constitutions.

In one illuminating example, in 1992, the Supreme Court of Rhode Island adopted, under its own state Constitution, the federal automobile exception as defined by the U.S. Supreme Court. See State v. Werner, 615 A.2d 1010 (R.I. 1992). More than a decade earlier, in State v. Benoit, 417 A.2d 895 (R.I. 1980), the same court had held that, under the Rhode Island Constitution, not only probable cause, but also exigency beyond the inherent mobility of the vehicle were required for application of the automobile exception to the warrant requirement. Werner, supra at 1012-13. In reaching this holding, the Benoit court had noted an apparent inconsistency in U.S.

Supreme Court case law with regard to the requirement for exigency in warrantless automobile searches. Werner, supra (citing Benoit, supra at 900 n.1). However, by 1992, when Werner was decided, the Rhode Island Supreme Court concluded that federal case law in this area had "been stabilized," via, inter alia, the decisions of United States v. Ross, 456 U.S. 798 (1982), and Michigan v. Thomas, 458 U.S. 259 (1982) (per curiam). Werner, supra at 1013. More specifically, in its 1992 Werner decision, the Rhode Island Supreme Court determined that "it is clear that exigency is no longer a requirement for the automobile exception to the Fourth Amendment." Id. In light of the U.S. Supreme Court's clarification of the exigency issue, and recognizing that any "decision to depart from minimum standards imposed by the Fourth Amendment should be made guardedly and should be supported by a principled rationale," the Rhode Island Supreme Court "conclude[d] that it is preferable to adopt one clear-cut rule to govern automobile searches and, in turn, eliminate the conflicting interpretations of Article I, section 6, of the Rhode Island Constitution and the Fourth Amendment to the United States Constitution." Werner, supra at 1014.

North Dakota's jurisprudential experience in the area of automobile searches has been somewhat similar to that of Rhode Island. In State v. Meadows, 260 N.W.2d 328, 332 (N.D. 1977), the Supreme Court of North Dakota upheld the warrantless search of the defendant-appellant's automobile under both the Fourth Amendment and Article I, Section 18 of the North Dakota Constitution. The North Dakota Court cited both U.S. Supreme Court cases and state cases in concluding that "the warrantless search of an automobile is justified only where there are exigent circumstances, in addition to probable cause, which require immediate action." Meadows, supra. In holding that the warrantless search at issue was justified, the Meadows Court noted the following circumstances, all of which contributed to the finding of exigency: the defendant-

appellant's vehicle was easily movable; the defendant-appellant was in the immediate vicinity; several individuals, including the defendant-appellant's mother, were aware that law enforcement personnel were looking for him; and it was "conceivable" that evidence could have been removed or the vehicle itself moved from the jurisdiction if police were required to secure a warrant prior to the vehicular search. Id. More than thirty years later, the Supreme Court of North Dakota revisited the question of whether exigency was required for application of the automobile exception. See State v. Zwicke, 767 N.W.2d 869, 873 (N.D. 2009). Citing Dyson, 527 U.S. at 467, the Supreme Court of North Dakota recognized that in the time since it had decided Meadows, the U.S. Supreme Court had explicitly held that no exigent circumstances beyond the inherent mobility of the vehicle were required for a probable cause-based, warrantless search of a vehicle. Zwicke, supra at 873. The Zwicke court then held as follows: "to the extent that Meadows can be read to require something more than mobility for exigent circumstances [in the context of the automobile exception], we overrule that part of our decision in that case." Zwicke, supra.

Massachusetts has also changed its requirements for application of the automobile exception over time. In 1990, the Supreme Judicial Court of Massachusetts concluded that, under both the Fourth Amendment and Article l4 of the Massachusetts Declaration of Rights, a warrantless search of a vehicle was justified when police had probable cause and securing a warrant was impracticable because of exigent circumstances. Commonwealth v. Cast, 556 N.E.2d 69, 76 (Mass. 1990). While acknowledging that, under some circumstances, Article l4 had been interpreted to provide greater protection against unlawful search and seizure than did the Fourth Amendment, the court declined to extend greater protection under Article l4 to the warrantless search of a motor vehicle, and held that a lawful, warrantless search of a

vehicle extends to all containers found within. Id. at 79-80. Seven years later, in Commonwealth v. Motta, 676 N.E.2d 795 (Mass. 1997), the Massachusetts high Court recognized that the U.S. Supreme Court had "eliminated the requirement of exigent circumstances to justify the warrantless search of a motor vehicle stopped in transit or seized or searched in a public place." Id. at 799 (citing Pennsylvania v. Labron, 518 U.S. at 938). Finding "no compelling reason why the automobile exception should come within [the] special category where art. 14 and Fourth Amendment law diverge," the Massachusetts high Court aligned its law with federal law, concluding as follows: "when an automobile is stopped in a public place with probable cause, no more exigent circumstances are required by art. 14 beyond the inherent mobility of an automobile itself to justify a warrantless search of the vehicle." Id. at 800.

Similarly, the Supreme Court of Connecticut has recently reiterated that "under our state constitution, our automobile exception permits a warrantless search of an automobile whenever the police have probable cause to do so." State v. Winfrey, 24 A.3d 1218, 1224 (Conn. 2011) (quoting State v. Dukes, 547 A.2d 10, 22 (Conn. 1988)). However, Connecticut does impose a limitation on this general rule by distinguishing on-the-scene searches from searches conducted at the police station: "once an automobile has been impounded at a police station, the factors that justify a warrantless search of the vehicle at the scene -- the legitimate safety concerns of police officers and the inherent mobility of automobiles -- cease to apply," and hence a warrant is required. Id. at 1225 (citing State v. Miller, 630 A.2d 1315, 1325-26 (Conn. 1993)). The Winfrey Court was careful to clarify that Miller's limitation was applicable **only** when a vehicle is searched at a police station. "Miller does not govern cases where an automobile remains in public and is therefore potentially mobile, even though the driver has been taken into police custody and the police have effective control of the vehicle," because

there is a continuing possibility that a vehicle accessible to the public would be relocated or the evidence therein removed by someone other than the arrestee. Winfrey, supra at 1226. The Connecticut Supreme Court also questioned the wisdom of requiring police officers to guard the motor vehicle while a warrant is being obtained: "[I]t is unreasonable to require law enforcement officers, who are already tasked with maintaining control of arrestees in insecure and potentially hostile environments, to remain in the field and simultaneously stand a careful and possibly prolonged watch over vehicles likely to contain contraband until a warrant can be procured." Id.

Other states have adopted the federal approach. See State v. Conn, 99 P.3d 1108, 1114 (Kan. 2004) (reiterating that, under state and federal law, the warrantless search of an automobile is justified when probable cause has been established, and explaining that "exigency arises because of the mobility of the vehicle," such that no other exigency is required); Chavies v. Commonwealth, 354 S.W.2d 103, 111 (Ky. 2011) (reiterating that "Section 10 of the Kentucky Constitution provides no greater protection than does the federal Fourth Amendment;" explaining that an automobile's mobility is an exigent circumstance, per se, and that "mobility refers to the capability of using an automobile on the highways, not the probability that it will be [so] used;" citing U.S. Supreme Court precedent for the conclusion that an "individualized assessment of the likelihood that the car will be driven away or that its contents will be tampered with during the period required to obtain a warrant is unnecessary;" and recognizing the lesser expectation of privacy in a motor vehicle) (internal quotation marks and citations omitted); State v. Tompkins, 423 N.W.2d 823 (Wisc. 1988) (holding that exigent circumstances are not required for a probable cause-based, warrantless search of an automobile; stating that Article I, Section 11 of the Wisconsin Constitution provides no greater rights than does the Fourth Amendment of the U.S. Constitution; and reasoning

that a federal versus state distinction with regard to the need for exigent circumstances is neither necessary nor appropriate when the texts of the relevant constitutional provisions are nearly identical).

Hence, many states have adopted the federal automobile exception, with some states clearly indicating that they have, over time, modified their requirements with respect to warrantless automobile searches to conform to and/or remain consistent with U.S. Supreme Court jurisprudence in this area, jurisprudence which, as we have discussed above, has undergone its own modifications over time.

In contrast to the above examples, some states have departed from the federal automobile exception based on state constitutional provisions, the texts of which are decidedly different from that of the Fourth Amendment. For example, in State v. Elison, 14 P.3d 456, 471 (Mont. 2000), the Montana Supreme Court held that there was no automobile exception to the search warrant requirement under the Montana Constitution. Rather, the court held, a warrantless search of an automobile requires not only probable cause, but also "a generally applicable exception to the warrant requirement such as a plain view search, a search incident to arrest, or exigent circumstances." Id. Importantly, in reaching this holding, the Montana Supreme Court relied on two provisions of its state Constitution: Article II, Section 11, the language of which is nearly identical to the Fourth Amendment, and also Article II, Section 10, the unique language of which affords citizens an explicit and greater right to individual privacy. Id. at 468-69; Mont. Const., Article II, Section 10 ("The right of individual privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest."). Based on the Montana Constitution's unique and explicit privacy provision, the Elison Court found less than compelling the U.S. Supreme Court's analysis as to the reduced expectation of privacy in a motor

vehicle, as set forth in Carney, 471 U.S. at 391-92, but rather concluded that the defendant had an actual and reasonable expectation of privacy in the items stowed behind the front seat of his vehicle. Elison, supra at 470-71. There was no question that probable cause to search the vehicle was present: the defendant was observed smoking a marijuana pipe in his vehicle; a police officer smelled the odor of marijuana as he approached the vehicle; the defendant admitted to police that there was marijuana in his vehicle; and he had red, glassy eyes. Id. at 460-61, 468, 471. But the Montana Supreme Court declined to find exigency, concluding that the mobility of the vehicle was not an exigency per se; that there was no evidence of record to support the possibility that a confederate of the defendant might have moved the vehicle or destroyed the evidence therein; and that exigency was not established merely by the lateness of the hour at which the vehicle was stopped or by the likelihood that it would have been difficult to obtain a search warrant at that time of the night. Id. at 471. Accordingly, the Montana Supreme Court held that the warrantless search of the defendant's vehicle was unlawful. Id.

Similarly, Washington State has not adopted any exception to the warrant requirement specifically for motor vehicles, based on Article I, Section 7 of the Washington State Constitution, which explicitly protects privacy and reads as follows: "No person shall be disturbed in his private affairs, or his home invaded, without authority of law." In State v. Tibbles, 236 P.3d 885 (Wash. 2010), the Washington Supreme Court reiterated that "the right to be free from unreasonable governmental intrusion into one's 'private affairs' encompasses automobiles and their contents." Id. at 887 (citation omitted). Thus, pursuant to Washington state law, a warrant to search a motor vehicle must be obtained unless the circumstances fall into one of a narrow set of exceptions to the warrant requirement, including exigent circumstances, consent,

search incident to arrest, plain view and inventory searches. Id. at 888. The only potentially applicable exception in Tibbles was the exigent circumstances exception, which applies when "obtaining a warrant is not practical because the delay inherent in securing a warrant would compromise officer safety, facilitate escape or permit the destruction of evidence." Id. at 888 (citation omitted). Although the mobility of a vehicle could be an exigent circumstance in some situations, the Washington Supreme Court instructed that the totality of the circumstances must be assessed to determine whether an exigency did indeed exist under the facts of a given case. Id. at 888. Based on the totality of the circumstances in Tibbles, the Washington Supreme Court concluded that exigent circumstances did not exist, citing the state's failure to set forth evidence of a need for haste, flight by the suspect, imminent destruction of evidence, impracticability of obtaining a warrant, or danger to police or anyone else. Accordingly, the court held that the search of the defendant-appellant's car violated Article I, Section 7 of the Washington State Constitution.

Given that the Pennsylvania Constitution has no provision analogous to Article I, Section 7 of the Washington Constitution, or to Article II, Section 10 of the Montana Constitution, we conclude that the experience of these states is unpersuasive. See Russo, supra at 1211 & n.12 (concluding that the rejection of the federal open fields doctrine by Montana and Washington was unpersuasive because it was based on provisions in the constitutions of those states that explicitly protect individual privacy or private affairs, provisions that have no analogous counterparts in the Pennsylvania Constitution).

Other states have relied on state constitutional provisions that are very similar or essentially identical to the Fourth Amendment in concluding that a warrantless search of a motor vehicle must be supported by exigent circumstances. For example, in State v.

Cooke, 751 A.2d 92 (N.J. 2000), the Supreme Court of New Jersey relied on Article I, paragraph 7 of the New Jersey Constitution and prior state decisional law to hold that the "automobile exception applies only in cases in which probable cause and exigent circumstances are evident, making it impracticable for the police to obtain a warrant." Id. at 99. The New Jersey high Court recognized that "the term 'exigent circumstances' is, by design, inexact [and] incapable of precise definition because, by its nature, the term takes on form and shape depending on the facts of any given case." Id. at 102. The court counseled that the combination of relevant factors in any given case must be considered in order to assess whether exigent circumstances were present. Factors that the Cooke Court considered relevant included: the impracticability of requiring an officer to leave a surveillance post to stand guard over the vehicle at issue; the loss of the element of surprise as to the police investigation or action; and the presence of third parties who might attempt to move the vehicle or destroy the evidence therein while the police awaited a warrant. In Cooke, police had conducted a warrantless search of the defendant's car after arresting him during a surveillance operation in an area known for drug-trafficking. Even though police had received reliable information two weeks prior to the search that the defendant was selling drugs in that area and storing the drugs in his car, New Jersey's highest court held, based on the combination of all of the above factors, that exigency had been established, and thus the warrantless search of the defendant's vehicle was justified and the contraband therein was admissible. Id. at 102.

In State v. Gomez, 932 P.2d 1 (N.M. 1997), the Supreme Court of New Mexico explicitly declined to follow the U.S. Supreme Court's Fourth Amendment jurisprudence in interpreting the search and seizure provisions of Article II, Section 10 of the New Mexico Constitution. While recognizing that in some of its precedents it had followed "in lock-step" the U.S. Supreme Court's interpretation of the Fourth Amendment, the New

Mexico Supreme Court in Gomez stated that it "no longer follow[s]" federal Fourth Amendment precedent in interpreting Article II, Section 10 of its state Constitution. Id. at 11. Accordingly, the Gomez Court held that a warrantless search of an automobile requires not only probable cause, but also "a particularized showing of exigent circumstances," which were defined as "an emergency situation requiring swift action to prevent imminent danger to life or serious danger to property, or to forestall the imminent escape of a suspect or destruction of evidence." Id. at 12 (citation omitted). The test for exigency prescribed by New Mexico's highest court was an objective one, as to whether a reasonable, well-trained police officer would have determined that exigent circumstances existed. Id. The Gomez Court upheld the warrantless vehicular search in question based on the officer's reasonable belief that, if an immediate search was not undertaken, one or more of the numerous people milling about at the scene could have removed and/or destroyed the evidence of drug possession and use in the vehicle. Id. at 12. While declining to accept the federal bright-line automobile exception, the New Mexico Supreme Court nevertheless acknowledged that "it may be true that in most cases involving vehicles there will be exigent circumstances justifying a warrantless search." Id. at 13.

In State v. Bauder, 924 A.2d 38, 50 (Vt. 2007), a case decided under Chapter I, Article 11 of the Vermont Constitution, the Vermont Supreme Court reiterated that the automobile exception to the warrant requirement requires a showing of both probable cause and exigent circumstances. In holding that the search at issue was unlawful, the Vermont Supreme Court noted that the defendant had been arrested for driving under the influence and was thus in custody; the vehicle was parked in a commercial lot; "the police had not observed any evidence of a crime in the vehicle[;] and there was nothing to indicate that the passenger, who had been questioned by the police and had

departed, would have any reason to return to the vehicle or ability to remove its contents." Id. at 50-51.

Thus, in sum, while most states have adopted the federal automobile exception to the warrant requirement, some have not. At least two states, Montana and Washington, have rejected an automobile exception to the warrant requirement based on protections for individual privacy explicitly set forth in their state constitutions. Other states, relying on their distinct interpretations of state constitutional provisions that are similar or nearly identical to the Fourth Amendment, have declined to adopt the federal automobile exception, and have maintained a requirement, not just for probable cause, but also for exigent circumstances beyond the inherent mobility of a motor vehicle. This second group of states has stressed several factors, e.g., the preference for warrants, see Cooke, supra at 99 (New Jersey), Gomez, supra at 11 (New Mexico), Bauder, supra at 43-44 (Vermont); consistent state precedent, see Cooke, supra at 97-99; reasonable expectations of privacy, even in an automobile, see Cooke, supra at 99, Bauder, supra at 42. However, most states have adopted the federal automobile exception, citing, e.g., the inherent mobility of a motor vehicle as a sufficient exigency, see Winfrey, supra (Connecticut), Conn, supra (Kansas), Chavies, supra (Kentucky), Motta, supra (Massachusetts), Zwicke, supra (North Dakota), Tompkins, supra (Wisconsin); the decreased expectation of privacy in a motor vehicle, see Conn, supra; Chavies, supra, Motta, supra; the desirability of eliminating or avoiding conflicting interpretations of state and federal constitutional provisions that are very similar if not identical, see Werner, supra (Rhode Island), Motta, supra, Tompkins, supra; the difficulty and/or undesirability of requiring a law enforcement officer to remain in the field and guard the vehicle while a warrant is being sought, see Winfrey, supra, Motta, supra;

the difficulty in conducting an individualized assessment of the likelihood that the vehicle will be moved or the evidence therein disturbed, see Winfrey, supra, Chavies, supra.

While the variety of state experiences in this area is uniformly informative and of interest, we are more persuaded by the logic and reasoning of the states that have adopted the federal automobile exception than by that of the states that have continued to impose a requirement of exigency beyond the inherent mobility of the vehicle.

For the fourth and final Edmunds factor, we must consider the policies implicated by the constitutional interpretations advanced, "including unique issues of state and local concern, and applicability within modern Pennsylvania jurisprudence." Edmunds, supra at 895. We believe that this factor militates strongly in favor of adoption of the federal automobile exception, which requires only a finding of probable cause, and no exigency beyond the inherent mobility of a motor vehicle, to support a warrantless vehicular search.

One need only examine this Court's fractured jurisprudence in the area of motor vehicle searches to recognize the difficulty that we have had in articulating a consistent, clear, understandable, and readily applicable conception of exigency sufficient to support a warrantless vehicular search. See Commonwealth v. Hernandez, 935 A.2d 1275, 1280 (Pa. 2007) ("Precisely what satisfies the exigency requirement for warrantless vehicle searches has been the subject of many of this Court's opinions, some of which include multiple, varying expressions with no clear majority."). Even in the instant case, the Superior Court noted that "[t]he application of th[e] definition [of exigent circumstances] has unquestionably been difficult for the courts of this Commonwealth." Commonwealth v. Gary, 29 A.3d 804, 807 (Pa.Super. 2011). The current state of affairs falls far short of this Court's responsibility to provide guidance to

the bench, prosecutors, defense attorneys, and local and state police officers as to the constitutional requirements for a warrantless vehicular search.

A consideration of some specific examples from our decisional law shows how the determination of exigency -- or lack thereof -- can turn on small facts in the midst of a complex, volatile, fast-moving, stressful, and potentially threatening situation in the field. For example, we have considered on several occasions how quickly and specifically probable cause must arise for police -- and the reviewing court -- to conclude that obtaining a warrant is impracticable. Compare Commonwealth v. Ionata, 544 A.2d 917, 920 (Pa. 1988) (OISA) (concluding that probable cause arose in time for police officers to have obtained a warrant where they had information four hours prior to a warrantless vehicular search that drugs would be in a particular automobile); id. at 921 (OISR) (McDermott, J.) (concluding that the OISA's decision "trivializes the fourth amendment"); id. (OISR) (Papadakos, J.) (concluding that the warrantless search was proper because police had independent probable cause); Commonwealth v. Rodriguez, 585 A.2d 988, 993-94 (Pa. 1991) (Flaherty, J., dissenting) (concluding that police officers had had sufficient opportunity to obtain a search warrant because they had received information as to the anticipated drug sale at least three and one-half hours before stopping the defendant-appellant's car, and noting that a magistrate's office was located just ten minutes from the area where the officers had observed the subject vehicle); Rodriguez, 585 A.2d at 989-91 (Majority Opinion) (concluding that police officers had had no opportunity to obtain a warrant where, although they had received reliable information in the morning that the defendant-appellant was coming into the area on that day to sell drugs, they did not know which automobile she would be using, nor did they know in which jurisdiction she would be traveling); and Commonwealth v. White, 669 A.2d 896, 899 (Pa. 1995) (concluding that police officers had had ample

opportunity to obtain a warrant where they had received information as to an anticipated drug sale 36 to 48 hours prior to the search, and indicating that the mere fact that police did not know which car would be used to conduct the drug transaction did not constitute an unforeseen circumstance).[15]

A further difficulty with the assessment of probable cause under some of our decisions is that police officers must determine not only whether they have probable cause to search a motor vehicle, but also precisely when in the course of their investigation probable cause arose, and whether at that point, there was sufficient opportunity to secure a warrant. See Commonwealth's Brief at 28; White, supra at 909-10 (Castille, J., dissenting). This is a difficult standard to apply, not just for the court, but also, and more importantly, for police officers operating in the field, often in the midst of a fast-moving investigation.

A second example of the complexity and, in some instances, inconsistency, in the area of warrantless motor vehicle searches, is our decisional law as to what circumstances constitute sufficient danger to the police or the public such that an exigency is present, and thus a warrantless vehicular search is justified. Compare Commonwealth v. Holzer, 389 A.2d 101, 106 (Pa. 1978) (stating that there is an exception to the warrant requirement "where the need for prompt police action is imperative … because the officer must protect himself from danger to his person by checking for concealed weapons"); White, 669 A.2d at 902 n.5 (indicating that a warrantless search of a motor vehicle may be acceptable where "the police must search in order to avoid danger to themselves or others, as might occur in the case where

[15] Rodriguez was decided by a 4 - 3 majority, since two justices (Chief Justice Nix and Justice Zappala) joined the dissent. White was decided by a six-member Court, with four justices in the majority, one justice concurring, and one dissenting. In Ionata, the Court was evenly divided, and thus the order of the Superior Court was affirmed.

police had reason to believe that explosives were present in the vehicle"); Commonwealth v. Perry, 798 A.2d 697, 703 (Pa. 2002) (OAJC) (interpreting White to "teach" that exigent circumstances may exist in "an extreme situation in which there is a great potential for deadly harm" and indicating that the situation should also be one that police did not create); Perry, supra at 724 (Nigro, J., dissenting) (suggesting that the OAJC "has authorized warrantless searches based merely on the potential for danger to the police, and in doing so, essentially abandons the requirement of exigency"); Commonwealth v. Hernandez, 935 A.2d 1275, 1282 (Pa. 2007) (holding that "where there is potential danger to police or others in the context of a vehicle stop, exigency has been established for purposes of a warrantless search," but also stating that "police must be able to articulate the danger posed"); and Hernandez, supra at 1288 (Castille, J., concurring) (opining that "there need not be a 'great' potential of deadly danger, but a reasonable potential, or a colorable potential," and advising that this Court "should not adopt a rule under which police must suffer the deadly consequences if their actions somehow 'created' the exigency").[16] Although Hernandez explicitly held that danger to police or others may constitute exigent circumstances, the standard by which to assess the danger remains unclear.

Finally, we consider this Court's opinions in response to the question of what -- or whether -- evidence is required to show that a third party, e.g., an arrestee's cohorts, family, friends, or other persons often completely unknown to police, is likely to move the arrestee's vehicle or tamper with evidence therein. Compare Commonwealth v. Perry, 798 A.2d 697, 702 (Pa. 2002) (OAJC) (in a case where police stopped a car at 3

[16] White was decided by a six-member Court, with four justices in the majority, one justice concurring, and one dissenting. Perry was also decided by a six-member Court, and generated four opinions. Hernandez was decided by a four-justice majority, with three justices concurring in two separate concurring opinions.

a.m. in the middle of a Philadelphia street and arrested the two occupants as suspects in a shooting that had just occurred, stating that "it is uncontested that … there was no danger of the automobile leaving [the scene] with the contents therein"); Kilgore I, 677 A.2d at 313 (concluding that there were no exigent circumstances to justify failure to obtain a warrant prior to searching a vehicle parked at the residence of the defendant-appellant's father-in-law, who was on the scene, because the defendant-appellant was in custody, three police officers were at the scene, and "[c]learly, one of the officers could have secured the vehicle while a search warrant was obtained"); Kilgore I, supra at 314-15 (Castille, J., dissenting) (strongly disputing the majority's claim that a police officer could and should have guarded the vehicle while a warrant was being obtained, based on considerations of safety and law enforcement efficacy and efficiency); Commonwealth v. Baker, 541 A.2d 1381, 1381 (Pa. 1988) (citing Commonwealth v. Milyak, 493 A.2d 1346, 1349-51 (Pa. 1985), for the conclusion that immobilization of a motor vehicle while police obtain a search warrant is not required, but rather is an alternative to an immediate search, because it is not clear that the intrusion of immobilization is less than the intrusion of an immediate search); Commonwealth v. Holzer, 389 A.2d 101, 106-07 (Pa. 1978) (in a case where, after the defendant-appellant had been arrested for murder, police officers found his car on a public street and seized it, concluding that the warrantless seizure of the vehicle was proper because, inter alia, "the car could easily have been removed from the area and its evidence lost"); and Commonwealth v. Cockfield, 246 A.2d 381, 384 (Pa. 1968) (in a case where police found and searched a murder suspect's car parked on a public street, holding that the warrantless search was not justified because, inter alia, the possibility that the car would be moved while police were securing a warrant was "purely conjectural").

Thus, the question of whether, and under what circumstances, a police officer is required to guard a vehicle stopped in a public place while waiting for another officer to secure a search warrant are far from clear. A related issue is whether police must present evidence as to the probability that one or more third parties -- who may very well be completely unknown to the officers -- might move a vehicle or tamper with the evidence therein while a warrant is being sought. These are fact-intensive issues, far from amenable to articulable rules or some other form of judicial guidance that law enforcement officers operating in the field could readily apply.

As the cases summarized and compared above make clear, our fractured jurisprudence in the area of warrantless motor vehicle searches has often turned on small details in the midst of a complex factual scenario, details which have been given varying emphasis over time by different members of this Court. Accordingly, it remains difficult, if not impossible, for police officers in the field to determine how this Court would rule in motor vehicle search and seizure cases, the circumstances of which are almost endlessly variable. To provide greater uniformity in the assessment of individual cases and more consistency with regard to the admissibility of the fruits of vehicular searches based on probable cause, a more easily applied rule -- such as that of the federal automobile exception -- is called for. See California v. Acevedo, 500 U.S. 565, 577 (1991) (in the context of promulgating a rule for the warrantless search of motor vehicles and the containers found therein, reiterating "the virtue of providing clear and unequivocal guidelines to the law enforcement profession").

This position is supported by the fact that we, in agreement with the U.S. Supreme Court, have long considered the immobilization of a motor vehicle while securing a search warrant to be an alternative to the immediate search of the vehicle because it is far from clear which course constitutes the greater intrusion. Baker, 541

A.2d 1383 ("[I]t is not clear that the intrusion arising from immobilization of an automobile is less than the intrusion of searching it."); see also Chambers, 399 U.S. at 51-52 ("For constitutional purposes, we see no difference between on the one hand seizing and holding a car before presenting the probable cause issue to a magistrate and on the other hand carrying out an immediate search without a warrant", as which is the greater and which is the lesser intrusion is debatable and dependent upon a variety of circumstances). Thus, rather than demanding that police secure a warrant for every search of a motor vehicle where there is probable cause, we have concluded that the immediate search of a vehicle and the immobilization of the vehicle while a warrant is being obtained are constitutional alternatives.

Our review and research have revealed no unique Pennsylvania policy considerations that counsel in favor of a state standard for motor vehicle searches that is distinct from the federal standard.[17] Probable cause to search a motor vehicle arises with regularity in the normal course of law enforcement in Pennsylvania as it does throughout the nation. We agree with the Supreme Courts of Rhode Island and Wisconsin that, unless a state constitution mandates a distinct result, and particularly when the relevant state and federal constitutional provisions are nearly identical, it is desirable to maintain a single, uniform standard for a warrantless search of a motor vehicle, applicable in federal and state court, to avoid unnecessary confusion, conflict,

[17] Appellee argues that the enhanced protection of individual privacy rights afforded by Article I, Section 8 requires a departure from federal law with regard to the automobile exception. See Appellee's Brief at 32-33, 35-36; see also Brief of Amicus Curiae, Pennsylvania Association of Criminal Defense Lawyers, at 13-20. We cannot agree for all the reasons discussed in the text, supra. The determination of enhanced privacy protections under some circumstances does not automatically translate into enhanced privacy protections wherever they may be asserted. Furthermore, Appellee fails to consider that, although motor vehicles are not unprotected by Article I, Section 8, the expectation of privacy therein is diminished. See text, supra.

and inconsistency in this often-litigated area. See Werner, 615 A.2d at 1014; Tompkins, 423 N.W.2d at 829-30, 832.

In sum, our review reveals no compelling reason to interpret Article I, Section 8 of the Pennsylvania Constitution as providing greater protection with regard to warrantless searches of motor vehicles than does the Fourth Amendment. Therefore, we hold that, in this Commonwealth, the law governing warrantless searches of motor vehicles is coextensive with federal law under the Fourth Amendment. The prerequisite for a warrantless search of a motor vehicle is probable cause to search; no exigency beyond the inherent mobility of a motor vehicle is required. The consistent and firm requirement for probable cause is a strong and sufficient safeguard against illegal searches of motor vehicles, whose inherent mobility and the endless factual circumstances that such mobility engenders constitute a per se exigency allowing police officers to make the determination of probable cause in the first instance in the field.

Here, there is no dispute that probable cause existed to search Appellee's motor vehicle. Nothing more is required. Therefore, we vacate the order of the Superior Court, and we reinstate Appellee's judgment of sentence.

Former Justice Orie Melvin did not participate in the consideration or decision of this case.

Mr. Chief Justice Castille and Mr. Justice Eakin join the opinion.

Mr. Justice Saylor files a concurring opinion.

Madame Justice Todd files a dissenting opinion in which Mr. Justice Baer joins.