[J-51-2019]
IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

SAYLOR, C.J., BAER, TODD, DONOHUE, DOUGHERTY, WECHT, MUNDY, JJ.

COMMONWEALTH OF PENNSYLVANIA,	:	No. 37 EAP 2018
	:	
Appellee	:	Appeal from the Judgment of Superior
	:	Court entered on 6/18/18 at No. 1193
	:	EDA 2016 affirming the judgment of
v.	:	sentence entered on 4/15/16 in the
	:	Court of Common Pleas, Criminal
	:	Division, Philadelphia County at No.
SCOTT BISHOP,	:	CP-51-CR-0003894-2015
	:	
Appellant	:	ARGUED: May 16, 2019

OPINION

CHIEF JUSTICE SAYLOR **DECIDED: September 26, 2019**

Appellant argues that this Court should interpret the provision of the Pennsylvania Constitution conferring upon individuals a right against self-incrimination to provide greater protection than the Fifth Amendment to the United States Constitution, as interpreted by the Supreme Court of the United States. The Commonwealth counters that this claim has not been properly preserved.

As a preliminary matter, under the Fifth Amendment to the United States Constitution, as construed in *United States v. Patane*, 542 U.S. 630, 124 S. Ct. 2620 (2004) (plurality), a statement made by a criminal defendant during a custodial interrogation who has not been apprised of the warnings required by *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602 (1966), generally must be suppressed. *See*

Patane, 542 U.S. at 641-42, 124 S. Ct. at 2629 (citing *Chavez v. Martinez*, 538 U.S. 760, 790, 123 S. Ct. 1994, 2013 (2003) (Kennedy, J., concurring in part and dissenting in part, joined by Stevens, J.)). However, the violation does not justify the exclusion of physical evidence recovered as a result of the statement. *See id.* at 634, 124 S. Ct. at 2624; *id.* at 644-45, 124 S. Ct. at 2630-31 (Kennedy, J., concurring, joined by O'Connor, J.).

The Pennsylvania Constitution's analogue to the Fifth Amendment is contained in Article I, Section 9 of the state charter. *See* PA. CONST. art. I, §9. To date, Article I, Section 9 has not been interpreted by this Court to provide any greater protection than does the Fifth Amendment in the relevant regard. *Cf. Commonwealth v. Cooley*, 632 Pa. 119, 129 n.8, 118 A.3d 370, 375 n.8 (2015) ("We have held that Article I, §9 of the Pennsylvania Constitution affords no greater protections against self-incrimination than the Fifth Amendment to the United States Constitution." (citing *Commonwealth v. Knoble*, 615 Pa. 285, 290 n.2, 42 A.3d 976, 979 n.2 (2012))).[1]

Appellant was a parolee. During a home visit in March 2015, a parole agent performed a drug test, which indicated that methamphetamine was present in Appellant's urine. Appellant was handcuffed and asked whether the agent would find anything in the residence that would violate parole conditions. Appellant then admitted that he had a firearm in a hallway closet. The agent proceeded to the closet, where he found a revolver, marijuana, electronic scales, and packaging materials.

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[1] As Appellant relates, the statement from *Cooley* must be taken in the light of other decisions, such as *Commonwealth v. Molina*, 628 Pa. 465, 104 A.3d 430, 452 (2014) (Opinion Announcing the Judgment of the Court), in which a majority of the five participating Justices determined that Article I, Section 9 affords greater protection than its Fifth Amendment counterpart in the arena of pre-arrest silence. *See id.* at 502, 104 A.3d at 452; *id.* at 507-09, 104 A.3d at 455-56 (Saylor, J., concurring, joined by Todd, J.).

Subsequently, another parole agent asked Appellant where his car was located, and Appellant indicated that the vehicle was in front of the residence. Inside the vehicle's console, the agent found bullets and prescription bottles. Throughout the encounter, neither agent apprised Appellant of his constitutional rights as is generally required by *Miranda* when a defendant is interrogated while in custody.

Appellant was charged with multiple criminal offenses, and he filed a suppression motion. In relevant part, the motion indicated, in broad terms, that both the statements and physical evidence had been obtained in violation of Appellant's "U.S. Constitutional rights or independently protected rights secured by the Pennsylvania Constitution[.]" Omnibus Motion dated June 9, 2015, in *Commonwealth v. Bishop*, CP-51-CR-0003894-2015 (C.P. Phila.), at 1. The motion also alleged that "the questioning of the defendant was not preceded by adequate warnings as to the right to counsel, the right to remain silent and be free from self-incrimination." *Id.*

In the ensuing hearings, Appellant's counsel initially argued that all physical evidence should be suppressed under "Amendments 4 and 14 of the U.S. Constitution, as well as Article I, Section 8 of the Pennsylvania Constitution" and that his statements should be suppressed "under Amendments 5 and 6 and 14 of the Federal Constitution and Article I, Section 9 of the Pennsylvania Constitution." N.T., Nov. 19, 2015, at 3-4. Notably, he did not initially seek suppression of the physical evidence under Article I, Section 9.

Nevertheless, in later segments of his argument, counsel made some broader statements relative to the physical evidence. For example, he argued:

> [T]he search of the house, Your Honor, I'd ask you suppress any fruits of that. Granted there is a [sic] testimony of record that my client is subject to conditions that make him searchable upon a finding of reasonable suspicion or even suspicion of a parole violation. The officer testified to the

> drug test violation. I would still just ask the Court to consider, despite the current state of the law that maybe the statute allowing that, it should be unconstitutional under both federal and state laws.

N.T., Nov. 19, 2015, at 26-27. In another passage from his argument, counsel alluded to *Patane* while addressing the search of Appellant's vehicle:

> I know the case law probably doesn't support me on this but in the event that something changes, they did ultimately find out that this was Mr. Bishop's car after interrogating him and eliciting statements that I believe should be suppressed. I know that under cases in the U.S. Supreme Court and in our courts, we don't apply the exclusion of physical evidence to potential Miranda violations[,] but I would nonetheless make the argument that they only found out this was Mr. Bishop's car after, A, unlawfully interrogating him or, B, a plate search after everything's already been found.

N.T., Nov. 23, 2015, at 16.

Significantly, at no time during the argument did counsel suggest that the protections provided by the state and federal constitutions differed in any way. The suppression court did not require briefs, but rather, tendered its findings and rulings on the record at the hearings.

The court held that Appellant should have received *Miranda* warnings and that his statement relating to the firearm was subject to exclusion. *See* N.T., Nov. 19, 2015, at 37-40. It determined however, that the parole agent's inquiry about the location of Appellant's vehicle did not rise to the level of interrogation, and therefore, suppression was not required. *See* N.T., Nov. 23, 2015, at 20-21. Regarding the physical evidence obtained from the residence, the court concluded that the inevitable discovery exception to the warrant requirement pertained, and accordingly, there was no constitutional violation.

Appellant was convicted of the charged offenses, and he lodged an appeal in the Superior Court. As in the trial court, Appellant made no attempt to distinguish between the federal and state charters in the proceedings before the intermediate court.

The Superior Court affirmed in a non-precedential opinion, reasoning, in relevant part, that physical evidence is not subject to suppression under *Patane*. Additionally, the court quoted its own prior decision as follows:

> Currently, there is no precedent in this Commonwealth indicating that the Pennsylvania Constitution extends greater protection than its federal counterpart with respect to the Fifth Amendment right against self-incrimination in the context of physical evidence obtained as a result of or during the course of an unwarned statement. We find *Patane* instructive here. Accordingly, until our Supreme Court has the occasion to conduct an independent analysis, we are persuaded by the reasoning in *Patane*.

Commonwealth v. Bishop, No. 1193 EDA 2016, *slip op.* at 9 (quoting *Commonwealth v. Abbas*, 862 A.2d 606, 609-10 (Pa. Super. 2004) (footnotes omitted)).

Appellant submitted a petition for allowance of appeal to this Court, in which he framed the question presented in the following fashion:

> Should not this Court conduct an independent analysis of whether the Pennsylvania Constitution extends greater protection than its federal counterpart with respect to the Fifth Amendment right against self-incrimination in the context of physical evidence recovered as a result of or during the course of an unwarned statement?

Commonwealth v. Bishop, ___ Pa. ___, 196 A.3d 129 (2018) (*per curiam*).

The Commonwealth contends that the Court should not conduct an independent analysis, because Appellant never asked the common pleas court or the Superior Court

to do so in the first instance.[2] In this regard, the Commonwealth stresses that, prior to the filing of his brief in this Court, Appellant did nothing to distinguish between the federal and state constitutions. In such instances, the Commonwealth observes, this Court treats parallel federal and state constitutional provisions as coterminous. *See, e.g.*, *Commonwealth v. Lagenella*, 623 Pa. 434, 441 n.3, 83 A.3d 94, 99 n.3 (Pa. 2013). The Commonwealth urges that the intermediate and common pleas courts should be permitted to do the same for good reason.

Appellant, on the other hand, criticizes the Commonwealth for failing to submit an answer to his petition for allowance of appeal advancing waiver. He explains that, before the Supreme Court of the United States, when a party fails to raise a waiver claim in a response to a petition for a writ of certiorari, the Court proceeds to decide the merits of the question presented. *See* Reply Brief for Appellant at 7 n.7; *cf. City of Oklahoma City v. Tuttle*, 471 U.S. 808, 816, 105 S. Ct. 2427, 2432 (1985) ("Nonjurisdictional defects [such as waiver] should be brought to our attention no later than in respondent's brief in opposition to the petition for certiorari; if not, we consider it *within our discretion* to deem the defect waived." (emphasis adjusted)).

This Court has announced no similar rule, however. And certainly we would not apply such a precept to the detriment of a litigant who has had no previous notice of it, particularly since the filing of a brief in opposition to a petition for allowance of appeal is optional. *See* Pa.R.A.P. 1116(a).[3]

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[2] The issue of waiver is a legal one over which our review is plenary. *See, e.g.*, *Stapas v. Giant Eagle, Inc.*, ___ Pa. ___, ___, 198 A.3d 1033, 1037 (2018).

[3] This Court entertains thousands of petitions for allowance of appeal in any given year, and only a small percentage of discretionary appeals are permitted. So far, we have maintained a system that does not burden putative appellees with responding, at the allocatur stage, to the wide range of petitions that are unlikely to be granted.

(continued…)

Next, Appellant observes that this Court has declined, in various instances, to entertain arguments that were not encompassed in the grant of allocatur. *See* Reply Brief for Appellant at 7 n.7 (citing *Commonwealth v. Shabezz*, 641 Pa. 92, 104, 166 A.3d 278, 284 (2017), *Pocono Mountain Sch. Dist. v. Pa. Dep't of Educ.*, 637 Pa. 507, 517 n.8, 151 A.3d 129, 135 n.8 (2016) (Opinion Announcing the Judgment of the Court), and *Commonwealth v. Revere*, 585 Pa. 262, 271 n.8, 888 A.2d 694, 700 n.8 (2005)).

Shabezz, however, merely offers a recitation of the range of substantive matters that were in and outside the scope of the allocatur grant in that particular case. *See Shabezz*, 641 Pa. at 104, 166 A.3d at 284 ("It is critical first to underscore what is not at issue in this case."). The Opinion Announcing the Judgment of the Court in *Pocono Mountain Sch. Dist.* is non-precedential and, in any event, does not present any exposition of law concerning whether, and in what circumstances, the Court will consider matters raised by an appellee outside the four corners of an allocatur grant. *See Pocono Mountain Sch. Dist.* 637 Pa. at 517 n.8, 151 A.3d at 135 n.8 (stating, without further explanation, that "[w]e do not address this argument [by an appellee], as it is beyond the scope of our allocatur grant"). And it is beyond question that this Court can -- and does on occasion -- review matters that are outside the scope of an order granting a discretionary appeal. For example, in *Commonwealth v. Metz*, 534 Pa. 341, 633 A.2d 125 (1993), the Court explained:

> We granted allocatur in this case to address the issue of whether the police had adequate reason to stop Appellant's vehicle based upon his avoidance of a systematic roadblock. However, because we find that Appellant waived this issue, we do not reach it.

(…continued)
That said, it should be noted that the Court could certainly benefit from the filing of a brief in opposition at the allocatur stage, where pervading waiver concerns are present.

Id. at 343, 633 A.2d at 126.

In this regard, this Court, in its discretion, may sustain a valid judgment for any reason appearing of as of record. *See, e.g.*, *Ario v. Ingram Micro, Inc.*, 600 Pa. 305, 315-16, 965 A.2d 1194, 1200 (2009); *Heim v. Med. Care Availability & Reduction of Error Fund,* 611 Pa. 1, 10, 23 A.3d 506, 511 (2011) (explaining that an appellee does not bear the burden of issue preservation). This right-for-any-reason principle aligns with the recognition that it is the petitioner/appellant who has the greatest control over the framing of the issues presented in appeals, including discretionary ones. It is only fair, then, that an appellee should be permitted to present the Court with other reasons why a judgment should be sustained after the matter is accepted for review. *See supra* note 3. And certainly such reasons may include waiver concerns. *See, e.g.*, *Metz*, 534 Pa. at 343, 633 A.2d at 126.[4] Accordingly, Appellant's contention that waiver considerations outside the four corners of an order allowing a discretionary appeal may not be considered is meritless.

Appellant additionally argues that his "state constitutional claim was broadly preserved below." Reply Brief for Appellant at 2. Appellant asserts, incorrectly, that his counsel alluded to Article I, Section 9 as a basis for suppression of physical evidence in the opening passages of his arguments during the suppression hearings. *See id.* (citing

[4] Although *Metz* did not specifically invoke the right-for-any-reason doctrine, the determination plainly involved application of that precept favorable to the appellee. Indeed, the Court otherwise enforced the requirement of issue preservation relative to the appellant. *See id.* at 347 n.4, 633 A.2d at 127 n.4 (explaining, with regard to an issue the appellant sought to raise, "we are limited to the issues as framed in the petition for allowance of appeal"). The final case cited by Appellant in this line of his argument, *Revere*, 585 Pa. 271 n.8, 888 A.2d 699, 700 n.8, is also in this vein.

N.T., Nov. 19, 2015, at 3-4).[5] Appellant also relies on counsel's entreaty that the search of his residence, "despite the current state of the law . . . should be unconstitutional under both federal and state laws." *Id.* at 26-27.

Proper issue preservation facilitates an orderly system of justice. *See, e.g.*, *Newman Dev. Grp. of Pottstown, LLC v. Genuardi's Family Markets, Inc.*, 617 Pa. 265, 286, 52 A.3d 1233, 1246 (2012) ("[W]e have a strong interest in the preservation of consistency and predictability in the operation of our appellate process, and issue preservation rules play an important role in that process." (citation omitted)). It enables the courts of original jurisdiction, in particular, to correct mistakes and affords opposing parties a fair opportunity to respond. *See Schmidt v. Boardman Co.*, 608 Pa. 327, 357, 11 A.3d 924, 942 (2011) (Majority Opinion, in the relevant respects) (enforcing issue preservation, even where the effort is necessarily futile in a court of original jurisdiction bound by a contrary ruling of an appellate court). In *Schmidt*, the Court explained:

> [T]here are . . . very good reasons supporting a requirement that potential challenges be identified early in litigation, not the least of which are to channel the appellate review and afford fair notice to opposing parties of what may be to come at later stages. Indeed, knowledge of the matters which will be available to be raised on appeal may affect decisions which shape litigation, including tactical and settlement choices. For example, in a case in which the plaintiff has the option of proceeding against the defendant on strict liability and/or negligence theories, the plaintiff may choose to proceed in negligence if she knows whether or not the foundation of the strict-liability case may be susceptible to disruption on appeal.

[5] As previously related, at such time, counsel referenced Article I, Section 9 as a basis for suppression of Appellant's statements only, and not the physical evidence. *See* N.T., Nov. 19, 2015, at 3-4.

Id. at 355-56, 11 A.3d at 941.[6]

In terms of efforts by criminal defendants to raise claims for departure from federal constitutional jurisprudence on independent state grounds, the Commonwealth is correct that the precedent of this Court requires that some analysis explaining the grounds for departure is required. In this regard, our position comports with the approach of the New Mexico Supreme Court, which distinguishes between instances in which established state court precedent construes a provision of the state constitution to provide more protection than its federal counterpart and scenarios in which there is no such precedent. *See State v. Gomez*, 932 P.2d 1, 8-9 (N.M. 1997).

In the former instance, *i.e.*, when there is controlling precedent:

> the claim may be preserved by (1) asserting the constitutional principle that provides the protection sought under the [state] Constitution, and (2) showing the factual basis needed for the trial court to rule on the issue.

Id. at 8. Where there is no precedent supporting departure,

> a party also must assert *in the trial court* that the state constitutional provision at issue should be interpreted more expansively than the federal counterpart *and* provide reasons for interpreting the state provision differently from the federal provision. This will enable the trial court to tailor proceedings and to effectuate an appropriate ruling on the issue.

Id. (emphasis in original; footnote omitted).

The New Mexico Supreme Court specifically reiterated:

> References to the state constitution, without some discussion or argument concerning the scope of its

[6] The Court also related that it has taken a stricter approach to waiver than pertains in many other jurisdictions, particularly those that adhere to the plain or fundamental error doctrine. *See Schmidt*, 608 Pa. at 356-57, 11 A.3d at 942.

> protections, are not enough to alert the trial court to the issue of a possible difference between the rights afforded by the state constitution and those provided by the [federal charter].

Id. at 10;[7] *accord Wilkins v. State*, 946 N.E.2d 1144, 1147 (Ind. 2011) ("Because [the appellant] provides no authority or independent analysis supporting a separate standard under the state constitution, any state constitutional claim is waived.").

This infrastructure serves as an apt refinement of our present jurisprudence, which already treats parallel federal and state constitutional provisions as coterminous where the appellant has done nothing to distinguish between them. *See, e.g.*, *Lagenella*, 623 Pa. at 441 n.3, 83 A.3d at 99 n.3.[8] We therefore take this opportunity to adopt the framework.

In the present case, because Appellant did not distinguish between the Fifth Amendment and Article I, Section 9 before the suppression court, his claim favoring departure is waived.[9] Furthermore, Appellant also waived the claim for additional

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[7] Like this Court, the New Mexico Supreme Court does not require specified criteria for departure, as do a number of other jurisdictions, *see Gomez*, 932 P.2d at 8 n.3, although this Court strongly favors a discussion of the factors set forth in *Commonwealth v. Edmunds*, 526 Pa. 374, 390, 586 A.2d 887, 895 (1991). At a minimum, however, the defendant must offer some reasonably developed, colorable analysis that would support departure.

[8] In other words, this Court's prior decisions amply confirm that the "claim" to be preserved, in departure scenarios, is a claim that an analogue provision of the state constitution operates differently than its federal counterpart. *See, e.g.*, *Lagenella*, 623 Pa. at 441 n.3, 83 A.3d at 99 n.3. *See generally In re J.M.*, 556 Pa. 63, 83 n.15, 726 A.2d 1041, 1051 n.15 (1999) (explaining that issues not raised before the trial or Superior Court are not preserved for appellate review). Accordingly, although the *Gomez* analysis serves as a refinement of our jurisprudence, we find that it is fair for it to be applied here, since no aspect of its application should come as a surprise to the counseled appellant.

[9] Appellant highlights that this Court does not require appellants to engage in a "complete analysis" on pain of waiver. Reply Brief for Appellant at 10-11 (citing *Commonwealth v. Arroyo*, 555 Pa. 125, 134 n.6, 723 A.2d 162, 166 n.6 (1999), and (continued…)

protection under the state constitution in the Superior Court, since he did not develop any supportive reasoning before that court either. *See Wirth v. Commonwealth*, 626 Pa. 124, 149-50, 95 A.3d 822, 837 (2014) ("[W]here an appellate brief fails to provide any discussion of a claim with citation to relevant authority or fails to develop the issue in any other meaningful fashion capable of review, that claim is waived." (quoting *Commonwealth v. Johnson*, 604 Pa. 176, 191, 985 A.2d 915, 924 (2009) (citations omitted))).[10]

We also deem it appropriate, in our discretion, to enforce the waiver here. The Commonwealth was never previously put on sufficient notice that Appellant would seek

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(…continued)
Commonwealth v. Swinehart, 541 Pa. 500, 509 n.6, 664 A.2d 957, 961 n.6 (1995)). As previously related, however, we have required *some* analysis. *See, e.g.*, *Lagenella*, 623 Pa. at 441 n.3, 83 A.3d at 99 n.3. While certainly we may accept that the presentation can be truncated in futility scenarios (*i.e.*, where the reviewing court is bound by a contrary ruling of a higher court), we reinforce our agreement with the Supreme Court of New Mexico that mere citation to a provision of the state constitution is insufficient.

[10] The Superior Court suggested that the departure matter relative to *Patane* had been previously decided in *Commonwealth v. Abbas*, 862 A.2d 606 (Pa. Super. 2004). The *Abbas* court, however, explained that:

> The only privilege asserted here is the federal one; Abbas does not argue that Pennsylvania's Constitution offers greater protection than the Fifth Amendment.

Abbas, 862 A.2d at 610 n.4.

It would be untenable for a court to decide an important state constitutional question as a precedential matter in the absence of any argumentation and without any analytical treatment on its own part of the departure question beyond an expression of agreement with the analysis of the Supreme Court of the United States tethered to the federal constitution. Accordingly, the Superior Court was incorrect in its suggestion that *Abbas* would be dispositive relative to the intermediate court's own jurisprudence and that of the courts of common pleas.

to pursue a departure claim, and it advanced its waiver objection at an appropriate juncture when such a claim was first presented in this Court. We find this to be a strong consideration in the decision whether to apply the right-for-any-reason doctrine, since it is the appellant who is attempting to overturn the status quo established in the prior reviewing courts during the orderly administration of justice. Here, as well, the various waivers are rather apparent, in our view. Additionally, this Court has been divided in other departure cases. It can be less productive to attempt to decide sensitive constitutional questions in cases in which there is a pervading waiver concern, since the additional issue is likely to lead to a further splintering of votes.

Appellant also cites *Molina*, 628 Pa. 465, 104 A.3d 430, and other cases as manifesting "[t]his Court's renewed interest in Pennsylvania's right against self-incrimination." Reply Brief for Appellant at 10; *see also supra* note 1. According to Appellant, a defendant cannot be expected to anticipate future constitutional rulings in detail. None of the decisions cited by Appellant, however, concerns departure on independent state grounds from the federal constitutional jurisprudence embodied in *Patane*. Moreover, our issue preservation requirements would be very weak ones were they to turn on predictive judgments about how the Court may or may not rule in the future in some other case or cases.

Turning to the dissent, Justice Wecht depicts our decision as imposing a "brand-new issue preservation regime . . . find[ing] no support whatsoever in Pennsylvania law." Dissenting Opinion, *slip op.* at 5-6. This Court has long held, however, that "[i]t is a fundamental principle of appellate review that we will not reverse a judgment or decree on a theory that was not presented to the trial court." *Kimmel v. Somerset Cty. Comm'rs*, 460 Pa. 381, 384, 333 A.2d 777, 779 (1975). As we have said, given that no exclusionary remedy was available to Appellant under the Fifth Amendment to the

United States Constitution relative to the physical evidence, the only theory available to him in a suppression context was that Article I, Section 9 offered greater protection. Such theory, however, was never advanced. To the degree that the dissent envisions a dichotomous waiver regime in which the pursuit of a departure claim and the concomitant necessity for meaningful development are required only in this Court -- but not in courts of original jurisdiction and/or in the intermediate courts -- that position was squarely rejected by a majority of the Court two months ago based on reasons drawn from the existing decisional law. *See Commonwealth v. Bell*, ___ Pa. ___, ___, 211 A.3d 761, 769 (2019) (finding a departure claim waived where the appellant's brief before this Court was "the first time [the appellant] has suggested that Article I, Section 8 provides an independent basis for relief").

The dissent also posits that the impetus to address the limitations on the applicability of the federal exclusionary rule "necessarily arose only *after* the Superior Court affirmed the suppression court on an *alternative* basis[.]" Dissenting Opinion, *slip op.* at 11 (emphasis in original). Accordingly, it is Justice Wecht's position that Appellant was presented with his first available opportunity to make a departure claim when he filed a petition for allowance of appeal in this Court. *See id*. As previously explained, however, Appellant's counsel was specifically aware, from the outset, that the exclusionary rule did not apply to the physical evidence under the prevailing law. Furthermore, counsel was obliged under the Rules of Professional Conduct to advise the suppression court of the authority undermining his position, *see* Pa.R.P.C. 3.3(2), and he did so. *See* N.T., Nov. 23, 2015, at 16 (reflecting counsel's statement to the suppression court that, "I know that under cases in the U.S. Supreme Court and in our courts, we don't apply the exclusion of physical evidence to potential Miranda violations[.]").

But counsel utterly failed to confront the prevailing case law to which he alluded. In particular, he did not articulate anything along the lines of the rationale that he seeks to present here, namely, a claim that this Court should rely on Article I, Section 9 of the Pennsylvania Constitution to expand the application of the exclusionary rule beyond its reach under the federal constitutional jurisprudence of the Supreme Court of the United States, where it was created. *See Weeks v. United States*, 232 U.S. 383, 391-92, 34 S. Ct. 341, 343-44 (1914); *see also Mapp v. Ohio*, 367 U.S. 643, 655, 81 S. Ct. 1684, 1691 (1961) (imposing the exclusionary rule on the states, such as Pennsylvania, which had not previously recognized its application to state-level prosecutions). In the circumstances, relief could only have been even contemplated by the suppression court had it undertaken its own independent research akin to an *Edmunds* analysis to determine whether Article I, Section 9 should be regarded as affording broader protection than its Fifth Amendment counterpart. *See supra* note 7. In other words, counsel's approach of neither suggesting departure nor offering any reasons for departing was the antithesis of meaningful development. In our view, the fact that the common pleas court did not incorporate *Patane* into its rationale as an alternative ground for its refusal to award suppression is fortuitous and is not a basis for excusing a litigant seeking to depart from existing law, and/or to present a matter of first impression, from laying the groundwork for such effort in the court of original jurisdiction.[11]

[11] Certainly, there are situations in which issues should be deemed preserved on account of a truncated proffer, such as where the court of original jurisdiction declines to entertain any additional development. On this record, however, there is no evidence that the suppression court thwarted the development of Appellant's present claim. Indeed, and again, Appellant did not so much as suggest a departure theory.

In terms of the degree of development required for departure claims, our present decision is also rebuked by the dissent as a "paragon of judicial doublespeak," because we have not delineated precisely what range of particular arguments must be made in order to preserve a departure claim. Dissenting Opinion, *slip op.* at 8. As previously noted, however, the most straightforward course for counsel is to follow the template indicated in *Edmunds*, *see supra* note 7, and counsel who do so certainly have safe haven. The affordance of latitude in terms of the presentation, *see id.*, serves as a recognition of the circumstance-dependent character of litigation and an acknowledgment of the fact that the *Edmunds* factors were adopted as a guide and not a talisman.[12]

Conceptions such as "meaningfulness" and "adequacy" of development are, of course, dependent on the circumstances, and the practice of judging quintessentially requires the application of considered judgment. For example, whereas the Court has sometimes found conclusory, single-sentence arguments to be inadequate to preserve issues, *see, e.g.*, *Commonwealth v. Bracey*, 568 Pa. 264, 274 n.4, 795 A.2d 935, 940 n.4 (2001), a single sentence presenting a citation to directly-controlling legal authority can reflect the most effective advocacy in other scenarios. Standards exist in the law precisely because many principles simply are not reducible to *per se* edicts, and attorneys in our system of justice are trained accordingly in furtherance of effective advocacy. *See generally MindGames, Inc. v. W. Pub. Co.*, 218 F.3d 652, 657 (7th Cir.

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[12] For example, in *Commonwealth v. White*, 543 Pa. 45, 669 A.2d 896 (1995), the Court determined that the appellant:

> clearly raise[d] a claim under the Pennsylvania Constitution, cite[d] cases in support of his claim, and relate[d] the cases to the claim. That is sufficient.

Id. at 50, 669 A.2d at 899.

2000) (discussing the essential roles of both rules and standards in the justice system). In all events, lawyers who omit reasons, or provide only scant ones, in their efforts to secure relief for their clients should know very well that they are proceeding at the risk of waiver. *Accord Kimmel*, 460 Pa. at 384, 333 A.2d at 779.

Finally, the dissent emphasizes the uncertainty of current Pennsylvania law as concerns the protections available under Article I, Section 9. *See* Dissenting Opinion, *slip op.* at 7. Unlike the dissent, however, we conclude that uncertainty in the law generally implicates a need for better development in order to provide the courts with beneficial advocacy, not as a reprieve from the obligation to present any sort of development at all.

The order of the Superior Court is affirmed.

Justices Baer, Todd, Donohue, Dougherty and Mundy join the opinion.

Justice Donohue files a concurring opinion.

Justice Wecht files a dissenting opinion.