[J-154-2000]
IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

COMMONWEALTH OF PENNSYLVANIA,	:	No. 11 EAP 2000
	:	No. 12 EAP 2000
Appellee	:	
	:	
	:	Appeal from the judgment of the Superior
v.	:	Court entered on September 13, 1999 at
	:	No. 1313 & 1314 Philadelphia 1998,
	:	reversing the order of the Court of
SHAWNEY PERRY,	:	Common Pleas of Philadelphia County on
	:	March 11, 1998 at No. 1016 June Term
Appellant.	:	1996.
	:	
	:	
COMMONWEALTH OF PENNSYLVANIA,	:	740 A.2d 712 (Pa. Super. 1999).
	:	
Appellee	:	
	:	ARGUED: October 18, 2000
	:	
v.	:	
	:	
	:	
BRETT STEWART,	:	
	:	
Appellant	:	
	:	

OPINION ANNOUNCING THE JUDGMENT OF THE COURT

MR. JUSTICE CAPPY **DECIDED: June 3, 2002**

The issue before the court is whether exigent circumstances excused the Commonwealth's warrantless search of a vehicle, after the occupants had been removed from the vehicle and taken into police custody. I conclude that under the unique facts of

this case, there existed a potential threat of deadly harm to the police, and thus, exigent circumstances that justified the Commonwealth's failure to obtain a search warrant.

As resolution of this case is fact-driven, a detailed recitation of the facts is necessary. On Saturday June 8, 1996, at approximately 3:00 a.m., Javon Jones and Bobby Mahalati were driving a GEO Tracker to Illusions, an after-hours club. At the same time, Appellant Perry was driving a white Lexus and Appellant Stewart was a passenger in the vehicle. Perry had stopped the Lexus at a green light on 7th Street which was around the corner from the club. Perry and Stewart were blocking a lane of traffic while the men conversed with some women who were in the car behind them. Jones, driving the Tracker with the top and windows down, pulled along side the Lexus as the light turned red. Stewart turned to Jones and remarked, "What the f--- you looking at?" Jones and Mahalati ignored Stewart. When the light turned green, Jones drove around the Lexus and stopped in front of the entrance to Illusions. Perry pulled the Lexus along the passenger side of the Tracker. Perry asked Mahalati, "What the f--- you looking at?" Perry then repeated several times, "What do you want to do? Do you want to f--- us?" Mahalati responded, "All right, What ever p----." One or both of the Appellants shouted, "What? Do you want to take care of this" and "We can take care of this around the corner." Perry and Stewart then drove to the end of the block and turned left onto 8th Street.

Perry positioned the Lexus on 8th Street so as to leave only enough room for a single vehicle to pass. Jones and Mahalati drove past the Lexus, passing it on the right. Jones and Mahalati observed that both Perry and Stewart were holding guns. Mahalati threw his seat back in an attempt to protect himself while Jones attempted to speed away. Shots rang out and Mahalati lost feeling in his legs.

Jones drove around the block in an effort to seek help. Jones flagged down Philadelphia Police Officer Tyrone Forrest, who was on duty outside of Illusions. Officer Forrest observed the bullet hole in the side of the Tracker and noted blood on the seat.

After summoning an ambulance, Officer Forrest broadcasted an alert over police radio at 2:59 a.m., stating that a man had been shot and that his assailants were two black males who had driven southbound on 8th Street in a two-door white Lexus.

Officer John Barker received the police broadcast. Approximately one minute later, he observed Perry and Stewart in the white Lexus which was proceeding south on 8th Street. Barker requested back up and followed. Officer Barker and Sergeant Glenn Katz, who had joined in the pursuit, ultimately stopped the men near the intersection of 11th and Federal Streets. The Lexus was blocking one of two southbound lanes of 11th Street.

The officers directed Perry and Stewart out of the car. The officers did not request that Perry turn off the engine, and thus, the motor remained running. The police frisked the men as a safety precaution but no weapons were found on their persons. The police took Jones to the stopped vehicle in an attempt to identify the assailants. Jones arrived within fifteen minutes after Officer Forrest had reported the shooting over the radio.

Upon seeing Perry and Stewart, Jones immediately exclaimed, "that's them and they have two guns." At that point, Perry and Stewart were handcuffed and placed in police vehicles. Jones informed police that at least one of the guns appeared to be an "automatic" weapon. This information was relayed to Lieutenant Thomas McDevitt who had arrived on the scene. Determining that as a matter of public safety it was imperative for the guns to be recovered, Lieutenant McDevitt requested that Officer Barker search the Lexus for the weapons.

Officer Barker returned to the vehicle and shined a flashlight into the passenger compartment. He noticed that the floor mat on the driver's side was askew. Concerned that one of the guns may be lying beneath the mat, Officer Barker lifted the mat and uncovered a 9mm Helwan, loaded with six bullets. Officer Barker then searched under the passenger side floor mat and uncovered a .22 Beretta. Once the weapons were removed,

the Lexus was driven to police headquarters. No other search was made of the vehicle, and the vehicle was immediately driven to an impoundment area.

Perry and Stewart were held for trial for attempted murder, aggravated assault, criminal conspiracy, and related charges. On March 9, 1998, a joint suppression motion was filed in which Perry and Stewart claimed that the police had acted illegally in conducting a warrantless search of the Lexus and in seizing the guns. The court suppressed the weapons seized from the Lexus finding that the police were not permitted to search the vehicle without a search warrant. More specifically, the suppression judge noted that at the time the police entered the Lexus, both Perry and Stewart had been handcuffed and taken into police custody. Thus, no exigent circumstances were present which would justify the warrantless search.

The Commonwealth appealed to the Superior Court, certifying that the suppression of the weapons had substantially handicapped its prosecution of Perry and Stewart.[1] The Superior Court reversed the order of the suppression court. The Superior Court found that exigent circumstances existed with respect to public safety and with respect to police safety that excused the warrantless search of the Lexus. The Superior Court remanded the matter for further proceedings. This court granted allocatur and the cases were consolidated for review.

The issue before the court is whether exigent circumstances excused the warrantless search of the Lexus, thus rendering the search constitutionally reasonable.[2]

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[1] The Commonwealth may appeal a suppression order as a final order "when the Commonwealth certifies in good faith that the suppression order terminates or substantially handicaps the prosecution." Commonwealth v. Dugger, 486 A.2d 382, 386 (Pa. 1985).

[2] When reviewing the rulings of a suppression court, this court must determine whether the record supports that court's findings of fact and then determine whether the inferences and legal conclusions drawn from those facts are reasonable. Commonwealth v. Hall, 701 A.2d 190 (Pa. 1997). Where the defendant has been successful before the suppression court, (continued…)

As neither Perry nor Stewart contends that the search was violative of the Fourth Amendment to the United States Constitution, the starting point in resolving this issue is the Pennsylvania Constitution. Article I, Section 8 of the Pennsylvania Constitution sets the parameters of governmental searches and seizures of the citizens of our Commonwealth, their homes, and their possessions:

> 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. Const., art. I, §8. This court has consistently embraced the principle that Article I, Section 8 of the Pennsylvania Constitution requires that searches by the state be permitted only upon obtaining a warrant issued by the neutral and detached magistrate. Thus, as a general proposition, warrantless searches are unreasonable for constitutional purposes. Commonwealth v. Petroll, 738 A.2d 993, 998 (1999).

However, this court has recognized a number of exceptions from this general warrant requirement.[3] Under certain limited circumstances, the failure on the part of police

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(…continued)
the appellate court may consider only the evidence of the witnesses offered by the defendant, as the verdict winner, and only so much of the evidence for the prosecution as read in the context of the record as a whole that remains uncontradicted. Where the record supports the findings of fact, the court are bound by those facts and may reverse only if the court erred in reaching its legal conclusion based upon the facts. In re D.M., 727 A.2d 556, 557 (Pa. 1999).

[3] For example, police do not need a warrant where the subject of the search gives his or her consent to be searched. Commonwealth v. Abdul-Salaam, 678 A.2d 342 (Pa. 1996). Likewise, if a defendant abandons property, retrieval of such objects does not constitute a search or a seizure necessitating a warrant. Commonwealth v. Hawkins, 718 A.2d 265 (Pa. 1998). Furthermore, police may, as part of a standardized inventory procedure, (continued…)

to obtain a warrant prior to a search will be excused and the subsequent search will not be deemed violative of the privacy protections granted by our Constitution. For example, under Pennsylvania law, for a warrantless search of a motor vehicle to be valid, there must be a showing of both probable cause *and* exigent circumstances. Commonwealth v. White, 669 A.2d 896, 900 (Pa. 1995).[4]

The parties in this case have focused on this court's opinion in White. Each party contends that White compels a ruling in their favor. Thus, an in-depth review of that case to determine its impact on this appeal is appropriate.

White involved a warrantless search of an automobile for drugs. In White, the police were informed that William White and another individual, Henry Bennett, had a large supply of cocaine and that they were expected to make a sale of the drugs on a particular date. Moreover, the police understood that the cocaine was being moved back and forth between White's residence and Bennett's residence. The police obtained a search warrant for Bennett's residence, vehicle, and person and obtained a warrant for the search of White's residence and person. However, the police failed to obtain a warrant for White's vehicle. As fate would have it, White drove his vehicle into the stakeout area and an unidentified man entered White's vehicle. As this was happening, Bennett also drove by and passed White's car a number of times. Bennett then left the area and the police took White and his

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search a container or items in a defendant's possession without a warrant. Commonwealth v. Zook, 615 A.2d 1 (Pa. 1992).

[4] While Pennsylvania law requires both a showing of probable cause and exigent circumstances, federal law requires less and does not offer the same protection under the United States Constitution. Maryland v. Dyson, 527 U.S. 465 (1999)(pursuant to Fourth Amendment, "automobile exception" has no separate exigency requirement; thus, where there is probable cause to search an automobile, a search is not unreasonable for purposes of the Fourth Amendment if based on facts that would justify the issuance of a warrant even if a warrant is not obtained).

passenger into custody. Without obtaining a warrant for White's automobile, the police then entered his vehicle and retrieved a bag containing cocaine as well as a marijuana cigarette that was in plain view on the vehicle's console. The suppression court suppressed the evidence. The Superior Court reversed.

On appeal, this court first reiterated the general rule that a warrant is required before the police may engage in the search of an automobile. The court then proceeded to discuss four exceptions to the warrant requirement. Three of the exceptions considered exigent circumstances and the fourth exception addressed a warrantless search for inventory purposes. In discussing the first exception, the court addressed the timing aspects of vehicular searches.

> [P]olice 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; and (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.

Commonwealth v. White, 669 A.2d at 900.

Thus, this type of exigent circumstances exception to the warrant requirement focuses on the potential for loss of contraband and concentrates on the ability of the Commonwealth to have obtained a warrant in advance of the search. In White, the court determined that the police had ample information that White's automobile would be involved in criminal activity and that there were no unforeseen circumstances that would justify a warrantless search of the vehicle.

The court also spoke to a second type of exception dealing with an exigency that justifies a search in the absence of a warrant - a search incident to an arrest. The White court, citing Commonwealth v. Timko, 417 A.2d 620 (Pa. 1980), explained that a

warrantless search may be permissible as a search incident to an arrest. However, the court reaffirmed the extent of such a search and limited the warrantless search of a vehicle incident to an arrest to areas and clothing immediately accessible to the person arrested. Id. The purpose of this second type of exception was to prevent the arrestee from securing weapons or destroying contraband. White, 669 A.2d at 902, citing Timko, 417 A.2d at 622-23. The court found that White was removed from the car and patted down for weapons, then moved a short distance from the car and was placed under police guard. As the contents of the vehicle were not accessible to White, the police could not search White's automobile incident to his arrest.

The White court also touched upon a third excuse to the warrant requirement dealing with another type of exigent circumstance. The court recognized the propriety of a warrantless search where there is potential danger to the police or to others, but where the harm does not lie at the direct hand of the defendant. As explained in White:

> We do not propose to invalidate warrantless searches of vehicles where the police must search in order to avoid danger to themselves or others, as might occur in the case where police had reason to believe that explosives were present in the vehicle. Emergencies such as this, however, are not part of this case.

White, 669 A.2d at 902, n.5.[5] The court determined that there was nothing in the record to support an exigency such as danger to the police to justify the warrantless search.

Finally, the court addressed an exception to the warrant requirement for searches conducted for inventory purposes. The court, again citing to Timko, found that an inventory

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[5] This warrant exception regarding police safety finds further support in Timko in which this court suggested that a warrantless search would be justified if police were confronted with "explosives or some other item which might in some way endanger the police officers or others … ." Timko, 417 A.2d at 623.

search is permissible, but only when the police demonstrate that the search was in fact conducted as a search for purposes of the protection of the owner's property which remained in police custody, the protection of police against claims of lost or stolen property, and the protection of police against danger. Id. citing Timko, 417 A.2d at 623. The White court made clear that if the search was conducted as part of a criminal investigation, it could not qualify as an inventory search. In White, the court found that the warrantless search in that case was conducted as part of a criminal investigation, and thus, could not be excused as an inventory search.

Although the parties discuss each of these exceptions, it is clear that only the third exception, that dealing with potential danger to the police or public, is truly implicated in this appeal. In the matter sub judice, it is uncontested that although the police did not have the opportunity to obtain a warrant prior to stopping Appellants, there was no danger of the automobile leaving with the contents therein. Furthermore, as Perry and Stewart were secured in a police cruiser prior to the time the search of the vehicle was conducted, a search of the vehicle incident to the arrest could not have been lawfully performed. Finally, it is plain that the search was part of a criminal investigation and not conducted as part of the inventorying of property. Thus, it is the potential danger to police or others, as discussed in footnote five of the White opinion, that is the proper focus in this appeal.

Turning to this limited exception, the Superior Court in this case gave two bases for finding exigent circumstances, public safety and police safety. As to concern for the public in general, the Superior Court credited the Commonwealth's explanation that unless the guns were located in the car, the police would have to organize an immediate search of the entire route that the defendants had traveled while fleeing through the city in order to recover the weapons. Lieutenant McDevitt testified that police resources were low at that time and obtaining a search warrant at approximately 3:00 a.m. on a Saturday morning

would have taken several hours. Lieutenant McDevitt opined that by that time, there could be children on the streets.

Alternatively, the Superior Court noted that Officer Barker testified that he would have searched the Lexus, even absent Lieutenant McDevitt's direction to search the vehicle, out of concern for his safety and the safety of his fellow officers. Specifically, Officer Barker noted that the motor of the Lexus was still running when the men were in custody and that the vehicle was in the middle of one lane of 11th Street. This constituted an unsafe situation. Furthermore, in attempting to drive or to park the vehicle, an officer ran the risk of injury from a concealed weapon. The police believed from Jones' statement that a 9mm "automatic" was allegedly used in the crime. Finally, Lieutenant McDevitt testified that such a weapon could "easily go off on the officer, if he hit a bump or stepped on it or kicked it by accident with his foot." N.T. 3/10/98 at 261.

The Superior Court found that the Commonwealth had met its burden in demonstrating probable cause[6] and exigent circumstances that excused the requirement of a search warrant. The Superior Court opined that the officers were faced with two equally difficult and dangerous situations, thus, the court found a need for immediate action. Based upon the gravity of the offense and the level of danger as well as the minimal intrusion into defendant's expectation of privacy, the Superior Court concluded that the search was not unreasonable and reversed the suppression of the weapons.

Based upon the unique facts of the case, I too find that exigent circumstances existed to excuse obtaining a warrant to avoid danger to the police. White teaches that in an extreme situation in which there is a great potential for deadly harm, exigent circumstances may exist to justify a warrantless search of a vehicle. The contours of this

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[6] The parties do not seriously contest that the officers had probable cause to believe that the Lexus contained evidence regarding the shooting. Thus, this appeal turns on the issue of whether exigent circumstances were present which justified the warrantless search.

exception should be defined so that when police are faced with a situation that they did not create, which necessitates that they enter an automobile, and they possess specific and articulable facts from which they reasonably believe that there exists a great potential for deadly harm, the police may conduct a limited search of the vehicle to ensure their safety.

Turning to the case sub judice, it is of critical import that the Lexus was in the middle of a lane of traffic with its engine running. This required the police to enter the vehicle to remove it from the right of way and to turn off the vehicle's ignition. Moreover, the police possessed the specific knowledge that a shooting had occurred minutes before which resulted in serious injury. An eyewitness to the crime immediately identified the men in custody as the shooters. Furthermore, the witness stated that there were two weapons involved in the crime and that one of the guns was an automatic weapon. Appellants had been frisked and no weapons were discovered on their person, increasing the likelihood that the guns were in the Lexus. The uncontradicted testimony by the police established that the type of weapon alleged to have been used in the crime was fragile and could easily go off if bumped or stepped upon, posing an immediate threat to any officer who attempted to move the vehicle.[7]

Thus, the police were faced with the necessity of entering the vehicle and were armed with specific and articulable facts that established a great potential for deadly harm to the police if the search of the automobile was not conducted. Finally, the police engaged in a search limited only to establishing the integrity of the passenger compartment of the vehicle. Indeed, after the weapons were discovered, no further search of the vehicle was

[7] I note that this court should not assume or accept that all 9mm automatic weapons are sensitive. However, for purposes of review in this appeal the court must accept the uncontradicted testimony of the Commonwealth. In re D.M., 727 A.2d 556 (Pa. 1999).

conducted. Faced with all of these unique and extreme circumstances, considered in toto, it was not unreasonable for police to have searched the vehicle without a warrant.[8]

The concurrence authored by Justice Castille takes issue with the analytical approach taken above as it relates to the first exception to the warrant requirement. It does so by attempting to paint this court's majority decision in White as dicta, as a misapprehension and erroneous application of law, flawed by mischaracterization and incomplete quotation, and incredibly, as actually being "coterminous" with federal law. However, the reticular argument offered by the concurrence is more daring than convincing. The court's decision in White stands as a declaration by our court affording our citizens broader protections under Article I, Section 8 of the Pennsylvania Constitution than under the Fourth Amendment of the United States Constitution. The court in White created a construct to interpret this Commonwealth's Constitution and it is a majority opinion that is binding precedent.[9]

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[8] As I would find that the warrantless search was excused due to the exigency of consideration of police safety, it is not necessary to address the Superior Court's alternative holding that public safety created a separate exigency that justified the warrantless search. I express no opinion as to the merits of this alternative theory.

[9] The concurrence first claims that the court's discussion in White regarding the first type of exigent circumstances is dicta and is not precedent for the proposition that this court follows an Article I, Section 8 approach to automobile searches that is distinct and different from the approach under the Fourth Amendment. In the concurrence's expansive view of dicta as applied to White, and carried to its logical conclusion, the only statement in an appellate opinion strictly necessary to the decision of the case is the order of the court. Of course, such a parsimonious interpretation of what is "necessary" to a decision is jurisprudentially unsound. Yet, it is what the concurrence suggests in its ultra-broad view of dicta. Such an interpretation is inconsistent with the established role of supreme courts. Courts frequently construct tests that act as an interpretation of the law.

The case in White arose under Article I, Section 8. The "automobile exception" issue was certainly necessary to the disposition of the appeal. Moreover, as the issue was resolved in a manner inconsistent with federal law, it was necessarily distinct from such law. Finally, it is anomalous for the concurrence to suddenly assert that the court's discussion of the automobile exception in White is dicta, when in his dissent in White, (continued…)

The concurrence by Justice Castille maintains that there is no indication that White's approach was different under Article I, Section 8 than under the Fourth Amendment. This is not so. While perhaps not as precise as desired by the concurrence, White reveals a significantly different approach. Rather than engage in the mental gymnastics necessary to reach the concurrence's position, a more natural and comfortable reading of White is that it was merely an attempt to reconcile Pennsylvania law with certain aspects of federal law, but to nevertheless establish independent state law regarding automobile searches.

After emphasizing the importance of the defendant's state constitutional claims, the White majority discussed the exigent circumstances requirement in the context of federal and state law. While the majority cited to the quarter century old decision in Chambers v. Maroney, 399 U.S. 42 (1970), it did not review, nor even cite to, subsequent cases by the United States Supreme Court that converted the automobile exception into an absolute rule allowing searches in the presence of probable cause. See, e.g., United States v. Ross, 456 U.S. 798 (1982). Instead, the majority looked to state cases that support the conclusion that Pennsylvania law is independent of federal law. See Commonwealth v. Ionata, 544 A.2d 917 (Pa. 1988)(plurality noting that there exists no per se exemption and exigent circumstances are necessary to justify a search). Thus, rather than a misinterpretation and disregard of federal law, it becomes clear that the White majority, attempted to reconcile federal and state case law, ultimately setting forth the law under Article I, Section 8, independent of federal law.

(…continued)
Justice Castille voiced no such concern, but maintained instead that the discussion regarding a search incident to an arrest was dicta. White, 669 A.2d at 909; see also Pennsylvania v. Labron, 518 U.S. 938, 946 n.5 (1996)(Stevens, J. dissenting). It certainly draws into question what is left of White if, as according to the concurrence, the court's discussions regarding the automobile exception and the court's analysis regarding search incident to an arrest are now both labeled and dismissed as dicta. Casual and convenient application of the dicta label to an analysis that is objectionable does not make it so.

This interpretation is bolstered by Justice Castille's dissent in White which speaks volumes and would be nothing short of bizarre if White's analysis were indeed coterminous with federal law. Specifically, the dissent in White urged that the "automobile exception to the warrant requirements of ***this Commonwealth*** should be a *per se* rule" recognizing an automobile exception regardless of how much time police may have to obtain a warrant. White, 669 A.2d at 909 (emphasis supplied). The dissent's *per se* rule would allow warrantless searches of all automobiles for which police have independent probable cause to believe, inter alia, that a felony has been committed by the occupants of the vehicle. White, 669 A.2d at 909-10. Such a position is coextensive with federal law. It becomes obvious that the dissent in White knew that the majority was interpreting state law and that law was different than federal law. If the White majority were setting forth an analysis that was "coterminous" with federal law, the dissent would have had no foundation to urge the "adoption" of a *per se* rule. See Pennsylvania v. Labron, 518 U.S. 938, 945-46 (1996)(Stevens, J. dissenting). Accord Commonwealth v. Glass, 754 A.2d 655, 659 n.6 (Pa. 2000)(Castille, J.)(recognizing that Labron and White were a departure from Fourth Amendment "automobile exception" to warrant requirement). White stands as a statement by this court as to the warrant requirement for automobile searches under Article I, Section 8 that is independent of federal law.

Any doubt about this fact vanishes when subsequent case law is considered. These cases consistently confirm that White sets the standard for analysis under Article I, Section 8, and this paradigm is not coterminous with federal law. See, e.g., Commonwealth v. Luv, 735 A.2d 87 (Pa. 1999); Commonwealth v. Casanova, 748 A.2d 207, 211 (Pa. Super. 2000); Commonwealth v. Burns, 700 A.2d 517, 518 (Pa. Super. 1997); Commonwealth v. Gelineau, 696 A.2d 188, 191 (Pa. Super. 1997); Commonwealth v. Lechner, 685 A.2d 1014, 1016 n.7 (Pa. Super. 1996); Commonwealth v. Haskins, 677 A.2d 328, 330 (Pa. Super. 1996).

In fact, this court's post-White decision in Commonwealth v. Luv, 735 A.2d 87 (Pa. 1999), sharpens the point. First, and absolutely necessary to an understanding of Luv, by the time Luv was decided, the United States Supreme Court had made eminently clear that the automobile exception under federal law does not have a separate exigency requirement. Maryland v. Dyson, 527 U.S. 465, 466-67 (1999)(the "automobile exception" has no separate exigency requirement); Pennsylvania v. Labron, 518 U.S. 938, 940 (1996)(if a car is readily mobile and probable cause exists to believe it contains contraband, the Fourth Amendment allows a search without more). As there can be no question that federal law did not require exigent circumstances at the time Luv was decided, the White standard requiring exigent circumstances, reaffirmed and utilized in Luv, can only stand as a statement of our unique state law jurisprudence. The Luv majority, quoting the White standard and construing prior cases, unambiguously stated that "***[t]he determining factors in all of these cases are the existence of probable cause and the presence of exigent circumstances. One without the other is insufficient to justify a warrantless search of a vehicle.***" Luv, 735 A.2d at 93 (emphasis supplied). To suggest that the Luv court's use of the White construct constituted a continued ignorance of federal law in the face of Dyson and Labron, or worse, a refusal to apply federal law, is simply too strained to be credible. Rather, Luv reasonably and properly interpreted the White construct as the law under Article I, Section 8.

Further confirming this reading of White is the Luv court's emphasis on the possibility of the loss of evidence if the vehicle were not searched. Critical to the decision in Luv, yet brushed aside by the concurrence, was the fact that the police were faced with the possibility that if the car was not searched without a warrant, the automobile would continue, possibly resulting in the introduction of a substantial amount of drugs into the community. These were the exigent circumstances that justified the warrantless search

and clearly were not required under federal law.[10] Luv, 735 A.2d at 94. The import of this is undeniable. Thus, this court's case law subsequent to White is consistent with the analysis set forth today.

In conclusion, far from being "coterminous" with federal law, White sets forth a straightforward approach that maintains the integrity of the warrant requirement and the privacy of our citizens, bowing only to limited exigencies, for example, when officers' lives are at risk.

The order of the Superior Court is affirmed and the matter remanded for further proceedings.

Former Chief Justice Flaherty did not participate in the decision of this case.

Mr. Justice Castille files a concurring opinion joined by Madame Justice Newman.

Mr. Justice Saylor files a concurring opinion.

Mr. Justice Nigro files a dissenting opinion joined by Mr. Chief Justice Zappala.

[10] This is a critical aspect that distinguishes Luv from the case sub judice where the defendants were arrested and in police custody prior to the search and there was no possibility that the evidence would be lost prior to obtaining a warrant.