Running a Red Light: How Pennsylvania Rushed to Its Destination and Failed to Define "Exigent Circumstances" in Commonwealth v. Alexander

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ABSTRACT

The United States Supreme Court and the Pennsylvania Supreme Court both recognize an “automobile exception” to the warrant requirement pursuant to their respective constitutions. In 2014, the Pennsylvania Supreme Court adopted the federal automobile exception. Under the federal automobile exception, police can search a vehicle without a warrant where probable cause exists. In 2020, the Pennsylvania Supreme Court overruled its 2014 decision, and announced its official departure from federal standard. Now, police can search a vehicle without a warrant only upon a showing of both probable cause and exigent circumstances.

Adding an exigency component to the warrantless search requirement is not the problem. Rather, the problem is that the Pennsylvania Supreme Court does not provide a definition, standard, or even slight guidance for defining exigency. Instead, the Pennsylvania Supreme Court defaults to a case-by-case assessment for determining whether the facts of a case rise to the level of exigency.

Under a case-by-case assessment, what rises to a level of exigency is in the eye of the beholder. Motorists, police officers, and trial judges will face the consequences of the Pennsylvania Supreme Court’s decision to omit a bright-line standard for determining whether a situation permits a police officer to conduct a lawful, warrantless search. The current case-by-case assessment will increase speculation of police officers’ decision making, and trial courts will render inconsistent rulings. The Pennsylvania Supreme Court should take its next opportunity to establish a bright-line rule but, at the very least, provide specific guidance on defining exigent circumstances.

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I. INTRODUCTION

One fundamental debate that has challenged courts for decades is whether search and seizure cases should be decided on a case-by-case method of adjudication or by the application of bright-line rules.¹ The Pennsylvania Supreme Court recently added to that conversation with its 2020 decision, Commonwealth v. Alexander.²

The federal automobile exception to the Fourth Amendment’s warrant requirement states that nothing more than probable cause is required for police to conduct a warrantless search of a car.³ In

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³ U.S. Const. amend. IV.
2014, the Pennsylvania Supreme Court held, in Commonwealth v. Gary, that this exception applies in Pennsylvania.4 But, under the notion that Article I, Section 8 of the Pennsylvania Constitution affords greater privacy protections to its citizens than the Fourth Amendment of the United States Constitution, the Pennsylvania Supreme Court overruled Gary in 2020.5 In Alexander, the Pennsylvania Supreme Court announced the Commonwealth’s departure from the federal model of warrantless searches.6 Because the federal automobile exception no longer stands in Pennsylvania, law enforcement must establish both probable cause and exigent circumstances7 to justify a warrantless search of a vehicle.8

By including an exigency requirement as part of the warrantless search protocol, the Pennsylvania Supreme Court moved away from a bright-line standard and toward a case-by-case assessment.9 While deciding Alexander, the Court had an opportunity to, once and for all, provide long-awaited guidance on what it means to encounter a situation of “exigency.” However, the Court merely noted that it is up to a reviewing court to “assess the totality of the circumstances presented to the officer before the entry in order to determine if exigent circumstances relieved the officer of the duty to secure a warrant.”10 Using a case-by-case assessment to determine exigency, with little to no guidance from the Court, drastically expands law enforcement’s discretion to determine what is an exigent circumstance.11 This is the third time in the past three decades that Pennsylvania has overruled its precedent in this context.12 This type of constant change is more representative of a pendulum swing than it is of an articulate and widely applicable common law standard.

Questioning the wisdom of the court for recognizing greater privacy protections pursuant to the Pennsylvania Constitution is beyond the scope of this Article. This Article does not dispute that the

5. Alexander, 243 A.3d at 207.
6. Id. at 207–08.
7. Id. The Pennsylvania Supreme Court briefly explained that “exigent circumstances” may arise when there is a potential danger to the police or public, however, a mere assertion of danger may not be sufficient. Id. at 187.
8. Id. at 207.
9. Id. at 208 (stating that “the long history of Article I, Section 8 and its heightened privacy protections do not permit us to carry forward a bright-line rule . . . ”).
10. Id.
11. See, e.g., City of Chicago v. Morales, 527 U.S. 41, 64 (1999) (holding that an ordinance that does not establish minimal guidelines to help police officers determine what activities constitute “loitering” affords “too much discretion to the police”).
Alexander decision aligns with Article I, Section 8 of the Pennsylvania Constitution which grants greater privacy protections than the Fourth Amendment. The court’s efforts in imposing an exigency requirement to serve as an additional barrier between law enforcement and groundless searches should not be diminished. However, this Article questions the functionality of Alexander given the current police-citizen climate and highlights the danger of the court’s lack of guidance in defining “exigency” and defaulting to a case-by-case assessment.

The most common type of interaction between police and civilians is a traffic stop, and the relationship between the American public and law enforcement, particularly its violent nature, has been under continual re-examination. Under Alexander, exigent circumstances are in the eye of the beholder. The court based its decision on an ideal of privacy under the Pennsylvania Constitution and ignored the amount of discretion it left to police to determine their own parameters of exigency. This Article argues that the Pennsylvania Supreme Court would benefit the police, public, and trial judges if it would adopt a clear bright-line rule or, short of that, specific guidance that is workable and that will be applied consistently regardless of any factual variances.

Accordingly, this Article proceeds in four sections. Section II discusses the history of uncertainty surrounding the automobile exception in Pennsylvania. Pennsylvania’s checkered history results largely from the Pennsylvania Supreme Court’s struggle with distinguishing its standard from the Fourth Amendment model. In many earlier cases, the Pennsylvania Supreme Court wove federal case law into its discussion of the exigency requirement without clearly distinguishing the Pennsylvania standard from the federal standard. Section II also examines the development of tension between the public and police and analyzes how bright-line rules emerged from those conflicts to serve as a tool to render fair rulings while also preserving the integrity of our courts. Section III describes the two landmark cases in this Commonwealth for vehicle

15. See infra notes 21–95 and accompanying text.
17. See infra notes 108–54 and accompanying text.
searches, *Gary* and *Alexander*. The section highlights the greater protections afforded to individuals from unreasonable searches and seizures because of *Alexander* and analyzes the foreseeable effects resulting from the Court’s lack of guidance in defining “exigency.” The section concludes by discussing how Pennsylvania jurisprudence has already recognized the value of eliminating a case-by-case exigency assessment and the need to stick to a clear bright-line rule or standardized procedure for vehicle searches. Despite this Article’s reluctance to fully embrace the decision, it celebrates that *Alexander* recognized that the real danger to citizens is a compromised right to be free from unreasonable searches and seizures.

II. BACKGROUND

A. *The History of the Automobile Exception*

The power of the states to interpret their constitutions to offer broader protection of individual rights than that required by the United States Constitution is undisputed. As Justice Byron White has explained, “individual states may surely construe their own constitutions as imposing more stringent constraints on police conduct than does the Federal Constitution.” However, this principle had little practical application prior to the 1970s when litigators and courts began to narrowly focus on federal constitutional claims and often disregarded similar state constitutional provisions that may provide clients with relief. Chief Justice Warren Burger used the term “new judicial federalism” to describe the 1970s and 1980s as a period in American legal history where the United States Supreme Court Justices had to remind states of their power to interpret their constitutions more broadly than it interpreted the United States Constitution. Many state supreme courts that exercised this power largely did so in the area of criminal law.

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18. See infra notes 155–81 and accompanying text.
19. See infra notes 182–224 and accompanying text.
20. See infra notes 225–38 and accompanying text.
25. See Hardiman, supra note 21, at 506.
1. Federal Law: The Fourth Amendment

A search or seizure under the federal Constitution occurs when the government invades the privacy of an individual. The Fourth Amendment protects individuals against unreasonable searches and seizures. Generally, all warrantless searches under the Fourth Amendment are presumptively unreasonable unless the search falls within an established exception to the warrant requirement.

The Fourth Amendment only protects an individual’s “subjective expectation of privacy . . . that society is prepared to recognize as ‘reasonable.’” The United States Supreme Court has held that such an expectation of privacy exists in movable vessels, including automobiles. However, when compared to a home, society has acknowledged that individuals have a reduced exception of privacy with regard to their automobile. Therefore, the U.S. Supreme Court has historically treated automobiles differently than permanent premises for Fourth Amendment purposes.

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27. Id. at 209. The Fourth Amendment provides:
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. CONST. amend. IV.
28. See, e.g., Agnello v. United States, 269 U.S. 20, 32 (1925); see also McDonald v. United States, 335 U.S. 451, 453 (1948) (stating that the protection of the Fourth Amendment “extends to the innocent and guilty alike . . . and . . . with few exceptions, stays the hands of the police unless they have a search warrant”).
33. Carroll, 267 U.S. at 147; see also Opperman, 428 U.S. at 368. "Automobiles, unlike homes, are subjected to pervasive and continuing governmental regulation and controls, including periodic inspection and licensing requirements." Id.
This distinct treatment contributed to the formation of a federal automobile exception to the warrant requirement. The federal automobile exception originated in Carroll v. United States. The U.S. Supreme Court held that, if law enforcement has probable cause to believe that a vehicle has evidence of a crime or contraband located in it, a search of the vehicle may be conducted without first obtaining a warrant. In Carroll, federal agents suspected two individuals of bootlegging. After the agents unexpectedly encountered the suspects driving a vehicle, the agents stopped and ordered the suspects to exit the vehicle. At first, the agents examined the backseat upholstery, and, even though there was no alcohol in plain view, they observed that the backseat looked different from typical vehicle upholstery. One of the agents ripped open the seat, thereby exposing sixty-eight bottles of gin and whiskey. The defendants claimed that the agents participated in an unconstitutional search of the vehicle due to the lack of a warrant; however, Chief Justice William H. Taft rejected the defendants’ argument, and announced what would ultimately become known as the “Carroll Doctrine.” Chief Justice Taft stated:

[T]he true rule is that if the search and seizure without a warrant are made upon probable cause, that is, upon a belief, reasonably arising out of circumstances known to the seizing officer, that an automobile or other vehicle contains that which by law is subject to seizure and destruction, the search and seizure are valid.

Therefore, under this automobile exception, police can search a vehicle without a warrant where (1) probable cause exists, and (2)

34. Chambers, 399 U.S. at 51–52; Carroll, 267 U.S. at 147–56.
35. Carroll, 267 U.S. at 147.
36. Id. at 149. The Court held that the officers had justification for the warrantless search and seizure, meaning that "the facts and circumstances within their knowledge and of which they had reasonably trustworthy information were sufficient in themselves to warrant a man of reasonable caution in the belief that intoxicating liquor was being transported in the automobile which they stopped and searched." Id. at 162.
37. Id. at 160.
38. Id.
39. Id. at 174 (McReynolds, J., dissenting).
40. Id.
41. Id. at 149, 160 (majority opinion).
42. Id.
43. The United States Supreme Court has found probable cause to exist “where the known facts and circumstances are sufficient to warrant a man of reasonable prudence in the belief that contraband or evidence of a crime will be found.” Ornelas v. United States, 517 U.S. 690, 696 (1996). Examples of probable cause to search a vehicle may be personally observing evidence or contraband in plain view inside a vehicle, see Horton v. California, 496 U.S. 128, 128 (1990); receiving a tip provided to the officer by a reliable confidential
the vehicle that is subject to search must be capable of ready movement, or is “readily mobile.”44 The Court reasoned that the inherent mobility of automobiles create circumstances of such exigency that rigorous enforcement of the warrant requirement is impossible.45 Additionally, an individual’s reduced expectation of privacy in a vehicle supports permitting a warrantless search based on probable cause.46

The U.S. Supreme Court further articulated the federal automobile exception in *Chambers v. Maroney*, when it announced that exigent circumstances need not be present at the time of the actual search.47 In *Chambers*, the police had probable cause to believe the defendant committed a robbery.48 The police located a car that matched the description of the car used in the commission of the robbery.49 When the police located and stopped the car, one of the passengers was wearing a sweater matching the description of a sweater worn by one of the robbers.50 Because the police suspected that the driver was the robber, they arrested him and immobilized the vehicle.51 The police searched the car at the station and found a .38 caliber pistol and items belonging to the robbery victim.52 The defendant filed a petition for habeas corpus arguing that the warrantless search violated his Fourth Amendment right against unreasonable searches and seizures.53 Although the U.S. Supreme Court recognized that police had the choice of either searching the car while at the scene or at the impound lot, the Court stated:

> 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

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45. See *Carroll*, 267 U.S. at 153; see also South Dakota v. Opperman, 428 U.S. 364, 368 (1976).
46. Opperman, 428 U.S. at 368. “Automobiles, unlike homes, are subjected to pervasive and continuing governmental regulation and controls, including periodic inspection and licensing requirements.” *Id.*
48. *Id.* at 44.
49. *Id.*
50. *Id.*
51. *Id.*
52. *Id.* at 44–45.
53. *Id.* at 45–46.
warrant. Given probable cause to search, either course is reasonable under the Fourth Amendment.54

The U.S. Supreme Court continued to uphold the ruling and applied it in subsequent vehicle search cases. In United States v. Ross, for example, the U.S. Supreme Court held that “if probable cause justifies the search of a lawfully stopped vehicle, it justifies the search of every part of the vehicle and its contents that may conceal the object of the search.”55 The U.S. Supreme Court, in Pennsylvania v. Labron, reaffirmed this principal when it reversed the Pennsylvania Supreme Court’s ruling in Commonwealth v. Labron.56 In Labron, police officers in Philadelphia saw the defendant participating in multiple drug transactions.57 The police arrested the defendant, searched the trunk of his car, and found cocaine.58 Before reaching the U.S. Supreme Court, the Pennsylvania Supreme Court held that the evidence discovered in the defendant’s car should be suppressed because the police violated the Fourth Amendment when they did not have probable cause and exigent circumstances to justify a warrantless search.59 However, the U.S. Supreme Court determined that the Pennsylvania Supreme Court was incorrect in its holding, and held that the Philadelphia police did not violate the Fourth Amendment because probable cause was present.60 Labron further confirmed that exigent circumstances are not required to satisfy the automobile exception under the Fourth Amendment.61 At this point, Fourth Amendment jurisprudence is abundantly clear that the automobile exception, under the U.S. Constitution requires only: (1) a readily mobile vehicle and (2) probable cause to suspect contraband within the vehicle.62

2. Pennsylvania Law: Article I, Section 8

Article I, Section 8 of the Pennsylvania Constitution63 is the analogous provision to search and seizure protections under the Fourth

54. Id. at 52.
57. Labron, 518 U.S. at 939, 941.
58. Id. at 939.
59. Labron, 669 A.2d at 924. In rendering its decision, the Pennsylvania Supreme Court analyzed relevant state cases that incorporated analyses from federal cases. Id.
60. Labron, 518 U.S. at 941.
61. Id. at 938–39.
62. Id.
63. Article I, Section 8 reads:
Amendment. Both the U.S. Supreme Court and the Pennsylvania Supreme Court acknowledge that individuals have a reduced expectation of privacy inside their vehicles. According to the Pennsylvania Supreme Court, “it is too great a leap of logic to conclude that the automobile is entitled to the same sanctity as a person’s body.” While the vast majority of jurisdictions followed the U.S. Supreme Court’s lead and recognized some form of the federal automobile exception, Pennsylvania did not.


64. Dennis Whitaker, One of These Constitutions (in More Respects than you Realize) is Not Like the Other, PA. APP. ADVOC. (Sept. 22, 2017), https://paablog.com/con-week-finale/.


67. Christian A. Fisanick, We’re on the Road to Nowhere: The Automobile Exception to the Warrant Requirement under the Pennsylvania Constitution, 8 WIDENER J. PUB. L. 1, 9 (1998). Professor at John Jay College of Criminal Justice of the City University of New York, Barry Latzer’s, has conducted research identifying five jurisdictional categories that state vehicle search exceptions can fit into:

1. jurisdictions that follow the United States Supreme Court’s jurisprudence after a detailed state constitutional analysis. The paradigm of this group is Wisconsin, where that state’s high court extensively analyzed the competing interests of the constitutional requirement and the need for effective law enforcement. See State v. Tompkins, 423 N.W.2d 823 (Wis. 1988);

2. jurisdictions that accept the United States Supreme Court’s jurisprudence with little or no individualized state constitutional analysis. Nebraska serves as an example, where that state’s high court simply stated that the United States Constitution and the Nebraska Constitution are coextensive on the automobile exception. See State v. Vermuele, 453 N.W.2d 441 (Neb. 1990);

3. jurisdictions such as New Hampshire that categorically reject an automobile exception on state constitutional grounds. See State v. Stender, 656 A.2d 409 (N.H. 1995);

4. jurisdictions taking an idiosyncratic approach to the issues, such as Vermont, which rejects the container rule of Ross. These jurisdictions reject the automobile exception for parked, immobile, and unoccupied vehicles. See State v. Savva, 616 A.2d 774 (Vt. 1991) and State v. Krock, 725 P.2d 1285 (Oreg. 1985); and


Id. at 9–10 n.58. Commentators and scholars have concluded that Pennsylvania fits within the third group. See id.
Pennsylvania was one of the early states to exercise its power to expand individual rights beyond the minimum requirements of the U.S. Constitution. Though similarly worded to the U.S. Constitution, the Pennsylvania Constitution has historically been interpreted to guarantee broader rights under the law of search and seizure than the Fourth Amendment. One significant case in this regard is *Commonwealth v. Sell*. The issue in *Sell* was whether the Pennsylvania Supreme Court, in interpreting Article I, Section 8, should retain the “automatic standing” principle as a matter of state constitutional law, or, to embrace the reasoning and conclusions of the U.S. Supreme Court’s interpretation of the Fourth Amendment and eliminate that concept. Writing for the majority, Justice Robert N. C. Nix, Jr., recognized that “[w]hile minimum federal constitutional guarantees are ‘equally applicable to the [analogous] state constitutional provision[s],’ the state has the power to provide broader standards than those mandated by the federal Constitution.” He noted that “constitutional protection against unreasonable searches and seizures existed in Pennsylvania more than a decade before the adoption of the federal Constitution, and fifteen years prior to the promulgation of the Fourth Amendment.” Where the U.S. Supreme Court had abolished “automatic standing” under the U.S. Constitution, Justice Nix concluded that individuals charged with possessory offenses have “automatic standing” to bring a suppression motion under the Pennsylvania Constitution to challenge the admissibility of evidence alleged to be the fruit of an illegal search or seizure. *Sell* also recognized that “Article I, [S]ection 8 of the Pennsylvania Constitution

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68. See Hardiman, supra note 21, at 507.
70. Commonwealth v. Sell, 470 A.2d 457 (Pa. 1983). In *Sell*, the Allentown, Pennsylvania Police Department executed a search warrant, which included firearms stolen in a recent burglary, at an amusement arcade. As a result of the search, the police retrieved several firearms that were located on open shelves beneath the counter in an area to which all of the employees had access. Id. at 458.
71. *Id.* at 458. The rule of “standing” determines whether a party was the appropriate person to move to suppress allegedly illegal evidence. *Id.* Further, the rule known as “automatic standing,” provides that the mere charge of a defendant with a possessory offense automatically confers standing to assert an alleged search and seizure violation. *Id.* at 462.
72. *Id.* at 466–67 (internal citations omitted) (relying on Commonwealth v. Dejohn, 403 A.2d 1283, 1291 (Pa. 1979) (recognizing an expectation of privacy in bank records under Article I, Section 8 of the Pennsylvania Constitution, notwithstanding the Supreme Court's refusal to recognize any expectation of privacy in bank records under the Fourth Amendment)).
73. *Sell*, 470 A.2d at 466.

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mandates greater recognition of the need for protection from illegal governmental conduct offensive to the right of pri-

Consequently, *Sell* made clear that the Pennsylvania Supreme Court would accord as much weight to the U.S. Supreme Court’s interpretations of the U.S. Constitution as it accorded to the decisions of sister state courts or lower federal courts, depending upon the persuasiveness of the opinion.

3. Confusion in the 1990s

Despite *Sell’s* formal departure from Fourth Amendment jurisprudence, the Pennsylvania Supreme Court had difficulties applying this concept in automobile cases. The confusion around whether Pennsylvania followed the federal automobile exception stemmed from Pennsylvania’s use of federal case law in state law cases, without clearly distinguishing the Pennsylvania standard exigency requirement from the federal standard. In the late 1980s and 1990s, the Pennsylvania Supreme Court decided a line of cases, illustrating the Court’s inconsistent application and approach to automobile searches. The U.S. Supreme Court noted the Pennsylvania Supreme Court’s incorrect reading of the federal automobile exception in *Pennsylvania v. Labron*, where it reversed the Pennsylvania Supreme Court’s decisions in *Commonwealth v. Labron*. The U.S. Supreme Court stated that “[t]he law of the Commonwealth thus appears to us ‘interwoven with the federal law, and . . . the adequacy and independence of any possible state law ground is not clear from the face of the opinion.’” The U.S. Supreme Court stated that, although the Pennsylvania Supreme Court discussed Pennsylvania cases in *Labron*, the cases it cited relied on Fourth Amendment analyses rather than specific Article I, Section 8 analyses.

76. *Id.* at 468.
77. *Id.* at 467–68.
78. Several scholars note that Pennsylvania did not fully reject the federal automobile exception until 1995. See Fisanick, supra note 67, at 10.
80. *Labron*, 518 U.S. at 939. In *Labron*, police officers saw the defendant participating in multiple drug transactions, and later arrested the defendant, searched the trunk of his car without a warrant, and found cocaine. *Id.* at 939.
82. *Id.* at 941; *Labron*, 669 A.2d at 924 (citing *White*, 669 A.2d at 900 (resting on Pennsylvania Supreme Court’s analysis of Chambers v. Maroney, 339 U.S. 42 (1970))).
When adjudicating Article I, Section 8 issues, the Pennsylvania Supreme Court continually cited to cases that were decided on Fourth Amendment grounds. For example, in Commonwealth v. Milyak, the defendant based his claim on the Fourth Amendment, and the Pennsylvania Supreme Court decided the case on Fourth Amendment reasoning. The facts in Milyak involved a tip provided to the police that a van was used in a burglary. Once the police located the van, they arrested the van’s occupants and searched the van without a warrant. Justice Stephen Zappala Sr., concurring, explained that a state constitutional issue was not before the Court and a Fourth Amendment analysis was proper. The Pennsylvania Supreme Court reviewed the case under Fourth Amendment principles, but in a unanimous decision, ultimately found that no violation had occurred. The Court’s struggle to consistently interpret the boundaries of Article I, Section 8 is not apparent from the face of Milyak. Rather, the struggle can be found where the Pennsylvania Supreme Court cited Milyak (a case with a Fourth Amendment claim) in cases where claims were brought under Article I, Section 8, not the Fourth Amendment, and did so without delineating how Milyak was distinguishable from Article I, Section 8 cases. In Commonwealth v. Luv, for example, the Pennsylvania Supreme Court discussed Milyak along with Article I, Section 8 cases and stated “[t]he determining factors in all of these cases are the existence of probable cause and the presence of exigent circumstances.” The Court did so even though Milyak was not dependent on the exigent circumstance component at all.

Three years after Milyak, the Pennsylvania Supreme Court decided Commonwealth v. Baker and turned away from the Milyak federal analysis, outlining the requirement of exigencies in an

84. Id. at 1347.
85. Id. at 1348.
86. Id. at 1351 (Zappala, J., concurring).
87. Id. at 1349 (majority opinion).
88. See, e.g., Commonwealth v. Luv, 735 A.2d 87, 93 (Pa. 1999) (discussing Milyak, along with Rodriguez, Baker, and White, stating that “[t]he determining factors in all of these cases are the existence of probable cause and the presence of exigent circumstances.”); Commonwealth v. White, 669 A.2d 896, 900 (Pa. 1995) (holding that no unforeseen circumstances would justify a warrantless search); Commonwealth v. Rodriguez, 585 A.2d 988, 990 (Pa. 1991) (holding that the existing unforeseen circumstances gave police insufficient opportunity to secure a warrant and therefore justified the warrantless search); Commonwealth v. Ionata, 544 A.2d 917, 919 (Pa. 1988) (finding that a brown box with bags protruding from it on the passenger seat was not sufficient to support probable cause, and thus, the warrantless search was improper).
89. Luv, 735 A.2d at 93.
90. See Milyak, 493 A.2d at 1351.
automobile search. The court stated, “[i]t is well established that automobiles are not per se unprotected by the warrant requirements of the Fourth Amendment, and of [Article I, Section 8]. Nevertheless, certain exigencies may render the obtaining of a warrant not reasonably practicable.” Accordingly, the Pennsylvania Supreme Court in *Baker* drifted away from the U.S. Supreme Court’s interpretation of the automobile exception by reasoning that exigencies must exist at the time of the warrantless search, which was demonstrated by the mobility of the vehicle and inadequate time for law enforcement to obtain a warrant.

The Pennsylvania Supreme Court, however, started to obscure its reasons again in several cases when it cited to *Milyak* as requiring exigent circumstances when the case did not actually support this proposition. In 1991, the Pennsylvania Supreme Court cited to both *Milyak* and *Baker*, cases that represent opposite ends of the spectrum. *Milyak* supports an automobile exception that only requires a mobile vehicle and probable cause as prerequisites, and *Baker* requires an exigency element. The Pennsylvania Supreme Court’s struggle to properly and consistently apply one standard illustrates the court’s long history of confusion regarding the exigent circumstance requirement, and perhaps, broadens the line between the Fourth Amendment and Article I, Section 8. These conflicting standards raised the question of whether Pennsylvania is actually committed to a rigorous body of independent search and seizure law.

4. Efforts at a Solution

In 1991, Justice Ralph Cappy sought to enhance judicial uniformity in cases that require distinguishing the Pennsylvania Constitution from the Federal Constitution and designed a four-part framework in *Commonwealth v. Edmunds*. In *Edmunds*, the Pennsylvania Supreme Court reversed the judgment of the Superior Court, holding that the “good faith” exception to the exclusionary rule established in *United States v. Leon* does not apply to Article I, Section 8 of the Pennsylvania Constitution. Although
Edmunds illustrated a clear departure from the federal standard's "good faith" exception for warrantless searches, Justice Cappy's efforts to create a clear framework for state courts to apply in interpreting their respective constitutions reduced the need for state courts to rely on U.S. Supreme Court analyses. In light of the U.S. Supreme Court's requirement that state courts make a "plain statement" of any adequate and independent state grounds upon which their decisions rest, Justice Cappy wrote:

[A]s a general rule it is important that litigants brief and analyze at least the following four factors:
(1) text of the Pennsylvania constitutional provision;
(2) history of the provision, including Pennsylvania caselaw;
(3) related case-law from other states;
(4) policy considerations, including unique issues of state and local concern, and applicability within modern Pennsylvania jurisprudence.

Using this framework, the court declined to adopt the "good faith" exception to the exclusionary rule, explaining: (1) neither identical language nor similarity between the federal and state constitutions requires the Pennsylvania courts to follow federal precedent; the Pennsylvania Constitution was adopted ten years prior to the ratification of the United States Constitution, and the Pennsylvania Supreme Court refuted the "misconception that state constitutions are somehow patterned after the United States Constitution;" (3) the historical record "indicate[d] that the purpose underlying the exclusionary rule in this Commonwealth is quite distinct from the purpose underlying the exclusionary rule under the [Fourth] Amendment" and thus warranted independent analysis and judgment; and (4) to adopt a "good faith" exception to the defendant for several offenses, including criminal conspiracy, simple possession, possession with intent to deliver, possession with intent to manufacture, and manufacture of a controlled substance. Id. at 889. The trial court granted the Defendant's motion to suppress the seized marijuana because the warrant was defective, and the appellate court reversed. Id. at 888-90. The Defendant appealed the reversal to the Supreme Court of Pennsylvania.

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98. See Hardiman, supra note 21, at 515.
100. Id. at 896.
101. Id.
102. Id. at 897.
exclusionary rule would contradict certain Pennsylvania Rules of Criminal Procedure.\footnote{Id. at 901–05 (stating that "such a rule would effectively negate the judicially created mandate reflected in the Pennsylvania Rules of Criminal Procedure, in Rules [203], [205], and [206]"). PA. R. CRIM. P. 203 states, in pertinent part: (B) No search warrant shall issue but upon probable cause supported by one or more affidavits sworn to before the issuing authority. The issuing authority, in determining whether probable cause has been established, may not consider any evidence outside the affidavits; (D) At any hearing on a motion for the return or suppression of evidence, or for suppression of the fruits of evidence, obtained pursuant to a search warrant, no evidence shall be admissible to establish probable cause other than the affidavits provided for in paragraph (B).}

The \textit{Edmunds} opinion was Pennsylvania's first attempt to establish a formulaic approach to interpreting the Pennsylvania Constitution.\footnote{See Hardiman, supra note 21, at 518; Commonwealth v. Strader, 931 A.2d 630, 633 (Pa. 2007) (analyzing under the Fourth Amendment of the United States Constitution and declining to perform \textit{Edmunds} analysis where appellant failed to cite the \textit{Edmunds} factors); Commonwealth v. White, 669 A.2d 896, 899 (Pa. 1995) (explaining that the \textit{Edmunds} analysis is not mandatory, and that a party's claim should not be dismissed for failing to follow the precise format set in \textit{Edmunds}).} Interestingly, however, \textit{Edmunds} has not been applied uniformly to every case triggering issues of state constitutional interpretation. For example, a few years after \textit{Edmunds}, the Pennsylvania Supreme Court stated, in \textit{Commonwealth v. White}, that the \textit{Edmunds} analysis is not a mandatory test, rather, it is a rule for litigants to follow and a guidepost for courts in interpreting state constitutional provisions.\footnote{Commonwealth v. Luv, 735 A.2d 87, 93 (Pa. 1999) (relying on \textit{White}, 669 A.2d at 899); see also Commonwealth v. McCree, 924 A.2d 621, 626–27 (Pa. 2007).} Conversely, there are Pennsylvania cases that \textit{have} relied on \textit{Edmunds} and have shown a clear departure from the federal automobile exception.\footnote{Hernandez, 935 A.2d at 1286–87 (Castille, J., concurring).} This inconsistent application of \textit{Edmunds} has raised eyebrows among judges and legal scholars. Chief Justice Ronald Castille criticized these decisions for not following a coherent \textit{Edmunds-style} state constitutional analysis stating "[t]his area of the law has not represented the Court's finest jurisprudential hour."\footnote{Hernandez, 935 A.2d at 1286–87 (Castille, J., concurring).} The less than uniform treatment of \textit{Edmunds} certainly contributed to the doctrinal confusion of applying Article I, Section 8.
B. Development of Society & The Police

1. Cycle of Distrust

The outrage surrounding George Floyd’s death in 2020 and repeated police brutality against people of color led to a cultural reckoning around what it means to police. Modern policing techniques use broken windows tactics that employ an intensive, aggressive, and restrictive form of policing that targets low-level infractions, and emphasizes arrests. At least seventy people died in law enforcement custody after uttering “I can’t breathe,” showing that his tragic death was not an isolated incident. During the summer of 2020, citizens demonstrated across the country demanding divestment from police departments, reinvestment into the life-affirming services that help communities thrive, and elimination of unrestrained police brutality.

The movement, however, was about more than police brutality. Rather, it was about institutional racism in the legal system and in policing tactics that originated from the institution of slavery and the oppression of people of color in the United States. Organized policing systems began as slave patrols in the South, starting in the colony of South Carolina in 1704. These armed slave patrols were


109. “Broken windows” strategies are theories that focus not only on how criminal conduct presents a danger to society but more so how poverty- and inequity-induced low-level crimes, such as property crimes, homelessness, prostitution, and drug offenses, present a threat. See generally, George L. Kelling & James Q. Wilson, Broken Windows: The Police and Neighborhood Safety, ATLANTIC (Mar. 1982), https://www.theatlantic.com/magazine/archive/198203/broken-windows/304465/.


115. Id. The slave patrol extended its way to the North as well. The Northern colonies also created night watch patrols in the 1630s, the first of which was founded in Boston in 1636, with New York following suit in 1658. Frank Olito, Photos Show How Policing Has Evolved in the US Since Its Beginnings In the 1600s, INSIDER, https://www.insider.com/history-of-police-in-the-us-photos-2020-6 (Apr. 26, 2021, 4:00 PM).
typically tasked with searching for, arresting, and detaining slaves who escaped as well as guarding against rebellions.\textsuperscript{116}

Although formal police departments were not instituted until the 1800s, slave patrols usually formed the police force in many jurisdictions.\textsuperscript{117} Population growth, inequality spurred by the Industrial Revolution, and the rise in crimes, such as burglary and prostitution, all contributed to the emergence of urban policing.\textsuperscript{118}

In the South and the East, the legacy of slave patrols and the mistreatment of people of color continued even after the Civil War in the form of vigilante groups.\textsuperscript{119} The goals of these groups were to control freed slaves who were now working in the agricultural caste system and to enforce Jim Crow segregation laws.\textsuperscript{120} In the West, U.S. Marshals enforced federal law and vigilante groups, especially likely to kill indigenous people and people of color, emerged.\textsuperscript{121} Between 1840 and the 1920s, mobs, vigilantes, and law enforcement officers lynched over five hundred innocent Mexicans as they cleared the way for westward expansion and killed thousands more innocent people in Texas, California, Arizona, Nevada, Utah, Colorado, and New Mexico.\textsuperscript{122}

Modern policing began in 1909 when August Vollmer became chief of police in Berkeley, California.\textsuperscript{123} Vollmer introduced military tactics into policing, framing the objective as “we’re conducting a war, a war against the enemies of society.”\textsuperscript{124} Policing subsequently grew harsher, and the number of police expanded as states developed their own police forces.\textsuperscript{125}

The 1960s marked a turning point in policing as law enforcement responded to protests against the treatment of people of color and racial profiling in the United States.\textsuperscript{126} The civil rights movement gained momentum, and the public gathered to demonstrate against

\textsuperscript{116} Id.
\textsuperscript{117} Id.
\textsuperscript{118} Id.
\textsuperscript{119} Id.
\textsuperscript{120} Jill Lepore, The Invention of the Police, NEW YORKER (July 13, 2020), https://www.newyorker.com/magazine/2020/07/20/the-invention-of-the-police.
\textsuperscript{121} Id.
\textsuperscript{122} Id.
\textsuperscript{123} Id.
\textsuperscript{124} Id.
\textsuperscript{125} Id.
racial discrimination and injustice. The police would often respond to protestors with physical brutality through tear gas, a high-pressure water hose, or attack dogs. In 1965, President Lyndon Johnson declared a “war on crime” and encouraged Congress to pass the Law Enforcement Assistance Act which supplied local police with military-grade weapons. The Los Angeles Police Chief described fighting protesters as “very much like fighting the Viet Cong,” illustrating just how militarized the police culture was. President Johnson even told an audience of police and policymakers in 1966 that “if we wish to rid this country of crime, if we wish to stop hacking at its branches only, we must cut its roots and drain its swampy breeding ground, the slum.”

The constitutional rights to a fair trial, due process, and equal protection are meant to protect people from the government when it attempts to deprive them of their freedom. However, the over-policing of hot-spot communities of color—combined with a chronic over-reliance on police to fix issues like homelessness, substance abuse, and mental health crises—leads to dangerous racialized policing techniques and undue use of force. Racialized policing has been deeply ingrained in American police culture from the days of slave patrols through the war on drugs, that the players in the criminal legal system, policy makers, and municipal leaders have treated it as normal.

According to a Gallup poll released on August 12, 2020, for the first time in twenty-seven years, a majority of adults in the United States do not trust law enforcement. While 56% of white adults said they were confident in the police, only 19% of black adults shared that same confidence. Social media and news outlets, sources that shape society’s perceptions and opinions, also fuel a general distrust of the police. Too often we hear police defend unjustified killings by saying, “I was in fear for my life” but later see the opposite in personal body camera footage. Other times, we

128. Id.
129. See 89 P.L. 197, 79 Stat. 828; see also Lepore, supra note 120.
130. Lepore, supra note 120.
131. Id.
134. Id.
see body camera footage revealing law enforcement failing to know
the law and asserting their claimed authority to the absolute lim-
its. Other viral videos show officers failing to establish probable
cause or unlawfully detaining and arresting targeted popula-
tions.

Existing scholarship largely focuses on civilians as the target of
police violence, but the idea that routine traffic stops also pose an
incredible and unpredictable amount of danger to the police has
been longstanding. The most recent annual data from the Fed-
eral Bureau of Investigation’s Law Enforcement Officers Killed &
Assaulted Program reported that six out of the forty-eight law-en-
forcement officers who were feloniously killed in the line of duty in
2019 were conducting traffic violation stops. Beyond statistics,
routine traffic stops are commonly described within law-enforce-
ment circles as especially dangerous encounters for police. For
instance, during officer training, police academies use videos of ex-
treme cases of officers being randomly shot during traffic stops that
otherwise appear entirely routine. These videos are designed to
stress the importance of not becoming complacent on the scene or
hesitating to use force.

The Community Relations Service (CRS) of the U.S. Department
of Justice has assisted police departments and communities all over
the country in coming to grips with the difficult task of maintaining

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137. Id.
142. Id.
143. Id.
law and order in a complex and changing multicultural society.\textsuperscript{144} Police-citizen conflict accounts for a major portion of the disputes to which CRS responds,\textsuperscript{145} and traffic stops account for over one-third of those police-citizen conflicts.\textsuperscript{146} Currently, the public does not trust the police, and this relationship must change before courts add a potentially dangerous layer to this already fragile dynamic.

\section{2. Bright-Line Rules}

Search and seizure jurisprudence is a tension between the privacy rights of individuals and the ability of police officers to enforce the law.\textsuperscript{147} This tension led to two methods of adjudicating disputes. One method is to determine the reasonableness of every search on a “case-by-case” basis, paying particular attention to the facts of each case.\textsuperscript{148} The second method is to create “bright lines” by which police officers, trial courts, and individuals know exactly what may or may not be searched in any given situation.\textsuperscript{149}

Bright-line rules are not unique to search and seizure laws.\textsuperscript{150} Commentators have found clear-cut rules of adjudication necessary for the following reasons. First, in a system that affords great discretion to law enforcement, bright line rules, created by and for police, would reduce the speculation of discriminatory treatment towards historically racially profiled citizens.\textsuperscript{151} Second, bright line rules present specific and articulable criteria for law enforcement to use when faced with determining if their scope of authority permits a search.\textsuperscript{152} Finally, bright line rules aid lower courts in defining what is reasonable conduct without having to solely defer to the arresting officers’ judgment at the time of the search.\textsuperscript{153}

Accordingly, implementing bright line rules in judicial proceedings has been viewed as effectuating significant results. Not only can bright line rules set parameters of what is unacceptable police

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{144} DEP'T. JUST., PRINCIPLES OF GOOD POLICING: AVOIDING VIOLENCE BETWEEN POLICE AND CITIZENS, (Sept. 2003), https://www.justice.gov/archive/crs/pubs/principlesofgoodpolicingfinal092003.htm. The CRS works to prevent or resolve community conflicts and tensions arising from policies and practices. \textit{Id.}
\item \textsuperscript{145} \textit{Id.}
\item \textsuperscript{146} Harrison, \textit{supra} note 13. In 2018, the police contacted 61.5 million people, and of that, 25 million were drivers or passengers in a traffic stop. \textit{Id.}
\item \textsuperscript{147} See Silk, \textit{supra} note 1.
\item \textsuperscript{148} \textit{Id.}
\item \textsuperscript{149} \textit{Id.}
\item \textsuperscript{150} \textit{Id. at 282.}
\item \textsuperscript{151} \textit{Id. at 286.}
\item \textsuperscript{152} \textit{Id.}
\item \textsuperscript{153} \textit{Id.} (arguing that “fact-style” adjudication provides the lower courts with little guidance).
\end{itemize}
\end{footnotesize}
conduct, but trial judges can more easily apply bright line rules in deciding cases, which may result in appellate courts seeking less clarification on search and seizure law.  

III. ANALYSIS

A. The Pennsylvania Supreme Court


In April of 2014, the Pennsylvania Supreme Court decided Gary to determine whether probable cause, alone, was enough to allow law enforcement to search an individual’s vehicle. In Gary, two police officers pulled over the defendant, Sheim Gary, believing that the level of tint on his car windows violated Pennsylvania’s Motor Vehicle Code. During the stop, the officers noticed the smell of marijuana emanating from the passenger and driver sides of the vehicle; however, the defendant conceded that there was marijuana in the vehicle, and attempted to flee the scene. The officers apprehended him and returned him to the police cruiser. The officers conducted a warrantless search and found a bag with approximately two pounds of marijuana under the front hood. The defendant was found guilty of possession of a controlled substance and possession with intent to deliver.

The defendant appealed to the Superior Court and, ultimately, to the Pennsylvania Supreme Court, contending that the warrantless search of the vehicle was unlawful because police conducted the search in the absence of any recognized exception to the warrant requirement. The defendant argued that he was entitled to the greater privacy protections afforded by Pennsylvania’s constitution. Pennsylvania argued that because the police did not have the opportunity to obtain a search warrant prior to stopping the vehicle, they were permitted, under the exception, to conduct an immediate, warrantless search. In essence, Pennsylvania argued

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154. Id. at 285.
156. Id. at 104–05; 75 Pa.C.S.A. § 4702(a) (requiring a registered vehicle undergo a once yearly inspection).
158. Id.
159. Id.
160. Id.
161. Id.
162. Id. at 108.
163. Id.
for the adoption of the limited automobile exception, and cited to Commonwealth v. McCree, where a three-justice majority held that a “limited automobile exception” under Article I, Section 8 provided police with the lawful right to access and seize incriminating evidence in plain view in an automobile without a warrant. The Pennsylvania Supreme Court, in McCree, explained that the increased privacy concerns with respect to the seizure of one’s person are not present when an object is seized from one’s vehicle. However, when deciding Gary, the Pennsylvania Supreme Court examined textual, historical, precedential, and policy considerations and turned to cases where it affirmed Article I, Section 8 and the Fourth Amendment as providing comparable protections. After a discussion of the aforementioned considerations, the Court came to the following conclusion:

[O]ur 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 co-extensive 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 Court reasoned that “firm requirement for probable cause is a strong and sufficient safeguard against illegal searches of motor vehicles,” and that the inherent mobility and the endless factual circumstances that such mobility engenders constitute a per se exigency.

164. Id. at 122 (citing Commonwealth v. McCree, 924 A.2d 621, 630 (Pa. 2007)). The lead opinion in McCree explained:

[We] have allowed warrantless searches '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.'

McCree, 924 A.2d at 630 (emphasis added). In contrast, an improper warrantless search under the automobile exception is "when the police have ample advance information that a search of an automobile is likely to occur in conjunction with apprehension of a suspect." 165

Id.

165. McCree, 924 A.2d at 630.

166. See Gary, 91 A.3d at 126 (citing cases interpreting and applying Article I, Section 8).

167. Id. at 138 (not a majority decision but rather an “Opinion Announcing the Judgment of the Court”).

168. Id.
As a result of *Gary*, Pennsylvania followed the bright-line federal automobile exception: the prerequisite for a warrantless search of a motor vehicle is probable cause to search, and no exigency beyond the inherent mobility of a motor vehicle is required.”


After six years of applying the narrowed, bright-line rule under *Gary*, the Pennsylvania Supreme Court decided to re-examine the issue. On May 11, 2016, at approximately 2:30 a.m., Philadelphia police officer Joshua Godfrey and his partner stopped a vehicle driven by Keith Alexander. The officers smelled marijuana, and upon confessing that he and his female passenger had just smoked marijuana, Alexander was arrested and placed inside the officer’s vehicle while the officers searched his car. Alexander had a key around his neck which opened a locked metal box that the officers found behind the driver’s seat, containing bundles of heroin. The Commonwealth charged Alexander with possession of heroin with intent to distribute. Alexander filed a motion to suppress the search of the vehicle. The Superior Court denied his motion, finding that the officers had probable cause to search the vehicle and the box. The denial was grounded in *Gary*’s application of the narrow federal automobile exception.

Alexander appealed to the Pennsylvania Supreme Court, contending that it should overrule or limit *Gary* because Article I, Section 8 of the Pennsylvania Constitution requires a showing of exigency in addition to probable cause. The Court agreed, and explained that it is “the role of this Court to interpret the Constitution and to say what it means. *Gary* did not do so.” The majority stated that “[the Pennsylvania Constitution’s] heightened privacy protections do not permit us to carry forward a bright-line rule that gives short shrift to citizen’s privacy rights.” As of December 2020, the Pennsylvania Supreme Court declared, “we return to the

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169. *Id.*
171. *Id.*
172. *Id.*
173. *Id.*
174. *Id.*
175. *Id.*
176. *Id.* at 181–82.
177. *Id.*
178. *Id.* at 182.
179. *Id.* at 199.
180. *Id.* at 208.
pre-Gary application of our limited automobile exception... pursuant to which warrantless vehicle searches require both probable cause and exigent circumstances,” either alone is insufficient.\footnote{181} Because of \textit{Alexander}, the federal automobile exception no longer stands in Pennsylvania.

\textbf{B. Analysis of Alexander}

\textit{1. Expanding the Scope of Privacy}

\textit{Alexander} assured drivers in Pennsylvania that the rights of privacy and protection embodied in Article I, Section 8 do, in fact, extend beyond their own driveways. Article I, Section 8 defends an individual's privacy against governmental intrusion in many situations that are no longer recognized on the federal level.\footnote{182} Over the past several decades, the U.S. Supreme Court has restricted Fourth Amendment privacy protections where the Pennsylvania Supreme Court has resisted doing so through interpretations of Article 1, Section 8.\footnote{183} For example, the Fourth Amendment allows for a "good faith exception,"\footnote{184} while the Pennsylvania Constitution does not.\footnote{185} Additionally, in the stop and frisk context, the Pennsylvania Supreme Court has held that an anonymous tip that a man of a particular description at a particular location carrying a gun was not sufficient justification for police to conduct a stop and frisk,\footnote{186}

\footnotetext{181. \textit{Id.} at 207.}
\footnotetext{184. The good faith exception to the exclusionary rule under the Fourth Amendment originated in \textit{United States v. Leon}, 468 U.S. 897 (1984), and suspends operation of the exclusionary rule where police act in good faith reliance on a facially valid warrant issued by a neutral and detached magistrate, which warrant later proves defective for lack of probable cause.}
\footnotetext{185. \textit{Edmunds}, 586 A.2d at 899. \textit{Edmunds} concerned the search of a building and seizure of marijuana based upon a warrant which was defective due to a magistrate’s erroneous determination of probable cause. \textit{Id. at} 889. While such a search would have been admissible under the Fourth Amendment given the “good faith exception” to the exclusionary rule, the Pennsylvania Supreme Court looked to the state constitution and found therein a right of privacy sufficient to preclude the application of such an exception as a matter of state law. \textit{Id. at} 887.}
rejecting federal precedent. In the suppression context, the Pennsylvania Supreme Court rejected the U.S. Supreme Court’s Fourth Amendment-based reasoning that a fleeing suspect is not “seized” unless the pursuing officers apply physical force to the suspect or the suspect heeds demands to halt. The reluctance of Pennsylvania courts to adopt the same exceptions that the Federal courts have adopted shows a clear divergence of interests in which the drafters of each constitution sought to advance. This divergence of interests is evident in both Pennsylvania and federal jurisprudence.

The textual similarities of Article I, Section 8 and the Fourth Amendment do not suggest that they require identical interpretations, or that both must follow the same standard. Unlike other states that have also rejected the federal automobile exception but rely on “the unique language of [their] own constitution,” Pennsylvania courts have placed a much heavier emphasis on the historical application of Article I, Section 8.

189. See Smith, supra note 63.
190. See, e.g., Commonwealth v. Tarbert, 535 A.2d 1035, 1037 (Pa. 1987) (stating that the Court has not hesitated to interpret Pennsylvania Constitution as affording greater protections than federal Constitution provides); Sell, 470 A.2d at 466 (stating that the Court frequently has recognized Pennsylvania Constitution as an alternative and independent source of individual rights); Commonwealth v. Tate, 432 A.2d 1382, 1387 (Pa. 1981) (finding that states may provide through their constitutions bases for rights and liberties independent from those provided by federal Constitution); Commonwealth v. Harris, 239 A.2d 290, 292 n.2 (Pa. 1968) (stating court has power to impose standards on searches and seizures higher than those required by Fourth Amendment); Commonwealth v. Jones, 378 A.2d 835, 839–40 (Pa. 1977); Commonwealth v. Jeffries, 311 A.2d 914, 918 (Pa. 1973).
191. See Pruneyard Shopping Ctr. v. Robins, 447 U.S. 74, 81 (1980) (holding that states may provide more expansive liberties than those the federal Constitution provides); Oregon v. Hass, 420 U.S. 714, 719 (1975) (finding “a State is free as matter of state law to impose greater restrictions on police activity than those Court holds to be necessary based on federal constitutional standards.”).
192. See, e.g., Commonwealth v. Matos, 672 A.2d 769, 771 (Pa. 1996) (noting textual similarities between Article I, Section 8 and the Fourth Amendment, and also acknowledged that the court was not bound to interpret each provision identically); Commonwealth v. Chase, 960 A.2d 108, 117 (Pa. 2008) (noting “the textual similarity between the Fourth Amendment and Article I, § 8”).
193. Commonwealth v. Edmunds, 586 A.2d 887, 895 (Pa. 1991) (recognizing the textual similarities between Article I, Section 8, but looking to Pennsylvania’s history to interpret the provision to reflect a strong concern for privacy).
195. See Smith, supra note 63 (discussing the emphasis that Pennsylvania courts have placed on this interest and the importance of raising privacy concerns when challenging a search and seizure issue); see also Edmunds, 586 A.2d at 896 (creating a test to allow for areas not covered under federal law to be recognized as private in Pennsylvania).
2. Protecting or Endangering a Constitutional Guarantee

The constitutional right of privacy is significant, but it is not unqualified. Though an individual’s right to privacy is a fundamental right, courts have held that in certain situations, it can be abridged. These situations exist where a government interest is so compelling that it warrants the diminishment of one’s right to privacy in order to achieve some greater societal objective.

The Court’s eagerness to trust officers’ discretion in *Alexander* is admirable, but given the current climate of police encounters, bright-line rule advocates believe that it provides more deference to law enforcement than it should. The result may provide too much discretion to law enforcement and intrude unnecessarily upon the privacy of less powerful members of society. While police are sworn to uphold the Constitution, they are still “engaged in the often-competitive enterprise of ferreting out crime.” Therefore, it is not surprising that, in the course of intervening in drug traffic, the police have been so relentless in pushing their claimed authority relating to traffic stops to the absolute limits.

The Pennsylvania Supreme Court in *Alexander* touched on this and defended its holding by explaining that it is not entitled to ignore the Pennsylvania Constitution just because adhering to it would make law enforcement policies and procedures more difficult. However, modern policing in the United States, as a result of its troubled history, is full of institutional flaws and systematic and inequitable distribution of resources, power, and opportunity. Currently, the public does not trust the police, and increasing officer discretion will raise the temperature of car stops significantly. Courts are called on to “protect against abuses by all branches of government . . . protect minorities of all types from the majority, and protect the rights of people who can’t protect

198. Id.
200. As Justice Robert Jackson noted in his dissent in *Brinegar v. United States*, “the extent of any privilege of search and seizure without warrant which we sustain, the officers interpret and apply themselves and will push to the limit.” 338 U.S. 160, 182 (1949) (Jackson, J., dissenting).
201. Commonwealth v. Alexander, 243 A.3d 177, 198 (Pa. 2020). The Court stated that “we are not a policy branch, and we cannot ignore constitutional commands even if they make the work of police or prosecutors harder.” Id.
themselves.\textsuperscript{203} The current political climate, and its violent nature, warrant courts to consider factors outside its precedent.

Many scholars have advocated for courts to make greater use of empirical data regarding the danger of car stops when deciding cases involving regulating police conduct.\textsuperscript{204} For example, out of 1,036 police officers, only 6\% strongly agree that they have received adequate training for traffic stops involving noncompliant drivers.\textsuperscript{205} Studies looking at racial profiling in policing analyzed police traffic stop data and found Black drivers are more likely to be stopped, and stopped more frequently, in any given year.\textsuperscript{206} Furthermore, after an investigatory stop happens, the police are five times more likely to search the vehicle if the driver is Black than if the driver is White, even though the "hit rate," the rate at which contraband is found, for Blacks is less than half of what it is for Whites.\textsuperscript{207} Given these facts, the government should have an interest in ensuring law enforcement officers are properly trained to handle all situations and are equipped with the necessary techniques to deescalate potentially dangerous situations. The data reflect the need for greater and more specific instructions in policing, and a societal interest in crafting functional rules because, as Justice Sonia Sotomayor noted, court decisions do not exist in a vacuum and have real and significant consequences on people's daily lives.\textsuperscript{208} Improving how courts regulate the police requires new forms of partnerships to equip the judiciary with the type of empirical expertise that can inform their decisions.\textsuperscript{209}


\textsuperscript{205} Harrison, supra note 13. From April 22, 2021, to May 4, 2021, a total of 1,036 police officers completed an online survey that addresses several important issues police leaders should consider. "Only 6\% strongly agree that they have received adequate training for traffic stops involving noncompliant drivers; 46\% disagree or strongly disagree[,]" and 83\% agree. Id. "Since January 2019, 75\% report they have not received any hands-on training about removing a noncompliant driver from a vehicle; 35\% say they have received simulator or hands-on training on the use of less lethal tools with a noncompliant driver." Id. "About 42\% said their department has never provided traffic stop training; 50\% more said it occurs yearly. The remaining 8\% noted they received weekly or more frequent training." Id.


\textsuperscript{207} Bianca Velez, Do the Police Protect and Serve All People in the United States?: A Survey of the Problems Within Modern Policing and Solutions to Ensure the Police Protect and Serve Us All, 55 U.S.F. L. REV. 421, 427 (2021).


\textsuperscript{209} Velez, supra note 207.
3. Efficiency of Bright-Line Rules

In Alexander, the Pennsylvania Supreme Court had two choices: (1) keep Gary’s bright-line rule by confining a valid warrantless search to where probable cause alone is sufficient, or (2) risk blurring it by requiring law enforcement to establish a vague form of exigency on a case-by-case assessment. By choosing the latter, the court left the question of exigency unanswered and provided little guidance on how to go about answering the question. The court may better serve law enforcement by adopting a clear bright-line rule, one which will respond to any situational variances. Short of that, more specific guidance will be helpful.

In deciding cases, courts have an opportunity to inform and shape behaviors. The language of Alexander is hardly informative. To the extent that exigency is defined in the Alexander, the court cited to Mincey v. Arizona: “the exigencies of the situation make the needs of law enforcement so compelling that the warrantless search is objectively reasonable under the Fourth Amendment.” The Pennsylvania Supreme Court admits that the definition of exigency “has unquestionably been difficult for the courts of this Commonwealth.” Despite the ongoing challenge to define exigency, the Pennsylvania Supreme Court in Alexander stated, “but so what?” If the justices of this court—all of whom are extensively trained in the law and have legal resources at their fingertips—have difficulty determining what constitutes sufficient exigencies that permit the warrantless search of a vehicle, how can officers in the field be expected to make on-the-spot decisions in this regard and consistently reach the correct results?

The Pennsylvania courts’ struggle to interpret the permissible boundaries of a warrantless automobile search under Article I, Section 8 can serve as a prediction to how trial courts will continue to


211. One commentator argues that the “case-by-case due process approach” is defective because the approach “provided the Court with scant opportunity to shape and direct the behavior of law enforcement officers.” Charles J. Ogletree, Are Confessions Really Good for the Soul? A Proposal to Mirandize Miranda, 100 HARV. L. REV. 1826 (1987); Caperton v. A. T. Massy Coal Co., 556 U.S. 868, 891 (2009) (Roberts, J., dissenting) (“The Court’s new ‘rule’ provides no guidance to judges and litigants about when recusal will be constitutionally required,” because “a ‘probability of bias’ cannot be defined in any limited way.”).


render inconsistent rulings, absent specific guidance. This problem was particularly evident in Commonwealth v. White and Commonwealth v. Rodriguez, two cases with very similar facts but entirely opposite holdings. Both cases involved informants supplying police with information that the defendants were in possession of illegal narcotics and would be using vehicles to transport the contraband. In both cases, the police could not fully describe the particular vehicle being driven in the crime and tried to justify their warrantless searches of the vehicle based on unforeseen circumstances. In Rodriguez, the court upheld the search because the police did not know until they saw the defendant that she would be driving that particular vehicle, and therefore, a search warrant could not have been obtained. In White, the court did not uphold the search and stated that the police could have requested a search warrant “as particular as reasonably possible.” The inconsistent holdings in Rodriguez and White, two cases that are based on nearly identical facts, undermines the integrity of our criminal justice system by exposing the inability of a court to announce a consistent standard for law enforcement to follow.

Where there is a risk for inconsistent applications of a rule, courts opt for a workable bright-line rule that is both easy for officers to apply and for citizens to understand. In the context of search and seizure law, providing standardized bright-line rules that can be readily understood and implemented by the police is generally more effective in protecting constitutional rights. Moreover, drivers must also be given the opportunity to know in advance what conduct may subject them to a warrantless search. Bright-line rules satisfy this objective by providing detailed notice to the public on how to conduct themselves in potentially unlawful situations.

215. See supra notes 19–25 and accompanying text.
217. White, 669 A.2d at 899; Rodriguez, 585 A.2d at 989.
218. White, 669 A.2d at 898; Rodriguez, 585 A.2d at 990.
219. Rodriguez, 585 A.2d at 990–91. The Court also upheld the search as valid because the police did not know exactly where in the county defendant would be traveling on the date in question, therefore did not know which magistrate would have proper jurisdiction to issue a search warrant. Id. at 991.
220. White, 669 A.2d at 901, n.3.
221. See, e.g., Chimel v. California, 395 U.S. 752, 760 (1969) (citing numerous inconsistent decisions indicating that precedent cannot be rationally and consistently applied, creating the need for a more precise rule); New York v. Belton, 453 U.S. 454, 459 (1981) (citing numerous vehicle-search cases with similar facts and inconsistent holdings to show that this confusion led the Court to opt for a workable bright line rule).
However, for a bright-line rule to be effective, law enforcement must be able to comprehend the rule, such that police can refer to the rule in every search and seizure encounter. Rulings that are impossible to apply by the police have been deemed “useless rulings,” no matter how sophisticated and intricate they may sound to lawyers and judges.224

Pennsylvania courts have repeatedly noted that “rules governing law enforcement conduct must be easily discernible and capable of clear and consistent application.”225 Pennsylvania courts have articulated the value that eliminating a case-by-case exigency assessment brings to officers at automobile stops,226 several of which are recognized by Justice Castille.227 Common law adjudication “stands ready” to convert a case-by-case assessment into “a far more specific patchwork of rules.”228 Scholars have observed and noted conscious decisions by courts to “inject rule-like languages” into the interstices that standards leave open.229 Further observations reveal that courts engage in what has been called the “rulification of standards, developing sub-principles that guide their application of standards.”230

The need for a bright-line rule is not a novel idea. When Pennsylvania departed from the federal standard in the 1990s, dissenting judges and scholars urged the Pennsylvania Supreme Court to adopt the federal standard for some of the same reasons this Article

224. Id. (viewing highly sophisticated set of rules, “qualified by all sorts of ifs, ands, and buts and requiring the drawing of subtle nuances and hairline distinctions,” may be impossible for officers in the field to apply, despite being preferred by lawyers and judges).
227. Commonwealth v. Luv, 735 A.2d 87, 95 (Pa. 1999) (Castille, J., concurring) (advocating for bright line rules to prevent police officers from having to choose between taking the time to obtain a warrant and risk flight of the car, or, not obtain a warrant and risk suppression of the evidence obtained from the search); White, 669 A.2d at 909 (Castille, J., dissenting) (“This Court has previously adopted bright line rules where experience proved it to be difficult for law enforcement officials to administer more flexible rules based on the totality of the circumstances.”).
229. See Frederick Schauer, New Perspectives on Statutory Interpretation: The Tyranny of Choice and the Rulification of Standards, 14 J. CONTEMP. LEGAL ISSUES 893, 805 (2005) (“Whether it be by importing rules from elsewhere, or imposing rules of some sort on their own otherwise unconstrained decision-making, or filling decisional voids with three- and four-part tests, interpreters and enforcers of standards have tried to convert those standards into rules to a surprising degree . . . .”); see also Alan A. Fisher & Robert H. Lande, Efficiency Considerations in Merger Enforcement, 71 CALIF. L. REV. 1582, 1586 (explaining that an individual approach may result in too frequent error, and higher litigation costs).
Running a Red Light

argues. Justice James McDermott dissented sharply to *Sell* majority's departure from Fourth Amendment jurisprudence, claiming that this departure was unwarranted and dangerous. According to the dissent, when there is no discernible textual distinction between the Pennsylvania and United States constitutions, the Pennsylvania Supreme Court should adopt the reasoning of the U.S. Supreme Court. Justice McDermott opined that “absent compelling reason, textual or otherwise . . . the interests of this nation are best served by maintaining common standards of constitutional law throughout its separate jurisdictions.”

The divergent opinions in *Sell* exemplify the contrasting positions in an ongoing national debate concerning new judicial federalism: proponents champion the notion of the states as laboratories of justice and the need for independent interpretation of state constitutions to secure liberty, while critics believe that federal standards should be respected because disparate state standards will lead to unpredictable and chaotic results.

In 1998, former Chief Deputy District Attorney, Christian Fisanick, reacted to the Pennsylvania Supreme Court’s rejection of the federal automobile exception in *Commonwealth v. White* and *Commonwealth v. Labron*. Fisanick described hypothetical situations, based, in part on real cases, to illustrate some of the many difficulties and dangers associated with roadside searches. He offers a hypothetical scenario which he describes as “The Lone Police Officer,” to illustrate a realistic scenario where the Pennsylvania standard fails to adequately protect law enforcement. However, this scenario can also be used to illustrate the types of questions officers need to have answered in order to determine whether the threshold for the exigency requirement has been met. The scenario is as follows:

A lone police officer in a rural jurisdiction pulls over a carload of individuals for speeding. He identifies a large bag of drugs on the front seat through an open window. With the officer outnumbered by the suspects and with no backup readily available, should the Pennsylvania Constitution require impoundment of the vehicle and acquisition

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231. Fisanick, supra note 67, at 20.
233. *Id.* at 470.
234. Fisanick, supra note 67, at 15.
235. *Id.* at 17.
236. *Id.*
of a warrant in order for the officer to protect himself from drug dealers and their hidden weapons?\textsuperscript{237}

Is an encounter with a drug dealer one of exigency? How outnumbered must the officer be before there are exigent circumstances? How far away is his protective backup? How long must the officer wait for the warrant? These questions prompt the need for a sharp, bright-line rule with a straightforward application.\textsuperscript{238}

VI. CONCLUSION

It is undisputed that Pennsylvania citizens are entitled to the greater privacy protections under Article I, Section 8 than the Fourth Amendment. However, the Pennsylvania Supreme Court’s approach in \textit{Alexander} is unworkable. The court’s rejection of the federal automobile exception and failure to provide a working definition of exigency is counterproductive to its ultimate goal of protecting the privacy of its citizens. The federal automobile exception is functional for police officers in the field and judges in the courtroom to apply. It would ensure that defendants are treated the same in all contexts. The court should take this opportunity to establish a bright-line rule but, at the very least, provide specific guidance on defining “exigent circumstances,” recognizing its practical benefits to trial courts and officers in the field.

\textsuperscript{237} Id. Fisanick explains the answer to this question should be “no” because the officer’s safety would be jeopardized while waiting with the suspect until another officer arrives with a warrant and requiring the officer to obtain a warrant seems impractical. \textit{Id}.

\textsuperscript{238} Id.