No. 20160261-SC

IN THE

# UTAH SUPREME COURT

STATE OF UTAH,
*Plaintiff/Respondent,*

*v.*

ZACHARY RIGBY,
*Defendant/Petitioner.*

## Brief of Respondent

*On Writ of Certiorari to the Utah Court of Appeals*


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## STATEMENT OF JURISDICTION

This case is before the Court on a writ of certiorari to the Utah Court of Appeals in *State v. Rigby*, 2016 UT App 42, 369 P.3d 127 (Addendum A). The Supreme Court has jurisdiction under Utah Code Ann. § 78A-3-102(5) (West 2009).

## STATEMENT OF THE ISSUE

Does the automobile exception to the warrant requirement of the Utah Constitution's search and seizure provision, art. I, § 14, require an exigency apart from the mobility of the automobile?

*Standard of Review*. On certiorari, the Supreme Court reviews de novo the decision of the court of appeals. *State v. Verde*, 2012 UT 60, ¶13, 296 P.3d 673. "That said, '[t]he correctness of the court of appeals' decision turns, in

part, on whether it accurately reviewed the trial court's decision under the appropriate standard of review.'" *Id.* (quoting *State v. Levin*, 2006 UT 50, ¶15, 144 P.3d 1096). A trial court's decision on a motion to suppress is a mixed question of law and fact. The court's interpretation of the Utah Constitution is a question of law reviewed for correctness. *State v. Casey*, 2002 UT 29, ¶19, 44 P.3d 756. The court's other legal conclusions are also reviewed non-deferentially for correctness, including its application of the legal standard to the facts. *State v. Fuller*, 2014 UT 29, ¶17, 332 P.3d 937. But its underlying factual findings are reviewed for clear error. *Id.*

## CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES

**Utah Const. art. I, § 14**

> 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 warrant shall issue but upon probable cause supported by oath or affirmation, particularly describing the place to be searched, and the person or thing to be seized.

## STATEMENT OF THE CASE

### A. Summary of facts.

In March 2013, Deputy Brian Groves of the Cache County Sheriff's Office stopped the car Defendant was driving for running a stop sign. R82. Upon approaching the car, Deputy Groves "immediately detect[ed] the odor of both burnt and fresh marijuana coming from the vehicle." R82-83.

During the stop, Deputy Groves also noticed that Defendant and his two passengers were exhibiting "physical indicators of recent marijuana use," R82-83, including bloodshot eyes, droopy eyelids, a stoned look, and extreme nervousness. R60; *Rigby*, 2016 UT App 42, ¶3. A drug K-9 unit was summoned to the scene, arrived shortly after, and "positively indicated on the vehicle." R83. Officers thereafter searched the car and—after finding a small metal pipe for smoking marijuana and plastic bag of fresh marijuana—arrested Defendant. R60,83; *Rigby*, 2016 UT App 42, ¶3.

**B. Summary of proceedings.**

Defendant was charged with (1) driving with a measurable controlled substance in the body, a class B misdemeanor, (2) possession of a controlled substance in a drug-free zone, a class A misdemeanor, (3) possession of drug paraphernalia in a drug-free zone, a class A misdemeanor, and (4) failure to stop at a stop sign, a class C misdemeanor. R1-2. Defendant moved to suppress the drug evidence. R39-44. Following briefing and argument, R51-55,63-65,76, the trial court denied the motion on two independent grounds: (1) the warrantless search of the car was justified under the State automobile exception to the warrant requirement; and (2) the warrantless search of the car was justified by probable cause for Defendant's search and arrest. R82-85 (Addendum C).

Defendant thereafter pled guilty to driving with a measurable controlled substance in the body, a class B misdemeanor, and possession of a controlled substance, reduced to a class B misdemeanor, and the remaining charges were dismissed. R93-95. In so pleading, Defendant reserved his right to appeal the trial court's order denying his motion to suppress. R95. Defendant was sentenced to 180 days in jail on both counts, with all but two days suspended, and placed on supervised probation for one year. R107-08.

On appeal, Defendant challenged only the trial court's conclusion that the search was justified by the State automobile exception. *Rigby*, 2016 UT App 42, ¶6. He did not challenge the trial court's other basis for denying his motion—i.e., that the warrantless search of the car was justified by the drug arrest. *See id.* at ¶¶ 7-29. Even though Defendant failed to challenge all of the bases for the trial court's denial of his suppression motion, the court of appeals nevertheless addressed his sole challenge and held that the State automobile exception mirrors the federal exception: "we decline to depart from the path of federal law and conclude that under the automobile exception, ... the law enforcement officers in this case were only required to have probable cause to justify the search of Rigby's vehicle." *Id.* at ¶28.

Defendant petitioned for a writ of certiorari and, after the State stipulated thereto, this Court granted review.

## SUMMARY OF ARGUMENT

The trial court denied Defendant's suppression motion for two reasons: (1) the warrantless search of the car was justified under the State automobile exception to the warrant requirement; and (2) the warrantless search of the car was justified by virtue of probable cause supporting Defendant's arrest. Defendant challenged only one of those grounds on direct appeal. Accordingly, any decision on that ground cannot result in reversal of the trial court's order. This Court should therefore affirm the court of appeals' decision on the alternative ground that Defendant has failed to demonstrate why the trial court's order should be reversed.

In any event, the court of appeals correctly held that the State automobile exception to the warrant requirement is the same as the federal exception. The framers of the Utah Constitution, and the people who ratified it, intended that article I, section 14 of the Utah Constitution guarantee the same protections as those afforded under the Fourth Amendment. Defendant has not demonstrated otherwise. Indeed, the history of Section 14, as well as the historical case law governing searches of vehicles on the thoroughfares, demonstrates that a warrant is not required for mobile vehicles stopped so long as there exists probable cause to believe contraband will be found. No exigency apart from the mobility of the vehicle is required.

## ARGUMENT

### I.

### This Court should affirm the court of appeals' opinion on the alternative ground that Defendant failed on direct appeal to challenge all of the grounds upon which the district court denied his motion to suppress.

This Court should affirm the court of appeals' decision affirming the district court's denial of his motion to suppress, but should do so on alternative grounds. The issue raised on direct appeal, and again on certiorari review, was not the sole basis for the district court's denial of Defendant's motion to suppress. The district court denied the suppression motion on two, independent grounds—either of which supported its ruling. The court of appeals' opinion is thus advisory, and would, in no event affect the district court's ruling. This Court should thus affirm on the alternative ground that Defendant failed to demonstrate that the trial court erred in denying his suppression motion.

This Court has observed that "one of the most fundamental principles of the appellate process" is that the appellant "identify ... flaws in the district court's order that require[ ] reversal." *Allen v. Friel*, 2008 UT 56, ¶4, 194 P.3d 903. If an appellant "fails to attack the district court's reasons" for denying relief requested in the trial court, he "cannot demonstrate that the district court erred" in denying that relief and he cannot prevail on appeal.

*Golden Meadows Properties, LC v. Strand*, 2010 UT App 257, ¶17, 241 P.3d 375. Utah appellate courts thus "will not reverse a ruling of the trial court that rests on independent alternative grounds where the appellant challenges only one of those grounds." *Salt Lake County v. Butler, Crockett & Walsh Development Corp.*, 2013 UT App 30, 297 P.3d 38.

Nor is it proper for the Court to opine on issues that are not dispositive. Where any direction the Court " 'may provide ... may ultimately prove to be irrelevant,' or where there are 'possible circumstances under which [the Court] would not need to address [a constitutional claim],' to do so would be to impermissibly render an advisory opinion." *Clegg v. Wasatch County*, 2010 UT 5,¶26, 227 P.3d 1243 (quoting *Pett v. Autoliv ASP Inc.*, 2005 UT 2, ¶5, 106 P.3d 705, and *State v. Ortiz*, 1999 UT 84, ¶4, 987 P.2d 39).

Defendant argued below that, unlike the federal automobile exception to the warrant requirement, the State automobile exception requires exigency apart from a vehicle's mobility to justify a warrantless search. R39-44,63-64. He contended that there was no such exigency here and that the warrantless search of the car thus violated Section 14 of the Utah Constitution's Declaration of Rights. R39-44,63-64,120-26.

The district denied Defendant's motion to suppress, but on two independent grounds. The court ruled that under the automobile exception ar-

ticulated in *State v. Anderson*, 910 P.2d 1229 (Utah 1996), the warrantless search was justified because the officers had probable cause, "the vehicle was mobile[,] and the occupants were alerted to police presence." R83-84.[1] But the court ruled that the warrantless search was also justified for another independent reason. In its oral ruling, the court explained that the question is whether an officer can "arrest a person and then search the vehicle for suspected contraband ... which constituted the probable cause for the arrest in the first place." R138-39. The court concluded that an officer can. It ruled that such a search is "a natural extension of the person of the Defendant" because "probable cause existed to question and search the Defendant for illegal drugs," R84, and also to "take [him] from the vehicle and arrest him," R140.

The district court's ruling that the warrantless search of Defendant's car was justified by the probable cause for Defendant's arrest is consistent with Fourth Amendment jurisprudence. In *Arizona v. Gant*, the United States Supreme Court held that "circumstances unique to the vehicle context justify a search incident to a lawful arrest when it is 'reasonable to be-

[1] Two signed, but different, orders denying the motion to suppress appear in the record. R78-81; R82-85. The district court, however, struck the first order. R90. In addressing the State automobile exception, the court of appeals mistakenly relied on language from the district court's stricken order. *See Rigby*, 2016 UT App 42, ¶4 (quoting R80).

lieve evidence relevant to the crime of arrest might be found in the vehicle.'" 556 U.S. 332, 343 (2009) (quoting *Thornton v. United States*, 541 U.S. 615, 632 (2004)). *Gant* explained that "when a recent occupant is arrested for a traffic violation, there will be no reasonable basis to believe the vehicle contains relevant evidence." Id. at 343-44. But in other cases, like here, "the offense of arrest will supply a basis for searching the passenger compartment of an arrestee's vehicle and any containers therein." Id. at 344.

The district court did not rely on *Gant*, but came to the same conclusion under its analysis of the Utah Constitution's reasonableness requirement. R129 (observing that "the case before us is a Utah constitutional case"). The court reasoned that "under the totality of the circumstances and in balancing the interests of the State and the Defendant's privacy, the search of the vehicle in this matter was reasonable and was therefore lawful and valid." R84; *accord* R141-42. The court explained that under such circumstances, it is not reasonable to "burden officers with using their mobile technology just because it exists in their vehicles." R84; *accord* R140.

On direct appeal, Defendant challenged only the district court's application of the automobile exception under *Anderson*. He did not challenge the district court's independent State ground for denying the motion based on the same rationale applied in *Gant*. Accordingly, the court of appeals'

opinion on the automobile exception is advisory only. No matter what that court held on the automobile exception, it could not affect the district court's order denying the motion to suppress. So too on certiorari review. Even if this Court were to disagree with the court of appeals' opinion on the automobile exception, that holding would not be sufficient to reverse the district court's judgment and would amount to no more than an advisory opinion. This Court should therefore affirm the court of appeals' opinion, but on the alternative ground that Defendant failed to demonstrate why "the district court's order ... require[s] reversal." *Friel*, 2008 UT 56, ¶4.

**II.**

**In any event, Defendant has failed to demonstrate that the automobile exception to the Utah Constitution's warrant requirement should be different that the federal automobile exception.**

This Court has observed that "federal Fourth Amendment protections *may* differ from those guaranteed our citizens by [Section 14 of] our state constitution." *Brigham City v. Stuart*, 2005 UT 13, ¶ 10, 122 P.3d 506 (emphasis added), *overruled on other grounds*, 547 U.S. 398 (2006); *accord State v. Tiedemann*, 2007 UT 49, ¶34, 162 P.3d 1106. But as recognized by the court of appeals below, this Court has historically "considered the protections afforded to be one and the same." *State v. Watts*, 750 P.2d 1219, 1221 (Utah 1988). Even in those rare cases where the Court has examined an issue un-

der an independent state constitutional analysis, it has generally adopted the Fourth Amendment doctrine. *See, e.g., State v. DeBooy*, 2000 UT 32, ¶ 19, 996 P.2d 546 (adopting the "analysis and rationale" of Fourth Amendment jurisprudence in examining administrative highway checkpoints); *Watts*, 750 P.2d at 1221 (holding that like the Fourth Amendment, Section 14 does not protect against unreasonable private searches); *Sims v. Collection Div. of the Utah State Tax Comm'n*, 841 P.2d 6, 10, 14-15 (Utah 1992) (plurality opinion) (adopting analysis and rationale of *One 1958 Plymouth Sedan v. Pennsylvania*, 380 U.S. 693 (1965), in concluding that quasi-criminal proceedings are subject to the exclusionary rule).

In only one circumstance has a majority of this Court held that Section 14 provides greater protection than the Fourth Amendment. In *State v. Thompson*, the court held that, unlike the Fourth Amendment, Section 14 recognizes a legitimate expectation of privacy in bank records. 810 P.2d 415, 417-18 (Utah 1991) (rejecting the rationale of *United States v. Miller*, 425 U.S. 435 442 (1976)).[2] One other case often cited as an example of providing

[2] The protection afforded to bank records, however, was also provided by statute. *See* Utah Code Ann. § 78-27-45(1) (1990) (providing that the State may not obtain bank records by subpoena "without first obtaining written permission from the person whose financial transactions or other records of financial condition are to be examined, or obtaining an order from a court of competent jurisdiction permitting access to the information").

greater protections garnered the support of only a plurality: *State v. Larocco*, 794 P.2d 460, 464-71 (Utah 1990) (plurality opinion) (concluding, in essence, that a car thief has a legitimate expectation of privacy in the stolen car).

In sum, "the truism that article I, section 14 may provide greater protections to Utah citizens than the Fourth Amendment," *State v. Worwood*, 2007 UT 47, ¶19, 164 P.3d 397, does not mean that it provides broader protections generally.

### A. When interpreting article I, section 14 of the Utah Constitution, this Court should first look to the purpose and intent of its framers and the people who ratified it.

The threshold question is whether this Court should concern itself at all with Fourth Amendment jurisprudence when examining Section 14, and if so, under what circumstances it should "depart from federal Fourth Amendment doctrine and chart [its] own course." *State v. Brake*, 2004 UT 95, ¶16 n.2, 2004 UT 95. The answer to that question has long evaded a majority of this Court. *See Watts*, 750 P.2d at 1221 n.8 (observing that "a somewhat different construction may prove to be an appropriate method for insulating this state's citizenry from the vagaries of inconsistent interpretations given to the fourth amendment by federal courts"); *State v. Anderson*, 910 P.2d 1229, 1235 (Utah 1996) (Russon, J., joined by Howe, J., for plurality) ("Utah courts should construe article I, section 14 in a manner similar to construc-

tions of the Fourth Amendment except in compelling circumstances"), *id.* at 1239-40 (Stewart, J., concurring in result) (opining that "Utah ought not depart from federal search and seizure law in construing article I, section 14 simply because of some inconsistency in that law, or minor disagreement with it," but declining "to adopt the 'compelling circumstances' standard"); *id.* at 1241 (Durham, J., concurring and dissenting) (rejecting state constitutional analysis that is "presumptively dependent on federal law"). This Court should answer that question by turning to an examination of the intent and purpose of the framers who adopted the state constitution and of the people who ratified it.

"It is a cardinal rule of construction that constitutions should be construed in light of their framers' intent." *American Fork v. Crosgrove*, 701 P.2d 1069, 1072 (Utah 1985). In discerning that intent, "the starting point should always be the plain meaning of the textual language" itself. *American Bush v. City of South Salt Lake*, 2006 UT 40, ¶115, 140 P.3d 1235 (Durham, C.J., concurring in part and dissenting in part); *accord Tiedemann*, 2007 UT 49, at ¶ 37. This textual analysis should also include an examination of "other [related] constitutional provisions." *West*, 872 P.2d at 1015.

When the intent of the framers cannot be clearly discerned from the text of a provision and related provisions, the Court has "inform[ed] its tex-

tual interpretation with historical evidence of the framers' intent." *American Bush*, 2006 UT 40, ¶10. This may include (1) "'the background out of which [the provision] arose,'" *id*. (citation omitted); (2) the debates at the 1895 Utah Constitutional Convention, *American Fork City v. Crosgrove*, 701 P.2d 1069, 1072-73 (Utah 1985); (3) the historical source of the provision, such as the common law, *id*. at 1071-73; (4) statutory law enacted by the first Utah Legislature, *P.I.E. Employees Fed. Credit Union v. Bass*, 759 P.2d 1144, 1148 (Utah 1988); (5) "court decisions made contemporaneously to the framing of Utah's constitution in sister states with similar . . . constitutional provisions," *American Bush*, 2006 UT 40, at ¶ 11; (6) "the unique history" of the state, *Soc'y of Separationists, Inc. v. Whitehead*, 870 P.2d 916, 921 (Utah 1993); and (7) the "state's particular . . . traditions," *West v. Thomson Newspapers*, 872 P.2d 999, 1013 (Utah 1994).

In *Tiedemann*, the Court observed that historical arguments "do not represent a *sine qua non* in constitutional analysis." 2007 UT 49, at ¶ 37. The Court held that state constitutional analysis may also "rely on whatever assistance legitimate sources may provide in the interpretive process." *Id*. This is a marked departure from Utah jurisprudence. The Court thus suggested that it "'may also look to . . . sister state law, and policy arguments in the form of economic and sociological materials to assist . . . in arriving at a

proper interpretation of the provision in question.'" *Tiedemann*, 2007 UT 49, at ¶ 37 (citation omitted). But in *Whitehead*—the source of this language—the Court explained that "[e]ach of these types of evidence can help in divining *the intent and purpose of the framers*, a critical aspect of any constitutional interpretation." *Whitehead*, 870 P.2d at 921 n.6 (emphasis added). In other words, despite its expressed willingness to look at non-textual or non-historical evidence, the Court in *Whitehead* viewed "divining the intent and purpose of the framers" as the ultimate purpose for looking at those sources.

*Tiedemann* suggested that federal analysis which is flawed, confusing, or inconsistent may also justify independent analysis. *Tiedemann*, 2007 UT 49, at ¶ 37 (citing *State v. Larocco*, 794 P.2d 460, 467-70 (Utah 1990) (plurality opinion), and *State v. Watts*, 750 P.2d 1219, 1221 n.8 (Utah 1988)). But a perceived flaw in federal analysis is not a principled basis for departing from the federal standard. Indeed, interpreting the state provision differently simply because the court believes the federal analysis to be flawed is not an interpretive framework at all. It is reactive and result-oriented, and is irrelevant to a determination of the framers' intent.

As explained in Justice Durrant's concurring opinion in *American Bush*, "a historical analysis of our state constitution is the most appropriate

interpretive course to follow when confronted with constitutional questions." *American Bush*, 2006 UT 40, at ¶ 86 (Durrant, J., concurring). In this context, it is the most appropriate method for determining whether Section 14 provides broader search and seizure protections than the Fourth Amendment. This interpretive framework anchors the judicial enterprise "to the text of the constitution as understood and intended by its framers and the voters who ratified it" and "provides stability to state government while remaining true to the principle that it is the people of this state who should ultimately determine how our society should be structured." *Id*. at ¶¶ 83-84; *accord* Paul G. Cassell, *The Mysterious Creation of Search and Seizure Exclusionary Rules Under State Constitutions: The Utah Example*, 1993 Utah L. Rev. 751, 774-80 (1993) [hereinafter "*The Utah Example*"] (endorsing "historically-based" approach that incorporates neutral principles).

### B. Article I, section 14 of the Utah Constitution was generally intended to provide the same protections afforded under the Fourth Amendment.

An examination of the text, background, and history of article I, section 14 reveals that its framers, and the people who ratified it, generally intended to guarantee the same protections afforded under the Fourth Amendment.

**1. The text of Section 14 is the surest indication that the protections afforded thereunder were intended to mirror those of the Fourth Amendment.**

The language of Section 14 "contains the surest indication of the intent of its framers and the citizens of Utah who voted it into effect." *American Bush*, 2006 UT 40, ¶16. In all relevant respects, Section 14 is identical to the Fourth Amendment. It differs only in punctuation, capitalization, and the omission of the unnecessary "and" that precedes "particularly" in the Fourth Amendment:

> **Fourth Amendment** (*differences identified with editing marks*)
>
> 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~~s~~ shall issue~~,~~ but upon probable cause~~,~~ supported by Oath or affirmation, ~~and~~ particularly describing the place to be searched~~,~~ and the persons~~s~~ or things~~s~~ to be seized.
>
> **Article I, Section 14**
>
> 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 warrant shall issue but upon probable cause supported by oath or affirmation, particularly describing the place to be searched and the person or thing to be seized.

U.S. Const. amend. IV; Utah Const. art. I, § 14.

Nothing in the text of Section 14 indicates any enlargement or expansion of rights beyond those afforded under the Fourth Amendment. Like the Fourth Amendment, Section 14 secures the right of the people "against un-

reasonable searches and seizures," and like the Fourth Amendment, it requires that warrants be based "upon probable cause," be "supported by oath or affirmation," and "particularly describ[e] the place to be searched[,] and the person(s) or thing(s) to be seized." *Id*. As further explained below, this identity of language is strongly indicative of the framers' intent to provide protections identical to those of the Fourth Amendment.

**2. The evolution of Utah's search and seizure provision suggests that Utah's framers intended to provide protections that mirrored the Fourth Amendment.**

The evolution of Utah's search and seizure provision also suggests that the framers intended to provide Utah citizens with the same protections as those afforded under the Fourth Amendment. The constitutional convention of 1895 represented the territory's sixth attempt at statehood. *See* Linda Thatcher, *A Chronology of Utah Statehood*, Beehive History 21, at 28-32 (1995). The search and seizure provision of the territory's six proposed constitutions evolved from a version unlike the Fourth Amendment to a version that, as discussed, is materially identical to the Fourth Amendment:

> **1849 Draft.** The people shall be secure in their persons, houses, papers, and possessions, from unreasonable searches and seizures.[3]

[3] 1849 Draft Constitution of the State of Deseret, Art. VIII, sec. 6, reproduced in Laws of Utah 44, 55 (1855) [hereinafter "1849 Draft Const., art. VIII, § 6"].

**1862 Draft.** The people shall be secure in their persons, houses, papers, and possessions, from unreasonable searches and seizures.[4]

**1872 Draft.** The right of the people to be secure in their persons, houses, papers and effects, against unreasonable seizures and searches shall not be violated; and no warrant shall issue but on probable cause, supported by oath or affirmation, particularly describing the place or places to be searched, and the person or persons, and thing or things to be seized.[5]

**1882 Draft**. 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 warrant shall issue but on probable cause, supported by oath or affirmation, particularly describing the place or places to be searched, and the person or persons, and thing or things, to be seized.[6]

**1887 Draft.** 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 warrant shall issue but on probable cause, supported by oath or affirmation, particularly describing the place to be searched, and the persons or things to be seized.[7]

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[4] 1862 Draft Constitution of the State of Deseret, Art. II, sec. 5, as reported in THE DESERET NEWS, Jan. 29, 1862, at 242 [hereinafter "1862 Draft Const., art. II, § 5."].

[5] 1872 Draft Constitution of the State of Deseret, art. I, sec. 18, as reported in THE DESERET NEWS, Mar. 6, 1872, at 53 [hereinafter "1872 Draft Const., art. I, § 18"].

[6] 1882 Draft Constitution of the State of Deseret, art. I, sec. 16, as reported in Constitution of the State of Utah: Adopted by the Convention, April 27, 1882 [hereinafter "1882 Draft Const., art. I, § 16"].

[7] 1887 Draft Constitution of the State of Utah, art. I, sec. 19, as reported in THE DESERET NEWS, Jul. 13, 1887, at 412 [hereinafter "1887 Draft Const., art. I, § 19"].

> **1895.** 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 warrant shall issue but upon probable cause supported by oath or affirmation, particularly describing the place to be searched and the person or thing to be seized.[8]

The 1849 and 1862 drafts were identical, and included only a reasonableness clause. They did not include a warrant clause, as found in the Fourth Amendment and almost all state constitutions of the time. *See* State-by-State Comparison Chart [hereinafter "CC"] (Addendum B). And rather than tracking the reasonableness language of the Fourth Amendment, the 1849/1862 version tracked the language found in the Delaware, Pennsylvania, and Connecticut constitutions (using active voice and referring to "possessions" rather than "effects"). *See* CC, B1-2.[9]

Subsequent drafts adopted the format of the Fourth Amendment, incorporating both a reasonableness clause and a warrant clause. These versions also abandoned the active voice/ "possessions" language of Delaware, Pennsylvania, and Connecticut, in favor of Fourth Amendment phraseolo-

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[8] Utah Const. art. I, sec. 14; 2 Proceedings at 1856.

[9] The constitutions of Massachusetts, South Carolina, New Hampshire, Kentucky, Tennessee, Mississippi, Alabama, Maine, Michigan, and Texas also substantially tracked the reasonableness clause language of Delaware, Pennsylvania, and Connecticut. *See* CC, at B2-7. The Rhode Island, Vermont, and Ohio constitutions referred to "possessions" rather than "effects," but used the passive "shall not be violated" language. *See* CC, at B4-5.

gy. While similar to the Fourth Amendment, the 1872 version appears to have "simply incorporated Nevada's search and seizure guarantee." Paul G. Cassell, *Search and Seizure and the Utah Constitution: The Irrelevance of the Antipolygamy Raids*, 1995 BYU L. Rev. 1, 3 (1995) [hereinafter "*Antipolygamy Raids*"]. "More than 120 copies of the Nevada Constitution were printed and distributed to the delegates" at the convention. *Id*. The Utah delegates thereafter adopted a search and seizure provision that, but for some differences in capitalization, was identical to that found in the Nevada Constitution, with its somewhat unique and awkward language.[10] It thus secured the right against unreasonable "*seizures and searches*" and provided that warrants may not issue "but *on* probable cause, . . . particularly describing *the place or places to be searched, and the person or persons, and thing or things to be seized*." 1872 Draft Const., art. I, sec. 18 (emphasized language denoting differences from Fourth Amendment); CC, at B9.

The 1882 version abandoned the "seizures and searches" language of the Nevada model, adopting instead the "searches and seizures" language of the Fourth Amendment. *See* 1882 Draft Const., art. I, § 16. Other than some punctuation differences, it made no other changes to the Nevada

[10] Utah's version only differed in that unlike the Nevada provision, it did not capitalize "oath" or "affirmation." *See* CC, at B9.

model. The 1887 version moved further away from the Nevada model, discarding the awkward warrant clause language. *See* CC, at B9. The 1887 version instead tracked the language of the Fourth Amendment, requiring that warrants "particularly describ[e] the place to be searched, and the persons or things to be seized." 1887 Draft Const., art. I, § 19; U.S. Const. amend. IV.

The final and current search and seizure provision, adopted at the Constitutional Convention of 1895, represented a final repudiation of the Nevada model, replacing "on probable cause" with the Fourth Amendment language, "upon probable cause." *Id*. As explained above, the 1895 version is materially identical to the Fourth Amendment, making only minor stylistic changes to the Fourth Amendment language.

The framers chose to mirror the language of the Fourth Amendment, even though they had a variety of other models to choose from. They might have chosen to pattern the search and seizure guarantee after the more broadly worded Washington provision, which stated that "[n]o person shall be disturbed in his private affairs, or his home invaded, without authority of law." Wash. Const. art. I, § 7 (Oct. 1, 1889); *see also The Utah Example*, *supra*, at 751, 801 & n.312. They might have specified that the probable cause showing be made in writing or by affidavit, as required under the constitutions of Rhode Island, Illinois, Missouri, Colorado, South Dakota, Montana,

Idaho, and Wyoming. *See* CC, at B4, B6, B9-10. They might have chosen to adopt the language used by some of the original thirteen states. *See* CC, at B1-4. Or, they might have added to the wording of the Fourth Amendment, as did Nevada and other states. *See*, *generally*, CC, at B4-9. Instead, they adhered to the language of the Fourth Amendment.

In sum, the evolution of Utah's search and seizure provision—from a single reasonableness clause (fashioned in the language of our first two states), to the Nevada model (with its unique wording), to the near replica of the Fourth Amendment—suggests that Utah's framers were satisfied with the protections afforded under the Fourth Amendment and intended to secure for Utahns those same protections. Indeed, given the evolving history of Utah's provision, which culminated in the adoption of a provision mirroring the Fourth Amendment, "it is difficult to argue that the Utah provision should be more broadly interpreted." *Antipolygamy Raids*, *supra*, at 5.

**3. The action taken by Utah's framers at the 1895 Convention, together with their debates and statements, suggest that they intended to provide protections that mirrored the Fourth Amendment.**

The proceedings of the Constitutional Convention of 1895 also offer important clues regarding the framers' intent. On the fifteenth day of the Convention, Heber M. Wells submitted the report of the Committee on the Preamble and Declaration of Rights ("Rights Committee"). 1 *Official Report*

*of the Proceedings and Debates of the Convention Assembled at Salt Lake City on the Fourth Day of March, 1895, to Adopt a Constitution for the State of Utah* 200 (Salt Lake City, Star Printing Co. 1898) [hereinafter "*Proceedings*"]. Two days later, the Convention began its consideration of the proposed declaration of rights. *Proceedings*, at 228-29. On the twenty-second day, "Section 14 was read and passed without amendment" or discussion. *Id*. at 319.

Although the delegates were silent regarding Section 14, the actions taken by the delegates, and their statements and debates, offer significant insight into their intent as to Section 14. Of most significance was a written address to the people of Utah recommending ratification, which declared that "[t]he inspiration behind the declaration of rights came from the great parent bill of rights framed by the fathers of our country." 2 *Proceedings* 1847. The framers thus viewed the Bill of Rights as the starting point, or foundation, upon which the declaration of rights was built. That said, they also understood that they were not obligated to provide protections identical to the Bill of Rights. Thus, Dennis Clay Eichnor, a member of the Rights Committee, stated that he "consulted [all] forty-four state constitutions, in preparing [the] declaration of rights. *Id*. at 102.

An examination of the declaration of rights, as adopted by the Convention, reveals that the framers generally retained the fundamental guar-

antees of the Bill of Rights. In many instances they borrowed liberally from other state constitutions to clarify, supplement, or otherwise modify the federal right.[11] In other words, they built upon the foundation of the "great

[11] *See, e.g.* Utah Const. art. I, § 1 (adding that all men have the right "to worship according to the dictates of their consciences" and "to communicate freely their thoughts and opinions, being responsible for the abuse of that right"); Utah Const. art. I, § 4 (incorporating First Amendment religious liberty clauses but adding that "[t]he rights of conscience shall never be infringed," that "[t]here shall be no union of church and State," that participation in elections and juries may not be conditioned on religious beliefs, and that money may not be appropriated for religious functions or establishments); Utah Const. art. I, § 6 (specifying that the people's right to bear arms is "for their security and defense"); Utah Const. art. I, § 9 (prohibiting "unnecessary rigor" of prisoners in addition to prohibiting excessive bails and fines, and cruel and unusual punishment, as found in the Eighth Amendment); Utah Const. art. I, § 10 (expounding on the right to a jury trial); Utah Const. art. I, § 12 (adding the right to have "a copy" of the accusation, "the right to appear and defend in person," the right "to testify in [one's] own behalf," and "the right to appeal in all cases," providing that "the accused, before final judgment, [could not] be compelled to advance money or fees to secure the[se] rights," and adding that "a wife shall not be compelled to testify against her husband, nor a husband against his wife"); Utah Const. art. I, § 13 (permitting initiation of criminal prosecution by grand jury indictment or, unlike Fifth Amendment, "by information after an examination and commitment by a magistrate"); Utah Const. art. I, § 15 (adding that freedom of speech and of the press may not be restrained and setting the parameters for defamation law); Utah Const. art. I, § 19 (defining treason using the same terminology as U.S. Const., art. III, § 3, but unlike art. III, § 3, not recognizing that a conviction for treason can be based on the traitor's confession in open court); Utah Const. art. I, § 20 (providing the same rights of the Third Amendment regarding the quartering of soldiers, but adding a provision that "[t]he military shall be in strict subordination to the civil power"); Utah Const. art. I, § 22 (prohibiting the taking of private property for public use without just compensation, as in the Fifth Amendment, but adding that private property may not be "damaged for public use without just compensation").

parent bill of rights." 2 *Proceedings* 1847. In other instances, however, the language of other federal provisions was left unaltered (save for stylistic changes). As discussed, the framers left unaltered the language of the Fourth Amendment in Section 14. *Compare* U.S. Const. amend. IV *with* Utah Const. art. I, § 14. They also left unaltered the language of the Thirteenth Amendment, prohibiting slavery, in Section 21. *Compare* U.S. Const. amend. XIII *with* Utah Const. art. I, § 21. Section 5, governing the privilege of the writ of habeas corpus, also tracks the language of its federal counterpart, article I, section 9, clause 2 of the United States Constitution. *Compare* U.S. Const. art. I, § 9, cl. 2 *with* Utah Const. art. I, § 5. Although the delegates were silent as to Section 14, sections 5 and 21 generated debate.

The debates respecting these latter two provisions are particularly instructive when assessing the framers' intent in choosing language that tracked the language of the United States Constitution.

Section 21 (proposed as section 22) was proposed by the Rights Committee to read:

> Neither slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist in this State.

1 *Proceedings* 326. As noted, this tracked the language of the Thirteenth Amendment:

> Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been unduly convicted, shall exist within the United States, or any place subject to their jurisdiction.

U.S. Const. amend. XIII. Orson Whitney moved to amend the proposed provision, so "that the word 'whereof' be stricken out and the words, 'of which' be substituted." 1 *Proceedings* 326. This proposal to amend was swiftly opposed:

> Mr. EICHNOR. I think that this is the language of the Constitution of the United States.
>
> Mr. WELLS: Exactly.
>
> Mr. EICHNOR: I believe in adhering to the Constitution of the United States when we copy it.
>
> Mr. WHITNEY: It is a hundred years old.

1 *Proceedings* 326. Following this discussion, the question was taken on the motion and "the amendment was rejected." 1 *Proceedings* 326.

The debate regarding Section 5 reveals why the delegates believed in adhering to federal constitutional language. Unlike Section 21, Section 5 was originally proposed in language that differed from the United States Constitution:

> The privilege of the writ of habeas corpus shall not be suspended, unless, when in case of rebellion or invasion, the public safety *imperatively demands it*.

1 *Proceedings* 252 (emphasis denoting difference from U.S Const. art. I, § 9). On objection of one of the delegates, the word "imperative" was stricken, as it was not found in any of the other constitutions. 1 *Proceedings* 252. Another delegate proposed that the provision be amended "by adding 'in such a manner as shall be prescribed by law.'" 1 *Proceedings* 252-53. But Charles Varian opposed the amendment, asking why it "cannot . . . be safely left to such occasions and to be exercised in accordance with the general precedent and history of its exercise in this country." 1 *Proceedings* 252-53. Others opposed the amendment on grounds that both the United States Constitution and most state constitutions did not include such language. *See* 1 *Proceedings* 253-57. The proposed amendment was thus rejected. Delegate Evans from Weber County then proposed that the words "demands it" be replaced with the words, "requires it," as provided in the United States Constitution:

> I just want to say that is the exact language of the Constitution of the United States and ["demands it"] might be considered in a different way. The words, 'requires it' have a well understood meaning by the construction of the courts. Now it may be considered differently if we use the words 'demands it,' because it might be that there should be some demand made upon the authorities whenever the public safety requires it. For that reason, I think it would be better to use the usual language.

1 *Proceedings* 257. The question was thereafter taken upon the motion and the amendment was adopted by the Convention, resulting in a provision

that tracked the language of the United States Constitution. 1 *Proceedings* 257.

These debates thus reveal that when the framers copied language from the United States Constitution, they did so to ensure that the provision would not "be considered in a different way." 1 *Proceedings* 257. When using language from the United States Constitution, or other constitutions, they did not seek to recognize rights that might be interpreted differently, but rather to guarantee rights that were firmly established by the courts. They sought stability and uniformity.

Another such example was the debate regarding the right of the accused "to be confronted by the witnesses against him." Utah Const. art. I, § 12. Mr. Van Horne proposed an exception to the confrontation right, where "evidence by deposition may be authorized by law." 1 *Proceedings* 306. This proposed amendment was met with fierce opposition on the grounds that it represented a departure from established precedent. In opposing the amendment, Charles Varian remarked that it "proposed to interpolate something new here involving something that puts us all at sea; again, requiring, as of necessity it will, other judicial construction, and interpretation . . . ." 1 *Proceedings* 307. Concluding his remarks, Mr. Varian then asked:

> Why not leave it as it is? *Why not leave it within the ancient landmarks, so that every lawyer and every layman may know just*

> *what this does mean*? *Judicial decision after decision, all in one line,* particularly have determined the meaning of this language as the committee have reported it here. *Why should we stray away and put something in there that will tend to bring about and will doubtless bring about this confusion and conflict in interpretation?*

1 *Proceedings* 307-08 (emphasis added). The proposed amendment was thereafter rejected. 1 *Proceedings* 308. Once again, the framers rejected language that would inject uncertainty in the right provided, in favor of language whose meaning was well established.

As noted, the framers did not engage in any such discussions regarding Section 14. But as discussed, they set as their inspiration the Bill of Rights and did not depart from the language of that charter in drafting Section 14. Absent evidence to the contrary, therefore, this Court should presume that the Constitution's framers, and the people who ratified it, intended that the protections afforded under the Fourth Amendment and Section 14 "be one and the same." *Watts*, 750 P.2d at 1221.

### C. Warrantless searches of vehicles based on probable cause alone have been recognized as reasonable since the inception of the nation.

In light of the foregoing presumption, this Court should depart from Fourth Amendment precedent only "in compelling circumstances," *Anderson*, 910 P.2d at 1235 (plurality opinion), e.g., relevant case law or other his-

torical evidence at or near the time of the framing suggesting a different understanding.

Defendant asks the Court to adopt a different interpretation based on inconsistencies, vagaries, or changes in federal jurisprudence. Pet.Brf. 6-8. But as explained by Justice Stewart in his concurring opinion in *Anderson*, "Utah ought not depart from federal search and seizure law in construing article I, section 14 simply because of some inconsistency in that law." 910 P.2d at 1239 (Stewart, J., concurring in result). But even if such were a valid basis to depart from Fourth Amendment jurisprudence, no such inconsistency or change exists here. Indeed, all the evidence of the law of search and seizure supports the court of appeals' conclusion that a warrantless search of a mobile vehicle is supported by probable cause alone.

The "automobile exception" to the Fourth Amendment's warrant requirement was first recognized in *Carroll v. United States*, 267 U.S. 132 (1925)—a decision that issued just 30 years after the Utah Constitution's adoption. *Carroll* held that "the true rule is that if a 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." *Id.* at 149.

In support, *Carroll* relied on a case that predated the Utah Constitution's adoption by almost 10 years—*Boyd v. United States*, 116 U.S. 616, 623 (1886)—which recognized the difference between seizing evidence of criminality and contraband. *Carroll*, 267 U.S. at 149-50. But more importantly for purposes here, *Carroll* looked to the actions of the First Congress as persuasive evidence of what the Framers who adopted the Bill of Rights understood the Constitution to mean. In this vein, the Act of 1789 authorized, on appropriate suspicion, the search and seizure of goods in transit without a warrant:

> "That every collector, naval officer and surveyor, or other person specially appointed by either of them for that purpose, shall have full power and authority, *to enter any ship or vessel*, in which they shall have reason to suspect any goods, wares or merchandise subject to duty shall be concealed; and therein to search for, seize, and secure any such goods, wares or merchandise ...."

*Id.* at 150 (quoting 1 Stat. 43) (emphasis added). But the Act did not authorize the warrantless search and seizure of such goods in homes or buildings:

> "[A]nd if [such a collector, naval officer, surveyor, or other specially appointed person] shall have cause to suspect a concealment thereof, in any *particular dwelling, house, store, building, or other place*, they or either of them shall, *upon application on oath or affirmation to any justice of the peace, be entitled to a warrant* to enter such house, store, or other place (in the daytime only) and there to search for such goods, and if any shall be found, to seize and secure the same for trial ...."

*Id.* at 150-51 (quoting 1 Stat. 43) (emphasis added).

Drawing from the Act of 1789 and ensuing legislation, *Carroll* concluded "that the guaranty of freedom from unreasonable searches and seizures by the Fourth Amendment has been construed, practically since the beginning of the government, as recognizing a necessary difference between a search of a store, dwelling house, or other structure in respect of which a proper official warrant readily may be obtained and a search of a ship, motor boat, wagon, or automobile for contraband goods, where it is not practicable to secure a warrant, because the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant must be sought." *Id.* at 153. And turning to the circumstances when a warrantless search of a vehicle may be made, *Carroll* held that "those lawfully within the country, entitled to use the public highways, have a right to free passage without interruption or search unless there is known to a competent official, authorized to search, probable cause for believing that their vehicles are carrying contraband or illegal merchandise." *Id.* at 154.

In sum, *Carroll* held that due to the mobility of a vehicle, a warrantless search of a vehicle that is stopped on the roadway is reasonable under the Fourth Amendment if there is probable cause to believe it contains contraband. The Supreme Court has never strayed from that principle.

In *Cooper v. California*, the Court held that "searches of cars that are constantly movable may make the search of a car without a warrant a reasonable one although the result might be the opposite in a search of a home, a store, or other fixed piece of property." 386 U.S. 58, 59 (1967). In *Chambers v. Maroney*, the Court again recognized that "[i]n terms of circumstances justifying a warrantless search, the Court has long distinguished between an automobile and a home or office." 399 U.S. 42, 48 (1970). *Chambers* thus reiterated that a warrant is unnecessary for the search of a vehicle because "the car is movable, the occupants are alerted, and the car's contents may never be found again if a warrant must be obtained." *Id.* at 51. In *Cardwell v. Lewis*, the Court recognized that the underlying factor for the automobile exception "has been the exigent circumstances that exist in connection with movable vehicles," i.e., "the opportunity to search is fleeting since a car is readily movable.'" 417 U.S. 583, 589 (1974) (quoting *Chambers*, 399 U.S. at 50-51). In *United States v. Ross*, the Court reiterated *Carroll's* conclusion that warrantless vehicle searches based on probable cause are reasonable "[g]iven the nature of an automobile in transit." 456 U.S. 798, 806-07 (1982). And in *California v. Carney*, the Court again observed that its cases "have consistently recognized ready mobility as one of the principal bases of the automobile exception." 471 U.S. 386, 390 (1985).

Notwithstanding these clear pronouncements, some lower courts began to read the Supreme Court's cases as requiring additional exigency, apart from an automobile's mobility. But in two per curiam decisions, the Supreme Court reiterated that it has never required exigency beyond the ready mobility of a vehicle. In *Pennsylvania v. Labron*, the Court held that lower court decisions holding otherwise were based "on an incorrect reading of the automobile exception to the Fourth Amendment's warrant requirement." 518 U.S. 938, 938-39 (1996) (per curiam). *Labron* emphasized that the automobile exception has from its inception been "based on the automobile's ready mobility,' an exigency sufficient to excuse failure to obtain a search warrant once probable cause to conduct the search is clear." *Id.* at 940. And three years later in *Maryland v. Dyson*, the Court again held that "under [its] established precedent" since *Carroll*, "the 'automobile exception' has no separate exigency requirement." 527 U.S. 465, 466-67 (1999) (per curiam).[12]

[12] Some cases have recognized that warrantless automobile searches based on probable cause are also justified "'because the expectation of privacy with respect to one's automobile is significantly less than that relating to one's home or office.'" *California v. Carney*, 471 U.S. 386, 390 (1985) (citation omitted). But that fact does not detract from the original reason identified by the Court for upholding warrantless automobile searches.

The plurality in *Anderson* saw it no differently, holding that "exigent circumstances exist when 'the car is movable, the occupants are alerted, and the car's contents may never be found again if a warrant must be obtained.' " 910 P.2d at 1237 (plurality opinion) (quoting *Chambers*, 399 U.S. at 51).

Defendant argues that the ability of officers to apply for a warrant electronically changes the calculus. Pet.Brf. 9-10. Not so. Seizing a car to await a warrant requires the same probable cause and exigency required to search the car. As explained in *Chambers*, there is "no constitutional difference between on the one hand seizing and holding a car before presenting the probable cause issue to a magistrate and on the other hand carrying out an immediate search without a warrant. Given probable cause to search, either course is reasonable." 399 U.S. at 51-52. The Court in *Ross* explained that permitting either course of action is reasonable under the Fourth Amendment—"based on the practicalities of the situations presented and a realistic appraisal of the relatively minor protection that a contrary rule would provide for privacy interests." 456 U.S. at 807 n.9.

## CONCLUSION

For the foregoing reasons, the Court should affirm the judgment of the Court of Appeals.

Respectfully submitted on January 9, 2017.

SEAN D. REYES
Utah Attorney General

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JEFFREY S. GRAY
Assistant Solicitor General
Counsel for Respondent

## CERTIFICATE OF COMPLIANCE

I certify that in compliance with rule 24(f)(1), Utah R. App. P., this brief contains 8,523 words, excluding the table of contents, table of authorities, and addenda. I further certify that in compliance with rule 27(b), Utah R. App. P., this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in Book Antiqua 13 point.

_____

JEFFREY S. GRAY
Assistant Solicitor General

## CERTIFICATE OF SERVICE

I certify that on January 9, 2017, a copy of the Brief of Respondent were ☑ mailed ☐ hand-delivered to:

Brandon J. Smith
Law Offices of Brandon J. Smith LLC
648 Summerwilde Avenue
River Height, UT 84321

Also, in accordance with Utah Supreme Court Standing Order No. 8, a courtesy brief on CD in searchable portable document format (pdf):

☐ was filed with the Court and served on appellant.

☑ will be filed and served within 14 days.

_____

# ADDENDA

**ADDENDUM A**

*State v. Rigby*, 2016 UT App 42, 369 P.3d 127

# THE UTAH COURT OF APPEALS

STATE OF UTAH,
Appellee,
*v.*
ZACHARY RIGBY,
Appellant.

Opinion
No. 20140553-CA
Filed March 3, 2016

First District Court, Logan Department
The Honorable Brian G. Cannell
No. 135100370

Brandon J. Smith, Attorney for Appellant

James Swink and Aaron M. Jossie, Attorneys
for Appellee

JUDGE STEPHEN L. ROTH authored this Opinion, in which JUDGE GREGORY K. ORME and SENIOR JUDGE JAMES Z. DAVIS concurred.[1]

ROTH, Judge:

¶1 Zachary Rigby appeals his conviction for driving with a measurable controlled substance in the body and possession or use of a controlled substance, both class B misdemeanors. Rigby challenges the trial court's denial of his motion to suppress evidence that the police found during a warrantless search of his vehicle. Rigby contends that the Utah Constitution provides its

1. Senior Judge James Z. Davis began his work on this case as a member of the Utah Court of Appeals. He retired from the court, but thereafter became a Senior Judge. He completed his work on this case sitting by special assignment as authorized by law. *See generally* Utah R. Jud. Admin. 11-201(6).

citizens greater protection against unreasonable searches than the United States Constitution because Utah courts have required police officers to have both probable cause and exigent circumstances when performing a warrantless search under the automobile exception. He concedes the officers had probable cause to search his automobile following the traffic stop but asserts that they violated his constitutional rights by conducting the search without a warrant in the absence of exigent circumstances. Because we are reluctant to diverge from our supreme court's historical pattern of paralleling federal search and seizure law, we conclude that law enforcement officers were only required to have probable cause to justify the search of Rigby's vehicle under the automobile exception to the warrant requirement. Accordingly, we affirm.

## BACKGROUND

¶2 Ordinarily, "[w]e recite the facts in the light most favorable to the trial court's findings from the suppression hearing." *State v. Giron*, 943 P.2d 1114, 1115 (Utah Ct. App. 1997) (citation and internal quotation marks omitted); *see also State v. Patefield*, 927 P.2d 655, 656 (Utah Ct. App. 1996). But for purposes of Rigby's motion to suppress and, by extension, this appeal, both parties have stipulated to the facts as presented in the original police report. "A stipulation of fact filed with and accepted by a court . . . is conclusive of all matters necessarily included in the stipulation." *Yeargin, Inc. v. Auditing Div. of Utah State Tax Comm'n*, 2001 UT 11, ¶ 20, 20 P.3d 287 (citation and internal quotation marks omitted); *see also Prinsburg State Bank v. Abundo*, 2012 UT 94, ¶ 14, 296 P.3d 709 ("[W]hen a court adopts a stipulation of the parties, the issues to which the parties have stipulated become settled . . . ." (citation and internal quotation marks omitted)). Therefore, we recite the facts in accordance with the parties' stipulation.

¶3 On March 28, 2013, a police officer pulled Rigby's automobile over for a stop sign violation. Upon approaching the vehicle, the police officer could "[i]immediately . . . detect[] the odor of both burnt and fresh marijuana coming from the vehicle." Rigby and the two other occupants were "exhibiting physical indicators of recent marijuana use, including bloodshot eyes, droopy eyelids and a stoned look," along with acting "extremely nervous" during the traffic stop. Additional officers, including a K9 officer, were called to the location. The officer who initiated the traffic stop then "explained [to Rigby] that [he] was going to be searching the vehicle, not only based on the fact that [he] could smell the marijuana in the vehicle but because the drug dog had given a positive indication as well." Two officers then searched Rigby's vehicle; they recovered a small metal pipe with marijuana residue and plastic bags containing fresh marijuana. Rigby was arrested and charged with possession of drug paraphernalia, a class A misdemeanor; driving with a measurable controlled substance in the body and possession or use of a controlled substance, both class B misdemeanors; and failure to stop at a stop sign, a class C misdemeanor.

¶4 Rigby filed a motion to suppress "[a]ll evidence seized and any statement obtained" "as a result of the unlawful searches" conducted "in violation of the Utah Constitution." At the evidentiary hearing on Rigby's motion, he conceded that the "odor of marijuana was sufficient" to establish probable cause but argued that exigent circumstances were also "required in order to justify a warrantless search" under the automobile exception. The trial court denied Rigby's motion to suppress, finding that "the search was reasonable under the circumstances and such evidence was lawfully obtained under the automobile exception to the warrant requirement."

¶5 Rigby subsequently pled guilty to one count of driving with a measurable controlled substance in the body, *see* Utah Code Ann. § 41-6a-517(2) (LexisNexis 2014), and one count of possession or use of a controlled substance, *see id.* § 58-37-

8(2)(a)(i).[2] In entering his pleas, Rigby reserved the right to appeal the trial court's denial of his suppression motion. *See State v. Sery*, 758 P.2d 935, 938 (Utah Ct. App. 1988) (describing how a conditional plea "specifically preserves the suppression issue for appeal and allows withdrawal of the plea if defendant's arguments in favor of suppression are accepted by the appellate court") (citations omitted).

## ISSUE AND STANDARD OF REVIEW

¶6 On appeal, Rigby argues that although the United States Constitution and the Utah Constitution contain nearly identically phrased protections against unreasonable searches, the Utah Constitution provides greater protection to its citizens by requiring law enforcement officers to have both probable cause and exigent circumstances before conducting a warrantless search under the automobile exception to the warrant requirement, even though the United States Supreme Court has held that under the federal constitution the automobile exception requires only probable cause. "Matters of constitutional interpretation are questions of law that we review for correctness, and we provide no deference to the district court's legal conclusions." *State v. Gonzalez-Camargo*, 2012 UT App 366, ¶ 15, 293 P.3d 1121 (citation and internal quotation marks omitted); *see also Menzies v. State*, 2014 UT 40, ¶ 27, 344 P.3d 581 ("Constitutional issues . . . are questions of law that we review for correctness . . . ." (first omission in original) (citation and internal quotation marks omitted)).

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2. Because the statutory provisions in effect at the relevant times do not differ materially from the statutory provisions now in effect, we cite the current version of the Utah Code for convenience.

## ANALYSIS

¶7 Both the United States Constitution and the Utah Constitution contain nearly identical provisions safeguarding an individual's right against unreasonable searches and seizures.[3] Both protect "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures" by the government. U.S. Const. amend. IV; *see also* Utah Const. art. I, § 14. Some time ago, the Utah Supreme Court observed that "Article I, section 14 of the Utah Constitution reads nearly verbatim with the fourth amendment, and thus [the] Court has never drawn any distinctions between the protections afforded by the respective constitutional provisions. Rather, the Court has always considered the protections afforded to be one and the same." *State v. Watts*, 750 P.2d 1219, 1221 (Utah 1988). The question presented here is whether Utah courts should continue to follow this principle and track the relatively recent evolution of the automobile exception under federal law or chart its own path under the Utah Constitution. To address this question, we first trace the history of the automobile exception under both federal and state case law. Next we examine the status of the automobile exception under federal law in light of the United States Supreme Court's decision in *Pennsylvania v. Labron*, 518 U.S. 938 (1996) (per curiam). Finally, we consider whether Utah is likely to continue to track federal law after *Labron* with regard to the automobile exception or chart a new path under the Utah Constitution.

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3. The Fourth Amendment to the United States Constitution 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,

(continued…)

I. The Automobile Exception to the Warrant Requirement

¶8 Because warrantless searches are "per se unreasonable," *Katz v. United States*, 389 U.S. 347, 357 (1967), "[p]olice officers generally need a warrant to search a place in which a person has a reasonable expectation of privacy," *State v. Boyles*, 2015 UT App 185, ¶ 10, 356 P.3d 687 (citing *Franks v. Delaware*, 438 U.S. 154, 164 (1978)); *see also id.* (citing *Franks*, 438 U.S. at 164) (noting that "[b]efore issuing a search warrant, a magistrate must determine that probable cause exists to conduct the search"). "There are, of course, exceptions to the general rule . . . one [of which] is the so-called 'automobile exception' . . . ." *California v. Carney*, 471 U.S. 386, 390 (1985). Historically, under the automobile exception, police were permitted to search an automobile without a warrant so long as both probable cause and exigent circumstances existed. *See, e.g.*, *Chambers v. Maroney*, 399 U.S. 42, 48–51 (1970); *State v. Limb*, 581 P.2d 142, 144 (Utah 1978).

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(…continued)

> and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const. amend. IV. The Utah Constitution is phrased very similarly:

> 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 warrant shall issue but upon probable cause supported by oath or affirmation, particularly describing the place to be searched, and the person or thing to be seized.

Utah Const. art. I, § 14.

A. The Automobile Exception Under Federal Case Law

¶9 In 1925, the United States Supreme Court decided *Carroll v. United States*, 267 U.S. 132 (1925), the seminal case addressing the automobile exception to the Fourth Amendment's warrant requirement. In *Carroll*, the Court determined that while an individual has a constitutionally protected privacy interest in an automobile, the degree of protection is lessened "because the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant must be sought." *Id.* at 153. This mobility principle has continued to be a factor in the Supreme Court's approach to automobile search cases since *Carroll*. *See, e.g.*, *Labron*, 518 U.S. at 940; *New York v. Class*, 475 U.S. 106, 112–13 (1986); *Carney*, 471 U.S. at 392–93; *South Dakota v. Opperman*, 428 U.S. 364, 367 (1976); *Cardwell v. Lewis*, 417 U.S. 583, 588–89 (1974); *Cady v. Dombrowski*, 413 U.S. 433, 441–42 (1973); *Coolidge v. New Hampshire*, 403 U.S. 443, 459–60 (1971); *Chambers*, 399 U.S. at 52; *Cooper v. California*, 386 U.S. 58, 59 (1967).

¶10 The Court has recognized, however, that "ready mobility is not the only basis for the [automobile] exception." *Carney*, 471 U.S. at 391. Rather, the exception is also justified because of the "reduced expectations of privacy" arising from the "pervasive regulation of vehicles capable of traveling on the public highways." *Id.* at 392 (citing *Cady*, 413 U.S. at 440–41); *see also Arizona v. Gant*, 556 U.S. 332, 345 (2009) (recognizing that "a motorist's privacy interest in his vehicle is less substantial than in his home"); *Wyoming v. Houghton*, 526 U.S. 295, 303–07 (1999) (holding that both drivers and passengers have a reduced expectation of privacy in an automobile); *Class*, 475 U.S. at 113 ("[A]utomobiles are justifiably the subject of pervasive regulation by the State."); *United States v. Chadwick*, 433 U.S. 1, 12–13 (1977) ("One has a lesser expectation of privacy in a motor vehicle because its function is transportation and it seldom serves as one's residence or as the repository of personal effects.") (citation omitted), *abrogated on other grounds by California v. Acevedo*, 500 U.S. 565 (1991); *Cardwell*, 417 U.S. at 590.

¶11 Historically, the automobile exception has required two circumstances. First, there must be probable cause for a search. *See Chambers*, 399 U.S. at 48 ("[A]utomobiles . . . may be searched without a warrant in circumstances that would not justify the search without a warrant of a house or an office, provided that there is probable cause . . . ."). And second, there must be exigent circumstances. *See id.* at 50–51 ("But the circumstances that furnish probable cause to search a particular auto for particular articles are most often unforeseeable; moreover, the opportunity to search is fleeting since a car is readily movable. . . . Only in exigent circumstances will the judgment of the police as to probable cause serve as a sufficient authorization for a search."). The required exigency was usually found to inhere in a factor fundamental to the exception itself, i.e., the characteristic mobility of an automobile. *See, e.g.*, *Acevedo*, 500 U.S. at 569 (citing *Carroll*, 267 U.S. at 158–59) (stating that "a warrantless search of an automobile, based upon probable cause to believe that the vehicle contained evidence of crime in light of an exigency arising out of the likely disappearance of the vehicle, [does] not contravene the Warrant Clause of the Fourth Amendment").

¶12 In 1996, however, the Supreme Court concluded that the warrantless search of an automobile no longer required separate consideration of exigent circumstances, so long as there was probable cause for the search. *Labron*, 518 U.S. at 940. The Court held that "ready mobility [was] exigency sufficient to excuse failure to obtain a search warrant once probable cause to conduct the search is clear." *Id.* (citing *Carney*, 471 U.S. at 390–91). In reaching this conclusion the Court reasoned that in addition to the mobility principle, its prior recognition of the "reduced expectation of privacy in an automobile" justified recasting the description of the automobile exception to permit a warrantless search "[i]f a car is readily mobile and probable cause exists . . . without [anything] more." *Id.* (citing *Carney*, 471 U.S. at 393).

B. The Automobile Exception Under Utah Case Law

¶13 Historically, Utah case law has mirrored federal case law with respect to the automobile exception to the warrant requirement. Utah cases, like their federal counterparts, have recognized that "[w]arrantless searches are per se unreasonable unless undertaken pursuant to a recognized exception to the warrant requirement." *State v. Brown*, 853 P.2d 851, 855 (Utah 1992) (citing *Katz v. United States*, 389 U.S. 347, 357 (1967)). Our case law has also echoed federal case law in recognizing that "[t]here are . . . several exceptions to the warrant requirement . . . includ[ing] . . . [the] search of an automobile based on probable cause." *State v. Hygh*, 711 P.2d 264, 267 (Utah 1985) (citing *Chambers*, 399 U.S. 42); *see also State v. Limb*, 581 P.2d 142, 144–45 (Utah 1978) (discussing the automobile exception to the warrant requirement and quoting *Chambers*, 399 U.S. at 51, with approval).

¶14 Our cases have also described the rationale for the automobile exception much like federal cases have. For example, in the 1948 case *City of Price v. Jaynes*, while discussing the validity of a city ordinance modeled after the Fourth Amendment, our supreme court recognized that under federal law an individual has a lessened degree of protection in some instances based on whether the place to be searched is mobile. 191 P.2d 606, 608 (Utah 1948). And in *City of Price* the Utah Supreme Court enunciated and followed the principles first announced in *Carroll*:

> [The Fourth Amendment] has been construed practically since the beginning of the Government, as recognizing a necessary difference between a search of a store, dwelling house or other structure in respect of which a proper official warrant readily may be obtained, and a search of a ship, motor boat, wagon or automobile for contraband goods where it is not practicable to serve a warrant

> because the vehicle can be quickly moved out of the jurisdiction in which the warrant is sought.

*Id.* at 608 (quoting *Carroll*, 267 U.S. at 153); *see also State v. Dorsey*, 731 P.2d 1085, 1087 (Utah 1986) (citing *Carroll*, 267 U.S. 132, ("It has long been held that warrantless vehicle searches are not invalid under the Fourth Amendment if probable cause for a search exists.")). And subsequent to *City of Price*, the court has repeatedly referred to the mobility principle as justification for the automobile exception. *See, e.g.*, *State v. Baker*, 2010 UT 18, ¶ 11, 229 P.3d 650; *State v. James*, 2000 UT 80, ¶ 10, 13 P.3d 576; *State v. Anderson*, 910 P.2d 1229, 1234–37 (Utah 1996) (plurality opinion); *Limb*, 581 P.2d at 144–45; *State v. Farnsworth*, 519 P.2d 244, 247 (Utah 1974); *State v. Shields*, 503 P.2d 848, 849 (Utah 1972).

¶15 Further, like the federal courts, our supreme court has recognized that in addition to an automobile's ready mobility, the automobile exception finds support in reduced privacy expectations. For instance, in *State v. Baker*, the Utah Supreme Court noted that the "automobile exception to the warrant rule arises because occupants of a vehicle have a lesser expectation of privacy due to the mobile nature of vehicles and their highly regulated status." 2010 UT 18, ¶ 11 (alteration, citation, and internal quotation marks omitted); *accord James*, 2000 UT 80, ¶ 10 ("Due to the mobile nature of vehicles and their highly-regulated status, persons traveling in vehicles have a lesser expectation of privacy than they would have within a private dwelling."); *see also State v. Lopez*, 873 P.2d 1127, 1131–34 (Utah 1994); *State v. Schlosser*, 774 P.2d 1132, 1135 (Utah 1989).

¶16 And like the federal courts until *Labron*, the Utah Supreme Court has historically described the automobile exception as requiring both probable cause and exigent circumstances to justify a police officer in the warrantless search of an automobile. *See, e.g.*, *State v. Christensen*, 676 P.2d 408, 411 (Utah 1984) ("For [the automobile] exception to apply, the police must have

probable cause to believe that the automobile contains either contraband or evidence of a crime and that they may be lost if not immediately seized."); *see also State v. Larocco*, 794 P.2d 460, 470 (Utah 1990) (plurality opinion) (approving the logic of *Christensen*, 676 P.2d 408, and re-iterating the requirement that police officers have both probable cause and exigent circumstances to justify a search under the automobile exception); *Limb*, 581 P.2d at 144 (citing *Carroll*, 267 U.S. 132, with approval and holding that probable cause and exigent circumstances existed to justify a warrantless search of an automobile). Also in line with the federal approach, the Utah Supreme Court has recognized that the required exigency generally arises from the inherent mobility of an automobile. *See Shields*, 503 P.2d at 849 ("In exigent circumstances, the judgment of a police officer as to probable cause will serve as sufficient authorization for a search, i.e., a search warrant is unnecessary where there is probable cause to search an automobile stopped on the highway, for the car is movable, . . . and the car's contents may never be found again if a warrant must be obtained.").

II. The Automobile Exception Under *Pennsylvania v. Labron*

¶17 On July 1, 1996, the United States Supreme Court decided the companion cases of *Pennsylvania v. Kilgore* and *Pennsylvania v. Labron* in a consolidated opinion. *See Pennsylvania v. Labron*, 518 U.S. 938 (1996) (per curiam). In both cases, the Pennsylvania Supreme Court had held that the Fourth Amendment to the United States Constitution required law enforcement officers to obtain a warrant before searching a vehicle unless both probable cause and exigent circumstances were present. *Id.* at 938–39. In particular, the Pennsylvania Supreme Court had held that the warrantless search of Labron's vehicle was unjustified because although law enforcement officers had probable cause to search the trunk of the vehicle for suspected drug activity, there were no exigent circumstances justifying the search because "the police had time to secure a warrant." *Id.* at 939–40. In a relatively short per curiam decision, the Supreme Court concluded that it

was incorrect under the Fourth Amendment for courts to require law enforcement officers to have *both* probable cause and exigent circumstances for the warrantless search of an automobile. *Id.* The Court began its analysis with a brief review of the history of the Fourth Amendment's automobile exception. *Id.* (first citing *California v. Carney*, 471 U.S. 386, 390–91 (1985); then citing *Carroll*, 267 U.S. 132). The Court noted that the first cases underlying the automobile exception "were based on the automobile's 'ready mobility'" because "'ready mobility[]' [is] an exigency sufficient to excuse failure to obtain a search warrant once probable cause to conduct the search is clear." *Id.* But the Court explained that "[m]ore recent cases provide a further justification [for the automobile exception]" based on an "individual's reduced expectation of privacy in an automobile[] [because of] . . . its pervasive regulation." *Id.* (citing *Carney*, 471 U.S. at 391–92). The Court concluded, "If a car is readily mobile and probable cause exists to believe it contains contraband, the Fourth Amendment thus permits police to search the vehicle without more." *Id.* (citing *Carney*, 471 U.S. at 393). The Court has subsequently stated that *Labron* stands for the rule that under federal law, "the 'automobile exception' has no separate exigency requirement." *Maryland v. Dyson*, 527 U.S. 465, 466–67 (1999) (per curiam) (discussing *Labron*, 518 U.S. 938).[4]

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4. In *Maryland v. Dyson*, 527 U.S. 465 (1999) (per curiam), the Supreme Court stated that it had been "clear" since *United States v. Ross*, 456 U.S. 798 (1982), that the automobile exception had no exigency requirement and characterized *Labron* as simply reiterating that principle:

> The Fourth Amendment generally requires police to secure a warrant before conducting a search. *California v. Carney*, 471 U.S. 386, 390–91 (1985). As we recognized nearly 75 years ago in *Carroll v. United States*, 267 U.S. 132 (1925), there is an exception to this requirement for searches of

(continued…)

## III. The Automobile Exception Under Article I, Section 14 of the Utah Constitution

¶18 The Utah Supreme Court has not specifically considered the effect of *Labron* on Utah law. And though we have

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(…continued)

> vehicles. And under our established precedent, the "automobile exception" has no separate exigency requirement. We made this clear in *United States v. Ross*, 456 U.S. 798, 809 (1982), when we said that in cases where there was probable cause to search a vehicle "a search is not unreasonable if based on facts that would justify the issuance of a warrant, *even though a warrant has not been actually obtained*." In a case with virtually identical facts to this one (even down to the bag of cocaine in the trunk of the car), *Pennsylvania v. Labron*, 518 U.S. 938 (1996) (per curiam), we repeated that the automobile exception does not have a separate exigency requirement: "If a car is readily mobile and probable cause exists to believe it contains contraband, the Fourth Amendment . . . permits police to search the vehicle without more." Id. at 940.

*Dyson*, 527 U.S. at 466–67 (emphasis in original). But *Labron* itself did not mention *Ross* and seemed at the time to mark a point of departure from the exigency requirement. Certainly, the conclusion *Dyson* draws from *Ross* seems more apparent in *Labron*'s clarifying light than it may have been before then. It is tempting to surmise that *Labron*'s per curiam nature may have signaled that the Court did not consider its decision to be so much a departure from the past as an acknowledgement that, given its foundation in the mobility principle, the exigency requirement may already have largely lost its role as an independent component of the automobile exception.

mentioned *Labron* on occasion, this court has not had the opportunity to specifically analyze Article I, Section 14 of the Utah Constitution in light of that decision. In fact, each of the few times this court has cited *Labron*, we did so to support a conclusion—in the context of analyzing federal law—that a law enforcement officer's search of an appellant's automobile was justified under the automobile exception to the Fourth Amendment's warrant requirement because the officer had probable cause. *See State v. Despain*, 2007 UT App 367, ¶¶ 14, 16, 173 P.3d 213 (recognizing that the requirements to justify a search under the automobile exception have "fluctuated in the past," but ultimately relying on both *Dyson* and *Labron* to conclude that "federal law ha[d] been clarified" and therefore "[t]he officers' search . . . was justified under the automobile exception to the Fourth Amendment[] . . . because the officers had probable cause"); *State v. Griffith*, 2006 UT App 291, ¶¶ 6–8, 141 P.3d 602 (relying on *Dyson* and *Labron* to conclude that because the defendant's vehicle was mobile the officer needed only probable cause to search the vehicle under the Fourth Amendment); *State v. Mehew*, 2003 UT App 166U, para. 3 (citing *Labron*, 518 U.S. at 940) (holding that because the defendant's vehicle was mobile and probable cause existed the warrantless search of the vehicle was valid under the automobile exception). Further, although not specifically citing *Labron*, we have applied the rule *Labron* recognized—that the automobile exception, under federal law, has no separate exigency requirement—on a number of occasions. *See, e.g.*, *State v. Juma*, 2012 UT App 27, ¶ 9, 270 P.3d 564; *State v. Butler*, 2011 UT App 281, ¶ 12, 263 P.3d 463; *In re D.A.B.*, 2009 UT App 169, ¶ 7, 214 P.3d 878; *State v. Griffith*, 2006 UT App 291, ¶ 6, 141 P.3d 602. And it appears that the only time we have been asked to consider whether Article I, Section 14 of the Utah Constitution would yield a more restrictive interpretation of the automobile exception than *Labron*, we declined to do so because the state constitutional issues were inadequately briefed. *See Despain*, 2007 UT App 367, ¶ 12 (explaining that the "[d]efendant mentioned both the Utah and United States Constitutions in his opening brief," but "did not

conduct a separate analysis of the protections afforded by each" and, as a consequence, this court "refrained from engaging in [a] state constitutional analysis" of the automobile exception and affirmed the district court based on *Labron*'s holding that the Fourth Amendment required only probable cause for the warrantless search of an automobile).

¶19 Here, Rigby acknowledges that both "the U.S. Constitution and the Utah Constitution contain almost identical protections against unreasonable searches" and that "in 1996 the U.S. Supreme Court [in *Labron*] changed the requirements under the U.S. Constitution to require probabl[e] cause only," no longer requiring a separate showing of exigency. Rigby argues, however, that "[n]o such decision has been issued regarding the status of the Utah Constitution." And therefore, according to Rigby, "under the Utah Constitution an officer must still have both probable cause and exigent circumstances to justify the warrantless search of an automobile." Unlike the appellant in *Despain*, we believe that Rigby analyzes the issue in a manner sufficient to warrant our consideration of whether, in light of *Labron*, the Utah Constitution now provides its citizens greater protection against unreasonable searches than the United States Constitution by continuing to require that police officers have both probable cause and exigent circumstances to justify a warrantless search under the automobile exception. Rigby primarily draws support for his argument that Utah ought to depart from the federal path with regard to the automobile exception from three opinions, which seem to be the Utah Supreme Court's last ventures into the realm of the Utah Constitution's relationship to the automobile exception prior to *Labron*: *State v. Watts*, 750 P.2d 1219 (Utah 1988), *State v. Larocco*, 794 P.2d 460 (Utah 1990) (plurality opinion), and *State v. Anderson*, 910 P.2d 1229 (Utah 1996) (plurality opinion). We address each case in order to determine whether our supreme court has established a discernible distinction between the Fourth Amendment to the United States Constitution and Article I, Section 14 of the Utah Constitution that may apply here.

A. State v. Watts

¶20 In *State v. Watts* a majority of the Utah Supreme Court affirmed the appellant's conviction for unlawful production and possession of marijuana. *Watts*, 750 P.2d at 1225. The appellant in *Watts* had unsuccessfully moved the trial court to suppress evidence based upon the Fourth Amendment to the United States Constitution and Article I, Section 14 of the Utah Constitution. *Id.* at 1220. While ultimately holding that private searches did not fall within the protection of the Utah Constitution, the *Watts* court acknowledged and affirmed its historical pattern of interpreting both the federal and the state constitutions as providing identical protections:

> Article I, section 14 of the Utah Constitution reads nearly verbatim with the fourth amendment, and thus this Court has never drawn any distinctions between the protections afforded by the respective constitutional provisions. Rather, the Court has always considered the protections afforded to be one and the same. We do not depart from that view in this case, and hold that unreasonable private searches are not subject to the protection of article I, section 14 of the Utah Constitution.

*Id.* at 1221 (footnotes omitted).

¶21 Although Rigby acknowledges the court's reasoning, he points to a footnote in *Watts* in which the court opined that "choosing to give the Utah Constitution a somewhat different construction may prove to be an appropriate method for insulating this state's citizens from the vagaries of inconsistent interpretations given to the fourth amendment by the federal courts." *Id.* at 1221 n.8. Rigby interprets this footnote as indicating that "[t]he *Watts* court reserved the right to distinguish between the protections afforded by the two Constitutions." But the footnote's indication of the court's

willingness to consider a different direction at some point in the future must be considered in light of the majority's unequivocal decision not to "depart . . . from [the court's] consistent refusal . . . to interpret article I, section 14 of [the Utah] constitution in a manner different from the fourth amendment to the federal constitution." *Id.* Therefore, the supreme court's statement in *Watts* reinforces Utah's historical pattern of tracking federal law in this area both in principle and in practice while keeping open the possibility of departing from that pattern, should the circumstances undergirding it change in some significant way. *Cf. State v. Worwood*, 2007 UT 47, ¶ 11, 164 P.3d 397 ("In cases involving Fourth Amendment questions under the United States Constitution, we review mixed questions of law and fact under a correctness standard in the *interest of creating uniform legal rules for law enforcement*." (emphasis added)).

B. State v. Larocco

¶22 In *State v. Larocco* a plurality of the supreme court (two justices concurring and one concurring only in the result) urged departure from continued reliance on federal jurisprudence as the basis for interpreting Article I, Section 14 of the Utah Constitution. *Larocco*, 794 P.2d at 470–71. The plurality reasoned that although both federal and Utah courts had historically interpreted the automobile exception to require both probable cause and exigent circumstances, *id.* at 470, exigency had become essentially a given based on a too-simplistic notion about the ready mobility of automobiles, *id.* at 469. The *Larocco* plurality thus concluded that an automobile's mere potential for mobility ought no longer to be sufficient to satisfy the exigency requirement under the Utah Constitution. Rather, a two-step process was required: first, it should be established that officers had probable cause for a search; then in order to meet the required level of exigency, "[t]he next step requires justification of the warrantless search by showing either that the procurement of a warrant would have jeopardized the safety of the police officers or that the evidence was likely to have been

lost or destroyed." *Id.* at 470. In other words, for the automobile exception to apply, the State must go beyond the general concept of ready mobility and show exigency particularized to the actual circumstances at hand. Thus, in *Larocco*, there was probable cause for a search, but the State failed to show that the presumably stolen automobile, while operable and likely mobile, would no longer have been available to search if the officers had taken the time to obtain a warrant. As a result, the warrantless search was not justified. *Id.* at 470–71.

¶23 But *Larocco*'s plurality status "represents the view of only two justices . . . and is therefore not the law of this state." *Anderson*, 910 P.2d at 1234 n.5. Accordingly, the holding from *Watts* remained "the law of this state." *See id.*; *see also State v. Giron*, 943 P.2d 1114, 1121 (Utah Ct. App. 1997) ("Because *Larocco* was only a plurality opinion, its analysis is not binding."). Therefore, we cannot conclude that the plurality decision in *Larocco* signals our supreme court's intent to interpret the state constitution to provide different protections than the federal constitution. *See State v. Mohi*, 901 P.2d 991, 996 n.3 (noting that "a plurality opinion . . . does not establish precedent"). A subsequent plurality decision, *State v. Anderson*, underscores this notion.

C. State v. Anderson

¶24 In *State v. Anderson*, issued just months before *Labron*,[5] the Utah Supreme Court was again asked to depart from its practice of interpreting in tandem the search and seizure requirements of the state and federal constitutions in the context of the automobile exception. *See Anderson*, 910 P.2d at 1235. But the *Anderson* plurality rejected the approach taken by the *Larocco*

5. *State v. Anderson*, 910 P.2d 1229 (Utah 1996), was issued on February 2, 1996, while *Labron*, 518 U.S. 938, was issued approximately five months later, on July 1, 1996.

plurality and affirmed that Utah would continue to track the federal path in this area: "Because this portion of *Larocco* coincides with federal law, we agree with those who joined the *Larocco* plurality that article I, section 14 of the Utah Constitution requires that warrantless searches of automobiles be justified by a showing of probable cause and exigent circumstances." *Id.* at 1237. Based on this statement, Rigby urges us to acknowledge *Anderson* as the irrefutable last word on the issue. In other words, Rigby argues that even if *Larocco*'s more restrictive plurality approach is not binding, we should conclude at a minimum that the *Anderson* plurality has accurately articulated Utah law just prior to *Labron* as holding that probable cause alone is not sufficient to justify the warrantless search of an automobile but that exigent circumstances are also required. Rigby contends that the *Anderson* court "went into great detail to explain that under both the Federal and Utah constitutions the warrantless search of an automobile required 'both probable cause and exigent circumstances.'" (Quoting *Anderson*, 910 P.2d at 1236.)

¶25 While that is true, *Anderson* does not support Rigby's position as strongly as he contends, because Rigby does not acknowledge the context in which that explanation occurred. Although the *Anderson* plurality recognized that in the past, federal Fourth Amendment law had been "the source of much confusion among judges, lawyers, and police," it went on to explain that our supreme court "ha[s] endeavored toward uniformity in the application of the search and seizure requirements of the state and federal constitutions, particularly since the respective provisions are practically identical," cautioning that "[a]n opposite approach could lead to unfavorable results." *Id.* at 1235–36 (citation and internal quotation marks omitted). In accordance with this principle, recognizing that at the time *Anderson* was issued, federal law "require[d] that such a search be premised on probable cause and exigent circumstances," *id.* at 1237, the plurality concluded that the Utah Constitution required the same: "[T]he Utah

Constitution requires that warrantless searches of automobiles be justified by a showing of probable cause and exigent circumstances," *id.* Thus, rather than fixing the combination of probable cause and exigent circumstances as the invariable components of the automobile exception under the Utah Constitution, *Anderson* can be read to express the plurality's view that the Utah Supreme Court had expressed a distinct and continuing preference to have Article 1, Section 14 interpreted consistently with the Fourth Amendment in order to avoid the "unfavorable results" that a different approach "could lead to." *Id.* at 1235 ("For these reasons, Utah courts should construe article I, section 14 in a manner similar to constructions of the Fourth amendment except in compelling circumstances." (citing, among other cases, *Watts*, 750 P.2d at 1221 & n.8)).

D. The Current State of the Automobile Exception Under Utah Law

¶26 The plurality decisions in *Larocco* and *Anderson* present two competing approaches. On the one hand, the *Larocco* plurality analyzes the automobile exception to require a complex, policy-based analysis giving due consideration to the principle that the Utah Constitution ought to be independently analyzed with the potential for affording Utah citizens greater liberties than the federal. *Larocco*, 794 P.2d at 469–71. On the other hand, the *Anderson* plurality firmly rejects that approach and urges that the court instead adhere to the historical pattern of following the path of federal law to avoid confusion and "unfavorable results." *Anderson*, 910 P.2d at 1234–37. But although the pluralities in *Larocco* and *Anderson* began an internal dialogue that could eventually lead to changes in Utah's approach, we are effectively left with *Watts* as the supreme court's last majority expression, and therefore what appears to be the court's last word on the automobile exception. And while *Watts* held that the automobile exception required both probable cause and exigent circumstances, its reasoning was firmly based

on the principle of tracking the path set by the United States Supreme Court. *Watts*, 750 P.2d at 1220–21 & n.8.

¶27 Certainly, Rigby's contention that Utah courts ought now to depart from the federal interpretive path and determine that Article I, Section 14 of the Utah Constitution provides Utah citizens with more expansive rights than those guaranteed under the Fourth Amendment to the United States Constitution finds resonance in the language of some prior cases. *See State v. Brake*, 2004 UT 95, ¶ 16 n.2, 103 P.3d 699 (first citing *Anderson*, 910 P.2d at 1234–37; and then citing *Larocco*, 794 P.2d at 469–70) (declining "the implicit invitation" inherent in the circumstances of the case "to revisit the dormant but unresolved debate in this court over the merits of whether and when to depart from federal Fourth Amendment doctrine and chart our own course in the realm of search and seizure law based on the protections afforded by article I, section 14 of the Utah Constitution"); *State v. DeBooy*, 2000 UT 32, ¶ 12, 996 P.2d 546 ("While this court's interpretation of article I, section 14 has often paralleled the United States Supreme Court's interpretation of the Fourth Amendment, we have stated that we will not hesitate to give the Utah Constitution a different construction where doing so will more appropriately protect the rights of this state's citizens."); *Larocco*, 794 P.2d at 465 ("[W]e have by no means ruled out the possibility of [drawing distinctions between the protections afforded by article I, section 14 of the Utah Constitution and the fourth amendment of the United States Constitution]." (quoting *Watts*, 750 P.2d at 1221 n.8)); *Watts*, 750 P.2d at 1221 n.8 ("In declining to depart in this case from our consistent refusal heretofore to interpret article I, section 14 of our constitution in a manner different from the fourth amendment to the federal constitution, we have by no means ruled out the possibility of doing so in some future case. Indeed, choosing to give the Utah Constitution a somewhat different construction may prove to be an appropriate method for insulating this state's citizens from the vagaries of inconsistent interpretations given to the fourth amendment by the federal courts."). But the decades-long

pattern of Utah decisions following the lead of federal law in this area before *Larocco* and *Anderson*—a pattern acknowledged and applied in *Watts*—is established enough that the burden must be on the challenging party to persuade us that a change is justifiable, and Rigby has not carried that burden here. Rather, the strength of that pattern and the very intensity of the disagreement between the *Larocco* and *Anderson* pluralities deter us from concluding that the current court would mark *Labron* as Utah's point of departure from the path of federal law on the automobile exception.

¶28 And even were we tempted to do so,

> as an intermediate court of appeals, we would be reluctant, in any event, to become overly creative in fashioning a state constitutional rule different from the federal rule. Such a task lies more appropriately with the Utah Supreme Court as "the ultimate and final arbiter of the meaning of the provisions in the Utah Declaration of Rights and the primary protector of individual liberties."

*State v. Jackson*, 937 P.2d 545, 550 (Utah Ct. App. 1997) (first quoting *Anderson*, 910 P.2d at 1240 (Stewart, J., concurring in the result); then citing *State v. Larocco*, 742 P.2d 89, 95 n.7 (Utah Ct. App. 1987) (stating that any departure from Fourth Amendment case law "should be announced by our state's supreme court, not this court"), *rev'd on other grounds*, 794 P.2d 460 (Utah 1990)); *cf. DIRECTV v. Utah State Tax Comm'n*, 2015 UT 93, ¶¶ 44–46 (declining to "embark on a constitutional[] . . . journey" when asked to extend federal dormant commerce clause precedent because the United States Supreme Court's current approach does not seem to point in that direction and because it is not the province of the Utah Supreme Court to embark on that journey). Accordingly, we decline to depart from the path of federal law and conclude that under the automobile exception, as interpreted in *Labron*, the law enforcement officers in this case

were only required to have probable cause to justify the search of Rigby's vehicle under the automobile exception to the warrant requirement of either the federal or Utah constitutions. *See State v. Despain*, 2007 UT App 367, ¶¶ 13–16, 173 P.3d 213. Because there is no dispute that the officers here had probable cause for a search, the trial court did not err in denying Rigby's motion to suppress.[6]

## CONCLUSION

¶29 For the reasons stated above, the judgment of the trial court is affirmed.

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6. Because we follow *Labron*'s lead and conclude that no separate showing of exigent circumstances is required under the automobile exception, we do not reach Rigby's argument that the availability of warrants by telephone or other electronic media means that there was no exigency here as a matter of law. *Cf. State v. Rodriguez*, 2007 UT 15, ¶ 60, 156 P.3d 771 ("[P]ractical considerations associated with warrant acquisition remain central to inquiries into whether exigent circumstances justify a warrantless search."); *State v. Larocco*, 794 P.2d 460, 470 (Utah 1990) (plurality opinion) (recognizing "[t]he amount of time necessary to obtain a warrant" is a factor used to "determin[e] whether circumstances are exigent"); *City of Orem v. Henrie*, 868 P.2d 1384, 1391–92 (Utah Ct. App. 1994) (identifying "the availability of a telephonic warrant" as one consideration when determining whether exigency exists).

# ADDENDUM B

State-by-State Constitution Comparison Chart

| | | | |
|---|---|---|---|
| | **U.S. Const. amend IV** | | 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. |
| 1 | **DE**<br>Dec. 7, 1787 | Del. Const. art. I, § 6<br>(Dec. 2, 1831) | 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 particularly as may be, nor then, unless there be probable cause supported by oath or affirmation.<br><br>http://www.stateconstitutions.umd.edu/Search/results.aspx?srch=6&state='DE'&CID=116,117,118,139,119,124,179,246,247,248,249,251,151,231,193,173,157,158,159,153,154,155,156,101,102,103,104,100,105,259,260,261,262,108,109,110,111,125,126,127,128,107,106,161,162,160,120,121,122,123,178,209,207,215,210,211,212,213,214,216,218,176,163,164,165,172,190,198,197,192,184,185,239,240,241,242,238,244,245,188,235,236,237,112,113,114,269,145,146,147,148,149,183,181,182,257,258,199,263,171,252,253,254,255,256,194,195,200,201,202,203,204,205,206,223,264,265,267,268,243,115,225,230,177&art=&sec=&amd=&key=&Yr=03/04/1895 [1] |
| 2 | **PA**<br>Dec. 12, 1787 | Penn. Const. art. I, § 8<br>(Jan. 1, 1874) | 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.<br><br>http://www.stateconstitutions.umd.edu/Search/results.aspx?srch=6&state='PA'&CID=116,117,118,139,119,124,179,246,247,248,249,251,151,231,193,173,157,158,159,153,154,155,156,101,102,103,104,100,105,259,260,261,262,108,109,110,111,125,126,127,128,107,106,161,162,160,120,121,122,123,178,209,207,215,210,211,212,213,214,216,218,176,163,164,165,172,190,198,197,192,184,185,239,240,241,242,238,244,245,188,235,236,237,112,113,114,269,145,146,147,148,149,183,181,182,257,258,199,263,171,252,253,254,255,256,194,195,200,201,202,203,204,205,206,223,264,265,267,268,243,115,225,230,177&art=&sec=&amd=&key=&Yr=03/04/1895 |
| 3 | **NJ**<br>Dec. 18, 1787 | N.J. Const. art. I, § 6<br>(Aug. 13, 1844) | 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 warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the papers and things to be seized.<br><br>http://www.stateconstitutions.umd.edu/Search/results.aspx?srch=6&state='NJ'&CID=116,117,118,139,119,124,179,246,247,248,249,251,151,231,193,173,157,158,159,153,154,155,156,101,102,103,104,100,105,259,260,261,262,108,109,110,111,125,126,127,128,107,106,161,162,160,120,121,122,123,178,209,207,215,210,211,212,213,214,216,218,176,163,164,165,172,190,198,197,192,184,185,239,240,241,242,238,244,245,188,235,236,237,112,113,114,269,145,146,147,148,149,183,181,182,257,258,199,263,171,252,253,254,255,256,194,195,200,201,202,203,204,205,206,223,264,265,267,268,243,115,225,230,177&art=&sec=&amd=&key=&Yr=03/04/1895 |

[1] This Addendum sets forth the search and seizure provisions of the various states as of 1895. The date below the State represents its admission date. The date below the state constitutional provision represents the version of that constitution. Sources are generally from governmental, historical, or educational websites, including the NBER/University of Maryland State Constitutions Project, "a portal to the texts of the state constitutions of the United States." *See* www.stateconstitutions.umd.edu.

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| 4 | **GA**<br>Jan. 2, 1788 | Geo. Const. § 1, par. XVI (1877)<br>(as ratified without subsequent amendments) | 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 warrant shall issue except upon probable cause, supported by oath, or affirmation, particularly describing the place, or places, to be searched, and the persons or things to be seized.<br><br>http://www.cviog.uga.edu/Projects/gainfo/con1877b.htm (University of Georgia—Carl Vinson Institute of Government) |
| 5 | **CN**<br>Jan. 9, 1788 | Conn. Const. art. I, § 8<br>(Oct. 12, 1818) | The people shall be secure in their persons, houses, papers, and possessions from unreasonable searches or 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.<br><br>http://www.stateconstitutions.umd.edu/Search/results.aspx?srch=6&state='CT'&CID=116,117,118,139,119,124,179,246,247,248,249,251,151,231,193,173,157,158,159,153,154,155,156,101,102,103,104,100,105,259,260,261,262,108,109,110,111,125,126,127,128,107,106,161,162,160,120,121,122,123,178,209,207,215,210,211,212,213,214,216,218,176,163,164,165,172,190,198,197,192,184,185,239,240,241,242,238,244,245,188,235,236,237,112,113,114,269,145,146,147,148,149,183,181,182,257,258,199,263,171,252,253,254,255,256,194,195,200,201,202,203,204,205,206,223,264,265,267,268,243,115,225,230,177&art=&sec=&amd=&key=&Yr=03/04/1895 |
| 6 | **MA**<br>Feb. 6, 1788 | Mass. Const. Part the First, art. XIV (1780) | Every subject has a right to be secure from all unreasonable searches, and seizures of his person, his houses, his papers, and all his possessions. All warrants, therefore, are contrary to this right, if the cause or foundation of them be not previously supported by oath or affirmation; and if the order in the warrant to a civil officer, to make search in suspected places, or to arrest one or more suspected persons, or to seize their property, be not accompanied with a special designation of the persons or objects of search, arrest, or seizure: and no warrant ought to be issued but in cases, and with the formalities, prescribed by the laws.<br><br>http://www.founding.com/library/lbody.cfm?id=478&parent=475 |
| 7 | **MD**<br>Apr. 28, 1788 | Mary. Const. Dec. Rts. art. 26<br>(Aug. 17, 1867) | That all warrants, without oath or affirmation, to search suspected places, or to seize any person or property, are grievous and oppressive; and all general warrants to search suspected places, or to apprehend suspected persons, without naming or describing the place, or the person in special, are illegal, an ought not to be granted. [Note: The Declaration of Rights to the 1867 Constitution includes 45 "articles," and no sections. Because the constitution then continues with Article I, we have coded these articles as sections in the 9002 article representing the Declaration of Rights.]<br><br>http://www.stateconstitutions.umd.edu/Search/results.aspx?srch=6&state='MD'&CID=116,117,118,139,119,124,179,246,247,248,249,251,151,231,193,173,157,158,159,153,154,155,156,101,102,103,104,100,105,259,260,261,262,108,109,110,111,125,126,127,128,107,106,161,162,160,120,121,122,123,178,209,207,215,210,211,212,213,214,216,218,176,163,164,165,172,190,198,197,192,184,185,239,240,241,242,238,244,245,188,235,236,237,112,113,114,269,145,146,147,148,149,183,181,182,257,258,199,263,171,252,253,254,255,256,194,195,200,201,202,203,204,205,206,223,264,265,267,268,243,115,225,230,177&art=&sec=&amd=&key=&Yr=03/04/1895 |

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| 8 | **SC**<br>May 23, 1788 | S.C. Const. art. I, § 22 (Apr. 16, 1868) | All persons have a right to be secure from unreasonable searches or seizures of their persons, houses, papers or possessions. All warrants shall be supported by oath or affirmation, and the order of the warrant to a civil officer to make search or seizure in suspected places, or to arrest one or more suspected persons, or to seize their property, shall be accompanied with a special designation of the persons or objects of search, arrest or seizure; and no warrant shall be issued but in the cases and with the formalities prescribed by the laws.<br><br>http://www.stateconstitutions.umd.edu/Search/results.aspx?srch=6&state='SC'&CID=116,117,118,139,119,124,179,246,247,248,249,251,151,231,193,173,157,158,159,153,154,155,156,101,102,103,104,100,105,259,260,261,262,108,109,110,111,125,126,127,128,107,106,161,162,160,120,121,122,123,178,209,207,215,210,211,212,213,214,216,218,176,163,164,165,172,190,198,197,192,184,185,239,240,241,242,238,244,245,188,235,236,237,112,113,114,269,145,146,147,148,149,183,181,182,257,258,199,263,171,252,253,254,255,256,194,195,200,201,202,203,204,205,206,223,264,265,267,268,243,115,225,230,177&art=&sec=&amd=&key=&Yr=03/04/1895 |
| 9 | **NH**<br>June 21, 1788 | N.H. Const. art. I, § 19 (Sep. 5, 1792) | Every subject has a right to be secure from all unreasonable searches and seizures of his person, his houses, his papers, and all his possessions; *Therefore*, All warrants to search suspected places, or arrest a person for examination or trial, in prosecutions for criminal matters, are contrary to this right, if the cause or foundation of them be not previously supported by oath or affirmation; and if the order in a warrant to a civil officer to make search in suspected places, or to arrest one or more suspected persons, or to seize their property, be not accompanied with a special designation of the persons or object of search, arrest, or seizure; and no warrant ought to be issued but in cases and with the formalities prescribed by law.<br><br>http://www.stateconstitutions.umd.edu/Search/results.aspx?srch=6&state='NH'&CID=116,117,118,139,119,124,179,246,247,248,249,251,151,231,193,173,157,158,159,153,154,155,156,101,102,103,104,100,105,259,260,261,262,108,109,110,111,125,126,127,128,107,106,161,162,160,120,121,122,123,178,209,207,215,210,211,212,213,214,216,218,176,163,164,165,172,190,198,197,192,184,185,239,240,241,242,238,244,245,188,235,236,237,112,113,114,269,145,146,147,148,149,183,181,182,257,258,199,263,171,252,253,254,255,256,194,195,200,201,202,203,204,205,206,223,264,265,267,268,243,115,225,230,177&art=&sec=&amd=&key=&Yr=03/04/1895 |
| 10 | **VA**<br>June 25, 1788 | Vir. Const. art. I, § 10 (1870) | That general warrants, whereby an officer or messenger may be commanded to search suspected places without evidence of a fact committed, or to seize any person or persons not named, or whose offense is not particularly described and supported by evidence, are grievous and oppressive, and ought not to be granted.<br><br>http://www.harbornet.com/rights/virginia.txt |
| 11 | **NY**<br>July 26, 1788 | N.Y. Const. (Nov. 6, 1894) | *No search protection provided.<br><br>http://www.stateconstitutions.umd.edu/Search/Search.aspx |

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| 12 | **NC**<br>Nov. 21, 1789 | N.C. Const. art. I, § 15 (July 1, 1868) | General warrants, whereby any officer or messenger may be commanded to search suspected places, without evidence of the act committed, or to seize any persons not named, whose offence is not particularly described and supported by evidence, are dangerous to liberty and ought not to be granted.<br><br>http://www.stateconstitutions.umd.edu/Search/results.aspx?srch=6&state='NC'&CID=116,117,118,139,119,124,179,246,247,248,249,251,151,231,193,173,157,158,159,153,154,155,156,101,102,103,104,100,105,259,260,261,262,108,109,110,111,125,126,127,128,107,106,161,162,160,120,121,122,123,178,209,207,215,210,211,212,213,214,216,218,176,163,164,165,172,190,198,197,192,184,185,239,240,241,242,238,244,245,188,235,236,237,112,113,114,269,145,146,147,148,149,183,181,182,257,258,199,263,171,252,253,254,255,256,194,195,200,201,202,203,204,205,206,223,264,265,267,268,243,115,225,230,177&art=&sec=&amd=&key=&Yr=03/04/1895 |
| 13 | **RI**<br>May 29, 1790 | R.I. Const. art. I, § 6 (May 3, 1843) | The right of the people to be secure in their persons, papers and possessions, against unreasonable searches and seizures, shall not be violated; and no warrant shall issue, but on complaint in writing, upon probable cause, supported by oath or affirmation and describing as nearly as may be, the place to be searched, and the persons or things to be seized.<br><br>http://www.stateconstitutions.umd.edu/Search/results.aspx?srch=6&state='RI'&CID=116,117,118,139,119,124,179,246,247,248,249,251,151,231,193,173,157,158,159,153,154,155,156,101,102,103,104,100,105,259,260,261,262,108,109,110,111,125,126,127,128,107,106,161,162,160,120,121,122,123,178,209,207,215,210,211,212,213,214,216,218,176,163,164,165,172,190,198,197,192,184,185,239,240,241,242,238,244,245,188,235,236,237,112,113,114,269,145,146,147,148,149,183,181,182,257,258,199,263,171,252,253,254,255,256,194,195,200,201,202,203,204,205,206,223,264,265,267,268,243,115,225,230,177&art=&sec=&amd=&key=&Yr=03/04/1895 |
| 14 | **VT**<br>Mar. 4, 1791 | Ver. Const. chap. I, art. 11 (as established July 9, 1793 and amended through Nov. 5, 2002) | That the people have a right to hold themselves, their houses, papers, and possessions, free from search or seizure; and therefore warrants, without oath[s] or affirmation[s] first made, affording sufficient foundation for them, and whereby any officer or messenger may be commanded or required to search suspected places, or to seize any person or persons, his, her or their property, not particularly described, are contrary to that right, and ought not to be granted.<br><br>http://www.leg.state.vt.us/statutes/const2.htm; http://vermont-archives.org/govhistory/constitut/con93.htm |
| 15 | **KY**<br>June 1, 1792 | Kent. Const. § 10 (as ratified on Aug. 3, 1891, and revised Sep. 28, 1891) | The people shall be secure in their persons, houses, papers and possessions, from unreasonable search and seizure; and no warrant shall issue to search any place, or seize any person or thing, without describing them as nearly as may be, nor without probable cause supported by oath or affirmation.<br><br>http://www.lrc.state.ky.us/Legresou/constitu/010.htm |

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| 16 | **TN**<br>June 1, 1796 | Tenn. Const. art. I, § 7 (adopted Feb. 23, 1870 and ratified on the fourth Saturday of Mar., 1870)<br>http://www.state.tn.us/sos/bluebook/online/section5/tnconst.pdf | That the people shall be secure in their persons, houses, papers and possessions, from unreasonable searches and seizures; and that general warrants, whereby an officer may be commanded to search suspected places, without evidence of the fact committed, or to seize any person or persons not named, whose offences are not particularly described and supported by evidence, are dangerous to liberty and ought not to be granted.<br><br>http://www.tngenweb.org/law/constitution1870.html |
| 17 | **OH**<br>Mar. 1, 1803 | Ohio Const. art. I, § 14 (ratified Mar. 10, 1851) | The right of the people to be secure in their persons, houses, papers, and possessions, against unreasonable searches and seizures, shall not be violated; and no warrant shall issue, but upon probable cause, supported by oath or affirmation, particularly describing the place to be searched, and the person and things to be seized.<br><br>http://www.ohiohistory.org/onlinedoc/ohgovernment/constitution/cnst1851.html |
| 18 | **LA**<br>Apr. 30, 1812 | Louis. Const. Bill Rts., Art. 2 (ratified Dec. 8, 1879) | 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 warrant shall issue except upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or things to be seized.<br><br>http://www.stateconstitutions.umd.edu/Search/results.aspx?srch=6&state='LA'&CID=116,117,118,139,119,124,179,246,247,248,249,251,151,231,193,173,157,158,159,153,154,155,156,101,102,103,104,100,105,259,260,261,262,108,109,110,111,125,126,127,128,107,106,161,162,160,120,121,122,123,178,209,207,215,210,211,212,213,214,216,218,176,163,164,165,172,190,198,197,192,184,185,239,240,241,242,238,244,245,188,235,236,237,112,113,114,269,145,146,147,148,149,183,181,182,257,258,199,263,171,252,253,254,255,256,194,195,200,201,202,203,204,205,206,223,264,265,267,268,243,115,225,230,177&art=&sec=&amd=&key=&Yr=03/04/1895 |
| 19 | **IN**<br>Dec. 11, 1816 | Ind. Const. art. I, § 11 (ratified Nov. 1, 1851) | The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search or seizure, shall not be violated; and no warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or thing to be seized.<br><br>http://www.law.indiana.edu/uslawdocs/inconst/art-1.html#sec-11<br><br>http://www.statelib.lib.in.us/www/ihb/resources/constarticle1.html |
| 20 | **MS**<br>Dec. 10, 1817 | Miss. Const. art. III, § 23 (adopted Nov. 1, 1890) | The people shall be secure in their persons, houses, and possessions from unreasonable seizure or search; and no warrant shall be issued without probable cause, supported by oath or affirmation, specially designating the place to be searched and the person or thing to be seized.<br><br>http://www.sos.state.ms.us/ed_pubs/Constitution/2007/Mississippi%20Constitution.pdf;<br>http://www.sos.state.ms.us/pubs/constitution/constitution.asp |

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| 21 | **IL**<br>Dec. 3, 1818 | Ill. Const. art. II, § 6 (Aug. 8, 1870)<br><br>art. I., § 6 (ratified 1970) | 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 warrant shall issue without probable cause, supported by affidavit, particularly describing the place to be searched, and the persons or things to be seized. |
| | http://www.stateconstitutions.umd.edu/Search/results.aspx?srch=6&state='IL'&CID=116,117,118,139,119,124,179,246,247,248,249,251,151,231,193,173,157,158,159,153,154,155,156,101,102,103,104,100,105,259,260,261,262,108,109,110,111,125,126,127,128,107,106,161,162,160,120,121,122,123,178,209,207,215,210,211,212,213,214,216,218,176,163,164,165,172,190,198,197,192,184,185,239,240,241,242,238,244,245,188,235,236,237,112,113,114,269,145,146,147,148,149,183,181,182,257,258,199,263,171,252,253,254,255,256,194,195,200,201,202,203,204,205,206,223,264,265,267,268,243,115,225,230,177&art=&sec=&amd=&key=&Yr=03/04/1895 | | |
| 22 | **AL**<br>Dec. 14, 1819 | Ala. Const. art. I, § 6 (ratified Nov. 16, 1875) | That the people shall be secure in their persons, houses, papers, and possessions from unreasonable seizure or searches, and that no warrant shall issue to search any place, or to seize any person or thing, without probable cause, supported by oath or affirmation. |
| | http://www.legislature.state.al.us/misc/history/constitutions/1875/1875_1.html | | |
| 23 | **ME**<br>Mar. 15, 1820 | *Maine Const. art. I, § 5 (1820) (last modified 1/1/2003) | 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 seize any person or thing, shall issue without a special designation of the place to be searched, and the person or thing to be seized, nor without probable cause, supported by oath or affirmation. |
| | http://www.stateconstitutions.umd.edu/Search/showASM.aspx?CID=176&AID=2001&SID=16654&MID=-1&key=search | | |
| 24 | **MO**<br>Aug. 10, 1821 | Missouri Const. art. II, § 11 (1875) | That the people shall be secure in their persons, papers, homes and effects, from unreasonable searches and seizures; and no warrant to search any place, or seize any person or thing, shall issue without describing the place to be searched, or the person or thing to be seized, as nearly as may be; nor without probable cause, supported by written oath or affirmation. |
| | http://www.moga.mo.gov/const/A01015.HTM | | |
| 25 | **AR**<br>June 15, 1836 | Ark. Const. art. II, § 15 (1874) | The right of the people of this State to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrant shall issue, except upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or thing to be seized. |
| | http://www.arkleg.state.ar.us/data/constitution/ArkansasConstitution1874.pdf | | |

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| 26 | **MI**<br>Jan. 26, 1837 | Mich. Const. art. VI, § 26 (adopted Aug. 15, 1850) | The person, houses, papers and possessions of every person shall be secure from unreasonable searches and seizures. No warrant to search any place or to seize any person or things, shall issue without describing them, or without probable cause, supported by oath or affirmation.<br><br>http://www.legislature.mi.gov/documents/historical/miconstitution1850.htm |
| 27 | **FL**<br>Mar. 3, 1845 | Fla. Const. Decl. Rts., § 22 (1885)<br><br>*art. I, § 12 as amended in 1982 | The right of the people to be secure in their persons, houses, papers and effects against unreasonable seizures and searches, shall not be violated, and no warrants issued but upon probable cause, supported by oath or affirmation, particularly describing the place or places to be searched, and the person or persons, and thing or things to be seized.<br><br>http://www.law.fsu.edu/crc/conhist/1885con.html (Florida State University) |
| 28 | **TX**<br>Dec. 29, 1845 | Tex. Const. art. I, § 9 (1876) | The people shall be secure in their persons, houses, papers and possessions from all unreasonable seizures or searches, and no warrant to search any place, or to seize any person or thing, shall issue without describing them as near as may be, nor without probable cause supported by oath or affirmation.<br><br>http://tarlton.law.utexas.edu/constitutions/text/IART01.html (University of Texas at Austin - Tarton Law Library) |
| 29 | **IA**<br>Dec. 28, 1846 | Iowa Const. art. I, § 8 (1857) | The right of the people to be secure in their persons, houses, papers and effects, against unreasonable seizures and searches shall not be violated; and no warrant shall issue but on probable cause, supported by oath or affirmation, particularly describing the place to be searched, and the persons and things to be seized.<br><br>http://www.legis.state.ia.us/Constitution.html#a1s8 |
| 30 | **WI**<br>May 29, 1848 | Wisc. Const. art. I, § 11 (1848) | 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 warrant 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.<br><br>http://www.legis.state.wi.us/rsb/unannotated_wisconst.pdf |

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| 31 | **CA**<br>Sep. 9, 1850 | Cal. Const. art. I, § 19 (ratified 1849) (revised in 1879) | The right of the people to be secure in their persons, houses, papers and effects, against unreasonable seizures and searches, shall not be violated; and no warrant shall issue but on probable cause, supported by oath or affirmation, particularly describing the place to be searched, and the persons and things to be seized.<br><br>http://www.sos.ca.gov/archives/level3_const1849txt.html |
| 32 | **MN**<br>May 11, 1858 | Minn. Const. art. I, § 10 (adopted 1857) | 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 warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized.<br><br>http://www.mnhs.org/library/constitution/transcriptpages/rt.html; http://www.mnhs.org/library/constitution/index.html |
| 33 | **OR**<br>Feb. 14, 1859 | Ore. Const. art. I, § 9 (1859) | No law shall violate the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search or seizure; and no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or thing to be seized.<br><br>http://bluebook.state.or.us/state/constitution/orig/bill_rights3.htm |
| 34 | **KS**<br>Jan. 29, 1861 | Kan. Const. Bill of Rts, § 15 (adopted at Wyandotte July 29, 1859) | The right of the people to be secure in their persons and property against unreasonable searches and seizures shall be inviolate, and no warrant shall issue but on probable cause, supported by oath or affirmation, particularly describing the place to be searched and the person and property to be seized.<br><br>http://www.kshs.org/research/collections/documents/online/wyandotteconstitution.htm#billrights (Kansas State Historical Society) |
| 35 | **WV**<br>June 20, 1863 | W.V. Const. art. II, § 3 (ratified Apr. 24, 1862) | The right of the citizens to be secure in their houses, persons, papers and effects, against unreasonable searches and seizures, shall not be violated. No warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons and things to be seized.<br><br>http://www.wvculture.org/HISTORY/statehood/constitution.html (West Virginia Division of Culture and History);<br>http://www.stateconstitutions.umd.edu/Search/showASM.aspx?CID=225&AID=2977&SID=27352&MID=-1&key=search |

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| 36 | **NV**<br>Oct. 31, 1864 | Nev. Const. art. I, § 18 (ratified Sep. 1, 1864) | The right of the people to be secure in their persons, houses, papers and effects against unreasonable seizures and searches shall not be violated; and no warrant shall issue but on probable cause, supported by Oath or Affirmation, particularly describing the place or places to be searched, and the person or persons, and thing or things to be seized.<br><br>http://www.leg.state.nv.us/Const/NvConst.html#Art1 |
| 37 | **NE**<br>Mar. 1, 1867 | Neb. Const. art. I, § 7 (1875). | 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 warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or thing to be seized.<br><br>http://uniweb.legislature.ne.gov/legaldocs/view.php?page=c0101007000 |
| 38 | **CO**<br>Aug. 1, 1876 | Colo. Const. art. II, § 7 (adopted by convention Mar. 14, 1876) | That the people shall be secure in their persons, papers, homes and effects, from unreasonable searches and seizures; and no warrant to search any place or seize any person or thing shall issue without describing the place to be searched, or the person or thing to be seized, as near as may be, nor without probable cause, supported by oath or affirmation, reduced to writing.<br><br>http://www.colorado.gov/dpa/doit/archives/constitution/1876.pdf |
| 39 | **ND**<br>Nov. 2, 1889 | N.D. Const. art. I, § 18 (Aug. 17, 1889) | 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 warrant shall issue but upon probable cause, supported by oath or affirmation, particularly describing the place to be searched and the persons and things to be seized.<br><br>http://www.stateconstitutions.umd.edu/Search/showASM.aspx?CID=257&AID=3637&SID=34752&MID=-1&key=search<br><br>(Univ. of Maryland NBER/Maryland State Constitutions Project) |
| 40 | **SD**<br>Nov. 2, 1889 | S.D. Const. art. VI, § 11 (ratified Oct. 1, 1889) | The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches any seizures, shall not be violated, and no warrant shall issued but upon probable cause supported by affidavit, particularly describing the place to be searched and the person or thing to be seized.<br><br>http://www.stateconstitutions.umd.edu/Search/results.aspx?srch=6&state='SD'&CID=223&art=&sec=&amd=&key=&Yr=03/04/1895 |

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| 41 | **MT**<br>Nov. 8, 1889 | Mont. Const. art. III, § 7 (ratified Oct. 1, 1889) | The people shall be secure in their persons, papers, homes, and effects, from unreasonable searches and seizures, and no warrant to search any place or seize any person or thing shall issue without describing the place to be searched, or the person or thing to be seized, nor without probable cause, supported by oath or aflirmation, reduced to writing.<br>http://www.umt.edu/Law/library/1889%20Montana%20Constitution.pdf |
| 42 | **WA**<br>Nov. 11, 1889 | Wash. Const. art. I, § 7 (approved Oct. 1, 1889) | No person shall be disturbed in his private affairs, or his home invaded, without authority of law.<br>http://www.secstate.wa.gov/history/constitution_view.aspx?i=1889 |
| 43 | **ID**<br>July 3, 1890 | Ida. Const. art. I, § 17 (ratified July 3, 1890) | 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 warrant shall issue without probable cause shown by affidavit, particularly describing the place to be searched and the person or thing to be seized.<br>http://dfm.idaho.gov/cdfy2007/OtherDocuments/id-constitution.pdf |
| 44 | **WY**<br>July 10, 1890 | Wyo. Const. art. I, § 4 (ratified Nov. 5, 1889) | 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 warrant shall issue but upon probable cause, supported by affidavit, particularly describing the place to be searched or the person or thing to be seized.<br>http://soswy.state.wy.us/informat/07Const.pdf |
| 45 | **UT**<br>Jan. 4, 1896 | Utah Const. art. I, § 14 (adopted May 8, 1895 and ratified 1895) | 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 warrant**s** shall issue but upon probable cause supported by oath or affirmation, particularly describing the place to be searched and the person**s** or thing**s** to be seized.<br>http://www.le.utah.gov/documents/conconv/66.htm<br>2 Official Report of the Proceedings and Debates of the Convention Assembled to Adopt a Constitution for the State of Utah 1856 |

# ADDENDUM C

Order Denying Defendant's Motion to Suppress

(R82-85)

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IN THE FIRST JUDICIAL DISTRICT COURT OF CACHE COUNTY

STATE OF UTAH

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| STATE OF UTAH,<br><br>Plaintiff,<br><br>vs.<br><br>ZACHARY RIGBY,<br><br>Defendant. | ORDER DENYING DEFENDANT'S MOTION TO SUPPRESS<br><br>Case No. 135100370<br><br>Judge Brian G. Cannell |

THIS MATTER comes before the Court on Defendant's Motion to Suppress. Having reviewed said motion with accompanying memorandum, the State's memorandum in opposition, and having conducted a hearing on the matter, the Court finds the following:

Defendant and the State have stipulated to certain facts of the case. On or about March 28, 2013, Defendant was arrested after a search of his vehicle revealed marijuana and drug paraphernalia, including a urine sample that tested positive for THC marijuana. Defendant was initially stopped for a stop sign violation. After contacting the Defendant (driver), the responding officer could immediately detect the odor of both burnt and fresh

marijuana coming from the vehicle. The Officer could also detect other physical indicators of recent marijuana use. A short time later a canine unit arrived and the canine positively indicated on the vehicle. Subsequently, a warrantless search was conducted, wherein drugs and drug paraphernalia were located inside the vehicle.

Defendant concedes that prior to the warrantless search of his vehicle, probable cause existed to believe that Defendant was in possession of controlled substances due to the odor observed by the officer as well as the hit on the car by the canine. Defendant also stipulates that Defendant was lawfully stopped pursuant to a traffic violation. Defendant argues that despite the existence of probable cause, the State has failed to establish that exigency existed to justify the officers in using the automobile exception to the warrant requirement as a means to search the vehicle.

Defendant argues that according to *State v. Larocco*, 794 P.2d 460, (Utah 1990), the State has not met its burden to show that exigent circumstances existed because at the scene of the search there were multiple officers present, the occupants of the vehicle including Defendant were cooperative, and the officers had the technological capability in their police cruisers to quickly obtain a warrant at the scene prior to the search, thereby creating circumstances that were not exigent in nature.

The State however relies on *State v. Anderson*, 910 P.2d 1229, (Utah 1996), wherein the facts are analogous to the present case. In *Anderson* the defendant's vehicle was stopped and probable cause and exigent circumstances existed and the subsequent search was found to be lawful. The Utah Supreme Court "has ruled that exigent circumstances exist when the car is movable, the occupants are alerted, and the car's contents may never be found again if a warrant must be obtained." *Id.* at 1237.

Despite the availability of equipment in the police cruisers at the scene, probable cause and exigent circumstances existed in this case as a matter of fact. The officers could smell marijuana, the canine unit hit on the vehicle, which further established probable cause, and because the vehicle was mobile and the occupants were alerted to police presence, exigent circumstances existed and the search validly fell under the automobile exception to the warrant requirement.

This Court also finds that as probable cause existed to question and search the Defendant for illegal drugs, the vehicle is a natural extension of the person of the Defendant. This Court also finds that although the arresting officer had the technological means to attempt to obtain a warrant prior to the search of the vehicle, this Court will not burden officers with using their mobile technology just because it exists in their vehicles. This Court further finds that under the totality of the circumstances and in balancing the interests of the State and the Defendant's privacy, the search of the vehicle in this matter was reasonable and was therefore lawful and valid.

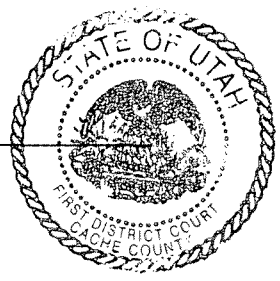
IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

Defendant's motion to suppress is denied as to the evidence obtained by law enforcement officers during the warrantless search of defendant's vehicle, as the search was reasonable under the circumstances and such evidence was lawfully obtained under the automobile exception to the warrant requirement.

DATED this 23 day of Dec., 2013

BY THE COURT

Honorable
District Court Judge



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CERTIFICATE OF DELIVERY

I hereby certify that I emailed a true and correct copy of the foregoing to the defendant's attorney, Brandon Smith, to his email address of brandon@dtsattorneys.com.

Anne Winn
Legal Assistant

Dated November 7, 2013