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BRIGHT LINES AND OPAQUE CONTAINERS: SEARCHING FOR REASONABLE RULES IN AUTOMOBILE CASES*

Stephen J. Bogacz, Esq.**

The task of discerning the differing limits of permissible police conduct in regard to automobile searches under the Federal and State Constitutions is a burden which we should not place upon our citizens or our law enforcement officials at this juncture, particularly when one of our goals in this area should be to create workable and understandable rules which adequately protect the rights of our citizens while assuring effective administration of the criminal law Providing the police officer in the field with a consistent, easily followed guideline would certainly enhance the effectiveness of the police and, in the long run, should also provide greater protection for the individual.¹

These optimistic reflections were voiced by Judge Domenick Gabrielli, in his concurring opinion, in the landmark case of *People v. Belton*.² Yet eleven years and numerous plurality and divided decisions later, we remain today perhaps even further away from Judge Gabrielli's laudable goal. Neither police officers, prosecutors, nor lower court judges have an unclouded comprehension of the permissible scope of an automobile search. The dearth of clear direction from our highest state court has been unfortunate for both law enforcement and individual liberty. While the New York Court of Appeals continues to wrangle over abstract and conjectural differences, the police remain befuddled, unsure of how to proceed in each particular scenario which

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1. *People v. Belton*, 55 N.Y.2d 49, 57-58, 432 N.E.2d 745, 749-50, 447 N.Y.S.2d 873, 877-78 (1982) (Gabrielli, J., concurring).

2. *Id.* (Gabrielli, J., concurring).

involves an automobile. Searches are undertaken which compromise privacy interests. Some are upheld, others are rebuffed, usually on intricate distinctions unappreciated by either the average police officer or the average citizen. Society is not enhanced by legal hairsplitting; only those whose convictions are reversed benefit. We need "workable and understandable rules." The United States Supreme Court has crafted such a set of "automobile case" rules which, while not flawless, are decidedly preferable to New York's.

The "automobile exception" to the warrant requirement under the Fourth Amendment was first announced by the Supreme Court in *Carroll v. United States*.³ Acknowledging the inherent mobility of automobiles, which renders the procurement of a warrant impractical, as well as a diminished expectation of privacy in vehicles, the Court upheld the warrantless search of a car for which the police demonstrated probable cause.⁴ The Court drew a distinct contrast between the need for probable cause to search the car and probable cause to arrest the driver, holding that "[t]he right to search and the validity of the seizure are not dependent on the right to arrest. They are dependent on the reasonable cause the seizing officer has for belief that the contents of the automobile offend against the law."⁵ The New York Court of Appeals and United States Supreme Court would unnecessarily complicate this forthright precept. Car searches have since been scrutinized under a number of theories, including searches based upon limited probable cause running only to specific containers,⁶ searches incident to the arrest of an occupant of a car,⁷ and searches based on reasonable suspicion,⁸ in

3. 267 U.S. 132 (1925).

4. *Id.* at 150-59.

5. *Id.* at 158-59.

6. *See, e.g., Arkansas v. Sanders*, 442 U.S. 753 (1979). *See infra* notes 17-20 and accompanying text.

7. *See, e.g., New York v. Belton*, 453 U.S. 454 (1981). *See infra* note 33 and accompanying text.

8. *See, e.g., Michigan v. Long*, 463 U.S. 1032 (1983). *See infra* notes 92-99 and accompanying text.

addition to the automobile exception. Two or more of these concepts often compliment one another.⁹

After *Carroll*, the Supreme Court continued to construe the automobile exception in a straightforward fashion. In *Chambers v. Maroney*,¹⁰ the Court reiterated the *Carroll* holding that “the search of an auto on probable cause proceeds on a theory wholly different from that justifying the search incident to an arrest”¹¹ Justice White set forth the applicable automobile search standard:

For constitutional purposes, we see no difference between on the one hand seizing and holding a car before presenting the probable cause issue to a magistrate and on the other hand carrying out an immediate search without a warrant. *Given probable cause to search*, either course is reasonable under the Fourth Amendment.¹²

This analysis is sound and the inquiry unambiguous. If the probable cause under which the police searched the car satisfies the criterion for securing a search warrant from a magistrate, the search is sustained. This both comports with Fourth Amendment jurisprudence and is responsive to the practical concerns of efficient law enforcement and of avoiding needless delays for the occupants of the automobile.

The Supreme Court’s objective analysis became clouded in the late 1970’s by a conflict over the types of containers which could properly be searched under the automobile exception. In *United States v. Chadwick*,¹³ a divided Court held that a footlocker (which the police had probable cause to seize) recovered from a car and impounded could not be searched without a warrant. Reasoning that the footlocker’s brief contact with the car did not render it a true automobile search,¹⁴ the Court asserted: “[t]he

9. See, e.g., *Belton*, 453 U.S. at 454; *People v. Belton*, 55 N.Y.2d 49, 435 N.E.2d 745, 447 N.Y.S.2d 873 (1982). See *infra* notes 33-36.

10. 399 U.S. 42 (1970).

11. *Id.* at 49.

12. *Id.* at 52 (emphasis added).

13. 433 U.S. 1, 6-16 (1976).

14. *Id.* at 11-13.

factors which diminish the privacy aspects of an automobile do not apply to respondents' footlocker."¹⁵ The Court therefore determined that a warrant was needed in order to search the footlocker, which had been "safely immobilized" by the police.¹⁶

In *Arkansas v. Sanders*,¹⁷ the Court applied the *Chadwick* analysis to luggage properly seized from a taxi, with the corresponding outcome. Justice Burger's concurring opinion, in *Sanders*, illustrates the flaws in the *Chadwick-Sanders* reasoning, when he admits to being unsure as to "whether [there] would be a stronger or weaker case for requiring a warrant to search the suitcase when a warrantless search of the automobile is otherwise permissible."¹⁸ The police in *Sanders* had probable cause to believe that the particular suitcase held contraband.¹⁹ When it was lawfully seized from the taxicab, however, the Court found a warrant to be essential prior to opening it.²⁰ Under *Carroll* and *Chambers*, however, no warrant was required for the police to search the interior of cars which they had *general* probable cause to believe contained contraband. In *Carroll*, the contraband was located behind the upholstery of the seat from which the filling had been removed;²¹ in *Chambers*, it was concealed in a compartment under the dashboard.²² One may conclude from these decisions that when the police search a car with general

15. *Id.* at 13.

16. *Id.*

17. 442 U.S. 753, 757-66 (1979).

18. *Id.* at 768 (Burger, C.J., concurring).

19. *Id.* at 761.

20. *Id.* at 763-65. The Court stated that the State has failed to carry its burden of demonstrating the need for warrantless searches of luggage properly taken from automobiles. A closed suitcase in the trunk of an automobile may be as mobile as the vehicle in which it rides. But as . . . noted in *Chadwick*, the exigency of the mobility must be assessed at the point immediately before the search--after the police have seized the object to be searched and have it securely within their control Once police have seized a suitcase . . . the extent of its mobility is in no way affected by the place from which it was taken.

Id. at 763 (citing *United States v. Chadwick*, 433 U.S. 1, 13 (1976)).

21. *Carroll v. United States*, 267 U.S. 132, 136 (1925).

22. *Chambers v. Maroney*, 399 U.S. 42, 44 (1970).

probable cause (and *less specific* information), they may conduct a *broad* search than when they act upon *specific* probable cause.²³ This would appear to be the antithesis of the anticipated and preferred result. In non-automobile search and seizure cases, more specific information usually provides the police with greater capacity to appropriately encroach upon privacy interests without a warrant.

This anomalous conclusion was eliminated in *California v. Acevedo*.²⁴ The Supreme Court halted its *Chadwick-Sanders* digression, holding that “the Fourth Amendment does not compel separate treatment for an automobile search that extends only to a container within the vehicle.”²⁵ Henceforth, the police may search such a container without a warrant, so long as they have probable cause to believe it contains contraband or evidence.²⁶

23. See Note, *California v. Acevedo: The Ominous March of a Loyal Foot Soldier*, 52 LA. L. REV. 1225 (1992). The author discussed the conflict between *Chadwick* and *Ross*, where searches in one instance are focused upon specific containers as opposed to situations where the probable cause is focused upon the entire vehicle. *Id.* at 1233. The author pointed out that prior to Supreme Court review, the California Appellate Division in *People v. Acevedo* “recognize[d] the anomalous nature of the *Ross-Chadwick* dichotomy” and explained:

If police have probable cause to believe contraband is concealed in a particular container, they must obtain a warrant before searching it, even when it is being stored in a vehicle. If the investigation has, for whatever reason, yet to focus on a particular container and there is only probable cause to believe the contraband is located somewhere in an automobile, officers may conduct a warrantless search of any containers in the car that could reasonably conceal the evidence One unfortunate feature of the rule is an incentive for police officers to withhold evidence related to probable cause in order to fit within the more generous confines of *Ross*. Despite misgivings concerning the continuing validity of *Chadwick* after *Ross*, we are in no position to ignore the Supreme Court’s mandate.

Id. at 1233 (quoting *People v. Acevedo*, 265 Cal. Rptr. 23, 27 (1989), *rev’d*, 111 S. Ct. 1982 (1991)).

24. 111 S. Ct. 1982 (1991).

25. *Id.* at 1989.

26. *Id.* at 1991. The Court reaffirmed the principle enunciated in *United States v. Ross*, 456 U.S. 798, 824 (1982), by stating that

The *Acevedo* Court's reversion to the *Carroll-Chambers* rule is unmistakable.²⁷ *Chadwick* and *Sanders* represented the Supreme Court's notable divergence from its bright-line rule.²⁸ In New York, however, such rules have been viewed more skeptically.

New York's first serious consideration of the *Carroll-Chambers* automobile exception came about circuitously as a result of *People v. Belton*²⁹ [hereinafter *Belton I*]. The New York Court of Appeals initially held that a search incident to the lawful arrest of the driver of a car, whom the police removed from the vehicle, did not extend to the pocket of his jacket in the back seat.³⁰ The court relied upon the fact that the jacket was no longer in the defendant's "grabbable area"³¹ in suppressing the search.³²

"[t]he scope of a warrantless search of an automobile . . . is not defined by the nature of the container in which the contraband is secreted. Rather, it is defined by the object of the search and the places in which there is *probable cause to believe that it may be found*."

Acevedo, 111 S. Ct. at 1991 (emphasis added) (quoting *Ross*, 456 U.S. at 824).

27. *Acevedo*, 111 S. Ct. at 1985-91. The Court stated that "[t]he interpretation of the *Carroll* doctrine . . . now applies to all searches of containers found in an automobile." *Id.* at 1991.

28. *See id.* at 1989-91. The Court noted that "[t]he *Chadwick-Sanders* rule not only has failed to protect privacy but it also confused courts and police officers and impeded effective law enforcement" due to its language contradicting the holding in *Carroll*. *Id.* at 1989. "The *Chadwick-Sanders* rule is the antithesis of a 'clear and unequivocal' guideline." *Id.* at 1990.

29. 50 N.Y.2d 447, 407 N.E.2d 420, 429 N.Y.S.2d 574 (1980), *rev'd*, 453 U.S. 454 (1981).

30. *Id.* at 449, 407 N.E.2d at 421, 429 N.Y.S.2d at 575.

31. *See Chimel v. California*, 395 U.S. 752, 763 (1969) (defining "'the area 'within his immediate control' . . . [as] the area from within which he might gain possession of a weapon or destructible evidence'" (citations omitted)).

32. *Belton*, 50 N.Y.2d at 450-52, 407 N.E.2d at 422-23, 429 N.Y.S.2d at 476-77. The court found that although the arrest justified a warrantless search for finding weapons within the arrestee's grabbable area, "it [did] not transform the initial predicate into a carte blanche justification to rummage through all articles which might bear some connection to the arrestee." *Id.* at 450-51, 407 N.E.2d at 422, 429 N.Y.S.2d at 576 (citations omitted).

The Supreme Court reversed, finding that when the police have lawfully arrested the occupant of a vehicle, they may, "as a contemporaneous incident of that arrest, search the passenger compartment of that automobile, . . . [including] the contents of any containers found within the passenger compartment."³³ The Court undeniably employed a fiction—that the defendant, even after being removed from the car, still had access to the entire passenger compartment—in order to establish a bright-line rule justifying the search of the entire compartment. Interestingly, the Court's hypothesis did not emanate from the automobile exception, but rather out of the concept of a search incident to a lawful arrest.

On remand, the court of appeals declined to adopt the Supreme Court's scope of search incident to arrest.³⁴ Instead, in *People v. Belton*³⁵ [hereinafter *Belton II*], it utilized a theory overlooked in *Belton I*, the automobile exception. The scope of the search which the court now permitted under this exception was identical to that which the Supreme Court upheld as incident to the arrest of the vehicle's occupant, a search of the passenger compartment and any closed container visible therein.³⁶ The court thus introduced a new element to the automobile exception analysis, probable cause to arrest an occupant of the vehicle. This factor would eventually obscure the heretofore predominant inquiry upon which the exception was established, probable cause to search the car. It was now unclear as to whether New York's automobile exception recognized the basis developed in *Carroll* and *Chambers*, the reasonable justification the police had to search the car, without any reference to probable cause to arrest.

33. *New York v. Belton*, 453 U.S. 454, 460 (1981). In a footnote, the Court defined "container" as "closed or open glove compartments, consoles, or other receptacles located anywhere within the passenger compartment, as well as luggage, boxes, bags, clothing, and the like. Our holding . . . does *not* encompass the trunk." *Id.* at 460-61 n.4 (emphasis added).

34. 55 N.Y.2d 49, 432 N.E.2d 745, 447 N.Y.S.2d 873 (1982).

35. *Id.*

36. *Id.* at 52-55, 432 N.E.2d at 746-48, 447 N.Y.S.2d at 874-76. In *Belton II*, the court declined to extend the scope of the authorized search to the car's trunk. *Id.* at 54 n.3, 432 N.E.2d at 748 n.3, 447 N.Y.S.2d at 876 n.3.

On the same day as *Belton*, the Supreme Court also decided *Robbins v. California*,³⁷ and entangled itself in the quagmire of opaque containers. In facts remarkably similar to *Belton*, the police search in *Robbins* went a bit further. The police uncovered a recessed luggage compartment and retrieved a tote bag and two opaque packages.³⁸ Under constraint of *Chadwick* and *Sanders*, a plurality of the Court held that closed, opaque containers found in a lawfully stopped and searched vehicle, could not be opened without a warrant.³⁹ The Court also laid to rest the suggested ambiguity regarding diverse levels of protection being afforded different types of containers, which was intimated in *Sanders*:⁴⁰

[I]t is difficult if not impossible to perceive any objective criteria by which that task might be accomplished. What one person may put into a suitcase, another may put into a paper bag In short, the negative implication of footnote 13 of the *Sanders* opinion is that, unless the container is such that its contents may be said to be in plain view, those contents are fully protected by the Fourth Amendment.⁴¹

The Court's analysis in *Robbins* was based upon the automobile exception, *not* upon a search incident to arrest. Under essentially indistinguishable facts,⁴² the Court reached paradoxical resolutions, due exclusively to legal conjecture. This is not

37. 453 U.S. 420 (1981).

38. *Id.* at 422.

39. *Id.* at 424-25.

40. *Id.* at 425-28; *see also* *Arkansas v. Sanders*, 442 U.S. 753, 764-65 n.13. In *Sanders*, the Court noted that "[n]ot all containers and packages found by police during the course of a search will deserve full protection of the Fourth Amendment There will be difficulties in determining which parcels taken from an automobile require a warrant for their search and which do not." *Id.*

41. *Robbins*, 453 U.S. at 426-27.

42. The fact that the search in *Robbins* extended to the recessed luggage compartment is of no moment insofar as the decision is concerned. Had the tote bag and two opaque containers been recovered from the back seat (from which *Belton's* jacket had been recovered), the decision would not have been different. The bright-line rule the Court chose to employ in *Robbins* flowed directly from the container itself. If it is closed and opaque, the Court held it may not be opened without a warrant. *Id.* at 428.

desirable if the Court is to afford guidance to its police and citizens. Nor was it well-reasoned under Fourth Amendment evaluation. The police, in each instance, acted under probable cause to search the car; their behavior was reasonable. The exclusionary rule was instituted to deter *unreasonable* police conduct.⁴³ In identifying such a disparate standard between car searches and searches incident to arrests, the Court apparently lost sight of the rationale for the rule.

The *Robbins* reasoning was flawed from another perspective, its reliance upon *Chadwick* and *Sanders* as automobile exception cases. Although it might be argued that they should have been so characterized, the Supreme Court had held they were not. As Justice Stevens correctly pointed out in his dissent, “*Sanders* and *Chadwick* are both plainly distinguishable from this case because neither case truly involved the automobile exception,” due to the incidental nature of the contact of the containers with the car in both of those cases.⁴⁴ Stevens suggested his own bright-line rule: “In my opinion, the ‘automobile exception’ to the warrant requirement therefore provided each officer the authority to make a thorough search of the vehicle—including the glove compartment, the trunk, and any containers in the vehicle that

43. See *Weeks v. United States*, 232 U.S. 383 (1914). The Court stated that

[t]he effect of the Fourth Amendment is to put the courts of the United States and Federal officials, in the exercise of their power and authority, under limitations and restraints as to the exercise of such power and authority, and to forever secure the people, their persons, houses, papers and effects against all unreasonable searches and seizures under the guise of law. This protection reaches all alike, whether accused of crime or not, and the duty of giving to it force and effect is obligatory upon all entrusted under our Federal system with the enforcement of the laws. The tendency of those who execute the criminal laws of the country to obtain conviction by means of unlawful seizures and enforced confessions . . . should find no sanction in the judgments of the courts which are charged at all times with the support of the Constitution and to which people of all conditions have a right to appeal for the maintenance of such fundamental rights.

Id. at 391-92.

44. *Robbins*, 453 U.S. at 445-46 (Stevens, J., dissenting).

might reasonably contain the contraband.”⁴⁵ In the context of *Carroll* and *Chambers*, this is entirely compatible. The expectation of privacy in a closed, opaque container in an automobile is at least identical to (and may even be less than) that expectation in the upholstery or in a hidden compartment underneath the dashboard. Accordingly, the same search criterion ought to pertain to both.⁴⁶

A year later, Justice Stevens’ dissent became the majority opinion. In *United States v. Ross*,⁴⁷ the Court effectively reversed *Robbins*⁴⁸ and held that closed, opaque containers properly seized under the automobile exception could now be searched without a warrant.⁴⁹ The decision included a telling reference to practical exigencies:

It is therefore significant that the practical consequences of the *Carroll* decision would be largely nullified if the permissible scope of a warrantless search of an automobile did not include containers and packages found inside the vehicle. *Contraband goods rarely are strewn across the trunk or floor of a car*; since by their very nature such goods must be withheld from public view, they rarely can be placed in an automobile unless they are enclosed within some form of container.⁵⁰

45. *Id.* at 444 (Stevens, J., dissenting).

46. *See id.* at 447-49 (Stevens, J., dissenting). Justice Stevens examined the findings of *Carroll* and *Chambers*, which recognize the automobile exception to the extent that a magistrate would authorize such search by a warrant, and stated that “[i]f a magistrate issued a search warrant for an automobile, and officers in conducting the search authorized by the warrant discovered a suitcase in the car, they surely would not need to return to the magistrate for another warrant before searching the suitcase.” *Id.* at 448-49 (Stevens, J., dissenting).

47. 456 U.S. 798 (1982).

48. The Court recognized the inconsistencies between *Ross* and *Robbins*, and rejected *Robbins*’ reasoning, but nevertheless failed to overturn its holding. *Id.* at 824.

49. *Id.* at 817-825. The majority stressed that the underlying test had not changed, “[m]oreover, the probable-cause determination must be based on objective facts that could justify the issuance of a warrant by a magistrate and not merely on the subjective good faith of the police officers.” *Id.* at 808.

50. *Id.* at 820 (emphasis added).

Ross, in a notable step forward in responsible jurisprudence, announced a new clarification to the bright-line rule: “[t]he scope of a warrantless search of an automobile thus is not defined by the nature of the container . . . [but] by the object of the search and the places in which there is probable cause to believe that it may be found.”⁵¹ The holding also had the practical effect of narrowing *Chadwick* and *Sanders* to their precise situation, until *Acevedo* provided an even greater level of uniformity by reversing them.

While the Supreme Court was honing a purposeful bright-line rule, New York’s added component, the possible link between probable cause to arrest and the search, was again being considered by the court of appeals. In *People v. Langen*,⁵² New York embraced the *Ross* rule regarding closed, opaque containers. The court of appeals, however, also endorsed the direct link standard.⁵³ New York now required a *nexus* between the circumstances of the arrest and the probable cause to search the car:

It is held that when the circumstances giving rise to probable cause to arrest a driver or passenger in the automobile also support the belief that the automobile contains contraband *related to the crime for which the arrest is made*, police may search, within a reasonable time after the arrest, any container, locked or otherwise, located in the automobile.⁵⁴

Left conspicuously unaddressed was the *Carroll-Chambers* circumstance, where the police *lack* probable cause to arrest and only manifest probable cause to search the car. After *Belton II*, however, and the majority’s pronouncement in *Langen* that “the above rule requires *both* probable cause to search the automobile generally *and a nexus* between the probable cause to search and

51. *Id.* at 824.

52. 60 N.Y.2d 170, 456 N.E.2d 1167, 469 N.Y.S.2d 44 (1983), *cert. denied*, 465 U.S. 1028 (1984).

53. *Id.* at 180-82, 456 N.E.2d at 1172-73, 469 N.Y.S.2d at 49-50.

54. *Id.* at 172, 456 N.E.2d at 1167-68, 469 N.Y.S.2d at 44-45 (emphasis added).

the crime for which the arrest is being made,”⁵⁵ it is improbable that the *Carroll-Chambers* rule had continued viability in New York after *Langen*.

Less than a year later, in *People v. Ellis*,⁵⁶ the court of appeals was evidently uncomfortable with the *Langen* rule. It ignored the nexus specification, finding that “[i]t was the probable cause to believe a gun was in the car that gave the police officers grounds for the search of the car,”⁵⁷ when the defendant had been arrested for a traffic infraction.⁵⁸ The court went on to declare that “[t]he basis for the automobile exception to the warrant requirement is the reduced expectation of privacy associated with automobiles and the inherent mobility of such vehicles.”⁵⁹ Allusion to the nexus requirement of *Langen* is noticeably absent. Was *Ellis* signaling a shift to the federal rule? Was New York about to adopt the *Carroll-Chambers* analysis and bright-line rule?

When confronted with this, the court of appeals hesitated. In *People v. Blasich*,⁶⁰ the court traversed a tentative line between *Belton II*, *Langen* and *Ellis*. Its midway stance now maintained that “the proper inquiry in assessing the propriety of a *Belton* search is simply whether the circumstances gave the officer probable cause to search the vehicle. Whether the officer had probable cause to arrest an occupant of the vehicle for one or more crimes is significant.”⁶¹ Significant, but not mandated.

55. *Id.* at 181, 456 N.E.2d at 1173, 469 N.Y.S.2d at 50 (emphasis added).

56. 62 N.Y.2d 393, 465 N.E.2d 826, 477 N.Y.S.2d 106 (1984).

57. *Id.* at 397, 465 N.E.2d at 828, 477 N.Y.S.2d at 108.

58. *Id.* at 396-97, 465 N.E.2d at 827-28, 477 N.Y.S.2d at 107-08. The court of appeals also applied the *Ross-Langen* rule, approving the search of a locked glove compartment. *Id.* at 398, 465 N.E.2d at 828-29, 477 N.Y.S.2d at 108-09.

59. *Id.* at 397, 465 N.E.2d at 828, 477 N.Y.S.2d at 108.

60. 73 N.Y.2d 673, 541 N.E.2d 40, 543 N.Y.S.2d 40 (1989) (finding that the police acted lawfully in searching defendant’s automobile subsequent to the police arresting him for impersonation while the defendant was questioned regarding burglar’s tools found on the front floor of his automobile).

61. *Id.* at 681, 541 N.E.2d at 45, 543 N.Y.S.2d at 45. The court recognized the nexus requirement enunciated in *Langen* but noted that “nothing in our decisions suggests that the [nexus requirement] refers only to charges

Blasich appeared to leave open the prospect of a *Carroll-Chambers* type search, under certain facts. But this was far from clear. In fact, probable cause to arrest was indeed present in *Blasich*, thereby further obscuring the breadth of the new posture.

At this point, it would be worthwhile to explore whether the nexus requirement ought to exist at all. Many argue that without any connection to the arrest of an occupant, the police have no authority to conduct a warrantless search of a car, based upon privacy implications concerning the vehicle. Is this not illusory? Are not probable cause to arrest and probable cause to search two separate and distinct concepts, each compelling its own legal analysis? Magistrates daily authorize search warrants for premises, based *solely* upon probable cause to search. Automobiles are comparable to premises, with even a reduced expectation of privacy. Since the *Carroll-Chambers* criterion demands the identical standard for a warrantless car search which would support the issuance of a warrant, it is consistent with Fourth Amendment jurisprudence. It furnishes reliable guidance to our police and citizenry. It ought to be followed in New York.

The nexus standard itself is perhaps an inadvertent consequence of the particular facts contained in *Belton II*, which the court of appeals erroneously deemed controlling in *Langen*. Comparison of the language of each case is enlightening. *Belton II* makes no effort to distinguish a separate "New York automobile exception" from its federal counterpart.⁶² Indeed, the majority opinion favorably comments on the federal rationale for the exception: "the reduced expectation of privacy associated with automobiles and the inherent mobility of such vehicles."⁶³ The decision can appropriately be read as a case *coincidentally* involving probable cause to arrest, rather than requiring probable cause to arrest as an obligatory predicate to the car search. In *Belton II*, the

formally announced by the arresting officer and we perceive no reason to adopt such a narrow, formalistic approach today." *Id.* at 680, 541 N.E.2d at 44, 543 N.Y.S.2d at 44.

62. *People v. Belton*, 55 N.Y.2d 49, 53, 432 N.E.2d 745, 747, 447 N.Y.S.2d 873, 875 (1982).

63. *Id.* (citations omitted).

probable cause to arrest happened to provide the underlying justification to search the car; it was not imperative for that purpose.

Langen, however, takes *Belton II* a full step further. Its language is unmistakable: search pursuant to the automobile exception "requires both probable cause to search the automobile generally and a nexus between the probable cause to search and the crime for which the arrest is being made."⁶⁴ The *Langen* court purportedly was applying the *Belton II* criterion.⁶⁵ In fact, it established an unreasonably high standard which *Ellis* and *Blasich* struggled to reconcile with their own facts.

The nexus yardstick continues to frustrate sound analysis by the court of appeals. *People v. Torres*⁶⁶ is instructive. The police actions were based upon a rather detailed anonymous call:

[A]n individual known as "Poppo," who was wanted on homicide charges, could be found having his hair cut at a barber shop located at 116th Street and Third Avenue in Manhattan. The suspect was described as a large, six-foot tall Hispanic male wearing a white sweater, driving a black Eldorado and carrying a gun in a shoulder bag.⁶⁷

These particulars were all corroborated by the detectives' personal observations upon arrival at the precise location.⁶⁸ After directing the defendant and a companion out of the Eldorado, the

64. *People v. Langen*, 60 N.Y.2d 170, 181, 456 N.E.2d 1167, 1173, 469 N.Y.S.2d 44, 50 (1983), *cert. denied*, 465 U.S. 1028 (1984).

65. *Id.* In *Langen*, the court based its nexus requirement on its reasoning in *Belton II*, by stating:

[W]hen "police have validly arrested an occupant of an automobile, and they have reason to believe that the car may contain evidence related to the crime for which the occupant was arrested or that a weapon may be discovered or a means of escape thwarted, they may contemporaneously search the passenger compartment, including any containers found therein."

Id. (quoting *Belton*, 55 N.Y.2d at 55, 432 N.E.2d at 748, 447 N.Y.S.2d at 876).

66. 74 N.Y.2d 224, 543 N.E.2d 61, 544 N.Y.S.2d 796 (1989).

67. *Id.* at 226, 543 N.E.2d at 62, 544 N.Y.S.2d at 797.

68. *Id.*

detectives frisked them, with negative results.⁶⁹ One of the detectives then reached into the front seat of the car and removed the shoulder bag from where it had been left by defendant.⁷⁰ He felt the outside of the bag and discerned the shape of a gun.⁷¹ He unzipped the bag and discovered a Rossi revolver and several rounds of live ammunition.⁷²

The court of appeals suppressed the evidence finding that “[a]t most, the detectives may have had a reasonable basis for *suspecting* the presence of a gun.”⁷³ The court identified the circumstance as squarely within the *Belton II* (although more properly the *Langen*) context, with its nexus yardstick.⁷⁴ The court thus found no justification for recovering the bag containing the gun.⁷⁵

This decision contains several disquieting aspects. First is the conclusion that the police only possessed reasonable suspicion for *suspecting* the presence of a gun.⁷⁶ This disregards the fact that the initial call specifically announced that “*the bag contained a gun*” as Judge Bellacosa correctly pointed out in his dissent.⁷⁷ At the time the bag was retrieved, this was no longer simply an anonymous call situation. The express components of the call had all been corroborated by the detectives’ own observations, save one: that the gun was in the bag.⁷⁸ A year prior to *Torres*, the

69. *Id.*

70. *Id.*

71. *Id.*

72. *Id.*

73. *Id.* at 227, 543 N.E.2d at 63, 544 N.Y.S.2d at 798.

74. *Id.* at 227-30, 543 N.E.2d at 63-65, 544 N.Y.S.2d at 798-800.

75. *Id.* at 230, 543 N.E.2d at 65, 544 N.Y.S.2d at 800.

76. *See supra* note 73 and accompanying text.

77. *Torres*, 74 N.Y.2d at 233, 543 N.E.2d at 67, 544 N.Y.S.2d at 802 (Bellacosa, J., dissenting).

78. *Id.* (Bellacosa, J., dissenting). Judge Bellacosa bases his opinion on these facts and rejects the automobile exception under these circumstances by stating that “this case is not controlled by the . . . automobile exception and container standard of [*Belton II*],” but it is instead supported by

[h]ighly detailed information reported to the police and manifestly based on personal knowledge, corroborated in every observable aspect and coupled with yet-to-be conformed data that the suspect is a violent felon-

court of appeals had, for the first time, acknowledged that specific information corroborated by independent observations elevated the permissible level of police intrusion.⁷⁹ Given the precision of the call and the corroboration of all the other details, would not the police have an *obligation* to examine the bag?

The holding also portrayed as “unrealistic” and “far-fetched,” the fear for the departing officers’ safety once the defendant and his associate were permitted to return to the vehicle and the concealed weapon.⁸⁰ This is a questionable conclusion at best, as Judge Bellacosa once again illustrated in his dissent.⁸¹ That opinion aside, however, the majority failed to take into account a far larger array of potential victims, the general population. The detectives in *Torres* were not only acting to safeguard themselves, they also had a duty to protect others.⁸² Given the extent of their information, could they have responsibly permitted the two suspects to return to the car and drive off, without first examining the contents of the bag? Concern for public safety is

-armed and suspected of murder--provides more than adequate basis for upholding the reasonableness of the *officers’ safeguarding actions*.

Id. at 234-35, 543 N.E.2d at 68, 544 N.Y.S.2d at 803 (Bellacosa, J., dissenting) (emphasis added) (citations omitted).

79. *People v. Salaman*, 71 N.Y.2d 869, 522 N.E.2d 1048, 527 N.Y.S.2d 750 (1988) (finding that the police did not act unreasonably when they frisked defendant who matched a description given by an anonymous informant as one who was armed with a gun). The court stated that “[t]he officer was of course duty bound to investigate the report.” *Id.* at 870, 522 N.E.2d at 1049, 527 N.Y.S.2d at 751 (citations omitted).

80. *Torres*, 74 N.Y.2d at 230-31, 543 N.E.2d at 65, 544 N.Y.S.2d at 800.

81. *Id.* at 232, 543 N.E.2d at 66, 544 N.Y.S.2d at 801 (Bellacosa, J., dissenting) (citation omitted) (stating that “[t]he dangers may be ‘far-fetched’ . . . to Judges in the protected enclave of the courthouse, but not to cops on the beat”).

82. *See id.* at 236, 543 N.E.2d at 69, 544 N.Y.S.2d at 804 (Bellacosa, J., dissenting). Judge Bellacosa stated:

The officers’ and innocent bystanders’ safety concerns are not alleviated, in law and certainly not in fact, by a frisk of the person only, in this circumstance given the continuing, frighteningly real nature of the threat presented by the accessibility of the gun as soon as the defendant might reenter or reach into the car.

Id. (Bellacosa, J., dissenting).

recognized as allowing police intrusion onto the very person of the suspect.⁸³ In *Torres*, the police possessed the added information that the gun was purported to be in the very bag that was the subject of the intrusion. Is recovery of the bag and “frisking” it from the outside any more intrusive than a frisk of someone’s person? In fact, it is far less so. Would the safety concerns have been less “unrealistic” or “far-fetched” if the police had gone directly to the bag without frisking the occupants of the car?

The court of appeals itself, in *People v. Brooks*,⁸⁴ had acknowledged that a frisk need not be limited to the suspect’s person, but may properly extend to the suspect’s “grabbable reach,” including “personal items capable of concealing a weapon,” such as a shoulder bag.⁸⁵ Given this practical analysis, the *Torres* conclusion must be challenged. If the detectives had directed the defendant to bring the bag with him when exiting the vehicle, it would have remained within his grabbable area and, thus subjecting him to a search under *Brooks*. Similarly, suppose the detectives had ordered defendant to hand over the bag while still seated in the car. Would this not have been upheld, and appropriately so, following *Brooks*? Under these facts, it is unreasonable to deny the police the ability to retrieve the bag from the automobile simply because they first removed the occupants.

It is suggested here that based upon the facts in *Torres*, probable cause existed to search the bag in question, irrespective of the presence or absence of any probable cause to arrest the occupants of the Eldorado. The information was precise and detailed, and corroborated in every regard except for the contents of the bag. In *Ross*, the police similarly acted upon specific

83. See *Salaman*, 71 N.Y.2d at 870, 522 N.E.2d at 1048-49, 527 N.Y.S.2d at 751.

84. 65 N.Y.2d 1021, 1023, 484 N.E.2d 132, 132, 494 N.Y.S.2d 103, 103 (1985) (finding that the police conducted a permissible frisk of defendant and personal items within the defendant’s grabbable reach, as he matched a description of someone seen waving a gun).

85. *Id.*

information provided by an informant.⁸⁶ The details were *less particular* than those in *Torres*; which directly referred to the definite location of the gun (in the shoulder bag).⁸⁷

Under the federal rule, there is no question that in *Torres* probable cause would have been found and the search of the bag upheld under the automobile exception. This would have been a suitable outcome. The nexus standard in New York prevented it and generated an unrealistic result. In *Torres*, Judge Titone, writing for the majority, proclaimed that “such [police] intrusions must be both justified in their inception and reasonably related in scope and intensity to the circumstances which rendered their initiation permissible.”⁸⁸ This analysis was not utilized by the court, despite its declaration. The detectives clearly possessed ample information justifying their stop of defendant and his associate, their frisks of both and their recovery of the bag containing the concealed gun and ammunition.⁸⁹ The retrieval of the bag was “reasonably related in scope and intensity to the circumstances,” given the specificity of their knowledge and the degree of previous corroboration. Their handling of the bag was also circumspect. The detective did *not* immediately open it. Only upon noticing its “unusual weight,” did he even take the minimally intrusive step of feeling the outside of the bag.⁹⁰ Then, and only then, having felt what he discerned to be a gun, did he open the bag and uncover the gun.⁹¹

86. *United States v. Ross*, 456 U.S. 798, 800 (1982). In *Ross*, a reliable informant provided police with a detailed description of a man, named “Bandit,” selling narcotics supposedly stored in the trunk of his “purplish maroon” Chevrolet Malibu with District of Columbia license plates, which was parked at a specific location. *Id.* When the police observed a similar automobile leaving the location with the driver matching the informant’s description, they stopped the automobile. *Id.* at 801.

87. *People v. Torres*, 74 N.Y.2d 224, 226, 543 N.E.2d 61, 62, 541 N.Y.S.2d 796, 797 (1989). See *supra* note 67 and accompanying text.

88. *Torres*, 74 N.Y.2d at 230, 543 N.E.2d at 65, 541 N.Y.S.2d at 800.

89. See *supra* notes 67-72 and accompanying text.

90. *Torres*, 74 N.Y.2d at 226, 543 N.E.2d at 62, 541 N.Y.S.2d at 797.

91. *Id.* New York, of course, would have additional difficulty with this course of events. *Id.* The detective *felt* the gun within the bag prior to unzipping the bag. The court of appeals has recently rejected the “plain touch”

The *Torres* holding also declined to apply the federal rule of *Michigan v. Long*⁹² as a matter of state constitutional construction.⁹³ The federal criterion is grounded in legitimate

exception to the warrant requirement. See *People v. Diaz*, 81 N.Y.2d 106, 612 N.E.2d 298, 595 N.Y.S.2d 940 (1993); *Matter of Marrhonda G.*, 81 N.Y.2d 942, 613 N.E.2d 568, 597 N.Y.S.2d 662 (1993). Each of these cases implicated the ability of police officers to discern the contents of a bag, container, etc., simply by touching the outside. Finding that "touching is inherently less reliable and cannot conclusively establish an object's identity or criminal nature," the court suppressed drugs in *Diaz* and 4 guns in *Marrhonda G.* *Diaz*, 81 N.Y.2d at 112, 612 N.E.2d at 302, 595 N.Y.S.2d at 944 (citations omitted). In *Marrhonda G.*, the gun holding was particularly irksome since in respondent's knapsack, an "officer felt what he believed to be the butt and trigger guard of a gun." The touching of the knapsack was inadvertent; the officer picked it up to move it. 81 N.Y.2d at 944, 613 N.E.2d at 569, 597 N.Y.S.2d at 663. The touching during that move was unavoidable. The officer's sensory impression was unambiguous. Still, the court was unconvinced. Instead of endorsing a plain touch exception, at least insofar as guns are concerned, the court suggested alternative theories to perhaps allow the bag to be opened, including grabbable area, consent and search incident to arrest. It also recommended the securing of a search warrant, citing *Arkansas v. Sanders* as authority, with no reference to *California v. Acevedo*. *Id.* at 945, 613 N.E.2d at 569, 597 N.Y.S.2d at 663.

The reference to grabbable area, of course, raises the same objections as were previously lodged in the *Torres* discussion. In a more general sense, the court failed to focus on the purpose of the exclusionary rule. As Judge Bellacosa noted in his dissenting opinion, the police activity was "reasonable and lawful." *Id.* at 946, 613 N.E.2d at 570, 597 N.Y.S.2d at 664 (Bellacosa, J., dissenting). He concluded that the majority's analysis "elevates form over substance." *Id.* at 946-47, 613 N.E.2d at 570, 597 N.Y.S.2d at 664 (Bellacosa, J., dissenting). By permitting an abstract criterion to obscure examination of the reasonableness of the police conduct, the court unnecessarily jeopardized the safety of the police and the public in its rejection of the plain touch exception.

In this rebuff, the court had to draw an artificial distinction between a police officer's ability to frisk a pocket or waistband and his or her proficiency to "frisk" a bag or other container. The same officer who is competent to ascertain the presence of a gun in a pocket, and to then go into that pocket and recover the weapon (without the need to resort to a warrant), apparently lacks the tactile capacity to do likewise in feeling the outside of a bag. This illogical conclusion unfortunately emanates directly from the rejection of plain touch.

92. 463 U.S. 1032 (1983).

93. *Torres*, 74 N.Y.2d at 226, 543 N.E.2d at 62, 544 N.Y.S.2d at 797.

apprehension for the safety of the police and the general public.⁹⁴ As Justice O'Connor announced in the majority opinion:

[T]he search of the passenger compartment of an automobile, limited to those areas in which a weapon may be placed or hidden, is permissible if the police officer possesses a reasonable belief based on "specific and articulable facts which, taken together with the rational inferences from those facts, reasonably warrant" the officer in believing that the suspect is dangerous and the suspect may gain immediate control of weapons.⁹⁵

This is a direct and sensible application of the Supreme Court's definition of a police officer's ability to stop and frisk, as enunciated in *Terry v. Ohio*,⁹⁶ to the vehicle context. It is noteworthy that the decision also asserted that "the officers did not act unreasonably in taking preventive measures to ensure that there were no other weapons within Long's immediate grasp *before permitting him to reenter his automobile*."⁹⁷ Ostensibly, the Supreme Court did not find it "far-fetched" that if a suspect is allowed to re-enter the car, "he will then have access to any weapons inside."⁹⁸ Its inquiry pragmatically focused on whether or not the police conduct was reasonable.⁹⁹

The *Long* rationale won apparent endorsement in New York in *People v. Lindsay*,¹⁰⁰ wherein the court of appeals upheld a search of the area of an automobile under the driver's seat, following a negative frisk of the driver which was based upon reasonable suspicion.¹⁰¹ *Lindsay*, however, was decided solely

94. *Long*, 463 U.S. at 1045-52.

95. *Id.* at 1049 (citing *Terry v. Ohio*, 392 U.S. 1, 21 (1968)).

96. 392 U.S. 1 (1968).

97. *Long*, 463 U.S. at 1051 (emphasis added).

98. *Id.* at 1052 (citing *United States v. Powless*, 546 F.2d 792, 795-96 (8th Cir.), *cert. denied*, 430 U.S. 910 (1977)).

99. *Id.* at 1046. In *Long*, the Court applied the reasonable standard principles enunciated in *Terry v. Ohio*, in which the Court noted that it "'need not develop at length in this case . . . the limitations which the Fourth Amendment places upon a protective search and seizure for weapons. These limitations will have to be developed in the concrete factual circumstances of individual cases.'" *Id.* at 1047 (quoting *Terry*, 392 U.S. at 29).

100. 72 N.Y.2d 843, 527 N.E.2d 279, 531 N.Y.S.2d 796 (1988).

101. *Id.* at 844-45, 527 N.E.2d at 279, 531 N.Y.S.2d at 796.

on a federal constitutional claim.¹⁰² Its viability under the state constitution was left an open question, which *Torres* answered, albeit in the negative.¹⁰³

The post-*Torres* case law has further regressed into a clutter of confusion.¹⁰⁴ The next noteworthy holding was *People v.*

102. *Id.* at 845, 527 N.E.2d at 280, 531 N.Y.S.2d at 797. The court reasoned that based on federal law, the search under the driver's seat was "limited to those areas in which a weapon could have been placed or hidden and because the officers . . . 'possess[ed] an articulable and objectively reasonable belief that the [occupants were] potentially dangerous' and might, upon reentering the car, gain immediate control of a weapon secreted in that area." *Id.* (alterations in the original) (quoting *Long*, 463 U.S. at 1051).

103. Following *Lindsay*, the Supreme Court, Appellate Division, Second Department, employed the same reasoning to facts virtually identical to those in *Torres* (but prior to *Torres*), in sustaining the search of a bag in a vehicle which the police ordered vacated, after a touch of the bag revealed the presence of a gun. *People v. Wilson*, 150 A.D.2d 628, 541 N.Y.S.2d 499 (2d Dep't 1989). Similarly upheld was a police request that a suspect in a car hand over a brown paper bag, which the officer had a reasonable belief it contained a gun. *People v. McClane*, 143 A.D.2d 848, 533 N.Y.S.2d 326 (2d Dep't 1988). The second department also sustained the search of an automobile *trunk* for which the police had "probable cause to detain the occupants," based upon information that a gun had been used in a robbery, for which this was the purported "getaway car." *People v. Torres*, 145 A.D.2d 664, 665, 536 N.Y.S.2d 176, 177 (2d Dep't 1988), *appeal denied*, 73 N.Y.2d 927, 538 N.E.2d 370, 540 N.Y.S.2d 1018 (1989) (citing *People v. Ellis*, 62 N.Y.2d 393, 465 N.E.2d 826, 477 N.Y.S.2d 106 (1984)).

104. Several appellate division decisions have followed *Torres*, even when presented with additional facts which might have provided a reason to distinguish it. *See People v. Theodis*, 155 A.D.2d 339, 341, 547 N.Y.S.2d 310, 312 (1st Dep't 1989) (applying *Torres* after noting that there were significant differences from *Torres*), *appeal denied*, 75 N.Y.2d 872, 552 N.E.2d 882, 553 N.Y.S.2d 303 (1990); *see also People v. Mullins*, 196 A.D.2d 894, 602 N.Y.S.2d 156 (2d Dep't 1993) (suppressing handgun found under automobile seat after a radio transmission and an unidentified man told officers that the defendant's automobile had a gun in it); *People v. Carbone*, 184 A.D.2d 648, 585 N.Y.S.2d 68 (2d Dep't 1992) (suppressing controlled substances found in leather bag of automobile when officers searched the bag after noticing pink pills next to it on the automobile's floor); *People v. Pena*, 155 A.D.2d 310, 547 N.Y.S.2d 282 (1st Dep't 1989) (applying *Torres* despite the fact that the information was provided to the police by a citizen-informant, not anonymously); *People v. Drayton*, 172 A.D.2d 849, 569 N.Y.S.2d 212 (2d Dep't 1991) (following *Torres* despite the fact that the police observed the

Coutin,¹⁰⁵ in which the court of appeals, in a memorandum decision, sustained a car search based upon “reasonable suspicion to stop the car . . . , reasonable concern for [the officers’] safety . . . , and probable cause to search the interior of the car for a weapon and evidence of the crime.”¹⁰⁶ The court curiously

defendant “fumbling around” under the front seat and a frisk revealed an empty holster in his waistband), *appeal denied*, 78 N.Y.2d 921, 577 N.E.2d 1066, 573 N.Y.S.2d 474 (1991). Constrained by *Torres*, the second department, held that these facts did not “warrant a search under the passenger compartment of the defendant’s automobile.” *Id.* at 851, 569 N.Y.S.2d at 214.

The Supreme Court, Appellate Division, Third Department, likewise, found no basis to search a car after a negative frisk (based on reasonable suspicion), even though an *empty holster* was observed on the passenger seat in *People v. Snyder*, 178 A.D.2d 757, 577 N.Y.S.2d 678 (3d Dep’t 1991), *aff’d*, 80 N.Y.2d 815, 600 N.E.2d 620, 587 N.Y.S.2d 893 (1992). Under the federal rule, of course, it is likely that both of these fact patterns would be deemed probable cause to search the car for a gun.

Occasionally, reference to *Torres* is conspicuously absent. *See People v. Rodriguez*, N.Y. L.J., May 11, 1990, at 34 (2d Dep’t May 10, 1990). In *Rodriguez*, a state trooper demanded to be shown whatever the passenger of a car was attempting to secrete under the seat, due to safety considerations. *Id.* The court upheld this demand with no mention of *Torres*. *Id.* Similarly, in *People v. Sprinkler*, ___ A.D.2d ___, 603 N.Y.S.2d 550 (2d Dep’t 1993), the second department sustained the retrieval of a gun from under the defendant’s seat in a car. The court ignored *Torres*, even though the police were apparently acting upon reasonable suspicion, not probable cause. *Id.* at ___, 603 N.Y.S.2d at 551. *Torres* has also been cited as a cross-reference. *See People v. Jean-Louis*, 154 A.D.2d 393, 395, 545 N.Y.S.2d 782, 783 (2d Dep’t 1989) (sustaining the search of a bag under a car seat after a sudden “frantic” hand movement by the passenger).

Most recently, in *People v. Alston*, 195 A.D.2d 396, 600 N.Y.S.2d 688 (1st Dep’t 1993), the first department somewhat awkwardly distinguished *Torres* in sustaining a search under the passenger seat of a vehicle properly stopped for a traffic infraction. *Id.* at 398, 600 N.Y.S.2d at 690. After the stop, the passenger made furtive movements under the seat and was ordered out of the car by the officer, who then retrieved a gun from under the seat. *Id.* at 397, 600 N.Y.S.2d at 689. Since the *driver* remained in the auto, the court was able to distinguish *Torres* by underscoring the abiding danger to the police generated by that factor. *Id.* at 398, 600 N.Y.S.2d at 690. Of course, had the police also removed the driver from the vehicle (thereby advancing their safety), the gun undoubtedly would have been suppressed under *Torres*.

105. 78 N.Y.2d 930, 578 N.E.2d 431, 573 N.Y.S.2d 633 (1991).

106. *Id.* at 932, 578 N.E.2d at 431, 573 N.Y.S.2d at 633.

made no reference to *Torres*, even while discussing reasonable suspicion.¹⁰⁷ More puzzling is that it affirmed the first department holding which relied on *Lindsay*,¹⁰⁸ and in which *Torres* was cited by the dissent.¹⁰⁹ Factually, the specificity of the knowledge in the officers' possession was at the approximate level as in *Torres*. Yet, the first department had opted to base its ruling on "the existence of *reasonable suspicion* to support a limited search for weapons."¹¹⁰ Is this not at least the minimum level under which the officers acted in *Torres*?

In a subsequent memorandum decision, *People v. Jackson*,¹¹¹ the court of appeals distinguished *Torres* by upholding the search of a bag well within the defendant's immediate reach.¹¹² Instead of removing defendant from the car, the police, acting out of safety concerns, conducted a "rather cursory examination of the bag . . . while defendant was still sitting in the car."¹¹³ This is appropriate and reasonable. Given the inherent danger involved in any car stop,¹¹⁴ however, is it wise to require the police to inspect the container while it is still within the suspect's reach? Would it not be safer for all concerned to first remove the suspect's access to the container, prior to the police searching it?

107. *Id.*

108: 168 A.D.2d 269, 272-73, 563 N.Y.S.2d 394, 396 (1st Dep't 1990), *aff'd*, 78 N.Y.2d 930, 578 N.E.2d 431, 573 N.Y.S.2d 633 (1991).

109. *Id.* at 274, 563 N.Y.S.2d at 397 (Murphy, J., dissenting) (finding that "once the occupants were out of the car, the officers had no right, without further inquiry or arrest of the occupants, to search the recesses of the automobile for a handgun").

110. *Id.* at 272, 563 N.Y.S.2d at 396 (emphasis added).

111. 79 N.Y.2d 907, 590 N.E.2d 240, 581 N.Y.S.2d 655 (1992).

112. *Id.* at 909, 590 N.E.2d at 241, 581 N.Y.S.2d at 656.

113. *Id.*

114. *See* *Pennsylvania v. Mimms*, 434 U.S. 106, 110-11 (1977) (stating that the Court has "recognized the inordinate risk confronting an officer as he approaches a person seated in an automobile," including the risk of shootings by suspects and accidental injuries caused by passing traffic); *People v. McLaurin*, 70 N.Y.2d 779, 515 N.E.2d 904, 521 N.Y.S.2d 218 (1987) (discussing *Mimms* to justify an officer's insistence that a suspicious passenger step out of the automobile while the driver was being investigated).

Jackson squarely places the *Torres* holding in the illogical posture of compelling the opposite.

In *Coutin* and *Jackson*, the court of appeals again appeared to be moving away from the *Langen-Torres* nexus criterion. Once more, however, the court hesitated. In *People v. Snyder*,¹¹⁵ the court reverted to the *Torres* rationale. After the police stopped a vehicle under suspicion concerning an assault, and received further information that a handgun may have been involved, they removed the occupants from the automobile and frisked them (with negative results).¹¹⁶ After observing an *empty holster* on the seat, they searched the car and retrieved an automatic pistol.¹¹⁷ Applying *Torres*, the court of appeals suppressed the gun on appeal, holding that "the police lacked probable cause to believe that defendant's vehicle contained a weapon or evidence of a crime."¹¹⁸

The allusion to evidence of a crime clearly refers to the nexus standard, as it once again obscures the fundamental inquiry: did the police have probable cause to believe a gun was in the car? Although the court held negatively, this was due, at least in part, to the nexus requirement, as *Torres* interpreted *Langen*. The addition of the empty holster to the details which the police already had ought to have afforded sufficient probable cause to search the car, irrespective of any basis to arrest the occupants. The inquiry regarding the justification to search the car *must* be conducted with no reference to probable cause to arrest.

Most recently, in *People v. Galak*,¹¹⁹ the court once again sought to articulate a purposeful nexus standard. However, by relying upon the tentative connection established in *Blasich*,¹²⁰ the court merely guaranteed further confusion. Factually, *Galak*

115. 80 N.Y.2d 815, 600 N.E.2d 620, 587 N.Y.S.2d 893 (1992).

116. *People v. Snyder*, 178 A.D.2d 757, 757-58, 577 N.Y.S.2d 678, 679 (3d Dep't 1991), *aff'd*, 80 N.Y.2d 815, 600 N.E.2d 620, 587 N.Y.S.2d 893 (1992).

117. *Id.* at 758, 577 N.Y.S.2d at 679.

118. *Snyder*, 80 N.Y.2d at 816, 600 N.E.2d at 620, 587 N.Y.S.2d at 893.

119. 81 N.Y.2d 463, 616 N.E.2d 842, 600 N.Y.S.2d 185 (1993).

120. *See supra* notes 60-61 and accompanying text.

is comparable to *Blasich*,¹²¹ in that the police in both cases acted upon a “combination of evidence—derived both before and during the stop.”¹²² The *Galak* court asserted that such a combination “provided not only probable cause to search but a sufficient nexus between the probable cause and the arrest,” citing *Blasich* as authority.¹²³ *Blasich*, however, seemingly declared that probable cause to arrest an occupant of the vehicle was “significant” but not mandatory.¹²⁴ *Galak* appears to assert the opposite. Of course, as previously discussed, the scope of the *Blasich* holding is by no means unclouded and *Galak* contributes no additional clarity.

Our highest Court regularly reminds us that regarding car searches, there is “no dispute among judges about the importance of striving for clarification in this area of the law;”¹²⁵ the need for “an approach that would give more specific guidance to police and courts;”¹²⁶ “the virtue of providing ‘clear and unequivocal’ guidelines to the law enforcement profession.”¹²⁷ This, of course, is a commendable aim. “When a person cannot know how a court will apply a settled principle to a recurring factual situation, that person cannot know the scope of his

121. In *Galak*, the police stopped the defendant who was driving an automobile believed to be stolen, and the defendant revealed incriminating evidence concerning the true ownership of the automobile. *Galak*, 81 N.Y.2d at 465-66, 616 N.E.2d at 843, 600 N.Y.S.2d at 186.

122. *Id.* at 468, 616 N.E.2d at 845, 600 N.Y.S.2d at 188.

123. *Id.*

124. *People v. Blasich*, 73 N.Y.2d 673, 681, 541 N.E.2d 40, 45, 543 N.Y.S.2d 40, 45 (1989). The court stated that

the proper inquiry in assessing the propriety of a *Belton* search is simply whether the circumstances gave the officer probable cause to search the vehicle. Whether the officer had probable cause to arrest an occupant of the vehicle for one or more crimes is *significant*. Which of those crimes the officer selected when formally notifying the suspect that he was under arrest has little bearing on the matter.

Id. (emphasis added).

125. *United States v. Ross*, 456 U.S. 789, 803 (1982).

126. *Robbins v. California*, 453 U.S. 420, 435 (1981) (Powell, J., concurring).

127. *California v. Acevedo*, 111 S. Ct. 1982, 1990 (1991) (citations omitted).

constitutional protection, nor can a policeman know the scope of his authority.”¹²⁸

In this context, bright-line rules that are propitious and abstract distinctions may be detrimental. The Supreme Court has manifested a willingness to hone purposeful bright-line rules to cover most car search scenarios. The New York Court of Appeals has been too hasty to reject “this bright-line approach to automobile searches”¹²⁹ as a matter of state constitutional law. Too much legal scholarship results in too many spurious distinctions, precipitating confusion and disservice to the public. New York’s pivotal failure to adopt the Supreme Court’s rationale has produced a failure to guide and a failure to protect.

The *Carroll/Chambers/Ross/Acevedo* line of cases has propagated fair and reasonable analysis. The underlying purpose behind the exclusionary rule has resulted in a sound inquiry in every federal car search: did the police act under color of probable cause sufficient to justify the issuance of a warrant by a magistrate? An affirmative response satisfies the Fourth Amendment, permits responsible police behavior and more than reasonably protects against police abuses.

The *Belton/Langen/Ellis/Blasich/Torres/Coutin/Snyder* line, on the other hand, offers only confusion and is internally inconsistent and often contradictory. The specter of New York’s nexus consideration is ever present. It interferes with objective evaluation and must be eliminated. Probable cause to search a vehicle must be scrutinized by its own independent analysis utilizing the federal standard, if we are ever to attain Judge Gabrielli’s objective.

128. *New York v. Belton*, 453 U.S. 454, 459-60 (1981).

129. *People v. Blasich*, 73 N.Y.2d 673, 678, 541 N.E.2d 40, 43, 543 N.Y.S.2d 40, 43 (1989).