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NEW LIMITS ON POLICE VEHICLE SEARCHES IN WASHINGTON—State v. Ringer, 100 Wn. 2d 686, 674 P.2d 1240 (1983).

INTRODUCTION

In State v. Ringer, the Washington Supreme Court announced two new constitutional rules for police searches and seizures. First, police arresting a suspect in a car may search the suspect and the area within the suspect's immediate control for weapons or evidence, but may not search the area beyond the arrestee's reach. Second, unless there are exigent circumstances that justify their dispensing with a warrant, police with probable cause to search a lawfully stopped vehicle must obtain a warrant before conducting a search.

Various public officials and organizations have criticized Ringer, castigating the Washington Supreme Court for being soft on crime and for ignoring the clear pronouncements of the United States Supreme Court. While careful analysis of Ringer refutes the first of these criticisms, there is no question that the Washington court broke with recent federal case law in its analysis and holding. Justice Dolliver, writing for the seven-member majority, admitted this frankly and announced that federal case law was irrelevant because the court based its analysis solely on the state constitution.

This Note analyzes the basis for and propriety of the Washington court's deviation from United States Supreme Court case law and the court's interpretation of the state constitution. Further, it discusses Ringer's significance in light of other Washington search and seizure cases that rely on the state constitution. Finally, this Note discusses the implications of nonuniformity between federal and Washington search and seizure law in cases in which the federal and state law enforcement systems cooperate.

I. THE FACTS OF RINGER

The Ringer court had to rule on the propriety of two warrantless searches, each of which presented a distinct legal issue. On November 6, 1979, state troopers found Russell J. Ringer, who was wanted on state

2. Id. at 699, 674 P.2d at 1248.
3. Id. at 701, 674 P.2d at 1248.
4. For example, Mike Redman of the Washington State Association of Prosecuting Attorneys stated: "In an incredible number of cases, over a wide variety of issues, the court . . . has made this state a haven for criminals of all stripes." Seattle Times, July 31, 1984, at D-6, col. 1.
5. 100 Wn. 2d at 689–90, 674 P.2d at 1242–43.
drug charges, seated in his parked van in a highway rest area. While arresting and handcuffing Ringer, they noticed the odor of marijuana emanating from his van. After placing Ringer in their patrol car, they searched the van and found luggage that appeared to contain drugs. Opening the luggage, the officers found and seized several controlled substances. Ringer was charged with drug possession, and was convicted after an unsuccessful attempt to suppress the evidence from the warrantless search.

On August 7, 1981, Bellevue police officers lawfully arrested Eugene Corcoran on suspicion of boat theft. The officers removed Corcoran from his car, placed him in a patrol car, and then thoroughly searched his car. The officers found marijuana in a paper bag on the front seat. Like Ringer, Corcoran was charged with and convicted of drug possession after he failed in his attempt to suppress the evidence from the warrantless search.

II. THE RINGER COURT'S REASONING

State v. Ringer and Bellevue v. Corcoran, which were consolidated on appeal, raised two related questions regarding the proper scope of warrantless police searches conducted incident to arrest. First, when officers have arrested a suspect lawfully, what is the scope of the search they may conduct incident to that arrest? Second, if the officers have independent probable cause to search the arrestee's vehicle, must they obtain a warrant before doing so?

Writing for the majority, Justice Dolliver acknowledged that the searches of both Ringer's and Corcoran's vehicles were constitutional under the fourth amendment to the United States Constitution. Never-
theless, the Washington Supreme Court reversed both convictions and announced its own, more restrictive rules for police automobile searches. The court limited warrantless searches incident to lawful arrests to the arrestee's person and the area within his or her immediate control at the time of the search. Police with probable cause to suspect the presence of contraband in a lawfully stopped automobile must obtain a search warrant unless they can show that it could not be done without risking the driver's escape or the destruction of evidence.

A. The Search Incident to Arrest Exception

The Washington court arrived at its decision by relying on state search and seizure law rather than the fourth amendment. The court began by discussing the adoption of article 1, section 7 of the state constitution and the contemporaneous common law search incident to arrest doctrine. Article 1, section 7 of Washington's constitution provides: "No person shall be disturbed in his private affairs, or his home invaded, without authority of law." There is little constitutional history to guide interpretation of this provision. However, as the Ringer court noted, its framers adopted it in preference to a proposed section identical to the fourth amendment. It follows that the level of protection against governmental invasion of privacy provided by the fourth amendment did not satisfy the framers of Washington's constitution. Furthermore, the Ringer court observed that article 1, section 7 of the state constitution suggests that the court should use the common law in force at the time of the constitution's enactment to aid it in construing specific constitutional provisions.

may conduct a warrantless search of the vehicle as thorough as that which a magistrate could authorize. Id. at 823.

14. Ringer, 100 Wn. 2d at 699, 674 P.2d at 1248.
15. Id. at 699–701, 674 P.2d at 1240–43.
16. Id. at 690, 674 P.2d at 1242–43.
17. Id. at 690–93, 674 P.2d at 1242–44.
18. WASH. CONST. art. 1, § 7.
20. Ringer, 100 Wn. 2d at 690, 674 P.2d at 1243.
21. This is exactly what the Washington court inferred in State v. Simpson, 95 Wn. 2d 170, 622 P.2d 1199 (1980) (court held that article 1, § 7, unlike the fourth amendment, grants criminal defendants automatic standing to challenge police searches and seizures) and State v. White, 97 Wn. 2d 92, 640 P.2d 1061 (1982) (article 1, § 7, unlike the fourth amendment, requires that evidence obtained through enforcement of a flagrantly unconstitutional statute be suppressed regardless of the enforcing officer's good faith belief in the statute's validity).
22. Ringer, 100 Wn. 2d at 690, 674 P.2d at 1243 ("[C]onstruing Const. art. 1, § 7, we look initially to its origins and to the law of search and seizure at the time our constitution was adopted.").
On the basis of its analysis of Washington and British common law, the *Ringer* court found that the framers of article 1, section 7 intended to allow only a very narrow search incident to arrest exception to the warrant requirement. Only the need to preserve destructible evidence or to prevent the arrestee’s escape should justify a warrantless search incident to arrest. The *Ringer* court found, however, that in almost every case between 1922 and 1964, Washington courts upheld searches that went far beyond the original scope of the search incident to arrest exception.

The trend expanding the scope of searches incident to arrest changed in 1964. Washington, following the lead of the United States Supreme Court, began expanding the constitutional rights of criminal defendants in search and seizure cases. The Washington Supreme Court disregarded the plethora of cases interpreting article 1, section 7 of the Washington constitution, and decided search incident to arrest cases exclusively under the fourth amendment. The *Ringer* court noted that during this

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The court found two relevant themes in eighteenth and nineteenth century legal treatises and cases. First, the warrant requirement occupied a central position in Anglo-American law, and courts were extremely loath to allow warrantless searches or seizures. Second, the court found that the common law allowed officers to make warrantless arrests for misdemeanors or felonies committed in their presence or when they had probable cause to believe that the suspect had committed a felony. In such situations officers clearly had no time to obtain a warrant. Courts also permitted police to search the person of an arrestee for evidence of the crime and for weapons; otherwise, the courts reasoned, an arrestee might foil the arrest by destroying evidence concealed on his or her person or by using a weapon to escape.

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*Ringer*, 100 Wn. 2d at 692-93, 674 P.2d at 1243-44. (citing State v. Michaels, 60 Wn. 2d 638, 374 P.2d 989 (1962); Dillon v. O'Brien, 20 L.R. Ir. 300, 316-17 (Ex. D. 1887); Leigh v. Cole, 6 Cox Crim. L. Cas. 329, (Oxford Circ. 1853)).

24. 100 Wn. 2d at 692-93, 674 P.2d at 1243-44.

25. Id. at 695, 674 P.2d at 1245. See, e.g., State v. Jackovich, 56 Wn. 2d 915, 355 P.2d 976 (1960); State v. Cyr, 40 Wn. 2d 840, 246 P.2d 480 (1952); State v. Miller, 151 Wash. 114, 275 P. 75 (1929); State v. Deitz, 136 Wash. 228, 239 P. 386 (1925); State v. Hughlett, 124 Wash. 366, 214 P. 841 (1923). The most glaring example of this is State v. McCollum, 17 Wn. 2d 85, 136 P.2d 165 (1943). The police arrested McCollum in a hospital several miles distant from his home, yet the *McCollum* majority upheld a search of his home as an incident to the arrest. Id. at 89-90, 136 P.2d at 167.

26. E.g., Preston v. United States, 376 U.S. 364 (1964) (holding that searches made after the arrest and in another place are not incident to arrest); Mapp v. Ohio, 367 U.S. 643 (1961) (holding that the exclusionary rule applies to the states).

27. *Ringer*, 100 Wn. 2d at 697, 674 P.2d at 1246.

28. The fourth amendment standard regarding searches incident to arrest was exemplified by Preston v. United States, 376 U.S. 364, 367 (1964), in which the Court held: "[O]nce an accused is under arrest and in custody, then a search made at another place, without a warrant, is simply not incident to the arrest."

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period the United States Supreme Court interpreted the search incident to arrest exception consistent with its common law origins.\(^{29}\)

In the 1981 case of *New York v. Belton*,\(^{30}\) however, the United States Supreme Court broke with this pattern. In *Ringer*, the Washington Supreme Court rejected *Belton* and returned to article 1, section 7 of the state constitution as the basis for Washington search and seizure law.\(^{31}\)

The *Ringer* court found that neither the search of Ringer’s van nor that of Corcoran’s automobile passed muster under its newly formulated search incident to arrest rule. In each case officers handcuffed the defendant and placed him in a patrol car before searching his vehicle. Neither defendant had the slightest opportunity to frustrate the arrest by reaching into his vehicle for weapons or destructible evidence.\(^{32}\)

**B. The Exigent Circumstances Exception**

The court next dealt with a separate question raised by the search of Ringer’s van: did the fact that the arresting officer had probable cause to believe that the van contained drugs justify his warrantless search?\(^{33}\) In *United States v. Ross*,\(^{34}\) the United States Supreme Court held that police officers who legitimately stop an automobile, and who have probable

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31. The *Ringer* court stated:

> We choose now to return to the protections of our own constitution and to interpret them consistent with their common law beginnings. . . . we conclude that, when a lawful arrest is made, the arresting officer may search the person arrested and the area within his immediate control. . . . A warrantless search in this situation is permissible only to remove any weapons the arrestee might seek to use in order to resist arrest or effect an escape and to avoid destruction of evidence by the arrestee of the crime for which he or she is arrested.

100 Wn. 2d at 699, 674 P.2d at 1247-48.

In its analysis, the *Ringer* court did not explicitly criticize *Belton*. This restraint is puzzling; as the court’s ruling represents a dramatic break from federal case law, which it had followed in the search incident to arrest area for fifteen years, one would have expected a thorough discussion of *Belton* and United States v. Ross, 456 U.S. 798 (1982), and an explanation of why the present court found the rationales of those decisions untenable. However, the *Ringer* court may not have disagreed with *Belton and Ross* insofar as they established minimum constitutional standards. A rule that binds all fifty states should perhaps be less stringent than one binding only one state. Individual states that find a federal standard too lax can always promulgate stricter standards, while a state faced with a strict federal rule has little flexibility in applying it. It is also possible that the *Ringer* court avoided discussing *Belton and Ross* at length because it wanted to make it absolutely clear that those cases were irrelevant to its decision. An extended discussion of federal cases might have obscured the importance of the court’s state constitutional analysis.

32. 100 Wn. 2d at 700, 674 P.2d at 1248.
33. This question did not arise with respect to Corcoran, as the officers in his case did not have probable cause to search his car.
34. 456 U.S. 798 (1982).
cause to believe that it conceals contraband, may conduct a warrantless search of the vehicle that is as thorough as a magistrate could authorize. The Ross Court relied on a long line of federal decisions holding that vehicle searches should be judged by less stringent standards than building searches.35

The Ringer court acknowledged that the search was acceptable under federal constitutional standards,36 but chose to follow an early Washington case holding that article 1, section 7 protects automobiles as fully as it protects houses.37

The Ringer court found, however, that Washington law did recognize an ‘‘exigent circumstances’’ exception to the warrant requirement.38 State officers could dispense with a warrant when confronted by emergencies and exigencies. Exigency, the court continued, depends on the totality of the circumstances in each case, including the possible availability of a telephonic warrant.39 Those seeking the exemption must show that the exigencies of the situation made that course imperative.40 As the officers had not shown that any exigencies compelled them to search Ringer’s van without a warrant, and apparently had not tried to obtain a telephonic warrant, the court held the exigent circumstances exception inapplicable.41

35. This so-called ‘‘automobile exception’’ began with Carroll v. United States, 267 U.S. 132 (1925), where the Court upheld the conviction of bootleggers obtained by means of evidence seized in a warrantless search of their automobile. The Court stated that because an automobile is inherently mobile, the fourth amendment does not require police officers to obtain a warrant every time they have probable cause to search; otherwise the automobile’s owners would simply drive out of the jurisdiction before police officers obtained the warrant. Id. at 153. The United States Supreme Court still follows Carroll. E.g., Texas v. Brown, 460 U.S. 730 (1983).

36. Ringer, 100 Wn. 2d at 689, 674 P.2d at 1242.

37. Id. at 700, 674 P.2d at 1248 (citing State v. Gibbons, 118 Wash. 171, 203 P. 390 (1922)).

38. 100 Wn. 2d at 701–02, 674 P.2d at 1248–49.

39. Id. The court reasoned that the availability of a telephonic warrant reduces the need for officers to make a warrantless search. Id. (citing Marek, Telephonic Search Warrants: A New Equation for Exigent Circumstances, 27 CLEV. ST. L. REV 35 (1978)).

40. Ringer, 100 Wn. 2d at 701, 674 P.2d at 1249. Presumably, the ‘‘exigent circumstances’’ exception applies whenever a police officer does not reasonably have time to present evidence of probable cause to a judicial officer.

41. Ringer, 100 Wn. 2d at 703, 674 P.2d at 1249.

Justice Dimmick, joined by Justice Dore, dissented from the court’s opinion. Id. at 703–06, 674 P.2d at 1250–51. Justice Dimmick had little quarrel with the majority’s analysis of search incident to arrest doctrine, focusing her criticism instead on the majority’s dismissal of the ‘‘automobile exception’’ to the warrant requirement. Id. at 704, 674 P.2d at 1250. She argued that several recent Washington cases had recognized the exception, although she admitted that they had often confused it with the search incident to arrest exception.

Justice Dimmick read these cases as requiring only that vehicle searches be reasonable under the circumstances, and in her opinion, when circumstances include a lawful arrest and probable cause to believe the vehicle carries contraband, a warrantless search is nearly always reasonable. Id. at 704–05, 674 P.2d at 1250–51. Because the officers in Ringer’s case had probable cause to search his van, Justice Dimmick found it eminently reasonable for them to dispense with a warrant.
III. THE INDEPENDENT INTERPRETATION OF WASHINGTON’S CONSTITUTION

A. Use of State Constitutions to Expand Individual Rights as a National Trend

Washington is not the first state to interpret its own constitution as imposing different restraints on police than the federal constitution. In the early 1970's, a new trend in state constitutional law appeared. Increasingly dissatisfied with the Burger Court’s conservative approach to individual rights, state courts have begun using the federal constitution as merely a starting point in their constitutional analyses. If a particular government action passes muster under the federal constitution, the courts will scrutinize it closely for conformity with state constitutional standards. Their premise is that the federal Bill of Rights establishes minimum rather than maximum civil rights guarantees.

For example, in *People v. Anderson*, the California Supreme Court held the death penalty unconstitutional under 'state law. Although the United States Supreme Court had never held the death penalty per se unconstitutional under the eighth amendment prohibition of cruel and unusual punishment, the *Anderson* court held that the death penalty violated a state constitutional provision. California’s constitution differs from the eighth amendment in that it prohibits cruel or unusual punishment. The court reasoned that the state constitution’s different wording justified a different standard than that imposed by the eighth amendment.

Not only did she find the majority’s new constitutional rule inconsistent with recent precedent, but she predicted that it would cause great confusion among police officers accustomed to relying on federal precedent, and pointed out that innumerable convictions based on evidence obtained under the old law were now in doubt. *Id.* at 706, 674 P.2d at 1251. Finally, she argued that the new rule would not increase the constitutional rights of arrested individuals, as warrants are mere formalities following upon a police officer’s finding of probable cause. *Id.*


43. *See Note, supra note 42.*

44. 6 Cal. 3d 628, 493 P.2d 880, 100 Cal. Rptr. 152, *cert. denied,* 405 U.S. 983 (1972).

45. In *Furman v. Georgia*, 408 U.S. 238 (1972), the Court appeared to abolish the death penalty when it held that, as applied, Georgia’s death penalty was unconstitutional. The Court later clarified its *Furman* decision, finding that the death penalty could be constitutional if applied systematically and with allowances for consideration of extenuating circumstances in each case. *E.g.*, *Gregg v. Georgia*, 428 U.S. 153 (1976); *Proffitt v. Florida*, 428 U.S. 242 (1976); *Jurek v. Texas*, 428 U.S. 262 (1976).


In *People v. Brisendine*, the California court went further and construed its state constitutional search and seizure provision as guaranteeing greater privacy rights than does the fourth amendment, even though the state and federal provisions are virtually identical. Specifically, the court refused to follow *United States v. Robinson*, which allowed police to conduct full-scale body searches of all persons arrested and taken into custody, even if the arrestee's only offense was a minor traffic violation.

Other states have followed California's lead, particularly in the area of search and seizure law; Alaska, Hawaii, Louisiana, New Hampshire, New York, Oregon, Pennsylvania, and Rhode Island, among others, have begun forging new protections for their citizens against warrantless police searches and seizures.

This trend of construing state constitutional provisions to afford greater individual rights than their federal counterparts is recent. In the Warren Court years, state courts usually began their constitutional analyses by determining whether the United States Supreme Court had held that the relevant Bill of Rights provision applied to the states through the fourteenth amendment's due process clause. If so, the court applied federal precedent. Where the United States Supreme Court had not incorporated a specific Bill of Rights provision into the due process clause, the state courts almost invariably construed state constitutional provisions as providing fewer individual rights than their federal counterparts.

**B. Supreme Court Review of State Constitutional Decisions**

State courts may safely turn to their state constitutions in order to avoid unpalatable federal precedent. The Supreme Court will not review state court decisions relying on "adequate and independent" state grounds.

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48. 18 Cal. 3d 528, 531 P.2d 1099, 119 Cal. Rptr. 315 (1975).
49. 18 Cal. 3d at 522-53, 531 P.2d at 1110, 119 Cal. Rptr. at 330-31. The people of California recently nullified Brisendine's effect by amending their constitution to provide that "[e]xcept as provided by statute... relevant evidence shall not be excluded in any criminal proceeding..." CAL CONST art. 1, § 28(d) (1879, amended 1982). Now, only the fourth amendment to the United States Constitution limits the right of the California legislature to pass search and seizure laws.
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An adequate state ground is one that defeats no important federal interests.\textsuperscript{55} Presumably, therefore, if granting an individual right under the state constitution impairs another person’s federal constitutional rights, the state court’s decision is not immune from Supreme Court review.

The term “independent” was traditionally shorthand for any non-federal ground—statutory, constitutional, or one based on the court’s general supervisory powers.\textsuperscript{56} In its recent decision in \textit{Michigan v. Long},\textsuperscript{57} however, the Supreme Court expanded the scope of its review of state decisions. It indicated that unless it is apparent that a state court bases its decision on independent state grounds, the Supreme Court will accept review.\textsuperscript{58} In light of the \textit{Long} presumption, it appears that state courts cannot insulate their decisions from Supreme Court review unless they can justify their holdings by substantial reference to state constitutions or cases.

The \textit{Ringer} court made every effort to avoid the possibility of Supreme Court review. First, the opinion frankly admitted that its holding conflicted with federal precedent and that it relied on federal cases only for guidance.\textsuperscript{59} The court thus avoided any confusion as to whether it based its decision on federal or state grounds. Second, it did not discuss the merits of the federal search and seizure cases,\textsuperscript{60} implying that those cases were irrelevant to its decision. Third, and most important, the \textit{Ringer} majority focused its analysis on article 1, section 7 of the state constitution, delving into its legislative history, examining its common law context, and criticizing judicial interpretations of the section. In so doing, the \textit{Ringer} court met the \textit{Long} test, foreclosed Supreme Court review, and established a new search and seizure rule for Washington.

\textbf{C. The Basis and Propriety of the Ringer Court’s Reliance on the State Constitution}

The question remains whether the Washington Supreme Court’s approach in \textit{Ringer} was justified. That question can be divided into three parts. First, was there a proper basis in state law for developing a search incident to arrest standard different from the United States Supreme Court’s fourth amendment standard?\textsuperscript{61} Second, was the \textit{Ringer} decision

\begin{itemize}
\item \textsuperscript{55} Henry v. Mississippi, 379 U.S. 443 (1965).
\item \textsuperscript{56} See Note, supra note 42, at 601.
\item \textsuperscript{57} 103 S. Ct. 3469.
\item \textsuperscript{58} Id. at 3474.
\item \textsuperscript{59} \textit{Ringer}, 100 Wn. 2d at 689–90, 674 P.2d at 1242–43.
\item \textsuperscript{60} See supra note 33 and accompanying text.
\item \textsuperscript{61} For an excellent article discussing the independent interpretation of Washington’s constitu-
\end{itemize}
substantively proper? Finally, will the decision be overly burdensome to law enforcement agencies?

1. There Exists a State Law Basis for the Ringer Analysis

The first question, whether state law provides a solid basis for the Ringer court’s decision, requires a two-part analysis: (a) do the text and history of article 1, section 7 support the conclusion that it is more protective of an accused’s rights than the fourth amendment, and (b) is there judicial precedent for interpreting article 1, section 7 differently from its federal counterpart?

62. Recently Justice Horowitz, then associate justice of the Washington Supreme Court, dissented strongly from an opinion establishing an independent interpretation of article 1, § 7. State v. Simpson, 95 Wn. 2d 170, 195–203, 622 P.2d 1199 (1980). Stating that “In the past, this court has always interpreted the federal and state search and seizure requirements identically.” Justice Horowitz suggested that the state constitution should be given an interpretation different from that afforded the federal constitution only after careful examination of four criteria. Id. at 196, 199–202, 622 P.2d 1216–18; see also Note, The New Federalism: Toward a Principled Interpretation of the State Constitution, 29 STAN. L. REV. 297, 300 (1977). First, the court should compare the language of similar state and federal provisions to see whether any differences mandate an independent state constitutional interpretation. Second, the court should explore state precedents to see if they provide justifications for an independent state interpretation. Third, the court should determine whether unique local conditions exist that might warrant an independent interpretation. Finally, the court should consider the United States Supreme Court’s position on the issue. Simpson, 95 Wn. 2d at 200–02, 622 P.2d at 1216.

No court has adopted Justice Horowitz’s test. While it is a praiseworthy attempt to ensure that uniformity between state and federal law is not abandoned without good reason, it has several serious flaws. First, the requirement that state constitutional language mandate an independent interpretation is at once too vague and too stringent. It is absurd to suppose that the framers of 1889 had the pre-science to draft constitutional language that would require in 1984 an interpretation differing from that of another, equally expansive, constitutional provision. The fourth criterion is even less compelling. Disagreeing with Supreme Court case law is analytically a prerequisite to considering whether one must follow it. Therefore, an examination of Supreme Court interpretations of a federal constitutional provision would not be of the slightest use in deciding whether a state constitutional provision can be interpreted differently.

More important is that the above criteria ignore the fact that dual sovereignty is a fundamental and prized element of the American system, developed precisely for the purpose of providing citizens with two sources of regulation and protection. See Utter, supra note 61, at 494 (citing Alderwood Assoc. v. Washington Envtl. Council, 96 Wn. 2d 230, 237–38, 635 P.2d 108, 113 (1981). Thus, independent state court interpretation should be encouraged. See Oregon v. Hass, 420 U.S. 714 (1975). If state constitutions provide exactly the same protections as their federal counterparts, they become redundant, a result at odds with the intentions of their creators.

Given that premise, it is irrelevant whether state courts can find linguistic variations between federal and state provisions that mandate different interpretations of each. It is also irrelevant that state courts have previously seen no necessity to interpret their state constitutions independently. They cannot lose the power to interpret their own constitution in any way they see fit, within federal constitutional limits, merely because they have adhered to a federal stand for many years.
In determining whether the state constitution's framers intended to afford individuals greater protection from police searches and seizures, one must begin by comparing the language of article 1, section 7 with that of the fourth amendment. The differences between the two are remarkable. Not only is article 1, section 7 much simpler than its federal counterpart, but its emphasis is quite different. Rather than prohibiting specific police practices, it declares an uncategorical right to privacy. Moreover, the framers did not dilute this declaration by referring to "reasonable" invasions of privacy. On the other hand, the fourth amendment does not explicitly establish an individual right; it merely sets "reasonable" limits on police searches and seizures. The language of the two provisions justifies an inference that the framers intended article 1, section 7 to afford the individual greater rights than those provided by federal law. Bolstering this inference is the fact that the men at the Washington Constitutional Convention passed upon and rejected a provision identical to the fourth amendment before adopting the language of article 1, section 7.

Further, recent Washington case law supports an interpretation of article 1, section 7 more protective of individual rights than the fourth amendment. In State v. Hehman, the Washington court refused to follow United States v. Robinson and Gustafson v. Florida. In these cases the United States Supreme Court held that police could make custodial arrests for minor traffic violations, and that those custodial arrests trigger a right to search the arrestee. In State v. Simpson, the Washington court granted criminal defendants automatic standing to contest warrantless searches and seizures.

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63. Article 1, § 7 provides: "No person shall be disturbed in his private affairs, or his home invaded, without authority of law." WASH. CONST. art. I, § 7. The fourth amendment provides:

                The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const. amend. IV.

64. See supra notes 22–23 and accompanying text discussion regarding article 1, § 7.


70. In general, a criminal defendant may challenge a police search or seizure only if he or she has a reasonable expectation of privacy in the area searched or property seized. See Rakas v. Illinois, 439 U.S. 128 (1978). In Jones v. United States, 362 U.S. 257 (1960), the Supreme Court created an exception to this rule for cases in which the criminal charge includes possession of property as an element. The Court thus granted defendants automatic standing to raise fourth amendment claims even where they had stolen the property searched or seized, and therefore had no reasonable expectation of privacy in the property. However, in United States v. Salvucci, 448 U.S. 83 (1980), the Court overruled Jones and abolished fourth amendment automatic standing.
that produced evidence usable at trial. Basing its decision on article 1, section 7 of the state constitution, the court declined to follow the federal rule abolishing automatic standing.\textsuperscript{71}

In \textit{State v. White},\textsuperscript{72} the Washington court refused to follow the United States Supreme Court in establishing a "good faith" exception to the exclusionary rule where officers rely on flagrantly unconstitutional, but as yet unrepealed, vagrancy statutes.\textsuperscript{73} The court found in article 1, section 7 an emphasis on protecting personal rights rather than on limiting governmental actions, which mandated a different approach than that taken under the fourth amendment.\textsuperscript{74}

\textit{Ringer} thus follows three cases proclaiming the state court's right to interpret article 1, section 7 as more protective of individual rights than the fourth amendment. Together, these cases establish a consistent, principled basis for applying the state constitution to search and seizure questions, and put police on notice that Washington courts will not tolerate overreaching searches and arrests that violate individual rights.\textsuperscript{75}

\textsuperscript{71} 95 Wn. 2d at 177, 622 P.2d at 1206. The court commented: "Such independent interpretation is particularly appropriate when the language of the state provisions differs from the federal, and the legislative history of the state constitution reveals that this difference was intended by the framers." \textit{Id.} (citations omitted).

\textsuperscript{72} 97 Wn. 2d 92, 640 P.2d 1061 (1982).

\textsuperscript{73} In Michigan v. DeFillippo, 443 U.S. 31 (1979), the Supreme Court held the exclusionary rule inapplicable to a case where an officer enforced an unconstitutional, but as yet unrepealed, statute in the good faith belief that it was valid. The \textit{White} court rejected the good faith standard, finding it too subjective and unworkable: "How do courts probe the minds of officers to see if their beliefs of validity are truly held?" 97 Wn. 2d at 107 n.6, 640 P.2d at 1069 n.6.

\textsuperscript{74} \textit{Id.} at 110, 640 P.2d at 1071.

\textsuperscript{75} In \textit{State v. Chrisman}, 100 Wn. 2d 814, 676 P.2d 419 (1984), decided shortly after \textit{Ringer}, the Washington Supreme Court continued this trend. The \textit{Chrisman} court refused to follow the Supreme Court's application of the plain view exception to the warrant requirement to a particular set of facts. The plain view doctrine is based on the common sense notion that police do not need to "search" for something they can see plainly; it follows that they need not obtain a search warrant before seizing contraband plainly in view. In \textit{Chrisman}, campus police had arrested a student for possessing alcohol. They accompanied him to his dormitory room so that he might retrieve his student identification card. While waiting outside the room for him, one of the officers noticed a pipe and a green substance lying on the student's desk. The officer stepped into the room and looked at the substance closely. It proved to be marijuana, and the student was arrested and convicted of drug possession. \textit{Id.} at 815–16, 676 P.2d at 421. When Chrisman appealed the case to the state supreme court, the court reversed his conviction on the ground that the officers had violated the fourth amendment by stepping into Chrisman's room without a warrant. \textit{Id.} at 816, 676 P.2d at 421. The United States Supreme Court, however, held that the search was proper under the plain view exception to the warrant requirement, as the officer had the right to enter Chrisman's room. \textit{Id.} at 819, 676 P.2d at 423. It remanded the case to the state court for clarification of its opinion. On remand, the Washington Supreme Court held that the search of Chrisman's room violated article 1, § 7 of the state constitution, and again reversed his conviction. \textit{Id.} at 822, 676 P.2d at 424.
2. The Majority's Decision Was Substantively Proper

The Ringer majority’s new rule for Washington is also logical and persuasive. Justice Dolliver’s thorough research into the common law provides a strong basis for his criticism of cases upholding broad searches conducted incident to lawful arrests. Given the central importance of the warrant requirement in Anglo-American jurisprudence, it is appropriate to construe established exceptions narrowly. For the same reason, courts should be wary of creating new exceptions, and should not extend the scope of those exceptions beyond their justifications. The Ringer court properly acted to limit the scope of searches incident to arrest. Recognizing that the search incident to arrest exception was intended only to prevent frustration of a lawful arrest, it restricted the permissible scope of such a search to the area into which an arrestee might reach. Officers cannot use arrests to justify fishing expeditions for contraband or evidence of crime.

The court’s rejection of the automobile exception is consistent with its search incident to arrest analysis. The automobile exception establishes an entire class of effects that police may search without a warrant. Courts attempt to justify the exception by pointing out that automobiles are inherently mobile and by arguing that persons have fewer expectations of privacy in the contents of their vehicles than in the contents of their houses.

Neither of these justifications is persuasive. The first appears to be a necessity argument: as cars are inherently mobile, drivers may move them out of the jurisdiction before police can obtain a search warrant. This argument is flawed because, in fact, the vehicle may be immobile: (1) the vehicle’s owner may be under arrest and thus unable to move the vehicle or to retrieve its contents; (2) the owner may agree to let police seize his or her vehicle long enough to obtain a warrant rather than submit to an immediate search; or (3) the vehicle may be abandoned or inoperable. That it may be necessary in some cases to search an automobile without a warrant does not justify dispensing with the warrant requirement whenever an automobile is the subject of a search.

The second argument is equally flawed. It is unquestionable that people do not expect as much privacy in an automobile as in a house; they are certainly aware that others may watch them as they drive. Nevertheless, that lack of privacy does not extend to the contents of parcels, especially

76. E.g., United States v. Ross, 456 U.S. 798 (1982). This rationale was first articulated by the Court in Carroll v. United States, 267 U.S. 132, 153–54 (1925).

77. The idea that the fourth amendment protects only “reasonable expectation[s] of privacy” originated with Justice Harlan’s concurring opinion in Katz v. United States, 389 U.S. 347, 361 (1967), and was adopted by the Court in Terry v. Ohio, 392 U.S. 1, 9 (1968).
if they have placed those parcels in the glove compartment or under a seat. In fact, people retain many important expectations of privacy while in a car. Therefore, one cannot justify a generalized automobile exception to the warrant requirement on the basis of automobiles’ comparative openness.

Recognizing an exigent circumstances exception to the warrant requirement is a sensible approach to automobile search cases. Its purpose, to prevent frustration of a probable cause search, is analogous to the “preventing frustration of an arrest” purpose of the search incident to arrest exception. If an officer can show that it was impossible to obtain a warrant without risking the removal of the automobile from the jurisdiction, the search is permissible. The exception draws a rational distinction between cases in which it is necessary to search at once and those in which it is not. It thus allows police to operate efficiently without jeopardizing the existence of the warrant requirement.

Ringer does not formulate a bright-line test for the constitutionality of automobile searches as the United States Supreme Court did in United States v. Ross and New York v. Belton. In Washington, police cannot be absolutely certain in a particular case that a search is constitutional, as they often could be under federal law. They, and later the reviewing court, must consider the facts and circumstances in each case and judge for themselves the permissible scope of a warrantless search. This should not be difficult, however. By explaining the purposes of the search incident to arrest and exigent circumstances exceptions, Ringer gives each officer the tools to make an intelligent determination of constitutionality. If the police realize that only the need to prevent frustration of the arrest and the destruction of evidence justifies a search incident to arrest, they will not search an automobile after its owner has been arrested and secured in patrol car. On the other hand, Ringer will not prohibit them from searching the arrestee and the area within his or her reach.

Similarly, when police lawfully stop a car and have probable cause to search it, Ringer’s rule of exigency will guide them in deciding whether to search without a warrant. If the officers have arrested all the car’s occupants and have taken them to the police station, there is usually no need to conduct an immediate car search. If, however, there is probable cause to search the car, but no basis for arresting or detaining its occupants, there is a real danger that the driver will remove the car from the jurisdiction before police can obtain a warrant. In that case, the exigent circumstances exception comes into play and a warrantless search is permissible.

78. 456 U.S. 798 (1982); see supra note 35 and accompanying text.
79. 453 U.S. 454 (1981); see supra note 13 and accompanying text.
Washington’s New Car Search Rule

Expecting police to make such judgments is not unreasonable. Police confront emergencies frequently, and often make split-second decisions. Once they understand the rule of necessity that Ringer imposes, they should be able to apply it in almost any circumstance. A bright-line rule that draws arbitrary distinctions between the passenger compartment and the trunk of an automobile, on the other hand, breaks down whenever an officer is confronted by a situation not fitting neatly into existing categories.80

3. The Practical Effect of Ringer on Local Law Enforcement

One reason for concern regarding the independent interpretation of state constitutions is the loss of uniformity in law enforcement. Together, Ringer, Hehman, White, and Simpson create a chasm between federal and state arrest and search procedures that will undoubtedly cause confusion in both state and federal law justice systems.

State and federal law enforcement agencies often cooperate. If state police violate article 1, section 7 and turn the improperly seized evidence over to a federal prosecutor, will a federal court suppress the evidence? Likewise, if Federal Bureau of Investigation agents conduct a search proper under the fourth amendment but improper under article 1, section 7 and the target of the search is later prosecuted by the state, must a state court suppress the evidence?81

Ringer does little to clarify these questions. However, the Washington court has indicated that it views article 1, section 7 as protecting individuals regardless of who searched or arrested them.82 If that is indeed the case, then state courts will suppress searches prohibited by Ringer even if federal agents conducted those searches. This could mean that the federal courts will be deluged with cases against Washington defendants, because federal prosecutors will find it easier to win convictions in any case involving a warrantless search or seizure. That, however, is unlikely; federal court dockets are too crowded and states’ obligations for handling the bulk of criminal prosecutions are too well established. The more likely result is that both state and federal police in Washington will restrict the

80. In Belton, for instance, the Court implicitly drew a distinction between the passenger compartment and trunk of a car, holding that with probable cause police officers may search the former but not the latter. Justice Brennan’s dissenting opinion pointed out that the distinction is artificial and breaks down when applied to such vehicles as hatchbacks or station wagons. 456 U.S. at 470 (Brennan, J., dissenting).

81. See Amsterdam, Perspectives on the Fourth Amendment, 58 Minn. L. Rev. 349, 367-72 (1974), suggesting that the answer to these questions may depend upon whether the courts view the relevant provision as a police regulation or as a guarantee of individual rights.

82. See State v. Simpson, 95 Wis. 2d 170, 177-78, 622 P.2d 1203, 1206 (1980).
scope of their searches to conform with Ringer's requirements. Such a
result will secure the citizens of Washington against police harassment
without sacrificing police effectiveness. Naturally, police will properly
continue to search suspicious vehicles and containers; however, they now
must first obtain a warrant, absent exigent circumstances.

IV. CONCLUSION

In State v. Ringer, the Washington Supreme Court created a new rule
for police automobile searches that breaks significantly with federal case
law. The court relied on the state constitution to establish a rule more
protective of individual rights than that now mandated by the federal con-
stitution. Its ruling is consistent with the strong federalism envisioned by
the founders of this country and firmly established by the United States
Supreme Court. The ruling means, however, that federal and state police
will operate under different standards—a result that may cause some con-
fusion in cases where the two collaborate. To eliminate confusion, the
Washington Supreme Court should clarify Ringer's application to cases
in which federal and state law enforcement agencies cooperate.

Miriam Metz