



10-1982

Michigan v. Long

Lewis F. Powell Jr.

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we've had enough
writing ~~up~~ on auto
searches to last a few years.

Another "auto search" case.

I'm inclined to think the
Mich. S/C erred ~~as~~ as it often
does on 4th Amend. issues.

The police conduct seemed
entirely reasonable.

But with Belmont, Ross, etc, we

Preliminary Memo

done enough
for awhile.

October 8, 1982 Conference
List 1, Sheet 3

No. 82-256

MICHIGAN

Cert to Michigan
Supreme Court
(Kavanaugh
& Coleman [CJ],
dissenting; Moody,
concurring in result)
State/Criminal

Timely

v.

LONG

1. SUMMARY: Petr contends: (1) that the Michigan Supreme Court erred in holding that protective searches, commonly known as Terry searches, are limited to pat-down searches of people, and (2) that marijuana seized from the trunk of resp's car was properly seized pursuant to an inventory search.

2. FACTS & DECISION BELOW: Resp was convicted of possession of marijuana. The petition focuses on the

deny. Although the decision focused ~~on~~ almost solely on federal precedents, there at least is a Krivos question. Moreover, there is no direct conflict. The Court should →

admissibility of certain evidence introduced against defendant over his objection at trial. The facts relating to the search are as follows. One night two deputies spotted resp driving at an excessive speed. The deputies saw the car proceed down a side road and then swerve, coming to a stop in a ditch. The deputies approached the car. Resp met the deputies at the back of his car. Resp produced his license only after being asked twice for it. The deputy then asked to see resp's vehicle registration. When the defendant did not respond, the officer repeated his request, whereupon resp began walking toward the open door of his car. The deputies followed. As the deputies approached the open door, they saw a knife on the floor of the driver's side of the car. The deputies told resp to stop and to put his hands on the roof of the car. He did. One deputy retrieved the knife and the other conducted a pat-down search, which revealed no weapons. One deputy then ^{shown (?)} shined his flashlight into the front seat of the car to search for other weapons, petn. at 15, and saw something leather under the armrest. Upon lifting the armrest, he observed a substance he believed to be marijuana. Resp was thereupon arrested.

*probable
cause*

The deputies then impounded the car. After determining that there was no lock on the car trunk, one of the deputies, using a knife, unlatched the trunk. The deputy later testified that he opened the trunk "because . . . there may have been more [marijuana] in the trunk," and because he wanted to check the trunk for valuables. More marijuana was found in the trunk.

Resp moved to suppress all of the marijuana at the preliminary hearing and several times at trial. The trial court denied all such motions. The Mich. Ct. of App. affirmed resp's conviction.

The Mich. Sup. Ct. reversed, with one justice dissenting and one concurring in the result. It held as follows. "The officer's entry into the vehicle cannot be justified under the principles set forth in Terry. Terry authorized only a limited pat-down search of a person suspected of criminal activity. That case did not authorize the search of an area." Moreover, protection of the officers, the rationale of Terry, could not justify this search because "[a]ny weapon which might have been hidden in the car would have been out of reach of the [resp] and thus not a danger to the deputies." Having invalidated the initial intrusion, the majority quickly found that the marijuana taken from the trunk must be suppressed as a fruit of the initial illegal intrusion.

What
about
the
knife

Agreeing that the principles of Terry governed, the dissenter noted that other courts had upheld protective searches of the interior of a vehicle while the occupants were detained outside. These courts reasoned that officers in such encounters might be in danger because the accosted individuals were not under arrest at the time and could have returned to the vehicle and retrieved a weapon when the encounter with the officers ended. In this case, the officers faced greater danger because the defendant had an opportunity to enter the vehicle during his encounter with the deputies. Moreover, the danger to the

deputies clearly outweighed the minimal intrusion upon resp's privacy that the raising of the armrest represented. Indeed, the intrusion made by the officers in this case was minimal compared to the intrusion upheld in Terry. The dissenter then asserted that the seizure of the marijuana in the trunk resulted from a proper inventory search.

The concurring justice concluded that the marijuana discovered on the front seat had been obtained legally, for the reasons stated in the dissent, but believed that the marijuana in the trunk had been obtained unlawfully. The search of the trunk was not a proper inventory. No standard departmental policy was followed in conducting the alleged inventory, and no inventory form was presented below. The owner of the car was present, unlike the owner of the car in South Dakota v. Opperman, yet the police did not ask the owner whether he wanted the car inventoried. Also, unlike Opperman, the impoundment lot to which resp's car would be taken was secure.

3. CONTENTIONS: Petitioner. The lower courts have split on the question of whether a Terry search may be made of an area if such a search is necessary to protect a law enforcement officer. The Mich. Sup. Ct.'s decision conflicts with Terry's protective frisk rationale. The marijuana found in the trunk was the result of a valid inventory search. The state's caretaking duty, which provided a justification for the search, arose when it became clear that the driver could not himself drive the car.

Respondent. The limitation of the protective search to defendant's person rested on an interpretation of the Michigan

Constitution, and thus rests on an adequate state ground independent of the Fourth Amendment. The decision below also was based upon the application of well-established legal principles to the unique facts of the case. The court below concluded that the officers had no reason to believe that resp was armed or dangerous and that the search was motivated by a desire to protect themselves. None of the cases cited by petr require a different result. Discussion of whether the trunk search could be justified as an inventory search was unnecessary to the decision of the majority, and was only seriously discussed in the concurring opinion. Reviewing a concurring opinion in a Mich. Sup. Ct. case on a point not reached by the majority would be a waste of this Court's resources. Moreover, there was no basis in Michigan law for impounding the car, thus there was no legal justification for the alleged inventory. In any event, the search of the trunk was not a valid inventory search.

2
?
4. DISCUSSION: There does not seem to be a conflict in the circuits over this question. Petr cites only one case that holds that a Terry search cannot include the search of an area. However, in this case, Canal Zone v. Bender, 573 F.2d 1329 (5th Cir. 1978), the CA 5 held that the search was not motivated by the officer's concern for their safety because the officers did not frisk the defendants.

?
The decision below [✓] does conflict with cases in which area Terry searches have been held consistent with the Fourth Amendment. The holding below can fairly be said to rest on federal grounds. The court below did explicitly hold that the

search violated both the state and federal constitutions. It is fairly clear, however, that the Mich. Sup. Ct. believed that the scope of a Terry search under the state constitution was identical to the scope of such a search under the Federal Constitution. The court was not attempting to give the Michigan Constitution independent scope. The court relied not on its own precedent but on federal precedent. The decision below does not rest on a factual finding that the deputies' search was not motivated by their concern for their own safety. The Mich. Sup. Ct. did say that the protective rationale of Terry was inapplicable because resp could have posed no danger to the deputies. However, that statement was an alternative holding and seems completely wrong.

The conflict the opinion below creates is not severe enough to demand the Court's attention at this time.

With respect to the trunk search issue, petr has shown no need for the Court to discuss the inventory exception in the context of this case.

I recommend denial.

There is a response.

September 27, 1982

Bell

Opinion in Petition

ME

Court
Argued, 19...
Submitted, 19...

Voted on....., 19...
Assigned, 19...
Announced, 19...

No. 82-256

MICHIGAN

VB.

LONG

~~Problem~~ W & R Hunter
This is a Termination
case - not an auto case

Grant

[illegible]

lfp/ss 02/21/83

81-256 Michigan v. Long

This is a pre-bench memo identification of the issues and arguments in this case that is described as whether the rationale of a Terry stop may be extended to an "area" here within a automobile - as contrasted with a weapons frisk of a person's clothing.

Two officers observed respondent's car, shortly after midnight, driving at an excessive speed and ending up in the ditch. Respondent was out of the vehicle when the officers requested drivers license and registration. Respondent had left his door open, and when he moved to reenter the car an officer observed a large knife lying on the floor board. This prompted a pat down (negative), and a flash light examination of the front seat area of the vehicle. An object was observed beneath the arm rest that possibly could have contained a weapon. When examined, it contained marijuana. The officers then "impounded" the automobile, and opened the unlocked trunk and found marijuana in it.

Several important facts are not disputed: the state makes no claim to probable cause either to search the vehicle before discovering the knife or to arrest for

what appear to be only a traffic violation. Respondent does not deny that the stop of the vehicle was lawful.

Michigan Supreme Court (reversed respondent's conviction)

The Court did not question the pat down of respondent's person. This clearly was justified after the knife was observed. The court held, however, that Terry "authorized only a limited pat down search of a person suspected of criminal activity. That case did not authorize the search of an area."

The court added that any weapon which might have been hidden in the car, would have been out of the reach of respondent and thus no danger to the officers.

The court further held that the search of the trunk was an illegal fruit of the search of the front seat, and could not be justified as an inventory search.

New York v. Belton, referred to only in a footnote, was irrelevant because defendant had not been arrested prior to the search of the interior of the car (Ross had not been decided by us, but it would not be applicable because there was not probable cause to search the automobile).

The SG's Brief (better than that of the state)

The rationale of Terry applies to the "limited inspection" of the front seat. In view of defendant's conduct, and the discovery of a weapon on the floor, the police acted reasonably in inspecting the front seat for other weapons. The Michigan court said that any weapons there would not have been a threat to the officers. But the officers were confronted by a dilemma. They were not sure there was probable cause to arrest. Unless they arrested, the suspect would reenter the vehicle where the presence of a gun, for example, would constitute a danger.

The SG argues persuasively that officers have to make "on the scene judgments". Not infrequently, they are shot in the course of dealing with suspects. Given the options, they acted reasonably in this case and the Terry doctrine should apply.

Moreover, a motorist's expectation of privacy as to what can be observed or found by a limited search of the interior (particularly the front seat of an automobile) is minimal.

The SG also argues that the principle of New York v. Belton should be applied. If officers may search the entire interior of a car, incident to arrest, even when the arrestee has been removed from the car, officers

- such as those in this case - should be allowed the conduct a limited Terry search for weapons when they have reasonable suspicion to believe that the suspect was armed and dangerous. Courts should not speculate, after the fact, as to alternative measures that might have been taken.

Search of Trunk

The SG's argument with respect to this aspect of the case is less convincing. Apparently, the officers arrested respondent after they found the knife and marijuana, and purported to take the car itself into custody. Yet, the state does not rely on search incident to arrest. Rather, it relies only on the right to make an inventory search, citing Opperman.

As both the marijuana from the trunk and from the front seat were admitted in evidence, I suppose we have to decide both issues. If, however, we agreed with the state as to the front seat inspection, we could remand to the Michigan court to determine - in light of our opinion - whether search of the trunk was justified.

I would prefer, however, to go ahead and address the search of the trunk issue. The SG recognizes that Opperman does not control because this was not a regular

departmental type inventory procedure. But other aspects of Opperman do support the inventory search justification. In Opperman, a locked passenger compartment, including an unlocked glove compartment, were searched. Here, only an unlocked trunk was searched. Expectations of privacy were less than where the entire vehicle was locked as in Opperman. In any event, a search on the scene is no more intrusive, and may be more effective in forestalling claims of theft, than a subsequent search.

* * *

My tentative view is that the inspection (search) of the front seat area was fully justified by the circumstances. This may be another exception to the warrant clause, where reasonable suspicion entitled the officers to protect themselves. This, of course, is the rationale of Terry and in general is supported by the rationale of Belton.

I am less persuaded as to the validity of the trunk search. On balance, I am inclined to agree with the SG.

L.F.P., Jr.

ss

lfp/ss 02/21/83

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of probable
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search*

*And no claim
of right to arrest
for a traffic offense*

But Risk-consider
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L.F.P., Jr.

ss

drk 02/22/83

*Helpful - I'm inclined to
agree with Rives. See his
recommendations - 12, 13*

BENCH MEMORANDUM

To: Mr. Justice Powell

February 22, 1983

From: Rives

No. 82-256, Michigan v. Long

Questions Presented

1. Whether Terry v. Ohio, 392 U.S. 1 (1967), authorizes a search of the interior of a car when the driver is standing outside of the car; and

2. Even if the search of the car interior were not justified, whether the police may search the trunk of the car pursuant to an inventory search.

I. Background

Shortly after midnight, Deputies Howell and Lewis were on routine road patrol in an unpopulated, rural area in Michigan. A car going the opposite direction drove past at approximately 71 miles per hour. The officers turned their car around and pursued the speeding car. The car made a left turn, swerving off the road and running into the ditch.

As the deputies approached, resp who was the only occupant of the car, got out, left the door on the driver's side open and met the deputies at the rear of the car. Howell asked resp for his driver's license. Resp did not say anything and when Howell asked for the license a second time, resp produced it. Howell then asked for the car registration and proof of insurance. Again, resp did not say anything. The request was repeated and resp began walking towards the open car door. Both deputies accompanied resp. Howell testified that resp was cooperative, that he "appeared to be under the influence of something," and that he acted scared. According to Howell, resp's demeanor was different than that of people who are nervous because they have been stopped by a police officer. His demeanor instead was more typical of people who "have open intox in the car or something like that." App. 25a. As they approached the open door, the deputies saw a closed

buck knife--a folding knife with a four inch blade--lying on the front floorboard. On seeing the knife, they had resp place his hands on the roof of the car while they frisked him. The frisk produced no weapons. After the frisk resp was standing at the rear of the car under the control of Lewis. Howell, who was positioned between resp and the car door, determined that it was necessary to search the car to see if there were any weapons in the car.

Deputy Howell testified:

"Okay, after I frisked him I walked up to the door of the car looking for another weapon. I shined my light into the car. There were arm rests--front seat of the vehicle was equipped with arm rests. I saw something that appeared to be under the arm rest. At this time I kneeled in the vehicle and I lifted the arm rest. There was a leather pouch, it appeared to be a long folded wallet, folded in half, it wasn't what you would call a wallet but it appeared something like that. It was laying underneath the arm rest.

Lifting the armrest revealed that the leather pouch, which was open, contained a plastic bag full of marijuana. The plastic bag protruded from the open pouch.

The officers arrested resp for possession of marijuana. They searched the interior of the car for further contraband, but did not find any. They decided to impound the car and asked for the keys. When resp handed over only one key, Howell asked resp for the trunk key, which resp said he did not have. Howell noticed that the trunk lock had been knocked out and used his own pocket knife to open the trunk. His reasons for searching the trunk were:"[n]umber one, because I already found marijuana, suspected marijuana, in the interior

of the car, there may have been more in the trunk. Secondly, I check them for valuables, I do." App. 17a. A search of the trunk revealed two bags full of 75 pounds of marijuana.

The trial court refused to suppress the evidence. The intermediate appellate court found that the search of the car interior was constitutional under Terry and that the search of the trunk was a valid inventory search under South Dakota v. Opperman, 428 U.S. 364 (1976). The state supreme court reversed. It noted first that Terry had authorized only a pat-down search of a person. It had not authorized a search of the area adjacent to him. Alternatively, the court observed that the scope of a Terry search must be limited to the reasons for making the search. Here the search exceeded its reason--to provide the officers with protection. In this case, resp was outside of the car, under control of one of the officers, and in no position to reach inside the car. Because the resp could not get to the whatever weapons might be in the car, there was no need for the officers to search the car.

The court also suppressed the marijuana that was found in the car trunk. It noted the state's argument that the search of the trunk was valid either as an inventory search or a search incident to an arrest. The court found, however, that the search of the car trunk was based on the discovery of the bag of marijuana in the car interior. As such it was a fruit of an unlawful search and should be suppressed. Although the court did not discuss why it rejected the state's inventory search argument, it may have concluded that the officer's

dominant motive for searching the trunk was the discovery of marijuana in the car interior and that the inventory rationale did not provide an independent basis for the search.

II. Discussion

This case presents three issues. First, whether the decision below rests on independent and adequate state grounds. Second, whether the search of the car interior was reasonable in light of the intrusiveness of the search and the reasons for the police action. Third, whether the search of the car trunk was a valid inventory search.

A. Whether There Are Adequate and Independent State Grounds

The state supreme court stated that the issue presented was whether the search of the car interior "violated the constitutional proscription against unreasonable searches and seizures." App. to Pet. for Cert. 17. It defined "constitutional" as referring to both the United States and the State Constitutions. See id., at 17, n. 4. Although the state supreme court based its subsequent discussion almost exclusively on Terry and other federal precedent, it held that the search of the car interior violated both the Fourth Amendment of the United States Constitution and art 1, §11 of the Michigan Constitution, the state analogue of the Fourth Amendment. See id., at 19.

Delaware v. Prouse, 440 U.S. 648 (1979), found that invocation of state constitutional grounds was not sufficient

when the construction given the state constitutional provision was predicated on the interpretation of the analagous federal provision. If one looked only at the decision below, it would seem that the analysis in Prouse is applicable here. The state supreme court relied primarily on the federal constitutional standard established in Terry. As in Prouse, it noted in concluding that both the state and federal constitutions were violated. In the same month, however, in which the state court issued this case, it issued People v. Secrest, 413 Mich. 521 (1982). In Secrest, the court stated:

"There are differences in wording between the two [the Fourth Amendment and the analogous state provision]. As a result, we have imposed a higher standard under the state provision than the federal when the item seized is not one within the proviso of the third sentence of art 1, §11. People v. Moore, 391 Mich 426, 216 NW2d 770 (1974); People v. Beavers, 393 Mich 554, 567-568, 227 NW2d 511 (1975). In doing so, however, we have in the past looked to federal case authority in our analysis of the state constitutional question, and we do so here."

Secrest indicates that the Michigan courts look to federal law for guidance but do not feel compelled to adopt the federal interpretation. Because there is substantial evidence that the state court was relying on independent state grounds, I would recommend that the case be Krivda'd. A remand would be consistent with your vote at the cert stage. The cert pool memo indicates that you voted to deny in part because it was unclear whether the decision rested on state or federal grounds. /
yes

B. Whether the Search of the Car Interior Was Reasonable

The state supreme court found the search here invalid for two reasons. First, Terry authorized only a limited pat-down search of a person. It did not authorize search of an area. Second, given the facts of this case, the search was not necessary to protect the officer's safety.

The first rationale advanced by the state supreme court does not seem consistent with Terry v. Ohio. In Terry, the Court recognized that a search "must be limited to what is necessary for the discovery of weapons which might be used to harm the officer or others nearby." Id., at 26. Although only a pat-down search was necessary in Terry to ensure the officer's safety, Terry suggests that the scope of the search will vary depending on the particular facts of each case. Thus, if a broader search of the area within the suspect's immediate reach were necessary, it would seem that Terry would authorize it. yes

The more difficult question is whether the scope of the search undertaken here was reasonable in light of the circumstances of this case. In United States v. Mendenhall, 446 U.S. 544, 561 (1980) (POWELL, J., concurring), you noted that three factors were relevant to making this determination: (i) the public interest served by the search; (ii) the nature and scope of the intrusion; and (iii) the objective facts upon which the law enforcement officer relied in light of his knowledge and expertise. There can be little doubt but that there is a strong public interest in ensuring the safety of policemen. Traffic stops present a particular problem since

the police are forced to approach the offender's car and expose themselves to unknown risks. See Pennsylvania v. Mimms, 434 U.S. 106 (1977). On the other hand, a search of a suspect's car is an intrusive measure. Despite the lesser expectation of privacy in cars than in homes, a person retains a substantial expectation of privacy in his car. People traditionally carry personal effects in their cars and ensure their privacy by locking and securing their cars against other people's intrusion. While the nature of the intrusion--searching the car--was fairly great, the scope of the search was relatively limited in this instance. Deputy Howell only directed his flashlight into the car and lifted the armrest to get a better view of the leather pouch underneath. ?

scope
limited

The third factor is more problematic: whether the police have a reasonable, articulable suspicion that the suspect is armed and dangerous. Here, the basis of that suspicion is minimal. When the police approached initially, resp got out of the car and came to meet them. The police did not indicate that he gave any sign of being dangerous. They described him instead as cooperative, but intoxicated. Deputy Howell testified that, in his professional opinion, resp acted scared as if he had some "open intox" in the car. The only reason to suppose that resp was an "armed and dangerous individual" came from the discovery of the closed buck knife on the front floorboard of the car. As Deputy Howell later testified, there were a number of tools behind the front seat. This knife easily could have slid forward when the car went

into the ditch. Although a buck knife is larger than a normal pocket knife, it is not uncommon for it to be used as a tool or for hunting. Given resp's intoxicated, but otherwise innocuous conduct, the discovery of a buck knife on the floorboard of a car does not provide a particularly strong inference that resp presented a danger to the police.

Although the discovery of the knife was the only basis for the police's search, it seems sufficient when considered in light of this Court's precedents. In Pennsylvania v. Mimms, supra, the Court approved a pat-down search of a motorist when the officer only saw a bulge in the driver's pocket. If observation of a bulge is sufficient to justify a patdown, then it would seem that discovery of a large, closed knife on the front floorboard is sufficient to justify some sort of search of the car to determine if there were other weapons present.

The state supreme court, relying on Chimel, found that the search should not extend beyond the area that was within resp's immediate reach, since no greater search was necessary to protect the officer's safety. While the state supreme court's reasoning has a certain appeal, it is questionable whether it applied Chimel correctly. In Chimel, the suspect had been arrested and was under the officer's control. Because the arrest restricted the defendant's mobility in Chimel, there was only a need to search the area in his immediate control. Here, the resp was not under arrest and retained a greater degree of mobility. He may reenter the car,

as he did here, to get papers or documents. He definitely will reenter the car after the police have finished talking to him. Thus, the area that is within the suspect's control is potentially greater than it is where an arrest has taken place. When the police have reason to believe that there may be weapons in the car, as they did here, then it would seem that the limited search that occurred here is not prohibited by the Fourth Amendment.

yes

While the search in this case did not entail a substantial invasion of resp's privacy, I doubt that the principle that justifies this search can be limited easily. To ensure that there are no weapons that a suspect could use on reentering his car, an officer typically would have to look in the glove compartment, under the seat and examine any closed containers. If the closed container is soft, such as a leather pouch, an officer can satisfy his concern for safety solely by "patting down" the pouch. If, however, there is a closed box sitting on the seat, only a search of the box itself will reveal whether it contains dangerous weapons. Extending a protective search this far would mean that an articulable suspicion that the suspect is armed and dangerous most likely will entitle an officer to conduct as extensive a search of the car interior as he could if he had probable cause to arrest the suspect.

B. Whether the Search of the Trunk Was Valid

After discovering the marijuana, the deputies arrested resp and searched the interior of the car, as permitted by New York v. Belton, 453 U.S. 454 (1981). They discovered no contraband other than the plastic bag full of marijuana. They then opened the trunk and discovered the two bags with 75 pounds of marijuana in them. The question presented in the cert petn was whether this search may be justified as a valid inventory search.¹

This case is distinguished from South Dakota v. Opperman, 428 U.S. 364 (1976), in which there was an established departmental procedure for conducting an inventory search. Although Deputy Howell stated that he normally conducted an inventory search before he impounded a car, he was only policeman in the department who did this. There was no department policy of conducting inventory searches or procedures to regularize the search itself. Thus, the search here is contrary to your concurrence in Opperman, which relied on the presence of "established police department rules or policy" that are applicable "whenever an automobile is seized."

¹Although the issue is not presented by the cert petn, the SG notes that the search of the trunk may be justified as a search incident to an arrest. Belton, however, explicitly limits such searches to the interior of the car. The SG also argues that the discovery of the bag of marijuana in the passenger compartment gave the police probable cause to search the trunk. This argument is closer, but questionable. It is common for a large number of people to carry small quantities of marijuana in plastic bags for their own use. It is questionable whether carrying such a bag of marijuana makes it probable that larger quantities of the drug are secreted in the trunk.

See 428 U.S., at 383. In the absence of rules that regularize such searches the bases for the declaring the search reasonable under the Fourth Amendment are diminished.

This case is distinguished from Opperman also by the fact that the suspect was present when the car was impounded. In Opperman, the car had been left unattended and the police could not locate him in a reasonable time. See id., at 384 (POWELL, J., concurring). Here, the suspect was present. Because he could have consented to impoundment without an inventory search, and waived any right to complain if his valuables were stolen, the concerns that give rise to a need for an inventory search are lessened.

Conclusion

1. The question as to whether there are independent and adequate state grounds is close. The state court explicitly relied on the state constitution and subsequently stated that it only looked to the federal constitutional decisions for guidance. Because of the closeness of the issue, I would recommend Krivda'ing the case.

2. If you reach the merits, I would recommend reversing the decision that the search of the car interior violated the Fourth Amendment. On balance, the search of the passenger compartment was reasonable when the officer's concern for safety, the limited scope of the search, and the discovery of

13.
the knife are considered. Acceptance of this rationale will lead most likely to approving a search of the interior of a car whenever an officer has a reasonable suspicion that the suspect is armed and dangerous.

3. I would recommend affirming the decision that the inventory search of the trunk was unreasonable, since the search lacked the safeguards of an established departmental rules and procedures.

Whether Terry applies to search an area (interior of auto) as well as person of one suspected of having weapons

Casero (SG of Mich)

As to independent state ground,
the op. of S/G Mich ~~is~~ in this
case relied on Fed cases. ~~But~~
But the provision of Mich Const
- as construed to impose a
higher standard - doesn't apply
to a Terry stop.

Resping to JPS, counsel agreed
that both majority & dissent
in this case did rely on both
State & Fed Court.

Relies on Mich v. Thomas
Ross & Belton.

Straw (SG - 10 mi)

Relies on Belton (applies to search
incident to arrest)

A pre-arrest situation may be
more dangerous than when arrest
has been made.

BRW noted that discovery of
marijuana ~~or~~ constituted probably
cause to search entire auto
including trunk.

Gears (Rush)

Relies on People v. Seaver as
requiring all remand for determining
whether there is an independent
& adequate state grounds.

Relies on Sibron v. N. Y.

Officer was cooperative.

c x x x

Responding to BRW, counsel said
he thinks Mich follows Carroll
as to auto search on probable
cause to stop it.

The Chief Justice

Rev.

Not sure of } Rev - 5
Krieger - 4
Case was decided on Fed grounds,
& should be reversed. Terry principle
clearly authorized the limited search
of front seat.

Stop was lawful

Justice Brennan

Krieger

In Severest, Mich S/CT held squarely
that Mich. Const. creates a higher
standard than Fed Const.

Justice White

Reverse

Wouldn't dissent from Krieger
Prouse & other cases have said a State
should be explicit in saying it relies
on state rather than Fed Const. grounds

On merits, could search entire
car. But on Terry analysis, only
search of front seat area.

Justice Marshall

Knida

Justice Blackmun

Rev.

Need not Knida

Justice Powell

Int vate: Knida

On merits, agree with BRW & will Reverse

Justice Rehnquist

Rev.

On merits!
should decide on
Terry analysis.
(BPR says can't search
entire car under Terry.
But says on prob. cause.)

Under Prosser, we need not Knida,
(Bill said to earlier cases - he
cited several - support Prosser)

We should not invite state courts
to avoid S/CT review by basing
decisions on state grounds. We could
end up with 50 state courts being
final on many issues.

Justice Stevens

Knida or Dismuir for WANT Fed Jur
~~the~~ Contrary to WTR, we should leave
more cases to states.

Here the "holding" by Mech Ct was
based on both State & Fed grounds. The burden
is on person asserting Fed. grounds to
show reliance on them.

By insisting on applying Prosser
principle & resolving doubts in favor of Fed
juris, we burden Fed Cts.

Justice O'Connor

Reverse

State Cts like to refer to Fed. court. on
reversive issues in they want to blame
Fed law.

Can reach merits here. Prosser

On merits, reverse on Terry rationale.

Supreme Court of the United States
Washington, D. C. 20543

u

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

March 7, 1983

RE: No. 82-256 Michigan v. Long

Dear Thurgood, Lewis and John:

We four are in dissent in the above. Will you, Lewis,
be willing to undertake the dissent?

Sincerely,

Biel

Justice Marshall

Justice Powell

Justice Stevens

March 8, 1983

82-256 Michigan v. Long

Dear Bill:

I will be glad to undertake a dissent.

Sincerely,

Justice Brennan

lfp/ss

cc: Justice Marshall
Justice Stevens

drk 03/12/83

To: Mr. Justice Powell

From: Rives

Re: No. 82-256, Michigan v. Long

In researching state law, it turned out that this question was more difficult than was apparent from the parties' briefs. The problem arises from the "proviso" to art 1, §11, the relevant Michigan constitutional provision. The proviso was added to limit the operation of the state constitutional provision to the extent it would prohibit the admission of certain types of evidence from criminal trials. Michigan has subsequently realized that this proviso is inoperative to the extent it conflicts with the Fourth Amendment. The result of this conflict, however, is that with respect to items falling within the proviso the Michigan constitution offers no greater protection than that provided by the Fourth Amendment. Thus, any exclusion of evidence that is covered by the proviso necessarily presents a federal question.

The question on which this case ultimately turns is whether marijuana is a "narcotic drug" within the meaning of the proviso. The state statutes ^{now} define marijuana as not being a narcotic drug, but the statutory provisions are not necessarily controlling as to the meaning of a constitutional provision. When the constitutional provision was enacted in 1963, the state statutes

If marijuana is a narcotic drug under state law, it is within the proviso.
And much S/C has held that w/respect to items within the proviso, the Fed Court controls, the state, due to a statutory change in Mich. 11. Marijuana is not a narcotic.

did define marijuana as a narcotic. Under state laws of constitutional construction, the state statutes existing at the time the constitutional provision is ratified are strong evidence as to the meaning of its terms. The state courts, however, have construed some constitutional terms to incorporate changes occurring after ratification and it is not completely clear how the Michigan courts would treat this question.

The state courts have not addressed this issue specifically. Although my research makes me question the strength of our position, I went ahead and wrote up a draft dissent as strongly, and fairly, as I could. It seemed to me that the strongest line of argument available was to say that this was an unsettled question of state law. Even if one might speculate as to the course the state courts would take, it is not the business of this Court to interpret a State's constitution for it. On reading this draft, you may want to reconsider your position. I think either position is tenable. The difference between them is I believe the degree of certainty that this Court will require before it assumes that it has jurisdiction and the degree to which this Court is willing to undertake an independent analysis of state law.

Today the Court reaches out to decide an issue of federal constitutional law regardless of the fact that the state judgment may rest on an independent and adequate state ground. In so doing the Court transgresses on basic principles of federalism.

I

This Court consistently has recognized that it has no jurisdiction over state court judgments that rest on independent and adequate state grounds. See Delaware v. Prouse, 440 U.S. 648 (1979); Herb v. Pitcairn, 324 U.S. 117, 125 (1945); Fox Film Corp. v. Muller, 296 U.S. 207 (1935). This principle is not merely a technical rule; it reflects instead this Court's limited power to review

state decisions. As Justice Jackson, writing for the Court in Pitcairn, recognized:

"[O]ur power is to correct wrong judgments, not to revise opinions. We are not permitted to render an advisory opinion, and if the same judgment would be rendered by the state court after we corrected its views of federal laws, our review would amount to nothing more than an advisory opinion." 324 U.S., at 126.

In order to protect both the States' and our own jurisdiction, we have required that it affirmatively appear that the federal question was decided and that its decision was essential to the disposition of the case. See, e.g., Minnesota v. National Tea Co., 309 U.S. 551, 555 (1940); Lynch v. New York, 293 U.S. 52 (1934). When it is not clear whether the decision rests on federal or state grounds, the Court has either dismissed the writ or requested the state court to clarify the grounds on which its judgment rests. See California v. Krivda, 409 U.S.

n. 4. After analyzing the issue in light of our opinion in Terry v. Ohio, 392 U.S. 1 (1968), the Supreme Court of Michigan concluded, "We hold, therefore, that the deputies' search of the vehicle was proscribed by the Fourth Amendment to the United States Constitution and art 1, §11 of the Michigan Constitution. The evidence obtained pursuant to the unconstitutional search should have been suppressed." Id., at 472-473.

¹The language of art. 1, § 11 is similar, but not identical, to the language of the Fourth Amendment. It provides:

"The person, houses, papers, and possessions of every person shall be secure from unreasonable searches and seizures. No warrant to search any place or to seize any person or things shall issue without describing them, nor without probable cause, supported by oath or affirmation. The provisions of this section shall not be construed to bar from evidence in any criminal proceeding any narcotic drug, firearm, bomb, explosive or any other dangerous weapon, seized by a peace officer outside the curtilage of any dwelling house in this state."

Proviso

When, as here, the state court rests its holding explicitly on the state constitution, this ordinarily will be sufficient to establish that the decision is based on independent and adequate state grounds.² In this instance, however, there is additional evidence that the Court lacks jurisdiction. The Supreme Court of Michigan repeatedly has interpreted art 1, §11 more broadly than the Fourth Amendment. In People v. Secrest, 321 N.W.2d 368, 369 (1982), for example, it stated:

"There are differences in wording between the two [provisions]. As a result, we have imposed a higher standard under the state provision than

²In Delaware v. Prouse, 440 U.S. 648, 652 (1979), we held that explicit reliance on a state constitutional provision would not be sufficient where the opinion makes clear that the state provision "will automatically be interpreted" to conform to the analogous federal provision. Before concluding that there were no independent state grounds, however, we determined that the state courts previously had not undertaken any independent analysis of their own constitution. See id., at 652 and nn. 4-5. As noted below in text, Michigan has interpreted art 1, §11 independently of the Fourth Amendment.

Tone, esp. the proviso

the federal when the item seized is not one within the proviso of the third sentence of art 1, § 11. People v. Moore, 391 Mich. 426, 435, 216 N.W.2d 770 (1974); People v. Beavers, 393 Mich. 554, 567-568, 227 N.W.2d 511 (1975). In doing so, however, we have in the past looked to federal case authority in our analysis of the state constitutional question, and we do so here."

See also People v. Beavers, 393 Mich. 554, 567-568 (1975)

("While the result reached today reflects an analysis of Federal case authority, our conclusion is based upon the Michigan Constitution and the protection afforded the people of this state against unreasonable searches and seizures); id., at 570 (Coleman, C.J., dissenting) ("We can, and on occasion do, interpret the state constitutional provisions as affording protection beyond those required ... as a matter of Federal Constitutional law."); cf. People v. Plantefaber, 410 Mich. 594, 615 (1981) (Coleman, C.J., dissenting) (recognizing that state

court has interpreted art 1, §11 more broadly than the Fourth Amendment). These cases leave little doubt that, as a general matter, Michigan courts have interpreted their own constitution independently of the federal and ^{but} have relied on federal authority only where the analysis ¹ is persuasive.

This normally would be sufficient to establish that the state court's judgment rests on an independent and adequate state ground. Art 1, §11, however, contains a provision that mandates further analysis. This proviso states, "The provisions of this section shall not be construed to bar from evidence in any criminal proceeding any narcotic drug, firearm, bomb, explosive or any other dangerous weapon, seized by a peace officer outside the curtilage of any dwelling house in this state." Thus,

The proviso

See People v. Moore, 391 Mich. 426, 435 (1974). In other words, if an item falls within the proviso, the State will exclude this evidence under art 1, §11 only to the extent that the Fourth Amendment would require its exclusion.

As the exclusion of any evidence falling within this proviso necessarily presents a federal question, the issue on which our jurisdiction ultimately turns is whether marijuana is a "narcotic drug" within the meaning of the proviso. It is at once apparent that this issue presents solely a question of state law. And if this question is not settled by state decisions, the respect due the state courts requires that we allow them to decide in the first instance the scope of their own constitutional provisions.

*issue
turns
on whether
marijuana
is a
narcotic
drug*

③ is not
settled

An examination of Michigan law reveals that this issue can hardly be described as settled. The Supreme Court of Michigan has never addressed the issue. The only Michigan case in which the issue has been presented squarely did not decide the question but held on other grounds, "Const 1963, art 1, §11 will no longer allow the marijuana to be introduced into evidence."³ People v. Smith, 31 Mich. App. 366, 373 (1971). In 1966, one state appellate court did find that proviso would allow the

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³The analysis in Smith is not clear. Smith may have rejected the argument that marijuana was a "narcotic drug" on the basis of the current statutory provision. If this were the analysis, then the result today would be different since Michigan currently recognizes that marijuana is not a narcotic. See Mich. Comp. Laws Ann. §333.7107 (1978). But Smith does not appear to have resolved this question. The basis of its holding appears to be that the Fourth Amendment voided the proviso to art 1, §11--a holding that is in apparent conflict with later state cases. Compare People v. Moore, 391 Mich. 427 (1974).

admission of marijuana. See People v. Monroe, 3 Mich. App. 544 (1966).⁴ It did not consider, however, whether marijuana were a narcotic drug within the meaning of the state constitution, and the most recent indication of the State's position suggests otherwise. In People v. Plantefaber, 410 Mich. 594 (1981), a majority of the state supreme court found that marijuana uncovered during a police search should be excluded under both the federal and state constitutions. Chief Justice Coleman dissented because neither provision, in her view, required that the

⁴In People v. Barker, 18 Mich. App. 544 (1969), the majority did not reach the issue of whether marijuana seized during a search were admissible under art 1, §11. Judge Levin, however, reached the issue in a concurring opinion. He concluded that the Fourth Amendment would require the exclusion of the evidence even though it otherwise would be admitted under art 1, §11. Judge Levin did not address specifically the question of whether marijuana was a "narcotic drug" but apparently assumed that it was covered by the proviso.

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marijuana be excluded. In reaching this conclusion, she determined first that the search complied with the Fourth Amendment. She then considered whether art 1, §11 provided Michigan citizens with greater protection than the Fourth Amendment. She concluded, "[o]n the facts herein, I find nothing in Const. 1963, art 1, §11, which would justify extending the protections of the state Constitution beyond the protection of U S Const, Am IV, so as to require the exclusion of the challenged evidence." Id., at _____. Of course, if marijuana were a narcotic drug within the meaning of the proviso, there would have been no need for Chief Justice Coleman to have considered whether the state constitution extended greater protection than the Fourth Amendment. A determination that the marijuana was admissible under the Fourth Amendment

automatically would have established its admissibility under the Michigan constitution. I would hesitate to rest this Court's jurisdiction on as fragile a base as these scattered and sporadic decisions provide.

The Michigan statutes do not clarify the matter either. At present [✓] marijuana is not classified as a narcotic drug. "Narcotic drug" is defined instead only as "[o]pium and opiate, and any salt, compound, derivative, or preparation of opium or opiate." See Mich. Comp. Laws Ann. §333.7106 (1978). It is true that [✓] when art 1, §11 was adopted in 1963, Michigan defined marijuana as a narcotic drug. See 1931 Mich. Pub. Acts 172 (repealed 1970). But it is not clear whether Michigan would interpret the specific constitutional term in art 1, §11 in light of the statutory definition at the time of

Where it is unclear, as it is here, whether the judgment below rests on independent and adequate state grounds, the respect due the States, no less than concerns for our own jurisdiction, requires that we ask rather than tell the States what they intended. Accordingly, I would vacate the judgment and remand for such further proceedings as may be appropriate.

If you agree with my memo, it would be possible to say that this Court has jurisdiction for the reasons stated in fn. 7 (It essentially restates your letter to Justice Brennan).

RK

The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens

5/12

He

From: Justice O'Connor

Circulated: _____

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 82-256

MICHIGAN, PETITIONER v. DAVID KERK LONG

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF
MICHIGAN

[May —, 1983]

JUSTICE O'CONNOR delivered the opinion of the Court.

In *Terry v. Ohio*, 392 U. S. 1 (1968), we upheld the validity of a protective search for weapons in the absence of probable cause to arrest because it is unreasonable to deny a police officer the right "to neutralize the threat of physical harm," *id.*, at 24, when he possesses an articulable suspicion that an individual is armed and dangerous. We did not, however, expressly address whether such a protective search for weapons could extend to an area beyond the person in the absence of probable cause to arrest. In the present case, respondent David Long was convicted for possession of marijuana found by police in the passenger compartment and trunk of the automobile that he was driving. The police searched the passenger compartment because they had reason to believe that the vehicle contained weapons potentially dangerous to the officers. We hold that the protective search of the passenger compartment was reasonable under the principles articulated in *Terry* and other decisions of this Court. We also examine Long's argument that the decision below rests upon an adequate and independent state ground, and we decide in favor of our jurisdiction.

I

Deputies Howell and Lewis were on patrol in a rural area one evening when, shortly after midnight, they observed a

Sent to
me to
pre-view.

See

my
letter of
5/16 to
S.O.C.

car traveling erratically and at excessive speed.¹ The officers observed the car turning down a side road, where it swerved off into a shallow ditch. The officers stopped to investigate. Long, the only occupant of the automobile, met the deputies at the rear of the car, which was protruding from the ditch onto the road. The door on the driver's side of the vehicle was left open.

Deputy Howell requested Long to produce his operator's license, but he did not respond. After the request was repeated, Long produced his license. Long again failed to respond when Howell requested him to produce the vehicle registration. After another repeated request, Long, whom Howell thought "appeared to be under the influence of something," 413 Mich. 461, 469, 320 N. W. 2d 866, 868 (1982), turned from the officers and began walking toward the open door of the vehicle. The officers followed Long and both observed a large hunting knife on the floorboard of the driver's side of the car. The officers then stopped Long's progress

¹It is clear, and the respondent concedes, that if the officers had arrested Long for speeding or for driving while intoxicated, they could have searched the passenger compartment under *New York v. Belton*, 453 U. S. 454 (1981), and the trunk under *United States v. Ross*, — U. S. — (1982), if they had probable cause to believe that the trunk contained contraband. See Tr. Oral Arg., at 41. However, at oral argument, the State informed us that while Long could have been arrested for a speeding violation under Michigan law, he was *not* arrested because "[a]s a matter of practice," police in Michigan do not arrest for speeding violations unless "more" is involved. See Tr. Oral Arg., at 6. The officers did issue Long an appearance ticket. The petitioner also confirmed that the officers could have arrested Long for driving while intoxicated but they "would have to go through a process to make a determination as to whether the party is intoxicated and then go from that point." *Id.*, at 6.

The court below treated this case as involving a protective search, and not a search justified by probable cause to arrest for speeding, driving while intoxicated, or any other offense. Further, the petitioner does not argue that if probable cause to arrest exists, but the officers do not actually effect the arrest, that the police may nevertheless conduct a search as broad as those authorized by *Belton* and *Ross*. Accordingly, we do not address that issue.

and subjected him to a *Terry* protective pat-down, which revealed no weapons.

Long and Deputy Lewis then stood by the rear of the vehicle while Deputy Howell shined his flashlight into the interior of the vehicle, but did not actually enter it. The purpose of Howell's action was "to search for other weapons." *Id.*, at 469, 320 N. W. 2d, at 868. The officer noticed that something was protruding from under the armrest on the front seat. He knelt in the vehicle and lifted the armrest. He saw an open pouch on the front seat, and upon flashing his light on the pouch, determined that it contained what appeared to be marijuana. After Deputy Howell showed the pouch and its contents to Deputy Lewis, Long was arrested for possession of marijuana. A further search of the interior of the vehicle, including the glovebox, revealed neither more contraband nor the vehicle registration. The officers decided to impound the vehicle. Deputy Howell opened the trunk, which did not have a lock, and discovered inside it approximately 75 pounds of marijuana.

The Barry County Circuit Court denied Long's motion to suppress the marijuana taken from both the interior of the car and its trunk. He was subsequently convicted of possession of marijuana. The Michigan Court of Appeals affirmed Long's conviction, holding that the search of the passenger compartment was valid as a protective search under *Terry*, *supra*, and that the search of the trunk was valid as an inventory search under *South Dakota v. Opperman*, 428 U. S. 364 (1976). See 94 Mich. App. 338, 288 N. W. 2d 629 (1979). The Michigan Supreme Court reversed. The court held that "the sole justification of the *Terry* search, protection of the police officers and others nearby, cannot justify the search in this case." 413 Mich., at 472, 320 N. W. 2d, at 869. The marijuana found in Long's trunk was considered by the court below to be the "fruit" of the illegal search of the interior, and was also suppressed.²

² Chief Justice Coleman dissented, arguing that *Terry* authorized the

We granted certiorari in this case to consider the important question of the authority of a police officer to protect himself by conducting a *Terry*-type search of the passenger compartment of a motor vehicle during the lawful investigatory stop of the occupant of the vehicle. — U. S. — (1982).

II

Before reaching the merits, we must consider Long's argument that we are without jurisdiction to decide this case because the decision below rests on an adequate and independent state ground. The court below referred twice to the state constitution in its opinion, but otherwise relied exclusively on federal law.³ Long argues that the Michigan courts have provided greater protection from searches and seizures under the state constitution than is afforded under the Fourth Amendment, and the references to the state constitution therefore establish an adequate and independent ground for the decision below.

It is, of course, "incumbent upon this Court . . . to ascertain for itself . . . whether the asserted non-federal ground independently and adequately supports the judgment." *Abie State Bank v. Bryan*, 282 U. S. 765, 773 (1931). Although we have announced a number of principles in order to help us determine whether various forms of references to

area search, and that the trunk search was a valid inventory search. See 413 Mich., at 473-480, 320 N. W. 2d, at 870-873. Justice Moody concurred in the result on the ground that the trunk search was improper. He agreed with Chief Justice Coleman that the interior search was proper under *Terry*. See *id.*, at 480-486, 320 N. W. 2d, 873-875.

³On the first occasion, the court merely cited in a footnote both the state and federal constitutions. See 413 Mich., at 471, n. 4, 320 N. W. 2d, at 869, n. 4. On the second occasion, at the conclusion of the opinion, the court stated: "We hold, therefore, that the deputies' search of the vehicle was proscribed by the Fourth Amendment to the United States Constitution and art. 1, § 11 of the Michigan Constitution." *Id.*, at 472-473, 320 N. W. 2d, at 870.

state law constitute adequate and independent state grounds,⁴ we openly admit that we have thus far not developed a satisfying and consistent approach for resolving this vexing issue. In some instances, we have taken the strict view that if the ground of decision was at all unclear, we would dismiss the case. See, *e. g.*, *Lynch v. New York*, 293 U. S. 52 (1934). In other instances, we have vacated, see, *e. g.*, *Minnesota v. National Tea Co.*, 309 U. S. 551 (1940), or continued a case, see *e. g.*, *Herb v. Pitcairn*, 324 U. S. 117 (1945), in order to obtain clarification about the nature of a state court decision. See also *California v. Krivda*, 409 U. S. 33 (1972). In more recent cases, we have ourselves examined state law to determine whether state courts have used federal law to guide their application of state law or to provide the actual basis for the decision that was reached. See also *Delaware v. Prouse*, *supra*, and *Zacchini v. Scripps-Howard Broadcasting Co.*, *supra*. In *Oregon v. Kennedy*, — U. S. —, — (1982), we rejected an

⁴For example, we have long recognized that “where the judgment of a state court rests upon two grounds, one of which is federal and the other non-federal in character, our jurisdiction fails if the non-federal ground is independent of the federal ground and adequate to support the judgment.” *Fox Film Corp. v. Muller*, 296 U. S. 207, 210 (1935). We may review a state case decided on a federal ground even if it is clear that there was an available state ground for decision on which the state court could properly have relied. *Beecher v. Alabama*, 389 U. S. 35, 37, n. 3 (1967). Also, if, in our view, the state court “felt compelled by what it understood to be federal constitutional considerations to construe . . . its own law in the manner that it did,” then we will not treat a normally adequate state ground as independent, and there will be no question about our jurisdiction. *Delaware v. Prouse*, 440 U. S. 648, 653 (1979) (quoting *Zacchini v. Scripps-Howard Broadcasting Co.*, 433 U. S. 562, 568 (1977)). See also *South Dakota v. Neville*, — U. S. —, —, n. 3 (1983). Finally, “where the non-federal ground is so interwoven with the [federal ground] as not to be an independent matter, or is not of sufficient breadth to sustain the judgment without any decision of the other, our jurisdiction is plain.” *Enterprise Irrigation District v. Farmers Mutual Canal Company*, 243 U. S. 157, 164 (1917).

invitation to remand to the state court for clarification even when the decision rested in part on a case from the state court, because we determined that the state case itself rested upon federal grounds. We added that "[e]ven if the case admitted of more doubt as to whether federal and state grounds were intermixed, the fact that the state court relied to the extent it did on federal grounds requires us to reach the merits." *Id.*, at —.

↓
[The process that we have employed in cases such as *Delaware v. Prouse* is unsatisfactory because it involves substantial expenditures of this Court's resources. In addition, it requires us to interpret state laws with which we are generally unfamiliar, and which often, as in this case, have not been discussed at length by the parties. Vacation and continuance for clarification have also been unsatisfactory both because of the delay and decrease in efficiency of judicial administration, see *Dixon v. Duffy*, 344 U. S. 143 (1952),⁵ and, more important, because these methods of disposition place significant burdens on state courts to demonstrate the presence or absence of our jurisdiction. See *Philadelphia Newspapers, Inc. v. Jerome*, 434 U. S. 241, 244 (1978) (REHNQUIST, J., dissenting); *Department of Motor Vehicles v. Rios*, 410 U. S. 425, 427 (1973) (Douglas, J., dissenting). Finally, outright dismissal of cases is clearly not a panacea because it cannot be doubted that there is an important need for uniformity in federal law, and that this need goes unsatisfied when we fail to review an opinion that rests primarily upon federal grounds and where the independence

⁵ Indeed, *Dixon v. Duffy* is also illustrative of another difficulty involved in our requiring state courts to reconsider their decisions for purposes of clarification. In *Dixon*, we continued the case on two occasions in order to obtain clarification, but none was forthcoming: "[T]he California court advised petitioner's counsel informally that it doubted its jurisdiction to render such a determination." 344 U. S., at 145. We then vacated the judgment of the state court, and remanded.

This ad hoc method of dealing with cases that involve possible adequate and independent state grounds is antithetical to the doctrinal consistency that is required when sensitive issues of federal-state relations are involved. Moreover, none of the various methods of disposition that we have employed thus far recommends itself as the preferred method that we should apply to the exclusion of others, and we therefore determine that it is appropriate to reexamine our treatment of this jurisdictional issue in order to achieve the consistency that is necessary.

of an alleged state ground is not apparent from the four corners of the opinion. We have long recognized that dismissal is inappropriate "where there is strong indication . . . that the federal constitution as judicially construed controlled the decision below." *National Tea Co.*, *supra*, 309 U. S., at 556 (1940).

Respect for the independence of state courts, as well as avoidance of rendering advisory opinions, have been the cornerstones of this Court's refusal to decide cases where there is an adequate and independent state ground. It is precisely because of this respect for state courts, and this desire to avoid advisory opinions, that we do not wish to continue to decide issues of state law that go beyond the opinion that we review, or to require state courts to reconsider cases to clarify the grounds of their decisions. Accordingly, when, as in this case, a state court decision fairly appears to rest primarily on federal law, or to be interwoven with the federal law, and when the adequacy and independence of any possible state law ground is not clear from the face of the opinion, we will no longer reject the most reasonable explanation that the state court decided the case the way it did because it believed that federal law required it to do so. If a state court chooses merely to rely on federal precedents as it would on the precedents of all other jurisdictions, then it need only make clear by a plain statement in its judgment or opinion that the federal cases are being used only for the purpose of guidance, and do not themselves compel the result that the court has reached. In this way, both justice and judicial administration will be greatly improved. If the state court decision indicates clearly and expressly that it is alternatively based on bona fide separate, adequate, and independent grounds, we, of course, will not undertake to review the decision. This approach obviates in most instances the need to examine state law in order to decide the nature of the state court decision, and will at the same time avoid the danger of our rendering advisory opinions.* It also avoids the unsatisfactory

*There may be certain circumstances in which clarification is necessary or desirable, and we will not be foreclosed from taking the appropriate action.

and intrusive practice of requiring state courts to clarify their decisions to the satisfaction of this Court. We believe that such an approach will provide state judges with a clearer opportunity to develop state jurisprudence unimpeded by federal interference, and yet will preserve the integrity of federal law. "It is fundamental that state courts be left free and unfettered by us in interpreting their state constitutions. But it is equally important that ambiguous or obscure adjudications by state courts do not stand as barriers to a determination by this Court of the validity under the federal constitution of state action." *National Tea Co.*, *supra*, 309 U. S., at 557.

Our review of the decision below under this framework leaves us unconvinced that it rests upon an independent state ground. Apart from its two citations to the state constitution, the court below relied *exclusively* on its understanding of *Terry* and other federal cases. Not a single state case was cited to support the state court's holding that the search of the passenger compartment was unconstitutional.⁶ Indeed, the court declared that the search in this case was unconstitutional because "[t]he Court of Appeals erroneously applied the principles of *Terry v. Ohio* . . . to the search of the interior of the vehicle in this case." 413 Mich., at 471, 320 N. W. 2d, at 869. The references to the state constitution in no way indicate that the decision below rested on grounds in any

⁶ At oral argument, Long argued that the state court relied on its decision in *People v. Reed*, 393 Mich. 342, 224 N. W. 2d 867, cert. denied, 422 U. S. 1044 (1975). See Tr. of Oral Arg., at 29. However, the court cited that case only in the context of a statement that the State did not seek to justify the search in this case "by reference to other exceptions to the warrant requirement." 413 Mich., at 472, 320 N. W. 2d, at 869-870 (footnote omitted). The court then noted that *Reed* held that "A warrantless search and seizure is unreasonable *per se* and violates the Fourth Amendment of the United States Constitution and art. 1, § 11 of the state constitution unless shown to be within one of the exceptions to the rule." *Id.*, at 472-473, n. 8, 320 N. W. 2d, at 870, n. 8.

way *independent* from the state court's interpretation of federal law. Even if we accept that the Michigan constitution has been interpreted to provide independent protection for certain rights also secured under the Fourth Amendment, it fairly appears in this case that the Michigan Supreme Court rested its decision primarily on federal law.

Rather than dismissing the case, or requiring that the state court reconsider its decision on our behalf solely because of a mere possibility that an adequate and independent ground supports the judgment, we find that we have jurisdiction in the absence of a plain statement that the decision below rested on an adequate and independent state ground. It appears to us that the state court "felt compelled by what it understood to be federal constitutional considerations to construe . . . its own law in the manner that it did." *Zacchini v. Scripps-Howard Broadcasting Co.*, 433 U. S. 562, 568 (1977).⁷

⁷There is nothing unfair about requiring a plain statement of an independent state ground in this case. Even if we were to rest our decision on an evaluation of the state law relevant to Long's claim, as we have sometimes done in the past, our understanding of Michigan law would also result in our finding that we have jurisdiction to decide this case. Under state search and seizure law, a "higher standard" is imposed under art. 1, § 11 of the 1963 Michigan Constitution. See *People v. Secrist*, 413 Mich. 521, 525, 321 N. W. 2d 368, 369 (1982). If, however, the item seized is, *inter alia*, a "narcotic drug . . . seized by a peace officer outside the curtilage of any dwelling house in this state," art 1, § 11 of the 1963 Michigan Constitution, then the seizure is governed by a standard identical to that imposed by the Fourth Amendment. See *People v. Moore*, 391 Mich. 426, 435, 216 N. W. 2d 770, 775 (1974).

Long argues that under the current Michigan Public Health Code § 333.7107, the definition of a "narcotic" does not include marijuana. The difficulty with this argument is that Long fails to cite any authority for the proposition that the term "narcotic" as used in the Michigan constitution is dependent on current statutory definitions of that term. Indeed, it appears that just the opposite is true. The Michigan Supreme Court has held that constitutional provisions are presumed "to be interpreted in accordance with existing laws and legal usages of the time" of the passage of

III

The court below held, and respondent Long contends, that Deputy Howell's entry into the vehicle cannot be justified under the principles set forth in *Terry* because *Terry* authorized only a limited pat-down search of a *person* suspected of criminal activity rather than a search of an area. 413 Mich., at 472, 320 N. W. 2d, at 869 (footnote omitted). Brief for Respondent, p. 10. Although *Terry* did involve the protective frisk of a person, we believe that the police action in this case is justified by the principles that we have already established in *Terry* and other cases.

In *Terry*, the Court examined the validity of a "stop and frisk" in the absence of probable cause and a warrant. The police officer in *Terry* detained several suspects to ascertain their identities after the officer had observed the suspects for a brief period of time and formed the conclusion that they

the provision. *Bacon v. Kent-Ottawa Authority*, 354 Mich. 159, 169, 92 N. W. 2d 492, 497 (1958). If the state legislature were able to change the interpretation of a constitutional provision by statute, then the legislature would have "the power of outright repeal of a duly-voted constitutional provision." *Ibid.* Applying these principles, the Michigan courts have held that a statute passed subsequent to the applicable state constitutional provision is not relevant for interpreting its constitution, and that a definition in a legislative act pertains only to that act. *Jones v. City of Ypsilanti*, 26 Mich. App. 574, 182 N. W. 2d 795 (1970). See also *Walber v. Wayne Circuit Judge*, 2 Mich. App. 145, 138 N. W. 2d 772 (1966), *aff'd*, 381 Mich. 138, 160 N. W. 2d 876 (1968). At the time that the 1963 Michigan Constitution was enacted, it is clear that marijuana was considered a narcotic drug. See 1961 Mich. Pub. Acts, No. 266, § 1. Indeed, it appears that marijuana was considered a narcotic drug in Michigan until 1978, when it was removed from the narcotic classification. We would conclude that the seizure of marijuana in Michigan is not subject to analysis under any "higher standard" that may be imposed on the seizure of other items. In the light of our holding in *Delaware v. Prouse*, *supra*, that an interpretation of state law in our view compelled by federal constitutional considerations is not an independent state ground, we would have jurisdiction to decide the case.

were about to engage in criminal activity. Because the officer feared that the suspects were armed, he patted down the outside of the suspects' clothing and discovered two revolvers.

Examining the reasonableness of the officer's conduct in *Terry*,⁴ we held that there is "no ready test for determining reasonableness other than by balancing the need to search [or seize] against the invasion which the search [or seizure] entails." 392 U. S., at 21 (quoting *Camara v. Municipal Court*, 387 U. S. 523, 536-537 (1967)). Although the conduct of the officer in *Terry* involved a "severe, though brief, intrusion upon cherished personal security," 392 U. S., at 24-25, we found that the conduct was reasonable when we weighed the interest of the individual against the legitimate interest in "crime detection and prevention," *id.*, at 23, and the "need for law enforcement officers to protect themselves and other prospective victims of violence in situations where they lack probable cause for an arrest." *Id.*, at 24. When the officer has a reasonable belief "that the individual whose suspicious behavior he is investigating at close range is armed and presently dangerous to the officer or to others, it would appear to be clearly unreasonable to deny the officer the power to take

⁴ Although we did not in any way weaken the warrant requirement, we acknowledged that the typical "stop and frisk" situation involves "an entire rubric of police conduct—necessarily swift action predicated upon the on-the-spot observations of the officer on the beat—which historically has not been, and as a practical matter could not be, subjected to the warrant procedure. Instead, the conduct in this case must be tested by the Fourth Amendment's general proscription against unreasonable searches and seizures." 392 U. S., at 20 (footnote omitted). We have emphasized that the propriety of a *Terry* stop and frisk is to be judged according to whether the officer acted as a "reasonably prudent man" in deciding that the intrusion was justified. *Terry, supra*, 392 U. S., at 27. "A brief stop of a suspicious individual, in order to determine his identity or to maintain the status quo momentarily while obtaining more information, may be most reasonable in light of the facts known to the officer at the time." *Adams v. Williams*, 407 U. S. 143, 146 (1972).

necessary measures to determine whether the person is in fact carrying a weapon and to neutralize the threat of physical harm." *Ibid.*

Although *Terry* itself involved the stop and subsequent pat-down search of a person, we were careful to note that "[w]e need not develop at length in this case, however, 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 29. Contrary to Long's view, *Terry* did not restrict the preventative search to the person of the detained suspect.⁹

In two cases in which we applied *Terry* to specific factual situations, we recognized that investigative detentions involving suspects in vehicles are especially fraught with danger to police officers. In *Pennsylvania v. Mimms*, 434 U. S. 106 (1972), we held that police may order persons out of an automobile during a stop for a traffic violation, and may frisk those persons for weapons if there is a reasonable belief that they are armed and dangerous. Our decision rested in part on the "inordinate risk confronting an officer as he approaches a person seated in an automobile." *Id.*, at 110. In *Adams v. Williams*, 407 U. S. 143 (1972), we held that the police, acting on an informant's tip, may reach into the passenger compartment of an automobile to remove a gun from a driver's waistband even where the gun was not apparent to police from outside the car and the police knew of its exist-

⁹As Chief Justice Coleman noted in her dissenting opinion in the present case:

"The opinion in *Terry* authorized the frisking of an overcoat worn by defendant because that was the issue presented by the facts. One could reasonably conclude that a different result would not have been constitutionally required if the overcoat had been carried, folded over the forearm, rather than worn. The constitutional principles in *Terry* would still control."

413 Mich., at 475-476, 320 N. W. 2d, at 871 (Coleman, C. J., dissenting).

ence only because of the tip. Again, our decision rested in part on our view of the danger presented to police officers in "traffic stop" and automobile situations.¹⁰

Finally, we have also expressly recognized that suspects may injure police officers and others by virtue of their access to weapons, even though they may not themselves be armed. In the Term following *Terry*, we decided *Chimel v. California*, 395 U. S. 752 (1969), which involved the limitations imposed on police authority to conduct a search incident to a valid arrest. Relying explicitly on *Terry*, we held that when an arrest is made, it is reasonable for the arresting officer to search "the arrestee's person and the area 'within his immediate control'—construing that phrase to mean the area from within which he might gain possession of a weapon or destructible evidence." *Id.*, at 763. We reasoned that "[a] gun on a table or in a drawer in front of one who is arrested can be as dangerous to the arresting officer as one concealed in the clothing of the person arrested." *Ibid.* In *New York v. Belton*, 453 U. S. 454 (1981), we determined that the lower courts "have found no workable definition of 'the area within the immediate control of the arrestee' when that area arguably includes the interior of an automobile and the arrestee is its recent occupant." *Id.*, at 460. In order to provide a "workable rule," *ibid.*, we held that "articles inside the relatively narrow compass of the passenger compartment of an automobile are in fact generally, even if not inevitably, within 'the area into which an arrestee might reach in order to grab a weapon' . . ." *Ibid.* (quoting *Chimel, supra*, 395 U. S., at 763). We also held that the police may examine the contents of any open or closed container found within the pas-

¹⁰"According to one study, approximately 30% of police shootings occurred when a police officer approached a suspect seated in an automobile. Bristow, *Police Officer Shootings—A Tactical Evaluation*, 54 J.Crim.L.C.& P.S. 93 (1963)." *Adams v. Williams, supra*, 407 U. S., at 148, n. 3.

senger compartment, "for if the passenger compartment is within the reach of the arrestee, so will containers in it be within his reach." 453 U. S., at 460. (footnote omitted). See also *Michigan v. Summers*, 452 U. S. 692, 702 (1981).

Our past cases indicate then that protection of police and others can justify protective searches when police have a reasonable belief that the suspect poses a danger, that roadside encounters between police and suspects are especially hazardous, and that danger may arise from the possible presence of weapons in the area surrounding a suspect. These principles compel our conclusion that the 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 officers to believe that the suspect is dangerous and the suspect may gain immediate control of weapons.¹¹ See *Terry*, 392 U. S.,

¹¹ We stress that our decision does not mean that the police may conduct automobile searches *whenever* they conduct an investigative stop, although the "bright line" that we drew in *Belton* clearly authorizes such a search whenever officers effect a custodial arrest. An additional interest exists in the arrest context, i. e., preservation of evidence, and this justifies an "automatic" search. However, that additional interest does not exist in the *Terry* context. A *Terry* search, "unlike a search without a warrant incident to a lawful arrest, is not justified by any need to prevent the disappearance or destruction of evidence of crime The sole justification of the search . . . is the protection of police officers and others nearby" 392 U. S., at 29. What we borrow now from *Chimel* and *Belton* is merely the recognition that part of the reason to allow area searches incident to an arrest is that the arrestee, who may not himself be armed, may be able to gain access to weapons to injure officers or others nearby, or otherwise to hinder legitimate police activity. This recognition applies as well in the *Terry* context. However, because the interest in collecting and preserving evidence is not present in the *Terry* context, we require that officers who conduct area searches during investigative detentions must do so only when they have the level of suspicion identified in *Terry*.

at 21. "The issue is whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or those of others was in danger." *Id.*, at 27. If a suspect is "dangerous," he is no less dangerous simply because he is not arrested. If, while conducting a legitimate *Terry* search of the interior of the automobile, the officer should, as here, discover contraband other than weapons, he clearly cannot be required to ignore the contraband, and the Fourth Amendment does not require its suppression in such circumstances. *Coolidge v. New Hampshire*, 403 U. S. 443, 465 (1971); *Michigan v. Tyler*, 436 U. S. 499, 509 (1978); *Texas v. Brown*, — U. S. —, —, — (1983) (plurality opinion by REHNQUIST, J., and opinion concurring in the judgment by POWELL, J.).

The circumstances of this case clearly justified Deputies Howell and Lewis in their reasonable belief that Long posed a danger if he were permitted to reenter his vehicle. The hour was late and the area rural. Long was driving his automobile at excessive speed, and his car swerved into a ditch. The officers had to repeat their questions to Long, who appeared to be "under the influence" of some intoxicant. The intrusion was "strictly circumscribed by the exigencies which justifi[ed] its initiation." *Terry, supra*, 392 U. S., at 26. Long was not frisked until the officers observed that there was a large knife in the interior of the car into which Long was about to reenter. The subsequent search of the car was restricted to those areas to which Long would generally have immediate control, and that could contain a weapon. The trial court determined that the leather pouch containing marijuana could have contained a weapon. App. 64a.¹²

"The touchstone of our analysis under the Fourth Amendment is always 'the reasonableness in all circumstances of the particular government invasion of a citizen's personal secu-

¹² Of course, our analysis would apply to justify the search of Long's person that was conducted by the officers after the discovery of the knife.

ality.'" *Pennsylvania v. Mimms, supra*, 434 U. S., at 108-109 (quoting *Terry, supra*, 392 U. S., at 19). In this case, the officers did not act unreasonably in not permitting Long to reenter his automobile before taking preventive measures to ensure that there were no other weapons within Long's immediate grasp. Therefore, the balancing required by *Terry* clearly weighs in favor of permitting the police to conduct an area search to uncover weapons, as long as they possess an articulable belief that the suspect is potentially dangerous.

The Michigan Supreme Court appeared to believe that it was not reasonable for the officers to believe that Long could injure them, because he was effectively under their control during the investigative stop and could not get access to any weapons that might have been located in the automobile. See 413 Mich., at 472, 320 N. W. 2d, at 869. This reasoning is mistaken in several respects. During any investigative detention, the suspect is "in the control" of the officers in the sense that he "may be briefly detained against his will . . ." *Terry, supra*, 392 U. S., at 34 (WHITE, J., concurring). Just as a *Terry* suspect on the street may, despite being under the brief control of a police officer, reach into his clothing and retrieve a weapon, so might a *Terry* suspect in Long's position break away from police control and retrieve a weapon from his automobile. See *United States v. Rainone*, 586 F. 2d 1132, 1134 (CA7 1978), cert. denied, 440 U. S. 980 (1979). In addition, if the suspect is not placed under arrest, he will be permitted to reenter his automobile, and he will then have access to any weapons inside. *United States v. Powless*, 546 F. 2d 792, 795-796 (CA8), cert. denied, 430 U. S. 910 (1977). Or, as here, the suspect may be permitted to reenter the vehicle before the *Terry* investigation is over, and again, may have access to weapons. In any event, we stress that a *Terry* investigation, such as the one that occurred here, involves a police investigation "at close range," *Terry, supra*, 392 U. S., at 24, when the officer remains particularly vul-

nerable in part *because* a full custodial arrest has not been effected, and the officer must make a "quick decision as to how to protect himself and others from possible danger." *Id.*, at 28. In such circumstances, we have not required that officers adopt alternate means to ensure their safety in order to avoid the intrusion involved in a *Terry* encounter.¹³

IV

The trial court and the court of appeals upheld the search of the trunk as a valid inventory search under this Court's decision in *South Dakota v. Opperman*, 428 U. S. 364 (1976). The Michigan Supreme Court did not address this holding, and instead suppressed the marijuana taken from the trunk as a fruit of the illegal search of the interior of the automobile. Our holding that the initial search was justified under *Terry* makes it necessary to determine whether the trunk search was permissible under the Fourth Amendment. However, we decline to address this question because it was not passed upon by the Michigan Supreme Court, whose deci-

¹³ Long makes a number of arguments concerning the invalidity of the search of the passenger compartment. The thrust of these arguments is that *Terry* searches are limited in scope and that an area search is fundamentally inconsistent with this limited scope. We have recognized that *Terry* searches are limited insofar as they may not be conducted in the absence of an articulable suspicion that the intrusion is justified, see *e. g.*, *Sibron v. New York*, 392 U. S. 40, 65 (1968), and that they are protective in nature and limited to weapons, see *Ybarra v. Illinois*, 444 U. S. 85, 93-94 (1979). However, neither of these concerns is violated by our decision. To engage in an area search, which is limited to seeking weapons, the officer must have an articulable suspicion that the suspect is potentially dangerous.

Long also argues that there cannot be a legitimate *Terry* search based on the discovery of the hunting knife because Long possessed that weapon legally. See Brief for Respondent, p. 17. Assuming *arguendo* that Long possessed the knife lawfully, we have expressly rejected the view that the validity of a *Terry* search depends on whether the weapon is possessed in accordance with state law. See *Adams v. Williams*, 407 U. S. 143, 146 (1972).

sion we review in this case. See *Cardinale v. Louisiana*, 394 U. S. 437, 438 (1969). We remand this issue to the court below, to enable it to determine whether the trunk search was permissible under *Opperman, supra*, or other decisions of this Court. See, e. g., *United States v. Ross*, — U. S. —, (1982).¹⁴

V

The decision of the Michigan Supreme Court is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

¹⁴ Long suggests that the trunk search is invalid under state law. See Tr. of Oral Arg., at 41, 43-44. The Michigan Supreme Court is, of course, free to determine the validity of that search under state law.

Sandra - asked
me to pre-view this,
especially Part II as
to independent grounds.
(See my dissent in
City of Mesquite)

Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens

not yet
circulated

From: Justice O'Connor

Circulated: _____

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-256

MICHIGAN, PETITIONER v. DAVID KERK LONG

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF
MICHIGAN

[May —, 1983]

JUSTICE O'CONNOR delivered the opinion of the Court.

In *Terry v. Ohio*, 392 U. S. 1 (1968), we upheld the validity of a protective search for weapons in the absence of probable cause to arrest because it is unreasonable to deny a police officer the right "to neutralize the threat of physical harm," *id.*, at 24, when he possesses an articulable suspicion that an individual is armed and dangerous. We did not, however, expressly address whether such a protective search for weapons could extend to an area beyond the person in the absence of probable cause to arrest. In the present case, respondent David Long was convicted for possession of marijuana found by police in the passenger compartment and trunk of the automobile that he was driving. The police searched the passenger compartment because they had reason to believe that the vehicle contained weapons potentially dangerous to the officers. We hold that the protective search of the passenger compartment was reasonable under the principles articulated in *Terry* and other decisions of this Court. We also examine Long's argument that the decision below rests upon an adequate and independent state ground, and we decide in favor of our jurisdiction.

I

Deputies Howell and Lewis were on patrol in a rural area one evening when, shortly after midnight, they observed a

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car traveling erratically and at excessive speed.¹ The officers observed the car turning down a side road, where it swerved off into a shallow ditch. The officers stopped to investigate. Long, the only occupant of the automobile, met the deputies at the rear of the car, which was protruding from the ditch onto the road. The door on the driver's side of the vehicle was left open.

Deputy Howell requested Long to produce his operator's license, but he did not respond. After the request was repeated, Long produced his license. Long again failed to respond when Howell requested him to produce the vehicle registration. After another repeated request, Long, whom Howell thought "appeared to be under the influence of something," 413 Mich. 461, 469, 320 N. W. 2d 866, 868 (1982), turned from the officers and began walking toward the open door of the vehicle. The officers followed Long and both observed a large hunting knife on the floorboard of the driver's side of the car. The officers then stopped Long's progress

¹ It is clear, and the respondent concedes, that if the officers had arrested Long for speeding or for driving while intoxicated, they could have searched the passenger compartment under *New York v. Belton*, 453 U. S. 454 (1981), and the trunk under *United States v. Ross*, — U. S. — (1982), if they had probable cause to believe that the trunk contained contraband. See Tr. Oral Arg., at 41. However, at oral argument, the State informed us that while Long could have been arrested for a speeding violation under Michigan law, he was *not* arrested because "[a]s a matter of practice," police in Michigan do not arrest for speeding violations unless "more" is involved. See Tr. Oral Arg., at 6. The officers did issue Long an appearance ticket. The petitioner also confirmed that the officers could have arrested Long for driving while intoxicated but they "would have to go through a process to make a determination as to whether the party is intoxicated and then go from that point." *Id.*, at 6.

The court below treated this case as involving a protective search, and not a search justified by probable cause to arrest for speeding, driving while intoxicated, or any other offense. Further, the petitioner does not argue that if probable cause to arrest exists, but the officers do not actually effect the arrest, that the police may nevertheless conduct a search as broad as those authorized by *Belton* and *Ross*. Accordingly, we do not address that issue.

and subjected him to a *Terry* protective pat-down, which revealed no weapons.

Long and Deputy Lewis then stood by the rear of the vehicle while Deputy Howell shined his flashlight into the interior of the vehicle, but did not actually enter it. The purpose of Howell's action was "to search for other weapons." *Id.*, at 469, 320 N. W. 2d, at 868. The officer noticed that something was protruding from under the armrest on the front seat. He knelt in the vehicle and lifted the armrest. He saw an open pouch on the front seat, and upon flashing his light on the pouch, determined that it contained what appeared to be marijuana. After Deputy Howell showed the pouch and its contents to Deputy Lewis, Long was arrested for possession of marijuana. A further search of the interior of the vehicle, including the glovebox, revealed neither more contraband nor the vehicle registration. The officers decided to impound the vehicle. Deputy Howell opened the trunk, which did not have a lock, and discovered inside it approximately 75 pounds of marijuana.

The Barry County Circuit Court denied Long's motion to suppress the marijuana taken from both the interior of the car and its trunk. He was subsequently convicted of possession of marijuana. The Michigan Court of Appeals affirmed Long's conviction, holding that the search of the passenger compartment was valid as a protective search under *Terry*, *supra*, and that the search of the trunk was valid as an inventory search under *South Dakota v. Opperman*, 428 U. S. 364 (1976). See 94 Mich. App. 338, 288 N. W. 2d 629 (1979). The Michigan Supreme Court reversed. The court held that "the sole justification of the *Terry* search, protection of the police officers and others nearby, cannot justify the search in this case." 413 Mich., at 472, 320 N. W. 2d, at 869. The marijuana found in Long's trunk was considered by the court below to be the "fruit" of the illegal search of the interior, and was also suppressed.²

² Chief Justice Coleman dissented, arguing that *Terry* authorized the

We granted certiorari in this case to consider the important question of the authority of a police officer to protect himself by conducting a *Terry*-type search of the passenger compartment of a motor vehicle during the lawful investigatory stop of the occupant of the vehicle. — U. S. — (1982).

II

Before reaching the merits, we must consider Long's argument that we are without jurisdiction to decide this case because the decision below rests on an adequate and independent state ground. The court below referred twice to the state constitution in its opinion, but otherwise relied exclusively on federal law.¹ Long argues that the Michigan courts have provided greater protection from searches and seizures under the state constitution than is afforded under the Fourth Amendment, and the references to the state constitution therefore establish an adequate and independent ground for the decision below.

It is, of course, "incumbent upon this Court . . . to ascertain for itself . . . whether the asserted non-federal ground independently and adequately supports the judgment." *Abie State Bank v. Bryan*, 282 U. S. 765, 773 (1931). Although we have announced a number of principles in order to help us determine whether various forms of references to

area search, and that the trunk search was a valid inventory search. See 413 Mich., at 473-480, 320 N. W. 2d, at 870-873. Justice Moody concurred in the result on the ground that the trunk search was improper. He agreed with Chief Justice Coleman that the interior search was proper under *Terry*. See *id.*, at 480-486, 320 N. W. 2d, 873-875.

¹On the first occasion, the court merely cited in a footnote both the state and federal constitutions. See 413 Mich., at 471, n. 4, 320 N. W. 2d, at 869, n. 4. On the second occasion, at the conclusion of the opinion, the court stated: "We hold, therefore, that the deputies' search of the vehicle was proscribed by the Fourth Amendment to the United States Constitution and art. 1, § 11 of the Michigan Constitution." *Id.*, at 472-473, 320 N. W. 2d, at 870.

state law constitute adequate and independent state grounds,⁴ we openly admit that we have thus far not developed a satisfying and consistent approach for resolving this vexing issue. In some instances, we have taken the strict view that if the ground of decision was at all unclear, we would dismiss the case. See, e. g., *Lynch v. New York*, 293 U. S. 52 (1934). In other instances, we have vacated, see, e. g., *Minnesota v. National Tea Co.*, 309 U. S. 551 (1940), or continued a case, see e. g., *Herb v. Pitcairn*, 324 U. S. 117 (1945), in order to obtain clarification about the nature of a state court decision. See also *California v. Krivda*, 409 U. S. 33 (1972). In more recent cases, we have ourselves examined state law to determine whether state courts have used federal law to guide their application of state law or to provide the actual basis for the decision that was reached. See also *Delaware v. Prouse*, *supra*, and *Zacchini v. Scripps-Howard Broadcasting Co.*, *supra*. In *Oregon v. Kennedy*, — U. S. —, ——— (1982), we rejected an

⁴For example, we have long recognized that "where the judgment of a state court rests upon two grounds, one of which is federal and the other non-federal in character, our jurisdiction fails if the non-federal ground is independent of the federal ground and adequate to support the judgment." *Fox Film Corp. v. Muller*, 296 U. S. 207, 210 (1935). We may review a state case decided on a federal ground even if it is clear that there was an available state ground for decision on which the state court could properly have relied. *Beecher v. Alabama*, 389 U. S. 35, 37, n. 3 (1967). Also, if, in our view, the state court "'felt compelled by what it understood to be federal constitutional considerations to construe . . . its own law in the manner that it did,'" then we will not treat a normally adequate state ground as independent, and there will be no question about our jurisdiction. *Delaware v. Prouse*, 440 U. S. 648, 653 (1979) (quoting *Zacchini v. Scripps-Howard Broadcasting Co.*, 433 U. S. 562, 568 (1977)). See also *South Dakota v. Neville*, — U. S. —, —, n. 3 (1983). Finally, "where the non-federal ground is so interwoven with the [federal ground] as not to be an independent matter, or is not of sufficient breadth to sustain the judgment without any decision of the other, our jurisdiction is plain." *Enterprise Irrigation District v. Farmers Mutual Canal Company*, 243 U. S. 157, 164 (1917).

invitation to remand to the state court for clarification even when the decision rested in part on a case from the state court, because we determined that the state case itself rested upon federal grounds. We added that "[e]ven if the case admitted of more doubt as to whether federal and state grounds were intermixed, the fact that the state court relied to the extent it did on federal grounds requires us to reach the merits." *Id.*, at —.

↓
 ¶The process that we have employed in cases such as *Delaware v. Prouse* is unsatisfactory because it involves substantial expenditures of this Court's resources. In addition, it requires us to interpret state laws with which we are generally unfamiliar, and which often, as in this case, have not been discussed at length by the parties. Vacation and continuance for clarification have also been unsatisfactory both because of the delay and decrease in efficiency of judicial administration, see *Dixon v. Duffy*, 344 U. S. 143 (1952),⁵ and, more important, because these methods of disposition place significant burdens on state courts to demonstrate the presence or absence of our jurisdiction. See *Philadelphia Newspapers, Inc. v. Jerome*, 434 U. S. 241, 244 (1978) (REHNQUIST, J., dissenting); *Department of Motor Vehicles v. Rios*, 410 U. S. 425, 427 (1973) (Douglas, J., dissenting). Finally, outright dismissal of cases is clearly not a panacea because it cannot be doubted that there is an important need for uniformity in federal law, and that this need goes unsatisfied when we fail to review an opinion that rests primarily upon federal grounds and where the independence

⁵Indeed, *Dixon v. Duffy* is also illustrative of another difficulty involved in our requiring state courts to reconsider their decisions for purposes of clarification. In *Dixon*, we continued the case on two occasions in order to obtain clarification, but none was forthcoming: "[T]he California court advised petitioner's counsel informally that it doubted its jurisdiction to render such a determination." 344 U. S., at 145. We then vacated the judgment of the state court, and remanded.

This ad hoc method of dealing with cases that involve possible adequate and independent state grounds is antithetical to the doctrinal consistency that is required when sensitive issues of federal-state relations are involved. Moreover, none of the various methods of disposition that we have employed thus far recommends itself as the preferred method that we should apply to the exclusion of others, and we therefore determine that it is appropriate to reexamine our treatment of this jurisdictional issue in order to achieve the consistency that is necessary.

of an alleged state ground is not apparent from the four corners of the opinion. We have long recognized that dismissal is inappropriate "where there is strong indication . . . that the federal constitution as judicially construed controlled the decision below." *National Tea Co.*, *supra*, 309 U. S., at 556 (1940).

Respect for the independence of state courts, as well as avoidance of rendering advisory opinions, have been the cornerstones of this Court's refusal to decide cases where there is an adequate and independent state ground. It is precisely because of this respect for state courts, and this desire to avoid advisory opinions, that we do not wish to continue to decide issues of state law that go beyond the opinion that we review, or to require state courts to reconsider cases to clarify the grounds of their decisions. Accordingly, when, as in this case, a state court decision fairly appears to rest primarily on federal law, or to be interwoven with the federal law, and when the adequacy and independence of any possible state law ground is not clear from the face of the opinion, we will no longer reject the most reasonable explanation that the state court decided the case the way it did because it believed that federal law required it to do so. If a state court chooses merely to rely on federal precedents as it would on the precedents of all other jurisdictions, then it need only make clear by a plain statement in its judgment or opinion that the federal cases are being used only for the purpose of guidance, and do not themselves compel the result that the court has reached. In this way, both justice and judicial administration will be greatly improved. If the state court decision indicates clearly and expressly that it is alternatively based on bona fide separate, adequate, and independent grounds, we, of course, will not undertake to review the decision. This approach obviates in most instances the need to examine state law in order to decide the nature of the state court decision, and will at the same time avoid the danger of our rendering advisory opinions.* It also avoids the unsatisfactory

*There may be certain circumstances in which clarification is necessary or desirable, and we will not be foreclosed from taking the appropriate action.

and intrusive practice of requiring state courts to clarify their decisions to the satisfaction of this Court. We believe that such an approach will provide state judges with a clearer opportunity to develop state jurisprudence unimpeded by federal interference, and yet will preserve the integrity of federal law. "It is fundamental that state courts be left free and unfettered by us in interpreting their state constitutions. But it is equally important that ambiguous or obscure adjudications by state courts do not stand as barriers to a determination by this Court of the validity under the federal constitution of state action." *National Tea Co.*, *supra*, 309 U. S., at 557.

Our review of the decision below under this framework leaves us unconvinced that it rests upon an independent state ground. Apart from its two citations to the state constitution, the court below relied *exclusively* on its understanding of *Terry* and other federal cases. Not a single state case was cited to support the state court's holding that the search of the passenger compartment was unconstitutional.⁶ Indeed, the court declared that the search in this case was unconstitutional because "[t]he Court of Appeals erroneously applied the principles of *Terry v. Ohio* . . . to the search of the interior of the vehicle in this case." 413 Mich., at 471, 320 N. W. 2d, at 869. The references to the state constitution in no way indicate that the decision below rested on grounds in any

⁶ At oral argument, Long argued that the state court relied on its decision in *People v. Reed*, 393 Mich. 342, 224 N. W. 2d 867, cert. denied, 422 U. S. 1044 (1975). See Tr. of Oral Arg., at 29. However, the court cited that case only in the context of a statement that the State did not seek to justify the search in this case "by reference to other exceptions to the warrant requirement." 413 Mich., at 472, 320 N. W. 2d, at 869-870 (footnote omitted). The court then noted that *Reed* held that "A warrantless search and seizure is unreasonable per se and violates the Fourth Amendment of the United States Constitution and art. 1, § 11 of the state constitution unless shown to be within one of the exceptions to the rule." *Id.*, at 472-473, n. 8, 320 N. W. 2d, at 870, n. 8.

way *independent* from the state court's interpretation of federal law. Even if we accept that the Michigan constitution has been interpreted to provide independent protection for certain rights also secured under the Fourth Amendment, it fairly appears in this case that the Michigan Supreme Court rested its decision primarily on federal law.

Rather than dismissing the case, or requiring that the state court reconsider its decision on our behalf solely because of a mere possibility that an adequate and independent ground supports the judgment, we find that we have jurisdiction in the absence of a plain statement that the decision below rested on an adequate and independent state ground. It appears to us that the state court "felt compelled by what it understood to be federal constitutional considerations to construe . . . its own law in the manner that it did." *Zacchini v. Scripps-Howard Broadcasting Co.*, 433 U. S. 562, 568 (1977).⁷

⁷There is nothing unfair about requiring a plain statement of an independent state ground in this case. Even if we were to rest our decision on an evaluation of the state law relevant to Long's claim, as we have sometimes done in the past, our understanding of Michigan law would also result in our finding that we have jurisdiction to decide this case. Under state search and seizure law, a "higher standard" is imposed under art. 1, § 11 of the 1963 Michigan Constitution. See *People v. Secrist*, 413 Mich. 521, 525, 321 N. W. 2d 368, 369 (1982). If, however, the item seized is, *inter alia*, a "narcotic drug . . . seized by a peace officer outside the curtilage of any dwelling house in this state," art 1, § 11 of the 1963 Michigan Constitution, then the seizure is governed by a standard identical to that imposed by the Fourth Amendment. See *People v. Moore*, 391 Mich. 426, 435, 216 N. W. 2d 770, 775 (1974).

Long argues that under the current Michigan Public Health Code § 333.7107, the definition of a "narcotic" does not include marijuana. The difficulty with this argument is that Long fails to cite any authority for the proposition that the term "narcotic" as used in the Michigan constitution is dependent on current statutory definitions of that term. Indeed, it appears that just the opposite is true. The Michigan Supreme Court has held that constitutional provisions are presumed "to be interpreted in accordance with existing laws and legal usages of the time" of the passage of

III

The court below held, and respondent Long contends, that Deputy Howell's entry into the vehicle cannot be justified under the principles set forth in *Terry* because *Terry* authorized only a limited pat-down search of a person suspected of criminal activity rather than a search of an area. 413 Mich., at 472, 320 N. W. 2d, at 869 (footnote omitted). Brief for Respondent, p. 10. Although *Terry* did involve the protective frisk of a person, we believe that the police action in this case is justified by the principles that we have already established in *Terry* and other cases.

In *Terry*, the Court examined the validity of a "stop and frisk" in the absence of probable cause and a warrant. The police officer in *Terry* detained several suspects to ascertain their identities after the officer had observed the suspects for a brief period of time and formed the conclusion that they

the provision. *Bacon v. Kent-Ottawa Authority*, 354 Mich. 159, 169, 92 N. W. 2d 492, 497 (1958). If the state legislature were able to change the interpretation of a constitutional provision by statute, then the legislature would have "the power of outright repeal of a duly-voted constitutional provision." *Ibid.* Applying these principles, the Michigan courts have held that a statute passed subsequent to the applicable state constitutional provision is not relevant for interpreting its constitution, and that a definition in a legislative act pertains only to that act. *Jones v. City of Ypsilanti*, 26 Mich. App. 574, 182 N. W. 2d 795 (1970). See also *Walber v. Wayne Circuit Judge*, 2 Mich. App. 145, 138 N. W. 2d 772 (1966), *aff'd*, 381 Mich. 138, 160 N. W. 2d 876 (1968). At the time that the 1963 Michigan Constitution was enacted, it is clear that marijuana was considered a narcotic drug. See 1961 Mich. Pub. Acts, No. 266, § 1. Indeed, it appears that marijuana was considered a narcotic drug in Michigan until 1978, when it was removed from the narcotic classification. We would conclude that the seizure of marijuana in Michigan is not subject to analysis under any "higher standard" that may be imposed on the seizure of other items. In the light of our holding in *Delaware v. Prouse*, *supra*, that an interpretation of state law in our view compelled by federal constitutional considerations is not an independent state ground, we would have jurisdiction to decide the case.

were about to engage in criminal activity. Because the officer feared that the suspects were armed, he patted down the outside of the suspects' clothing and discovered two revolvers.

Examining the reasonableness of the officer's conduct in *Terry*,³ we held that there is "no ready test for determining reasonableness other than by balancing the need to search [or seize] against the invasion which the search [or seizure] entails." 392 U. S., at 21 (quoting *Camara v. Municipal Court*, 387 U. S. 523, 536-537 (1967)). Although the conduct of the officer in *Terry* involved a "severe, though brief, intrusion upon cherished personal security," 392 U. S., at 24-25, we found that the conduct was reasonable when we weighed the interest of the individual against the legitimate interest in "crime detection and prevention," *id.*, at 23, and the "need for law enforcement officers to protect themselves and other prospective victims of violence in situations where they lack probable cause for an arrest." *Id.*, at 24. When the officer has a reasonable belief "that the individual whose suspicious behavior he is investigating at close range is armed and presently dangerous to the officer or to others, it would appear to be clearly unreasonable to deny the officer the power to take

³ Although we did not in any way weaken the warrant requirement, we acknowledged that the typical "stop and frisk" situation involves "an entire rubric of police conduct—necessarily swift action predicated upon the on-the-spot observations of the officer on the beat—which historically has not been, and as a practical matter could not be, subjected to the warrant procedure. Instead, the conduct in this case must be tested by the Fourth Amendment's general proscription against unreasonable searches and seizures." 392 U. S., at 20 (footnote omitted). We have emphasized that the propriety of a *Terry* stop and frisk is to be judged according to whether the officer acted as a "reasonably prudent man" in deciding that the intrusion was justified. *Terry, supra*, 392 U. S., at 27. "A brief stop of a suspicious individual, in order to determine his identity or to maintain the status quo momentarily while obtaining more information, may be most reasonable in light of the facts known to the officer at the time." *Adams v. Williams*, 407 U. S. 143, 146 (1972).

necessary measures to determine whether the person is in fact carrying a weapon and to neutralize the threat of physical harm." *Ibid.*

Although *Terry* itself involved the stop and subsequent pat-down search of a person, we were careful to note that "[w]e need not develop at length in this case, however, 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 29. Contrary to Long's view, *Terry* did not restrict the preventative search to the person of the detained suspect.⁹

In two cases in which we applied *Terry* to specific factual situations, we recognized that investigative detentions involving suspects in vehicles are especially fraught with danger to police officers. In *Pennsylvania v. Mimms*, 434 U. S. 106 (1972), we held that police may order persons out of an automobile during a stop for a traffic violation, and may frisk those persons for weapons if there is a reasonable belief that they are armed and dangerous. Our decision rested in part on the "inordinate risk confronting an officer as he approaches a person seated in an automobile." *Id.*, at 110. In *Adams v. Williams*, 407 U. S. 143 (1972), we held that the police, acting on an informant's tip, may reach into the passenger compartment of an automobile to remove a gun from a driver's waistband even where the gun was not apparent to police from outside the car and the police knew of its exist-

⁹As Chief Justice Coleman noted in her dissenting opinion in the present case:

"The opinion in *Terry* authorized the frisking of an overcoat worn by defendant because that was the issue presented by the facts. One could reasonably conclude that a different result would not have been constitutionally required if the overcoat had been carried, folded over the forearm, rather than worn. The constitutional principles in *Terry* would still control."

413 Mich., at 475-476, 320 N. W. 2d, at 871 (Coleman, C. J., dissenting).

ence only because of the tip. Again, our decision rested in part on our view of the danger presented to police officers in "traffic stop" and automobile situations.¹⁰

Finally, we have also expressly recognized that suspects may injure police officers and others by virtue of their access to weapons, even though they may not themselves be armed. In the Term following *Terry*, we decided *Chimel v. California*, 395 U. S. 752 (1969), which involved the limitations imposed on police authority to conduct a search incident to a valid arrest. Relying explicitly on *Terry*, we held that when an arrest is made, it is reasonable for the arresting officer to search "the arrestee's person and the area 'within his immediate control'—construing that phrase to mean the area from within which he might gain possession of a weapon or destructible evidence." *Id.*, at 763. We reasoned that "[a] gun on a table or in a drawer in front of one who is arrested can be as dangerous to the arresting officer as one concealed in the clothing of the person arrested." *Ibid.* In *New York v. Belton*, 453 U. S. 454 (1981), we determined that the lower courts "have found no workable definition of 'the area within the immediate control of the arrestee' when that area arguably includes the interior of an automobile and the arrestee is its recent occupant." *Id.*, at 460. In order to provide a "workable rule," *ibid.*, we held that "articles inside the relatively narrow compass of the passenger compartment of an automobile are in fact generally, even if not inevitably, within 'the area into which an arrestee might reach in order to grab a weapon'" *Ibid.* (quoting *Chimel*, *supra*, 395 U. S., at 763). We also held that the police may examine the contents of any open or closed container found within the pas-

¹⁰"According to one study, approximately 30% of police shootings occurred when a police officer approached a suspect seated in an automobile. Bristow, Police Officer Shootings—A Tactical Evaluation, 54 J.Crim.L.C.& P.S. 93 (1968)." *Adams v. Williams*, *supra*, 407 U. S., at 148, n. 2.

senger compartment, "for if the passenger compartment is within the reach of the arrestee, so will containers in it be within his reach." 453 U. S., at 460. (footnote omitted). See also *Michigan v. Summers*, 452 U. S. 692, 702 (1981).

Our past cases indicate then that protection of police and others can justify protective searches when police have a reasonable belief that the suspect poses a danger, that roadside encounters between police and suspects are especially hazardous, and that danger may arise from the possible presence of weapons in the area surrounding a suspect. These principles compel our conclusion that the 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 officers to believe that the suspect is dangerous and the suspect may gain immediate control of weapons.¹¹ See *Terry*, 392 U. S.,

¹¹ We stress that our decision does not mean that the police may conduct automobile searches *whenever* they conduct an investigative stop, although the "bright line" that we drew in *Belton* clearly authorizes such a search whenever officers effect a custodial arrest. An additional interest exists in the arrest context, i. e., preservation of evidence, and this justifies an "automatic" search. However, that additional interest does not exist in the *Terry* context. A *Terry* search, "unlike a search without a warrant incident to a lawful arrest, is not justified by any need to prevent the disappearance or destruction of evidence of crime The sole justification of the search . . . is the protection of police officers and others nearby" 392 U. S., at 29. What we borrow now from *Chimel* and *Belton* is merely the recognition that part of the reason to allow area searches incident to an arrest is that the arrestee, who may not himself be armed, may be able to gain access to weapons to injure officers or others nearby, or otherwise to hinder legitimate police activity. This recognition applies as well in the *Terry* context. However, because the interest in collecting and preserving evidence is not present in the *Terry* context, we require that officers who conduct area searches during investigative detentions must do so only when they have the level of suspicion identified in *Terry*.

at 21. "The issue is whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or those of others was in danger." *Id.*, at 27. If a suspect is "dangerous," he is no less dangerous simply because he is not arrested. If, while conducting a legitimate *Terry* search of the interior of the automobile, the officer should, as here, discover contraband other than weapons, he clearly cannot be required to ignore the contraband, and the Fourth Amendment does not require its suppression in such circumstances. *Coolidge v. New Hampshire*, 403 U. S. 443, 465 (1971); *Michigan v. Tyler*, 436 U. S. 499, 509 (1978); *Texas v. Brown*, — U. S. —, —, — (1983) (plurality opinion by REHNQUIST, J., and opinion concurring in the judgment by POWELL, J.).

The circumstances of this case clearly justified Deputies Howell and Lewis in their reasonable belief that Long posed a danger if he were permitted to reenter his vehicle. The hour was late and the area rural. Long was driving his automobile at excessive speed, and his car swerved into a ditch. The officers had to repeat their questions to Long, who appeared to be "under the influence" of some intoxicant. The intrusion was "strictly circumscribed by the exigencies which justif[ed] its initiation." *Terry, supra*, 392 U. S., at 26. Long was not frisked until the officers observed that there was a large knife in the interior of the car into which Long was about to reenter. The subsequent search of the car was restricted to those areas to which Long would generally have immediate control, and that could contain a weapon. The trial court determined that the leather pouch containing marijuana could have contained a weapon. App. 64a.¹²

"The touchstone of our analysis under the Fourth Amendment is always 'the reasonableness in all circumstances of the particular government invasion of a citizen's personal secu-

¹² Of course, our analysis would apply to justify the search of Long's person that was conducted by the officers after the discovery of the knife.

rity.'" *Pennsylvania v. Mimms, supra*, 434 U. S., at 108-109 (quoting *Terry, supra*, 392 U. S., at 19). In this case, the officers did not act unreasonably in not permitting Long to reenter his automobile before taking preventive measures to ensure that there were no other weapons within Long's immediate grasp. Therefore, the balancing required by *Terry* clearly weighs in favor of permitting the police to conduct an area search to uncover weapons, as long as they possess an articulable belief that the suspect is potentially dangerous.

The Michigan Supreme Court appeared to believe that it was not reasonable for the officers to believe that Long could injure them, because he was effectively under their control during the investigative stop and could not get access to any weapons that might have been located in the automobile. See 413 Mich., at 472, 320 N. W. 2d, at 869. This reasoning is mistaken in several respects. During any investigative detention, the suspect is "in the control" of the officers in the sense that he "may be briefly detained against his will . . ." *Terry, supra*, 392 U. S., at 34 (WHITE, J., concurring). Just as a *Terry* suspect on the street may, despite being under the brief control of a police officer, reach into his clothing and retrieve a weapon, so might a *Terry* suspect in Long's position break away from police control and retrieve a weapon from his automobile. See *United States v. Rainone*, 586 F. 2d 1132, 1134 (CA7 1978), cert. denied, 440 U. S. 980 (1979). In addition, if the suspect is not placed under arrest, he will be permitted to reenter his automobile, and he will then have access to any weapons inside. *United States v. Powless*, 546 F. 2d 792, 795-796 (CA8), cert. denied, 430 U. S. 910 (1977). Or, as here, the suspect may be permitted to reenter the vehicle before the *Terry* investigation is over, and again, may have access to weapons. In any event, we stress that a *Terry* investigation, such as the one that occurred here, involves a police investigation "at close range," *Terry, supra*, 392 U. S., at 24, when the officer remains particularly vul-

nerable in part *because* a full custodial arrest has not been effected, and the officer must make a "quick decision as to how to protect himself and others from possible danger." *Id.*, at 28. In such circumstances, we have not required that officers adopt alternate means to ensure their safety in order to avoid the intrusion involved in a *Terry* encounter.¹³

IV

The trial court and the court of appeals upheld the search of the trunk as a valid inventory search under this Court's decision in *South Dakota v. Opperman*, 428 U. S. 364 (1976). The Michigan Supreme Court did not address this holding, and instead suppressed the marijuana taken from the trunk as a fruit of the illegal search of the interior of the automobile. Our holding that the initial search was justified under *Terry* makes it necessary to determine whether the trunk search was permissible under the Fourth Amendment. However, we decline to address this question because it was not passed upon by the Michigan Supreme Court, whose deci-

¹³ Long makes a number of arguments concerning the invalidity of the search of the passenger compartment. The thrust of these arguments is that *Terry* searches are limited in scope and that an area search is fundamentally inconsistent with this limited scope. We have recognized that *Terry* searches are limited insofar as they may not be conducted in the absence of an articulable suspicion that the intrusion is justified, see *e. g.*, *Sibron v. New York*, 392 U. S. 40, 65 (1968), and that they are protective in nature and limited to weapons, see *Ybarra v. Illinois*, 444 U. S. 85, 93-94 (1979). However, neither of these concerns is violated by our decision. To engage in an area search, which is limited to seeking weapons, the officer must have an articulable suspicion that the suspect is potentially dangerous.

Long also argues that there cannot be a legitimate *Terry* search based on the discovery of the hunting knife because Long possessed that weapon legally. See Brief for Respondent, p. 17. Assuming *arguendo* that Long possessed the knife lawfully, we have expressly rejected the view that the validity of a *Terry* search depends on whether the weapon is possessed in accordance with state law. See *Adams v. Williams*, 407 U. S. 143, 146 (1972).

sion we review in this case. See *Cardinale v. Louisiana*, 394 U. S. 437, 438 (1969). We remand this issue to the court below, to enable it to determine whether the trunk search was permissible under *Opperman, supra*, or other decisions of this Court. See, e. g., *United States v. Ross*, — U. S. —, (1982).¹⁴

V

The decision of the Michigan Supreme Court is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

¹⁴ Long suggests that the trunk search is invalid under state law. See Tr. of Oral Arg., at 41, 43-44. The Michigan Supreme Court is, of course, free to determine the validity of that search under state law.

drk 05/13/83

To: Mr. Justice Powell

From: Rives

Re: No. 82-256, Michigan v. Long

50's rule { When a state court decision contains references to both state and federal law, Justice O'Connor's opinion establishes the following "plain statement" rule for determining this Court's jurisdiction: if a state court decision "fairly appears to rest primarily on federal law," the Court will presume that it has jurisdiction unless the state court has indicated clearly and expressly that its judgment rests on independent and adequate state grounds. As a working principle, the rule appears salutary. By requiring a clear statement that the opinion rests on independent and adequate state grounds, it keeps this Court from having to inquire into state law to determine its jurisdiction. And it may prevent state judges from relying on federal law, but insulating their decision from review by including a brief reference to state law. Thus, it seems that practical considerations counsel in favor of adopting such a rule.

But there are theoretical problems with such a rule, and for the following reasons I would recommend against joining Justice O'Connor's plain statement rule. It is well established that when a state court's judgment rests on independent and adequate state

grounds this Court has no jurisdiction to review the state court's decision. Because the presence of state grounds raises jurisdictional questions, the Court previously has been reluctant to decide cases where there is a substantial possibility that the state judgment does not rest on federal grounds. In such cases, the Court either has reviewed state law, declined jurisdiction or remanded to the States to allow them to explain the grounds on which their decisions rest. See, e.g., California v. Krivda, 409 U.S. 33 (1972); Minnesota v. National Tea Co., 309 U.S. 551 (1940); Herb v. Pitcairn, 324 U.S. 117 (1945).

Justice O'Connors' approach departs from this established precedent. She does not examine the cases to see whether the decision below rests on federal or state law. Rather, she resolves any doubts in favor of the Court's jurisdiction and thus causes the Court to exercise its power where it may have none. The proposed plain statement rule seems to me a departure from the Court's constant recognition that because it is a court of limited jurisdiction it will be reluctant to exercise its jurisdiction when it is in doubt.

A second difficulty with the rule announced by the opinion is that it seems fairly intrusive on state court authority. The state courts are under no obligation to keep state and federal law separate. As Justice Jackson stated in Herb v. Pitcairn, "[state] courts may adjudicate both kinds of questions and because it is not necessary to their functions to make a sharp separation of the two their discussion is often interlaced." 324 U.S., at 127. Only this Court has an obligation to limit its jurisdiction to questions of

3.

federal law. Thus, any plain statement rule is a requirement imposed on the state courts for this Court's benefit. If this Court had supervisory powers over the States it would make sense to have a plain statement rule, but it is less clear to me that there is a clear source of authority that justifies requiring state courts to explain their decisions in any particular fashion.¹

Finally, the plain statement rule presumes that the state courts intended to rely on federal authority, unless they state otherwise. Again, as Justice Jackson remarked in Herb v. Pitcairn: "it seems consistent with the respect due the highest courts of states of the Union that they be asked rather than told what they have intended. If this imposes an unwelcome burden it should be mitigated by the knowledge that it is to protect their jurisdiction from unwitting interference as well as to protect our own from unwitting renunciation." 324 U.S., at 127-128. I realize that researching state law or remanding cases is not the most efficient way of dealing with these types of cases, but it seems more consistent than the plain statement rule with concepts of federalism, such as the allocation of authority between state and federal courts.

Your dissenting opinion in City of Mesquite v. Alladdin's

¹The authority to promulgate such a rule may derive from this Court's power to decide its own jurisdiction. Thus, even when the Court's jurisdiction has been unclear, it has assumed jurisdiction, vacated and remanded for the state court to explain the basis of its decision. This plain statement requirement could be justified as a less intrusive way of determining the Court's own jurisdiction.

Castle seems to be more in line with the traditional approach to these questions than the approach proposed in Justice O'Connor's draft. In City of Mesquite, the Court of Appeals² had relied on both federal and state law to hold a state statute unconstitutional. You took a searching look at the state court decisions cited below and concluded that these state decisions had relied on federal law. Thus the Court of Appeals' passing reference to state decisions did not divest this Court of jurisdiction. As I read your opinion, this Court may exercise jurisdiction where it is clear that the opinion below did not rely on state law and this Court may examine the cases to make that determination. As I read Justice O'Connor's opinion, she would eschew the kind of close look that you took in City of Mesquite. Under her approach, the ambiguity that existed in City of Mesquite would be resolved in favor of this Court's jurisdiction without further inquiry. While City of Mesquite does not support Justice O'Connor's approach, I would not think it would preclude you from joining her opinion. Justice O'Connor acknowledges that the Court has tried varying ways of dealing with the independent and adequate state grounds issue and states that they have been inefficient. Thus, the opinion admittedly is a departure from past precedent and one could join it on that basis.

If you are inclined to join, it seems to me that are strong practical reasons for adopting the rule proposed by the

²The posture of these cases is different. City of Mesquite came from a federal court, while this case comes from a state court. Thus, in City of Mesquite there was less reason for this Court to refrain from reaching the federal question.

opinion. And I do not see that many problems with Justice O'Connor's general treatment of the issue. Specific criticisms that might be noted are as follows (my constructive suggestions are 3 and 4; 1 and 2 are primarily quibbles with the opinion's reasoning):

1. On page 6, the opinion states that remanding to have a state court clarify the basis for its judgment "place[s] significant burdens on state courts to demonstrate the presence or absence of our jurisdiction." But the plain statement rule places the same burden on the state courts and does so for precisely the same reason.
2. On page 6, the opinion states that dismissal of cases is not a feasible alternative because the need for federal uniformity is frustrated when "we fail to review an opinion that rests primarily upon federal grounds and where the independence of an alleged state ground is not apparent from the four corners of the opinion." There is a great deal of force to this argument, but it is not clear that acceptance of a plain statement rule would cure this lack of uniformity completely. A state court could choose to make alternative state and federal holdings, each independent of the other. In such a case, the federal holding would be unreviewable and would frustrate the goal of federal uniformity. It would seem that the Court has accepted some lack of uniformity as a cost of having a federal system. Further, any conflict can be resolved by a subsequent decision of this Court.

3. On page 7, the opinion states that adopting a plain statement rule "obviates in most instances the need to examine state law ... and will at the same time avoid the danger of our rendering advisory opinions." It is questionable whether the plain statement rule will avoid the danger of rendering advisory opinions. Under such a rule, the Court will decide federal issues in cases where it is arguable that the judgment rests on independent and adequate state grounds, thereby increasing the likelihood that the federal opinion will be advisory. I assume Justice O'Connor must mean that a plain statement rule will prevent the Court from rendering advisory opinions on state law. It might be helpful to make that point clear.

4. On pages 8-9, the opinion applies the test that it announced. But in so doing, the opinion combs through the case to find whether it relied on federal or state law. It even notes circumstances outside of the four corners of the document--i.e., Michigan's treatment of the Fourth Amendment in other cases--to determine whether the lower court's decision rests on state or federal law. This sort of inquiry undercuts the test the opinion just established. In my view, the opinion would be stronger if it simply noted that the decision below relies primarily on Terry v. Ohio and that it contains no "plain statement ... that the federal cases [did] not themselves compel the result that the court ... reached." (p. 7). By engaging in a less searching analysis, the Court would demonstrate that it means to apply its plain statement rule strictly.

March 15, 1983

82-256 Michigan v. Long

Dear Bill:

Since undertaking the dissent in this case, I have looked more thoroughly at Michigan law. This has led me to question my initial view that the judgment below rested on independent and adequate state grounds.

As a general matter I believe Michigan has interpreted art 1, §11 independently of the Fourth Amendment. As the Supreme Court of Michigan explicitly stated in People v. Secrest, 413 Mich. 521, 525 (1982), "we have imposed a higher standard under the state provision than the federal when the item seized is not one within the proviso of the third sentence of art 1, §11." But I do not believe that Secrest controls this case.

The problem arises from the proviso to art 1, §11 that states "[t]he provisions of this section shall not be construed to bar from evidence in any criminal proceeding any narcotic drug, firearm, bomb, explosive or any other dangerous weapon, seized by a peace officer outside the curtilage of any dwelling house in this state." Thus, even if a search otherwise would be unreasonable under art 1, §11, the proviso purports to prevent certain categories of evidence obtained during the search from being excluded at criminal trials.

As a state constitution cannot authorize the admission of evidence that the federal constitution would exclude, Michigan has recognized that the effect of the proviso is to "preclud[e] a construction of the Michigan search and seizure clause imposing a higher standard of reasonableness for searches and seizures of items named in the provision than the United States Supreme Court has held applicable under the Fourth Amendment." People v. Moore, 391 Mich. 426, 435 (1974). The exclusion of evidence of the types specified in this proviso therefore is governed by the federal constitution. Thus, the issue on which this case ultimately turns appears to be whether marijuana (the drug involved here) is a "narcotic drug" within the meaning of the proviso.

The respondent's brief asserts that the proviso is not applicable because Michigan no longer classifies marijuana as a narcotic. See 1978 Mich. Pub. Acts 368 (codified at Mich. Comp. Laws Ann. §333.7107). The Michigan courts have held consistently, however, that state constitutional

provisions should be interpreted in light of the laws existing when the provisions were ratified. See Bacon v. Kent-Ottawa Authority, 354 Mich. 159, 170-171 (1958). Indeed, the state courts appear to have been rather strict about not construing constitutional provisions in light of subsequent statutory changes. See Walker v. Wayne Circuit Judge, 2 Mich. App. 145, 148-149 (1966); Jones v. City of Ypsilanti, 26 Mich. App. 574, 578-579 (1970). As marijuana was classified as a narcotic drug when the state constitution was ratified in 1963, see 1961 Mich. Pub. Acts 206, I doubt that the subsequent statutory change alters the coverage of the proviso.

Although the state courts have not addressed the specific question whether marijuana is a narcotic, they appear to have assumed that marijuana falls within the coverage of the proviso. In People v. Monroe, 3 Mich. App. 544 (1966), the state court did not bother to consider whether the search that led to the discovery of marijuana was prohibited by the first part of art 1, §11 but simply admitted the marijuana into evidence on the basis of the proviso. See also People v. Barker, 18 Mich. App. 544 (1969) (Levin, J., concurring). But cf. People v. Smith, 31 Mich. App. 366, 373 (1971) (apparently holding that the Fourth Amendment voided the proviso to art 1, §11).

Even if the state courts were to disregard the law existing at the time the constitutional provision was ratified, the purpose of the proviso clearly appears to have been to allow the admission of contraband at criminal trials. This being so, it is unlikely Michigan would apply its "higher standard" to any type of contraband drug. In this case, the Michigan court stated that the search was invalid under both the federal and state constitutions. Equating the two provisions suggests that the court had in mind its recognition that the proviso, which is applicable to contraband-type articles, had been construed to conform to the federal constitution. This perhaps explains why the court did not undertake any independent analysis of the state constitution but relied solely upon this Court's Fourth Amendment decisions.

As you know, Bill, I was inclined to agree with majority on the merits but initially shared your view that the case should be disposed of as resting on independent and adequate state grounds. Since I now have substantial questions about the independence of the state grounds, I am afraid I must give up the dissent.

Sincerely,

Justice Brennan

lfp/ss

May 16, 1983

82-256 Michigan v. Long

Dear Sandra:

I have read with special interest your first draft of an opinion in this case, a draft not yet circulated. I make the following observations:

Your "plain statement" rule for determining this Court's jurisdiction would be: If a state court's decision "fairly appears to rest primarily on federal law," we will presume that this Court has jurisdiction unless the state court has indicated clearly and expressly that its judgment rests on independent and adequate state grounds. As a working principle the rule is salutary and practical considerations strongly support it.

There are, as I am sure you fully appreciate, some theoretical problems with such a rule. It is elementary that this Court has no jurisdiction where a state court's judgment rests on independent and adequate state grounds. As this is a jurisdictional question, we have thought it necessary either to remand a doubtful case to the state court or we have undertaken our own review of state law. I took this approach recently in my dissenting opinion in City of Mesquite v. Alladin's Castle (last Term).

Justice Jackson addressed this problem in Herb v. Pitcairn, 324 U.S. 117 (1945), in which - among other relevant statements - he said:

"[I]t seems consistent with respect to the highest courts of states of the Union that they be asked rather than told what they have intended. If this imposes an unwelcome burden it should be mitigated by the knowledge that it is to protect their jurisdiction from unwitting interference as well as to protect our own from unwitting renunciation." Id., at 127-128.

I confess being torn between the obvious advantage to us of your "plain statement" rule and the traditional concern of this Court not to exercise a jurisdiction that might in fact properly lie with a state. After all, we are a court of limited jurisdiction. On balance, however, I would join four other Justices in adapting your rule in view of the strong practical reasons that justify it.

Perhaps it would be desirable for your opinion to address somewhat more specifically what I have called the theoretical problems with a pragmatic rule. In my view, these problems are more theoretical than realistic - since complying with your proposed rule would hardly be burdensome except where a state court may have reason deliberately to pass the buck to us as perhaps the Michigan courts have been doing.

I note that in this case, your footnote 7 actually disposes of any argument that the decision below was based on an independent and adequate state ground.

I appreciate your giving me the opportunity to make advance comments on your opinion. I applaud your purposes and willingness to undertake an answer to this problem.

Sincerely,

Justice O'Connor

lfp/ss

Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens

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From: Justice O'Connor

Circulated: MAY 17 1983

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-256

MICHIGAN, PETITIONER v. DAVID KERK LONG

ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF MICHIGAN

[May —, 1983]

JUSTICE O'CONNOR delivered the opinion of the Court.

In *Terry v. Ohio*, 392 U. S. 1 (1968), we upheld the validity of a protective search for weapons in the absence of probable cause to arrest because it is unreasonable to deny a police officer the right "to neutralize the threat of physical harm," *id.*, at 24, when he possesses an articulable suspicion that an individual is armed and dangerous. We did not, however, expressly address whether such a protective search for weapons could extend to an area beyond the person in the absence of probable cause to arrest. In the present case, respondent David Long was convicted for possession of marijuana found by police in the passenger compartment and trunk of the automobile that he was driving. The police searched the passenger compartment because they had reason to believe that the vehicle contained weapons potentially dangerous to the officers. We hold that the protective search of the passenger compartment was reasonable under the principles articulated in *Terry* and other decisions of this Court. We also examine Long's argument that the decision below rests upon an adequate and independent state ground, and we decide in favor of our jurisdiction.

I

Deputies Howell and Lewis were on patrol in a rural area one evening when, shortly after midnight, they observed a

Join
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at 5/16

I see no ~~real~~ problems with
joining - The opinion seems fair.
RK

car traveling erratically and at excessive speed.¹ The officers observed the car turning down a side road, where it swerved off into a shallow ditch. The officers stopped to investigate. Long, the only occupant of the automobile, met the deputies at the rear of the car, which was protruding from the ditch onto the road. The door on the driver's side of the vehicle was left open.

Deputy Howell requested Long to produce his operator's license, but he did not respond. After the request was repeated, Long produced his license. Long again failed to respond when Howell requested him to produce the vehicle registration. After another repeated request, Long, whom Howell thought "appeared to be under the influence of something," 413 Mich. 461, 469, 320 N. W. 2d 866, 868 (1982), turned from the officers and began walking toward the open door of the vehicle. The officers followed Long and both observed a large hunting knife on the floorboard of the driver's side of the car. The officers then stopped Long's progress

¹ It is clear, and the respondent concedes, that if the officers had arrested Long for speeding or for driving while intoxicated, they could have searched the passenger compartment under *New York v. Belton*, 453 U. S. 454 (1981), and the trunk under *United States v. Ross*, — U. S. — (1982), if they had probable cause to believe that the trunk contained contraband. See Tr. Oral Arg., at 41. However, at oral argument, the State informed us that while Long could have been arrested for a speeding violation under Michigan law, he was not arrested because "[a]s a matter of practice," police in Michigan do not arrest for speeding violations unless "more" is involved. See Tr. Oral Arg., at 6. The officers did issue Long an appearance ticket. The petitioner also confirmed that the officers could have arrested Long for driving while intoxicated but they "would have to go through a process to make a determination as to whether the party is intoxicated and then go from that point." *Id.*, at 6.

The court below treated this case as involving a protective search, and not a search justified by probable cause to arrest for speeding, driving while intoxicated, or any other offense. Further, the petitioner does not argue that if probable cause to arrest exists, but the officers do not actually effect the arrest, that the police may nevertheless conduct a search as broad as those authorized by *Belton* and *Ross*. Accordingly, we do not address that issue.

and subjected him to a *Terry* protective pat-down, which revealed no weapons.

Long and Deputy Lewis then stood by the rear of the vehicle while Deputy Howell shined his flashlight into the interior of the vehicle, but did not actually enter it. The purpose of Howell's action was "to search for other weapons." *Id.*, at 469, 320 N. W. 2d, at 868. The officer noticed that something was protruding from under the armrest on the front seat. He knelt in the vehicle and lifted the armrest. He saw an open pouch on the front seat, and upon flashing his light on the pouch, determined that it contained what appeared to be marijuana. After Deputy Howell showed the pouch and its contents to Deputy Lewis, Long was arrested for possession of marijuana. A further search of the interior of the vehicle, including the glovebox, revealed neither more contraband nor the vehicle registration. The officers decided to impound the vehicle. Deputy Howell opened the trunk, which did not have a lock, and discovered inside it approximately 75 pounds of marijuana.

The Barry County Circuit Court denied Long's motion to suppress the marijuana taken from both the interior of the car and its trunk. He was subsequently convicted of possession of marijuana. The Michigan Court of Appeals affirmed Long's conviction, holding that the search of the passenger compartment was valid as a protective search under *Terry*, *supra*, and that the search of the trunk was valid as an inventory search under *South Dakota v. Opperman*, 428 U. S. 364 (1976). See 94 Mich. App. 338, 288 N. W. 2d 629 (1979). The Michigan Supreme Court reversed. The court held that "the sole justification of the *Terry* search, protection of the police officers and others nearby, cannot justify the search in this case." 413 Mich., at 472, 320 N. W. 2d, at 869. The marijuana found in Long's trunk was considered by the court below to be the "fruit" of the illegal search of the interior, and was also suppressed.²

² Chief Justice Coleman dissented, arguing that *Terry* authorized the

We granted certiorari in this case to consider the important question of the authority of a police officer to protect himself by conducting a *Terry*-type search of the passenger compartment of a motor vehicle during the lawful investigatory stop of the occupant of the vehicle. — U. S. — (1982).

II

Before reaching the merits, we must consider Long's argument that we are without jurisdiction to decide this case because the decision below rests on an adequate and independent state ground.¹ The court below referred twice to the state constitution in its opinion, but otherwise relied exclusively on federal law.² Long argues that the Michigan courts have provided greater protection from searches and seizures under the state constitution than is afforded under the Fourth Amendment, and the references to the state constitution therefore establish an adequate and independent ground for the decision below.

It is, of course, "incumbent upon this Court . . . to ascertain for itself . . . whether the asserted non-federal ground independently and adequately supports the judgment." *Abie State Bank v. Bryan*, 282 U. S. 765, 773 (1931). Although we have announced a number of principles in order to help us determine whether various forms of references

area search, and that the trunk search was a valid inventory search. See 413 Mich., at 473-480, 320 N. W. 2d, at 870-873. Justice Moody concurred in the result on the ground that the trunk search was improper. He agreed with Chief Justice Coleman that the interior search was proper under *Terry*. See *id.*, at 480-486, 320 N. W. 2d, 873-875.

¹On the first occasion, the court merely cited in a footnote both the state and federal constitutions. See 413 Mich., at 471, n. 4, 320 N. W. 2d, at 869, n. 4. On the second occasion, at the conclusion of the opinion, the court stated: "We hold, therefore, that the deputies' search of the vehicle was proscribed by the Fourth Amendment to the United States Constitution and art. 1, § 11 of the Michigan Constitution." *Id.*, at 472-473, 320 N. W. 2d, at 870.

to state law constitute adequate and independent state grounds,⁴ we openly admit that we have thus far not developed a satisfying and consistent approach for resolving this vexing issue. In some instances, we have taken the strict view that if the ground of decision was at all unclear, we would dismiss the case. See, e. g., *Lynch v. New York*, 293 U. S. 52 (1934). In other instances, we have vacated, see, e. g., *Minnesota v. National Tea Co.*, 309 U. S. 551 (1940), or continued a case, see e. g., *Herb v. Pitcairn*, 324 U. S. 117 (1945), in order to obtain clarification about the nature of a state court decision. See also *California v. Krivda*, 409 U. S. 33 (1972). In more recent cases, we have ourselves examined state law to determine whether state courts have used federal law to guide their application of state law or to provide the actual basis for the decision that was reached. See also *Delaware v. Prouse*, *supra*, and *Zacchini v. Scripps-Howard Broadcasting Co.*, *supra*. In *Oregon v. Kennedy*, — U. S. —, — (1982), we rejected an

⁴For example, we have long recognized that "where the judgment of a state court rests upon two grounds, one of which is federal and the other non-federal in character, our jurisdiction fails if the non-federal ground is independent of the federal ground and adequate to support the judgment." *Fox Film Corp. v. Muller*, 296 U. S. 207, 210 (1935). We may review a state case decided on a federal ground even if it is clear that there was an available state ground for decision on which the state court could properly have relied. *Beecher v. Alabama*, 389 U. S. 35, 37, n. 3 (1967). Also, if, in our view, the state court "felt compelled by what it understood to be federal constitutional considerations to construe . . . its own law in the manner that it did," then we will not treat a normally adequate state ground as independent, and there will be no question about our jurisdiction. *Delaware v. Prouse*, 440 U. S. 648, 653 (1979) (quoting *Zacchini v. Scripps-Howard Broadcasting Co.*, 433 U. S. 562, 568 (1977)). See also *South Dakota v. Neville*, — U. S. —, —, n. 3 (1983). Finally, "where the non-federal ground is so interwoven with the [federal ground] as not to be an independent matter, or is not of sufficient breadth to sustain the judgment without any decision of the other, our jurisdiction is plain." *Enterprise Irrigation District v. Farmers Mutual Canal Company*, 243 U. S. 157, 164 (1917).

invitation to remand to the state court for clarification even when the decision rested in part on a case from the state court, because we determined that the state case itself rested upon federal grounds. We added that "[e]ven if the case admitted of more doubt as to whether federal and state grounds were intermixed, the fact that the state court relied to the extent it did on federal grounds requires us to reach the merits." *Id.*, at —.

This *ad hoc* method of dealing with cases that involve possible adequate and independent state grounds is antithetical to the doctrinal consistency that is required when sensitive issues of federal-state relations are involved. Moreover, none of the various methods of disposition that we have employed thus far recommends itself as the preferred method that we should apply to the exclusion of others, and we therefore determine that it is appropriate to reexamine our treatment of this jurisdictional issue in order to achieve the consistency that is necessary.

The process that we have employed in cases such as *Delaware v. Prouse* is unsatisfactory because it requires us to interpret state laws with which we are generally unfamiliar, and which often, as in this case, have not been discussed at length by the parties. Vacation and continuance for clarification have also been unsatisfactory both because of the delay and decrease in efficiency of judicial administration, see *Dixon v. Duffy*, 344 U. S. 143 (1952),⁵ and, more important, because these methods of disposition place significant burdens on state courts to demonstrate the presence or absence of our jurisdiction. See *Philadelphia Newspapers, Inc. v.*

⁵ Indeed, *Dixon v. Duffy* is also illustrative of another difficulty involved in our requiring state courts to reconsider their decisions for purposes of clarification. In *Dixon*, we continued the case on two occasions in order to obtain clarification, but none was forthcoming: "[T]he California court advised petitioner's counsel informally that it doubted its jurisdiction to render such a determination." 344 U. S., at 145. We then vacated the judgment of the state court, and remanded.

Jerome, 434 U. S. 241, 244 (1978) (REHNQUIST, J., dissenting); *Department of Motor Vehicles v. Rios*, 410 U. S. 425, 427 (1973) (Douglas, J., dissenting). Finally, outright dismissal of cases is clearly not a panacea because it cannot be doubted that there is an important need for uniformity in federal law, and that this need goes unsatisfied when we fail to review an opinion that rests primarily upon federal grounds and where the *independence* of an alleged state ground is not apparent from the four corners of the opinion. We have long recognized that dismissal is inappropriate "where there is strong indication . . . that the federal constitution as judicially construed controlled the decision below." *National Tea Co.*, *supra*, 309 U. S., at 556 (1940).

Respect for the independence of state courts, as well as avoidance of rendering advisory opinions, have been the cornerstones of this Court's refusal to decide cases where there is an adequate and independent state ground. It is precisely because of this respect for state courts, and this desire to avoid advisory opinions, that we do not wish to continue to decide issues of state law that go beyond the opinion that we review, or to require state courts to reconsider cases to clarify the grounds of their decisions. Accordingly, when, as in this case, a state court decision fairly appears to rest primarily on federal law, or to be interwoven with the federal law, and when the adequacy and independence of any possible state law ground is not clear from the face of the opinion, we will accept as the most reasonable explanation that the state court decided the case the way it did because it believed that federal law required it to do so. If a state court chooses merely to rely on federal precedents as it would on the precedents of all other jurisdictions, then it need only make clear by a plain statement in its judgment or opinion that the federal cases are being used only for the purpose of guidance, and do not themselves compel the result that the court has reached. In this way, both justice and judicial administration will be greatly improved. If the state court decision in-

dicates clearly and expressly that it is alternatively based on bona fide separate, adequate, and independent grounds, we, of course, will not undertake to review the decision.

This approach obviates in most instances the need to examine state law in order to decide the nature of the state court decision, and will at the same time avoid the danger of our rendering advisory opinions.⁶ It also avoids the unsatisfactory and intrusive practice of requiring state courts to clarify their decisions to the satisfaction of this Court. We believe that such an approach will provide state judges with a clearer opportunity to develop state jurisprudence unimpeded by federal interference, and yet will preserve the integrity of federal law. "It is fundamental that state courts be left free and unfettered by us in interpreting their state constitutions. But it is equally important that ambiguous or obscure adjudications by state courts do not stand as barriers to a determination by this Court of the validity under the federal constitution of state action." *National Tea Co.*, *supra*, 309 U. S., at 557.

The principle that we will not review judgments of state courts that rest on adequate and independent state grounds is based, in part, on "the limitations of our own jurisdiction." *Herb v. Pitcairn*, 324 U. S. 117, 125 (1945).⁷ The jurisdic-

⁶There may be certain circumstances in which clarification is necessary or desirable, and we will not be foreclosed from taking the appropriate action.

⁷In *Herb v. Pitcairn*, *supra*, the Court also wrote that it was desirable that state courts "be asked rather than told what they have intended." It is clear that we have already departed from that view in those cases in which we have examined state law to determine whether a particular result was guided or compelled by federal law. Our decision today departs further from *Herb* insofar as we disfavor further requests to state courts for clarification, and we require a clear and express statement that a decision rests on adequate and independent state grounds. However, the "plain statement" rule protects the integrity of state courts for the reasons discussed above. The preference for clarification expressed in *Herb* has failed to be a completely satisfactory means of protecting the state and fed-

tional concern is that we not "render an advisory opinion, and if the same judgment would be rendered by the state court after we corrected its views of federal laws, our review could amount to nothing more than an advisory opinion." *Id.*, at 126. Our requirement of a "plain statement" that a decision rests upon adequate and independent state grounds does not in any way authorize the rendering of advisory opinions. Rather, in determining, as we must, whether we have jurisdiction to review a case that is alleged to rest on adequate and independent state grounds, see *Abie State Bank v. Bryan*, *supra*, 282 U. S., at 773, we merely assume that there are no such grounds when it is not clear from the opinion itself that the state court relied upon an adequate and independent state ground and when it fairly appears that the state court rested its decision primarily on federal law."

Our review of the decision below under this framework leaves us unconvinced that it rests upon an independent state ground. Apart from its two citations to the state constitution, the court below relied *exclusively* on its understanding of *Terry* and other federal cases. Not a single state case was cited to support the state court's holding that the search of the passenger compartment was unconstitutional.⁹ Indeed,

eral interests that are involved.

⁹It is not unusual for us to employ certain presumptions in deciding jurisdictional issues. For instance, although the petitioner bears the burden of establishing our jurisdiction, *Durley v. Mayo*, 351 U. S. 277, 285 (1956), we have held that the party who alleges that a controversy before us has become moot has the "heavy burden" of establishing that we lack jurisdiction. *County of Los Angeles v. Davis*, 440 U. S. 625, 631 (1979). That is, we presume in those circumstances that we have jurisdiction until some party establishes that we do not for reasons of mootness.

¹⁰At oral argument, Long argued that the state court relied on its decision in *People v. Reed*, 393 Mich. 342, 224 N. W. 2d 867, cert. denied, 422 U. S. 1044 (1975). See Tr. of Oral Arg., at 29. However, the court cited that case only in the context of a statement that the State did not seek to justify the search in this case "by reference to other exceptions to the warrant requirement." 413 Mich., at 472, 320 N. W. 2d, at 869-870 (footnote

the court declared that the search in this case was unconstitutional because "[t]he Court of Appeals erroneously applied the principles of *Terry v. Ohio* . . . to the search of the interior of the vehicle in this case." 413 Mich., at 471, 320 N. W. 2d, at 869. The references to the state constitution in no way indicate that the decision below rested on grounds in any way *independent* from the state court's interpretation of federal law. Even if we accept that the Michigan constitution has been interpreted to provide independent protection for certain rights also secured under the Fourth Amendment, it fairly appears in this case that the Michigan Supreme Court rested its decision primarily on federal law.

Rather than dismissing the case, or requiring that the state court reconsider its decision on our behalf solely because of a mere possibility that an adequate and independent ground supports the judgment, we find that we have jurisdiction in the absence of a plain statement that the decision below rested on an adequate and independent state ground. It appears to us that the state court "felt compelled by what it understood to be federal constitutional considerations to construe . . . its own law in the manner that it did." *Zacchini v. Scripps-Howard Broadcasting Co.*, 433 U. S. 562, 568 (1977).¹⁰

omitted). The court then noted that *Reed* held that "A warrantless search and seizure is unreasonable per se and violates the Fourth Amendment of the United States Constitution and art. 1, § 11 of the state constitution unless shown to be within one of the exceptions to the rule." *Id.*, at 472-473, n. 8, 320 N. W. 2d, at 870, n. 8.

¹⁰There is nothing unfair about requiring a plain statement of an independent state ground in this case. Even if we were to rest our decision on an evaluation of the state law relevant to Long's claim, as we have sometimes done in the past, our understanding of Michigan law would also result in our finding that we have jurisdiction to decide this case. Under state search and seizure law, a "higher standard" is imposed under art. 1, § 11 of the 1963 Michigan Constitution. See *People v. Secrist*, 413 Mich. 521, 525, 321 N. W. 2d 368, 369 (1982). If, however, the item seized is, *inter alia*, a "narcotic drug . . . seized by a peace officer outside the curtilage of any

III

The court below held, and respondent Long contends, that Deputy Howell's entry into the vehicle cannot be justified under the principles set forth in *Terry* because *Terry* authorized only a limited pat-down search of a *person* suspected of criminal activity rather than a search of an area. 413 Mich.,

dwelling house in this state," art. 1, § 11 of the 1963 Michigan Constitution, then the seizure is governed by a standard identical to that imposed by the Fourth Amendment. See *People v. Moore*, 391 Mich. 426, 435, 216 N. W. 2d 770, 775 (1974).

Long argues that under the current Michigan Public Health Code § 333.7107, the definition of a "narcotic" does not include marijuana. The difficulty with this argument is that Long fails to cite any authority for the proposition that the term "narcotic" as used in the Michigan constitution is dependent on current statutory definitions of that term. Indeed, it appears that just the opposite is true. The Michigan Supreme Court has held that constitutional provisions are presumed "to be interpreted in accordance with existing laws and legal usages of the time" of the passage of the provision. *Bacon v. Kent-Ottawa Authority*, 354 Mich. 159, 169, 92 N. W. 2d 492, 497 (1958). If the state legislature were able to change the interpretation of a constitutional provision by statute, then the legislature would have "the power of outright repeal of a duly-voted constitutional provision." *Ibid.* Applying these principles, the Michigan courts have held that a statute passed subsequent to the applicable state constitutional provision is not relevant for interpreting its constitution, and that a definition in a legislative act pertains only to that act. *Jones v. City of Ypsilanti*, 26 Mich. App. 574, 182 N. W. 2d 795 (1970). See also *Walber v. Wayne Circuit Judge*, 2 Mich. App. 145, 138 N. W. 2d 772 (1966), *aff'd*, 381 Mich. 138, 160 N. W. 2d 876 (1968). At the time that the 1963 Michigan Constitution was enacted, it is clear that marijuana was considered a narcotic drug. See 1961 Mich. Pub. Acts, No. 266, § 1. Indeed, it appears that marijuana was considered a narcotic drug in Michigan until 1978, when it was removed from the narcotic classification. We would conclude that the seizure of marijuana in Michigan is not subject to analysis under any "higher standard" that may be imposed on the seizure of other items. In the light of our holding in *Delaware v. Prouse*, *supra*, that an interpretation of state law in our view compelled by federal constitutional considerations is not an independent state ground, we would have jurisdiction to decide the case.

at 472, 320 N. W. 2d, at 869 (footnote omitted). Brief for Respondent, p. 10. Although *Terry* did involve the protective frisk of a person, we believe that the police action in this case is justified by the principles that we have already established in *Terry* and other cases.

In *Terry*, the Court examined the validity of a "stop and frisk" in the absence of probable cause and a warrant. The police officer in *Terry* detained several suspects to ascertain their identities after the officer had observed the suspects for a brief period of time and formed the conclusion that they were about to engage in criminal activity. Because the officer feared that the suspects were armed, he patted down the outside of the suspects' clothing and discovered two revolvers.

Examining the reasonableness of the officer's conduct in *Terry*,¹¹ we held that there is "no ready test for determining reasonableness other than by balancing the need to search [or seize] against the invasion which the search [or seizure] entails." 392 U. S., at 21 (quoting *Camara v. Municipal Court*, 387 U. S. 523, 536-537 (1967)). Although the conduct of the officer in *Terry* involved a "severe, though brief, intrusion upon cherished personal security," 392 U. S., at 24-25,

¹¹ Although we did not in any way weaken the warrant requirement, we acknowledged that the typical "stop and frisk" situation involves "an entire rubric of police conduct—necessarily swift action predicated upon the on-the-spot observations of the officer on the beat—which historically has not been, and as a practical matter could not be, subjected to the warrant procedure. Instead, the conduct in this case must be tested by the Fourth Amendment's general proscription against unreasonable searches and seizures." 392 U. S., at 20 (footnote omitted). We have emphasized that the propriety of a *Terry* stop and frisk is to be judged according to whether the officer acted as a "reasonably prudent man" in deciding that the intrusion was justified. *Terry, supra*, 392 U. S., at 27. "A brief stop of a suspicious individual, in order to determine his identity or to maintain the status quo momentarily while obtaining more information, may be most reasonable in light of the facts known to the officer at the time." *Adams v. Williams*, 407 U. S. 143, 146 (1972).

we found that the conduct was reasonable when we weighed the interest of the individual against the legitimate interest in "crime detection and prevention," *id.*, at 23, and the "need for law enforcement officers to protect themselves and other prospective victims of violence in situations where they lack probable cause for an arrest." *Id.*, at 24. When the officer has a reasonable belief "that the individual whose suspicious behavior he is investigating at close range is armed and presently dangerous to the officer or to others, it would appear to be clearly unreasonable to deny the officer the power to take necessary measures to determine whether the person is in fact carrying a weapon and to neutralize the threat of physical harm." *Ibid.*

Although *Terry* itself involved the stop and subsequent pat-down search of a person, we were careful to note that "[w]e need not develop at length in this case, however, 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 29. Contrary to Long's view, *Terry* did not restrict the preventative search to the person of the detained suspect.¹²

In two cases in which we applied *Terry* to specific factual situations, we recognized that investigative detentions involving suspects in vehicles are especially fraught with danger to police officers. In *Pennsylvania v. Mimms*, 434 U. S. 106 (1972), we held that police may order persons out of

¹² As Chief Justice Coleman noted in her dissenting opinion in the present case:

"The opinion in *Terry* authorized the frisking of an overcoat worn by defendant because that was the issue presented by the facts. One could reasonably conclude that a different result would not have been constitutionally required if the overcoat had been carried, folded over the forearm, rather than worn. The constitutional principles in *Terry* would still control."

413 Mich., at 475-476, 320 N. W. 2d, at 871 (Coleman, C. J., dissenting).

an automobile during a stop for a traffic violation, and may frisk those persons for weapons if there is a reasonable belief that they are armed and dangerous. Our decision rested in part on the "inordinate risk confronting an officer as he approaches a person seated in an automobile." *Id.*, at 110. In *Adams v. Williams*, 407 U. S. 143 (1972), we held that the police, acting on an informant's tip, may reach into the passenger compartment of an automobile to remove a gun from a driver's waistband even where the gun was not apparent to police from outside the car and the police knew of its existence only because of the tip. Again, our decision rested in part on our view of the danger presented to police officers in "traffic stop" and automobile situations.¹⁹

Finally, we have also expressly recognized that suspects may injure police officers and others by virtue of their access to weapons, even though they may not themselves be armed. In the Term following *Terry*, we decided *Chimel v. California*, 395 U. S. 752 (1969), which involved the limitations imposed on police authority to conduct a search incident to a valid arrest. Relying explicitly on *Terry*, we held that when an arrest is made, it is reasonable for the arresting officer to search "the arrestee's person and the area 'within his immediate control'—construing that phrase to mean the area from within which he might gain possession of a weapon or destructible evidence." *Id.*, at 763. We reasoned that "[a] gun on a table or in a drawer in front of one who is arrested can be as dangerous to the arresting officer as one concealed in the clothing of the person arrested." *Ibid.* In *New York v. Belton*, 453 U. S. 454 (1981), we determined that the lower courts "have found no workable definition of 'the area within

¹⁹"According to one study, approximately 30% of police shootings occurred when a police officer approached a suspect seated in an automobile. Bristow, *Police Officer Shootings—A Tactical Evaluation*, 54 J. Crim. L. C. & P. S. 93 (1963)." *Adams v. Williams*, *supra*, 407 U. S., at 148, n. 3.

the immediate control of the arrestee' when that area arguably includes the interior of an automobile and the arrestee is its recent occupant." *Id.*, at 460. In order to provide a "workable rule," *ibid.*, we held that "articles inside the relatively narrow compass of the passenger compartment of an automobile are in fact generally, even if not inevitably, within 'the area into which an arrestee might reach in order to grab a weapon'. . . ." *Ibid.* (quoting *Chimel, supra*, 395 U. S., at 763). We also held that the police may examine the contents of any open or closed container found within the passenger compartment, "for if the passenger compartment is within the reach of the arrestee, so will containers in it be within his reach." 453 U. S., at 460. (footnote omitted). See also *Michigan v. Summers*, 452 U. S. 692, 702 (1981).

Our past cases indicate then that protection of police and others can justify protective searches when police have a reasonable belief that the suspect poses a danger, that roadside encounters between police and suspects are especially hazardous, and that danger may arise from the possible presence of weapons in the area surrounding a suspect. These principles compel our conclusion that the 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 officers to believe that the suspect is dangerous and the suspect may gain immediate control of weapons.¹⁴ See *Terry*, 392 U. S.,

¹⁴ We stress that our decision does not mean that the police may conduct automobile searches *whenever* they conduct an investigative stop, although the "bright line" that we drew in *Belton* clearly authorizes such a search whenever officers effect a custodial arrest. An additional interest exists in the arrest context, *i. e.*, preservation of evidence, and this justifies an "automatic" search. However, that additional interest does not exist in the *Terry* context. A *Terry* search, "unlike a search without a warrant incident to a lawful arrest, is not justified by any need to prevent the disap-

at 21. "The issue is whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or those of others was in danger." *Id.*, at 27. If a suspect is "dangerous," he is no less dangerous simply because he is not arrested. If, while conducting a legitimate *Terry* search of the interior of the automobile, the officer should, as here, discover contraband other than weapons, he clearly cannot be required to ignore the contraband, and the Fourth Amendment does not require its suppression in such circumstances. *Coolidge v. New Hampshire*, 403 U. S. 443, 465 (1971); *Michigan v. Tyler*, 436 U. S. 499, 509 (1978); *Texas v. Brown*, — U. S. —, —, — (1983) (plurality opinion by REHNQUIST, J., and opinion concurring in the judgment by POWELL, J.).

The circumstances of this case clearly justified Deputies Howell and Lewis in their reasonable belief that Long posed a danger if he were permitted to reenter his vehicle. The hour was late and the area rural. Long was driving his automobile at excessive speed, and his car swerved into a ditch. The officers had to repeat their questions to Long, who appeared to be "under the influence" of some intoxicant. The intrusion was "strictly circumscribed by the exigencies which justifi[ed] its initiation." *Terry, supra*, 392 U. S., at 26. Long was not frisked until the officers observed that there was a large knife in the interior of the car into which Long

pearance or destruction of evidence of crime The sole justification of the search . . . is the protection of police officers and others nearby" 392 U. S., at 29. What we borrow now from *Chimel* and *Belton* is merely the recognition that part of the reason to allow area searches incident to an arrest is that the arrestee, who may not himself be armed, may be able to gain access to weapons to injure officers or others nearby, or otherwise to hinder legitimate police activity. This recognition applies as well in the *Terry* context. However, because the interest in collecting and preserving evidence is not present in the *Terry* context, we require that officers who conduct area searches during investigative detentions must do so only when they have the level of suspicion identified in *Terry*.

was about to reenter. The subsequent search of the car was restricted to those areas to which Long would generally have immediate control, and that could contain a weapon. The trial court determined that the leather pouch containing marijuana could have contained a weapon. App. 64a.¹⁵

In evaluating the validity of an officer's investigative or protective conduct under *Terry*, the "[t]ouchstone of our analysis . . . is always 'the reasonableness in all circumstances of the particular government intrusion of a citizen's personal security.'" *Pennsylvania v. Mimms*, *supra*, 434 U. S., at 108-109 (quoting *Terry*, *supra*, 392 U. S., at 19). In this case, 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. Therefore, the balancing required by *Terry* clearly weighs in favor of allowing the police to conduct an area search of the passenger compartment to uncover weapons, as long as they possess an articulable and objectively reasonable belief that the suspect is potentially dangerous.

The Michigan Supreme Court appeared to believe that it was not reasonable for the officers to believe that Long could injure them, because he was effectively under their control during the investigative stop and could not get access to any weapons that might have been located in the automobile. See 413 Mich., at 472, 320 N. W. 2d, at 869. This reasoning is mistaken in several respects. During any investigative detention, the suspect is "in the control" of the officers in the sense that he "may be briefly detained against his will . . ." *Terry*, *supra*, 392 U. S., at 34 (WHITE, J., concurring). Just as a *Terry* suspect on the street may, despite being under the brief control of a police officer, reach into his clothing and retrieve a weapon, so might a *Terry* suspect in Long's position

¹⁵ Of course, our analysis would apply to justify the search of Long's person that was conducted by the officers after the discovery of the knife.

break away from police control and retrieve a weapon from his automobile. See *United States v. Rainone*, 586 F. 2d 1132, 1134 (CA7 1978), cert. denied, 440 U. S. 980 (1979). In addition, if the suspect is not placed under arrest, he will be permitted to reenter his automobile, and he will then have access to any weapons inside. *United States v. Powless*, 546 F. 2d 792, 795-796 (CA8), cert. denied, 430 U. S. 910 (1977). Or, as here, the suspect may be permitted to reenter the vehicle before the *Terry* investigation is over, and again, may have access to weapons. In any event, we stress that a *Terry* investigation, such as the one that occurred here, involves a police investigation "at close range," *Terry, supra*, 392 U. S., at 24, when the officer remains particularly vulnerable in part because a full custodial arrest has not been effected, and the officer must make a "quick decision as to how to protect himself and others from possible danger." *Id.*, at 28. In such circumstances, we have not required that officers adopt alternate means to ensure their safety in order to avoid the intrusion involved in a *Terry* encounter.¹⁴

¹⁴ Long makes a number of arguments concerning the invalidity of the search of the passenger compartment. The thrust of these arguments is that *Terry* searches are limited in scope and that an area search is fundamentally inconsistent with this limited scope. We have recognized that *Terry* searches are limited insofar as they may not be conducted in the absence of an articulable suspicion that the intrusion is justified, see e. g., *Sibron v. New York*, 392 U. S. 40, 65 (1968), and that they are protective in nature and limited to weapons, see *Ybarra v. Illinois*, 444 U. S. 85, 92-94 (1979). However, neither of these concerns is violated by our decision. To engage in an area search, which is limited to seeking weapons, the officer must have an articulable suspicion that the suspect is potentially dangerous.

Long also argues that there cannot be a legitimate *Terry* search based on the discovery of the hunting knife because Long possessed that weapon legally. See Brief for Respondent, p. 17. Assuming *arguendo* that Long possessed the knife lawfully, we have expressly rejected the view that the validity of a *Terry* search depends on whether the weapon is possessed in accordance with state law. See *Adams v. Williams*, 407 U. S. 143, 146

IV

The trial court and the court of appeals upheld the search of the trunk as a valid inventory search under this Court's decision in *South Dakota v. Opperman*, 428 U. S. 364 (1976). The Michigan Supreme Court did not address this holding, and instead suppressed the marijuana taken from the trunk as a fruit of the illegal search of the interior of the automobile. Our holding that the initial search was justified under *Terry* makes it necessary to determine whether the trunk search was permissible under the Fourth Amendment. However, we decline to address this question because it was not passed upon by the Michigan Supreme Court, whose decision we review in this case. See *Cardinale v. Louisiana*, 394 U. S. 437, 438 (1969). We remand this issue to the court below, to enable it to determine whether the trunk search was permissible under *Opperman*, *supra*, or other decisions of this Court. See, e. g., *United States v. Ross*, — U. S. —, (1982).¹⁷

V

The decision of the Michigan Supreme Court is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

(1972).

¹⁷ Long suggests that the trunk search is invalid under state law. See Tr. of Oral Arg., at 41, 43-44. The Michigan Supreme Court is, of course, free to determine the validity of that search under state law.

May 17, 1983

82-256 Michigan v. Long

Dear Sandra:

Please join me.

Sincerely,

Justice O'Connor

lfp/ss

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

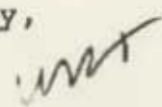
May 17, 1983

Re: No. 82-256 Michigan v. Long

Dear Sandra:

Please join me.

Sincerely,



Justice O'Connor

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 26, 1983

Re: 82-256 - Michigan v. Long

Dear Sandra:

Because I do not agree with the new approach to jurisdiction over state court judgments that your opinion proposes, I expect to be writing in dissent as soon as I can get to it.

Respectfully,



Justice O'Connor

Copies the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 27, 1983

Re: No. 82-256-Michigan v. Long

Dear Sandra:

I await the dissent.

Sincerely,

T.M.
T.M.

Justice O'Connor

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 1, 1983



Re: 82-256 - Michigan v. Long

Dear Sandra,

Please join me.

Sincerely yours,

A handwritten signature in blue ink, appearing to read "Byron", located below the "Sincerely yours," text.

Justice O'Connor

cc: The Conference

cpm

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE



June 1, 1983

Re: No. 82-256, Michigan v. Long

Dear Sandra:

I join.

Regards,

Justice O'Connor

Copies to the Conference



Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 23, 1983

Re: No. 82-256-Michigan v. Long

Dear Bill:

Please join me in your dissent.

Sincerely,

T.M.
T.M.

Justice Brennan

cc: The Conference

SOC for the Court

1st draft 5/17/83

2nd draft 5/31/83

3rd draft 6/28/83

Joined by CJ, BRW, LFP

Parts, I, III, IV, V Joined by HAB

HAB concurring

Typed draft 6/29/83

1st printed draft 6/29/83

WJB dissent

1st draft 6/23/83

2nd draft 6/29/83

Joined by TM

JPS dissent

1st draft 6/23/83

2nd draft 6/24/83