

**FOURTH AMENDMENT – SEARCH AND SEIZURE – NEW JERSEY SUPREME COURT CONTINUES TO PROTECT THE PRIVACY RIGHTS OF NEW JERSEY’S CITIZENS BY REQUIRING BOTH PROBABLE CAUSE AND EXIGENT CIRCUMSTANCES IN ORDER TO SEARCH A VEHICLE WITHOUT A WARRANT PURSUANT TO THE AUTOMOBILE EXCEPTION - *STATE V. COOKE*, 751 A.2D 92 (N.J. 2000).**

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## I. INTRODUCTION

Under Fourth Amendment jurisprudence, in order for the police to conduct a search or seizure, a neutral judge or magistrate must issue a warrant or else it is deemed *per se* unreasonable.<sup>1</sup> A warrantless search can be upheld only if an exception to the warrant requirement is met.<sup>2</sup> Among these exceptions are the automobile exception, emergency exception, search incident to a lawful arrest, and consent to search.<sup>3</sup> The Court in *Carroll v. United States* first articulated the automobile exception to the warrant clause and required not only a showing of probable cause to search a vehicle but also exigent circumstances which made it impracticable to obtain a warrant prior to the search.<sup>4</sup> Since then, the Supreme Court has overruled the strict requirements of *Carroll* and has held that only a showing of probable cause is necessary to validate a warrantless vehicle search.<sup>5</sup>

In New Jersey, however, the court has continued the stringent provisions set forth in *Carroll* and adheres to the requirements of probable cause and exigent circumstances to validate a warrantless automobile search.<sup>6</sup> The New Jersey Su-

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<sup>1</sup> *Katz v. United States*, 389 U.S. 347, 357 (1967) (citations omitted).

<sup>2</sup> Kevin J. Allen, *Overview of the Fourth Amendment*, 88 GEO. L.J. 883, 883 (2000).

<sup>3</sup> Patrick V. Banks, Note, *Fourth and Fourteenth Amendments- Search and Seizure- Police Officers with Probable Cause to Search a Vehicle May Inspect a Passenger’s Belongings Found in the Vehicle that are Capable of Concealing the Object of the Search*, 10 SETON HALL CONST. L.J. 543, 544 n.6 (2000).

<sup>4</sup> Joel S. Hjelmaas, Note, *The Need for a Higher Standard of Exigency as a Prerequisite for Warrantless Vehicle Searches*, 71 IOWA L. REV. 1161, 1164 (1986) (citing *Carroll v. United States*, 267 U.S. 132 (1925)).

<sup>5</sup> *Maryland v. Dyson*, 527 U.S. 465, 466 (1999).

<sup>6</sup> *State v. Cooke*, 751 A.2d 92, 94 (N.J. 2000).

preme Court has the power to compel more rigorous criteria to protect the privacy rights of its citizens since New Jersey "bear[s] ultimate responsibility for the safe passage of [its] ship."<sup>7</sup>

The Supreme Court in *Mapp v. Ohio*, expounded that the Fourth Amendment creates a "right to privacy, no less important than any other right carefully and particularly reserved to the people."<sup>8</sup> The right to privacy is a fundamental right inherent in the Fourth Amendment that is afforded to all citizens of the United States and is incorporated against each state through the Due Process Clause of the Fourteenth Amendment.<sup>9</sup> Yet, a state has the power to add to the constitutional floor established by the United States Constitution in order to mandate higher standards for searches and seizures *inter alia*.<sup>10</sup>

Moreover, "[t]he federalist system contemplates that state courts may grant greater protection to fundamental rights than is accorded under the federal constitution."<sup>11</sup> In New Jersey, the supreme court pronounced that "[o]ur State Constitution may independently furnish a basis for protecting personal rights when it is not clear that the guarantees of the federal Constitution would serve to grant the same level of protection."<sup>12</sup> The New Jersey Supreme Court has brought life and substance to these words in order to protect the privacy rights of its citizens.<sup>13</sup>

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<sup>7</sup> *State v. Hempele*, 576 A.2d 793, 800 (N.J. 1990).

<sup>8</sup> *Mapp v. Ohio*, 367 U.S. 643, 656 (1961).

<sup>9</sup> The incorporation of the Fourth Amendment upon the states through the Due Process Clause of the Fourteenth Amendment was first articulated in *Wolf v. Colorado*, 338 U.S. 25, 28 (1949). In *Mapp v. Ohio*, the United States Supreme Court acknowledged the incorporation of the Fourth Amendment against the States and extended it further by incorporating the federal exclusionary rule for unconstitutionally obtained evidence against the states. 367 U.S. at 655.

<sup>10</sup> *Cooper v. California*, 386 U.S. 58, 62 (1967).

<sup>11</sup> *State v. Lund*, 573 A.2d 1376, 1386 (N.J. 1990) (Pollock, J., concurring). Justice Brennan expressed that "State constitutions . . . are a font of individual liberties, their protections often extending beyond those required by the Supreme Court's interpretation of federal law." William J. Brennan, *State Constitutions and the Protection of Individual Rights*, 90 HARV. L. REV. 489, 491 (1977).

<sup>12</sup> *State v. Alston*, 440 A.2d 1311, 1318 (N.J. 1981) (citing *State v. Schmid*, 423 A.2d 615 (1980))(referring to Article I, Paragraph 7 of the New Jersey Constitution which is New Jersey's analogue to the Fourth Amendment).

<sup>13</sup> Compare *State v. Hempele*, 576 A.2d 793 (N.J. 1990) (finding that there is a privacy right associated with personal containers containing concealed contents, whether opaque garbage bags or other types of containers), and *State v. Johnson*, 346 A.2d 66 (N.J. 1975) (hold-

Despite the almost identical language of Article I, Paragraph 7 of the New Jersey Constitution and the Fourth Amendment of the United States Constitution,<sup>14</sup> the New Jersey courts have often interpreted Article I, Paragraph 7 to be more protective than the Federal Constitution in keeping with New Jersey's commitment to ensure heightened privacy protection for its citizens.<sup>15</sup> Despite its negative reputation for racial profiling, New Jersey is well-respected for its liberal approach to criminal procedure and privacy rights as well as its tendency to deviate from federal law in these areas.<sup>16</sup>

The New Jersey Supreme Court has not always been successful in its departure from federal case law, however. For example, in *New Jersey v. T.L.O.*, the United States Supreme Court reversed a judgment by the New Jersey Supreme Court, holding that the state court had misapplied the standard for reasonableness

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ing that personal knowledge of the right to refuse consent to a search is necessary to validate a search through consent), *with* *California v. Greenwood*, 486 U.S. 35 (1988) (determining that the Fourth Amendment does not prohibit a warrantless search and seizure of curbside garbage outside the home), *and* *Schneckloth v. Bustamonte*, 412 U.S. 218 (1973) (holding that proof of knowledge of the right to refuse consent was not necessary for a consent to search to be valid).

<sup>14</sup> The New Jersey Constitution states:

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

N.J. CONST. art. I, ¶ 7.

The United States Constitution states:

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

U.S. CONST. amend. IV.

<sup>15</sup> *State v. Pierce*, 642 A.2d 947, 960 (N.J. 1994).

<sup>16</sup> Scott Carbone, *The Unreasonable Expectation of Privacy: The "New" New Jersey Supreme Court Reevaluates State Constitutional Protections*, 30 SETON HALL L. REV. 361, 362 (1999); *see also* Walter A. Schmidlin III, *Are New Jersey Cops Worthless?*, 29 RUTGERS L.J. 1047, 1048-50 (1998) (providing examples of New Jersey's departure from federal interpretations of the Fourth Amendment).

in a search and seizure case.<sup>17</sup> In his concurrence in *State v. Lund*, Justice Pollock recalled the reversal of *New Jersey v. T.L.O.* and expressed concern that the New Jersey Supreme Court had again positioned itself for a reversal by the United States Supreme Court by failing to analyze its holding on independent state law grounds.<sup>18</sup> Justice Pollock acknowledged the importance of citing to state law in order to prevent reversal by the High Court and noted that it is unacceptable to ignore state law where applicable since it would lead to frivolous use of both the state and federal court system.<sup>19</sup> Six years later, the New Jersey Supreme Court attempted to prevent a reversal similar to *New Jersey v. T.L.O.* in *State v. Cooke*<sup>20</sup> by analyzing the case based on the New Jersey Constitution and prior case law in order to make New Jersey's position clear.

## II. STATEMENT OF THE CASE

The New Jersey Supreme Court granted certification in *State v. Cooke* to clarify the automobile exception under New Jersey law and to clarify whether it requires exigent circumstances to validate a warrantless search.<sup>21</sup> Justice Verniero, writing for a unanimous court, held that under New Jersey law, exigent circumstances and probable cause must be present to sustain a warrantless search and that since both were present here, the search was justified.<sup>22</sup>

On May 7, 1997, an officer of the Jersey City Police Department, surveying a housing complex in a high drug traffic area, observed Alfred Cooke in a Duncan Avenue parking lot apparently working on car stereo speakers in a gray Ford Es-

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<sup>17</sup> 469 U.S. 325, 347 (1985).

<sup>18</sup> 573 A.2d 1376, 1385-87 (N.J. 1990) (Pollock, J., concurring) (citing *State v. Hartley*, 511 A.2d 80 (1983) (citation omitted)).

<sup>19</sup> *Id.* at 1385 (Pollock, J., concurring). In his concurring opinion, Justice Pollock admonished that if the New Jersey Supreme Court does not analyze a case based on New Jersey case law, it has failed to fulfill its obligation. *Id.* In *State v. Lund*, the court relied on federal law to invalidate a warrantless automobile search.

<sup>20</sup> 751 A.2d 92, 94 (N.J. 2000) (upholding a warrantless automobile search as valid under the state constitution since exigent circumstances and probable cause were present).

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* The court stressed that even though the defendant was in custody at the time of the search, the car was still readily mobile since third parties could have accessed it and removed its contents or the vehicle itself. *Id.* Thus, the court reversed the decision to suppress the evidence obtained from the Ford Escort and remanded the case for trial. *Id.*

cort.<sup>23</sup> The police conducted the surveillance based on a report by a confidential, reliable informant that Cooke stored drugs in the Escort intending to sell them.<sup>24</sup>

The officer observed an alleged buyer approach Cooke and give him money.<sup>25</sup> Cooke walked to a white Hyundai, took a plastic bag from the passenger's side and gave the bag to the alleged buyer.<sup>26</sup> After the first buyer walked away, a second man approached and appeared to talk to Cooke.<sup>27</sup> An hour later, a third man, whom the police recognized from previous arrests as Bryan Miles, came up to the two others and all three walked over to the Hyundai.<sup>28</sup> Cooke handed a white object to the second man who then departed.<sup>29</sup> After retrieving another plastic bag from the Hyundai and placing it under the passenger seat of the Escort, Cooke and Miles drove away in the Hyundai.<sup>30</sup>

The surveillance officer, based on his own experience with area narcotics arrests, his first-hand observations, and the tip from the reliable informant, concluded that the defendant was involved in drug transactions and notified the auxiliary officers that the defendant was on the move.<sup>31</sup> The officers stopped the Hyundai, told Cooke that there was an unrelated, outstanding warrant for his arrest, and removed Miles from the car.<sup>32</sup> The officers asked Cooke about the gray Ford Escort, who denied any knowledge of the car.<sup>33</sup> The officers arrested Cooke, searched him, and found the keys to the Escort, while Cooke continued

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<sup>23</sup> *Id.* A team of officers remained in the area in case the surveillance officer needed assistance. *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Cooke*, 751 A.2d at 94.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.* The surveillance officer remained at his post in order to guard the scene temporarily until the Ford Escort could be searched. *Id.*

<sup>32</sup> *Cooke*, 751 A.2d at 95. The officers detained Miles for an unspecified amount of time. *Id.*

<sup>33</sup> *Id.*

to deny knowledge of the car.<sup>34</sup>

The officers returned to the Duncan Avenue parking lot to open and search the Escort with the keys.<sup>35</sup> During the search, the officers discovered illegal drugs.<sup>36</sup> Cooke was indicted for possession of cocaine and heroin, possession of cocaine, heroin, and marijuana with intent to distribute, and possession of cocaine, heroin, and marijuana with intent to distribute within 1000 feet of school property.<sup>37</sup> The defendant moved for suppression of the evidence seized during the search pursuant to the automobile exception, contending that the search was not permissible because the exception did not apply since there was a lack of exigent circumstances.<sup>38</sup>

The Superior Court of Hudson County, Law Division, granted Cooke's motion to suppress all evidence seized from the Ford Escort and upon reconsideration affirmed that ruling, reasoning that the automobile exception did not apply because there was an absence of exigent circumstances.<sup>39</sup> The court concluded that the car was not readily mobile since the defendant was arrested and in police custody, the police had the defendant's keys to the Escort, and the car was under police surveillance until it was searched.<sup>40</sup>

The appellate division affirmed for similar reasons, further reasoning that police did not have specific information that another person might try to move the vehicle or its contents, and thus exigent circumstances did not validate the search.<sup>41</sup>

The New Jersey Supreme Court reversed the lower court's decision to suppress the evidence using a two pronged analysis based on probable cause and exigent circumstances.<sup>42</sup> On the issue of probable cause, the court held that the

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<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.* Defendant was arrested for several violations of New Jersey law. N.J. STAT. ANN. §§ 2C:35-5a(1),(3),(12), -10a(1), -7, (West Supp. 2000).

<sup>38</sup> *Cooke*, 751 A.2d at 95.

<sup>39</sup> *Id.* The trial court's decision is unpublished.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.* The appellate division's opinion is unpublished.

<sup>42</sup> *Id.* at 99.

minimal requirement of a well-grounded suspicion to believe a crime was being committed was satisfied, only briefly discussing the supporting facts in the record.<sup>43</sup>

The court then addressed whether there were exigent circumstances and refuted four key points made by the lower courts.<sup>44</sup> First, Justice Verniero noted that regardless of the fact that the defendant was in police custody, there remained a possibility that the evidence would be removed or destroyed since third parties were aware of the defendant's arrest, thus creating an exigency.<sup>45</sup> In addition, the justice recognized that although the police possessed one set of keys to the Escort, another set of keys to the car might have existed enhancing the exigent circumstances.<sup>46</sup>

Furthermore, the supreme court reasoned that there was not enough time to secure a warrant even though the Escort remained under surveillance because it would be impracticable for the observing officer to relinquish his outlook post and physically guard the car while awaiting a warrant.<sup>47</sup> Lastly, looking at the totality of the circumstances, the court held that when events occur rapidly in the course of an ongoing investigation, the likelihood that the evidence will be destroyed is increased, contributing to the exigency of the situation.<sup>48</sup> Accordingly, based on the above factors, the New Jersey Supreme Court reversed the motion to suppress the evidence and remanded for trial.<sup>49</sup>

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<sup>43</sup> *Id.* at 99-100. The court found that the officer had a well-grounded suspicion based on the facts that a reliable informant reported that the defendant was selling drugs and storing them in the Escort and that the surveillance officer witnessed what he believed to be an illegal drug transaction. *Id.*

<sup>44</sup> *Cooke*, 751 A.2d at 100.

<sup>45</sup> *Id.* Specifically, Miles was present when Cooke stored the drugs and when the police arrested Cooke. *Id.* Miles could have inferred that the Escort was unattended and acted to remove the evidence stored in the car. *Id.*

<sup>46</sup> *Id.* The court noted that this is especially true when the defendant denies knowledge of the ownership of the vehicle, as Cooke did in this case. *Id.*

<sup>47</sup> *Id.* at 101.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.* at 102.

### III. PRIOR CASE HISTORY

#### A. UNITED STATES SUPREME COURT

In order for a search to be considered constitutional pursuant to the Fourth Amendment, a warrant must be issued.<sup>50</sup> To deviate from the requirement of a warrant prior to a search or seizure, one of the exceptions to the Warrant Clause must be applicable.<sup>51</sup> Such an exception was established in *Carroll v. United States* for searching automobiles.<sup>52</sup> The Supreme Court acknowledged the inherent impracticability of requiring a warrant when a vehicle is involved because important evidence might be rendered irretrievable if a police officer were required to obtain a warrant before conducting a search.<sup>53</sup> Ultimately, the *Carroll* Court considered a search constitutional if it was reasonable.<sup>54</sup> For a search to be reasonable, the Court held that a police officer must have probable cause to believe that there is illegal contraband concealed in a movable vehicle and that it can be put out of reach of a warrant; essentially, a showing of probable cause and exigent circumstances.<sup>55</sup> The Supreme Court sustained the search because probable cause and exigent circumstances existed.<sup>56</sup>

The automobile exception was further honed in *Chambers v. Maroney* where the Court opined that provided there is probable cause, a search of an automobile without a warrant is as legitimate as a search with a warrant.<sup>57</sup> Here, alleged

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<sup>50</sup> *Katz v. United States*, 389 U.S. 347, 357 (1967) (citations omitted).

<sup>51</sup> *Banks*, *supra* note 3, at 544 n.6.

<sup>52</sup> *Carroll*, 267 U.S. 132 (1925) (where the defendants were convicted of transporting alcoholic beverages based on a search of the vehicle in which they were transporting the liquor).

<sup>53</sup> *Id.* at 153.

<sup>54</sup> *Id.* at 146. The Court set forth that an unreasonable search is to be construed in light of what was reasonable at the time the Fourth Amendment was adopted. *Id.* at 149.

<sup>55</sup> *See id.* at 149-51.

<sup>56</sup> *Id.* at 162. *See, e.g.*, 2 WAYNE R. LAFAVE, SEARCH AND SEIZURE: TREATISE ON THE FOURTH AMENDMENT 509-12 (1978); Martin R. Gardner, *Search and Seizure of Automobiles and Their Contents: Fourth Amendment Considerations in a Post-Ross World*, 62 NEB. L. REV. 1, 4 (1983).

<sup>57</sup> 399 U.S. 42, 52 (1970).



robbers fleeing in a vehicle were arrested and their vehicle was seized.<sup>58</sup> The immobilized car was searched at the police station where items linking the occupants of the vehicle to the robbery were found.<sup>59</sup> Writing for the majority, Justice White reasoned that the arrest of the suspects occurred late at night in a dark parking lot and therefore it would have been impractical and possibly unsafe for the officers to search the vehicle at that location.<sup>60</sup> However, the Court posited that the circumstances were such that since probable cause existed to search the car in the parking lot, there was probable cause to search the car at the police station.<sup>61</sup> Again the Court found that since the car was a moving target at the time of seizure, and probable cause existed, there was sufficient reason to sustain the warrantless search at the police station.<sup>62</sup>

The automobile exception under federal law has been crafted and changed throughout the years to serve competing purposes, sometimes to protect citizens and other times to protect police officers.<sup>63</sup> In subsequent decisions, the United States Supreme Court has established bright line rules, only to narrow them.<sup>64</sup>

For example, in *Pennsylvania v. Labron*, the United States Supreme Court reviewed the constitutionality of a warrantless automobile search.<sup>65</sup> Relying on the Fourth Amendment, the Court held that, contrary to the Pennsylvania Constitution, a warrantless search is justified by probable cause and ready mobility; no showing of exigent circumstances was necessary.<sup>66</sup> Pennsylvania's Constitution

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<sup>58</sup> *Id.* at 44.

<sup>59</sup> *Id.*

<sup>60</sup> *Id.* at 52 n.10.

<sup>61</sup> *Id.*

<sup>62</sup> *Id.* Yet, the court ignored the fact that the vehicle was not moving and the exigency had been removed since the car was in police custody. *Id.* at 61-65. It was not impracticable at this point to obtain a warrant prior to the search. *Id.* at 64 n.9 (Harlan, J., concurring, dissenting).

<sup>63</sup> See generally Lewis R. Katz, *The Automobile Exception Transformed: The Rise of a Public Place Exemption to the Warrant Requirement*, 36 CASE W. RES. 375 (1986) (discussing the inconsistencies in Fourth Amendment jurisprudence and the general demise of the warrant requirement to legitimate the search of a vehicle).

<sup>64</sup> See *id.* at 377-79.

<sup>65</sup> 518 U.S. 938 (1996).

<sup>66</sup> *Id.* at 940 (citing *California v. Carney*, 471 U.S. 386, 393 (1985)).

has been interpreted to be more protective of privacy rights with regard to the automobile exception than the Fourth Amendment, and like the New Jersey Constitution, requires exigent circumstances to validate a search without a warrant.<sup>67</sup> Yet, the United States Supreme Court declined to rely on the Pennsylvania Constitution because the Pennsylvania Supreme Court interwove too many federal cases to base the decision on Pennsylvania case law, and instead the Court held that probable cause was enough to justify a warrantless search as per Fourth Amendment jurisprudence.<sup>68</sup>

Despite the various decisions written by the United States Supreme Court, in its most recent opinion on the issue, *Maryland v. Dyson*, the Court is clear. In a concise *per curiam* opinion, the Court abolished the need for exigent circumstances to validate a warrantless automobile search provided there is probable cause.<sup>69</sup>

#### B. NEW JERSEY SUPREME COURT

In one of the most noted New Jersey cases to address the constitutionality of a warrantless search, *State v. Alston*, the New Jersey Supreme Court upheld a warrantless search since it was based on probable cause and exigent circumstances.<sup>70</sup> Here, in pursuit of a speeding vehicle, the police noticed the occupants of the car moving around as if trying to conceal something.<sup>71</sup> Once the car was stopped, while the defendant was searching for his credentials, one of the officers saw three shotgun shells in the open glove compartment.<sup>72</sup> The occupants were asked to exit the car, and a search ensued.<sup>73</sup> The court upheld the search because the circumstances which gave rise to probable cause to search the vehicle occurred quickly.<sup>74</sup> Justice Clifford commented on the inherent mobility of the vehicle and the danger posed by the possibility that more weapons were

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<sup>67</sup> See *id.* at 939.

<sup>68</sup> *Id.* at 940-41.

<sup>69</sup> *Maryland v. Dyson*, 527 U.S. 465, 466-67 (1999) (quoting *Pennsylvania v. Labron*, 518 U.S. 938, 940 (1996)).

<sup>70</sup> 440 A.2d 1311, 1323 (N.J. 1981).

<sup>71</sup> *Id.* at 1313.

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> *Id.* at 1323.

concealed in the car.<sup>75</sup> The majority reasoned that just because the occupants were removed from the car, did not mean that the exigency had vanished.<sup>76</sup>

In *State v. Pierce*, the New Jersey Supreme Court examined a slightly different type of circumstance giving rise to a warrantless search, namely a warrantless vehicular search based solely on an arrest for a motor vehicle offense.<sup>77</sup> In this case, the vehicle was stopped for speeding, and after running a check on the driver's license, the driver was placed under arrest for driving with a suspended license.<sup>78</sup> Following the arrest, the other occupants of the vehicle were ordered to exit the van.<sup>79</sup> While the occupants were detained by other police officers, the arresting officer searched the van and found a woman's jacket containing a cellophane bag with traces of cocaine in it, a knife, and a closed camera case holding a revolver.<sup>80</sup> All of the occupants of the van were indicted on various charges including possession of cocaine, possession of a weapon without a permit, and receiving stolen property.<sup>81</sup>

Justice Stein, writing for the majority, refused to sustain a search without a showing of probable cause.<sup>82</sup> In deciding *Pierce*, the court analyzed *New York v. Belton*,<sup>83</sup> a factually similar case decided by the United States Supreme Court.<sup>84</sup> Justice Stein rejected *Belton*'s automatic validation of a search incident to an arrest.<sup>85</sup> The *Pierce* majority refused to sustain the warrantless search because it was not supported by probable cause and held that to allow this type of search would completely disregard the privacy rights guaranteed to New Jersey citi-

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<sup>75</sup> *Id.*

<sup>76</sup> *Alston*, 440 A.2d at 1323.

<sup>77</sup> 642 A.2d 947, 948 (N.J. 1994).

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> *Id.* at 948-49.

<sup>82</sup> *Id.* at 948.

<sup>83</sup> 453 U.S. 454 (1981) (holding that the search of any container within a vehicle is valid when incident to an arrest).

<sup>84</sup> *Pierce*, 642 A.2d at 953-58.

<sup>85</sup> *Id.* at 960.

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In *State v. Colvin*, a case similar to *State v. Cooke*, the issue presented to the court was whether the exigency required to validate a warrantless search dissipates when the vehicle is parked.<sup>87</sup> In *Colvin*, police officers were patrolling a high drug trafficking neighborhood when they observed the defendant in an alleged drug transaction.<sup>88</sup> When the officers shined a light on the defendant, he tossed a clear vial to the ground and attempted to flee, but was arrested instead.<sup>89</sup> An informant told police that the defendant's car, which was parked near the arrest site, contained drugs.<sup>90</sup> In addition, the informant related that others knew of the drugs and the arrest and would try to confiscate the drugs from the car.<sup>91</sup> The police verified that the car belonged to the defendant and proceeded to search it, recovering packets of cocaine from under the dashboard.<sup>92</sup> The court upheld the evidence seized in the search, opining that if there is probable cause to believe that a vehicle has illegal contraband and if there is reason to believe that the evidence may be lost or destroyed, the police may seize and search the vehicle without a warrant.<sup>93</sup>

#### IV. OPINION

In *State v. Cooke*, Justice Verniero, writing for a unanimous court, framed the issue as whether the automobile exception to the Warrant Clause of the New Jersey Constitution mandates a finding of exigent circumstances.<sup>94</sup> The justice commented that the issue is significant in light of the recent decision of the United States Supreme Court in *Pennsylvania v. Labron*, holding that probable cause without more is sufficient to sustain a warrantless search pursuant to the

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<sup>86</sup> *Id.* at 963.

<sup>87</sup> 587 A.2d 1278, 1279 (N.J. 1991).

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> *Colvin*, 587 A.2d at 1279.

<sup>94</sup> *State v. Cooke*, 751 A.2d 92 (N.J. 2000).

Fourth Amendment.<sup>95</sup>

After a recitation of the facts, Justice Verniero stated that in order to be valid, a warrantless search must fall within one of the recognized exceptions to the warrant requirement, and that the burden is on the government to prove that the search falls into one of the exceptions.<sup>96</sup> The unanimous court identified the State's argument to be that the search of the Escort was valid pursuant to the automobile exception, while the defendant contended the automobile exception did not apply since there were no exigent circumstances.<sup>97</sup>

Next, Justice Verniero, while purporting to look only at Federal Fourth Amendment decisions, defined the scope of the automobile exception by citing to both federal and New Jersey case law.<sup>98</sup> The court acknowledged that under New Jersey case law, the automobile exception allows for warrantless searches if there is probable cause to believe the readily mobile vehicle contains evidence of a crime.<sup>99</sup> The court noted that the automobile exception applies to both moving and parked vehicles on public highways, streets, or parking lots.<sup>100</sup>

Tracing federal case history, the justice related how the law evolved.<sup>101</sup> The court recognized that early federal decisions focused on exigent circumstances to justify a warrantless search because of the impracticability of obtaining a search warrant.<sup>102</sup> As a second rationale for permitting warrantless searches, the New Jersey Supreme Court further explained that the United States Supreme Court has allowed warrantless searches based on the reduced expectation of privacy in motor vehicles.<sup>103</sup> Justice Verniero then focused on *Pennsylvania v. Labron* and

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<sup>95</sup> *Id.* (citing *Pennsylvania v. Labron*, 518 U.S. 938 (1996)).

<sup>96</sup> *Id.* at 94-95 (citation omitted).

<sup>97</sup> *Id.* at 95.

<sup>98</sup> *Id.* at 95-96 (citing *Carroll v. United States*, 267 U.S. 132 (1925); *State v. Martin*, 436 A.2d 96 (N.J. 1981); *State v. Alston*, 440 A.2d 1311 (N.J. 1981)).

<sup>99</sup> *Id.* at 96 (citing *Alston*, 440 A.2d at 1321).

<sup>100</sup> *Cooke*, 751 A.2d at 96.

<sup>101</sup> *Id.*

<sup>102</sup> *Id.* (citing *Chambers v. Maroney*, 399 U.S. 42 (1970); *Cooper v. California*, 386 U.S. 58 (1967)).

<sup>103</sup> *Id.* (citing *California v. Carney*, 471 U.S. 386 (1985); *Cardwell v. Lewis*, 417 U.S. 583 (1974); *Cady v. Dombrowski*, 413 U.S. 433 (1973)).

announced it as the current law under Fourth Amendment jurisprudence.<sup>104</sup>

The court stated that certification was granted to clarify the United States Supreme Court's interpretation of the Fourth Amendment and its effect on New Jersey's reading of Article 1, Paragraph 7.<sup>105</sup> The court acknowledged that past interpretations of the New Jersey Constitution furnished its citizens with greater protections than afforded by the Fourth Amendment of the United States Constitution.<sup>106</sup> Justice Verniero summarized the state's arguments, which urged that *Labron* be followed by discarding the requirement of exigent circumstances and maintaining the sole requirement of probable cause and the lesser expectation of privacy afforded to automobiles in order to sustain the warrantless search.<sup>107</sup>

The court then set forth the established principles that New Jersey applies in automobile exception cases.<sup>108</sup> Justice Verniero explained that a combination of factors allows police to stop and search a readily mobile vehicle without a warrant.<sup>109</sup> The opinion articulated that a showing of probable cause to suspect illegal contraband, coupled with the exigent circumstances inherent in a vehicle because of its mobility, and the lessened expectation of privacy associated with a vehicle all contribute to validating a warrantless search.<sup>110</sup> Justice Verniero cautioned that permitting a warrantless search without a presence of exigent circumstances would give the police carte blanche to inspect any vehicle at any time, even in one's own driveway.<sup>111</sup> The court refused to sanction this, citing several New Jersey cases that required the presence of exigent circumstances.<sup>112</sup>

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<sup>104</sup> *Id.* (quoting *Pennsylvania v. Labron*, 518 U.S. 938 (1996)(holding that ready mobility and probable cause without more legitimated a search without a warrant).

<sup>105</sup> *Id.* at 97.

<sup>106</sup> *Cooke*, 751 A.2d at 97. (citing *State v. Pierce*, 642 A.2d 947 (N.J. 1994); *State v. Hempele*, 576 A.2d 793 (N.J. 1990); *State v. Novembrino*, 519 A.2d 820 (N.J. 1987); *State v. Hunt*, 450 A.2d 952 (N.J. 1982); *State v. Johnson*, 346 A.2d 66 (N.J. 1975)).

<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

<sup>112</sup> *Cooke*, 751 A.2d at 97 (citing *State v. Colvin*, 587 A.2d 1278 (N.J. 1991); *State v. Esteves*, 461 A.2d 1128 (N.J. 1983); *State v. Alston*, 440 A.2d 1311, (N.J. 1981); *State v. Martin*, 436 A.2d 96 (N.J. 1981); *State v. Patino*, 414 A.2d 1327 (N.J. 1980); *State v. LaPorte*, 301 A.2d 146 (N.J. 1973)).

The opinion pointed to specific facts that allowed warrantless searches and noted that in each case obtaining a warrant was impracticable.<sup>113</sup> The justice identified that in such cases, a search was permitted without a warrant when there existed either an unforeseeable event that threatened police officer safety, or a belief that armed and dangerous occupants of a vehicle, who were aware that they were suspected of a crime, would return to their parked vehicle and remove or destroy critical evidence.<sup>114</sup>

The New Jersey Supreme Court refused to depart from the precedent, positing that the prosecution had not shown a compelling basis to change the present standards, which protect important privacy rights.<sup>115</sup> The court stressed that the criminal justice system is founded on the need for effective law enforcement balanced with constitutional guarantees.<sup>116</sup> Justice Verniero explicitly rejected the holding of *Labron* and the standards set by Federal Fourth Amendment jurisprudence by pointing out that New Jersey is responsible for evaluating its own constitution and protecting its citizens.<sup>117</sup>

The justice continued by clarifying that although there is a lesser expectation of privacy in one's vehicle, that fact without more is insufficient to validate a search.<sup>118</sup> The court declared that a lower expectation of privacy is one factor that validates a search but it must be combined with probable cause and an overall exigent situation.<sup>119</sup>

Next, Justice Verniero analyzed the case using the standards set forth previously in *State v. Pierce* and *State v. Alston* for a warrantless automobile search.<sup>120</sup> The court accepted the definition of probable cause to be a "well-grounded suspicion that a crime has been or is being committed."<sup>121</sup> Relying on

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<sup>113</sup> *Id.* at 97-99.

<sup>114</sup> *Id.*

<sup>115</sup> *Id.* at 99.

<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

<sup>118</sup> *Cooke*, 751 A.2d at 99.

<sup>119</sup> *Id.*

<sup>120</sup> *Id.* Succinctly stated, "the automobile exception applies only in cases which probable cause and exigent circumstances are evident, making it impracticable for the police to obtain a warrant." *Id.*

<sup>121</sup> *Id.* (quoting *State v. Alston*, 440 A.2d 1311, 1321 (N.J. 1981)).

the trial court's findings that both a reliable informant reported that the defendant was selling drugs and keeping them in the Ford Escort as well as the officer's first-hand observations of what he considered to be illegal drug activity, Justice Verniero determined that probable cause did exist.<sup>122</sup> The court also mentioned that the officer saw Cooke exchanging money and a plastic bag, a bag which the officer believed contained narcotics.<sup>123</sup> Justice Verniero concluded that these facts gave rise to a well-grounded suspicion that the car contained illegal contraband sufficient to meet the probable cause requirement of the automobile exception.<sup>124</sup>

Shifting the inquiry to the exigent circumstances requirement of the automobile exception, the court defined exigent circumstances as the "unforeseeability and spontaneity of the circumstances giving rise to probable cause, and the inherent mobility of the automobile."<sup>125</sup> The court listed several instances that give rise to exigent circumstances: where the unanticipated circumstances that are the basis for probable cause arise quickly, where "any element of surprise [has] been lost," where the vehicle contains illegal drugs, where there are accomplices standing by to move the evidence, and where the police would need special assistance to keep watch over the vehicle and its contents.<sup>126</sup>

The justice stated that even though Cooke was in custody, the exigent circumstances did not disappear since the vehicle was accessible to third parties who could seize valuable evidence.<sup>127</sup> Justice Verniero recognized that Miles and at least two others knew of the drug transactions.<sup>128</sup> The court noted that since Miles was present during the arrest, Miles may have realized that the Escort was unattended thereby enabling either him or other third parties to remove evidence from the vehicle.<sup>129</sup> Secondly, the court recognized that just because

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<sup>122</sup> *Id.*

<sup>123</sup> *Id.* at 99-100.

<sup>124</sup> *Cooke*, 751 A.2d at 100. The court refused to remand the matter for a hearing on the question of probable cause because the record clearly supported its existence. *Id.*

<sup>125</sup> *Id.* (quoting *Alston*, 440 A.2d at 1322).

<sup>126</sup> *Id.*

<sup>127</sup> *Id.*

<sup>128</sup> *Id.* Recall from the facts that Miles, whom the police recognized from previous arrests, and the others were at the scene with Cooke during the incidents leading to their arrest.

<sup>129</sup> *Id.*



one set of keys was taken from Cooke, it did not preclude the existence of another set of keys.<sup>130</sup> The justice continued analyzing the facts by declaring that the presence of the surveillance officer did not make it more practicable to obtain a search warrant.<sup>131</sup> The court noted that the surveillance officer was alone and could not leave his post, therefore there was a realistic possibility that another party might move the vehicle or the evidence while he was watching from a distance.<sup>132</sup>

Finally, the court expressed that a heightened degree of exigency was present since the police were involved in an ongoing investigation of the scene soon after the events took place.<sup>133</sup> Predicated on the sequence of events, the court believed it to be very likely that vital evidence would be ruined.<sup>134</sup> Accordingly, the justice was convinced that it would have been too demanding to require a search warrant as the only way to make the search constitutional.<sup>135</sup>

Discussing *State v. Colvin*, Justice Verniero concluded that when probable cause exists to believe a parked car has contraband and that the evidence may be lost, a search can be valid without a warrant.<sup>136</sup> The court utilized a totality of the circumstances inquiry to find that while any of the facts of this case in isolation would not be sufficient to substantiate a warrantless search, here the search was valid.<sup>137</sup> Although Justice Verniero acknowledged that the term “exigent circumstances” is inexact and fact sensitive, the justice stressed the importance of protecting the interests of all members of the community coupled with the need for warrantless searches when the facts are present to validate them.<sup>138</sup> The court reversed and remanded the case for trial.<sup>139</sup>

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<sup>130</sup> *Cooke*, 751 A.2d at 100.

<sup>131</sup> *Id.*

<sup>132</sup> *Id.* at 101.

<sup>133</sup> *Id.*

<sup>134</sup> *Id.*

<sup>135</sup> *Id.* (citing *State v. Colvin*, 587 A.2d 1278, 1282 (N.J. 1991)).

<sup>136</sup> *Cooke*, 751 A.2d at 101 (citing *Colvin*, 587 A.2d at 1282).

<sup>137</sup> *Id.* at 102. The court reiterated the facts most relevant to the holding. *Id.* at 101.

<sup>138</sup> *Id.*

<sup>139</sup> *Id.*

## V. CONCLUSION

In New Jersey, the automobile exception to the Warrant Clause of Article I, Paragraph 7 applies when both probable cause and exigent circumstances exist.<sup>140</sup> New Jersey has added to the basic requirement of probable cause in order to protect its citizens more substantially than the Federal Constitution.<sup>141</sup> "The effect of the Fourth Amendment is to forever secure the people whether accused of crime or not, and the duty of giving to it force and effect is obligatory upon all intrusted [sic] under our federal system with the enforcement of the laws."<sup>142</sup> The privacy protections of the Fourth Amendment of the United States Constitution and the New Jersey Constitution Article I, Paragraph 7, affect all citizens since privacy is a policy concern that many value, but take for granted. When the privacy rights of alleged wrongdoers are taken away, the privacy rights of everyone are called into question. A person is innocent until proven otherwise, and securing a search warrant is one way to protect the privacy rights of the innocent. When the exceptions to the warrant requirement swallow the rule,<sup>143</sup> our privacy rights slowly erode.

In addition, the state courts, as part of a larger federal system, are required to interpret the law the way they feel it will best serve the citizens of their states.<sup>144</sup> However, this creates a friction between state and federal law and may prevent a cohesive way for citizens and police officers alike to plan their behavior. For example, in a case like *Cooke* it is possible that a police officer who conducted a search based on the perceived exigency of a situation would be prohibited from conducting the search by the New Jersey Supreme Court because of a failure to meet the burden of showing exigent circumstances, and yet be absolved by the United States Supreme Court because the only requirement was a showing of a lesser burden of probable cause.<sup>145</sup> What can New Jersey do to prevent a rever-

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<sup>140</sup> *Id.* at 94.

<sup>141</sup> *See id.* at 96-97.

<sup>142</sup> *Weeks v. United States*, 232 U.S. 383, 391-92 (1914).

<sup>143</sup> *See generally* Lawrence A. Dany, *Disavowing the Warrant Presumption: Have the Exceptions Finally Swallowed the Rule?*, 3 FLA. L. REV. 705 (2000).

<sup>144</sup> *State v. Lund*, 573 A.2d 1376, 1386 (N.J. 1990) (Pollock, J., concurring).

<sup>145</sup> *Compare* *State v. Novembrino*, 519 A.2d 820 (N.J. 1987) (refusing to modify the exclusionary rule with a good faith exception and would only issue a warrant where there was probable cause), *and* *State v. Pierce*, 642 A.2d 947 (N.J. 1994) (refusing to uphold a warrantless search incident to arrest for a traffic violation when there was no probable cause to search), *with* *United States v. Leon*, 468 U.S. 897 (1984) (holding that a reasonable good faith reliance on a search warrant, whether valid or not, would permit the admission of the evidence

sal by the United States Supreme Court in cases like these? We can look to prior cases for guidance.

The United States Supreme Court in *Pennsylvania v. Labron* made clear that the way for New Jersey to control its fate would be to clearly cite to New Jersey case law and not rely on federal case law.<sup>146</sup> Justice Pollock, writing in concurrence in *State v. Lund*, also recognized the importance of citing to state law in order to protect New Jersey Supreme Court's decisions from reversal by the United States Supreme Court.<sup>147</sup> Justice Pollock essentially felt that it would be an embarrassment for the New Jersey courts and a waste of the judicial resources of the United State Supreme Court to neglect a state law analysis and subject the case to federal review.<sup>148</sup> Moreover, in *Labron*, the United States Supreme Court noted that the state law cases cited by the Pennsylvania Supreme Court relied on Federal Fourth Amendment jurisprudence for their outcome and that it was not clear that the federal propositions Pennsylvania cited were merely cited for guidance.<sup>149</sup> The United States Supreme Court felt that a state law decision must clearly support its opinion with state law that compels the outcome, and only cite to federal law generally.<sup>150</sup> The Court articulated that it must be clear from the face of the opinion that the state court was relying on state law, or else the United States Supreme Court would have jurisdiction to review the decision.<sup>151</sup>

In *State v. Cooke*, Justice Verniero cited to federal cases as well as state cases.<sup>152</sup> Based on *Labron*, this would not be enough to protect the decision from federal review. Yet it would be hard for the New Jersey Supreme Court to

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seized in reliance on the search warrant), and *New York v. Belton*, 453 U.S. 454 (1981) (validating a search of the passenger compartment of a vehicle incident to a custodial arrest).

<sup>146</sup> 518 U.S. 938, 940-41 (1996).

<sup>147</sup> *Lund*, 573 A.2d at 1385-87 (Pollock, J., concurring) (discussing the reversal by the United States Supreme Court in *New Jersey v. T.L.O.*, 469 U.S. 325 (1985), and pointing out that the New Jersey Supreme Court should support decisions with New Jersey case law founded in the New Jersey Constitution in order to prevent the United States Supreme Court from reversing.)

<sup>148</sup> See *id.* at 1385; see also *supra* text accompanying notes 18-19.

<sup>149</sup> *Labron*, 518 U.S. at 940-41.

<sup>150</sup> *Id.* at 941.

<sup>151</sup> *Id.* (quoting *Michigan v. Long*, 463 U.S. 1032, 1040-41 (1983)).

<sup>152</sup> *State v. Cooke*, 751 A.2d 92, 96 (N.J. 2000).

rely on any New Jersey cases that could not be traced back to federal law. Federal Fourth Amendment jurisprudence was established earlier than New Jersey law, and thus citing to precedent would mean citing to federal law. In *Labron*, the Court assumed that there are state court opinions in the area of search and seizure jurisprudence that do not rely on nor cite to federal law.

Even one of the earliest of New Jersey cases looks to *Carroll v. United States* and *Chambers v. Maroney* for authority.<sup>153</sup> From a textualist viewpoint, the early federal cases required a showing of exigent circumstances, and for New Jersey or Pennsylvania courts to cite them would seem inevitable and necessary. Thus, it is difficult to square the *Labron* decision with the *Cooke* decision. If the United States Supreme Court were to review the *Cooke* holding, they could very easily look at the face of the opinion and see that the New Jersey Supreme Court interwove federal and state law, and in addition, even cited state cases that relied on federal law.<sup>154</sup>

Another interesting aspect of *Cooke* arises from the fact that the unanimous opinion was written by Justice Verniero, a former state attorney general who admitted to the practice of racial profiling by New Jersey State Troopers.<sup>155</sup> If *Cooke* is viewed as a privacy protective decision, it is undoubtedly favorable to New Jersey citizens. Is it consistent, however, for New Jersey to protect the privacy rights of its citizens and yet allow racial profiling to exist? This question combines a number of issues and would lead to a decision by the New Jersey Supreme Court as to whether a pretext stop based on race could be substantiated solely by Article I, Paragraph 7 to allow for a warrantless search or if an equal protection claim would also have to be established.

The United States Supreme Court recently decided a search and seizure case based on a pretextual stop because of race.<sup>156</sup> In *Whren v. United States*, two young African American men were pulled over for failure to signal before turning.<sup>157</sup> A warrantless search occurred and the contraband that was recovered was admitted into evidence.<sup>158</sup> The United States Supreme Court upheld the search

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<sup>153</sup> *State v. Waltz*, 293 A.2d 167 (N.J. 1972) (holding that the warrantless search of a mobile vehicle was valid when based on probable cause).

<sup>154</sup> *Cooke*, 751 A.2d at 96.

<sup>155</sup> Owen Moritz, *Whitman to Put End to Profiling*, N.Y. DAILY NEWS, April 21, 1999 (publication page not available).

<sup>156</sup> *Whren v. United States*, 517 U.S. 806 (1996).

<sup>157</sup> *Id.* at 808.

<sup>158</sup> *Id.* at 809.

without a warrant holding unanimously that the search did not violate the Fourth Amendment.<sup>159</sup> The Court noted that the proper way to raise an objection to a pretextual stop grounded in a minor traffic violation would be pursuant to the Fourteenth Amendment, not the Fourth Amendment.<sup>160</sup>

There remains an open question as to the issue of what New Jersey will deem constitutional with regard to racial profiling and pretextual stops under search and seizure jurisprudence. The New Jersey Supreme Court has yet to face a situation similar to *Whren*.<sup>161</sup> New Jersey could follow the United States Supreme Court's lead, but that would seem unlikely based on *State v. Pierce*.<sup>162</sup> In *State v. Pierce*, the New Jersey Supreme Court stated, just two years prior to *Whren*, that "to authorize vehicular searches incident to all traffic arrests poses too great a threat to rights guaranteed to New Jersey's citizens by their State Constitution."<sup>163</sup> The United States Supreme Court effectively rejected the holding of *State v. Pierce* with *Whren* by equating probable cause to suspect a vehicular infraction to probable cause to search a vehicle.<sup>164</sup>

Based on New Jersey's prior holdings in favor of protecting citizen's privacy,<sup>165</sup> it seems a foregone conclusion that a minor vehicle infraction could not give rise to a warrantless search regardless of whether race was an issue. New Jersey may find, however, that a pretextual stop leading to a search must be justified pursuant to an equal protection analysis and not via search and seizure as the *Whren* Court suggested. In most states, the exclusionary rule is not available to disallow evidence pursuant to an equal protection claim, only a Fourth Amendment claim, yet New Jersey has taken a pro-active step to automatically suppress

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<sup>159</sup> *Id.* at 813 (upholding a search as constitutional because a Fourth Amendment analysis for a traffic stop does not require a balancing of governmental and individual interests).

<sup>160</sup> *Id.* The Court expressed that the Equal Protection clause would be implicated rather than the Fourth Amendment and admonished that this would be the correct claim to bring in future cases. *Id.*

<sup>161</sup> See The Honorable Phyllis W. Beck & Patricia A. Daly, Esq., *State Constitutional Analysis of Pretext Stops: Racial Profiling and Public Policy Concerns*, 72 TEMP. L. REV. 597, 607 (1999).

<sup>162</sup> 642 A.2d 947 (N.J. 1994) (holding that a warrantless search must be supported by probable cause in order to be sustained).

<sup>163</sup> *Id.* at 963.

<sup>164</sup> *Whren*, 517 U.S. at 819.

<sup>165</sup> See *Pierce*, 642 A.2d at 960.

the evidence from a pretextual stop in order to protect citizens' constitutional rights.<sup>166</sup>

Now that Justice Verniero is on the court it may be a long time before a racial profiling issue comes before the New Jersey Supreme Court. For example, at the height of the racial profiling accusations and admissions, the State dropped its appeal to the New Jersey Supreme Court in *State v. Soto*.<sup>167</sup> *Soto* would have been one of the first cases where a selective enforcement claim was used in the context of racial profiling.<sup>168</sup> In addition, the New Jersey Supreme Court's Administrative Determination and Order has assigned Judge Walter R. Barisonok of Union County to determine issues of discovery related to racial profiling by the New Jersey State Police, which essentially removes decisions about suppression or admission of evidence from the New Jersey Supreme Court.<sup>169</sup>

Notwithstanding the fact that the New Jersey Supreme Court has yet to face the issue of racial profiling directly, some have complimented the state on its "enlightened approach" in regard to its willingness to suppress evidence related to a pretextual stop in order to deter officers from disregarding citizens' constitutional guarantees.<sup>170</sup> Such comments may help to offset the negative reputation that New Jersey has attained based on its racial profiling record. It seems unfair for New Jersey to be rated solely on the latter, when it is clear that the New Jersey Supreme Court has worked hard to protect the privacy rights of its citizens.<sup>171</sup>

Moreover, New Jersey should be commended for making decisions to allow evidence to be excluded whether based on a Fourth Amendment situation or a pretextual stop.<sup>172</sup> To continue this admirable trend, the New Jersey Supreme Court should grant certification to a racial profiling case when the court can include privacy protective jurisprudence in the decision and thereby improve New Jersey's image regarding racial profiling.

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<sup>166</sup> See Beck & Daly, *supra* note 161, at 616-17.

<sup>167</sup> Eugene Kiely, *State's Admission Expected to Bring Lawsuits But Verniero Downplays Effect-Report on Racial Profiling in New Jersey*, THE RECORD, April 21, 1999, at A10.

<sup>168</sup> Rocco Cammarere, *Racial Profiling: The Issue that Won't Disappear*, N.J. LAWYER, March 8, 1999 (publication page not available).

<sup>169</sup> See *State v. Ballard*, 752 A.2d 735, 746 (N.J. Super. Ct. 2000).

<sup>170</sup> Beck & Daly, *supra* note 161, at 616.

<sup>171</sup> *State v. Pierce*, 642 A.2d 947, 960 (N.J. 1994).

<sup>172</sup> Beck & Daly, *supra* note 161, at 615-16.