



## An Agricultural Law Research Article

### **Constitutional Law –Search and Seizure– Highway Agricultural Inspections and Fla. Stat. §570.15: An Attempt to Evade the Reasonableness and Probable Cause Standards of the Fourth Amendment**

by

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## CASE NOTES

**Constitutional Law—SEARCH AND SEIZURE—HIGHWAY AGRICULTURAL INSPECTIONS AND FLA. STAT. § 570.15: AN ATTEMPT TO EVADE THE REASONABLENESS AND PROBABLE CAUSE STANDARDS OF THE FOURTH AMENDMENT—*Pederson v. State*, 373 So. 2d 367 (Fla. 1st Dist. Ct. App. 1979).**

Late on the evening of December 17, 1977, Marvin J. Pederson violated Florida law when he failed to stop at the agriculture inspection station located on I-75.<sup>1</sup> Acting pursuant to the Department of Agriculture Road Guard Manual,<sup>2</sup> Inspector Leonard Pease followed the Pederson truck in a state pursuit vehicle and pulled him over to the side of the highway. Pease requested permission to inspect the contents of Pederson's truck for agricultural products, but the driver refused.<sup>3</sup> Subsequently, Pederson was escorted back to the inspection station where Pease formally arrested him for violating section 570.15(2), Florida Statutes.<sup>4</sup> Peder-

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1. *Pederson v. State*, 373 So. 2d 367, 368 (Fla. 1st Dist. Ct. App. 1979), *cert. denied*, No. 57,599 (Fla. Mar. 18, 1980). Ch. 75-215, § 1, 1975 Fla. Laws 493 (current version at FLA. STAT. § 570.15(2) (1979), *as amended* by ch. 79-587, 1979 Fla. Sess. Law Serv. 2608 (West)) states: "It shall be unlawful for any truck or motor vehicle trailer to pass any official road guard inspection station without first stopping for inspection. A violation of this subsection shall constitute a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083."

2. The Road Guard Bureau of the Division of Inspection is administered by the Department of Agriculture and Consumer Services (Department of Agriculture). The Department's unpublished and undated Road Guard Manual specifies two conflicting procedures for inspectors to follow when a vehicle which is statutorily required to stop at an inspection station fails to do so. The inspector is directed to follow the vehicle in an official pursuit car at a speed necessary to overtake it. After the pursued vehicle is stopped, the inspector must identify himself, ask for the driver's license, and ask permission to look inside. If permission is refused, the inspector requests the driver to return with him to the station. If the driver refuses and proceeds on, the inspector is directed to call the Florida Highway Patrol or the local sheriff's department for assistance.

However, a second, and presumably later, procedure directs the inspector to apprehend and arrest any driver who refuses to submit to an inspection at the station. The inspector is required to request assistance "if needed." (emphasis in original). Department of Agriculture Manual, Division of Inspection, Inspection and Enforcement Procedures (located in Room 323, Mayo Building, Tallahassee, Fla.).

3. *Pederson v. State*, 373 So. 2d 367, 368 (Fla. 1st Dist. Ct. App. 1979). Under ch. 75-215, § 1, 1975 Fla. Laws 493 (current version at FLA. STAT. § 570.15(1)(a) (1979), *as amended* by ch. 79-587, § 1, 1979 Fla. Sess. Law Serv. 2608 (West)), Department of Agriculture inspectors have "full access at all reasonable hours" to trucks "used in the production, manufacture, storage, sales, or transportation within the state" of agricultural, horticultural, and livestock products.

4. Ch. 75-215, 1975 Fla. Laws 493 (current version at FLA. STAT. § 570.15 (1979), *as amended* by ch. 79-587, 1979 Fla. Sess. Law Serv. 2608 (West)).

son again refused to permit an examination of the cargo area of his truck.<sup>5</sup> He was thereupon detained for "two or three hours" until the inspector had secured a search warrant, which authorized a search "for agricultural products kept in violation of Chapter 570 and the laws pertaining to the transportation of agricultural products."<sup>6</sup> Upon inspection of Pederson's truck, Pease discovered marijuana. Based on that evidence, Pederson was convicted in Hamilton County Circuit Court for possession of marijuana.<sup>7</sup>

Since 1975, section 570.15(1), Florida Statutes, has authorized Department of Agriculture highway inspectors to conduct searches of certain vehicles "used in the production, manufacture, storage, sale, or transportation within the state of any food product; any agricultural, horticultural, or livestock product; or any article or product with respect to which any authority is conferred by law on the department."<sup>8</sup> If a driver refused permission for the search, the inspector was statutorily empowered to either obtain a search warrant or "conduct a search . . . without a warrant pursuant to s. 933.19."<sup>9</sup> Section 933.19, Florida Statutes,<sup>10</sup> incorporates into state

5. *Pederson v. State*, 373 So. 2d 367, 368 (Fla. 1st Dist. Ct. App. 1979).

6. *Id.* at 368-69. Ch. 75-215, § 1, 1975 Fla. Laws 493 (current version at FLA. STAT. § 570.15(1)(b) (1979), as amended by ch. 79-587, 1979 Fla. Sess. Law Serv. 2608 (West)), permitted an inspector to "apply for a search warrant which shall be obtained as provided by law for the obtaining of search warrants in other cases, or may conduct a search of any of the aforesaid vehicles without a warrant pursuant to s. 933.19."

Ch. 77-174, § 1, 1977 Fla. Laws 719 (current version at FLA. STAT. § 933.02 (1979)), provides in part for the issuance of search warrants "[u]pon proper affidavits" which establish that one of the following grounds exists:

- (1) When the property shall have been stolen or embezzled in violation of law;
- (2) When any property shall have been used:
  - (a) As a means to commit any crime,
  - (b) In connection with gambling, gambling implements and appliances, or
  - (c) In violation of s. 847.011 or other laws in reference to obscene prints and literature;
- (3) When any property constitutes evidence relevant to proving that a felony has been committed;
- (4) When any property is being held or possessed:
  - (a) In violation of any of the laws prohibiting the manufacture, sale, and transportation of intoxicating liquors, or
  - (b) In violation of the fish and game laws, or
  - (c) In violation of the laws relative to food and drug.

*Id.*

7. *Pederson v. State*, 373 So. 2d 367, 367-68 (Fla. 1st Dist. Ct. App. 1979).

8. Ch. 75-215, § 1, 1975 Fla. Laws 493 (current version at FLA. STAT. § 570.15 (1979), as amended by ch. 79-587, 1979 Fla. Sess. Law Serv. 2608 (West)).

9. *Id.* Prior to 1975, ch. 59-54, § 1, 1959 Fla. Laws 74 (current version at FLA. STAT. § 570.15 (1979), as amended by ch. 79-587, 1979 Fla. Sess. Law Serv. 2608 (West)), authorized certain employees of the Department of Agriculture to "have full access at all reasonable hours to all places of business, factories, farm buildings, carriages, railroad cars, motor vehi-

search and seizure law the holding of the United States Supreme Court in *Carroll v. United States*.<sup>11</sup> In *Carroll*, the Court held that the warrantless search of an automobile does not violate the fourth amendment guarantee against unreasonable searches if certain conditions are present: The officer must have probable cause to believe that the vehicle contains contraband or other evidence of criminal activity;<sup>12</sup> and the circumstances must be such that the officer is required to act quickly before the automobile can be removed, the evidence can be destroyed, or the suspect can escape.<sup>13</sup>

In *Pederson v. State*,<sup>14</sup> Inspector Pease had obtained a warrant. The defendant challenged the validity of that warrant when he appealed his conviction to the First District Court of Appeal.<sup>15</sup> Under section 933.02, which is incorporated by reference into section 570.15(1)(b), Florida Statutes, a warrant will not be issued by a judge or magistrate unless a proper affidavit establishes probable cause to believe that the premises or vehicle to be searched contains the evidence or items which the officer suspects it contains.<sup>16</sup>

Inspector Pease, statutorily authorized to search only for "agri-

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cles and vessels" used in the agriculture industry. It also authorized an inspector to "apply for a search warrant which shall be obtained as provided by law . . . in other cases" if access was refused by the "owner, agent or manager of such premises."

Chapter 75-215, § 1, 1975 Fla. Laws 493 amended section 570.15 to include "inspectors" and "road guard inspection special officers" within the employees already authorized to inspect the premises listed and, additionally, authorized full access to "trucks, motor vehicles other than private passenger automobiles with no trailer in tow or any vehicles bearing an RV license tag, truck and motor vehicle trailers." It further authorized agricultural inspectors and other named employees to "conduct a search of any of the aforesaid vehicles without a warrant pursuant to s. 933.19." The statute continued to provide for the application of a search warrant in accordance with Florida Statutes. *But see* ch. 78-180, 1978 Fla. Laws 580 (current version at FLA. STAT. § 570.15(1) (1979), *as amended by* ch. 79-587, 1979 Fla. Sess. Law Serv. 2608 (West)) (exemption for vehicles bearing RV license tags deleted). *See also* *Miller v. State*, 368 So. 2d 943, 944 (Fla. 1st Dist. Ct. App. 1979).

10. (1979).

11. 267 U.S. 132 (1925).

12. *Id.* at 156.

13. *Id.* at 153. *Carroll* established the exigent circumstance that, when automobiles are mobile and can be removed before an officer has an opportunity to secure a search warrant, a warrant may not be required to conduct a valid search in the proper circumstances. *Id.* Later case law established the additional exigent circumstances of preventing the destruction of evidence and of preventing the suspect's escape. *Chambers v. Maroney*, 399 U.S. 42, 51 (1970).

For an in-depth discussion of the evolution of exigent circumstances relating to searches and seizures, see *Coolidge v. New Hampshire*, 403 U.S. 443, 454-73 (1971).

14. 373 So. 2d 367 (Fla. 1st Dist. Ct. App. 1979).

15. *Id.* at 367.

16. *See* note 6 *supra*.

cultural, horticultural, or livestock products,"<sup>17</sup> failed to establish in his affidavit sufficient probable cause to believe that Pederson's truck was transporting such products.<sup>18</sup> The result of the First District Court of Appeal's ruling was that the marijuana discovered during the illegal search of the truck could not be used as evidence against Pederson in a criminal prosecution.<sup>19</sup> The court reversed his conviction and, in doing so, also rejected the state's argument that agricultural inspections require less stringent constitutional safeguards than the fourth amendment mandates for criminal searches.<sup>20</sup> The court stated, "We think it obvious here that the inspector had no probable cause to believe that Pederson's particular vehicle was carrying contraband or agricultural products."<sup>21</sup> It cited *Carroll v. United States*, and the adoption of that opinion as the law of Florida under section 933.19, Florida Statutes, as authority: "*Carroll* stated that warrantless searches of vehicles could be justified only where there was probable cause for believing that the vehicle was carrying contraband or illegal merchandise."<sup>22</sup> The *Pederson* court did not elaborate further on the basis for its decision to exclude as evidence against Pederson the marijuana seized by Inspector Pease. The court's finding of inadmissibility was obviously based on the exclusionary rule, a judicially-created means of enforcing the fourth amendment's constitutional guarantee against unreasonable searches and seizures.<sup>23</sup> In response to *Pederson*, the

17. See note 3 *supra*.

18. 373 So. 2d at 369. See also FLA. STAT. § 933.04 (1979), which is incorporated indirectly by reference in FLA. STAT. § 570.15(1)(b) (1979), and states:

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

19. 373 So. 2d at 369.

20. *Id.* The state cited *Camara v. Municipal Court*, 387 U.S. 523 (1967), as authority. In *Camara*, the United States Supreme Court approved the use of a lesser probable cause standard for public health and safety officials seeking access to private dwellings. But the *Pederson* court refused to apply *Camara* saying: "Nowhere does Chapter 570, 933, or any other statutory provision require that the administrative probable cause standard in *Camara* apply to agricultural inspections." 373 So. 2d at 369. See also *Haugland v. State*, 374 So. 2d 1026, 1031 (Fla. 3d Dist. Ct. App. 1979) (burglary tools discovered during warrantless search of luggage in trunk of car inadmissible) in which the court said: "This was plainly a criminal search and seizure for . . . evidence of crime and cannot be converted into an administrative-type inventory search of an automobile." (citation omitted).

21. 373 So. 2d at 369.

22. *Id.*

23. Amsterdam, *Perspectives on the Fourth Amendment*, 58 MINN. L. REV. 349, 360 (1974).

Florida Legislature statutorily granted agricultural inspectors broader discretion to stop certain vehicles and to conduct searches. This note will examine that revised statute and explore its constitutional implications. It will attempt to demonstrate that the Florida law relating to highway agricultural inspections violates the fourth amendment to the United States Constitution. Furthermore, the legislative authorization of unconstitutional searches and seizures cannot prevent Florida courts from applying the exclusionary rule in future cases similar to *Pederson*.

Under the exclusionary rule, the fruit of an unconstitutional search or seizure may not be used as evidence against the person whose right to freedom from governmental intrusion has been violated.<sup>24</sup> The exclusionary rule has emerged from a patchwork of Supreme Court cases construing the scope of the fourth amendment and is one of the more confusing doctrines of the complex law of searches and seizures.<sup>25</sup>

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24. In *Weeks v. United States*, the Court said:

If letters and private documents can . . . be seized and held and used in evidence against a citizen accused of an offense, the protection of the Fourth Amendment declaring his right to be secure against such searches and seizures is of no value, and . . . might as well be stricken from the Constitution. The efforts of the courts and their officials to bring the guilty to punishment, praiseworthy as they are, are not to be aided by the sacrifice of those great principles established by years of endeavor and suffering which have resulted in their embodiment in the fundamental law of the land.

232 U.S. 383, 393 (1914).

25. The fourth amendment states that:

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.

The exclusionary rule was first set out by the Court in *Weeks v. United States*, 232 U.S. 383 (1914), and was applied to the states through the fourteenth amendment in *Mapp v. Ohio*, 367 U.S. 643 (1961).

The Supreme Court has developed the following exceptions to the fourth amendment requirement that a warrant based on probable cause be obtained prior to seizing evidence for use in criminal prosecutions: (1) when officers are in "hot pursuit" of a suspect, *Warden v. Hayden*, 387 U.S. 294 (1967); (2) when evidence is "in plain view" and is inadvertently seen by an officer who has a legal right to be in that place, *Harris v. United States*, 390 U.S. 234 (1968); (3) when a suspect is stopped and frisked for probable cause, *Terry v. Ohio*, 392 U.S. 1 (1968); (4) when a search is conducted incident to a lawful arrest, *Sibron v. New York*, 392 U.S. 40 (1968); (5) when exigent circumstances exist—such as the possibility that the evidence will be removed before a warrant can be obtained—so long as probable cause exists, *Coolidge v. New Hampshire*, 403 U.S. 443 (1971); (6) when consent is voluntarily and knowingly given without coercion, *Schneekloth v. Bustamonte*, 412 U.S. 218 (1973); (7) when an inventory search is conducted in accord with routine police procedures, *South Dakota v.*

Much of the confusion which has sprung from the Supreme Court's interpretation of the fourth amendment can be traced to the conflict which surrounds its purpose. Courts and commentators alike have struggled to strike a proper balance between the amendment's goal of protecting an individual's privacy and its goal of regulating police conduct.<sup>26</sup> On its face, the amendment contains both a guarantee and a prohibition. The reasonableness clause guarantees individuals "[t]he right . . . to be secure . . . against unreasonable searches and seizures." The warrant clause prohibits government officials from obtaining warrants to search or seize individuals or their "houses, papers, and effects" unless certain conditions are first met.<sup>27</sup> The official must have "probable cause"; *i.e.*, sufficient reason to believe that the evidence of unlawfulness which he or she seeks by the search or seizure is likely to be found.<sup>28</sup> The official must also subscribe to an oath or affirmation that such probable cause exists and must substantiate that affidavit by "particularly describing the place to be searched, and the persons or things to be seized."<sup>29</sup>

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Opperman, 428 U.S. 364 (1976); (8) when evidence is discovered inadvertently by an officer who is lawfully in the place of discovery, so long as time and circumstances are sufficient to dissipate the connection between the discovery and the introduction of the evidence in a criminal proceeding, *United States v. Ceccolini*, 435 U.S. 268 (1978).

Certain exceptions to the exclusionary rule have also evolved through case law. It is not applicable to evidence arising from grand jury testimony concerning a third party, *United States v. Calandra*, 414 U.S. 338 (1974); or business records, *Andresen v. Maryland*, 427 U.S. 463 (1976).

The fourth amendment's guarantee has been extended to the states through *Mapp v. Ohio*, 367 U.S. 643 (1961). For a succinct and helpful outline of the current status of fourth amendment law, see Bloodworth, *Where Search and Seizure Is Today*, 39 ALA. LAW. 444 (1978).

26. The Court recognized the conflict between the two goals of the fourth amendment in *Almeida-Sanchez v. United States*: "The needs of law enforcement stand in constant tension with the Constitution's protections of the individual against certain exercises of official power. It is precisely the predictability of these pressures that counsels a resolute loyalty to constitutional safeguards." 413 U.S. 266, 273 (1973).

Professor Anthony Amsterdam, a noted fourth amendment scholar, has stated the question as "whether the amendment should be viewed as protecting specific interests of specific individuals against specific abuses of specific police procedures or as regulating police practices broadly, generally and directly." Amsterdam, *supra* note 23, at 372.

27. U.S. CONST. amend. IV. See note 25 *supra*.

28. In *Carroll v. United States*, the Court defined probable cause as "facts and circumstances . . . such as to warrant a man of reasonable prudence and caution in believing that the offense has been committed." 267 U.S. at 161.

29. U.S. CONST. amend. IV. See note 25 *supra*. "The requirement of particularity of description of things is important to note, for it shows that even when there is sufficient cause to intrude upon an individual by a search, the framers decreed that it was unreasonable and should be unconstitutional to subject his premises or possessions to indiscriminate seizure." Amsterdam, *supra* note 23, at 411.

The two-clause structure of the amendment, which reflects its dual purpose, has led to overlapping and sometimes conflicting analyses by the Court in its review of challenged searches and seizures.<sup>30</sup> The initial analytical inquiries, however, have remained the same. Does the challenged action constitute a "search" or "seizure"; and, if so, is the search or seizure reasonable? In determining what constitutes reasonableness, the Court's analyses have relied increasingly upon the requirements of the warrant clause.<sup>31</sup> Thus, the guarantee against unreasonable intrusions has become indistinguishable in some cases from the prohibition against abusive police conduct. This merger view of the reasonableness and warrant clauses was set forth in *Chambers v. Maroney*: "In enforcing the Fourth Amendment's prohibition against unreasonable searches and seizures, the Court has insisted upon *probable cause as a minimum requirement for a reasonable search* permitted by the Constitution."<sup>32</sup>

The First District Court of Appeal's decision in *Pederson* thus rested squarely on the Supreme Court's present construction of the fourth amendment. The Florida court held Inspector Pease's search of *Pederson's* truck to be unreasonable because the inspector had no probable cause to believe the vehicle contained contraband or agricultural products.<sup>33</sup>

Despite the fact that the *Pederson* opinion was based on settled principles of constitutional law, it initiated a chain of events which resulted in a substantial 1979 revision of the Florida statute authorizing Department of Agriculture employees to conduct highway inspections. When the *Pederson* court refused to approve a less stringent standard of probable cause for the issuance of agri-

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30. As an example of the Court's inconsistency in analyzing search and seizure challenges, the focus of its approach shifted from the protection of places to the protection of people in *Katz v. United States*, 389 U.S. 347 (1967). At least one commentator views the Court's recent decision in *Rakas v. Illinois*, 439 U.S. 128 (1978), as a return to predicating fourth amendment rights against unreasonable intrusions on property rights rather than on a personal right to privacy. See Allen & Schaefer, *Great Expectations: Privacy Rights in Automobiles*, 34 U. MIAMI L. REV. 99, 109-13 (1979). Yet, in *Delaware v. Prouse*, 440 U.S. 648 (1979), the Court said: "The essential purpose of the proscriptions in the Fourth Amendment is to impose a standard of 'reasonableness' upon the exercise of discretion by government officials, including law enforcement agents, in order 'to safeguard the privacy and security of individuals against arbitrary invasions. . . .'" *Id.* at 653-54 (quoting *Marshall v. Barlow's, Inc.*, 436 U.S. 307, 312 (1978) (quoting *Camara v. Municipal Court*, 387 U.S. 523, 528 (1967))) (footnotes omitted) (emphasis added).

31. See *United States v. United States District Court*, 407 U.S. 297, 315 (1972).

32. 399 U.S. 42, 51 (1970) (emphasis added).

33. 373 So. 2d at 369.

cultural search warrants, it stated that "it may be constitutionally permissible for the Legislature to impose an administrative probable cause standard."<sup>34</sup> Two months after the *Pederson* decision was announced, Commissioner of Agriculture Doyle Conner wrote a letter to Governor Bob Graham, urging him to support "some urgently required amendments to our road guard law" for consideration during the special session of the legislature scheduled for November, 1979.<sup>35</sup> Conner stated that the *Pederson* decision presented "an impossible situation" because it "holds, in effect, that if inspection of vehicles required to stop at our road guard inspection stations is refused, a search warrant must be obtained, and only on a showing that probable cause exists for our inspectors to believe that the law is being violated."<sup>36</sup> Conner went on to explain that the Department of Agriculture would propose a bill to the legislature "which would not require probable cause, in the

34. *Id.* In a footnote, the court added: "We do not express an opinion as to the propriety of warrantless inspection searches, but there is authority for such a procedure pursuant to proper legislative authority." *Id.* at 369 n.2 (citations omitted). For authority the court cited *State v. Bailey*, 586 P.2d 648 (Ariz. App. 1978), and *Delaware v. Prouse*, 440 U.S. 648, 663 n.26 (1979).

*Bailey* is easily distinguished from the Florida agriculture inspection situation. The Arizona court in that case affirmed the propriety of seizing marijuana uncovered during a warrantless vehicle search on the basis of an Arizona statute and a state regulation "directed at vehicles from states east of the Rocky Mountains, which had been designated a 'high pest-risk area.' The [C]ommission [of Agriculture and Horticulture] is empowered to make and enforce such regulations as are necessary 'to prevent introduction of a crop pest or disease into the state.'" 586 P.2d at 650 (citation omitted) (emphasis added). The Arizona court adopted the reasoning of the Ninth Circuit Court of Appeals which considered a similar fact situation involving the state of Hawaii:

([Q]uarantined fruits, vegetables, and plants) can easily be transported . . . to the continental United States by departing tourists. The effect of such movement on agricultural crops in the mainland states could be serious, as each of the quarantined items may carry some form of plant disease or insect which could destroy crops in the other areas . . . . [R]equiring warrants for agricultural inspections of this type would effectively cripple any meaningful quarantine.

*Id.* at 650 (quoting *United States v. Schafer*, 461 F.2d 856, 858 (9th Cir.), *cert. denied*, 409 U.S. 881 (1972)).

Florida's agricultural inspection program is designed to monitor product quality rather than to implement quarantines. *Delaware v. Prouse* merely affirms the permissibility of "roadside truck weigh-stations and inspection checkpoints, at which some vehicles may be subject to further detention for safety and regulatory inspection than are others." 440 U.S. at 663 n.26. The footnote clarifies a passage in the text of the *Prouse* opinion which states: "This holding does not preclude the State of Delaware or other States from developing methods for spot checks that involve less intrusion or that do not involve the unconstrained exercise of discretion." *Id.* at 663 (emphasis added).

35. Letter from Doyle Conner to Bob Graham (August 24, 1979) (located in Office of the Governor, the Capitol, Tallahassee, Fla.).

36. *Id.*

criminal sense. It would rather impose a type of administrative probable cause set out in a line of recent United States Supreme Court cases."<sup>37</sup>

On October 11, Attorney General Jim Smith joined Conner in expressing his concern about the restrictive impact of *Pederson* upon the authority of agricultural inspectors "to regulate the flow of food, agricultural products, etc.," in accordance with chapter 570. "[I]f an individual drives a truck the contents of which are sealed from plain view and refuses access to an inspector it will necessarily follow that said inspector will be unable to inspect said vehicle because he will not be able to establish the requisite probable cause to inspect said vehicle as defined . . . in *Pederson*."<sup>38</sup> The Attorney General concluded, "[T]he decision . . . has rendered Section 570.15(1)(b) without force and effect."<sup>39</sup>

Neither letter described the "impossible situation" which warranted granting broader search powers to agricultural inspectors. The letters also failed to mention the fact that the *Pederson* decision dealt with the seizure of marijuana, possession of which is a second degree felony.<sup>40</sup>

The Department of Agriculture's proposed revision of section 570.15 was submitted to the legislature in November, 1979, as House Bill 35-C. It engendered little controversy, passed quickly, and was signed into law by Governor Graham on December 13, 1979.<sup>41</sup> Apparently, neither the Governor nor the legislature questioned whether the urgency with which the Department sought passage of the bill actually arose from unsuccessful attempts by inspectors to check truckloads of fruits and vegetables, or from a perceived need to strengthen the inspectors' statutory authority to stop and search marijuana smugglers. It is unlikely, however, that those state officials were unaware of the increased number of encounters between road guard inspectors and drug runners along Florida highways.<sup>42</sup>

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37. *Id.*

38. Letter from Jim Smith to Bob Graham (October 11, 1979) (located in Office of the Governor, the Capitol, Tallahassee, Fla.).

39. *Id.* (citation omitted).

40. FLA. STAT. § 893.13(1)(d)1 (1979); a second degree felony is punishable by imprisonment not to exceed fifteen years and a \$10,000 fine. FLA. STAT. § 775.082(3)(c), .083(1)(b) (1979).

41. Ch. 79-587, 1979 Fla. Sess. Law Serv. 2608 (West).

42. Florida became a major entry point for marijuana in the late 1970's when Colombia assumed increased prominence as a major cannabis exporter. In 1975, Mexico supplied the United States with 70% of its marijuana. In the wake of an American-financed crop eradica-

As it now reads, section 570.15<sup>43</sup> allows agricultural inspectors substantial latitude in deciding which vehicles may be stopped,<sup>44</sup> and it statutorily *requires* the driver of any detained vehicle to submit to a search.<sup>45</sup> In addition, the law explicitly exempts agricultural inspections from the search warrant prerequisites established by chapter 933, Florida Statutes.<sup>46</sup> Section 570.15(1)(b) now provides that an agricultural inspector or agent "may apply for, *obtain* and execute" a search warrant so long as: (1) he has reason to believe that the vehicle is subject to inspection under section 570.15(1)(a); (2) the vehicle has had reasonable notice to stop for inspection; and (3) the driver or owner has refused access for regulatory inspection.<sup>47</sup>

Florida's attempts to oversee the quality of its agricultural products began in 1900 with the creation of the Division of Fruit and Vegetable Inspection<sup>48</sup> for the sole purpose of measuring the maturity of oranges. In 1934, the Department of Agriculture established six inspection stations "to help prevent the shipment of uninspected fruit beyond the Suwannee and St. Mary's Rivers."<sup>49</sup>

tion program, however, Mexican contraband, which was smuggled into the United States via California and Texas, fell to less than one-third of the marijuana smoked by Americans. See R. SCHROEDER, *THE POLITICS OF DRUGS, AN AMERICAN DILEMMA* (2d ed. 1980). [hereinafter cited as *THE POLITICS OF DRUGS*]:

Colombia moved quickly to fill the gap. The Guajira peninsula was already the center of the flourishing cocaine trade. Smuggling routes were in place and experienced manpower was available . . . . By the end of the decade, an estimated 85,000 acres were planted to marijuana, producing some 35,000 tons of the drug yearly.

*Id.* at 123-24 (footnote omitted).

Florida, with its proximity to South America and its extensive coastline, thus became the natural port of entry for Colombian cannabis.

43. Due to the time at which the special session was held (November 1979), and due to the fact that the biennial printing of Florida Statutes 1979 had already taken place, this amended version of § 570.15 does not appear in Florida Statutes or in Laws of Florida 1979, but in 1979 Fla. Sess. Law Serv. 2608 (West).

44. Formerly, the statute included certain vehicles "used in" the agriculture industry. FLA. STAT. § 570.15(1)(a) (1979). The section now reads: "which are used or are of a type *which could be used.*" Ch. 79-587, 1979 Fla. Sess. Law Serv. 2608 (West) (emphasis added).

45. FLA. STAT. § 570.15(2) (1979), *as amended* by ch. 79-587, 1979 Fla. Sess. Law Serv. 2608 (West).

46. "The provisions of chapter 933, relating to probable cause for the issuance of search warrants, shall not apply to this section." FLA. STAT. § 570.15(1)(b) (1979), *as amended* by ch. 79-587, 1979 Fla. Sess. Law Serv. 2608 (West).

47. *Id.* (emphasis added).

48. SENATE COMMITTEE ON AGRICULTURE, *OVERSIGHT STUDY OF THE FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES 53* (Nov. 10, 1978) [hereinafter cited as *OVERSIGHT STUDY*]. In 1959 the division was given expanded authority to inspect and regulate all fruits, vegetables, and peanuts. *Id.*

49. STATE OF FLORIDA, *EXECUTIVE OFFICE OF THE GOVERNOR, OFFICE OF PLANNING AND*

The statutory purpose of the Division is "the administration and enforcement of the Feed, Fertilizer, Pesticide, Seed, Certified Seed, Food and Poultry and Egg Chapters of the Florida Statutes."<sup>50</sup> Its specific responsibilities deal exclusively with agricultural, horticultural, and livestock products.<sup>51</sup>

Currently, sixteen agricultural inspection stations dot north Florida highways.<sup>52</sup> The duties of Florida's 199 road guard inspectors and supervisors are limited to three areas: "(1) checking all documents accompanying shipments to ensure that they are authentic and in proper order, (2) visually inspecting as many loads as possible to ensure that they correspond with the documents . . . , and (3) recording statistical data."<sup>53</sup>

During 1978-79, Florida's agricultural inspectors intercepted more than twenty tons of marijuana, often at great personal risk.<sup>54</sup> Since 1973, three inspectors have been abducted by alleged marijuana smugglers, and two have been overpowered long enough for the suspects to escape. One of the abductees, Austin Gay, was murdered by his kidnappers in April, 1979.<sup>55</sup> Most of these incidents

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BUDGETING, PROGRAM EVALUATION OFFICE, ROAD GUARD AGRICULTURAL INSPECTION STATION/ CONTRABAND STUDY 7 (March 1980) [hereinafter cited as CONTRABAND STUDY].

50. OVERSIGHT STUDY, *supra* note 48, at 35.

51. Florida law requires the Department of Agriculture to inspect fresh citrus fruit, citrus juice and concentrate, tomatoes, limes and avocados, livestock, plants, feed, bees and bee equipment, poultry and eggs, dairy products, fertilizer, and pesticides. CONTRABAND STUDY, *supra* note 49, at 7. See generally FLA. STAT. Ch. 487 (1979), (Florida Pesticide Law); FLA. STAT. Ch. 500 (1979), (Florida Foods, Drugs and Cosmetics Law (relating to food products)); FLA. STAT. Ch. 575 (1979), (Certification Seed Law); FLA. STAT. ch. 576 (1979), (Agriculture Fertilizers); FLA. STAT. ch. 578 (1979), (Florida Seed Law); FLA. STAT. ch. 580 (1979), (Florida Commercial Feed Law); and FLA. STAT. ch. 583 (1979), (Classification and Sale of Eggs, Poultry, Etc.).

52. The stations are located at Fanning Springs on U.S. 19-98; Rock Bluff on State Road 340; Branford on U.S. 27-129; Luraville on Highway 51; Dowling Park on State Road 250; Interstate 10, eleven miles west of Live Oak; Ellaville on U.S. 90; Suwannee Springs on U.S. 129; Interstate 75, six miles south of the U.S. 129 intersection; White Springs on U.S. 41; Lake City on U.S. 441; Baxter on State Road 127; McClenny on State Road 121; Hilliard on U.S. 1; Yulee on U.S. 17; and Interstate 95, one mile south of the Florida-Georgia state line. CONTRABAND STUDY, *supra* note 49, at 10.

53. *Id.* at 11. Actual product inspections are performed at the point of origin by inspectors specially trained for product inspection. *Id.*

54. *Id.* at 15.

55. *Id.* at 1, 17. In November, 1977, Inspector Richard Brown was found handcuffed to a tree after being abducted at gunpoint from his U.S. 90 inspection station. In March, 1979, Inspector Leonard Pease was overpowered during a highway stop on I-75 and was found eight hours later handcuffed inside a church. Inspectors J.W. Davis and R.M. Shope have both encountered marijuana smugglers who disarmed them and forced them to lie face down until the smugglers could escape. *Id.* at 17. Inspector Austin Gay was abducted in April, 1979, and later found murdered. *Id.* at 1.

occurred when vehicles failed to stop at a station and subsequently were pursued and stopped on the highway by an inspector.<sup>56</sup>

The element of danger involved in an encounter with persons transporting cannabis is considerably greater than that encountered with smugglers of other illegal goods for two reasons. Florida law imposes long prison terms and substantial fines for possession of marijuana;<sup>57</sup> and tremendous profits can be realized from the sale of a cargo of cannabis which successfully reaches its destination.<sup>58</sup> From July 1, 1973, to June 30, 1979, Florida road guard inspectors intercepted 811 vehicles carrying contraband; 145 of them, or eighteen percent, were transporting marijuana.<sup>59</sup> Thirty of those 145 vehicles were found to contain less than 100 pounds of the illegal substance; two of the vehicles, both semi-trailers, were loaded with more than 10,000 pounds.<sup>60</sup> The average marijuana trafficker stopped by inspectors, however, was transporting 1,000 pounds of cannabis, which has a street resale value of approximately \$400,000

56. The details of Gay's abduction are unknown. Of the other four incidents, only one inspector was actually kidnapped from the inspection station. The other three inspectors had pursued vehicles and were in the process of either inspecting the vehicles or escorting them back to the station when the incidents occurred. *Id.* at 17.

57. See statutes cited at note 40 *supra*.

58. The United States General Accounting Office estimates that an ounce of marijuana sells for approximately \$35 on the street. THE POLITICS OF DRUGS, *supra* note 42, at 120 n.4.

According to the GAO, marijuana consumption in the United States is between 60,000 and 91,000 pounds a day, or 11,000 to 16,000 tons a year. If federal claims that there are 16 million regular users of marijuana in the United States are correct, the GAO estimate would indicate an average per capita daily consumption of from .06 to .09 ounces. The amount appears small—less than 3 ounces a month per user—but the aggregate cost is huge: from \$13 billion to \$21 billion a year at street-level prices.

*Id.* at 120 (footnote omitted).

The figures on marijuana consumption used by the Office of Planning and Budget, Executive Office of the Governor are considerably higher:

According to a recent article in *Parade Magazine*, 50 million Americans last year smoked 35,000 tons of marijuana. Florida Department of Law Enforcement estimates indicate that 70 percent of this amount comes into South Florida from Columbia for distribution to markets all over the United States.

CONTRABAND STUDY, *supra* note 49, at 14.

It is further estimated that marijuana wholesalers realize a profit of approximately \$160,000 on each 1,000-pound load of cannabis, or up to forty percent of the street value. *Id.* at 15.

59. CONTRABAND STUDY, *supra* note 49, at 12. Other types of contraband intercepted by road guard inspectors during the period from July 1, 1973, to June 30, 1979, included untaxed cigarettes (37% of total contraband seized), untaxed beverages (27%), and illegal aliens (18%). *Id.* at 13.

60. *Id.* at 16. One semi-trailer was carrying 32,810 pounds of cannabis, which has an estimated street value of more than \$13 million; the other contained 24,920 pounds, with an estimated street value of nearly \$10 million. *Id.* at 15.

and a profit margin of forty percent, or \$160,000.<sup>61</sup>

Since 1967, section 570.15 has been continually revised, ostensibly to protect inspectors from risky encounters with smugglers and to grant them greater authority with which to conduct vehicular inspections.<sup>62</sup> During the same period, marijuana trafficking has increased significantly in Florida, as has the state's resolve to eliminate, or at least reduce, the problem.<sup>63</sup> The latest revision of sec-

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61. *Id.* at 15. Sixty-seven percent of the vehicles found to be transporting marijuana were pickup trucks and vans. *Id.* at 12.

Some feel that it is only the "amateur smuggler" who does not have enough funds to purchase large quantities of marijuana in South Florida, or acquire an expensive motor home [which would not be subject to agricultural inspection], that is attempting to transport marijuana in vehicles that are subject to inspection if pursued and stopped.

*Id.* at 16.

62. *Id.* at 9. In 1967, inspection stations were furnished with state pursuit vehicles and employees were issued uniforms. *Id.* In 1975, inspectors were authorized by statute to wear firearms after completing an abbreviated police standards training program, which consisted of 160 hours of curriculum. The normal training requirement is 320 hours of study under the Police Standards Training Commission. *Id.* at 39. A plan to ensure that all inspectors receive the maximum amount of police standards training is currently being implemented by the Department of Agriculture and is scheduled for completion by May 1, 1981. Thirty employees, however, are ineligible to enroll in the training program due to disability or lack of a high school diploma. *Id.* at 41.

When first enacted in 1959, § 570.15, permitted an inspector to apply for a search warrant if he was refused access "to all places of business, factories, farm buildings, carriages, railroad cars, motor vehicles and vessels" used in agricultural pursuits. Ch. 59-54, § 1, 1959 Fla. Laws 74. Chapter 75-215, § 1, 1975 Fla. Laws 493, changed the all-inclusive "motor vehicles" to "trucks, motor vehicles other than private passenger automobiles with no trailer in tow or any vehicles bearing an RV license tag, truck and motor vehicle trailers." It also authorized inspectors and other personnel to conduct warrantless searches "pursuant to s. 933.19" and created § 570.15(2), which made failure to stop for inspection a second degree misdemeanor. For text of FLA. STAT. § 570.15(2) (1979), see note 1 *supra*.

Chapter 78-180, § 1, 1978 Fla. Laws 580, redefined which vehicles are subject to agricultural inspections: "Motor vehicles, except private passenger automobiles with no trailer in tow, travel trailers, camping trailers, and motor homes. . . ."

Chapter 79-371, § 1, 1979 Fla. Laws 1865 (current version at FLA. STAT. § 570.15(1)(b), (3), (4) (1979), as amended by ch. 79-587, 1979 Fla. Sess. Law Serv. 2608 (West)), expanded the inspectors' authority by permitting them to execute as well as apply for search warrants. It also created § 570.15(3):

Every law enforcement officer is authorized to assist employees of the department listed in subsection (1) in the enforcement of subsection (2). Such officer is authorized to stop and detain any vehicle and its driver who has failed to comply with subsection (2) until an employee of the department arrives to conduct the inspection required by law. Such law enforcement officer or a road guard inspection special officer may require the driver to return with his vehicle to the road guard inspection station where the driver failed to stop the vehicle for inspection.

Section 570.15(4) was also created by ch. 79-371. It immunizes persons "authorized to enforce or assist in enforcement of the provisions of this section" from civil and criminal liability.

63. See note 42 *supra*.

tion 570.15, the statutory authorization for agricultural inspections, is apparently an extension of that policy. It seems questionable, however, that the amended statute will actually decrease the risks road guard inspectors face when they encounter marijuana smugglers. To the contrary, past experience would indicate that granting inspectors broader discretion in conducting searches will pose an even greater threat to their personal safety.<sup>64</sup> It is also highly debatable whether strengthening the discretionary search powers of road guard employees will significantly increase the amount of marijuana confiscated. It is likely, however, that the use of this new statutory power will result in fewer convictions for possession and intent to sell marijuana because searches authorized by this statute appear to violate both federal and state constitutional guarantees against unreasonable searches and seizures.<sup>65</sup>

The situation is made more complex by the fact that it touches on several areas of law which have yet to be clearly defined by case law: the application of fourth amendment safeguards to automobile searches;<sup>66</sup> the purposes for which an administrative search

64. See notes 55-56 *supra*; see also CONTRABAND STUDY, *supra* note 49, at 36.

Florida is one of only three states which operate highway agricultural inspection stations. *Id.* at 43. In Arizona and California, inspectors do not have authority to pursue vehicles. They are required to notify the highway patrol when a vehicle fails to stop for inspection. *Id.*

65. FLA. CONST. art. I, § 12 states:

The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, and against the unreasonable interception of private communications by any means, shall not be violated. No warrant shall be issued except upon probable cause, supported by affidavit, particularly describing the place or places to be searched, the person or persons, thing or things to be seized, the communication to be intercepted, and the nature of evidence to be obtained. Articles or information obtained in violation of this right shall not be admissible in evidence.

For the text of the fourth amendment to the United States Constitution, see note 25 *supra*.

66. One commentator has noted, "For clarity and consistency, the law of the fourth amendment is not the Supreme Court's most successful product." Amsterdam, *supra* note 23, at 349. That observation is particularly applicable to the Court's decisions relating to automobile searches. In *Carroll v. United States*, 267 U.S. 132 (1925), the Court established the basis for the proposition that persons have a lesser expectation of privacy in automobiles due to the mobility of the vehicle. Since then, the following cases have carved out a sometimes confusing framework for applying fourth amendment guarantees to the search and seizure of automobiles: A vehicle search not based on probable cause at the time of arrest is also invalid if conducted after impoundment of the automobile, *Dyke v. Implement Mfg. Co.*, 391 U.S. 216 (1968); the peculiar characteristics of an automobile validate warrantless searches when probable cause exists, *Chambers v. Maroney*, 399 U.S. 42 (1970); a warrant is required if the automobile is not likely to be removed, *Coolidge v. New Hampshire*, 403 U.S. 443 (1971); the search of an automobile is far less intrusive than the search of a person or residence, *Cardwell v. Lewis*, 417 U.S. 583 (1974); a greater expectation of privacy exists in personal luggage found within an automobile than exists in the automobile

warrant may be issued;<sup>67</sup> and the public policy underlying the government's attempt to control the illegal use of marijuana.<sup>68</sup> Viewed in the narrow setting presented by Florida's agricultural inspection program, it appears that section 570.15 is a constitutionally invalid exercise of the state's police power.

*Delaware v. Prouse*,<sup>69</sup> a recent automobile search and seizure case, indicates the current approach used by the United States Supreme Court in determining the extent to which automobile searches fall within the protection of the fourth amendment. In *Prouse*, the Court held that discretionary spot checks of motorists' licenses and car registrations for the purpose of ensuring highway safety did not constitute a sufficiently legitimate governmental interest to outweigh "the resulting intrusion on the privacy and security of the persons detained."<sup>70</sup> As in *Pederson*, marijuana was discovered in the automobile during a routine stop. Unlike the Florida case, however, the Delaware patrolman who stopped the Prouse car did not conduct a search. The marijuana was in plain view on the floor of the vehicle.<sup>71</sup> Thus, the infringement on

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itself, *United States v. Chadwick*, 433 U.S. 1 (1977); a legitimate expectation of privacy by automobile passengers must exist before evidence seized from the car can be suppressed, *Rakas v. Illinois*, 439 U.S. 128 (1978); discretionary spot checks of automobiles are unreasonable intrusions on privacy expectations, *Delaware v. Prouse*, 440 U.S. 648 (1979). See also *United States v. Martinez-Fuerte*, 428 U.S. 543 (1976) (border checkpoint operations valid because they constitute lesser intrusion upon expectations of privacy than do roving patrols); *United States v. Brignoni-Ponce*, 422 U.S. 873, 882 (1975) (roving border patrols in search of illegal aliens and contraband require "reasonable suspicion" to search vehicles). See generally *Allen & Schaefer* note 30 *supra*.

67. In *Camara v. Municipal Court*, 387 U.S. 523 (1967), the Supreme Court held that regulatory health inspections require a less stringent standard of probable cause than do searches conducted for criminal investigatory purposes. This lesser standard has also been applied to regulatory inspections of commercial premises, *See v. City of Seattle*, 387 U.S. 541 (1967). Probable cause is not required, however, for the regulatory inspection of premises connected with the liquor industry, because Congress has broad powers to regulate that industry and has authorized such inspections by statute, *Colonnade Catering Corp. v. United States*, 397 U.S. 72 (1970). A similar exception to the probable cause standard has been applied to the firearms industry, *United States v. Biswell*, 406 U.S. 311 (1972). The Court's most recent consideration of warrantless administrative searches occurred in *Marshall v. Barlow's, Inc.*, 436 U.S. 307 (1978), in which the Court held that inspections conducted pursuant to the Occupational Safety and Health Act must meet the probable cause standards of *Camara*. See generally Note, *Administrative Searches and the Fourth Amendment: An Alternative to the Warrant Requirement*, 64 CORNELL L. REV. 856 (1979).

68. "We must ask ourselves whether marijuana is such a menace to American society that prohibiting it is worth breeding disrespect for the law. . . . The demand for drugs, not the illicit supply, lies at the heart of America's drug problems." *THE POLITICS OF DRUGS*, *supra* note 42, at 157.

69. 440 U.S. 648 (1979).

70. *Id.* at 655.

71. *Id.* at 650.

Prouse's privacy was much less intrusive than that suffered by Pederson. Even so, the Court held that, because the Delaware officer had no reason, *i.e.*, no probable cause, to suspect any kind of traffic violation or other illegal activity when he stopped the vehicle, he could not legally seize the drugs as evidence of criminal activity.<sup>72</sup> The Court recognized the state's interest in promoting highway safety, but found that other means could be used without jeopardizing the privacy interests of motorists.<sup>73</sup> Writing for the six-justice majority, Justice White construed the reasonableness standard of the fourth amendment to require "at a minimum, that the facts upon which an intrusion is based be capable of measurement against 'an objective standard,' whether this be probable cause or a less stringent test."<sup>74</sup>

When the *Prouse* holding is applied to the Florida agricultural inspection procedures, it becomes clear that the state may not justify the seizure of contraband when it occurs in the course of an inspection for diseased or poor quality agricultural products unless fourth amendment safeguards have been met. An application of the *Prouse* balancing analysis to *Pederson* indicates that, while the stopping of the defendant's truck was a valid exercise of the state's police power, the subsequent intrusion, *i.e.*, the search, was not. The articulated governmental interest in granting road guard inspectors full access to certain vehicles is "to enforce laws, rules, and regulations promulgated by the Department of Agriculture and Consumer Services for regulating the movement of agricultural, horticultural and livestock products."<sup>75</sup> As in *Prouse*, that type of state regulatory interest does not outweigh the constitutional right of an individual to be free from an unreasonable intrusion upon his or her privacy and security.

In 1976, the Florida Supreme Court held section 570.15 constitutional in *Stephenson v. Department of Agriculture*,<sup>76</sup> to the extent that it requires certain vehicles to stop for inspection. Adopting the district court of appeal's opinion as its own, the supreme court affirmed that agricultural inspections are a valid exercise of the state's police power and necessary for "disease control, fruit and

72. *Id.* at 661.

73. *Id.* at 658-661.

74. *Id.* at 654 (footnotes omitted).

75. CONTRABAND STUDY, *supra* note 49, at 9.

76. 342 So. 2d 60 (Fla. 1976). The court refused an apparel company's request for an injunction to exempt its trucks from being required to stop at inspection stations since the company's vehicles did not transport agricultural products. *Id.*

vegetable grading and other similar matters."<sup>77</sup> In the same opinion, however, the appellate court qualified that power by stating, "[I]f access is refused, the vehicle may not be searched without the inspector obtaining a search warrant or without a legal basis for search without a warrant pursuant to established law."<sup>78</sup> Thus, the Florida court explicitly recognized that the state's interest in protecting the quality of its agricultural products does not outweigh an individual's constitutional right to be free from unreasonable intrusions.

The complicating factor in *Pederson* and similar cases is that the agricultural inspectors did not seize diseased fruits or vegetables, but illegal drugs. The *Pederson* court implicitly recognized that the inspector had no statutory authority to search vehicles specifically for contraband when it stated, "[T]he provisions of *Carroll* . . . are applicable . . . when searches and seizures are made by the proper officers exercising police authority in the enforcement of any law of the state relative to the unlawful transportation of liquors, illegal drugs, or other contraband."<sup>79</sup> Nothing in chapter 570 empowers agricultural road guard inspectors to enforce any law relative to transportation of illegal drugs. Nevertheless, since 1975, section 570.15 has authorized Road Guard Bureau employees to conduct searches of specified vehicles with or without a warrant.<sup>80</sup> As amended in 1979, the statute currently goes a step further by eliminating the requirement that probable cause to believe that a violation has occurred be present (1) prior to the issuance of a search warrant,<sup>81</sup> and (2) before a warrantless search prompted by exigent circumstances may be conducted.<sup>82</sup> Florida case law, specifically decisions of the First District Court of Appeal,<sup>83</sup> indicates that some road guard inspectors routinely exceeded their statutory authority under the prior statute, which required that probable cause exist before a valid search could be carried out. They obtained warrants based on inadequate affidavits which failed *prima facie* to establish sufficient probable cause;<sup>84</sup> they con-

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77. *Id.* at 62 (quoting 329 So. 2d 373, 376 (Fla. 1st Dist. Ct. App. 1976)).

78. 329 So. 2d at 376.

79. 373 So. 2d at 369 (emphasis added).

80. See ch. 75-215, § 1, 1975 Fla. Laws 493.

81. See *Pederson v. State*, 373 So. 2d at 369.

82. See *Miller v. State*, 368 So. 2d 943, 944 (Fla. 1st Dist. Ct. App. 1979).

83. All sixteen agriculture inspection stations are located within the appellate jurisdiction of the First District Court of Appeal. See FLA. STAT. § 35.02 (1979).

84. *Pederson v. State*, 373 So. 2d 367 (Fla. 1st Dist. Ct. App. 1979); *State v. Webb*, 378 So. 2d 884 (Fla. 1st Dist. Ct. App. 1979).

ducted warrantless searches without probable cause<sup>85</sup> and without the consent of the vehicle's driver;<sup>86</sup> and they sought to search vehicles which were unlikely to be transporting agricultural, horticultural, or livestock products.<sup>87</sup>

The First District Court of Appeal has reversed a number of convictions for possession of large quantities of marijuana on the constitutional basis that the contraband was illegally seized by road guard inspectors and therefore was inadmissible as evidence under the exclusionary rule.<sup>88</sup>

85. *Miller v. State*, 368 So. 2d 943 (Fla. 1st Dist. Ct. App. 1979). The court said: "The provisions of Section 933.19 [see note 10 and accompanying text *supra*] are not applicable as there was a complete absence of any probable cause to suspect that the motor vehicle apprehended was carrying any contraband." *Id.* at 944. *Cf. Flynn v. State*, 374 So. 2d 1041, 1042 (Fla. 1st Dist. Ct. App. 1979) (the strong odor of marijuana and the presence of black plastic garbage bags were sufficient probable cause to conduct warrantless search of truck); *Smith v. State*, 333 So. 2d 91, 92 (Fla. 1st Dist. Ct. App. 1976) (enroute to inspection station at request of inspector who stopped van, appellants were observed throwing large bags of marijuana from the rear of their vehicle).

86. The court has frequently drawn a distinction between free and voluntary consent, *Holec v. State*, 376 So. 2d 401 (Fla. 1st Dist. Ct. App. 1979), and acquiescence to apparent authority, *Luxenburg v. State*, 384 So. 2d 742 (Fla. 1st Dist. Ct. App. 1980).

In *Powell v. State*, 332 So. 2d 105, 107 (Fla. 1st Dist. Ct. App. 1976), the court stated:

They [three inspection officers] convinced appellant that they had authority which they did not have, and thereby coerced him to break the lock and open the trailer pursuant to their demands. Such consent was certainly not voluntary . . . . To condone a warrantless search under these circumstances would make a mockery of the constitutional safeguard against unreasonable searches and seizures. Officers could at any time coerce consent through the bluff and subterfuge of informing the detained person that they could obtain a search warrant when, as a matter of fact, they could not.

*Cf. Eden v. State*, 370 So. 2d 826, 827 (Fla. 1st Dist. Ct. App. 1979) ("[I]n the absence of any refusal by appellant, the inspector had the right of full access to appellant's van").

87. During an on-site study conducted by the Office of Planning and Budgeting, Program Evaluation Office, Executive Office of the Governor, it was found that 86% of the vehicles which failed to stop at the ten inspection stations observed during a 24-hour period were pickup trucks and vans. Of the vehicles found transporting marijuana, 88% were pickup trucks and vans. CONTRABAND STUDY, *supra* note 49, at 19, 23. "Thus, when a road guard inspector pursues a vehicle which has bypassed an inspection station, he is pursuing a vehicle that is known to frequently be transporting marijuana." *Id.* at 23. The question which must be asked is whether the inspector is likely to find agricultural, horticultural, or livestock products in these vehicles.

88. Although the number of convictions secured by the state under prior law is not available, at least nine convictions have been overturned by the First District Court of Appeal on the basis of the exclusionary rule during 1979-80 alone. See *Luxenburg v. State*, 384 So. 2d 742 (Fla. 1st Dist. Ct. App. 1980); *Byrd v. State*, 380 So. 2d 457 (Fla. 1st Dist. Ct. App. 1980); *State v. Webb*, 378 So. 2d 884 (Fla. 1st Dist. Ct. App. 1979); *Nelson v. State*, 376 So. 2d 459 (Fla. 1st Dist. Ct. App. 1979); *Pederson v. State*, 373 So. 2d 367 (Fla. 1st Dist. Ct. App. 1979); *Villari v. State*, 372 So. 2d 522 (Fla. 1st Dist. Ct. App. 1979); *Seuss v. State*, 370 So. 2d 1203 (Fla. 1st Dist. Ct. App. 1979); *Rose v. State*, 369 So. 2d 447 (Fla. 1st Dist. Ct. App. 1979); *Miller v. State*, 368 So. 2d 943 (Fla. 1st Dist. Ct. App. 1979).

Two of those cases illustrate the situation faced by the court in applying both the reasonableness clause and the warrant clause of the fourth amendment. In *Villari v. State*,<sup>89</sup> the defendant appealed his conviction for possession and intent to sell 100 pounds of marijuana which had been discovered in his pickup truck by agricultural inspector Leonard Pease. After shining a flashlight into the back of Villari's truck,<sup>90</sup> Pease attempted to enter the vehicle but stopped when Villari asked, "'Don't you need a search warrant to look at my personal belongings?'"<sup>91</sup> The inspector pointed to luggage which was set apart from the truck's blanket-covered cargo and responded, "'I have no intention of looking in there.'"<sup>92</sup> After consulting with his supervisor by telephone, Inspector Pease returned to Villari's truck and "lifted the blanket covering several large bags. He then smelled the strong odor of marijuana," arrested the defendant for failing to stop initially at the inspection station, and called the sheriff.<sup>93</sup>

On appeal, the First District Court of Appeal held that Villari had not freely consented to the search which actually uncovered the cannabis.<sup>94</sup> Since no exigent circumstances, such as voluntary consent, existed, "further search necessitated the issuance of a search warrant pursuant to § 570.15(1)(b), Fla. Stat. (1977)."<sup>95</sup>

*State v. Webb*<sup>96</sup> involved a search which was conducted pursuant to a warrant. The defendant bypassed the inspection station and was stopped on the highway by an inspector. When she was unable to open the back of the camper-topped pickup truck she was driving, Webb was read her Miranda rights. The inspector told her he

89. 372 So. 2d 522 (Fla. 1st Dist. Ct. App. 1979). Villari failed to stop at the inspection station and was stopped on the highway by Inspector Pease. *Id.* at 523.

90. The court held that this limited search was not illegal since Villari had willingly opened the back of the truck at the inspector's request. *Id.*

91. *Id.*

92. *Id.*

93. *Id.* FLA. STAT. § 570.151 (1979) grants agriculture inspectors only the power to arrest persons for failing to stop for inspection, which is a violation of FLA. STAT. § 570.15(2) (1979), and constitutes a second degree misdemeanor.

94. 372 So. 2d at 524. The court found that the state had not produced clear and convincing evidence that Villari's consent was voluntarily given:

To accept the state's version would require that we interpret appellant's remarks to mean that he did not consent to the search of his suitcases, which in no way incriminated him, but voluntarily consented to the search of the cargo consisting of the marijuana which did incriminate him. We find this reasoning untenable . . . ."

*Id.*

95. *Id.*

96. 378 So. 2d 884 (Fla. 1st Dist. Ct. App. 1979).

smelled marijuana and asked for consent to conduct a search. She refused. The inspector then escorted Webb and her truck to the county jail, where he obtained and executed a search warrant.<sup>97</sup>

The trial court granted a motion to suppress admission of the marijuana discovered in the defendant's truck because the affidavit made by the agricultural inspector in seeking the issuance of a warrant failed to state sufficient probable cause for the search.<sup>98</sup> The First District Court of Appeal affirmed the lower court's holding because "Inspector Pease had no probable cause to believe that Ms. Webb's vehicle was carrying [agricultural] products and the affidavit states none."<sup>99</sup>

The *Villari* and *Webb* decisions are completely consistent with United States Supreme Court case law construing the fourth amendment. In *Almeida-Sanchez v. United States*,<sup>100</sup> the Court cited *Carroll v. United States* to clarify its stand on the warrantless search of automobiles. "It is settled, of course, that a stop and search of a moving automobile can be made without a warrant. . . . [B]ut the *Carroll* doctrine does not declare a field day for the police in searching automobiles. Automobile or no automobile, there must be probable cause for the search."<sup>101</sup> The Florida Supreme Court held that warrantless searches "'are *per se* unreasonable'" in *Hornblower v. State*,<sup>102</sup> and that "the burden is upon the State to demonstrate that the procurement of a warrant was not feasible because 'the exigencies of the situation made that course imperative.'"<sup>103</sup> In the area of searches conducted pursuant to a warrant, as was the case in *Webb*, the United States Supreme Court has consistently demanded that the requirements of prob-

97. *Id.*

98. *Id.* In relevant part, the inspector's affidavit stated:

Because the affiant has, on prior occasions, found agricultural, horticultural or livestock products in vehicles of this type, affiant pursued and stopped said vehicle . . . . The driver was identified to the affiant as Judith A. Webb, and after being advised that she had run the inspection station without stopping, Miss Webb tried to open the rear of said vehicle with the only keys she had which fits [sic] the lock. At this time, the affiant smelled, from the crack of the door, what he believes is the odor of cannabis. From affiant's training and experience, affiant has, on numerous prior occasions, smelled and recognized the smell as belonging to cannabis. Because this vehicle may contain agricultural, horticultural or livestock products, affiant has not completed [sic] his inspection at this time.

*Id.* at 885.

99. *Id.* (citations omitted).

100. 413 U.S. 266 (1973).

101. *Id.* at 269 (footnotes and citations omitted).

102. 351 So. 2d 716, 717 (Fla. 1977) (citations omitted).

103. *Id.* (citations omitted).

able cause and particularity be met before a valid warrant may issue.

During 1979-80 alone, the First District Court of Appeal reversed at least nine convictions for possession of marijuana on the basis that agricultural inspectors seized the contraband illegally.<sup>104</sup> No exigent circumstances existed in those cases to justify searches made in violation of the reasonableness clause or the warrant clause of the fourth amendment.<sup>105</sup>

While section 570.15(1), Florida Statutes, merely ignores the reasonableness and probable cause requirements of the fourth amendment, section 570.15(2), Florida Statutes, explicitly violates the very essence of the fourth amendment guarantee against unreasonable searches. It makes it unlawful for a designated vehicle "to pass any official road-guard inspection station without . . . submitting the vehicle for inspection."<sup>106</sup> The Supreme Court has consistently held nonconsensual, unreasonable searches to be unconstitutional in its review of searches conducted by the United States Border Patrol. The issue presented in those cases is the extent to which an official who is seeking to enforce a statutory prohibition against the illegal entry of aliens into the United States may stop and search vehicles which may be carrying aliens.<sup>107</sup> In *Almeida-Sanchez v. United States*, the Patrol discovered marijuana during the warrantless search of a car driven by a Mexican citizen who was legally in the United States.<sup>108</sup> The Court held that, since the Patrol had no reason to believe that the defendant had crossed the border or had committed an offense, and since the defendant had not consented to the search, the search was constitutionally invalid.<sup>109</sup> In *Almeida-Sanchez*, the government contended, just as the state of Florida argued in *Pederson*, that the search was validated by its administrative nature.<sup>110</sup> The Court rejected this argument,

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104. See note 88 *supra*.

105. For a discussion of how the Supreme Court has incorporated "the second clause . . . into the first," see Note, *supra* note 67, at 858-60, in which the author rejects the notion that the two clauses support the concept that warrantless searches are unconstitutional *per se*.

106. FLA. STAT. § 570.15(2) (1979), as amended by ch. 79-587, 1979 Fla. Sess. Law Serv. 2608 (West). See notes 45-48, *supra*, and accompanying text.

107. *United States v. Martinez-Fuerte*, 428 U.S. 543 (1976); *United States v. Brignoni-Ponce*, 422 U.S. 873 (1975); *Almeida-Sanchez v. United States*, 413 U.S. 266 (1973). See Keller, *Border Searches Revisited: The Constitutional Propriety of Fixed and Temporary Checkpoint Searches*, 2 HASTINGS CONST. L.Q. 251, 255-58 (1975).

108. 413 U.S. at 267-68. See Keller, *supra* note 107, at 258-61.

109. *Id.* at 271-72.

110. *Id.* at 270; *Pederson v. State*, 373 So. 2d 367, 369 (Fla. 1st Dist. Ct. App. 1979).

saying, "The search . . . was conducted in the unfettered discretion of the members of the Border Patrol, who did not have a warrant, probable cause, or consent. The search thus embodied precisely the evil the Court saw in *Camara* when it insisted that the 'discretion of the official in the field' be circumscribed by obtaining a warrant prior to the inspection."<sup>111</sup>

Even though *Almeida-Sanchez* involved a roving patrol and Florida agricultural inspectors are located at permanent stations,<sup>112</sup> the discretion accorded road guards to pursue vehicles which do not stop at the stations is arguably analogous to the unfettered discretion which the Court disapproved in *Almeida-Sanchez*.<sup>113</sup> Moreover, in a second border search case, *United States v. Martinez-Fuerte*, the Court recognized the constitutional validity of stopping automobiles at permanent checkpoints on the basis that "checkpoint operations both appear to and actually involve *less discretionary enforcement activity*."<sup>114</sup> The Court viewed such stops as "only a brief detention during which '[a]ll that is required of the vehicle's occupants is a response to a brief question or two and possibly the production of a document evidencing a right to be in the United States.'"<sup>115</sup>

Notwithstanding the Supreme Court's rejection of the administrative search theory in *Almeida-Sanchez*, Florida has statutorily applied the identical rationale to agricultural inspections on the basis that it requires a standard of probable cause less stringent than that required for criminal searches.<sup>116</sup> This attempt to circumvent the result in *Pederson* is based on two faulty premises, however. First, when the cargo which Road Guard employees seek to inspect is contraband, the resulting search is criminal in nature not regulatory. Second, the United States Supreme Court's holdings on administrative searches have been directed at the protection of privacy interests, not the facilitation of regulatory inspections. "If the government intrudes on a person's property, the privacy interest suffers whether the government's motivation is to investigate violations of criminal laws or breaches of other statu-

111. 413 U.S. at 270 (footnotes and citations omitted).

112. *Id.* at 268. For the locations of Florida's sixteen inspection stations, see note 52 and accompanying text *supra*.

113. 413 U.S. at 270.

114. 428 U.S. 543, 559 (1976) (emphasis added).

115. *Id.* at 558 (citations omitted).

116. FLA. STAT. § 570.15(2) (1979), as amended by ch. 79-587, 1979 Fla. Sess. Law Serv. 2608 (West). See notes 43-47 and accompanying text *supra*.

tory or regulatory standards."<sup>117</sup>

In *Frank v. Maryland*,<sup>118</sup> an early administrative search case, the Supreme Court refused to prohibit warrantless regulatory searches on the basis that the fourth amendment was explicitly drafted to prevent the unreasonable seizure of evidence for use in criminal prosecutions. It guarantees "the right to resist unauthorized entry which has as its design the securing of information to fortify the coercive power of the state against the individual, information which may be used to effect a further deprivation of life or liberty or property."<sup>119</sup> But the *Frank* holding which limited fourth amendment protections to criminal prosecutions was overruled in *Camara v. Municipal Court*.<sup>120</sup> In *Camara*, the Court extended the basic warrant requirements of the fourth amendment to administrative searches of dwellings because citizens are entitled to know whether such an inspection is lawful; the limits of the inspector's power to search; and whether the inspector is acting within his statutory authorization.<sup>121</sup> Rather than eroding the mandates of the fourth amendment that searches be reasonable and based on probable cause as applied to administrative searches, the Court extended that constitutional guarantee to non-criminal searches for the first time.

Contrary to Florida Agriculture Commissioner Conner's apparent belief that "administrative probable cause" constitutes a *significantly* less stringent standard than "criminal probable cause,"<sup>122</sup> the Supreme Court has required both reasonableness and particularity for the procurement of an administrative search warrant, whether or not the search might result in a criminal prosecution.<sup>123</sup> Thus, a regulatory inspection may not be conducted at

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117. *Marshall v. Barlow's, Inc.*, 436 U.S. 307, 312-13 (1978).

118. 359 U.S. 360, 365 (1959). In *Frank*, "The Court stressed that the probable cause requirement should not be flexibly interpreted as that would result in a dilution of the requirement." Note, *Warrantless Administrative Searches and the Fourth Amendment Marshall v. Barlow's, Inc.*, 8 CAP. UNIV. L. REV. 321, 325 (1978).

119. 359 U.S. at 365.

120. 387 U.S. 523 (1967).

121. *Id.* at 532.

122. Letter from Doyle Connor to Bob Graham (August 24, 1979) (located in Office of the Governor, the Capitol, Tallahassee, Fla.).

123. In *Camara* the Court stated:

In cases in which the Fourth Amendment requires that a warrant to search be obtained "probable cause" is the standard by which a particular decision to search is tested against the constitutional mandate of reasonableness. To apply this standard, it is obviously necessary first to focus upon the governmental interest which allegedly justifies official intrusion upon the constitutionally protected interests of the private citizen. For example, in a criminal investigation, the police may under-

the complete discretion of a government official; justification for the intrusion is required.

The Supreme Court has considered the issue of regulatory inspections and their relationship to the fourth amendment in two different factual settings. *Camara* involved a non-law enforcement inspector and the search of a dwelling for health regulation purposes.<sup>124</sup> *Prouse*, on the other hand, dealt with a police officer who detained a vehicle, which constitutes a seizure under the fourth amendment, for safety regulation purposes.<sup>125</sup> While *Camara* and *Prouse* both involved an administrative activity subject to the constitutional safeguards imposed by the fourth amendment, the factual elements of each case are easily distinguishable from one another.

Elements of both *Camara* and *Prouse* are present in the Florida agricultural inspection cases. The inspectors in both *Camara* and *Pederson* were not law enforcement officers.<sup>126</sup> The purpose of the vehicular detentions and searches in both *Prouse* and *Pederson* was to conduct a regulatory inspection.<sup>127</sup> The result of the *Pederson* search and seizure, as in *Prouse*, was the discovery and confiscation of marijuana.<sup>128</sup> As in *Camara*, the court in *Pederson* held that a warrant supported by probable cause must be obtained prior to conducting an administrative search if the owner refuses to consent to a warrantless search.<sup>129</sup> Finally, as in *Prouse*, the *Pederson* court held that it is illegal to search for and seize evidence of criminal activity in the course of a regulatory inspection which does not meet the reasonableness standard of the fourth amendment.<sup>130</sup>

Notwithstanding the differing factual elements present in *Camara*, *Prouse*, and *Pederson*, the constitutional doctrine is the same: Any search or seizure which is not reasonable and is not supported by probable cause is constitutionally invalid. Thus, the reliance which Florida officials placed on the administrative search

take to recover specific stolen or contraband goods. But that public interest would hardly justify a sweeping search of an entire city conducted in the hope that these goods might be found. Consequently, a search for these goods, even with a warrant, is "reasonable" only when there is "probable cause" to believe that they will be uncovered in a particular dwelling.

387 U.S. at 534-35.

124. 387 U.S. at 523.

125. 440 U.S. at 649, 653.

126. 387 U.S. at 525-26; 373 So. 2d at 368.

127. 440 U.S. at 662; 373 So. 2d at 368.

128. 373 So. 2d at 368.

129. *Id.* at 369.

130. *Id.*

theory as a basis for revising section 570.15 is completely unsupported by constitutional case law. Chapter 79-587, Laws of Florida, amended the statute which authorizes agricultural inspections to allow inspectors full access to certain vehicles "which could be used" in agriculture-related activities, thus giving road guard personnel virtually unlimited discretion in detaining those vehicles. The only prerequisites for currently obtaining a search warrant under section 570.15(1)(b) are that the inspector must think the vehicle is subject to inspection under section 570.15(1)(a), that the driver must have had reasonable notice to stop, and that the driver must refuse to allow a search of his or her vehicle.<sup>131</sup> The "'objective standard,' whether this be probable cause or a less stringent test," which the Supreme Court established as a minimum reasonableness standard in *Prouse*,<sup>132</sup> is conspicuously absent from the warrant requirements of section 570.15(1)(b).

In summary, Supreme Court precedents construing the fourth amendment afford no support for the proposition that Florida's agricultural inspectors may conduct unreasonable warrantless searches, or searches based on warrants which lack probable cause and particularity, ostensibly to protect the state's agricultural, horticultural, and livestock products. The state's legitimate interest in ensuring the wholesomeness of its food products, absent extraordinary circumstances, does not outweigh an individual's right to be free from unreasonable government intrusions as guaranteed by the fourth amendment. Nor does Florida's legitimate interest in controlling the illegal transportation of marijuana along its highways justify the violation of civil liberties, especially when the enforcers of the claimed state interest are not police officers but agricultural inspectors untrained in dealing with criminals.<sup>133</sup>

Florida officials, concerned with voluminous drug smuggling traffic, should reevaluate their current approach to stemming that tide. If checkpoint stops along the state's highways are an effective means of identifying and arresting marijuana smugglers, and it appears that they may be, then those stations ought to be periodically monitored by trained police officers. Agricultural inspectors should be prohibited from pursuing vehicles which fail to stop, and be required instead to notify the Florida Highway Patrol or local

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131. FLA. STAT. § 570.15 (1979), as amended by ch. 79-587, 1979 Fla. Sess. Law Serv. 2608 (West).

132. 440 U.S. 648, 654 (1979) (footnotes omitted).

133. For a review of the current police training requirements and status of agricultural inspectors, see note 62 *supra*.

sheriff's department of the incident.

Current Florida law essentially ignores an individual's right to be free from unreasonable search and seizure. Whatever interest the state seeks to promote through the exercise of its police power, it may not pursue that goal at the expense of personal liberties. "In times of unrest, this basic law [against search and seizure] . . . may appear unrealistic . . . to some. But the values were those of the authors of our fundamental constitutional concepts. . . . If times have changed, . . . the changes have made the values served by the Fourth Amendment more, not less, important."<sup>134</sup>

MARGOT PEQUIGNOT

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134. *Coolidge v. New Hampshire*, 403 U.S. 443, 455 (1971).