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EXIGENT CIRCUMSTANCES – THE STORY OF STATE V. COOKE

Featuring

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And

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Program description

Unlike federal law, New Jersey requires that police have both probable cause and exigent circumstances before search an automobile without a warrant. How does this affect the police? Badly! Check it out with this one-credit look into an area of vast legal confusion.

I. Introduction

- **Some decisions we recognize as landmark decisions at the moment the case is published, however there are “stealth” landmark decisions that we don’t realize the importance of the case until decades later when we can see how the case has progressed**
- **State v. Cooke, 163 NJ 657 (2000) is one of those cases in NJ**

II. Historical Background to the Cooke case

- **US v. Carroll, 267 US 132 (1925) – Carroll brothers were running gin, police investigated and obtained enough probable cause to stop the car and search it – the birth of the automobile exception because the car was readily mobile – no need for warrant**
 - **Inability at that time to get a warrant – communications were primitive**
 - **From technological stand point – needed either to get a search warrant or a means to search without a warrant – no other alternative at the time.**
 - **Inherent mobility of the vehicle with fact that probable cause existed – allowed to search without warrant**
- **Over time the Supreme Court developed different, additional justifications for the automobile exception**
 - **Lessened expectation of privacy in the car**
 - **Operating motor vehicle is pervasively regulated industry**
 - **“phony” justifications for automobile exceptions**
- **Chambers v. Maroney, 399 US 42 (1970) – when there is probable cause to believe there is contraband in a vehicle police can search the car under the automobile exception; it does not matter where the car is searched – the car is seized for 4th amendment purposes, so it does not matter if the search is conducted on the street or back at the police department or elsewhere**
- **State v. Martin, 119 NJ 2, 33 (1990) – NJ case that derives from Chambers v. Maroney – same legal**

principle as Maroney – the car is seized based on probable cause to believe something is inside vehicle and the police can search it at a time and place that is appropriate for them to do that

- **Under Automobile exception – the police can search where ever they have probable cause to believe that there is contraband**
- **Pennsylvania v. Labron, 518 US 938 (1996) – court decided that since 1925 there have been all kinds of justifications for why it is ok for police to search cars; court decided that if police have probable cause to believe there is evidence of a crime inside a vehicle the police can search the vehicle as long as it is readily mobile – does not matter whether you subscribe to “inherently mobile”, “regulated activity”, “lessened expectation of privacy” – doesn’t matter; necessity for police to be given easy to understand rules of Constitutional construction so that police can make decisions under highly stressful circumstances so it is important to have easy rules so that they can do their jobs and do them properly to get the job done (from NY v. Belton)**
- **US Supreme Court believes that the only thing for the 4th amendment is probable cause – minimum amount of protection for people in US for search of a vehicle**

III. State v. Cooke – “Stealth Landmark Case”

- **Background on the case:**
 - **Written by Justice Veneiro**
 - **Great controversy with Justice Veneiro when he was Attorney General for NJ because was AG during time when there was an issue with racial profiling by NJSP on the Turnpike**
 - **Justice Veneiro took it upon himself to be a chief writer on the 4th amendment issues during that time period**
- **Cooke was an opportunity for the NJ Supreme Court to conform NJ law to PA v. Labron**

- **NJ Constitution – Article 1, Paragraph 7 has the exact same language as the 4th Amendment of the US Constitution – so it would make perfect sense for the US Supreme Court to come to a conclusion and for the state justices to come to the same conclusion**
- **What happened??**
- **Two elements to support to automobile exception in NJ: probable cause and exigent circumstances are required – probable cause alone is not enough**
- **NJ Supreme Court made it harder for police to do their jobs because they added this additional element in order to conduct a search under the automobile exception**
- **Tremendously wasted opportunity to simply the law and make it consistent with the federal law**
- **States can give more rights than what is given by the US Constitution – floor v. ceiling analogy**
- **NJ Supreme Court was not able to come up with a definition of what exigent circumstances were so that the police can understand it – language in the case was that it cannot be defined because it was so amorphous**
- **How do you define exigent circumstances??**
- **In Cooke – the NJ Supreme Court defines it as out of the control of the police officers, unanticipated, unexpected – but what does this bring to the table for a police officer??**
- **Difficult to understand the concept – still undefinable**
- **As a result of Cooke:**
 - **What does this bring to the table? How does this effect and protect NJ citizens??**
 - **If need exigency to search, what is going to happen with State v. Martin (able to search a car with probable cause and bring the car to where ever they need to conduct the search) – where is exigency if car is brought back to the police department?**

IV. Post- Cooke Cases – What is Exigency??

- **From 2000-2006 – no further caselaw developed on this issue – all cases to Appellate Division exigent circumstances were found – appeared that App Div was going to “rubber stamp” exigent circumstances**
- **State v. Irelan, 375 NJ Super 100 (App. Div. 2005) – two boys driving a car on the Atlantic City Expressway and police pulled them over; apparent to NJSP that driver was intoxicated, field sobriety test, search; passenger gets cleared and tells him to leave; police arrest driver for DWI and then search car; police find gun in car – motion to suppress gun in Superior Court; App Div decides from the standpoint of objective reasonableness that this is an automobile exception case; police had probable cause to go into vehicle because when arrest someone for DWI there may be implements of drunk driving in the car such as beer bottles – physical evidence of drinking; what about exigency?? – traffic, no back up, released passenger could have returned to car to get gun if police left to get a warrant – search was sustained**
- **Irelan was one of many cases where exigent circumstances were based on slightest amount of exigency confronting the police would allow for search of vehicle**
- **State v. Dunlap, 185 NJ 543 (2006) – mother conducts search of daughter’s room and finds drugs which she attributes to daughter’s boyfriend; mother calls police and turns over the drugs; police get daughter to identify defendant as the person who gives her the drugs; daughter calls defendant to set up meeting; defendant arrives and police jump out and remove defendant, handcuff him, and proceed to search car expecting to find drugs and guns; police find drugs and guns; motion to suppress – did police have probable cause to believe drugs and guns in the car – but what were exigent circumstances?? Police lured defendant there, were lying in wait, controlled the scene from beginning to end, 10 officers v. 1 defendant – not**

unanticipated motor vehicle stop – therefore no exigency

- **Court says that if there had been only 2 officers then the decision may have come out differently – but this then places on the police to try to determine how many officers make it exigent**
- **Now confusing situation to the police, no definition of exigent circumstances**
- **NJ Supreme Court needed to better define exigency**
- **State v. Johnson, 193 NJ 528 (2008) – abandonment of property case – no expectation of privacy therefore no 4th amendment violation – no standing; court attempts to define exigent circumstances so that police can more readily understand; such a difficult concept to define and although court tries to define it – they are not successful**
- **State v. Pena Flores, 198 NJ 6 (2009) – 9 years after Cooke – nothing to prevent the Court from reinterpreting the Constitution – but did not; the Court decided to change the Court Rules instead; prior to this case – telephonic warrant could be obtained based on exigency and probable cause; NJ Supreme Court in this case says you can now get a telephonic search warrant without exigency – all police need is probable cause; major change in the law; Court also gives concrete definitions of what exigent circumstances are; telephonic warrant was the way the Court tried to get around the exigency issue – only need probable cause; telephonic warrant was to be regarded the same as a “regular” warrant and that defendant must file the motion to suppress and presumed valid**
- **Why has the telephonic warrant not been used by our police/law enforcement??**
 - **State v. Valencia, 93 NJ 126 (1983) – first case allowing telephonic search warrants**
 - **Never used**
 - **Not sure what is going on behind the scenes**
 - **Has not caught on in NJ**

- **In other states in the country this process has become part of the usual operations of the police**
- **In NJ – culture was wrong – after Valencia, Superior Court Judges made it clear that they did not want to be bothered; and that telephonic warrant was not being treated like a regular warrant, so the State still needed to prove its validity – which was changed by the Pena Flores case**
- **Is this an economic issue? Training, support, infrastructure was never set up as a result of economic issues confronting municipal police departments**
- **Pena Flores decision made an end run around the exigency issue – only gave an “out” which was the telephonic warrant issue**
 - **Justice Long tries to describe what are factual circumstances for exigency – tried to better explain exigency to the police**
- **Police have two options when going to search a vehicle based on the automobile exception:**
 - 1) **prepare telephonic warrant by contacting prosecutor, getting prosecutor approval, then contacting a judge – may take 30 minutes or more**
 - OR**
 - 2) **relying on another exception to the warrant requirement, i.e. consent, that is going to get the police in the car quickly**
 - **Smaller departments don’t want to take the time for an officer to be off the road to conduct a 30+ minute process when the matter could be done in 10 minutes by another means**
 - **Don’t want to go through the telephonic warrant process and find nothing in the car**
 - **Not convenient or economical for telephonic warrant**
- **If we incorporated telephonic warrants into our routine, then we can get them faster and have much more ease**

- with their use – but we don’t because no one is using them – can’t improve if we are not using them**
- **Still stuck with State v. Cooke – needing probable cause and exigency**
 - **State v. Minittee, 210 NJ 307 (2012) – robbery in progress and police chased vehicle; stopped vehicle at dead end street and see that there is evidence in the vehicle and have probable cause and exigency to seize the car and search; pursuant to Chambers v. Maroney and State v. Martin the police take vehicle to sally port of police department to search; search did not take place for lengthy period of time after car was seized and search;**
 - **App Div said these were robbers and evidence of firearms and also wanted in other jurisdictions for the same robbery and evidence in vehicle seen from the street – probable cause and exigency – police take vehicle from street to police department to conduct a search of vehicle which will take a lot of time; vehicle in police custody – no longer exigent once car is back at police department – exigence dissipated – police can search at their leisure**
 - **App Div said no longer going to follow Chambers v. Maroney or State v. Martin because need exigency and probable cause in NJ to search but once back at police station no longer exigent**
 - **NJ Supreme Court hears case**
 - **“guilty as hell rule”??**
 - **Disingenuous opinion and criticized by Justice Albin in the dissent**
 - **This case makes necessity to change holding in Cooke even more apparent**
 - **Case says police stop vehicle and have plenty of probable cause and exigency on the street and until car taken back to police station**
 - **Car at police station for a number of hours but no explanation in the case as to why no**

officer could pick up phone and contact judge to get a search warrant

- **NJ Supreme Court finds that exigency on the street continues when the vehicle is in police custody – not withstanding that the police had ample time to get a search warrant – this conclusion was not explained**

V. What is the Future of Cooke and the requirement of exigency??

- **Cooke has become a landmark decision in an egregious way**
- **Suppression of evidence where evidence should not have been suppressed**
- **Police are no better informed about what is exigency in order to go through the analysis for the automobile exception**
- **Still unclear what exigency brings to the table in terms of enhancing the protections for the people of NJ**
- **Exigency is created by the inability to get in touch with a judge – but then look at Minitie case**
- **Hopefully Justice Albin's analysis will eventually prevail over time**
- **Requirement of exigency is handcuffing the police on the street**
- **If it is Ok for US Supreme Court, then why is it not sufficient for NJ?**