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Lake Butler Apparel Co. v. Department of Agricultural and Consumer Services, 551 F. Supp. 901 (M.D. Fla. 1982)

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CASE NOTES

Constitutional Law—SEARCH AND SEIZURE—PRUNING THE POISONOUS TREE: FLORIDA'S AGRICULTURAL INSPECTION STATUTE FALLS TO A FOURTH AMENDMENT CHALLENGE—*Lake Butler Apparel Co. v. Department of Agriculture and Consumer Services*, 551 F. Supp. 901 (M.D. Fla. 1982)

I. INTRODUCTION

In 1979, a series of vehicular detentions and searches made pursuant to Florida's agricultural inspection statute formed the factual matrix for litigation in *Lake Butler Apparel Co. v. Department of Agriculture and Consumer Services*.[1] While the incidents in themselves were unremarkable, the United States District Court's resolution of the issues in the case had a decidedly profound impact on the statute, rendering it partially void for want of compliance with the fourth amendment.[2] As a result of the decision, the state's power to conduct non-consensual searches under the statute has been, at least for the moment, severely curtailed.

Although *Lake Butler* has substantial real-world significance to the ongoing protection of the state's agricultural resources,[3] at an-

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1. 551 F. Supp. 901, (M.D. Fla. 1982).

2. In effect, the district court held the statute's warrant provision unconstitutional for authorizing the issuance of search warrants without a showing of administrative probable cause. *Id.* at 907. In the interim between the *Lake Butler* decision and the enactment of new legislative standards, the road guards charged with conducting searches under the agricultural inspection statute were limited by the common law surrounding vehicular searches. In the context of the agricultural inspection program, the opportunity to conduct a constitutionally valid search would generally arise in one of three situations: (1) where the driver of the vehicle to be searched consented to the search, Schneckloth v. Bustamonte, 412 U.S. 218 (1973); (2) where there existed probable cause to believe a search of the vehicle would yield evidence of a statutory or regulatory violation, United States v. Ross, ___ U.S. ___ 102 S. Ct. 2157 (1982); and (3) where the search was conducted incident to the lawful arrest of the driver of the vehicle, Sibron v. New York, 392 U.S. 40 (1968). *See also* McDonough v. State, 8 FLA. L.W. 486 (Fla. 1st DCA Feb. 8, 1983) (search of vehicle based on probable cause and not on warrant provision of agricultural inspection statute is valid and not contrary to *Lake Butler* decision).

3. As early as 1930, the Florida Supreme Court acknowledged the importance of the citrus industry and the state's power to regulate it:

> The protection of a large industry constituting one of the great sources of the state's wealth and therefore directly or indirectly affecting the welfare of so great a portion of the population of the state is affected to such an extent by public interest as to be within the police power of the sovereign.

Johnson v. State, 128 So. 853, 857 (Fla. 1930) (citations omitted).

other level it offers an opportunity to explore relatively uncharted areas of fourth amendment jurisprudence. The agricultural inspection law, embodied in section 570.15, Florida Statutes, stood as perhaps the only example of a statute authorizing the issuance of administrative search warrants for the purpose of inspecting vehicles. The *Lake Butler* court was necessarily confronted with unique constitutional questions. This note, after describing the legislative and judicial history of section 570.15, will examine the court's rationale as it sought answers to those questions.

II. BACKGROUND

Since its inception in 1934, the Florida Department of Agriculture and Consumer Services' vehicle inspection program has experienced steady growth in the scope of its operations.[4] The primary purpose of the program is to enforce those rules which the Department has promulgated to regulate the movement of agricultural products in the state.[5] The road guards who man the stations do not engage in the actual inspection of produce, but instead are given the task of checking the authenticity and order of documents that accompany shipments, inspecting cargo to ensure that it conforms with those documents, and collecting statistical data.[6]

The first interception of marijuana from South Florida in 1973 injected a new and dangerous element into the agricultural inspection routine.[7] Nevertheless, the possibility of encountering smug-

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4. State of Florida, Executive Office of the Governor, Office of Planning and Budgeting, Program Evaluation Office, Road Guard Agricultural Inspection Station/Contraband Study (March 1980), at 7 [hereinafter cited as Road Guard Study]. The program traces its modest origins to six inspection stations located on major highways crossing the Suwanee and St. Mary's rivers in northern Florida. Initially, physical support for the inspectors was rather austere: the inspection stations consisted of tents, and light was supplied by kerosene lanterns and flashlights. The inspectors were specifically limited to inspecting citrus products and stations remained open only part of the year. By 1980 the number of stations had expanded to 19, no less than 14 types of agricultural commodities were subject to inspection and the program operated year-round. From a few thousand bushels of citrus inspected in 1934, almost 57 million bushels were inspected in 1977-78. *Id.* at 7, 9.

5. FLA. STAT. § 570.44(3)(1981) establishes a "Bureau of Road Guards" and defines its purpose:

> It shall be the duty of this bureau to operate and manage those road guard inspection stations of the state and to perform the general inspection activities relating to the movement of agricultural, horticultural, and livestock products and commodities as directed by the department and the division director.

6. Road Guard Study, *supra* note 4, at 11.

7. *Id.* at iii. At least five dangerous confrontations occurred between road guards and marijuana smugglers during the years 1977-80. One such incident resulted in the kidnapping and murder of road guard Austin Gay. Among the other episodes of violence, two road

glers, while regrettable as an incidental danger to the road guards, could not overshadow the emerging benefits of the situation. A program which had previously been an innocuous tool for furthering administrative rules was rapidly evolving into a significant weapon in Florida's fight against the importation of illegal drugs.[8]

Changes in the agricultural inspection statute reflected an unstated legislative desire to maximize those benefits. Prior to 1975, section 570.15 required the road guards to obtain a search warrant before conducting *any* non-consensual searches of vehicles.[9] The statute authorized "officers of the department" to have "full access at all reasonable hours to all . . . motor vehicles . . . used in the . . . transportation within the state of any agricultural product or of any article or product" the Department had authority to regulate.[10] If a driver refused access to a vehicle, the road guard could apply for a search warrant subject to the same standards "as provided by law for the obtaining of search warrants in other cases."[11] Thus, the road guards were held to the traditional requirement for obtaining a warrant: a showing of probable cause to believe the search would reveal evidence of a statutory violation.[12]

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guards were abducted, one was shot at, and one was overpowered and disarmed. *Id.* at 1, 17.

The increased likelihood of encountering drug traffickers was directly attributable to events occuring both in the United States and abroad. By 1979, over 42 million Americans had sampled marijuana. The demand for the drug had quadrupled since 1974 to a daily national consumption rate of about 130,000 pounds. By the mid-1970s, crackdowns on drug smugglers and marijuana eradication programs carried out through the spraying of the herbicide paraquat had drastically reduced the amount of cannabis coming from Mexico. Colombian growers swiftly supplanted their Mexican counterparts as the major suppliers of marijuana to the United States. Because of its location and features, Florida seemed the logical point of entry for the contraband. From there, the drug was carried north by plane, boat or motor vehicle. *The Colombian Connection*, TIME MAG. Jan. 29, 1979 at 22, 23.

8. Between 1973 and 1980 the road guards intercepted more than 175 vehicles carrying marijuana. "Law enforcement officials in the Third Judicial Circuit in North Florida state that there are probably more cases of marijuana arrests involving more than 100 pounds made in this area than in any other area of the State." Road Guard Study, *supra* note 4 at iv.

Statistics compiled through the inspection program support that assertion. Shipments of marijuana seized by the inspectors average approximately one thousand pounds each. A single interception of marijuana made during the inspection of a semi-trailer resulted in the confiscation of over 32 thousand pounds of the illegal drug. *Id.* at 15.

Consider the stakes involved: In 1979, a ton of marijuana had a street value of approximately $800 thousand dollars. A 16-ton load would be worth almost $13 million dollars. *Id.*

9. *See* FLA. STAT. § 570.15 (1961) (current version at FLA. STAT. § 570.15(1) (1981)).

10. *Id.*

11. *Id.*

12. The modern definition of probable cause can be traced to Stacey v. Emery, 97 U.S. 642 (1878):

> A reasonable ground of suspicion, supported by circumstances sufficiently

In 1975, however, an amendment to section 570.15 significantly increased the investigative powers of the road guards by eliminating the warrant requirement under certain circumstances.[13] At the same time, the amendment narrowed the class of vehicles subject to inspection to "trucks, motor vehicles other than private passenger automobiles with no trailer in tow . . . [and] truck and motor vehicle trailers.[14] Under the amended statute the road guards were afforded the option of either obtaining a search warrant to perform a non-consensual search or conducting the search "without a warrant pursuant to § 933.19."[15] Section 933.19 explicitly adopts the United States Supreme Court's holding in *Carroll v. United States*[16] as the "statute law of the state applicable to searches and seizures . . . [of] contraband."[17] In *Carroll*, the Court held that "[i]n cases where seizure is impossible except without a warrant," the seizing officer can perform a warrantless search if there exists

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> strong in themselves to warrant a cautious man in the belief that the party is guilty of the offence with which he is charged. . . . Such a state of facts as would lead a man of ordinary caution to believe, or to entertain an honest and strong suspicion, that the person is guilty.

Id. at 645 (citations omitted).

13. *See* Ch. 75-215, § 1, 1975 Fla. Laws 493 (current version at FLA. STAT. § 570.15(1) (1981)).

14. *Id.* The 1975 amendment to § 570.15 provided for the inspection of recreational vehicles as well. However, in 1978, § 570.15 was once again amended to exempt additional classes of vehicles from inspection. RV's were covered by the exemption as were "travel trailers, camping trailers, and motor homes." Ch. 78-180, § 1, 1978 Fla. Laws 580, 581 (current version at FLA. STAT. § 570.15(1) (1981)), amended by Ch. 79-587, § 1, 1980 Fla. Laws 13.

The new exemptions did not go unnoticed by the drug traffickers. According to the State of Florida's Program Evaluation Office:

> [T]he smugglers are using vehicles they know to not be subject to agricultural inspection. Many authorities feel the smugglers are using motor homes and other recreational vehicles to transport their illegal cargo. Motor homes can carry more tons of marijuana than pickup trucks, vans or vehicular trailers, and are not subject to agricultrual inspection.

Road Guard Study, *supra* note 4, at 16.

Another major change embodied in the 1975 amendment was the inclusion of a provision which made it a second degree misdemeanor "for any truck or any truck or motor vehicle trailer to pass any official road guard inspection station without first stopping for inspection." Ch. 75-215, § 1(2), 1975 Fla. Laws 493 (current version at FLA. STAT. § 570.15(2) (1981)). The scope of the provision was broadened in 1979 to include all vehicles except cars and RVs "which are used or are of a type which could be used" to transport agricultural products. Ch. 79-587, § (1)(a), 1980 Fla. Laws 14 (current version at FLA. STAT. § 570.15(1)(a) (1981)). Interestingly, the 1979 amendment also made it a second degree misdemeanor to refuse to submit the vehicle for inspection. *Id.* at § 2.

15. Ch. 75-215, § 1(1), 1975 Fla. Laws 493, (current version at FLA. STAT. § 570.15(1) (1981)).

16. 267 U.S. 132 (1925).

17. FLA. STAT. § 933.19 (1975).

"probable cause for believing that the automobile which he stops and seizes has contraband . . . therein."[18] Thus, the strictures of the *Carroll* rule allowed road guards to conduct warrantless searches only in situations where there was both probable cause to search and the procurement of a search warrant would be impracticable.

An increase in arrests under the new statutory provisions sparked a host of litigation in the courts. Challenges to the facial constitutionality of section 570.15 did not fare well. In *Stephenson v. Department of Agriculture and Consumer Services,*[19] the Florida Supreme Court upheld the constitutionality of the statute, finding it to be a valid exercise of the state's police powers which did not impair the constitutional guarantees of due process, equal protection, or freedom from unreasonable search and seizure.[20] Yet the Florida Supreme Court's wholesale endorsement of the statute did not prevent lower courts from overturning convictions based on the validity of individual searches. In one year alone, the First District Court of Appeal reversed no less than six convictions based on evidence discovered through the inspection program.[21]

It was the court's decision in one of those cases, *Pederson v. State,*[22] that prompted the legislature to once again overhaul section 570.15.[23] In *Pederson,* a road guard conducted a vehicular

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18. *Carroll,* 267 U.S. at 156.

19. 342 So. 2d 60 (Fla. 1976).

20. *Id.* at 62. In adjudicating the issues, the supreme court simply adopted the opinion of the First District Court of Appeal. It is difficult to ascertain the specific arguments raised by the plaintiffs at the lower court levels. However, a review of other cases suggests the probable content of those arguments.

In Gluesenkamp v. State, 391 So. 2d 192 (Fla. 1980), the supreme court rejected the appellants' argument that the vehicle classification scheme in § 570.15 discriminates against certain types of vehicles and their occupants in violation of the equal protection clause. *Id.* at 200. In addition, the appellants argued that the classifications made by the statute were unconstitutionally vague, thus denying them due process of law. Again, the court found their arguments unpersuasive, holding that the "statutory definitions of 'truck' in chapters 316, 320, and 323, Florida Statutes (1977), provide authoritative definitions and indicate what is the generally accepted definition of the word 'truck'." *Id.* at 198. *See also* Martin v. State, 411 So. 2d 169 (Fla. 1982) (court rejects equal protection and vagueness arguments).

21. *See* State v. Webb, 378 So. 2d 884 (Fla. 1st DCA 1979); Nelson v. State, 376 So. 2d 459 (Fla. 1st DCA 1979); Pederson v. State, 373 So. 2d 367 (Fla. 1st DCA 1979); Villari v. State, 372 So. 2d 522 (Fla. 1st DCA 1979); Seuss v. State, 370 So. 2d 1203 (Fla. 1st DCA 1979); Miller v. State, 368 So. 2d 943 (Fla. 1st DCA 1979).

22. 373 So. 2d 367 (Fla. 1st DCA 1979).

23. For an extensive analysis of the *Pederson* decision and its impact on § 570.15 see Note, *Highway Agricultural Inspections and Fla. Stat. § 570.15: An Attempt to Evade the Reasonableness and Probable Cause Standards of the Fourth Amendment,* 8 FLA. ST. U.L. REV. 523 (1980).

search pursuant to a warrant which had been improperly issued on less than probable cause.[24] The state argued that the less stringent administrative probable cause standard established by the United States Supreme Court in *Camara v. Municipal Court*[25] was applicable for obtaining a warrant under the agricultural inspection statute.[26] The district court refused to accept the state's argument, finding that "the probable cause standard intended by Section 570.15(1)(b) is one of traditional probable cause."[27] The court noted, however, that "it may be constitutionally permissible for the Legislature to impose an administrative probable cause standard" for obtaining a warrant, but declined to do so through the judiciary.[28]

Less than five months after the *Pederson* decision, a radically altered section 570.15 was passed by the legislature and signed into law by Governor Bob Graham in December, 1979.[29] The statute contained a unique scheme for accomodating the special demands of the administrative agricultural searches. Subject to inspection under the statute were vehicles other than passenger cars and recreational vehicles which were used or could be used to transport agricultural products.[30] In addition, if a road guard was denied permission to inspect a vehicle, a warrant would be issued upon a showing of three factors: (1) that the road guard had reason to believe the vehicle was of the type subject to inspection under the statute, (2) that the driver was given notice to stop for inspection, and (3) that the driver refused to consent to the search.[31] It was this version of section 570.15 that was to be first challenged—and challenged successfully—in *Lake Butler*.

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24. *Pederson*, 373 So. 2d at 369.

25. 387 U.S. 523 (1967).

26. *Pederson*, 373 So. 2d at 369.

27. *Id.*

28. *Id.* In addition to the court's comment in *Pederson*, on at least two prior occasions in 1979 the court had similarly prompted the legislature to amend § 570.15. *See* Rose v. State, 369 So. 2d 447, 449 (Fla. 1st DCA 1979) (quoting *Miller*); Miller v. State, 368 So. 2d 943, 944 (Fla. 1st DCA 1979) (the "subject is one that is ripe for legislative consideration.").

29. Ch. 79-587, § 1, 1980 Fla. Laws 14, 15 (current version at FLA. STAT. § 570.15(1) (1981)).

30. Ch. 79-587, § (1)(a), 1980 Fla. Laws 14 (current version at FLA. STAT. § 570.15(1)(a) (1981)).

31. Ch. 79-587, § (1)(b), 1980 Fla. Laws 14 (current version at FLA. STAT. § 570.15(1)(b) (1981)).

III. THE *Lake Butler* DECISION

In *Lake Butler,* the plaintiffs were corporations and individuals involved in the transportation of textiles between factories in Georgia and Florida.[32] On four separate occasions the plaintiffs' trucks were searched at agricultural inspection stations pursuant to section 570.15.[33] Additionally, in one instance a truck was stopped and detained for two and one-half hours before being released, but no warrant was obtained and no search was conducted.[34] The plaintiffs brought an action for declaratory judgment, injunctive relief and damages, claiming their fourth amendment rights were violated by the inspection process.[35] The claims for damages were settled prior to final adjudication and thus the district court was left to address the remaining questions surrounding the constitutionality of section 570.15.[36]

The court prefaced its analysis with a finding that most vehicles passing through the inspection stations were neither detained nor searched, and those that were targeted for inspection were done so at the "unguided discretion of the Road Guards. . . ."[37] Choosing the Constitution as the proper starting point for its inquiry, the court began by citing the simple language of the fourth amendment.[38] A literal reading of the fourth amendment reveals that it contains two edicts: the citizenry will be protected from unreasonable search and seizure, and a warrant to search will only be issued upon a showing of probable cause.[39] Thus, whenever a search or seizure occurs it must meet the constitutional requirement of reasonableness.[40] But when a search is made pursuant to a warrant it must be both reasonable *and* based on probable cause.[41] This dis-

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32. *Lake Butler,* 551 F. Supp. at 903 (M.D. Fla. 1982).
33. *Id.* at 904.
34. *Id.*
35. *Id.* at 902.
36. *Id.* at 904.
37. *Id.*
38. The fourth amendment provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrant 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.

39. *Id.*
40. *Camara,* 387 U.S. at 539 ("reasonableness is still the ultimate standard.").
41. Although there are several theories surrounding the interrelationship between the warrant clause and the reasonableness clause, this interpretation "comes closest to describ-

tinction is significant to the *Lake Butler* opinion. The district court's analysis regarded the inspection process as a combination of two distinct constitutional events: the stop or detention of the vehicle and the subsequent search. The stops were made without warrants; the searches were conducted pursuant to warrants as required by section 570.15. In evaluating the constitutionality of the agricultural inspections, the court necessarily followed two separate lines of inquiry.

The stops were analyzed in the framework of Supreme Court cases dealing with the warrantless detention of vehicles.[42] In determining the validity of the searches made under section 570.15, the *Lake Butler* court looked to the body of case law concerned with administrative search warrants for guidance.[43] Accordingly, this note will afford those areas of the law separate examination.

A. Stops and Detentions Under Section 570.15

By recognizing that the stop and detention of vehicles under section 570.15 implicated constitutional guarantees, the *Lake Butler* court simply underscored an established concept of fourth amendment jurisprudence. As early as 1925, the Supreme Court in *Carroll* acknowledged the right to "free passage without interruption" in a vehicle.[44] In *Delaware v. Prouse*,[45] the Court noted that "stopping an automobile and detaining its occupants constitute a 'seizure' within the meaning of [the fourth amendment], even though the purpose of the stop is limited and the resulting detention quite brief."[46]

In *Lake Butler*, the district court addressed the constitutionality of stops and detentions made under section 570.15 in one sentence.[47] Citing *United States v. Martinez-Fuerte*,[48] the court sim-

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ing the Court's present theory of the fourth amendment." Comment, *Considering the Two-Tier Model of the Fourth Amendment*, 31 AM. U.L. REV. 85, 92 n. 34 (1981). Other interpretations include: (1) the warrant clause and the reasonableness clause are to be read together, making any warrantless search unreasonable; (2) the reasonableness clause is included to ensure the searches conducted pursuant to a warrant meet an additional requirement of reasonableness; (3) the warrant clause is controlling, and any intrusion performed under warrant is per se reasonable. *Id.* at 91-92.

42. *Lake Butler*, 551 F. Supp. at 905.
43. *Id.* at 905-07.
44. *Carroll*, 267 U.S. at 154.
45. 440 U.S. 648 (1979).
46. *Id.* at 653.
47. *Lake Butler*, 551 F. Supp. at 905.
48. 428 U.S. 543 (1976).

ply concluded that "in the case of fixed checkpoints maintained by law enforcement officers . . . vehicles may be stopped for a brief period of time without probable cause or even a reasonable suspicion."[49] The court's statement seems to be an accurate recitation of the *Martinez-Fuerte* rule.[50]

In fact, a more extensive analysis indicates that the stops made pursuant to section 570.15 are perhaps more reasonable than those at issue in *Martinez-Fuerte*. In that case, the Court was faced with determining the constitutionality of checkpoint stops of vehicles made in the absence of any individualized suspicion that the occupants of the vehicle had committed a crime.[51] A fixed checkpoint was established along a major highway in California in an effort to intercept illegal aliens.[52] All vehicles were required to slow to a virtual halt for a cursory visual examination by law enforcement officers.[53] If a vehicle or its occupants seemed deserving of a more thorough examination, the vehicle was directed to a secondary inspection area.[54] There, the occupants were questioned about their residency status for three to five minutes.[55]

The *Martinez-Fuerte* Court employed a balancing analysis in evaluating the stops and detentions. Reasonableness was determined by weighing "the public interest against the Fourth Amendment interest of the individual."[56] The public interest served by the checkpoint screening for illegal aliens was found to be substantial.[57] Factors given weight in determining the intrusiveness of the

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49. 551 F. Supp. at 905. Although the district court in *Lake Butler* found that "brief" stops are constitutionally permissibile under the agricultural inspection program, challenges to individual instances of excessive detention should receive close judicial scrutiny. Certainly the two and one-half hour detention of one plaintiff in *Lake Butler* would remove it from the realm of the "reasonable" three to five minute detentions in *Martinez-Fuerte*. 428 U.S. at 547.

The excessive detention in *Lake Butler* is not unprecedented in the history of the inspection program. In Seuss v. State, 370 So. 2d 1203 (Fla. 1st DCA 1979), the plaintiff, after refusing to consent to a search of his vehicle, was detained for over an hour while a road guard repeatedly requested that he open the camper top to his pickup truck. The court found that under the circumstances, the plaintiff's eventual consent to the search was not freely and voluntarily given. *Id.* at 1204.

50. *See Martinez-Fuerte*, 428 U.S. at 562.

51. *Id.* at 547.

52. *Id.* at 545-46.

53. *Id.* at 546.

54. *Id.*

55. *Id.* at 546-47.

56. *Id.* at 555.

57. *Id.* at 556.

search included the type of traffic-checking operation,[58] the potential for interference with legitimate traffic,[59] the amount of discretion used by the inspectors,[60] and the amount of suspicion required to detain a vehicle.[61]

The Court found that permanent checkpoint stops are less intrusive than those made by roving patrols because "the motorist can see that other vehicles are being stopped, he can see visible signs of the officers' authority, and he is much less likely to be frightened or annoyed."[62] "[I]nterference with legitimate traffic is minimal [because] [m]otorists using these highways are not taken by surprise as they know, or may obtain knowledge of, the location of the checkpoints and will not be stopped elsewhere."[63] Since "[t]he location of a fixed checkpoint is not chosen by officers in the field . . . checkpoint operations both appear to and actually involve less discretionary enforcement activity" because the inspection officers are limited to checking only those cars which pass the checkpoint.[64] The intrusion in the stopping of vehicles, and even in detaining them in the secondary inspection area, was "sufficiently minimal that no particularized reason need exist to justify it."[65]

An application of the *Martinez-Fuerte* Court's analysis to stops and detentions made pursuant to section 570.15 logically yields a finding of reasonableness. State interests served by the agricultural inspection stations are substantial.[66] Like the detentions in *Martinez-Fuerte,* the *Lake Butler* stops were made at permanent inspection stations. The agricultural inspections interfere with legitimate traffic even less than the *Martinez-Fuerte* checkpoint investigations because section 570.15 exempts passenger cars and RV vehicles from its provisions.[67] Although the *Lake Butler* court found detentions were made at the "unguided discretion of the Road Guards,"[68] the Supreme Court's rationale would suggest that because the road guards were limited to checking only those vehicles which passed the stations—and then to only certain legisla-

58. *Id.* at 558.
59. *Id.* at 558-59.
60. *Id.* at 559.
61. *Id.* at 560-62.
62. *Id.* at 558 (quoting United States v. Ortiz, 422 U.S. 891, 894-95 (1975)).
63. *Martinez-Fuerte* 428 U.S. at 559.
64. *Id.*
65. *Id.* at 563.
66. *See supra* note 3.
67. *See* FLA. STAT. § 570.15(1)(1982). *Supra* note 14.
68. *Lake Butler,* 551 F. Supp. at 904.

tively-defined classes of vehicles—the stops made pursuant to section 570.15 were actually less discretionary than those in *Martinez-Fuerte*. The absence of a probable cause requirement for stopping vehicles under section 570.15 simply mirrored the facts of *Martinez-Fuerte*. In the aggregate, the intrusions imposed by stops and detentions under section 570.15 clearly seem to be outweighed by the public interest in the continued security of Florida's agricultural market.

B. Searches Under Section 570.15

In evaluating the searches made pursuant to section 570.15, the *Lake Butler* court primarily relied on the Supreme Court cases of *Camara v. Municipal Court*,[69] and *Marshall v. Barlow's, Inc.*[70] to render its decision.

Camara exists as the vehicle through which the Supreme Court first introduced current concepts of administrative search law. Refusing to uphold the constitutionality of warrantless housing inspections, the Court found that the fourth amendment mandate of reasonableness requires that regulatory health inspections of private dwellings be conducted pursuant to a warrant.[71] However, the Court noted that "[w]here considerations of health and safety are involved, the facts that would justify an inference of 'probable cause' to make an inspection are clearly different than those that would justify such an inference where a criminal investigation has been undertaken."[72] In the context of building inspections, probable cause need not be based on "specific knowledge of the condition of the particular dwelling" but instead on "reasonable legislative or administrative standards" which would indicate the dwelling has a heightened potential for code violations.[73] Thus, under *Camara*, unless the search to be conducted falls under a recognized exception to the warrant rule,[74] regulatory inspections

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69. 387 U.S. 523 (1967).

70. 436 U.S. 307 (1978).

71. *Camara*, 387 U.S. at 534. In the companion case to *Camara*, See v. City of Seattle, 387 U.S. 541 (1967), the Court held that private commercial buildings also deserve the protection afforded by an administrative search warrant. *Id.* at 545.

72. *Camara*, 387 U.S. at 538.

73. *Id.*

74. In *Camara*, the Court cautioned that "nothing we say today is intended to foreclose prompt inspections, even without a warrant, that the law has traditionally upheld in emergency situations." *Id.* at 539. Section 570.15 is not a quarantine statute and so does not fall under the "emergency inspection" exception. *See* State v. Bailey, 586 P.2d 648 (Ariz. Ct. App. 1978) (warrantless search of vehicle made pursuant to Arizona quarantine law upheld

must be conducted pursuant to a warrant and the warrant must be based at a minimum on administrative probable cause. Clearly, the searches in *Lake Butler* met the first requirement. In order to evaluate the second requirement, the district court reviewed an elaboration of the *Camara* standards in the more recent case of *Marshall v. Barlow's.*[75]

The *Lake Butler* court's frequent references to *Marshall v. Barlow's* suggest its importance in the analysis of section 570.15. In *Marshall v. Barlow's,* the Court addressed the constitutionality of the warrantless safety inspections of businesses conducted pursuant to the Occupational Safety and Health Act.[76] The Court rejected the arguments that the effectiveness of the Act would be unduly burdened by the warrant requirement[77] and that "the incremental protections afforded the employer's privacy by a warrant are so marginal that they fail to justify the administrative burdens that may be entailed."[78] As for the administrative burden in securing a warrant, the Court noted that "[p]robable cause in the criminal law sense is not required."[79] At the same time, a warrant "would provide assurances from a neutral officer that the inspection is reasonable under the Constitution, is authorized by statute, and is pursuant to an administrative plan containing specific neutral criteria."[80] Thus, reasonableness flows from the adherence of the "neutral officer" to the warrant procedure and his resultant inability to exercise "unbridled discretion" in the field.[81]

Applying the Court's rule to the agricultural inspection statute, the district court in *Lake Butler* found that section 570.15 failed to provide neutral criteria "for the guidance of Road Guards in the selection of vehicles to be searched, or for the guidance of judicial officers in issuing warrants for such searches" and was thus "insuf-

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as constitutional.)

Another exception to the warrant requirement exists in the context of regulatory inspections. In pervasively regulated industries with "a long tradition of close government supervision" no reasonable expectation of privacy exists "over the stock of such an enterprise" and warrantless searches are reasonable. Marshall v. Barlow's, 436 U.S. at 313. *See* United States v. Biswell, 406 U.S. 311 (1972) (firearms business exception to warrant requirement); Colonnade Catering Corp. v. United States, 397 U.S. 72 (1970) (liquor business exception to warrant requirement.)

75. 436 U.S. 307 (1978).
76. *Id.*
77. *Id.* at 316.
78. *Id.* at 322.
79. *Id.* at 320.
80. *Id.* at 323.
81. *Id.*

ficient to satisfy the Fourth Amendment requirement of 'probable cause' as interpreted in *Marshall v. Barlow's.*"[82]

Yet, on its face, section 570.15 specifically lists the criteria that must be present to procure a warrant,[83] and in the absence of those criteria (or presumably, a showing of traditional probable cause) a warrant would not issue. On a very literal level, the road guards did not enjoy unbridled discretion, but were generally limited to conducting vehicular searches when they had either consent to search or had obtained a warrant pursuant to the statute's warrant provision. Additionally, it is difficult to say that the warrant provision itself was overbroad, for it in fact pertained to only a very narrow class of vehicles: those subject to inspection under the statute which had been given notice to stop and to which the road guards had been denied access.[84] And therein lies the exquisite logic of the warrant provision. By making the assertion of fourth amendment rights one of the neutral criteria, the power to conduct a non-consensual search was triggered only when consent to search was withheld. Thus, the road guards were limited to searching in only two situations: when they had consent to search and when they did not. Obviously, these are limitations without meaning. And, as the *Lake Butler* court noted, the "mere showing that [the warrant requirements were] sufficient to satisfy the statute, is insufficient to satisfy the Fourth Amendment."[85]

IV. AFTERMATH

The *Lake Butler* decision was handed down in November, 1982.[86] The Department of Agriculture was left with a limited number of options: appeal the decision, re-write the warrant provision to include meaningful neutral criteria for establishing administrative probable cause, or neither appeal nor amend the statute but instead search pursuant to the traditional probable cause standard. The Department chose the second option. In May, 1983, a newly amended version of section 570.15 was approved by the House Judiciary Committee.[87] Included in the warrant provision is a new requirement that any vehicle to be searched pursuant to an administrative search warrant must be selected according to spe-

82. *Lake Butler*, 551 F. Supp. at 907.
83. *See* FLA. STAT. § 570.15(1)(1981).
84. *Id.*
85. *Lake Butler*, 551 F. Supp. at 907.
86. *Id.* at 901.
87. FLA. H.R. JOUR. 384 (Reg. Sess. May 12, 1983)

cific neutral criteria established by Department of Agriculture rules.[88]

V. CONCLUSION

The unique warrant provision of Florida's agricultural inspection law attempted to circumvent the purposes of the fourth amendment while facially adhering to the requirements of administrative probable cause as set out in *Marshall v. Barlow's*. It is undisputed that the warrant provision was enacted to serve important state interests. Yet, at the same time, fourth amendment rights should not be sacrificed in the name of administrative expedience. That more reasonable alternatives were available, and should have been employed, is evidenced by the state's decision to forego appeal and formulate new inspection guidelines.

If history is any indication, the most recent version of section 570.15 will surely be challenged in the courts. If, as the Supreme Court has said, "[t]he basic purpose of [the fourth amendment] . . . is to safeguard the privacy and security of individuals against arbitrary invasions by governmental officials,"[89] then the new regulations, by providing realistic constraints on the discretion of the road guards, should withstand the inevitable challenge.

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88. Fla. HB 310, 51(b)(2) (1983).
89. *Camara*, 387 U.S. at 528.