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March 9, 2009

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Honorable Chief Justice and Associate Justices
Supreme Court of New Jersey
Richard J. Hughes Justice Complex
Trenton, New Jersey 08625

Re: State v. Juan Pena-Flores, et al.
Docket No. 60,886

State v. Charles Fuller
Docket No. 60,986

Your Honors:

We urge this Court to postpone application of the exigency analysis enunciated by the Court in these consolidated cases until the procedural changes identified by the Court, namely a Statewide telephonic warrant system, are implemented. Slip op. at 34-35. Without such action, and until a telephonic warrant system is in place, the Court's decision leaves the State with a Hobson's choice: whether to routinely impound vehicles and detain suspects for lengthy periods of time or whether to stop effectively policing our streets.

This request is necessary because the Court discussed exigent circumstances such that law enforcement officers conducting motor vehicle stops will be more likely to secure the vehicle and detain the occupants while they attempt to obtain a



warrant. Until telephonic warrants are a realistic possibility, the result will be increased burdens on law enforcement officers, judges, motorists, and occupants. The only and entirely unacceptable alternative would be diminished enforcement to the detriment of public safety, with less vehicles searched despite the existence of probable cause. The State, therefore, requests that this Court postpone the implementation of its holding while at the same time moving as expeditiously as possible toward implementing a Statewide telephonic warrant system.

We recognize that a number of practical and logistical issues require resolution before telephonic and electronic warrants can become a "vibrant part of our process." Slip op. at 39. Indeed, this Court acknowledged as much when it established the Task Force, made up of representatives of the Attorney General, the Prosecutors, the Public Defender, the defense bar, and the judiciary "to address the practical issues in obtaining telephonic and electronic warrants."¹ Ibid. As the Court directed, the Task Force's study will "include recommendations for uniform procedures (including forms), equipment, and training, along with an evaluation of the scheme once it is underway." Ibid. (emphasis added to underscore that carefully

1 We note that there are no police representatives on the list of anticipated participants in the Task Force. We submit that police will be in a unique position to offer highly useful, practical information to the Task Force, and should actively participate in the problem identification and problem solving process, just as they contributed to the work of the Special Committee on Recordation of Custodial Interrogations established by this Court in State v. Cook, 179 N.J. 533 (2004).

crafted telephonic warrant scheme has not yet been developed or implemented). All of this recognizes that the infrastructure for obtaining telephonic warrants at all, let alone on a scale sufficient to handle the potentially thousands of cases arising out of motor vehicle stops, not only does not exist at present, but will undoubtedly take some time before it is in place.

The task at hand in implementing a telephonic warrant scheme as envisioned in the Court's opinion is unprecedented. Indeed, the State is not aware of any other jurisdiction that has established a local system, much less a statewide system, to use telephonic warrants during unplanned roadside encounters. Even the San Diego program referenced in the Court's opinion did not involve unexpected roadside encounters, but rather, dealt with warrant applications for planned narcotics operations.² Accordingly, until the telephonic warrant system is actually implemented, this Court should not impose an unrealistic burden upon law enforcement officers.

Furthermore, the State's request is consistent with the approach this Court has taken in similar cases. Specifically, when this Court in State v. Cook established a Committee to

² In the San Diego search warrant project, "the overwhelming majority of search warrants (89%) were directed at private homes." Laurence A. Benner & Charles T. Samarkos, Searching for Narcotics in San Diego: Preliminary Findings from the San Diego Search Warrant Project, 36 Cal. W. L. Rev. 221, 229 (2000). Furthermore, the authors made clear that "[n]o search warrant was obtained exclusively to search only an automobile." Id. at 229, n.28 (reasoning that United States Supreme Court decisions have "repeatedly held that a search warrant is not necessary to search or seize a car which is readily mobile if there is probable cause to search") (citing to Pennsylvania v. Labron).

develop procedures for recording police stationhouse interrogations, it did not change the rules, or expect police to change their practices, until after the Committee had completed its work. 179 N.J. 533, 561-62 (2004). Even then, the recordation requirement was imposed in stages. See R. 3:17 (effective January 1, 2006 in respect of homicide cases, and January 1, 2007 in respect of all other offenses encompassed by Rule). In other words, the Court gave law enforcement agencies an opportunity to develop and implement a system before they were expected to record custodial interrogations. So, too, with respect to telephonic warrants, courts should not reasonably expect law enforcement officers to operate under new rules until the procedures, equipment, and training recommended by the new Task Force are in place.

That said, the State urges the Court to move with dispatch in establishing this Task Force and setting a timetable for the filing of recommendations and the implementation of the system. The urgency of the charge to the Task Force should be commensurate with the need to make telephonic warrants a realistic tool as quickly as possible. For its part, the State commits to do everything it can to ensure that this is achieved.

Moreover, a telephonic warrant system that becomes operational as soon as possible is vital to mitigate against the adverse consequences that will result if the Court does not postpone implementation of its holding. In particular, there

will be an increase in the number of cases where a warrant is sought because, although the Court stated that "[e]xigency must be determined on a case-by-case basis," slip op. at 28, the most frequently recurring factors deemed relevant by the Court in finding exigency weigh heavily against such a finding in the typical, unanticipated motor vehicle stop. For example, "a low ratio of officers to suspects and the lack of available backup" - while recognized by the Court as supporting a finding of exigency, slip op. at 31, - are two factors that law enforcement officers always take every effort to minimize to ensure their safety as well as that of the individuals stopped. Likewise, a motor vehicle stop conducted in such a way to satisfy another factor noted by the court, failing to secure an occupant, is inimical to officer safety, which the Court acknowledges is one of the "preeminent determinants of exigency." Slip op. at 27-28. Hence, very real concerns for officer safety require that an officer purposely avoid satisfying several of the factors relevant to the Court's exigency determination. Taken together with the ambiguity presented by the other factors articulated by the Court, the result is that in many motor vehicle stops where probable cause develops spontaneously, police officers may not proceed under the automobile exception, but rather, will seek to secure a warrant.

An increase in the number of warrants sought will result in greater burdens for law enforcement officers, judges and

suspected motorists until a telephonic warrant system is in place. This Court implicitly recognized as much in the Fuller case when it explained that there was no exigency because "[t]he vehicle could have been impounded or one officer could have remained with it while a warrant was sought by telephone or in person." Slip op. at 34. As discussed above, however, seeking a warrant by telephone was not a realistic option, nor is it today. Consequently, the only remaining and acceptable option is to arrest the occupants and impound the vehicle while the officers seek an in-person warrant. That will impose heavy burdens upon the drivers and passengers who must wait in a holding cell while an officer seeks the warrant.

In addition, securing the vehicle at the scene is not realistic in the numerous cases where the stop occurs on the shoulder of a heavily traveled road. Under those conditions, the risk of injury to both the officers and the individuals stopped is too great to justify remaining at the scene while an officer attempts to secure an in-person warrant.

Finally, the need to implement a telephonic warrant system as soon as possible is critical to avoid a criminal justice system unable to accommodate the demands imposed by this Court's opinion. Simply put, the practical effect of the Court's opinion - increased uncertainty and ambiguity in the permissibility of a warrantless search and a concomitant increase in officers seeking to obtain a warrant - may, absent an effective and efficient system to obtain a telephonic

warrant, cause law enforcement officers to forego seeking warrants as the length of time that vehicles are impounded and motorists detained grows. Any potential diminished enforcement would occur to the detriment of public safety, as such decisions will not result from a lack of probable cause. As it is, the number of cases where uncertainty and ambiguity may compel an officer to obtain a warrant will necessary result in officers spending more time impounding or securing vehicles and awaiting the return of a warrant rather than carrying out their duties to protect the public.

In sum, the State will, of course, continue to work with prosecutors and law enforcement officers to align practices and procedures to the holding, consistent with officer safety, the safety and rights of individuals stopped, and the successful detection and prosecution of criminal offenses. Nevertheless, the standard adopted by the Court for assessing the exigency required to justify a search under the automobile exception will make it difficult, if not impossible, for law enforcement officers to understand whether they may proceed under the exception or should seek a warrant; will, thus, increase the need to obtain warrants as officers will not want to risk the suppression of contraband or other evidence of a crime or lead to lack of effective policing in our communities; and, as a result, will impose a heavy burden upon law enforcement officers, judges, and suspected motorists. Those burdens upon the officers, judges, and motorists will only increase if the

Court's holding is not postponed until a Statewide telephonic warrant system is in place. At the same time, we urge the Court to act as expeditiously as possible in implementing a telephonic warrant system.

Respectfully Submitted,



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