You Ride With 'Em, You Die With 'Em: A Look at *Maryland v. Pringle* and the United States Supreme Court's Implementation of Probable Cause by Association [*Maryland v. Pringle*, 540 U.S. 366, 124 S. Ct. 795 (2003)]

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"In law, as in life, a person to a degree may be judged by the company they keep . . . ."[1]

I. Introduction

In *Maryland v. Pringle*,[2] the United States Supreme Court incorrectly held that when police find drugs in a car, probable cause exists to believe any passenger in the car possesses the drugs.[3] This case is significant because the Court has modified the probable cause standard, which provides room for great abuse. By its nature, this case examines the Fourth Amendment right to be free from unreasonable searches and seizures. In particular, the case further defines what constitutes sufficient probable cause for an arrest.

This comment will explore the definition of probable cause and examine the present application and potential effects of the *Maryland v. Pringle* decision. In addition, it will examine whether probable cause exists to believe that a passenger sitting in the front seat of a car can be in possession of cocaine located in the back-seat armrest of the car. It will also analyze the substantive rules regarding probable cause since *Maryland v. Pringle*, specifically what changes have been made to the requirement that individualized probable cause exists for each suspect. Finally, the comment will examine possible effects of the ruling on future probable cause determinations.

In order to reach the appropriate conclusion, two specific sub-issues must be addressed: first, when individualized suspicion must be used to determine if probable cause exists for an arrest; and second,

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1. Mena v. City of Simi Valley, 354 F.3d 1015, 1020 (9th Cir. 2004) (Gould, J., dissenting) (citing Maryland v. Pringle, 124 S. Ct. 795 (2003)).
2. 124 S. Ct. 795 (2003).
3. *See id.* at 799-801.

whether the probable cause standard can be precisely defined or quantified.

Because the United States Supreme Court erroneously relaxed the individualized suspicion requirement, *Maryland v. Pringle* has effectively implemented probable cause by association. In addition, it has mandated a standard of responsibility that courts should not impose upon the people. As a result, this decision will disturb the balance between the pursuit of justice and the necessary protection of individual freedoms.

II. Case Description

At 3:16 a.m. on August 7, 1999, Officer Jeffrey Snyder stopped Donte Partlow for speeding.[4] Joseph Jermaine Pringle was the front-seat passenger.[5] Otis Smith, a third passenger, was riding in the back seat.[6] Officer Snyder observed a large amount of rolled-up cash when Partlow opened the glove compartment to obtain his registration.[7] Snyder returned to his vehicle to check the license and registration.[8] He found no outstanding warrants, but upon returning the documents to Partlow, he asked if there were any drugs or weapons in the car.[9]

Partlow responded that there were not, but consented to a search of the vehicle.[10] Officer Snyder searched the vehicle and discovered $763, the cash he saw while the glove compartment was open.[11] Searching the back seat, Snyder found five glassine baggies of cocaine hidden behind the upright armrest.[12] Snyder asked the three men to whom the cocaine and cash belonged.[13] Officer Snyder threatened to arrest all three if no one claimed responsibility, but no one did.[14] Consequently, all three men were arrested.[15] At the police station, Pringle waived his *Miranda* rights and confessed to ownership of the drugs.[16] Partlow and Smith were released.[17]

4. *Id.* at 798.
5. *Id.*
6. *Id.*
7. *Id.*
8. *Id.*
9. *Id.*
10. *Id.*
11. *Id.*
12. *Id.*
13. *Id.*
14. *Id.*
15. *Id.*
16. *Id.*
17. *Id.*

A. *Circuit Court for Baltimore County*

At trial, Pringle's attorney moved to suppress the confession, arguing the arrest was not supported by probable cause.[18] In an unpublished opinion, the Circuit Court for Baltimore County denied Pringle's motion to suppress.[19] A jury found Pringle guilty of possession of cocaine and possession with the intent to distribute cocaine.[20]

B. *Court of Special Appeals of Maryland*

The Court of Special Appeals of Maryland affirmed the trial court's denial of Pringle's motion to suppress.[21] The court addressed the *Folk* test, announced by the Maryland Special Court of Appeals in *Folk v. State.*[22] The test considers four factors to determine whether probable cause exists:

> 1.) proximity between the defendant and the contraband,
> 2.) the fact that the contraband was within the view or otherwise within the knowledge of the defendant,
> 3.) ownership or some possessory right in the premises or the automobile in which the contraband is found, or
> 4.) the presence of circumstances from which a reasonable inference could be drawn that the defendant was participating with others in the mutual use and enjoyment of the contraband.[23]

In *Folk v. State*, the appellant was one of six passengers in a vehicle in which one of the car's occupants was smoking marijuana.[24] The court denied Folk's motion to suppress the marijuana, stating that the appellant "could not be closer, short of direct proof that the appellant herself was in exclusive physical possession of the marijuana . . . . Proximity could not be more clearly established."[25]

While the Court of Special Appeals of Maryland quoted the *Folk* test, it did not apply it to the facts in *Pringle*.[26] Instead, the court implied that proximity within the car was sufficient to establish probable cause.[27] The court did not reconcile the fact that, unlike the visible marijuana in *Folk*, the cocaine in *Pringle* was hidden; however, the court also cited *Colin v. State*[28] and *Pugh v. State*,[29] in which the *Folk*

18. *Id.* at 799.
19. *Id.*
20. *Id.*
21. Pringle v. Maryland, 785 A.2d 790, 800 (Md. Ct. Spec. App. 2001).
22. *Id.* at 797-98 (citing Folk v. State, 275 A.2d 184 (Md. Ct. Spec. App. 1971)).
23. *Id.* at 797.
24. *Folk*, 275 A.2d at 185.
25. *Id.* at 189.
26. *Pringle*, 785 A.2d at 797-98.
27. *Id.* (discussing only the first element, proximity, of the *Folk* test in its analysis of whether probable cause existed to arrest Pringle).
28. 646 A.2d 1095 (Md. Ct. Spec. App. 1994).
29. 654 A.2d 888 (Md. Ct. Spec. App. 1995).

test was used to determine that certain defendants were in possession of contraband that was hidden within a vehicle.[30]

C. *Court of Appeals of Maryland*

The Court of Appeals of Maryland reversed the lower court's ruling, stating that "the mere finding of cocaine in the back armrest when [Pringle] was a front-seat passenger in a car being driven by its owner is insufficient to establish probable cause for an arrest for possession."[31] The court relied on *Livingston v. State*[32] and *Collins v. State*[33] for the premise that mere proximity to incriminating evidence cannot establish probable cause.[34]

In *Livingston*, the defendant was one of three people riding in a car that was stopped for speeding.[35] The defendant was riding in the back seat.[36] During the stop, a state trooper noticed marijuana seeds on the floor of the front passenger seat.[37] The officer arrested all three passengers, but the Maryland Court of Appeals found that the officer lacked probable cause because there was insufficient evidence to inculpate Livingston.[38]

Similarly, in *Collins*, an officer approached five men standing approximately five feet from a vehicle.[39] The officer saw a film canister on the back seat of the vehicle and asked one of the men to retrieve it.[40] The officer found cellophane packets of cocaine inside the canister.[41] All five men were arrested; however, the Maryland Court of Appeals held that the presence of the cocaine was not legally sufficient evidence to uphold a finding of probable cause for arrest because Collins was standing outside the vehicle.[42]

D. *United States Supreme Court*

The State of Maryland prevailed in a unanimous opinion delivered by Chief Justice William H. Rehnquist.[43] The Court reversed the ruling of the Court of Appeals of Maryland, stating that when cocaine is found hidden in the back-seat armrest of a car, an officer may reasonably infer that any or all of the vehicle's occupants had possession

30. *Pringle*, 785 A.2d. at 797-98 (citing *Pugh*, 654 A.2d 888; *Colin*, 646 A.2d 1095).
31. Pringle v. Maryland, 805 A.2d 1016, 1027 (Md. 2002).
32. 564 A.2d 414 (Md. 1989).
33. 589 A.2d 479 (Md. 1991).
34. *Pringle*, 805 A.2d at 1026-28.
35. *Livingston*, 564 A.2d at 415.
36. *Id.*
37. *Id.*
38. *Id.* at 418.
39. *See* Collins v. State, 589 A.2d 479, 480 (Md. 1991).
40. *Id.*
41. *Id.*
42. *Id.* at 482.
43. Maryland v. Pringle, 124 S. Ct 795, 798 (2003).

of the cocaine.[44] The Court held that the evidence was sufficient to support a finding of probable cause to believe that Pringle had committed the crime of possession, either solely or jointly with the other occupants of the vehicle.[45]

III. Background

The Fourth Amendment has long stood as the paramount barrier that protects citizens from abusive and coercive police tactics.[46] It 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 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.[47]

Specifically, the Fourth Amendment mandates that law enforcement must have both probable cause and a warrant prior to making an arrest.[48] Probable cause is the standard to which the Framers of the Constitution decided to hold law enforcement officers.[49]

The probable cause standard has been interpreted in many ways, but the effect has always remained the same: "If police conduct a search or seizure without probable cause, the search or seizure violates the commands of the [F]ourth [A]mendment and is therefore unconstitutional."[50] To understand the Court's decision in *Maryland v. Pringle,* it is important to examine the elements required for a lawful arrest, as well as the laws and core cases which have molded the present definition of the probable cause standard.

A. *Probable Cause*

1. Probable Cause as a Fluid Concept

Black's Law Dictionary defines "probable" as "[h]aving more evidence for than against; supported by evidence which inclines the

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44. *Id.* at 800-01.
45. *Id.*
46. Brinegar v. United States, 338 U.S. 160, 176 (1949) (stating that probable cause protects "citizens from rash and unreasonable interferences with privacy and from unfounded charges of crime," while giving "fair leeway for enforcing the law in the community's protection").
47. U.S. Const. amend. IV.
48. Mapp v. Ohio, 367 U.S. 643, 647 (1961).
49. Timothy R. Lohraff, Note, United States v. Leon *and* Illinois v. Gates*: A Call For State Courts to Develop State Constitutional Law*, 1987 U. Ill. L. Rev. 311, 315.

> Probable cause is the device the [F]ramers of the United States Constitution chose to balance privacy rights against the state's duty to enforce the law. The [F]ramers patterned the [F]ourth [A]mendment requirements on several state constitutional provisions, adopting the same concerns and ideals. The colonists sought to prevent government agents from searching and seizing property under legal general warrants and writs of assistance.

Id.

50. *See id.* at 314-15.

mind to believe, but leaves some room for doubt; likely."[51] The language "having more evidence for than against" and "likely" indicate that "probable" means more possible than not possible. Thus, if the word "probable" is quantified, it likely would be more than 50%. Courts, however, have consistently held that the probable cause standard does not require a 50% likelihood that a suspect committed a crime.[52]

The same standards are used to determine if probable cause exists for searches and arrests.[53] In *Brinegar v. United States*,[54] the United States Supreme Court interpreted the probable cause standard as a "'practical nontechnical conception' that deals with 'the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.'"[55] Thus, courts take into account that probable cause is a flexible standard and cannot be clearly defined.[56]

When determining whether probable cause exists for an arrest, courts weigh the evidence leading up to an arrest from the perspective of an objectively reasonable police officer.[57] Moreover, the United States Supreme Court has held that the totality-of-the-circumstances test should be used to evaluate probable cause determinations.[58] This test considers as a whole all of the events leading up to the arrest to determine if probable cause existed.[59] Alternatively, if a court independently interpreted the events and circumstances leading up to an arrest, there could be a lesser chance that the court would find proba-

51. BLACK'S LAW DICTIONARY 1201 (6th ed. 1990).

52. *See* Samos Imex Corp. v. Nextel Communications, Inc., 194 F.3d 301, 303 (1st Cir. 1999).

> The phrase "probable cause" is used, in the narrow confines of Fourth Amendment precedent, to establish a standard less demanding than "more probable than not." For example, arrests—made long before all proof is assembled for a trial—can be justified as based on probable cause by showing a reasonable basis for belief that a suspect committed a crime; in many cases such a basis exists without a 50 percent-plus likelihood that the suspect is guilty.

Id.; *see also* United States v. Garcia*,* 179 F.3d 265, 269 (5th Cir. 1999).

53. *See* State v. Moore, 853 A.2d 903, 906 (N.J. 2004) (citing State v Smith, 713 A.2d 1033, 1038 (N.J. 1998)).

54. 338 U.S. 160 (1949).

55. Illinois v. Gates, 462 U.S. 213, 231 (1983) (quoting *Brinegar*, 338 U.S. at 175-76).

56. *See Brinegar*, 338 U.S. at 176 ("Room must be allowed for some mistakes," but "those mistakes must be those of reasonable men, acting on facts leading sensibly to their conclusions of probability" so that "law-abiding citizens [are not left] at the mercy of the officers' whim or caprice.").

57. Ornelas v. United States, 517 U.S. 690, 696 (1996). Such considerations take into account the officer's experience. *See* Johnson v. Hawe, No. 03-35057, 2004 U.S. App. LEXIS 18352, at *6-7 (9th Cir. Aug. 31, 2004) ("Probable cause exists when the arresting officer has a reasonable belief, evaluated in light of the officer's experience and the practical considerations of everyday life, that a crime has been, is being, or is about to be committed.") (internal quotation marks omitted).

58. *See Gates*, 462 U.S. at 230-31.

59. United States v. Fernandez-Castillo, 324 F.3d 1114, 1117 (9th Cir. 2003) (stating that under the totality-of-the-circumstances approach, "[a]ll relevant factors must be considered in the reasonable suspicion calculus—even those factors that, in a different context, might be entirely innocuous").

ble cause. Each element of evidence would be construed only in relation to itself, lessening its influence on the interpretation of the circumstances as a whole. The United States Supreme Court has stated that the "totality-of-the-circumstances approach is far more consistent with our prior treatment of probable cause than is any rigid demand that specific 'tests' be satisfied . . . ."[60]

2. The Requirement of Individualized Suspicion

The United States Supreme Court has repeatedly affirmed the idea that probable cause must be individualized with respect to each suspect.[61] Individualized suspicion ensures that any search or seizure is substantially related to the circumstances which initiated the intrusion.[62] This is achieved because the requirement "limits not only the circumstances under which the government may initiate actions," but also "the scope and details of the search or seizure."[63]

In the United States, the historical basis for the individualized suspicion requirement dates back to the Colonial Era.[64] In order to circumvent smuggling in the American colonies, the English Parliament allowed officers to enforce customs laws by issuing writs of assistance to search without suspicion.[65] The Massachusetts Assembly responded with a bill that required the writs to describe the particular person or place to be searched.[66] Although the bill was not enacted, public reaction to the writs spurred a great amount of disregard, and the seed of particularized suspicion was planted in American culture.[67]

Although individualized suspicion is required by the Fourth Amendment, the United States Supreme Court has taken different approaches to its application.[68] The core of the concept originated with cases that addressed association and proximity to others for

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60. *See Gates*, 462 U.S. at 230-31.
61. *See* United States v. Cortez, 449 U.S. 411, 418 (1981) ("Chief Justice Warren, speaking for the Court in *Terry v. Ohio*, said that '[this] demand for specificity in the information upon which police action is predicated is the central teaching of this Court's Fourth Amendment jurisprudence.'").
62. Thomas K. Clancy, *The Role of Individualized Suspicion in Assessing the Reasonableness of Searches and Seizures*, 25 U. MEM. L. REV. 483, 485 (1994).
63. *Id.*
64. *Id.* at 491-95.
65. *Id.* at 502-08.
66. *Id.* at 507.
67. *Id.* at 507-08.

> The core complaint of the colonists was not that the searches and seizures were warranted, warrantless, or unauthorized actions; it was the general, suspicionless nature of the searches and seizures . . . . As they sought to regulate searches and seizures, the [F]ramers held certain principles to be fundamental, of which particularized suspicion was in the first rank.

Id. at 528.
68. *See id.* at 522-23, 590.

which probable cause existed to support an arrest.[69] *Ybarra v. Illinois*[70] and *United States v. Di Re*[71] are two of the leading cases regarding the individualized suspicion requirement.

a. United States v. Di Re

United States v. Di Re is acknowledged as one of the leading United States Supreme Court opinions recognizing the requirement of individualized suspicion for probable cause.[72] In *Di Re,* a federal investigator learned from a police informant that the informant was going to obtain counterfeit gasoline ration coupons from a man named Buttitta.[73] The police investigator went to the specified place and witnessed Reed, the sole occupant of the rear seat of the car, holding the coupons.[74] Two other occupants were in the car: Buttitta in the driver's seat and Di Re in the front passenger's seat.[75] Reed informed the investigator that Buttitta had given him counterfeit coupons.[76] Thereupon, all three men were taken into custody and searched.[77] At the police station, Di Re was instructed to empty his pockets.[78] Upon doing so, two gasoline ration coupons appeared.[79] During Di Re's booking, an additional one hundred gasoline ration coupons were found hidden in his shirt.[80]

After noting that the officers had no information implicating Di Re and no information pointing to Di Re's possession of coupons unless his presence in the car warranted that inference, the Court concluded that the officer lacked probable cause to believe that Di Re was involved in the crime.[81] The police lacked any independent facts that particularly implicated Di Re's involvement in the illegal behavior, and thus, regardless of his proximity to the crimes being committed, probable cause did not exist to arrest him.[82]

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69. *See id.* at 538.

> The centrality of the role played by individualized suspicion as a prerequisite for an intrusion may find its strongest expression in cases discussing association as a basis for a search or seizure. It is not an infrequent situation where the person whom the police have probable cause to arrest is found in the company of another person who is unknown to the police or whom the police do not have prior cause to arrest.

Id.

70. 444 U.S. 85 (1979).
71. 332 U.S. 581 (1948).
72. Clancy, *supra* note 62, at 539.
73. *Di Re*, 332 U.S. at 583.
74. *Id.*
75. *Id.*
76. *Id.*
77. *Id.*
78. *Id.*
79. *Id.*
80. *Id.*
81. *See id.* at 592.
82. *See id.* at 593.

b. Ybarra v. Illinois

In *Ybarra v. Illinois*, police learned from a reliable informant that the bartender at the Aurora Tap Tavern had been seen in possession of heroin on multiple occasions.[83] The police obtained a warrant to search the tavern and its bartender for evidence of possession of a controlled substance.[84] Upon entering the tavern, the officers conducted a pat-down search of each customer.[85] Ybarra, a customer, was patted down twice; the second time, the officers discovered packets of heroin in his pocket.[86] Ybarra was indicted by a grand jury for unlawful possession of a controlled substance.[87] He moved to suppress the heroin found on his person.[88] The trial court held that the search was justified pursuant to an Illinois statute that authorized the police to "prevent the disposal or concealment of the things particularly described in the warrant."[89]

On appeal, the Illinois Appellate Court held that the search of Ybarra was constitutional because the search was conducted in a one-room bar and Ybarra was not an "innocent stranger having no connection with the premises."[90] The court reasoned that because the heroin was found in small tinfoil packages, Ybarra could have concealed the contraband, thus thwarting the purpose of the warrant.[91]

The United States Supreme Court reversed, finding that the search was unconstitutional because the police did not possess probable cause to search Ybarra at the time the warrant was issued.[92] The Court recognized that the warrant did not suggest that the bar was known to be frequented by persons attempting to purchase illegal substances or that anyone had ever witnessed any customers attempting to purchase heroin from the bartender.[93] Absent a suggestion other-

83. *See* Ybarra v. Illinois, 444 U.S. 85, 87-88 (1979).

84. *See id.* at 88.

> [T]he judge issued a warrant authorizing the search of the following person or place: . . . [The] Aurora Tap Tavern. . . . Also the person of "Greg," the bartender, a male white with blondish hair appx. 25 years. The warrant authorized the police to search for evidence of the offense of possession of a controlled substance, to wit, [heroin], contraband, other controlled substances, money, instrumentalities and narcotics, paraphernalia used in the manufacture, processing and distribution of controlled substances.

Id. (internal quotations omitted).

85. *See id.*

86. *See id.* at 88-89.

87. *See id.* at 89.

88. *See id.*

89. *See id.* The statute provided: "In the execution of the warrant the person executing the same may reasonably detain to search any person in the place at the time: (a) To protect himself from attack, or (b) To prevent the disposal or concealment of any instruments, articles or things particularly described in the warrant." *Id.* at 86.

90. State v. Ybarra, 373 N.E.2d 1013, 1016 (Ill. App. Ct. 1978).

91. *Id.*

92. *See Ybarra*, 444 U.S. at 90.

93. *See id.*

wise, the Court held that probable cause did not exist to believe that Ybarra was in possession of illegal substances.[94]

The Court's interpretation of the facts in *Ybarra* reinforced the requirement that probable cause must be individualized with respect to the person or place to be searched or seized.[95] The Court reasoned that

> a person's mere propinquity to others independently suspected of criminal activity does not, without more, give rise to probable cause to search that person. Where the standard is probable cause, a search or seizure of a person must be supported by probable cause particularized with respect to that person. This requirement cannot be undercut or avoided by simply pointing to the fact that coincidentally there exists probable cause to search or seize another or to search the premises where the person may happen to be.[96]

Although the United States Supreme Court has repeatedly used the individualized suspicion requirement in reviewing probable cause determinations, the requirement has slowly eroded since its inception.[97] The law has evolved to include exceptions to the individualized suspicion requirement, such as administrative searches and regulatory searches, including border searches and checkpoint stops.[98] These exceptions to the individualized suspicion requirement have been justified by weighing the degree of intrusiveness against the expectation of privacy interests.[99]

B. *Exclusionary Rule*

When law enforcement officers violate the Fourth Amendment's requirement that probable cause exist before an arrest, the Exclusionary Rule may provide a remedy.[100] Evidence that is obtained subsequent to a violation of the Fourth Amendment is the fruit of an illegal arrest and usually cannot be used against the defendant.[101] The Exclusionary Rule is not hard-and-fast, however.[102] If the officer who violated the amendment did so with the mistaken belief that she was

94. *See id.*
95. *See id.* at 91.
96. *See id.*
97. Clancy, *supra* note 62, at 546.
98. *Id.* at 560-73. "In recent years, however, the Supreme Court has sanctioned an increasing variety of suspicionless searches and seizures, and suspicionless intrusions now occur in many aspects of everyday life." *Id.* at 486.
99. Camara v. Mun. Court, 387 U.S. 523, 534-35 (1967).
100. United States v. Leon, 468 U.S. 897, 906-07 (1984) (stating that the purpose of the Exclusionary Rule is to safeguard the Fourth Amendment by deterring inappropriate police conduct).
101. Taylor v. Alabama, 457 U.S. 687, 690 (1982). "[A] confession obtained through custodial interrogation after an illegal arrest should be excluded unless intervening events break the causal connection between the illegal arrest and the confession so that the confession is 'sufficiently an act of free will to purge the primary taint.'" *Id.* (quoting Brown v. Illinois, 422 U.S. 590, 602 (1975)).
102. *See Leon*, 468 U.S. at 918-19.

authorized to take such action, the good faith exception allows for the admissibility of evidence even though it is obtained in violation of the Fourth Amendment.[103]

C. *The Warrant Requirement and Exceptions*

In addition to probable cause, the Fourth Amendment requires that a warrant be obtained before an arrest is made;[104] however, there is sometimes a grave need for police to arrest an individual before a warrant can be obtained.[105] For example, law enforcement would be ineffective if officers witnessing a crime had to leave the scene, obtain a warrant, and then return to the scene to make an arrest. This is especially true when a crime is being committed in the officer's presence, or if there is an immediate threat to an individual's health and safety.[106] Thus, exceptions to the warrant requirement have been made to more effectively serve law enforcement needs as well as to ensure the safety of all people.[107]

In *Atwater v. Lago Vista*,[108] the United States Supreme Court affirmed the warrantless arrest exception, stating, "If an officer has probable cause to believe that an individual has committed even a very minor criminal offense in his presence, he may, without violating the Fourth Amendment, arrest the offender."[109]

The Maryland law invoked to arrest Pringle, Partlow, and Smith permitted warrantless arrests in certain circumstances.[110] These circumstances included when probable cause existed to believe a crime had been committed in the presence of a police officer and when probable cause existed to believe a felony had been committed.[111]

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103. *Id.* at 919-21.

104. U.S. CONST. amend. IV.

105. *See* Chimel v. California, 395 U.S. 752, 774 (1969) (stating that it is unreasonable to require the police to leave the scene of a crime and obtain a warrant when probable cause exists for an arrest because the items for which the search was intended might be removed while the officer is obtaining the warrant).

106. *See* Illinois v. Rodriguez, 497 U.S. 177, 191 (1990) ("The Court has tolerated departures from the warrant requirement only when an exigency makes a warrantless search imperative to the safety of the police and of the community."); United States v. Watson, 423 U.S. 411, 419 (1976).

107. Illinois v. McArthur, 531 U.S. 326, 330 (2001) ("[T]here are exceptions to the warrant requirement. When faced with special law enforcement needs, diminished expectations of privacy, minimal intrusions, or the like, the Court has found that certain general, or individual, circumstances may render a warrantless search or seizure reasonable.").

108. 532 U.S. 318 (2001).

109. *Id.* at 354.

110. MD. CODE ANN., Crim. Proc. Art. § 2-202 (2001). This section was repealed in 2001. Pringle v. Maryland, 805 A.2d 1016, 1021 n.7 (Md. 2002).

111. MD. CODE ANN., Crim. Proc. Art. § 2-202 (2001). Section 2-202 provided three circumstances in which a police officer could make an arrest without a warrant:

> (a) *Crime committed in presence of police officer*.—A police officer may arrest without a warrant a person who commits or attempts to commit a felony or misdemeanor in the presence or within the view of a police officer.
>
> (b) *Probable cause to believe crime committed in presence of officer*.—A police officer who has probable cause to believe that a felony or misdemeanor is being committed in

IV. Analysis

In *Maryland v. Pringle*, the United States Supreme Court analyzed whether probable cause existed to believe Pringle, the front-seat passenger riding in a vehicle with three occupants, was in possession of cocaine found hidden in the armrest of the back seat.[112]

A. *Parties' Arguments*

1. The State of Maryland

The State of Maryland argued that under the totality-of-the-circumstances test, probable cause existed to arrest all three occupants of the car.[113] It claimed that interpreting probable cause is simply a process of "assessing . . . inferences that flow from an understanding about basic human behavior."[114]

The State claimed probable cause to arrest existed "because the officer can draw reasonable inferences that the occupants are acquainted, that they all have ready access to the drugs, and that any one or more of them could have placed the drugs in the armrest."[115] Further, the State based its argument on what it claimed were reasonable inferences that all of the vehicle's occupants had knowledge of the cocaine.[116] It argued that an officer may reasonably assume that all of the passengers in a car know each other and are engaged in a common enterprise and thus, that Pringle was engaged in a common enterprise with Partlow and Smith.[117] Moreover, the State argued that if a car contains weapons or drugs, the people in the car should presumably be in joint possession of the contraband.[118]

> the presence or within the view of the police officer may arrest without a warrant any person whom the police officer reasonably believes to have committed the crime.
> (c) *Probable cause to believe felony committed*.—A police officer without a warrant may arrest a person if the police officer has probable cause to believe that a felony has been committed or attempted and the person has committed or attempted to commit the felony whether or not in the presence or within the view of the police officer.

Id.

112. Maryland v. Pringle, 124 S. Ct. 795, 799 (2003).

113. Brief for Petitioner at 22, *Pringle* (No. 02-809).

114. *Id.* at 7, 16.

115. *Id.* at 8.

116. *Id.* at 17-18.

117. *Id.* at 19 (citing Wyoming v. Houghton, 526 U.S. 295 (1999)). In *Houghton*, police stopped a car in which the defendant was a passenger. *Houghton*, 526 U.S. at 297-98. The officer observed a syringe in the driver's shirt pocket. *Id.* at 298. The driver admitted using the syringe to take drugs. *Id.* During a search of the vehicle the officer found a purse in the back seat that belonged to Houghton. *Id.* The purse contained drug paraphernalia. *Id.* Defendant was convicted on charges of possession. *Id.* The United States Supreme Court held that an officer could search all containers within a vehicle that might contain the object of the officer's search as long as the overall search was supported by probable cause. *Id.* at 307. The Court stated, "[A] car passenger—unlike the unwitting tavern patron in Ybarra—will often be engaged in a common enterprise with the driver, and have the same interest in concealing the fruits or the evidence of their wrongdoing." *Id.* at 304-05.

118. Brief for Petitioner at 20-21, *Pringle* (No. 02-809) (citing County Court of Ulster County v. Allen, 442 U.S. 140 (1979)). In *Allen*, four passengers were charged with possession of illegal

The State also suggested that if probable cause did not exist, then the result would be one of three adverse outcomes: 1) no one could be arrested; 2) only the driver could be arrested; or 3) "only the occupant closest to the drugs" could be arrested.[119]

2. Joseph Pringle

Pringle argued that because of the need for individualized suspicion, "probable cause [did] not exist to arrest the front-seat passenger in a car where cocaine [was] found hidden in the back-seat armrest next to the back-seat passenger."[120]

He first contended that the historical foundations of the Fourth Amendment mandate "that individualized suspicion must be present before law enforcement are authorized to make an arrest."[121] He referenced English case law establishing the need for individualized suspicion.[122] The English courts had held that broad warrants authorizing law enforcement to search and arrest violated the common law.[123]

Second, Pringle recognized that the United States Supreme Court has long held that individualized suspicion is a core component of probable cause.[124] Pringle based his argument on the Court's decisions in *Ybarra v. Illinois* and *United States v. Di Re*.[125]

Relying on *Ybarra*, Pringle argued that "Officer Snyder admittedly could not narrow his suspicion . . . and relied solely on [Pringle's] presence in the car where drugs were discovered," and thus, there was

weapons. *Allen*, 442 U.S. at 143. Based on a New York statute, the jury was instructed that they were entitled to infer possession from the suspects' presence in the car. *Id.* at 145. The defendants subsequently challenged this statutory presumption. *Id.* The Court held that the presumption was entirely rational because the defendants were not casual passengers, the weapons were in plain view, and an inference could be drawn that when a car is stopped for speeding the passengers in the vehicle would attempt to hide their weapons. *Id.* at 163-65.

119. Brief for Petitioner at 8, *Pringle* (No. 02-809).

120. *See* Brief of Respondent at 5-6, *Pringle* (No. 02-809).

121. *See id.* at 6-10.

122. *See id.* at 8-9.

123. *See id.*

> [I]n 1762, John Wilkes, then a member of Parliament, published, anonymously, a series of pamphlets called The North Briton, which criticized the policies of the Tory government. In response, Lord Halifax issued a general warrant to four messengers ordering them "to make strict and diligent search for the authors, printers, and publishers of seditious and treasonable papers, ..." Who should be arrested and what should be seized was left completely to the discretion of the messengers. . . . Wilkes was arrested and later released due to his privilege as a member of Parliament. Wilkes and the other arrestees brought suit against the messengers for trespass. Wilkes prevailed and the English courts ruled that the general warrants to arrest and search violated the common law.

Id. at 8.

124. *See id.* at 10-22.

125. *See id.* at 13-17, 20-22. "*Ybarra* is important for two reasons. First, it clearly confirms that individualized suspicion is an irreducible component in the probable cause equation. Second, mere proximity in time and place to one committing a crime is insufficient, by itself, to constitute probable cause." *Id.* at 22.

not sufficient probable cause to justify his arrest.[126] He then cited *Di Re* for the premise "that probable cause must be analyzed in relation to the elements of the offense for which one is arrested."[127] Pringle was charged with possession with intent to distribute, an offense which includes a specific *mens rea*.[128] Pringle argued that the record lacked any evidence which would have led a reasonable person to believe that he either knew of the presence of the cocaine in the back seat, or that he exercised any dominion or control over it.[129]

B. *The Court's Opinion*

In a unanimous opinion by Chief Justice William H. Rehnquist, the United States Supreme Court held that sufficient probable cause existed to arrest Pringle.[130] The Court recognized that the finding of cocaine in the back seat established probable cause to believe that a felony had been committed, enabling Officer Snyder to make a warrantless arrest.[131] Thus, the sole question for the Court to consider was whether probable cause existed to believe Pringle was in possession of the drugs.[132]

The Court addressed the probable cause standard, stating that it "is incapable of precise definition or quantification into percentages because it deals with probabilities and depends on the totality of the circumstances."[133] The Court, however, did recognize the *Ybarra* requirement that "the belief of guilt must be particularized with respect to the person to be searched or seized."[134]

Chief Justice Rehnquist then noted disfavor with the Maryland Court of Appeals' decision, which analyzed the money found in the glove compartment in isolation "rather than as a factor in the totality of the circumstances."[135] The money should be analyzed in relation to the cocaine, and when viewing the two pieces of evidence together, the officer could reasonably infer that a felony had been committed.[136]

The Court then stated that "Pringle's attempt to characterize this case as a guilt-by-association case is unavailing."[137] Further, Pringle's

126. *Id.* at 22.
127. *See id.* at 16.
128. *See id.* "[T]he elements of this offense include[d] 'the exercise of actual or constructive dominion or control over a thing' and 'knowledge of the controlled dangerous substance.'" *Id.* (quoting Petitioner's Appendix at 8a-9a).
129. *See id.* at 5-6.
130. *See Pringle*, 124 S. Ct. at 798.
131. *Id.* at 799.
132. *Id.*
133. *Id.* at 800.
134. *Id.*
135. *Id.* at 800 n.2 (citations omitted).
136. *Id.* at 800-01.
137. *Id.* at 801.

reliance on *Ybarra v. Illinois* and *United States v. Di Re* was misplaced.[138] First, it distinguished the facts of *Pringle* from those in *Ybarra*,[139] stating that Pringle and his companions were in a small car, not a public tavern.[140] The Court then noted that one can reasonably infer that the occupants of a vehicle are engaged in a common enterprise and thus, the occupants have a mutual interest in concealing evidence of their illegal behavior.[141]

Ultimately, the Court held that the officer could reasonably infer an illegal enterprise among Pringle, Partlow, and Smith, stating that "[t]he quantity of drugs and cash in the car indicated the likelihood of drug dealing, an enterprise to which a dealer would be unlikely to admit an innocent person with the potential to furnish evidence against him."[142]

Next the Court distinguished *Di Re*,[143] in which it had said, "Any inference that everyone on the scene of a crime is a party to it must disappear if the Government informer singles out the guilty person."[144] The United States Supreme Court distinguished the case by stating that in *Pringle*, none of the three men provided information with respect to the ownership of the cocaine or money.[145] The Court agreed with the State that probable cause existed to believe Pringle had committed the felony of possession.[146]

C. *Commentary*

In *Maryland v. Pringle*, the United States Supreme Court armed law enforcement officers with the use of probable cause by associa-

138. *Id.*

139. *Id.*

> In *Ybarra*, police officers obtained a warrant to search a tavern and its bartender for evidence of possession of a controlled substance. Upon entering the tavern, the officers conducted patdown searches of the customers present in the tavern, including Ybarra. Inside a cigarette pack retrieved from Ybarra's pocket, an officer found six tinfoil packets containing heroin.

Id.

140. *Id.*

141. *Id.* (citing Wyoming v. Houghton, 526 U.S. 295, 295 (1999)).

142. *Id.*

143. *See id.*

> In *Di Re*, a federal investigator had been told by an informant, Reed, that he was to receive counterfeit gasoline ration coupons from a certain Buttitta at a particular place. The investigator went to the appointed place and saw Reed, the sole occupant of the rear seat of the car, holding gasoline ration coupons. There were two other occupants in the car: Buttitta in the driver's seat and Di Re in the front passenger's seat. Reed informed the investigator that Buttitta had given him counterfeit coupons. Thereupon, all three men were arrested and searched. After noting that the officers had no information implicating Di Re and no information pointing to Di Re's possession of coupons, unless presence in the car warranted that inference, we concluded that the officer lacked probable cause to believe that Di Re was involved in the crime.

Id. (citing United States v. Di Re, 332 U.S. 581, 592-94 (1948)).

144. *Di Re*, 332 U.S. at 594.

145. *See Pringle*, 124 S. Ct. at 801.

146. *See id.* at 802.

tion.[147] This decision not only will disturb the balance between the pursuit of justice and the necessary protection of individual freedoms,[148] but also will tarnish the Fourth Amendment by changing the essential requirement that individualized suspicion must be present for a valid arrest.[149] Further, the Court has implemented probable cause by association by upsetting the individualized suspicion requirement and by attempting to deter legal conduct.[150]

1. Probable Cause by Association

First, *Maryland v. Pringle* has changed the probable cause standard. This is best illustrated by comparing the Court's analysis of the individualized suspicion requirement in *Di Re* and *Ybarra* to its analysis in *Pringle*.[151] Some critics may argue that the United States Supreme Court overruled these cases in *Pringle*; however, upon close examination of the Court's analysis, the Court has likely broadened the probable cause standard to include probable cause by association.

The Court's expansion of probable cause in *Maryland v. Pringle* has offset the balance between law enforcement and individual freedoms by opening the door to prosecution of innocent people. Consider the possibility that based on *Pringle,* an individual could be arrested for a crime even though he had nothing to do with the guilty behavior and had no knowledge of its existence.[152] Probable cause now exists to believe that an individual riding in a vehicle possesses anything within that vehicle, regardless of whether he knows of the contraband's existence.[153] These results are unreasonable; an individual should not be forced to search every compartment of a vehicle before feeling safe that he will not be arrested. Yet in *Pringle*, the United States Supreme Court mandated that level of caution.

Although the United States Supreme Court stated that "Pringle's attempt to characterize this case as a guilt-by-association case is unavailing,"[154] the Court substantiated this statement only by distinguishing *Ybarra* and *Di Re*.[155] This rationalization is ineffective because *Ybarra* and *Di Re* should be interpreted differently.[156]

147. *See infra* notes 151-56 and accompanying text.
148. *See infra* notes 160-69 and accompanying text.
149. *See infra* notes 151-69, 194-213 and accompanying text.
150. *See infra* notes 151-69, 178-81 and accompanying text.
151. *Compare* Ybarra v. Illinois, 444 U.S. 85 (1979) *and* United States v. Di Re, 332 U.S. 581 (1948) *with Pringle*, 124 S. Ct. 795.
152. For example, if a law-abiding person rode home with a friend, not knowing that drugs were in the car, that person could be arrested for possession of a controlled substance, even though she had no idea drugs were in the vehicle.
153. *See Pringle*, 124 S. Ct. at 801 (stating that the passengers in the vehicle are often engaged in a "common enterprise").
154. *Id.*
155. *See id.*
156. *See infra* notes 157-77 and accompanying text.

a. United States v. Di Re

In *Di Re*, the United States Supreme Court held that when a government informant specifically identifies an individual, probable cause does not exist to arrest anyone merely in the presence of the identified individual, exemplifying the individualized suspicion requirement.[157] In the absence of an identification by an informant as in *Pringle*, however, the police may infer that one's mere proximity to guilty behavior suffices to establish probable cause, eliminating the individualized suspicion requirement and emphasizing probable cause by association.

The Court distinguished *Di Re* by indicating that in *Pringle* there was no "singling out," and "none of the three men provided information with respect to the ownership of the cocaine or money."[158] Quoting *Di Re*, the Court stated, "Any inference that everyone on the scene of a crime is a party to it must disappear if the [g]overnment informer singles out the guilty person."[159] Thus, if a government informant had pointed to Pringle, Partlow, or Smith, then probable cause would have existed to arrest only the identified individual.[160] Because no singling out occurred, probable cause existed to arrest all three men.[161] Thus, instead of becoming more culpable by being identified by an informant, the parties in the car who are not identified become less culpable.

The seemingly false distinction between culpability when singled out and culpability when not is valuable when considering the culpability level from which the parties depart. In *Di Re*, the Court seemed to hold that the parties began with no probable cause, which was then established by an informant identifying an individual.[162] In *Pringle*, however, the Court seemed to take the opposite approach, holding that probable cause existed to arrest all three men, none of whom were identified by an informant.[163] Thus, instead of starting without probable cause for the identified individual, all parties start with probable cause, which then disappears for those who are not identified. So when no parties are identified, probable cause remains for all.

This is flawed reasoning when examined in connection with the rest of the Court's opinion in *Pringle*, a totality-of-the-opinion approach.[164] Prior to the Court's analysis of *Di Re*, it recognized the premise that passengers in a car are often engaged in a common enter-

157. *See* United States v. Di Re, 332 U.S. 581, 594 (1948).
158. *Pringle*, 124 S. Ct. at 801.
159. *Id.* (citing *Di Re*, 332 U.S. at 594).
160. *See id.*
161. *See id.*
162. *See Di Re*, 332 U.S. at 592-94.
163. *See Pringle*, 124 S. Ct. at 800-01.
164. *See infra* notes 165-69 and accompanying text.

prise.[165] When *Di Re* is examined along with this premise, the combined holding is that the occupants of a vehicle are presumed to be part of a common enterprise, unless an informant has pointed to a particular person in a vehicle. It is disconcerting to think that probable cause can be manipulated in such a way; all of the vehicle's occupants in *Pringle* were more culpable because an informant did not single out any one individual.[166] It is more reasonable to believe that if an informant knew of the existence of contraband in a vehicle, then the other occupants in the vehicle likely also knew of its existence. The informant must have had some basis by which he established his accusations, such as witnessing the individual in actual possession of the contraband. If an informant had occasion to know an individual was in possession of an illegal substance, it follows that others too could have had the same opportunity.

The fact that the counterfeit gasoline ration coupons in *Di Re* were in plain view is even more disturbing when distinguishing *Pringle*, in which the drugs were hidden in the back-seat armrest.[167] It is more likely that when contraband is hidden in a vehicle, the occupants do not all know of its existence. Thus, Pringle, Partlow, and Smith should be seen as less culpable than Di Re, for whom the United States Supreme Court found insufficient probable cause existed to arrest.[168] An opponent to this theory may claim there was no probable cause to arrest the other occupant of the vehicle in *Di Re* because counterfeit gasoline ration coupons do not maintain the same level of culpability as the cocaine found in *Pringle*, and because the other occupant could have believed the coupons were legitimate. This contention does not take into account the Court's belief that it is reasonable to assume all the occupants of a vehicle are engaged in a common enterprise.[169]

The Court misapplied *Di Re* by not addressing alternative interpretations of the case. As a result, the Court left open the premise that one's mere proximity to another's guilty behavior suffices to establish probable cause.

b. Ybarra v. Illinois

Maryland v. Pringle further alters the probable cause standard through its analysis of *Ybarra v. Illinois*.[170] The United States Su-

165. *See Pringle*, 124 S. Ct. at 801 (citing Wyoming v. Houghton, 526 U.S. 295, 304-05 (1999)).
166. *See id.* at 800-01.
167. *Id.* at 798.
168. *See* United States v. Di Re, 332 U.S. 581, 593-94 (1948).
169. *Pringle*, 124 S. Ct. at 801.
170. *See infra* notes 171-77 and accompanying text.

preme Court distinguished *Ybarra* by stating, "Pringle and his two companions were in a relatively small automobile, not a public tavern."[171] Based solely on this analysis, an individual's mere proximity to illegal behavior, regardless of his knowledge of its existence, increases the probability that he too is a cohort in the crime.

The Court based its decision in *Pringle* on events that took place in a small vehicle.[172] This "proximity contention" could further evolve when courts interpret this case beyond the context of a vehicle or beyond the charge of possession, increasing the possible abuse of the decision.[173] The Maryland Court of Appeals addressed this contention, stating,

> Under [Maryland's] reasoning, if contraband was found in a twelve-passenger van, or perhaps a bus or other kind of vehicle, or even a place, *i.e.*, a movie theater, the police would be permitted to place everyone in such a vehicle or place under arrest until some person confessed to being in possession of the contraband. Simply stated, a policy of arresting everyone until somebody confesses is constitutionally unacceptable.[174]

The United States Supreme Court also did not address broader factual situations in which the decision could be applied.[175] It would have been more effective for the Court to limit its holding to a standard that provides more precision. It could have established a standard that would have eliminated the possibility of increased abuse. For example, the Court could have used language that would have limited the "proximity contention" to a certain area, or limited the decision to the specific facts of *Pringle*; however, the language used by the Court only emphasized that the drugs were found in a small vehicle.[176] The Court had access to the premise referenced above; however, it failed to address the contention.[177]

2. United States Supreme Court's Attempt to Deter Legal Conduct

The United States Supreme Court has further implemented probable cause by association by attempting to deter legal conduct. *Pringle* serves to deter conduct by holding that probable cause exists to believe anyone riding in a vehicle possesses everything within that vehicle.[178]

171. *Pringle*, 124 S. Ct. at 801.
172. *Id.*
173. *See infra* notes 174-77, 189-213 and accompanying text.
174. Pringle v. Maryland, 805 A.2d 1016, 1028 n.12 (Md. 2002).
175. *Pringle*, 124 S. Ct. at 801-02.
176. *See id.* at 801.
177. *Id.* (lacking any language addressing the contention as stated in *Pringle*, 805 A.2d at 1028 n. 12).
178. *See infra* notes 179-81 and accompanying text.

Because of the potential for situations in which an innocent person could be prosecuted due to his proximity to illegal behavior, the Court's decision attempts to deter the conduct of individuals. *Pringle* mandates a greater degree of responsibility when deciding with whom we associate, because probable cause now exists to believe every passenger riding in a vehicle possesses anything within that vehicle, regardless of his knowledge of an object's existence.[179] Daily, millions of people are required to get into vehicles with unfamiliar people.[180] It would be extremely cumbersome to search every compartment of a vehicle before carpooling to work or taking a cab; without doing so, however, it is impossible to know that one is not illegally in possession of contraband.

Because it is not feasible to search every vehicle before getting in, people will tend to accompany only those who they most strongly believe are not in possession of contraband. The Court's holding places on each of us a degree of responsibility that is simply not practical, thereby forcing us to reconsider with whom we associate.[181]

3. Arrest—An Inevitable Conclusion?

If probable cause is based on individualized suspicion, and probable cause does not exist unless an individual is pointed out, the police may not make an arrest and no one will be held accountable for illegal behavior. The State of Maryland argued that a finding contrary to *Pringle* would leave three alternatives in situations in which an illegal substance is found in a vehicle: 1) no one could be arrested; 2) only the driver could be arrested; or 3) only the occupant closest to the drugs could be arrested.[182] Opponents to this theory might suggest that justice would have been more effectively served if the three men had been detained and further questioned regarding the cocaine instead of immediately arrested.

179. *See* Warren Richey, *Court import: Be careful whom you get in a car with*, CHRISTIAN SCIENCE MONITOR, December 19, 2003, at 12 ("Parents of teenagers now have an additional incentive to really get to know their children's friends and acquaintances. It is called *Maryland v. Pringle*.").

180. Brief of Respondent at 30, *Pringle* (No. 02-809) (citing the U.S. Census for the year 2000, which reported that 15,634,051 people car pooled to work each day). "Members of those car pools would, no doubt, be astonished to learn that they had best search the car and its occupants before accepting the ride, lest they be subject to arrest for possessing an item of contraband hidden somewhere, indeed anywhere, within the car." *Id.*

181. Criminalizing association is contrary to the fundamental rights furnished to United States citizens by the First Amendment of the Constitution. *See* U.S. CONST. amend. I. *But see* City of Canton v. Morris, 1993 Ohio App. LEXIS 4165, at *5 (Aug. 16, 1993) ("While the First Amendment guarantees the right to free association, it does not prevent the State from criminalizing such association when it is for the purpose of engaging in illegal activity.").

182. *See* Brief for Petitioner at 8, *Pringle* (No. 02-809).

It is well-established that police officers have the right to detain an individual upon reasonable suspicion of criminal activity.[183] Reasonable suspicion is a less demanding standard than probable cause.[184] In fact, due to the inherent seriousness of depriving an individual of his freedom, public policy supports short detentions rather than full custodial arrests.[185]

The officer's observation of the rolled-up money in the glove compartment most likely would have constituted sufficient evidence for the officer to believe that criminal activity was taking place, and thus, justified a short detention of the men.[186] Upon finding the cocaine in the back-seat armrest, the officer had probable cause to believe that criminal activity was occurring.[187]

Detention of individuals who are suspected of criminal activity could possibly provide additional information. If such information is not obtained, however, further detention would simply delay the inevitable: letting the suspects go without making an arrest and solving the crime.[188] In *Pringle*, the Court faced two less-than-ideal options: finding that probable cause did not exist to arrest the occupants of a car in which cocaine was found, or eroding the Fourth Amendment's requirement of individualized suspicion. The Court chose the latter, and has, therefore, opened the door to further erosion.

4. Trends as a Result of *Maryland v. Pringle*

The Court's decision in *Pringle* is suspect not because the Court found that probable cause existed to arrest someone; instead, the problem lies in that the Court did not limit its opinion to the facts

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183. Illinois v. Wardlow, 528 U.S. 119, 123 (2000) (citing Terry v. Ohio, 392 U.S. 1, 30 (1968)); United States v. Cortez, 449 U.S. 411, 417-18 (1981).

184. *Wardlow*, 528 U.S. at 123; Alabama v. White, 496 U.S. 325, 330 (1990).

> Reasonable suspicion is a less demanding standard than probable cause, not only in the sense that reasonable suspicion can be established with information that is different in quantity or content than that required to establish probable cause, but also in the sense that reasonable suspicion can arise from information that is less reliable than that required to show probable cause.

White, 496 U.S. at 330.

185. Rice v. Alcoholic Beverage Control Appeals Bd., 187 Cal. Rptr. 117, 119-20 (Cal. Ct. App. 1982).

186. *See* Washington v. Beegle, Nos. 20834-6-III & 20835-4-III, 2003 Wash. App. LEXIS 1505, at *14-15 (July 15, 2003). "An officer may briefly detain and question a person for investigative purposes and frisk the person for weapons, if the officer reasonably believes the person being stopped is involved in criminal activity, and the officer also has an objectively reasonable belief the person may be armed and dangerous." *Id.* (quoting Terry v. Ohio, 392 U.S. 1, 21-24 (1968)). Thus, an argument could be made that a well-trained officer could reasonably infer that the amount of money in the glove compartment was indicative of criminal activity.

187. Upon finding the cocaine in the back seat, the officer had justification to detain Pringle, Partlow, and Smith without arresting them because it satisfied the officer's suspicions that criminal activity was afoot. *See Beegle*, 2003 Wash App. LEXIS 1505, at *16-17 ("The police may expand an investigatory stop if the initial stop confirms or arouses additional suspicions.").

188. *See* Brief for Petitioner at 8, Maryland v. Pringle, 124 S. Ct. 795 (2003) (No. 02-809).

presented.[189] By not limiting the holding, the Court implied that mere proximity to illegal behavior is sufficient to constitute probable cause, ignoring the Fourth Amendment's individualized suspicion requirement, and thereby creating probable cause by association.[190] This insufficiency in analysis is the best evidence that such a decision is vulnerable to abuse, as exemplified in cases following *Pringle*.

Of the cases citing *Maryland v. Pringle*, most notable are *In re M.R.*[191] and *Eyer v. Evans*.[192] These cases extended beyond the confines of a vehicle the premise that mere proximity to illegal behavior constitutes probable cause.[193] In *In re M.R.*, a uniformed police officer in a "high drug area" observed three minors standing less than one foot apart, facing each other in a circle.[194] When the officer approached, the three minors began to walk away.[195] The officer then noticed a bag of marijuana in what would have been the middle of their circle.[196] All three minors were arrested for possession of marijuana.[197] A subsequent search of M.R., one of the minors, disclosed cocaine in his right front pocket.[198]

M.R. sought to suppress the marijuana and cocaine, arguing that the officer did not have probable cause to believe he was in possession of the marijuana.[199] The California Court of Appeals rejected M.R.'s argument that his case was distinguishable from *Pringle*.[200] The Court stated,

> The fact that [M.R.] was on a street corner, not in a confined space of a car, does not preclude probable cause under the circumstances . . . . The configuration of the three minors when [the officer] first observed them and their mutual departure from the bag of marijuana when they noticed him establish probable cause of common dominion and control among them over the bag.[201]

The California court held that probable cause existed to believe that any individual standing in close proximity to drugs on a street corner possesses those drugs.[202] This case supports the theory that the United States Supreme Court's decision in *Pringle* opened the door to

189. *See infra* notes 194-213 and accompanying text.
190. *See infra* notes 194-213 and accompanying text.
191. No. A104311, 2004 Cal. App. Unpub. LEXIS 5235 (June 2, 2004).
192. No. 03-042, 2004 U.S. Dist. LEXIS 1266 (E.D. La. Jan. 28, 2004).
193. *See infra* notes 194-213 and accompanying text.
194. *See In re M.R.,* 2004 Cal. App. Unpub. LEXIS 5235 at *2.
195. *Id.*
196. *Id.*
197. *Id.*
198. *Id.* at *3.
199. *Id.*
200. *Id.* at *5-8.
201. *See id.* at *7.
202. *Id.*

judicial abuse of Fourth Amendment rights because the individualized suspicion requirement has been whittled away even further.[203]

Similarly, in *Eyer*, plain-clothes officers noticed "a group of five individuals standing together in a circle."[204] As they approached the group, the officers smelled marijuana.[205] Additionally, the officers observed the group passing around what appeared to be a cigarette.[206] Despite the fact that the officers never witnessed Eyer in actual possession of the marijuana cigarette, they arrested all five individuals for possession of marijuana.[207] Eyer filed suit against the officers and the City of New Orleans, alleging his arrest violated the Fourth Amendment.[208]

The issue before the trial court was whether sufficient probable cause existed for the arrest.[209] Eyer claimed that "mere presence in the group of culpable individuals is insufficient to prove constructive possession."[210] The United States District Court for the Eastern District of Louisiana disagreed.[211] Citing *Maryland v. Pringle*, it held that the officers had sufficient probable cause even though they did not observe Eyer in actual possession of the marijuana.[212]

Thus, the standard set forth in *Pringle* has been extended beyond the confines of a car.[213] If a group of children or adults came across a bag on a street corner, they may stop to see what is inside. Unfortunately, they likely would not know the potential ramifications of that decision, and may unwittingly be arrested for possession of a substance they never touched.

V. Conclusion

The United States Supreme Court incorrectly held that police have sufficient probable cause to believe that any passenger riding in a vehicle possesses drugs that are found hidden within that vehicle. *Maryland v. Pringle* has altered the Fourth Amendment by creating probable cause by association. The decision has mandated a standard of responsibility that the Supreme Court should not have imposed upon the people. By changing the probable cause standard of the Fourth Amendment, this decision upsets the balance between the pursuit of justice and the necessary protection of individual freedoms.

203. *See In re M.R.*, 2004 Cal. App. Unpub. LEXIS 5235.
204. Eyer v. Evans, No. 03-342, 2004 U.S. Dist. LEXIS 1266, at *1 (E.D. La. Jan. 28, 2004).
205. *See id.* at *1-2.
206. *See id.* at *2.
207. *See id.*
208. *See id.*
209. *See id.* at *7.
210. *See id.* at *2-3.
211. *See id.* at *6-8.
212. *See id.* at *10.
213. *See supra* notes 189-212 and accompanying text.