

6.2: PEOPLE v. ROBINSON

STATE OF NEW YORK COURT OF APPEAL

People v. Robinson

97 NY2d 341 (2001)

(Case Syllabus edited by the Author)

OPINION OF THE COURT

The issue here is whether a police officer who has probable cause to believe a driver has committed a traffic infraction violates article I, § 12 of the New York State Constitution when the officer, whose primary motivation is to conduct another investigation, stops the vehicle. We conclude that there is no violation, and we adopt *Whren v. United States*, 517 U.S. 806, 116 S.Ct. 1769, 135 L.Ed.2d 89 as a matter of state law.

I

People v. Robinson

On November 22, 1993, New York City police officers in the Street Crime Unit, Mobile Taxi Homicide Task Force were on night patrol in a marked police car in the Bronx. Their main assignment was to follow taxicabs to make sure that no robberies occurred. After observing a car speed through a red light, the police activated their high intensity lights and pulled over what they suspected was a livery cab. After stopping the cab, one officer observed a passenger, the defendant, look back several times. The officers testified that they had no intention of giving the driver a summons but wanted to talk to him about safety tips. The officers approached the vehicle with their flashlights turned on and their guns holstered. One of the officers shined his flashlight into the back of the vehicle, where defendant was seated, and noticed that defendant was wearing a bulletproof vest. After the officer ordered defendant out of the taxicab, he observed a gun on the floor where defendant had been seated. Defendant was arrested and charged with criminal possession of a weapon and unlawfully wearing a bulletproof vest. Defendant moved to suppress the vest and gun, arguing that the officers used a traffic infraction as a pretext to search the occupant of the taxicab. The court denied the motion, and defendant was convicted of both charges. He was sentenced as a persistent violent felony offender to eight years to life on the weapons charge and 1 1/2 to 3 years on the other charge.

In affirming, the Appellate Division applied the *Whren* rationale (271 A.D.2d 17, 711 N.Y.S.2d 384 [2000]). We affirm the unanimous order of the Appellate Division.

People v. Reynolds

On March 6, 1999, shortly after midnight, a police officer, on routine motor patrol in the City of Rochester, saw a man he knew to be a prostitute enter defendant's truck. The officer followed the truck and ran a computer check on the license plate. Upon learning that the vehicle's registration had expired two months earlier, the officer stopped the vehicle.

The resulting investigation did not lead to any charges involving prostitution. Nevertheless, because the driver's eyes were bloodshot, his speech slurred and there was a strong odor of alcohol, police performed various field sobriety tests, with defendant failing most. Defendant was placed under arrest for driving while intoxicated. At the police station, tests indicated that defendant's blood alcohol level was .20%, double the legal limit of .10% (see, Vehicle and Traffic Law § 1192[2]).

Defendant was charged with driving while intoxicated, an unclassified misdemeanor, and operating an unregistered motor vehicle, a traffic infraction. Defendant's motion to suppress was granted by the Rochester City Court which dismissed all charges. County Court affirmed the dismissal, holding that the traffic violation was merely a pretext and the officer's primary motivation was to investigate prostitution. We reverse.

People v. Glenn

On November 7, 1997, plainclothes police officers were on street crime patrol in an unmarked car in Manhattan. They observed a livery cab make a right-hand turn without signaling. An officer noticed someone sitting in the back seat lean forward. The police stopped the vehicle to investigate whether or not a robbery was in progress. A police officer subsequently found cocaine on the rear seat and, after he arrested defendant, found additional drugs on his person. Defendant was charged with criminal possession of a controlled substance in the third degree and criminally using drug paraphernalia in the second degree. He contended that the drugs

should be suppressed, asserting that the traffic infraction was a pretext to investigate a robbery. After his motion to suppress was denied, he pleaded guilty to one count of criminal possession of a controlled substance and was sentenced, as a second felony offender, to 4 1/2 to 9 years in prison. Relying on *Whren*, the Appellate Division unanimously affirmed the conviction (279 A.D.2d 422, 723 N.Y.S.2d 425 [2001]). We affirm the order of the Appellate Division.

II

The Supreme Court, in *Whren v. United States*, 517 U.S. 806, 116 S.Ct. 1769, 135 L.Ed.2d 89 [1996], unanimously held that where a police officer has probable cause to detain a person temporarily for a traffic violation, that seizure does not violate the Fourth Amendment to the United States Constitution even though the underlying reason for the stop might have been to investigate some other matter.

In *Whren*, officers patrolling a known drug area of the District of Columbia became suspicious when several young persons seated in a truck with temporary license plates remained at a stop sign for an unusual period of time, and the driver was looking down into the lap of the passenger seated on his right. After the car made a right turn without signaling, the police stopped it, assertedly to warn the driver of traffic violations, and saw two plastic bags of what appeared to be crack cocaine in Whren's hands.

After arresting the occupants, the police found several quantities of drugs in the car. The petitioners were charged with violating federal drug laws. The petitioners moved to suppress the drugs, arguing that the stop was not based upon probable cause or even reasonable suspicion that they were engaged in illegal drug activity and that the police officer's assertion that he approached the car in order to give a warning was pretextual. The District Court denied suppression, and the Court of Appeals for the District of Columbia Circuit affirmed (53 F.3d 371 [1995]).

The Supreme Court held that the Fourth Amendment had not been violated because "[a]s a general matter, the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred" (*Whren, supra*, 517 U.S., at 810, 116 S.Ct. 1769). The stop of the truck was based upon probable cause that the petitioners had violated provisions of the District of Columbia traffic code. The Court rejected any effort to tie the legality of the officers' conduct to their primary motivation or purpose in making the stop, deeming irrelevant whether a reasonable traffic police officer would have made the stop.

According to the Court, "Subjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis" (*id.*, at 813, 116 S.Ct. 1769). Thus, the "Fourth Amendment's concern with 'reasonableness' allows certain actions to be taken in certain circumstances, whatever the subjective intent" (*id.*, at 814, 116 S.Ct. 1769).

More than 40 states and the District of Columbia have adopted the objective standard approved by *Whren* or cited it with approval (see, Appendix).¹

III

In each of the cases before us, defendant argues that the stop was pretextual and in violation of New York State Constitution, article I, § 12. By arguing that the stops were pretextual, defendants claim that although probable cause existed warranting a stop of the vehicle for a valid traffic infraction, the officer's primary motivation was to conduct some other investigation.

We hold that where a police officer has probable cause to believe that the driver of an automobile has committed a traffic violation, a stop does not violate article I, § 12 of the New York State Constitution. In making that determination of probable cause, neither the primary motivation of the officer nor a determination of what a reasonable traffic officer would have done under the circumstances is relevant.

We have observed that because the search and seizure language of the Fourth Amendment and of article I, § 12 is identical, they generally confer similar rights (see, *People v. Harris*, 77 N.Y.2d 434, 437, 568 N.Y.S.2d 702, 570 N.E.2d 1051 [1991]; *People v. P.J. Video*, 68 N.Y.2d 296, 304, 508 N.Y.S.2d 907, 501 N.E.2d 556 [1986]).² Nevertheless, this Court has not hesitated to expand the rights of New York citizens beyond those required by the Federal Constitution when a longstanding New York interest was involved (see, e.g., *People v. Scott*, 79 N.Y.2d 474, 583 N.Y.S.2d 920, 593 N.E.2d 1328 [1992]; *People v. Keta*, 79 N.Y.2d 474, 583 N.Y.S.2d 920, 593 N.E.2d 1328 [1992]; *People v. Griminger*, 71 N.Y.2d 635, 529 N.Y.S.2d 55, 524 N.E.2d 409 [1988]; *People v. Bigelow*, 66 N.Y.2d 417, 497 N.Y.S.2d 630, 488 N.E.2d 451 [1985]).

This Court has always evaluated the validity of a traffic stop based on probable cause that a driver has committed a traffic violation, without regard to the primary motivation of the police officer or an assessment that a reasonable traffic officer would have made the same stop. Where the police have stopped a vehicle for a valid reason, we have upheld police conduct without regard to the reason for the stop (*People v. David L.*, 81 A.D.2d 893, 439 N.Y.S.2d 152, revd. on dissent below 56 N.Y.2d 698, 451 N.Y.S.2d 722, 436 N.E.2d 1324 [1982], cert. denied 459 U.S. 866, 103 S.Ct. 146, 74 L.Ed.2d 123).

This Court has never held that a pretextual stop, as opposed to subsequent police conduct, was violative of article I, § 12. The dissent does not disagree (dissenting opn. at 367-368, 741 N.Y.S.2d at 164-65, 767 N.E.2d at 655-56). Although the Appellate Divisions have, on occasion, examined the primary motivation of a police officer in evaluating a traffic stop, all seven of the Judges on this Court acknowledge the “difficulty, if not futility, of basing the constitutional validity of searches or seizures on judicial determinations of the subjective motivation of police officers” (dissenting opn. at 371, 741 N.Y.S.2d at 167, 767 N.E.2d at 658). Thus, we are unanimous in our view that the primary motivation test is not, and should not be, part of our State constitutional jurisprudence.

Defendants, however, point to several of our cases—most notably *People v. Spencer*, 84 N.Y.2d 749, 622 N.Y.S.2d 483, 646 N.E.2d 785 [1995]—and contend that we have previously indicated our disapproval of pretextual police conduct. Defendants’ reliance on *People v. Spencer* is misplaced. There, we held that the stop of the vehicle merely to request information from the driver concerning the whereabouts of a criminal suspect was an unreasonable seizure in violation of the Fourth Amendment. In that case, the defendant had not committed a traffic violation.

We noted that “police stops of automobiles in this State are legal only pursuant to routine, nonpretextual traffic checks to enforce traffic regulations or when there exists at least a reasonable suspicion that the driver or occupants of the vehicle have committed, are committing, or are about to commit a crime” (id., at 753, 622 N.Y.S.2d 483, 646 N.E.2d 785). However, we explained what we meant by pretextual when we further noted that “there were no objective safeguards circumscribing the exercise of police discretion” and that if such stops “were permissible and motorists could in fact be pulled over at an individual police officer’s discretion based upon the mere right to request information, a Pandora’s box of pretextual police stops would be opened” (id., at 758, 759, 622 N.Y.S.2d 483, 646 N.E.2d 785). Central to *Spencer*’s holding was the absence of an objective standard for stopping a vehicle. Thus, a police officer could contrive a reason to stop a vehicle merely to make an inquiry. However, an objective standard is present here—the Vehicle and Traffic Law.

Moreover, in none of the cases in which we have extended the rights of New York State defendants beyond those of the Federal Constitution have we questioned a police officer’s authority to act when there was probable cause to conclude that a law or regulation has been violated. None of the reasons for extending protections of our Constitution beyond those given by the Federal Constitution exist here. In this case, regulating the ability of the police to stop a vehicle when there is probable cause to believe that a traffic regulation has been violated does little to expand the rights of the accused. Instead it may lead to the harm of innocent citizens. Thus, for example, in *People v. Reynolds*, the stop of the automobile led to the arrest of a person driving under the influence of alcohol.

The real concern of those opposing pretextual stops is that police officers will use their authority to stop persons on a selective and arbitrary basis. *Whren* recognized that the answer to such action is the Equal Protection Clause of the Constitution. We are not unmindful of studies, some of which are cited by defendants and the amici, which show that certain racial and ethnic groups are disproportionately stopped by police officers, and that those stops do not end in the discovery of a higher proportion of contraband than in the cars of other groups. The fact that such disparities exist is cause for both vigilance and concern about the protections given by the New York State Constitution. Discriminatory law enforcement has no place in our law.

Indeed, in *Brown v. State of New York*, 89 N.Y.2d 172, 652 N.Y.S.2d 223, 674 N.E.2d 1129 [1996], this Court recognized that in New York State, a plaintiff has a cause of action for a violation of the Equal Protection Clause and the Search and Seizure Clause of the State Constitution. In upholding the right of African Americans to sue for alleged violations of their right to equal protection and freedom from unreasonable searches and seizures, when they were detained because of their race during a police investigation, this Court stated:

“These sections [art. I, §§ 11, 12] establish a duty sufficient to support causes of action to secure the liberty interests guaranteed to individuals by the State Constitution independent of any common-law tort rule. Claimants alleged that the defendant’s officers and employees deprived them of the right to be free from unlawful police conduct violating the Search and Seizure Clause and that they were treated discriminatorily in violation of the State Equal Protection Clause. The harm they assert was visited on them was well within the contemplation of the framers when these provisions were enacted for fewer matters have caused greater concern throughout history than intrusions on personal liberty arising from the abuse of police power. Manifestly, these sections were designed to prevent such abuses and protect those in claimants’ position. A damage remedy in favor of those harmed by police abuses is appropriate and in furtherance of the purpose underlying the sections” (89 N.Y.2d, at 191).

The alternatives to upholding a stop based solely upon reasonable cause to believe a traffic infraction has been committed put unacceptable restraints on law enforcement. This is so whether those restrictions are based upon the primary motivation of an

officer or upon what a reasonable traffic police officer would have done under the circumstances. Rather than restrain the police in these instances, the police should be permitted to do what they are sworn to do—uphold the law.

In none of the cases cited by defendants has this Court penalized the police for enforcing the law. We should not do so here. To be sure, the story does not end when the police stop a vehicle for a traffic infraction. Our holding in this case addresses only the initial police action upon which the vehicular stop was predicated. The scope, duration and intensity of the seizure, as well as any search made by the police subsequent to that stop, remain subject to the strictures of article I, § 12, and judicial review (*People v. Troiano*, 35 N.Y.2d 476, 363 N.Y.S.2d 943, 323 N.E.2d 183 [1974]; *People v. Marsh*, 20 N.Y.2d 98, 281 N.Y.S.2d 789, 228 N.E.2d 783 [1967]).

IV

...We are not confounded by the proposition that police officers must exercise their discretion on a daily basis. Nor are we surprised at the assertion that many New Yorkers often violate some provision of the Vehicle and Traffic Law. But we cannot equate the combination of police officer discretion and numerous traffic violations as arbitrary police conduct that the Supreme Court in *Delaware v. Prouse* viewed as evil. That conduct violates the Fourth Amendment because it was “standardless and unconstrained” (id., at 661, 99 S.Ct. 1391). In the cases before us, however, we confirm a standard that constrains police conduct—probable cause under the Vehicle and Traffic Law and its related regulations that govern the safe use of our highways.

Accordingly, in *People v. Robinson* and *People v. Glenn*, the orders of the Appellate Division should be affirmed. In *People v. Reynolds*, the order of the Monroe County Court should be reversed, defendant’s motion to suppress denied, the accusatory instruments reinstated, and the case remitted to Rochester City Court for further proceedings in accordance with this opinion.

The U.S. Supreme Court held in 2014 that even if an officer is mistaken regarding the law, if that mistake is reasonable, the stop is still valid. Whether New York courts will apply this standard is yet to be determined.

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