TOURO COLLEGE
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Touro Law Review

Volume 18
Number 2 *New York State Constitutional Decisions: 2001 Compilation*

Article 19

March 2016

Court of Appeals, People v. Robinson

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SEARCH AND SEIZURE

United States Constitution Amendment IV:

The right of the people to be secure in their person, 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.

New York Constitution Article I, Section 12:

The right of the people to be secure in their person, 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.

COURT OF APPEALS OF NEW YORK

People v. Robinson[1]
(decided December 18, 2001)

Frank Robinson was convicted of criminal possession of a weapon in the third degree and the unlawful wearing of a bullet-proof vest. Robinson was sentenced as a persistent felon to eight years to life on the weapons charge and one and one-half to three years on the other.[2] Robinson appealed his conviction based on the constitutional safeguard set forth in the Search and Seizure Clause

[1] 97 N.Y.2d 341, 767 N.E.2d 638, 741 N.Y.S.2d 147 (2001).
[2] *Id.* at 346.

of both the Federal[3] and New York State[4] Constitutions. He argued that the officer's primary motivation in stopping the vehicle was to conduct some other investigation other than a valid traffic infraction.[5] The New York Court of Appeals affirmed the decision of the lower court and held that a vehicular stop by police was lawful where the officer had probable cause to believe that the driver committed a traffic violation.[6] In coming to this conclusion, the court stated that, "In making the 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."[7]

Two police officers in the Bronx were following taxicabs in an attempt to prevent robberies.[8] They pulled over a speeding car, which they suspected to be a livery cab.[9] The officers had planned on talking to the driver about safety tips rather than issuing a summons.[10] However, the police officers became suspicious when one of them observed the defendant repeatedly turn to glance at the officers.[11] One of the police officers shined his flashlight into the rear of the cab where defendant Robinson was seated and noticed that he was wearing a bulletproof vest.[12] After seeing the vest, the officer ordered the defendant out of the taxicab.[13] The police officer then noticed a gun on the floor of the cab where Robinson was seated.[14]

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[3] U.S. CONST. amend. IV. The Fourth Amendment provides in pertinent part: "The right of the people to be secure in their person, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . . but upon probable cause . . .."

[4] N.Y. CONST. art. I, § 12. This section provides in pertinent part: "The right of the people to be secure in their person, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . . but upon probable cause . . . ."

[5] *Robinson*, 97 N.Y.2d at 349.

[6] *Id.*

[7] *Id.*

[8] *Id.* at 346.

[9] *Id.*

[10] *Robinson* 97 N.Y.2d at 346-47.

[11] *Id.*

[12] *Id.* at 347.

[13] *Id.*

[14] *Id.*

On appeal to the appellate division, Robinson challenged the trial court's decision to allow the gun to be introduced into evidence, arguing the gun should have been suppressed.[15] Robinson claimed that the cab was unconstitutionally stopped under the pretext of a traffic violation.[16] He argued that the officers never intended to issue a summons for a traffic violation since the cab was stopped under the pretext of preventing criminal activity against cab drivers by their passengers.[17] The appellate court upheld the lower court's decision.[18]

The Court of Appeals began its analysis by discussing *Whren v. United States,*[19] which articulates the federal rule for dealing with pretextual traffic stops. In *Whren,* plain-clothes officers, while patrolling a known drug area, became suspicious after passing a truck with a temporary license plate that was waiting at a stop sign for a long period of time with the driver looking down.[20] After the truck made a sudden right turn and sped off without signaling, the officers stopped the car for the traffic violation.[21] As the officer approached the vehicle, he noticed two plastic bags filled with crack cocaine in the petitioner's hands and arrested him.[22] The petitioner claimed the drugs should have been suppressed from evidence because they were obtained through a pretextual traffic stop.[23]

Temporary detention of a person during an automobile stop constitutes a limited seizure under the provisions of the Fourth

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[15] People v. Robinson, 271 A.D.2d 17, 18, 711 N.Y.S.2d 384, 385 (1st Dep't 2000).

[16] *Id.* "A pretext stop has generally been defined as a police officer's use of a traffic infraction as a subterfuge to stop a motor vehicle in order to investigate the driver or occupant about an unrelated matter." *Id.* at 18, 711 N.Y.S.2d at 386.

[17] *Id.*

[18] *Id.*

[19] 517 U.S. 806 (1996).

[20] *Id.* at 808.

[21] *Id.*

[22] *Id.* at 809.

[23] *Id.*

Amendment.[24] Therefore, an automobile stop must not be "unreasonable" under any circumstances.[25] In *Whren*, the United States Supreme Court held that "[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."[26] Since the driver failed to signal before turning, the police officers had probable cause to stop the vehicle because the traffic code was violated. The Court rejected any effort to tie the primary motivation in making the stop to the constitutionality of the stop, and deemed it irrelevant whether a reasonable police officer would have followed the same course of action.[27] Therefore, "[s]ubjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis."[28] The Court's main reason for using an objective test is that it is easier to determine the intent of an individual officer than to decipher the collective thoughts of law enforcement in order to determine whether a "reasonable officer" would have acted upon the traffic infraction.[29]

The relevant parts of the Fourth Amendment of the United States Constitution and the New York State Constitution Article I § 12 are identical.[30] They both provide that the "right of people to

[24] *Whren*, 517 U.S. at 809 ("The Fourth Amendment guarantees 'the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.'") (citations omitted).

[25] *Id.* at 810.

[26] *Id. See* United States v. James Hassan El, 5 F.3d 726, 730 (4th Cir. 1993) ("When an officer observes a traffic offense, they are justified in stopping the vehicle under the Fourth Amendment. Such a limited detention does not become 'unreasonable merely because the officer has intuitive suspicions that the occupants of the car are engaged in some sort of criminal activity'") (citations omitted); *see also* United States v. Cummins, 920 F.2d 498, 500-01 (8th Cir. 1990) ("When an officer observes a traffic offense-however minor-he has probable cause to stop the driver of the vehicle . . . . That stop remains valid even if the officer would have ignored the traffic violation but for his other suspicions."); United States v. Scopo, 19 F.3d 777, 782 (2d Cir. 1994) ("Probable cause arises when the police reasonably believe that 'an offense has been or is being committed. In the instant case, there was probable cause to stop and arrest Scopo – CFSF officers directly observed him violating the traffic laws by not signaling lane changes.") (citations omitted).

[27] *Whren*, 517 U.S. at 813.

[28] *Id.* at 813.

[29] *Id.* at 815.

[30] *Robinson*, 97 N.Y.2d at 350.

be secure in their persons . . . against unreasonable searches and seizures, shall not be violated . . . ."[31] Although their wording is identical, there have been different interpretations of these clauses over the years. In particular, the New York Court of Appeals has expanded the rights of New York citizens beyond the requirements of the Federal Constitution when "a longstanding New York interest was involved."[32]

Prior to *Whren*, it was established precedent in New York that a traffic violation could not be used as a pretext to investigate a person on an entirely different matter.[33] In a situation where an apparent traffic violation does not motivate the stop, a traffic violation could not be used as a justification for the stop.[34] In essence, the courts looked to the subjective intent of the officers at the time of the stop rather than merely whether there was probable cause to make the stop.[35]

Following *Whren*, and until the *Robinson* decision, the appellate courts of New York struggled to define the appropriate

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[31] U.S. CONST. amend. IV; N.Y. CONST. art. I, § 12.

[32] *Robinson*, 97 N.Y.2d at 350.

[33] People v. Laws, 213 A.D.2d 226, 623 N.Y.S.2d 860, 861 (1st Dep't 1995). An officer on patrol in a known drug area noticed that defendant's car was double-parked and bore Connecticut license plates. The officer also noticed that the car had a broken tail-light and decided to run the plates. Thinking that defendant was in the area to possibly buy drugs, he proceeded to pull the car over. The court found that the traffic infraction was not the officer's reason for pulling the car over and granted suppression of the evidence acquired during the unwarranted stop.

[34] People v. Ynoa, 223 A.D. 975, 978, 623 N.Y.S.2d 888, 890 (3rd Dep't 1996). State Trooper on the New York State Thruway received a "be on the lookout for" message for a grey Oldsmobile with Massachusetts' license plates occupied by two Hispanics. Officer spotted car, noticed that one of the headlights was out on the vehicle and therefore pulled it over. After a search of the car, the officer found a bag containing U.S. currency and a brick of cocaine; he subsequently arrested the defendants. The court held that "Police officers may stop a motor vehicle where they have observed the commission of a traffic offense in their presence; however, the violation of the Vehicle and Traffic Law cannot be a mere pretext to investigate the defendant for another unrelated matter." *Id.* at 978, 636 N.Y.S.2d at 890. "The court held that since the officer intended to intercept the car . . . the stop was not motivated by the headlight infraction but was rather pretextual." *Id.*

[35] People v. Washington, 238 A.D.2d 43, 47, 671 N.Y.S.2d 439, 442 (1st Dep't 1998).

standard for deciding whether a stop of an automobile was merely a pretext.[36] The Court of Appeals' failure to make a decision as to whether pretext stops are in violation of the protection against unreasonable search and seizures provided for in Article I, § 12 of the New York State Constitution caused the individual departments to grapple with this issue.

In order to determine whether a stop is pretextual, some departments decided to continue applying a subjective test, where an inquiry is made to determine the true motivation for the officer making the stop.[37] This led to some of the appellate courts using various factors in determining a police officer's primary motivation for a traffic stop.[38] In *People v. Washington*,[39] the court considered factors, which led it to conclude that the officer's primary motivation in stopping the cab was a traffic infraction and therefore not merely pretextual.[40] Upon witnessing a livery cab driving erratically, the police officer followed the cab for a short distance before stopping it for driving the wrong way on a one-way street.[41] The problem with the court's approach in *Washington* is

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[36] *Id.* at 50, 671 N.Y.S.2d at 444.

[37] *Robinson,* 271 A.D.2d at 20, 711 N.Y.S.2d at 387; *see* People v. Califano, 225 A.D.2d 701, 680 N.Y.S.2d 700 (3d Dep't 1998); *see also* People v. McGriff, 219 A.D.2d 829, 631 N.Y.S.2d 969 (4th Dep't 1995).

[38] *Washington*, 238 A.D.2d at 50, 671 N.Y.S.2d at 444. Factors utilized to determine motivation of a police officer include: whether officer checked car's registration or issued summons to driver, whether officer made inquiries regarding alleged traffic violation beyond asking for license and registration, whether officer's assessment included issuance of traffic summonses, whether before the stop the officer followed the car for a significant distance or detained defendant for an extended period of time after the stop and whether prior to the stop the officer had already determined to stop and arrest the defendant.

[39] 238 A.D.2d at 43, 671 N.Y.S.2d at 439.

[40] *Washington*, 238 A.D.2d at 50-51, 671 N.Y.S.2d at 445. Officer pulled over a livery cab after witnessing it was going in the wrong direction on a one-way street. After asking the passenger to get out of cab, the officer noticed a handgun sticking out of the back of the passenger's seat and arrested the passenger. *Id.* "Clearly the officer's actions belie any intent, prior to the stop, to pursue an investigation of defendant concerning an unrelated robbery regardless of the traffic infraction." The court held that the mere failure of the officer to issue a traffic summons will not warrant a finding that a stop was pretextual. *Id.*

[41] *Id.*

that it is extremely difficult to establish the subjective intent of a police officer through the available means.[42]

In *People v. Robinson*,[43] the New York Court of Appeals handed down a landmark decision. The court finally established a uniform standard to be used in New York to determine whether pretext stops are in violation of the protection against unreasonable search and seizures articulated in Article I, § 12 of the New York State Constitution.[44] In light of the difficulties involved in determining the subjective motivation of police officers, the court held that the primary motivation test is not the best possible test and therefore is "not part of our State constitutional jurisprudence."[45] As a result, the court decided to adopt the *Whren* decision as a matter of state law.[46] The court held 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."[47] Neither the primary motivation of the officer nor a determination of how a reasonable officer under the same conditions would have acted is relevant in making a determination of probable cause.[48] Therefore, an officer who can explain credible facts establishing a reasonable basis that a person has violated a traffic law has "established a reasonable basis to effectuate a stop."[49]

The New York Court of Appeals hotly debated the issue prior to reaching its conclusion in *People v. Robinson*.[50] The

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[42] *Robinson*, 271 A.D.2d at 20, 711 N.Y.S.2d at 387 (citing *Whren*, 517 U.S. at 814).

[43] 97 N.Y.2d at 341.

[44] N.Y. CONST. art. I, § 12.

[45] *Robinson*, 97 N.Y.2d at 350.

[46] *Id.* at 346.

[47] *Id.* at 349 (The officers observed a livery cab speed through a red light and pulled it over, therefore establishing probable cause that a traffic violation had occurred).

[48] *Id.* (The Court stated "where the police have stopped a vehicle for a valid reason, we have upheld police conduct without regard to the reason for the stop,") (citing People v. David L., 81 A.D.2d 893, *rev'd*, 56 N.Y.2d 698, *cert. denied*, 459 U.S. 866 (1982)).

[49] *Robinson*, 97 N.Y.2d at 353.

[50] *See id.* (Opinion by Judge Smith in which Judges Wesley, Rosenblatt, and Graffeo concur; Judge Levine dissents in which Chief Justice Kaye and Judge Ciparick concur).

dissenters of the divided court wrote a compelling dissent. They believed the existence of probable cause that an infraction was committed is insufficient to protect against arbitrary conduct of police officers.[51] Further, they felt that the probable cause standard advocated in *Whren* does not demonstrate that it adequately protects the "constitutional rights of motorists on highways from arbitrarily exercised police powers to seize and search."[52] The majority rebutted this argument and concluded that probable cause stops are based on violations of the law rather than on the discretion of police officers.[53] In actuality, the adopted standard constrains police conduct to "probable cause under the Vehicle and Traffic Law and its related regulations that govern the safe use of our highways.[54] In essence, violation of a statute triggers the authority of an officer to make the stop while at the same time limiting his discretion.[55]

The dissenters believed that the court should have adopted an objective standard that would require a determination of "whether a reasonable officer assigned to Vehicle and Traffic Law enforcement in the seizing officer's department have made the stop under the circumstances presented, absent a purpose to investigate serious criminal activity of the vehicle's occupants."[56] This standard would make it highly relevant that the stop be carried out according to the ordinary procedures of their department.[57] Against this, the majority argued that the "reasonable officer" standard would result in inappropriate selective enforcement of traffic laws in accordance with the justice's beliefs in *Whren*.[58] They enhanced their beliefs by noting that no state court employs the "reasonable police officer" test advocated by the dissenters.[59]

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[51] *Id.* at 360 (Levine, J., dissenting).
[52] *Id.*
[53] *Id.* at 356.
[54] *Robinson*, 97 N.Y.2d at 358.
[55] *Id.*
[56] *Id.* at 371-72.
[57] *Id.* at 372.
[58] *Id.* at 357-58.
[59] *Robinson*, 97 N.Y.2d at 349.

In fact, more than forty states have adopted the objective standard adopted by *Whren*.[60]

In conclusion, after the decision in *People v. Robinson*, federal and state law is identical with respect to their treatment of both the federal and state Search and Seizure Clauses. The Fourth Amendment, as interpreted by the Supreme Court in *Whren v. United States*, is not violated by a seizure where a police officer has probable cause to detain someone for a traffic violation.[61] Therefore, the subjective intentions of a police officer in making a traffic stop plays no role in probable cause Fourth Amendment analysis.[62] In *People v. Robinson*, the Court of Appeals of New York decided to adopt the *Whren* standard as a matter of state law.[63] Therefore, in New York, as long as a police officer has observed a traffic violation, probable cause is established to pull someone over no matter how trivial the infraction may be and no matter what police officer's actual motivation was in stopping the individual.

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[60] *Id.* at 357.
[61] *Whren*, 517 U.S. at 810.
[62] *Id.* at 813.
[63] *Robinson*, 97 N.Y.2d at 346.

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