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## **Court of Appeals of New York, People v. Wright**

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## Court of Appeals of New York, *People v. Wright*

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## COURT OF APPEALS OF NEW YORK

### People v. Wright<sup>1</sup> (decided June 4, 2002)

The Warren County Court convicted Donald Wright of driving while intoxicated, which was a felony.<sup>2</sup> Wright appealed his conviction, arguing that the traffic violation used to detain him was a pretext, as the trooper was actually investigating a reckless driving complaint.<sup>3</sup> Wright claimed his right to be free from unreasonable searches and seizures, as guaranteed by both the United States<sup>4</sup> and New York Constitutions,<sup>5</sup> was violated. The appellate division reversed the lower court's decision and granted Wright's suppression motion.<sup>6</sup>

The Court of Appeals disagreed with the appellate division's conclusion that because the trooper's primary motivation for stopping Wright's car was not the traffic violation, it was insufficient to constitute probable cause for the stop.<sup>7</sup> Rather, the Court of Appeals held that because the trooper had probable cause to believe Wright violated a vehicle and traffic law, the stop was permissible.<sup>8</sup>

Wright's arrest resulted from a tip reported to a New York State Trooper by an unidentified source.<sup>9</sup> The tipster indicated a red Suzuki was being driven recklessly.<sup>10</sup> The trooper immediately searched for the car and successfully located the red Suzuki driven by Wright.<sup>11</sup> While pursuing the vehicle, the trooper discovered that the Suzuki's muffler violated New York State Vehicle and

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<sup>1</sup> 98 N.Y.2d 657, 773 N.E.2d 1011, 746 N.Y.S.2d 273 (2002).

<sup>2</sup> *Id.* at 658, 773 N.E.2d at 1011, 746 N.Y.S.2d at 273.

<sup>3</sup> *Id.*

<sup>4</sup> U.S. CONST. amend. IV provides in pertinent part: "The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated . . . ."

<sup>5</sup> N.Y. CONST. art. I § 12 provides in pertinent part: "The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated . . . ."

<sup>6</sup> *Wright*, 98 N.Y.2d at 658, 773 N.E.2d at 1011, 746 N.Y.S.2d at 273.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 659, 773 N.E.2d at 1011, 746 N.Y.S.2d at 274.

<sup>9</sup> *Id.* at 658, 773 N.E.2d at 1011, 746 N.Y.S.2d at 273.

<sup>10</sup> *Id.*

<sup>11</sup> *Wright*, 98 N.Y.2d at 658, 773 N.E.2d at 1011, 756 N.Y.S.2d at 273.

Traffic Law Section 375(31).<sup>12</sup> The trooper stopped the vehicle, administered a sobriety test that Wright failed, and witnessed Wright's own admission that he had been drinking.<sup>13</sup> Accordingly, the trooper arrested Wright for driving while intoxicated.<sup>14</sup>

The appellate division reversed Wright's conviction on the grounds that the trooper used the traffic violation as a pretext to investigate the reckless driving tip.<sup>15</sup> The court held that it is the police officer's primary motivation, in this instance the investigation of the reckless driving tip, that is paramount to determining whether a stop is lawful.<sup>16</sup> Accordingly, the appellate division granted Wright's motion to suppress.<sup>17</sup>

The Court of Appeals disagreed with the appellate division, holding that the stop was indeed lawful. The trooper did have probable cause to believe Wright committed a traffic violation, and the primary motivation of the officer is irrelevant.<sup>18</sup> The Court of Appeals relied on its decision in *People v. Robinson*,<sup>19</sup> which was decided after the appellate division's decision in *Wright*, and therefore reversed the appellate division.<sup>20</sup>

*Robinson* is a consolidated action of three cases where the Court of Appeals held that where a police officer believes the driver committed a traffic violation, the police officer has probable cause to stop the vehicle even though the vehicle and traffic law (VTL) violation is merely a pretext to investigate an entirely

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<sup>12</sup> N.Y. VEH. & TRAF. LAW § 375(31) (McKinney 1992) provides in pertinent part:

Every motor vehicle, operated or driven upon the highways of the state, shall at all times be equipped with an adequate muffler and exhaust system in constant operation and properly maintained to prevent any excessive or unusual noise and no such muffler or exhaust system shall be equipped with a cut-out, bypass, or similar device.

<sup>13</sup> *Wright*, 98 N.Y.2d at 658, 773 N.E.2d at 1011, 746 N.Y.S.2d at 273.

<sup>14</sup> *Id.*

<sup>15</sup> *Wright*, 286 A.D.2d at 521, 728 N.Y.S.2d at 847.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 522, 728 N.Y.S.2d at 847.

<sup>18</sup> *Wright*, 98 N.Y.2d at 658, 773 N.E.2d at 1011, 746 N.Y.S.2d at 273.

<sup>19</sup> 97 N.Y.2d 341, 767 N.E.2d 638, 741 N.Y.S.2d 147 (2001).

<sup>20</sup> *Wright*, 98 N.Y.2d at 658, 773 N.E.2d at 1011, 746 N.Y.S.2d at 273.

unrelated matter.<sup>21</sup> Therefore, the subjective intent of the police officer is irrelevant.<sup>22</sup>

The first of the three cases, *People v. Robinson*, involved a stop made by officers from the Mobile Taxi Homicide Task Force that were on night patrol and assigned to follow taxis to ensure the drivers were not robbed.<sup>23</sup> After observing a vehicle pass through a red light, the officers pulled over what they believed to be a livery cab.<sup>24</sup> One of the officers noticed that the passenger, Robinson, looked back several times.<sup>25</sup> When an officer shined a flashlight on Robinson, he discovered Robinson was wearing a bulletproof vest.<sup>26</sup> After Robinson was told to get out of the taxi, the officer discovered a gun on the floor of the vehicle, which was in close proximity to Robinson's seat.<sup>27</sup> Robinson was convicted of criminal possession of a weapon and unlawfully wearing a bulletproof vest.<sup>28</sup> The decision was unanimously affirmed by the Appellate Division, Third Department,<sup>29</sup> which relied on *Whren v. United States*.<sup>30</sup> Despite Robinson's argument that the vest and the gun should have been suppressed because the traffic stop was merely a pretext the officers employed to justify their search, the conviction was affirmed.<sup>31</sup>

In the second case, *People v. Reynolds*, a police officer observed a prostitute enter Reynolds' truck.<sup>32</sup> The officer ran a

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<sup>21</sup> *Robinson*, 97 N.Y.2d at 346, 767 N.E.2d at 640, 741 N.Y.S.2d at 149.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Robinson*, 97 N.Y.2d at 346, 767 N.E.2d at 640, 741 N.Y.S.2d at 149.

<sup>27</sup> *Id.* at 347, 767 N.E.2d at 640, 741 N.Y.S.2d at 149.

<sup>28</sup> *Id.*

<sup>29</sup> 271 A.D.2d 17, 711 N.Y.S.2d 384 (1st Dep't 2000).

<sup>30</sup> 517 U.S. 806 (1996). The appellate departments of New York were divided on this issue prior to the *Robinson* decision. While the First Department had relied on *Whren* in reaching its decision in *Robinson*, the Third Department in *Wright* believed that *Whren* did not control the analysis. Compare *People v. Glenn*, 279 A.D.2d 422, 723 N.Y.S.2d 425 (1st Dep't 2001); *People v. Robinson*, 271 A.D.2d 17, 711 N.Y.S.2d 384 (1st Dep't 2000) with *People v. Reynolds*, 713 N.Y.S.2d 813, 185 Misc. 2d 674 (County Ct., Monroe County 2000), *rev'd*, *Robinson*, 97 N.Y.2d at 358, 767 N.E.2d at 648-49, 741 N.Y.S.2d at 158-59.

<sup>31</sup> *Robinson*, 97 N.Y.2d at 347, 767 N.E.2d at 640, 741 N.Y.S.2d at 149.

<sup>32</sup> *Id.*

computer search that indicated the truck's registration was expired and pulled the truck over.<sup>33</sup> Upon discovery of the defendant's bloodshot eyes, slurred speech, and strong smell of alcohol, the officer conducted several field sobriety tests, most of which Reynolds failed.<sup>34</sup> A blood test administered at the police station confirmed that Reynolds' blood alcohol level was double the legal limit.<sup>35</sup> The county court affirmed the lower court's dismissal of the charges for driving while intoxicated and operating an unregistered vehicle, concluding that Reynolds' motion to suppress was properly granted because the traffic violation was a pretext used to permit the officer to investigate the suspected prostitution.<sup>36</sup> However, relying on *Whren*, the Court of Appeals reversed.<sup>37</sup>

In *People v. Glenn*, the third and final case, plain clothes officers observed a livery cab that turned without signaling.<sup>38</sup> The officers suspected the cab driver was being robbed because Glenn, who was sitting in the back seat, leaned forward.<sup>39</sup> Accordingly, the officers stopped the cab and discovered drugs on the back seat and on Glenn's person.<sup>40</sup> Glenn was convicted of criminal possession of a controlled substance.<sup>41</sup> However, he appealed his conviction arguing the drugs should be suppressed because the stop of the vehicle was merely a pretext to investigate an unrelated matter.<sup>42</sup> Both the appellate division and the Court of Appeals relied on *Whren* and affirmed.<sup>43</sup>

The Court of Appeals affirmed the decisions of the appellate division in *Robinson* and *Glenn*, and reversed the *Reynolds* decision.<sup>44</sup> The majority emphasized that most of the states had already either cited with approval or officially adopted

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<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Robinson*, 97 N.Y.2d at 347, 767 N.E.2d at 641, 741 N.Y.S.2d at 150.

<sup>37</sup> *Id.* at 358, 767 N.E.2d at 648-49, 741 N.Y.S.2d at 158-59.

<sup>38</sup> *Id.* at 347-48, 767 N.E.2d at 641, 741 N.Y.S.2d at 150.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Robinson*, 97 N.Y.2d at 347-48, 767 N.E.2d at 641, 741 N.Y.S.2d at 150.

<sup>42</sup> *Id.* at 348, 767 N.E.2d at 641, 741 N.Y.S.2d at 150.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.* at 358, 767 N.E.2d at 648-49, 741 N.Y.S.2d at 158-59.

the *Whren* standard.<sup>45</sup> The Court of Appeals had never before held that a pretextual stop was a violation of the New York Constitution.<sup>46</sup> The court further noted that the real concern regarding pretextual stops is that they not be performed arbitrarily and selectively. However, the court noted that this concern is properly addressed by the Equal Protection Clause<sup>47</sup> of the United States Constitution.<sup>48</sup> Therefore, the court held:

[W]here 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.<sup>49</sup>

Furthermore, the Court of Appeals noted that both the Fourth Amendment and Article I, Section 12 of the New York Constitution have identical language and both confer similar rights.<sup>50</sup> The court further noted that the alternative reasonable officer standard advocated by the dissent was not used in any state court and had been abandoned by the Tenth Circuit after it proved to be unworkable.<sup>51</sup> It unanimously concluded that such a test neither is nor should be “part of our State constitutional jurisprudence.”<sup>52</sup>

In *Robinson*, the dissent argued that the *Whren* standard inadequately safeguarded the rights accorded by both the Fourth Amendment and Article I, Section 12 of the New York Constitution.<sup>53</sup> They argued that the *Whren* standard allows any

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<sup>45</sup> *Id.* at 349, 767 N.E.2d at 642, 741 N.Y.S.2d at 151.

<sup>46</sup> *Robinson*, 97 N.Y.2d at 350, 767 N.E.2d at 643, 741 N.Y.S.2d at 152.

<sup>47</sup> U.S. CONST. amend. XIV § 1 provides in pertinent part: [N]or shall any State deprive any person of life, liberty, or property, without due process of law .

<sup>48</sup> *Robinson*, 97 N.Y.2d at 351, 767 N.E.2d at 644, 741 N.Y.S.2d at 153.

<sup>49</sup> *Id.* at 349, 767 N.E.2d at 642, 741 N.Y.S.2d at 151.

<sup>50</sup> *Id.* at 350, 767 N.E.2d at 642, 741 N.Y.S.2d at 151.

<sup>51</sup> *Id.* at 357, 767 N.E.2d at 648, 741 N.Y.S.2d at 157.

<sup>52</sup> *Id.* at 350, 767 N.E.2d at 643, 741 N.Y.S.2d at 152 (Levine, J., dissenting).

<sup>53</sup> *Robinson*, 97 N.Y.2d at 360, 767 N.E.2d at 650, 741 N.Y.S.2d at 159.

officer to make an unjustified stop by merely searching through the Vehicle and Traffic Law for some violation to use as a pretext to justify the stop.<sup>54</sup> The dissenters argued for an objective reasonable officer standard, one focused on the question of whether “a reasonable officer assigned to Vehicle and Traffic Law enforcement in the seizing officer’s department [would] have made the stop under the circumstances presented, absent a purpose to investigate serious criminal activity of the vehicle’s occupants.”<sup>55</sup>

The appellate divisions have had several occasions to apply the *Robinson* decision. For instance, in *People v. Park*, the Fourth Department upheld the defendant’s conviction for criminal possession of a controlled substance.<sup>56</sup> Park argued that the evidence should be suppressed because his vehicle was stopped under the pretext of violation of seatbelt regulations.<sup>57</sup> Similarly, the First Department invoked the *Robinson* standard in *People v. Webb*.<sup>58</sup> In that case, officers stopped a taxi cab that Webb was a passenger in and discovered the defendant’s drug paraphernalia.<sup>59</sup>

The federal courts follow the standard set forth in *Whren v. United States*.<sup>60</sup> *Whren* involved a conviction for violation of federal drug laws.<sup>61</sup> In *Whren*, the Supreme Court held that a stop is reasonable under the Fourth Amendment when it is made on the basis of violation of the traffic code, regardless of the subjective intent of the officer.<sup>62</sup> While patrolling an area known for high drug activity, officers noticed a car sitting at a stop sign for a prolonged period of time.<sup>63</sup> The officers noticed that the driver was looking down at the passenger’s lap.<sup>64</sup> When the police car returned to investigate, the vehicle made a sudden right turn without signaling and sped away.<sup>65</sup> After following the vehicle for

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<sup>54</sup> *Id.* at 373, 767 N.E.2d at 660, 741 N.Y.S.2d at 169.

<sup>55</sup> *Id.* at 371-72, 767 N.E.2d at 659, 741 N.Y.S.2d at 168.

<sup>56</sup> 294 A.D.2d 887, 888, 741 N.Y.S.2d 824, 825 (4th Dep’t 2002).

<sup>57</sup> *Id.*

<sup>58</sup> 291 A.D.2d 319, 737 N.Y.S.2d 618 (1st Dep’t 2002).

<sup>59</sup> *Id.*

<sup>60</sup> 517 U.S. at 806.

<sup>61</sup> *Id.* at 809.

<sup>62</sup> *Id.* at 813.

<sup>63</sup> *Id.* at 808.

<sup>64</sup> *Id.*

<sup>65</sup> *Whren*, 517 U.S. at 806.

a short time, the officers approached it and saw Whren holding two large bags that apparently contained drugs.<sup>66</sup> Both Whren and the driver, Brown, were arrested and drugs were discovered in the car.<sup>67</sup>

At the pretrial suppression hearing, the defendants argued that the stop lacked the requisite probable cause because it was pretextual.<sup>68</sup> However, that argument was rejected and the motion was denied.<sup>69</sup> Both defendants were convicted, and the Court of Appeals for the District of Columbia affirmed on the basis that the stop was permissible and the officers' subjective intent was irrelevant because the driver had violated a traffic regulation.<sup>70</sup> The Supreme Court affirmed, unanimously holding "[s]ubjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis," provided that the officer's actions are reasonable.<sup>71</sup>

The *Whren* defendants argued that a police officer may use any technical violation of the vehicle and traffic law to justify a stop.<sup>72</sup> Additionally, they argued that allowing stops to be made under such pretenses would allow officers to stop motorists on such impermissible factors as race.<sup>73</sup> The defendants argued for the use of a subjective standard that focuses on whether a reasonable police officer would make the stop for the reasons provided.<sup>74</sup>

The Court rejected the defendants' arguments. First, it noted that it did not know of any principle allowing courts to identify or determine which of the large number of traffic regulations that police officers had to choose from should be enforced or disregarded.<sup>75</sup> As for the defendants' argument regarding racial considerations, the Court indicated that the Equal Protection Clause, rather than the Fourth Amendment was the

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<sup>66</sup> *Id.* at 808-09.

<sup>67</sup> *Id.* at 809.

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> *Whren*, 517 U.S. at 809.

<sup>71</sup> *Id.* at 813.

<sup>72</sup> *Id.* at 810.

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> *Whren*, 517 U.S. at 818-19.

vehicle to address such claims.<sup>76</sup> Lastly, the Court rejected the subjective test posited by the defendants. The Court noted that it has never held in circumstances such as this “that an officer’s motive invalidates objectively justifiable behavior under the Fourth Amendment; but we have repeatedly held and asserted the contrary.”<sup>77</sup> The Court also indicated that although every Fourth Amendment case involves the necessity of balancing the relevant factors to determine the reasonableness of the act in question, when the search or seizure is based on probable cause the balancing is not an issue.<sup>78</sup> Therefore, the Court affirmed on the basis of the district court’s finding that the officers had probable cause to believe the defendants had violated a traffic regulation, and the resulting stop was therefore reasonable and in accordance with Fourth Amendment requirements regardless of the subjective intent of the police officer.<sup>79</sup>

Federal courts hold that provided there is probable cause for the officer to believe that a traffic violation has occurred, it is not a violation of the Fourth Amendment of the United States Constitution to effectuate a stop even if the officer’s motive is to investigate something other than the traffic violation. Similarly, New York courts also hold such a stop is not a violation of Article I, Section 12 of the New York Constitution. In this context, both the Fourth Amendment of the United States Constitution and Article I, Section 12 of the New York State Constitution provide the same rights.

*Melanie Hendry*

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<sup>76</sup> *Id.* at 813.

<sup>77</sup> *Id.* at 812.

<sup>78</sup> *Id.* at 817.

<sup>79</sup> *Id.* at 819.