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First Department, People v Robinson

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SEARCH AND SEIZURE

U.S. CONST. amend. 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

N.Y. CONST. art. I, § 12:

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 to be seized.

SUPREME COURT, APPELLATE DIVISION FIRST DEPARTMENT

People v. Robinson¹
(decided July 6, 2000)

Defendant, Frank Robinson, was convicted of criminal possession of a weapon in the third degree and the unlawful wearing of a body vest, and thus sentenced to concurrent indeterminate terms respectively, from eight years to life and one and one-half to three years.² Defendant appealed based on a constitutional safeguard set forth in the Search and Seizure clause of both the Federal³ and New York State⁴ Constitutions.⁵ He

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

² *Id.* at 390.

³ U.S. CONST. amend. IV. The Fourth Amendment provides in pertinent part: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures . . ." *Id.*

⁴ N.Y. CONST. art. I, § 12. This section provides a pertinent part: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures . . ." *Id.*

⁵ *Robinson*, 271 A.D.2d at 18, 711 N.Y.S.2d at 385.

claimed that the cab in which he was a passenger was unconstitutionally stopped by police officers on the pretext of a traffic violation and his right to be free from unreasonable searches and seizures was violated.⁶ When a police officer stops an automobile, that officer is temporarily detaining individuals.⁷ This constitutes a seizure of persons within the meaning of the Fourth Amendment of the United States Constitution, and Article I, Section 12 of the New York State Constitution.⁸ The Appellate Division, First Department, affirmed the decision of the lower court and held that the vehicular stop by police was lawful under the pretense that a traffic violation had occurred, regardless of the police officer's subjective intent.⁹

Two police officers were on motor patrol in Bronx County, New York, when they saw a car traveling at a high rate of speed going through a red light.¹⁰ The officers could not determine whether there were any other occupants within the vehicle, and as a result of the vehicle's size, assumed it was a livery cab.¹¹ The police officers planned to give the cab driver a leaflet on safety tips, however, when they pulled the cab over, one officer became suspicious when the defendant, who was seated in the rear of the cab, turned around repeatedly to view the officers.¹² One of the police officers shined his flashlight into the rear of the cab where defendant Robinson was seated, and noticed a puffy area around the defendant's chest.¹³ The police officer believed that the defendant was wearing a bulletproof vest, which he confirmed through a pat down search of Robinson.¹⁴ Furthermore, without leaning into the car, the same officer shined his flashlight into the

⁶ *Id.*

⁷ *Id.*

⁸ See *Whren v. United States*, 517 U.S. 806, 809-10 (1996) (explaining [t]emporary detention of individuals during the stop of an automobile by the police, even if only for a brief period and for a limited purpose, constitutes a 'seizure' of 'persons' within the meaning of the Fourth Amendment).

⁹ *Robinson*, 271 A.D.2d at 22, 711 N.Y.S.2d at 390.

¹⁰ *Id.* at 18, 711 N.Y.S.2d at 385.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Robinson*, 271 A.D.2d at 18, 711 N.Y.S.2d at 385.

passenger compartment and noticed a revolver loaded with ammunition on the floor of the cab where defendant was sitting.¹⁵

On appeal, the defendant challenged the court's holding that allowed the revolver into evidence, claiming that the weapon should have been suppressed.¹⁶ The defendant argued that the cab was unconstitutionally stopped by the police because it was a pretext stop based on a traffic violation.¹⁷ The defendant contends that the officers were staking out the vicinity, looking for criminal activity toward cab drivers by their passengers, and therefore, the officers never intended to issue a summons to the cab driver for the traffic violation.¹⁸

The *Robinson* court commenced its analysis by noting that a pretext stop occurs when a police officer uses a traffic violation as an excuse to stop a motor vehicle, to investigate the driver or occupant about a matter unrelated to the claimed traffic violation.¹⁹ Although New York courts have recognized in *New York v. Laws*,²⁰ that police officers do stop people under the pretext of a traffic violation, they have not provided any structure or guidelines to determine whether a stop is pretextual.²¹ Therefore, several

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Robinson*, 271 A.D.2d at 18, 671 N.Y.S.2d at 386. (citing *People v. Laws*, 213 A.D.2d 226, 623 N.Y.S.2d 860 (1st Dep't 1995). "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.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ 213 A.D.2d 226, 671 N.Y.S.2d 439 (1st Dep't 1998).

²¹ *People v. Washington*, 238 A.D.2d 43, 671 N.Y.S.2d 439 (1st Dep't 1998).

Although New York's intermediate appellate court's appear to have recognized the concept of pretext when a stop, ostensibly for a traffic infraction, is utilized primarily for an unrelated reason and have found such stops to be unjustified, they have never provided a uniform analytical framework for determining whether a stop is pretextual. As one commentator has noted, 'New York courts have struggled to define the appropriate standard in determining whether a stop is pretextual. Unfortunately, the Court of Appeals has not provided any guidelines in this area and, as a result, lower courts have had to grapple with the subject.'

Id. (quoting *KAMIS, NEW YORK SEARCH AND SEIZURE*, at 364 (1997 ed.).

factors have been employed by the appellate division in attempting to ascertain a police officer's motivation for a traffic stop.²² Using these factors to determine whether the police vehicular stop was legitimate can be difficult due to the broad nature of the factors.²³ The Court further commented that the New York Court of Appeals has never expressly held pretextual search and seizure activities by the police to be invalid under Article I, § 12 of the New York State Constitution.²⁴ However, state precedent set forth in *New York v. Laws*, implies that the rule in New York appears to be that an alleged traffic violation may not be used as a pretext to investigate an unrelated matter.²⁵ In order to determine whether a stop is pretextual some departments apply a subjective test, where an inquiry is made into the police officer's true motivation for stopping the vehicle.²⁶ The Appellate Division, First and Second

²² *Id.* at 50, 671 N.Y.S.2d at 446. Factors utilized to determine the primary motivation of an officer include: whether the officer checked the registration of the car or issued a summons to the driver; whether the officer followed the vehicle for a distance prior to the stop; whether the officer's duty included issuing traffic summonses. *Id.*

²³ *Robinson*, 271 A.D.2d at 18, 711 N.Y.S.2d at 386.

²⁴ *Id.* (citing *People v. Washington*, 238 A.D.2d 43,49, 671 N.Y.S.2d 439 (1st Dep't 1998)).

²⁵ *People v. Laws*, 213 A.D.2d 226, 623 N.Y.S.2d 860 (1st Dep't 1995).

An officer on patrol in a well known narcotics location and aware that individuals in the area often came from out of state to purchase large quantities of drugs, noticed defendant's car with Connecticut license plates which was double parked. The officer further testified that he noticed that the car had a broken tail-light and decided to run the plates. The officer thought that the defendant or somebody that he was with, was in the area to buy drugs and pulled over the car. The court found that the traffic violation was not the officer's reason for pulling the defendant's car over. The court held that the officer was motivated by an unfounded suspicion that criminal activity was taking place. Further, the court noted that a traffic violation may not be used as a pretext to investigate the defendant on an unrelated matter, and granted suppression of the evidence acquired during the unwarranted stop.

Id.

²⁶ *Robinson*, 271 A.D.2d at 18, 711 N.Y.S.2d at 386. See *People v. Califano*, 255 A.D.2d 701, 680 N.Y.S.2d 700 (3d Dep't 1998); see also *People v. Mc Griff*, 219 A.D.2d 829, 631 N.Y.S.2d 969 (4th Dep't 1995).

department's²⁷ seem to follow an objective test, set forth by the Supreme Court of the United State in *Whren v. United States*.²⁸

The *Robinson* court, in reaching its decision to follow an objective test, looked to the Second Department's strong emphasis towards the objective reasonableness of the stop.²⁹ In *New York v. Henry*,³⁰ the court held that "the legality of a search or seizure is to be measured by the objective circumstances, and not by the subjective motivation of the officer."³¹ The Second Department noted that an officer observing a vehicle with its headlights off, late in the evening, is a valid reason for stopping the vehicle.³² The court further noted that even if the officer had other subjective investigative motivations for stopping the vehicle, the reason for the stop remains valid, as long as the circumstances, viewed objectively, justify the stop.³³ This Second Department view was afforded great authority and adopted by the First department in *Robinson*.³⁴

In addition to relying on the approach of the Second Department, the First Department also adhered to the Federal rule. The issue of pretextual traffic stops and the factors motivating police officers when conducting them was addressed in *Whren v. United States*.³⁵ The *Whren* Court expressly held that a police

²⁷ See *People v. Henry*, 258 A.D.2d 473, 685 N.Y.S.2d 100 (2d Dep't 1999) (holding that the stop of defendant's car was valid based on the officer's personal observation of a traffic violation, and "is no less valid because the officer might also have been entertaining more serious suspicions," (quoting *People v. Dougherty*, 251 A.D.2d 344, 673 N.Y.S.2d 742 (2d Dep't 1998))).

²⁸ 517 U.S. 806 (1995).

²⁹ *Robinson*, 271 A.D.2d at 23, 711 N.Y.S.2d at 385.

³⁰ *New York v. Henry*, 258 A.D.2d 473, 685 N.Y.S.2d 100 (2d Dep't 1998).

³¹ *Id.* at 474, 685 N.Y.S.2d at 101. The court based its holding on *Whren v. United States*, 517 U.S. 806 (1996).

³² *Id.*

³³ *Id.*

³⁴ See also *New York v. Ortiz*, 265 A.D.2d 579, 698 N.Y.S.2d 36 (2d Dep't 1999) (holding that a pretextual stop was constitutional, even if the real purpose behind the stop was an investigation of a homicide since the officer stopped the vehicle based on his personal observation of a traffic violation; the stop remains constitutional even if the officer might have been entertaining more serious suspicions).

³⁵ *Whren*, 517 U.S. at 808 (noting that "whether the temporary detention of a motorist who the police have probable cause to believe has committed a civil traffic violation is inconsistent with the Fourth Amendment's prohibition against

officer's subjective reason for stopping an automobile is irrelevant, so long as the stop is reasonable.³⁶ The Court stated that the reasonableness of the officer's actions depends upon whether the police had probable cause to believe that a traffic violation had occurred.³⁷ It should be noted that probable cause exists when a police officer reasonably believes a crime will be, or has been committed.³⁸

In *Scopo*, police officers patrolling a popular drug area noticed an idle vehicle at an intersection with a stop sign for an unusually long period, followed by the vehicle suddenly turning without signaling and driving away at a high rate of speed.³⁹ The police officers stopped the vehicle claiming they intended to give the driver a warning regarding his traffic violations, however, after approaching the vehicle the police noticed a plastic bag containing crack cocaine in the defendant's hand.⁴⁰

At a pretrial suppression conference, the defense argued that the police stop was not justified due to a lack of probable cause.⁴¹ Furthermore, they claimed that a reasonable suspicion did not exist, which supported the notion that the defendants were engaged in illegal drug-dealing activities. Therefore, the grounds asserted by police for approaching the vehicle were based on mere pretext.⁴² The United States District Court denied the defendants' motion to suppress the evidence of illegal drugs.⁴³ The United

unreasonable seizures unless a reasonable officer would have been motivated to stop the car by a desire to enforce the traffic laws").

³⁶ *Id.* at 809.

³⁷ *Id.* The Court was in agreement with the lower D.C. Circuit Court of Appeals which held that, "regardless of whether a police officer subjectively believes that the occupants of an automobile may be engaging in some other illegal behavior, a traffic stop is permissible as long as a reasonable officer in the same circumstances could have stopped the car for the suspected traffic violation." *United States v. Whren*, 53 F.3d 371, 374-75 (D.C. Cir. 1995).

³⁸ *United States v. Scopo*, 19 F.3d 777 (2d Cir. 1993).

³⁹ *Id.* at 808 (describing *U.S. v. Scopo*, 19 F.3d 777 (2d Cir. 1993)).

⁴⁰ *Id.* at 809.

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Whren*, 517 U.S. at 809 (explaining that the district court did not find any facts indicating to the contrary that the actions of the police officers, in conducting the traffic stop, were outside their normal routine in conducting their duties).

States Court of Appeals for the District of Columbia affirmed the convictions, and held that a police officer who stops an automobile with a subjective belief that the occupants may be engaging in illegal behavior is permissible and not in violation of the Fourth Amendment's prohibition against unreasonable searches and seizures.⁴⁴

The Supreme Court's reasoning in adopting an objective approach is based on the Fourth Amendment's probable cause analysis, whereby subjective intentions of a police officer are not to be considered.⁴⁵ To ascertain whether probable cause exists, an objective judgment of the police officer's actions in relation to the facts surrounding the particular situation control over his subjective, actual state of mind at the time.⁴⁶ The Federal objective approach is utilized in respect to unreasonable searches and seizures primarily to afford police officers the freedom to enforce the law, without the necessity of hiding behind pretextual excuses such as an officer's subjective primary motivation to stop a vehicle for a traffic violation.⁴⁷

In *Robinson*, the court acknowledged that the New York State Constitution grants broader protection to New York citizens against unreasonable searches and seizures than does the Fourth Amendment of the Federal Constitution. Furthermore, the court noted that the language of the Fourth Amendment is identical to the language of Article 1 § 12 of the New York State Constitution, and assumingly confer similar rights.⁴⁸ Supported by a desire for consistency in implementing search and seizure rules, coupled with the guise of New York precedents, the *Robinson* court adopted and followed the Federal objective view.⁴⁹ Therefore, a police officer who has probable cause to make a traffic stop, but has other subjective investigative motivations to stop the vehicle in order to

⁴⁴ United States v. Whren, 53 F.3d 371 (D.C. Cir. 1995).

⁴⁵ *Whren*, 517 U.S. at 809.

⁴⁶ *People v. Jones*, 219 A.D.2d 417, 643 N.Y.S.2d 987 (1st Dep't 1996) (quoting *Scott v. United States*, 436 U.S.128 (U.S. Dist. Col. 1978).

⁴⁷ *Id.*

⁴⁸ *Robinson*, 271 A.D.2d at 23, 711 N.Y.S.2d at 389.

⁴⁹ *Id.*

investigate other possible unlawful conduct, will not be deemed pretextual.⁵⁰

In conclusion, federal and state law are similar in respect to their treatment of both the federal and state Search and Seizure Clauses.⁵¹ Presently, New York Courts lack uniformity in whether to apply the subjective test or follow the Federal objective reasonableness standard. The courts that apply the subjective test and focus on whether a traffic violation was the primary motivation for stopping the vehicle have failed to provide a structural framework for determining whether a stop is pretextual.⁵² Seemingly, in light of this failure, the Appellate Courts of New York are split as to what approach should be applied.

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⁵⁰ *Id.* at 23-24, 711 N.Y.S.2d at 389-90 (referring to *People v. Jones*, 219 A.D.2d 417, 643 N.Y.S.2d 987 (1st Dep't 1996)). The court noted that in determining whether probable cause exists, an "objective judicial determination of the facts in existence and known to the officer" prevails over the officer's "subjective evaluation." *Id.*; see also *Scott v. United States*, 436 U.S. at 138 (1978) (stating "the fact that the officer does not have the state of mind that is hypothesized by the reasons which provide the legal justification for the officer's action does not invalidate the action taken as long as the circumstances, viewed objectively, justify the action").

⁵¹ See, *People v. Jones*, 219 A.D.2d 417, 643 N.Y.S.2d 987 (1st Dep't 1996) (holding that an objective determination prevails over the police officers subjective state of mind); See also *Whren v. United States*, 517 U.S. 806 (1995).

⁵² See *People v. Jones*, 219 A.D.2d 417, 643 N.Y.S.2d 987 (1st Dep't 1996).