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County Court, Monroe County, People v. Reynolds

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COUNTY COURT, MONROE COUNTY

People v. Reynolds[1]
(decided August, 31, 2000)

The State of New York appealed from an order that granted the defendant's motion to suppress all evidence obtained as a result of an unlawful stop of the defendant's automobile.[2] Following the initial stop, the defendant was charged with driving while intoxicated in violation of Vehicle and Traffic Law § § 1192 (2)[3] and (3),[4] and having an unregistered motor vehicle in violation of Vehicle and Traffic Law § 401 (1) (a).[5]

The facts of the case were undisputed. Police officer Korey Brown was patrolling a parking lot on Lyell Avenue, when he observed a known male prostitute enter the defendant's pickup truck.[6] Officer Brown proceeded to run a registration check from the license plate of the defendant's truck and discovered that the registration was expired. The officer proceeded to stop the vehicle, and placed the defendant in the backseat of the police car, leaving the occupant in the pickup truck.[7] During his investigation, Officer Brown stated that he observed that the defendant showed signs of intoxication such as watery, bloodshot eyes, slurred speech and an odor of alcohol.[8] Thereafter the officer began to perform a sobriety test on the defendant, which the defendant failed.[9] The defendant was then arrested and charged with driving while

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[1] People v. Reynolds, 185 Misc. 2d 674, 713 N.Y.S.2d 813 (2000).
[2] *Id.* at 675, 713 N.Y.S.2d at 814.
[3] VEH. & TRAF. LAW § 1192.1 "Driving while intoxicated; per se. No person shall operate a motor vehicle while such person has .10 of one per centum or more by weight of alcohol in the person's blood as shown by chemical analysis of such person's blood, breath, urine or saliva . . . ." *Id.*
[4] VEH. & TRAF. LAW § 1192.2 "Driving while intoxicated. No person shall operate a motor vehicle while in an intoxicated condition." *Id.*
[5] VEH. & TRAF. LAW § 401 (1) (a), states in pertinent part, "Registration by owners. a. No motor vehicle shall be operated or driven upon the public highways of this state without first being registered in accordance with the provisions of this article . . . ." *Id.*
[6] *Reynolds*, 185 Misc. 2d at 675, 713 N.Y.S.2d at 814.
[7] *Id.* The police officer later testified that this was done to separate the two men in order to investigate possible prostitution activity. *Id.*
[8] *Id.*
[9] *Id.*

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intoxicated.[10] The officer did not discover any evidence regarding possible prostitution during his initial investigation.[11]

During a probable cause hearing, the police officer testified to the above facts, and the hearing court issued a written decision granting defendant's motion to suppress all evidence derived from the traffic stop, detention and ensuing arrest.[12] The hearing court based its decision on the police officer's lack of reasonable suspicion and probable cause for the DWI arrest in violation of the United States and New York State Constitutions.[13] In doing so, the court determined that vehicular stops must not be pretextual.[14] The standard the court used for assessing whether a stop is pretextual in nature was a primary motivation test.[15] The court went on to state that in the instant case, the motivation behind the police officer's initial stop was to investigate the possibility of prostitution and therefore the license plate check was unrelated to a traffic or equipment violation.[16] The hearing court concluded its analysis by stating that:

> [T]he primary motivation of the officer was the investigation of perceived prostitution . . . . [T]he officer observed no criminal conduct; his investigation of the matter and detention of defendant . . . resulted in no charges . . . for prostitution activities. A good faith belief by the officer that there was a violation of the vehicle and traffic law, coupled with the surrounding circumstances did not provided reasonable suspicion of criminal activity to justify the stop.[17]

The charges against the defendant were then dismissed and the people appealed.[18] During oral argument in front of this court on appeal, the People focused on the idea that pursuant to *Whren v.*

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[10] *Id.*
[11] *Id.* at 676, 713 N.Y.S.2d at 815.
[12] *Reynolds,* 185 Misc. 2d at 675, 713 N.Y.S.2d at 814.
[13] *Id.*
[14] *Id.*
[15] *See* People v. Dickson, 180 Misc. 2d 113, 114-15, 690 N.Y.S.2d 390, 391 (N.Y. Sup. Ct. 1998).
[16] *Reynolds*, 185 Misc. 2d at 676, 713 N.Y.S.2d at 815.
[17] *Id.*
[18] *Id.*

United States,[19] the stop of the defendant's car was legal because the officer's subjective motivation was not relevant.[20] The defendant argued that the hearing court was correct in its decision because New York law supports the view that pretextual stops are outlawed.[21] The question in front of the court was whether the decision of *Whren v. United States*, which interprets the Fourth Amendment's[22] protections against unreasonable searches and seizures, governs unreasonable searches and seizures of automobiles in New York State.[23]

The court started its inquiry by discussing the decision in *Whren*, where the Supreme Court held that the defendant's Fourth Amendment right against unreasonable search and seizure was not violated where a police officer's temporary detention was based on a probable belief that he had violated a traffic law, even though a reasonable officer would not have stopped the defendant motorist without some additional objective.[24] The Court in *Whren* cited its previous decisions in *United States v. Villamonte-Marquez*,[25] *United States v. Robinson*,[26] and *Scott v. United States*,[27] stating that these cases "served to foreclose any argument that the constitutional reasonableness of traffic stops depends on the actual motivations of the individual officers involved" and reaffirmed that

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

[20] *Reynolds*, 185 Misc. 2d at 676, 713 N.Y.S.2d at 815.

[21] *Id.*

[22] U.S. CONST. amend. IV, states, in relevant 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 . . . but upon probable cause . . . ." *Id.*

[23] *Reynolds*, 185 Misc. 2d at 676, 713 N.Y.S.2d at 815.

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

[25] 462 U.S. 579. (1983) (holding that customs officers did not violate the defendant's Fourth Amendment right against unreasonable search and seizure when it boarded a sailboat in order to check its documentation pursuant to Title 19 U.S.C. § 1581(a), which permits custom officers to board any vessel within the United States to examine its documentation).

[26] 414 U.S. 218 (1973) (holding that a search incident to a lawful arrest of a defendant does not violate the Fourth Amendment, reiterating that it is a well settled exception to the warrant requirement of the Fourth Amendment).

[27] 436 U.S. 128 (1978) (articulating the proper approach to evaluate a violation of a defendant's Fourth Amendment right is to objectively assess the officer's actions in light of the surrounding facts and circumstances, not the officer's subjective motivations).

subjective intentions do not play a role in a probable-cause Fourth Amendment analysis.[28]

The relevant parts of the Fourth Amendment of the United States Constitution and the New York Constitution Article I § 12[29] are identical. They both provide that the "right of people to be secure in their persons...against unreasonable searches and seizures, shall not be violated . . . but upon probable cause . . . ."[30] Although their wording is consistent, there has been different interpretation by the courts in their respective applications. Generally, where a conflict exists between the Supreme Court of United States and New York State Courts as to the correct interpretation of United States Constitution, state courts are bound by the Supreme Court's interpretation.[31] However, the state court can afford its citizens additional protection in its interpretation of its State Constitution, but cannot take away any rights that the Federal Constitution grants.[32] New York Courts have therefore interpreted the New York Constitution more stringently than its federal counterpart, reasoning that the federal interpretation would undermine the rights of its citizens to be "free from unreasonable governmental intrusion."[33]

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

[29] N.Y. CONST. art. I, § 12. This section provides, in relevant 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, 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.

Id.

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

[31] *Reynolds,* 185 Misc. 2d at 677, 713 N.Y.S.2d at 816.

[32] *Id.*

[33] *Id.* (articulating a list of cases in which the Court of Appeals carved out an independent body of search and seizure law under the New York Constitution). *See, e.g.*, People v. Scott, 79 N.Y.2d 474, 593 N.E.2d 1328, 583 N.Y.S.2d 920 (1992) (holding that an owner is constitutionally protected under Article I §12 from unreasonable search of land outside the curtilage); People v. Dunn, 77 N.Y.2d 19, 564 N.E.2d 1054, 563 N.Y.S.2d 388, *cert. denied*, 501 U.S. 1219 (1990) (holding that a canine sniff search is an invasion go a defendant's expectation of privacy under Article I § 12); People v. Class, 67 N.Y.2d 431, 494 N.E.2d 444, 503 N.Y.S.2d 313 (1986) (holding that the nonconsensual search of defendant's car to determine the vehicle identification number violated

Prior to *Whren*, it was well settled law in New York that a police officer could not use traffic violations as a mere pretext to stop a defendant to investigate an unrelated matter.[34] The various departments consistently looked beyond the initial traffic violations to determine what the officer's primary or subjective motivation was for making the stop.[35]

In the four years since the *Whren* decision, the New York Appellate Courts have had difficulty determining whether *Whren* supersedes New York's long-held principle that pretextual stops are outlawed.[36] The Court of Appeals' failure to enunciate a decision as to whether pretextual stops are grounded in the protection against unreasonable search and seizure provided for in Article I, § 12 of the Constitution of New York have caused the departments to adopt their own approaches to the issue addressed in *Whren*. The First Department has adopted the objective test adhered to in *Whren*. In *People v. Robinson*, the First Department explicitly adopted the federal view that "the subjective reason of the police for stopping an automobile is irrelevant in ascertaining the probable cause as long as the stop was reasonable.[37] Consistent with the First Department, the Second Department has also adopted the objective test articulated in *Whren*, but has shied away

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the defendant's Article I § 12 right against unreasonable search and seizure); People v. Johnson, 66 N.Y.2d 398, 488 N.E.2d 439, 497 N.Y.S.2d 618 (1985) (declining pursuant to Article I § 12, to apply the warrantless search analysis of "totality of the circumstances" articulated by the Supreme Court); People v. Bigelow, 66 N.Y.2d 417, 488 N.E.2d 451, 497 N.Y.S.2d 630 (declining to apply a good faith exception to the warrant requirement); People v. Belton, 55 N.Y.2d 49, 432 N.E.2d 745, 447 N.Y.S.2d 49 (1982) (holding that a contemporaneous search after a lawful stop is permitted where police has reason to believe car may contain evidence related to the crime for which the occupant was arrested or that a weapon may be discovered or a means of escape available).

[34] *Reynolds*, 185 Misc. 2d at 681, 713 N.Y.S.2d at 819.

[35] *See, e.g.*, People v. Ynoa, 223 A.D.2d 975, 636 N.Y.S.2d 888 (3d Dep't. 1996); People v. Laws, 213 A.D.2d 226, 623 N.Y.S.2d 860 (1st Dep't. 1995); People v. Lewis, 195 A.D.2d 523, 600 N.Y.S.2d 272 (2d Dep't. 1992); People v. Camarre, 171 A.D.2d 1002, 569 N.Y.S.2d 223 (4th Dep't. 1991); People v. Watson, 157 A.D.2d 476, 549 N.Y.S.2d 27 (1st Dep't. 1990); People v. Llopis, 125 A.D.2d 416, 509 N.Y.S.2d 135, People v. Flanagan, 56 A.D.2d 658, 391 N.Y.S.2d 907 (2d Dep't. 1977).

[36] *Reynolds*, 185 Misc. 2d at 682, 713 N.Y.S.2d at 819.

[37] People v. Robinson, 271 A.D.2d 17, 24, 711 N.Y.S.2d 384, 390 (1st Dep't. 2000).

from analyzing the primary motivation for the pretext stops. However, the Third and Fourth Departments have continued to use the primary motivation test in its determination of pretextual stops.[38] Lower courts have also treated the pretext issue differently than the higher courts.[39]

The New York Court of Appeals has not addressed this issue since the *Whren* decision, and has thus given no guidance to the lower courts of New York. The Court of Appeals has the authority to interpret state constitutional provisions and to impart on its citizens additional rights and protections than those offered under the Federal Constitution. The lower courts have followed the principle, guided by precedent, that "police stops of automobiles . . . are legal only pursuant to routine, nonpretextual traffic checks to enforce traffic regulations or when there exists at least reasonable suspicion that the driver or occupants of the vehicle have committed or are about to commit a crime."[40] The *Whren* decision, interpreting the Fourth Amendment of the United Sates Constitution, is inconsistent with the Court of Appeals' interpretation of Aarticle I, § 12 of the New York State Constitution.[41] Furthermore, although the Federal Constitution permits such pretextual stops, it does not require New York courts to permit the same if it would infringe on the rights of New York citizens. After setting forth the New York State decisions regarding pretextual stops and discussing the *Whren* decision and its implications, the County Court concluded that the precedent set forth in the State of New York is clear regarding the prohibition against pretextual stops and should be applied to the case at bar.

The case law interpreting the protections granted by the Fourth Amendment of the United States Constitution and Article I,

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[38] *See, e.g.*, People v. Peterson, 245 A. D.2d 815, 666 N.Y.S.2d 785 (3d Dept. 1997); People v. Perruccio, 267 A.D.2d 1082, 700 N.Y.S.2d 347, *cert. denied*, 94 N.Y.2d 905 (4th Dept. 1999).

[39] *See, e.g.*, People v. Lucas, 183 Misc. 2d 639, 704 N.Y.S.2d 779 (1999) (applying an objective analysis in reviewing reasonable cause for the vehicular stop); People v. Dickson, 180 Misc. 2d 113, 690 N.Y.S.2d 390 (1998) (applying the primary motivation test stating that it has "long served as an underpinning of New York's constitutional protections").

[40] *Reynolds*, 185 Misc. 2d at 680, 713 N.Y.S.2d at 818 (citing People v. Spencer, 84 N.Y.2d 749, 753, 646 N.E.2d 785, 787, 622 N.Y.S.2d 483, 485 (1995)).

[41] *See supra* notes 33 and 35.

§ 12 of the New York Constitution clearly shows that said rights under the Federal Constitution and the New York State Constitution are not identical. The Fourth Amendment, as interpreted by the Supreme Court in *Whren v. United States*, does not require an analysis of the individual officers' subjective intentions when determining probable cause in investigative automobile stops.[42] However, despite the *Whren* decision, New York courts have interpreted Article I, § 12 of the New York Constitution stringently, and have consistently held that pretextual stops are not permitted.[43] When determining whether probable cause exists, New York courts look to the officer's subjective as well as the objective reasons for the automobile checks.

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[42] *Whren*, 517 U.S. at 819.

[43] *See, e.g.*, People v. Scott, 79 N.Y.2d 474, 593 N.E.2d 1328, 583 N.Y.S.2d 920 People v. Dunn, 77 N.Y.2d 19, 564 N.E.2d 1054, 563 N.Y.S.2d 388 (1990); People v. Ynoa, 223 A.D.2d 975, 636 N.Y.S.2d 888 (3d. Dep't. 1996); People v. Laws, 213 A.D.2d 226, 623 N.Y.S.2d 860 (1st Dep't. 1995); People v. Lewis, 195 A.D.2d 523, 600 N.Y.S.2d 272 (2d Dep't. 1992); People v. Camarre, 171 A.D.2d 1002, 569 N.Y.S.2d 223 (4th Dep't. 1991); People v. Watson, 157 A.D.2d 476, 549 N.Y.S.2d 27 (1st Dep't. 1990).

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