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Search and Seizure, Supreme Court, Queens County: People v. Brewer

over, they must obtain a search warrant before examining the suitcase's contents.[409] This precedent can be similarly reconciled in the New York Supreme Court case of *People v. Hayes*.[410] In *Hayes*, the police had the authority to remove clothing of a defendant from a hospital. However, the police exceeded their boundaries when they performed tests of the blood found on the defendant's clothing.[411]

SUPREME COURT

QUEENS COUNTY

People v. Brewer[412]
(decided June 10, 1997)

Three men were charged with criminal weapons possession after the arresting officers stopped their vehicle in traffic.[413] They moved to suppress physical evidence obtained by the police, and statements made to police.[414] Defendants argued that the evidence was obtained in violation of their rights against unlawful search and seizure, guaranteed by the United States Constitution[415] and the New York State Constitution.[416] The motion to suppress was denied because the search of the

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[409] *See* United States v. Chadwick, 433 U.S. 1 (1971).

[410] 154 Misc. 2d 429, 584 N.Y.S.2d 1001 (Sup. Ct. New York County 1992).

[411] *Id.*

[412] 173 Misc. 2d 520, 622 N.Y.S.2d 172 (Sup. Ct. Queens County 1997).

[413] *Id.* at 521, 622 N.Y.S.2d at 172.

[414] *Id.*

[415] U.S. CONST. amend. IV. The amendment protects the right "of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures . . . but upon probable cause supported by oath or affirmation . . . ." *Id.*

[416] N.Y. CONST. art. I, § 12, cl. 1. This provision mirrors the Fourth Amendment of the Federal Constitution verbatim.

defendants' vehicle was found to be reasonable notwithstanding the motives of the arresting officers, and therefore not barred by either constitution as unreasonable search and seizure. [417]

Police Officer Hill was driving with his sergeant[418] and was stopped at a traffic light.[419] As he waited, he observed another car make a right turn through the intersection with no headlights on.[420] After this vehicle made the turn, it pulled over to the side of the road, pulled out again quickly, then turned back to the side of the road for a second time a few seconds later.[421] At this time, Hill stopped the car on the next block.[422]

When the car stopped, the driver, defendant Eaddy got out and walked toward Hill's car, behaving suspiciously.[423] Officer Hill requested to see his license, but Eaddy said that he did not have it with him.[424] He further explained that he did not want the rear passengers, Henry and Brewer, in the car.[425] Hill then told Brewer to exit the vehicle, but when he did, Hill noticed a bulge around his waistband.[426]

After a brief scuffle, Hill obtained the object, which turned out to be a flashlight.[427] Hill then saw codefendant, Ashraf, still in

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[417] *Brewer*, 173 Misc. 2d at 528, 622 N.Y.S.2d at 176.

[418] *Id.* at 522, 622 N.Y.S.2d at 172. They drove in an unmarked police car. *Id.*

[419] *Id.* at 522, 622 N.Y.S.2d at 172.

[420] *Id.* Hill testified that he saw a passenger in the rear of the vehicle look at him as the car passed through the intersection, and then its lights were turned on. *Id.*

[421] *Id.*

[422] *Id.*

[423] *Id.* at 522, 622 N.Y.S.2d at 172-73. Eaddy walked toward Officer Hill "with his hand in a 'semi-raised' position." *Id.* at 522, 622 N.Y.S.2d at 173. The officer told him to go back to the vehicle twice, and Eaddy did so, but only halfway into the driver's seat. *Id.*

[424] *Id.* at 522, 622 N.Y.S.2d at 173. Eaddy said he did not have his own license available, but he was borrowing his sister's car to give Hopkins, one of the passengers, a ride. *Id.*

[425] *Id.*

[426] *Id.*

[427] *Id.*

the car, pulling a gun from his waistband.[428] Ashraf dropped his gun to the floor of the car, and codefendant Henry kicked his feet under the driver's seat.[429] Hill removed Henry from the vehicle, and began to search the car.[430] Underneath the driver's seat, the officer recovered a loaded 9-millimeter pistol, and the .44 caliber revolver Ashraf had dropped.[431]

The defendants moved to suppress the physical evidence and statements made after they were charged with illegal weapons possession.[432] At the suppression hearing, Officer Hill testified that he did not stop the vehicle immediately after he had observed two Vehicle and Traffic Law violations, and that he did not issue summonses, but merely followed defendants, thereby continuing his surveillance of the car.[433] The court held that this infraction was clearly a pretext to further investigation of suspected criminal activity.[434]

To determine the validity of the stop, the *Brewer* court relied on New York case law.[435] The Court of Appeals has held that in New York State, traffic stops are seizures "implicating constitutional limitations,"[436] and therefore they are only legal when they are done as either routine, nonpretextual checks to

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[428] *Id.* In response, Hill drew his own revolver. *Id.*

[429] *Id.* at 523, 622 N.Y.S.2d at 173.

[430] *Id.*

[431] *Id.* The officer also recovered a ski mask from each defendant, except Eaddy. *Id.*

[432] *Id.*

[433] *Id.*

[434] *Id.*

[435] People v. Ingle, 36 N.Y.2d 413, 330 N.E.2d 39, 369 N.Y.S.2d 67 (1975). "In the context of a motor vehicle 'stop,' the degree of suspicion required to justify the stop is minimal." *Id.* at 415, 330 N.E.2d at 40, 369 N.Y.S.2d at 69. "All that is required is that the stop not be the product of mere whim, caprice, or . . . curiosity." *Id.* at 420, 330 N.E.2d at 44, 369 N.Y.S.2d at 74.

[436] People v. Spencer, 84 N.Y.2d 749, 752, 646 N.E.2d 785, 787, 622 N.Y.S.2d 483, 485 (1995) (holding that traffic stops are seizures "within the meaning of the Fourth Amendment," regardless of their purpose or duration of each search).

enforce regulations, or as preventive action to investigate a reasonable suspicion that the driver and/or passengers have performed an illegal act.[437]

This position was followed by the Second Department in *People v. Roundtree*[438] and *People v. David*[439] holding that traffic violations cannot be used as a pretext to search a suspect's vehicle or interrogate him for unrelated crimes.[440] Several other New York cases similarly held that police officers could not search a motor vehicle after they had only stopped it for a vehicle and traffic violation.[441]

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[437] *Id.* at 753, 646 N.E.2d at 787-88, 622 N.Y.S.2d at 485-86.

[438] 234 A.D.2d 612, 651 N.Y.S.2d 615 (2d Dep't 1996), *appeal denied*, 89 N.Y.2d 1040, 681 N.E.2d 1318, 659 N.Y.S.2d 871 (1997). In *Roundtree*, policemen followed a vehicle for six blocks because it resembled the make and model of a car used in transporting illegal firearms. *Id.* at 613, 651 N.Y.S.2d at 615. The officer stopped the vehicle when the driver allegedly made a left turn without signaling, but never questioned the motorist about the traffic violation. *Id.* The officer stated that he wanted to investigate gun-running in the area. *Id.*

[439] 223 A.D.2d 551, 553, 636 N.Y.S.2d 374, 376-77 (2d Dep't 1996). In *David*, a police officer stopped a car because the driver was not wearing his seat belt, and the inspection sticker had expired. *Id.* at 551, 636 N.Y.S.2d at 376. After the stop, the officer found that the driver had several falsified licenses, "sap" gloves (used as weapons), and hidden drugs. *Id.* at 551-52, 636 N.Y.S.2d at 376.

[440] *Roundtree*, 234 A.D.2d at 612-13, 651 N.Y.S.2d at 615. "Although police observation of a traffic infraction is a sufficient basis to satisfy a stop of the offending vehicle, . . . it is equally well settled that the 'police may not use a traffic violation as a mere pretext to investigate a suspect on an unrelated matter.'" *Id.* *See also David*, 223 A.D.2d at 553, 636 N.Y.S.2d at 376,

[441] *See* People v. Laws, 213 A.D.2d 226, 623 N.Y.S.2d 860 (1st Dep't 1995). In *Laws*, an out-of-state license plate and a broken taillight on a rental car raised the officer's suspicions of drug-related activity. *Id.* at 226-27, 623 N.Y.S.2d at 861. A pistol was recovered from the defendant. *Id.* The court upheld the suppression of the weapon as "the fruit of an unjustified stop. *Id.* at 227, 623 N.Y.S.2d at 861. *See also* People v. Smith, 181 A.D.2d 802, 581 N.Y.S.2d 240 (2d Dep't 1992). In *Smith*, the police saw defendant leave a known "stash house" with a bag, and get into a cab. *Id.* at 803, 581 N.Y.S.2d at 241. The officer stopped the cab after it made a sudden U-turn, the bag was searched, and a gun was found. *Id.* The suppression of this evidence was also upheld as the product of a pretextual search. *Id.* *See also*

However, the United States Supreme Court in *Whren v. United States*,[442] held that pretextual searches were not prohibited by the Fourth Amendment.[443] As in the instant case, undercover policemen in an unmarked car observed another vehicle that contained suspicious-looking occupants who violated traffic laws.[444] When the police car drove up to the vehicle, the officer observed several bags of crack-cocaine.[445] The district court denied the suppression and ruled that the officer's actions were the same as for any traffic stop.[446] Defendants were convicted, they appealed, and the United States Supreme Court granted certiorari.[447]

A unanimous Court, per Justice Scalia, held that an officer's motive does not invalidate objectively justifiable behavior under the Fourth Amendment, and that subjective intent by itself does not render otherwise legal conduct unconstitutional.[448] The Court acknowledged that a traffic stop is a "seizure" within the

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People v. Watson, 157 A.D.2d 476, 549 N.Y.S.2d 27 (1st Dep't 1990). In *Watson*, the court found that the evidence did not establish probable cause to believe that the defendants were in the process of committing a crime. *Id.* at 477, 549 N.Y.S.2d at 27. Since the driver's traffic violations were not the reason why the police pulled the car over, the court held that they could not "be used to justify the stop." *Id.*

[442] 116 S. Ct. 1769 (1996).

[443] *Id.* at 1774.

[444] *Id.* at 1772. In *Whren*, the truck had temporary license plates, and the driver repeatedly looked down into his passenger's lap. *Id.* The truck sat at an intersection for "what seemed to be an unusually long time - more than 20 seconds." *Id.* The driver then made a sharp turn without signaling and sped off at an "unreasonable speed." *Id.*

[445] *Id.*

[446] *Id.*

[447] *Id.* The District of Columbia Circuit held that regardless of the officer's subjective beliefs, "a traffic stop is permissible as long as a reasonable officer in the same circumstances could have stopped the car for the suspected violation." *Id.* (citing United States v. Whren, 53 F.3d 371 (D.C. Cir. 1995)).

[448] *Id.* at 1774.

constitutional definition,[449] but the seizure is reasonable when based on probable cause.[450]

The *Brewer* court questioned whether Whren had overruled the earlier New York cases that held against pretextual searches.[451] Defendants argued that since the Supreme Court had previously upheld pretextual stops in its earlier cases, New York courts had already rejected the ruling that permitted pretextual searches.[452]

However, the *Brewer* court explained that it could not conclude that New York had rejected *Whren's* interpretation of the Fourth Amendment.[453] In fact, *Whren* was cited favorably by *People v. McCoy*,[454] a recent case similar to the instant matter.[455]

Moreover, the *Brewer* court held that even if *Whren* were decided earlier, there was no evidence that New York courts rejected the Supreme Court's interpretation, since they had not addressed the issue.[456] The earlier cases[457] did not cite the New York State Constitution, and only one recent case adopted the premise that the State Constitution could provide New York

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[449] *Id.* at 1772.

[450] *Id.* at 1776.

[451] *Brewer*, 173 Misc. 2d at 524, 622 N.Y.S.2d at 174.

[452] *Id.* People v. Roundtree, 234 A.D.2d 612, 651 N.Y.S.2d 615 (2d Dep't 1996), which held against pretextual searches, was actually decided after the *Whren* decision. *Id.*

[453] *Id.* at 525, 662 N.Y.S.2d at 174. The *Roundtree* court neither cited *Whren*, nor cited to the New York State Constitution. *Id.*

[454] 657 N.Y.S.2d 437 (2d Dep't), *appeal denied*, 91 N.Y.2d 835, 690 N.E.2d 498, 667 N.Y.S.2d 689 (1997).

[455] *Id.* In *McCoy*, a police officer recognized a suspicious vehicle from a "roll call" he heard before his shift began. *Id.* at 438. He also observed that the car had a broken taillight, and the driver was not wearing his seat belt, so he pulled him over for the traffic violations. *Id.* He saw guns and ski masks inside the car. *Id.* The court held that a traffic stop was valid because of vehicle infractions, even though the officer believed the driver to be a suspect who was identified in an unrelated criminal matter. *Id.* at 438-39.

[456] *Brewer*, 173 Misc. 2d at 525, 622 N.Y.S.2d at 175.

[457] *See supra* notes 437-42 and accompanying text.

citizens more protection than under the Federal Constitution.[458] Therefore, the *Brewer* court could find no authority to support the argument that the pretextual stop violated constitutional rights under the State Constitution.[459]

The *Brewer* court also found that the only times New York cases cited to constitutional law to support their holdings, they cited either to the United States Constitution, or to the Supreme Court cases that interpreted it.[460] The court also cited to the recent case of *Ohio v. Robinette*[461] to illustrate that where state law is not specifically cited as authority, courts cite to federal law.[462] The *Brewer* court concluded that New York courts have not yet solved the *Whren* dilemma by interpreting the State Constitution.[463]

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[458] People v. Williams, N.Y. L.J., Aug. 5, 1996, 29 (Sup. Ct. Bronx County Aug. 4, 1996). While acknowledging *Whren*, the judge cited to People v. Spencer as affording greater protection to individual liberties under the State Constitution, and held the pretextual search before him to be inadmissible. *Id.* The phrase, "police stops of automobiles *in this State* are legal only pursuant to . . . nonpretextual traffic stops" was interpreted as a sign of the state interpreting its own constitution. *Id.* (emphasis added). *See Spencer*, 84 N.Y.2d at 753, 646 N.E.2d at 787, 622 N.Y.S.2d at 485.

[459] *Brewer*, 173 Misc. 2d at 526, 622 N.Y.S.2d at 175.

[460] *Id.* The court cited to several cases that were either silent as to constitutional authority or only cited to the Federal Constitution. *Id. See* People v. Owens, 164 Misc. 2d 15, 623 N.Y.S.2d 719 (Sup. Ct. New York County 1995). *See also* People v. Sobotker, 43 N.Y.2d 559, 373 N.E.2d 1218, 402 N.Y.S.2d 993 (1978). The court also referred to People v. Spencer, 84 N.Y.2d 749, 646 N.E.2d 785, 622 N.Y.S.2d 483 (1995), which followed the Federal Constitution as authority, apparently rejecting the reasoning of the Bronx Supreme Court in People v. Williams, N.Y. L.J., Aug. 5, 1996, 29.

[461] 117 S. Ct. 417 (1996). In *Robinette*, the Court held that when a state court decision rests on federal law, or a mixture of state and federal law, and when the court's opinion does not clarify any independent state law grounds for the decision, the decision will be construed as to cite federal law as the basis for its decision. *Id.* at 420. Incidentally, it also followed *Whren* as authority that an arresting officer's subjective intentions did not invalidate a stop or arrest for probable cause. *Id.* at 420-21.

[462] *Brewer*, 173 Misc. 2d at 526, 622 N.Y.S.2d at 175.

[463] *Id.*

The court's final question was whether New York, having not previously done so, should interpret its own Constitution to give its citizens broader protection than *Whren* allows.[464] In *People v. Johnson*,[465] the Court of Appeals held that since Article I, § 12 of the New York State Constitution conforms with the Fourth Amendment, the identical language supports a policy of uniformity between state and federal courts.[466]

However, in *People v. Reynolds*,[467] the Court of Appeals noted that principles of federalism allow a state the right to give its citizens greater insulation from government intrusion than the Fourth Amendment provides.[468] Thus, the *Brewer* court held that New York courts do have the power to interpret the State Constitution to provide broader protection than *Whren* provides, but it is not a power that a lower court judge can utilize.[469]

As justification for its refusal to interpret the State Constitution as such, the *Brewer* court cited *People v. Keta*,[470] which held that such a duty was the "exclusive domain" of the Court of Appeals, therefore lower courts must defer to its power.[471] The Second Department held that this was especially true when dealing with a provision that had an identical counterpart in the Federal Constitution.[472] In holding itself incapable to construe the State Constitution to provide broader rights for the defendants, the

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[464] *Id.*

[465] 66 N.Y.2d 398, 488 N.E.2d 439, 497 N.Y.S.2d 618 (1985)

[466] *Johnson*, 66 N.Y.2d at 406, 488 N.E.2d at 445, 497 N.Y.S.2d at 624. The Court of Appeals had traditionally fashioned remedies that conformed to Federal Constitutional interpretation. *Id.*

[467] 71 N.Y.2d 552, 523 N.E.2d 291, 528 N.Y.S.2d 15 (1988).

[468] *Id.* at 557, 523 N.E.2d at 293, 528 N.Y.S.2d at 17. Nevertheless, that power is still exercised cautiously, because the identical language of the two clauses still supports a policy of uniformity between State and Federal courts. *Id.*

[469] *Brewer*, 173 Misc. 2d at 527, 622 N.Y.S.2d at 176 (referring to Whren v. United States, 116 S. Ct. 1769 (1996)).

[470] 165 A.D.2d 172, 567 N.Y.S.2d 738 (2d Dep't 1991).

[471] *Id.* at 177-78, 567 N.Y.S.2d at 741.

[472] *Id.* at 178, 567 N.Y.S.2d at 741.

Brewer court claimed it was constrained to follow the holding of *Whren*, and deny the motion to suppress.[473]

The *Brewer* court also cited to *People v. Scott*[474] without discussing the holding of the case. In that case, the Court of Appeals rejected any rule that would require it to interpret State Constitutional provisions in "'lockstep' with the Supreme Court's interpretations of similarly worded provisions of the Federal Constitution."[475]

In a concurring opinion, then-Judge Kaye asserted that it is perfectly legitimate for a state court to reject Supreme Court precedent and establish higher constitutional standards in its own jurisdiction.[476] While the dissent criticized the majority for rejecting the policy of uniformity,[477] the concurrence stated that dual sovereignty was a strength of our federal system, and that ruling as such does not insult the Supreme Court.[478] Nevertheless, the *Brewer* court chose to leave the question open for that higher court to resolve.[479]

As stated, the language in both the federal and state provisions are the same.[480] However, the New York State provision can be construed to prohibit any traffic stops that are not intended for the

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[473] *Brewer*, 173 Misc. 2d at 528, 622 N.Y.S.2d at 176 (citing *Keta*, 165 A.D.2d at 177-78, 567 N.Y.S.2d at 741).

[474] 79 N.Y.2d 474, 593 N.E.2d 1328, 583 N.Y.S.2d 920 (1992), *rev'g Keta on other grounds*, 165 A.D.2d 172, 567 N.Y.S.2d 738.

[475] *Scott*, 79 N.Y.2d at 490, 593 N.E.2d at 1338, 583 N.Y.S.2d at 930.

[476] *Id.* at 504-05, 593 N.E.2d at 1347, 583 N.Y.S.2d at 939 (Kaye, J., concurring).

[477] *Id.* at 506-07, 593 N.E.2d at 1348, 583 N.Y.S.2d at 940 (Bellacosa, J., dissenting). The dissent asserted that before interpreting a state provision differently from its federal counterpart, there must be enough state case law to define and justify the scope of protection, rather than mere ideological disagreement. *Id.* at 510, 593 N.E.2d at 1350, 583 N.Y.S.2d at 942 (Bellacosa, J, dissenting).

[478] *Id.* at 505-06, 593 N.E.2d at 1348, 583 N.Y.S.2d at 940 (Kaye, J., concurring).

[479] *Brewer*, 173 Misc. 2d at 528, 622 N.Y.S.2d at 176.

[480] *See* U.S. CONST. amend. IV. *See also* N.Y. CONST. art. I § 12.

sole purpose of issuing a summons for a traffic violation.[481] As clearly demonstrated in *Whren*,[482] the federal provision is likely to be construed more conservatively, as to disregard a police officer's subjective intentions for a traffic stop, thereby limiting the rights that can be provided under the State Constitution.[483] However, the only way to construe the State provision to give defendants broader rights against illegal search and seizure than that which is currently allowable under modern interpretation of the Fourth Amendment is for the Court of Appeals to hold as such.[484]

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[481] People v. Williams, N.Y.L.J., Aug. 5, 1996 at 29 (citing People v. Spencer, 84 N.Y.2d 749, 646 N.E.2d 785, 622 N.Y.S.2d 483 (1995)).

[482] Whren v. United States, 116 S. Ct. 1769 (1996).

[483] *Reynolds*, 71 N.Y.2d at 557, 523 N.E.2d at 293, 528 N.Y.S.2d at 17. The dissent in this case went even further, stating that Supreme Court precedents are not controlling under the State Constitution, and "there are good reasons why our State rules should be different." *Id.* at 562, 523 N.E.2d at 296, 528 N.Y.S.2d at 20-21 (Hancock, J., dissenting).

[484] *Keta*, 168 A.D.2d at 177-78, 567 N.Y.S.2d at 741; *Brewer*, 173 Misc. 2d at 527-28, 622 N.Y.S.2d at 176.