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justification for the intrusion.¹⁴⁸ Where the safety inspection is conducted pursuant to a "closely-regulated statute" the potentially arbitrary nature of a search and seizure is eliminated and the expectation of privacy is diminished.

SUPREME COURT

BRONX COUNTY

People v. Williams¹⁴⁹
(decided August 5, 1996)

Defendants, Kevin Williams and Anthony Haynes, were each indicted on one count of criminal possession of a weapon in the third and fourth degree.¹⁵⁰ Williams was also charged with criminal possession of a controlled substance in the seventh degree.¹⁵¹ The defendants moved to suppress the evidence,¹⁵² including the weapon, ammunition and packages of cocaine that were recovered by the police at the scene of the incident.¹⁵³ The court granted this motion because they found that the police made

148. *Quackenbush*, 88 N.Y.2d at 544, 670 N.E.2d at 439, 647 N.Y.S.2d at 155.

149. N.Y. L.J., Aug. 5, 1996, at 29 (Sup. Ct. Bronx County Aug. 5, 1996).

150. *Id.*

151. *Id.*

152. *Id.* See N.Y. CRIM. PROC. LAW § 710.20 (McKinney 1996). This section provides in pertinent part:

Upon motion of a defendant who (a) is aggrieved by unlawful or improper acquisition of evidence and has reasonable cause to believe that such may be offered against him in a criminal action . . . a court may, under circumstances prescribed in this article, order that such evidence be suppressed or excluded upon the ground that it: (1) Consists of tangible property obtained by means of an unlawful search and seizure under circumstances precluding admissibility thereof in a criminal action against such defendant

Id.

153. *Williams*, N.Y. L.J., Aug. 5, 1996, at 25.

an unsupported "pretext stop"¹⁵⁴ to investigate an unrelated criminal activity.¹⁵⁵

Two police officers, Robert Hoyt and Frank Cervidio, observed two black males entering into a taxi cab while on routine patrol.¹⁵⁶ Soon thereafter, the cab "made an abrupt turn . . . up [the road] without signaling."¹⁵⁷ The policemen pulled the cab over.¹⁵⁸ Officer Hoyt stated that he pulled the cab over because of a traffic law violation and because he wanted to see whether a crime was being committed.¹⁵⁹

There was conflicting testimony as to when the police officer asked the cab driver for his license and registration.¹⁶⁰ Officer Hoyt testified that he asked for it when he first approached the cab.¹⁶¹ However, the cab driver, Mr. Windlay, stated that the officer did not ask for it until after the officers recovered a gun from underneath the front seat on the passenger's side of the car.¹⁶² The officers were informed of the whereabouts of the .25 caliber semi-automatic handgun by the cab driver after the defendants stepped out of the car.¹⁶³ The defendants were then handcuffed and brought down to the police precinct where they were searched.¹⁶⁴ Twenty-four packages of

154. *Id.* A "pretext stop" occurs when a police officer "use[s] traffic infractions to justify a stop of an individual when the police action is motivated by other reasons, namely, some suspicion that falls short of a reasonable suspicion that an occupant of a vehicle has committed, is in the process of or is about to commit a crime. See *People v. Owens*, 164 Misc. 2d 15, 18, 623 N.Y.S.2d 719, 721-22 (Sup. Ct. New York County 1995).

155. *Williams*, N.Y. L.J., Aug. 5, 1996, at 25.

156. *Id.*

157. *Id.*

158. *Id.*

159. *Id.* Officer Hoyt testified that he "stopped the cab . . . because of an infraction of the traffic laws and 'otherthings.'" *Id.* Hoyt further testified that he stopped the car "to find out if there was a crime committed." *Id.*

160. *Id.*

161. *Id.*

162. *Id.*

163. *Id.*

164. *Id.*

cocaine were found on William's person.¹⁶⁵ The defendants moved to suppress the gun, ammunition and cocaine.¹⁶⁶

In granting the motion to suppress the evidence the court relied on New York cases decided under the New York Constitution,¹⁶⁷ rather than on Supreme Court cases under the Federal Constitution.¹⁶⁸ In *People v. Spencer*,¹⁶⁹ two police officers were on routine patrol when they received a call stating that a woman had been assaulted by her boyfriend with a gun the previous day.¹⁷⁰ The officers picked up the complainant in order to look for the defendant.¹⁷¹ They located the defendant in a parked car, and, when he began driving, the officers pulled the car over.¹⁷² Upon approaching the vehicle, the officers found what appeared to be marijuana at the passenger's feet.¹⁷³ The defendant moved to suppress the evidence.¹⁷⁴ The court granted the motion because, in order for a police officer to legally stop a vehicle to investigate criminal activity, he must have a "reasonable suspicion that the driver or occupants of the vehicle have committed, are committing, or are about to commit a crime."¹⁷⁵ The court found that the officer did not have a reasonable suspicion.¹⁷⁶

165. *Id.*

166. *Id.*

167. 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. And no warrants shall issue, but upon probable cause" *Id.*

168. U.S. CONST. amend. IV. The Fourth Amendment states 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 . . . but upon probable cause" *Id.*

169. 84 N.Y.2d 749, 646 N.E.2d 785, 622 N.Y.S.2d 483, *cert. denied*, 116 S. Ct. 271 (1995).

170. *Id.* at 751, 646 N.E.2d at 786, 622 N.Y.S.2d at 484.

171. *Id.*

172. *Id.*, 646 N.E.2d at 786-87, 622 N.Y.S.2d at 484-85.

173. *Id.*, 646 N.E.2d at 787, 622 N.Y.S.2d at 485.

174. *Id.* at 752, 646 N.E.2d at 787, 622 N.Y.S.2d at 485.

175. *Williams*, N.Y. L.J., Aug. 5, 1996, at 25 (quoting *Spencer*, 84 N.Y.2d at 753, 646 N.E.2d at 787-88, 622 N.Y.S.2d at 485). See *People v. Harrison*, 57 N.Y.2d 470, 475, 443 N.E.2d 447, 449, 457 N.Y.S.2d 199, 201

The court defined reasonable suspicion as “the quantum of knowledge sufficient to induce an ordinary prudent and cautious person under the circumstances to believe that criminal activity is at hand.”¹⁷⁷ “The requisite knowledge must be more than subjective; it must have at least some demonstrable roots. Mere ‘hunch’ or ‘gut reaction’ will not do.”¹⁷⁸ “Nor will innocuous behavior alone generate a founded or reasonable suspicion that a crime is at hand.”¹⁷⁹ Thus, pretext stops may not be used by officers to investigate unrelated criminal activity.¹⁸⁰ Any attempt by the officer to use a pretext stop is a violation of the individual’s rights in the State.¹⁸¹

(1982) (finding that an officer “relying solely on the fact that the three men were occupying a dirty rental car . . . was insufficient to provide the requisite reasonable suspicion . . .”); *People v. Sobotker*, 43 N.Y.2d 559, 563, 373 N.E.2d 1218, 1220-21, 402 N.Y.S.2d 993, 996 (1978) (finding that “[b]y itself, the seemingly innocuous act of the defendant and his companions in glancing at a bar . . . did not reasonably denote criminal conduct.”); *People v. Ingle*, 36 N.Y.2d 413, 420-21, 330 N.E.2d 39, 44, 369 N.Y.S.2d 67, 75 (1975) (finding that an arbitrary stop by an officer to conduct a “routine traffic check” to better view defendant’s antique car was unreasonable.”). *See also* N.Y. CRIM. PROC. LAW § 140.50(1) (McKinney 1996). This section provides in pertinent part: “[A] police officer may stop a person in a public place located within the geographical area of such officer’s employment when he reasonably expects that such person is committing, has committed or is about to commit either (a) a felony or (b) a misdemeanor . . .” *Id.*

176. *Spencer*, 84 N.Y.2d at 755, 646 N.E.2d at 789, 622 N.Y.S.2d at 487.

177. *Williams*, N.Y. L.J., Aug. 5, 1996, at 29 (quoting *People v. Howard*, 147 A.D.2d 177, 179, 542 N.Y.S.2d 536, 538 (1st Dept. 1989); *People v. Sobotker*, 43 N.Y.2d at 564, 373 N.E.2d at 1220, 402 N.Y.S.2d at 996; *People v. Cantor*, 36 N.Y.2d 106, 112-13, 324 N.E.2d 872, 877, 365 N.Y.S.2d 509, 516 (1975)).

178. *Williams*, N.Y. L.J., Aug. 5, 1996, at 29 (quoting *Howard* 147 A.D.2d at 179, 542 N.Y.S.2d at 538; *Sobotker*, 43 N.Y.2d at 564, 373 N.E.2d at 1220, 402 N.Y.S.2d at 996).

179. *Williams*, N.Y. L.J., Aug. 5, 1996, at 29 (citing *People v. DuBour*, 40 N.Y.2d 210, 216, 352 N.E.2d 562, 567, 386 N.Y.S.2d 375, 380 (1976) (holding that police officers have the authority to approach and request information from civilians when acting pursuant to their law enforcement function so long as they are able to point to an articulable reason to justify their action)).

180. 216 N.Y. L.J. 29 (Sup. Ct. Bronx County Aug. 5, 1996).

181. *Id.*

In the case at bar, the court found that Officer Hoyt merely acted upon his own gut reaction when he proceeded to pull over the taxi.¹⁸² His testimony indicated that he stopped the cab in order to investigate unsupported criminal activity, rather than any traffic infraction.¹⁸³ Although the officer did believe that a traffic infraction had occurred, his intent was to investigate an unrelated situation upon stopping the car.¹⁸⁴ The officer neither issued a traffic summons to the driver, nor did he request any documents from the driver when he first confronted the situation.¹⁸⁵ According to *People v. Smith*,¹⁸⁶ failure to complete these tasks indicated that the traffic infraction “was clearly a mere pretext to stop the vehicle.”¹⁸⁷ Therefore, the stop was unjustifiable under New York law.¹⁸⁸

The New York Supreme Court refused to follow the interpretation of the Federal Constitution by ignoring the Supreme Court’s holding in *Whren v. United States*.¹⁸⁹ In that case, a policeman observed a truck waiting at a stop sign for an unusually long period of time.¹⁹⁰ The truck turned suddenly, “without signalling [sic], and sped off at an ‘unreasonable’ speed.”¹⁹¹ The police officers proceeded to stop the vehicle to warn the driver about the traffic violations.¹⁹² When the officer approached the truck, he noticed bags of crack cocaine in the defendant’s hand.¹⁹³ The defendant moved for suppression of

182. *Id.*

183. *Id.*

184. *Id.*

185. *Id.*

186. 181 A.D.2d 802, 581 N.Y.S.2d 240 (Sup. Ct. Kings County 1992).

187. *Id.* at 803, 581 N.Y.S.2d at 241. In *Smith*, an officer pulled over a cab driver because the officer suspected that the driver might possess drugs in his bag. *Id.* The officer failed to issue a summons, or ask for a license or registration. *Id.* The court held that the evidence was not admissible. *Id.*

188. *Williams*, N.Y. L.J., Aug. 5, 1996, at 29.

189. 116 S. Ct. 1769 (1996).

190. *Id.* at 1772.

191. *Id.*

192. *Id.*

193. *Id.*

the evidence under the Fourth Amendment of the Constitution.¹⁹⁴ The Court held that “the constitutional ‘reasonableness’ of traffic stops [should not depend] on the actual motivations of the individual officers involved.”¹⁹⁵ According to the Court, pretext stops made by a police officer do not violate an individual’s Federal Constitutional rights to be free from unreasonable searches and seizures.¹⁹⁶ The defendant argued that the Court should balance “the governmental and individual interests implicated in a traffic stop”¹⁹⁷ However, the Court found that “[w]here probable cause has existed, the only cases in which [it was] necessary to perform the ‘balancing’ analysis involved searches and seizures conducted in an extraordinary manner, unusually harmful to an individual’s privacy or even physical interests”¹⁹⁸ In this case, the Court concluded that “[t]he making of a traffic stop out-of-uniform does not remotely qualify as such an extreme practice, and so is governed by the usual rule that probable cause to believe the law has been broken ‘outbalances’ private interest in avoiding police contact.”¹⁹⁹ By adhering to the New York State Constitution, the court in *Williams* is attempting to promote greater protection to individual rights and liberties than would be provided for by the Federal Constitution.²⁰⁰

In sum, there is quite a distinction between the New York Constitution and the Federal Constitution in the area of searches and seizures. The New York Constitution affords greater protections to a defendant’s rights and liberties than does the

194. *Id.* 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. And no warrants shall issue, but upon probable cause” *Id.* See also *Mapp v. Ohio*, 367 U.S. 643 (1961) (holding that evidence should be deemed inadmissible if obtained in violation of the Fourth Amendment).

195. *Whren*, 116 S. Ct. at 1774.

196. *Id.* at 1774-76.

197. *Id.* at 1776.

198. *Id.*

199. *Id.* at 1777.

200. *Id.*

United States Constitution.²⁰¹ While the United States Constitution permits pretextual traffic stops to investigate potential criminal activity,²⁰² the New York State Constitution, in contrast, prevents the police from using pretextual stops to investigate unrelated criminal conduct.²⁰³

201. *Id.*

202. *Whren*, 116 S. Ct. at 1774-76.

203. *Williams*, N.Y. L.J., Aug. 5, 1996, at 29.

