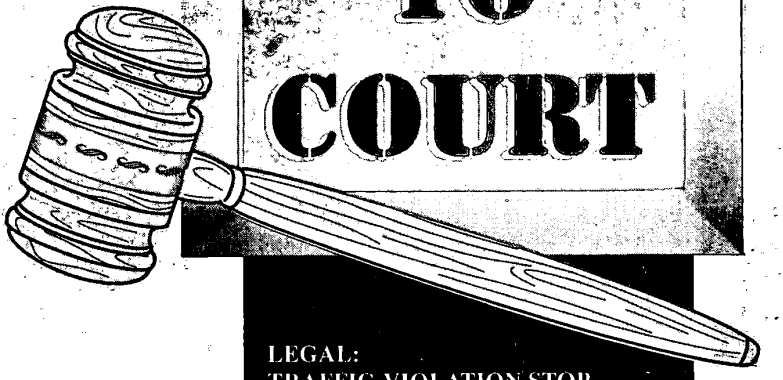
SEPTEMBER 1996

CRIME TO COURT



LEGAL:
TRAFFIC-VIOLATION STOP
OF MOTOR VEHICLE—
NOT INVALID AS PRETEXTUAL

Whren and Brown v. United States
United States Supreme Court

PROCEDURAL:
HINDSIGHT:
IN MEMORY OF
TROOPER MARK COATES,
Part 2 of 2

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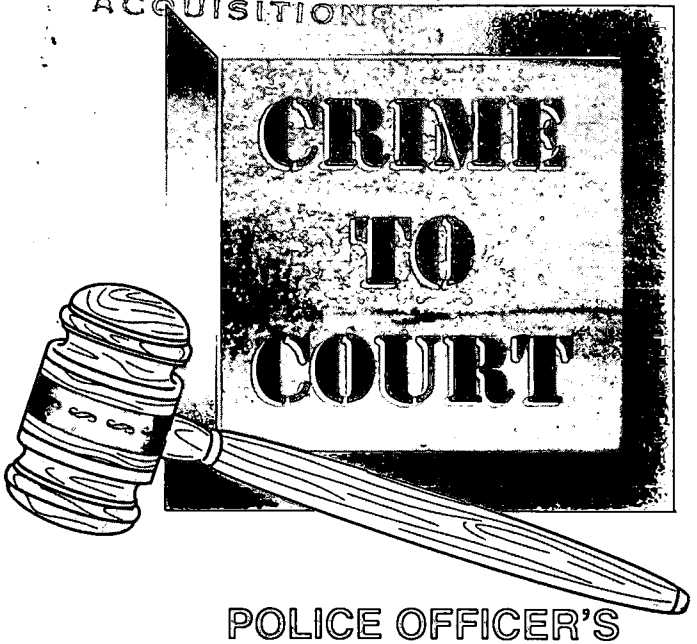

POLICE OFFICER'S HANDBOOK

by
Joseph C. Coleman
Legal Advisor and Writer

FOREWORD

— — — *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.*

Quoted with approval in
Whren and Brown v. United States
59 CrL 2121

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Production headquarters: 1101 George Rogers Boulevard, Columbia, SC 29201. Phone (803) 737-3437.

CONTENTS

THE CASE

**Traffic-Violation Stop of Motor Vehicle—
Not Invalid as Pretextual**

Whren and Brown v. United States

**United States Supreme Court
No. 95-5841—Decided June 10, 1996
Reported at 59 CrL 2121**

***Comment by* Crime to Court**

It is well established that police may not make an investigatory stop of a motorist without at least *reasonable suspicion* that the motorist [or a passenger in the vehicle] is engaged—or is about to be engaged—in criminal activity—or—unless the officer has *probable cause* to believe that the motorist is committing [or is about to commit] some violation of law.

Most often, of course, *probable cause* for stopping a motorist consists of observance by the officer of a traffic violation.

The courts have condemned as unreasonable the so-called *pretextual* stop of motorists. This means that the "stop" may not be merely an excuse to detain the motorist for some reason other than the one given.

The most common pretextual "stop" condemned by the courts has been the *random, unscheduled* stop of a motorist to check driver's license and registration—in the absence of any *reason-*

able suspicion or *probable cause* to believe that a violation of law is being [or is about to be] committed.

In our case for study in this legal segment of **Crime to Court** a motorist challenged his stop by police officers—even though the officers had observed him committing a traffic violation.

The action took place in Washington, D.C., and involved plainclothes vice-squad officers of the Metropolitan Police Department.

Opinion of the Supreme Court
Preamble by the Court

In this case we decide 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 unreasonable seizures unless a reasonable officer would have been motivated to stop the car by a desire to enforce the traffic laws.

Officers Observe Traffic Violations—Stop Vehicle

On the evening of June 10, 1993, plainclothes vice-squad officers of the District of Columbia Metropolitan Police Department were patrolling a "high-drug area" of the city in an unmarked car. Their suspicions were aroused when they passed a dark Pathfinder truck with temporary license plates and youthful occupants waiting at a stop sign, the driver looking down into the lap of the passenger at his right. The truck remained stopped at the intersection for what seemed an unusually long time—more than 20 seconds. When the police car executed a U-turn in order to head back toward the truck, the Pathfinder turned suddenly to its right, without signalling, and sped off at an "unreasonable" speed. The police-

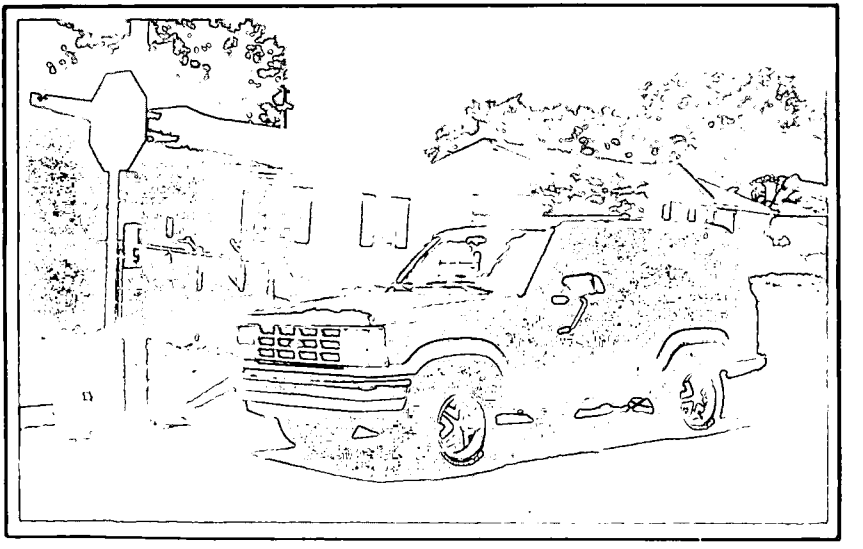
men followed, and in a short while overtook the Pathfinder when it stopped behind other traffic at a red light.

Plastic Bags Observed in Plain Sight

They pulled up alongside, and Officer Ephraim Soto stepped out and approached the driver's door, identifying himself as a police officer and directing the driver, petitioner Brown, to put the vehicle in park. When Soto drew up to the driver's window, he immediately observed two large plastic bags of what appeared to be crack cocaine in petitioner Whren's hands. Petitioners were arrested, and quantities of several types of illegal drugs were retrieved from the vehicle.

Defendant Argues that Stop was Pretextual

Petitioners were charged in a four-count indictment with violating various federal drug laws, including 21 U.S.C. §§ 844(a)



At an intersection for what seemed an unusually long time, the vehicle then turned right without signalling and sped off at an "unreasonable" speed.

and 860(a). At a pretrial suppression hearing, they challenged the legality of the stop and the resulting seizure of the drugs. They argued that the stop had not been justified by probable cause to believe, or even reasonable suspicion, that petitioners were engaged in illegal drug-dealing activity; and that Officer Soto's asserted ground for approaching the vehicle—to give the driver a warning concerning traffic violations—was pretextual. The District Court denied the suppression motion, concluding that "the facts of the stop were not controverted," and "[t]here was nothing to really demonstrate that the actions of the officers were contrary to a normal traffic stop."

Defendant Convicted

Petitioners were convicted of the counts at issue here. The Court of Appeals affirmed the convictions, holding with respect to the suppression issue 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."

LAW OF THE CASE

Stop of Motor Vehicle and Temporary Detention of Driver is a "Seizure"

The Fourth Amendment guarantees "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." Temporary 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 this provision. An automobile stop is thus subject to the constitutional imperative that it not be "unreasonable" under the circumstances. As a general matter, the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred.

Defendant Argues Stop was Pretextual

Petitioners accept that Officer Soto had probable cause to believe that various provisions of the District of Columbia traffic code had been violated. ("An operator shall . . . give full time and attention to the operation of the vehicle"); ("No person shall turn any vehicle . . . without giving an appropriate signal"); ("No person shall drive a vehicle . . . at a speed greater than is reasonable and prudent under the conditions"). They argue, however, that "in the unique context of civil traffic regulations" probable cause is not enough. Since, they contend, the use of automobiles is so heavily and minutely regulated that total compliance with traffic and safety rules is nearly impossible, a police officer will almost in-

variably be able to catch any given motorist in a technical violation. This creates the temptation to use traffic stops as a means of investigating other law violations, as to which no probable cause or even articulable suspicion exists. Petitioners, who are both black, further contend that police officers might decide which motorists to stop based on decidedly impermissible factors, such as the race of the car's occupants. To avoid this danger, they say, the Fourth Amendment test for traffic stops should be, not the normal one (applied by the Court of Appeals) of whether probable cause existed to justify the stop; but rather, whether a police officer, acting reasonably, would have made the stop for the reason given.

Court Has Never Held that Stop or Search *with Probable Cause* was Pretextual

Petitioners contend that the standard they propose is consistent with our past cases' disapproval of police attempts to use valid bases of action against citizens as pretexts for pursuing other investigatory agendas. We are reminded that in *Florida v. Wells,* we stated that "an inventory search must not be used as a ruse for a general rummaging in order to discover incriminating evidence"; that in *Colorado v. Bertine,* in approving an inventory search, we apparently thought it significant that there had been "no showing that the police, who were following standard procedures, acted in bad faith or for the sole purpose of investigation"; and that in *New York v. Burger,* we observed, in upholding the constitutionality of a warrantless administrative inspection, that the search did not appear to be "a 'pretext' for obtaining evidence of . . . violation of . . . penal laws." But only an undiscerning reader would regard these cases as endorsing the principle that ulterior motives can invalidate police conduct that is justifiable on the basis of probable cause to believe that a violation of law has occurred. In each case we were address-

ing the validity of a search conducted in the *absence* of probable cause. Our quoted statements simply explain that the exemption from the need for probable cause (and warrant), which is accorded to searches made for the purpose of inventory or administrative regulation, is not accorded to searches that are *not* made for those purposes.

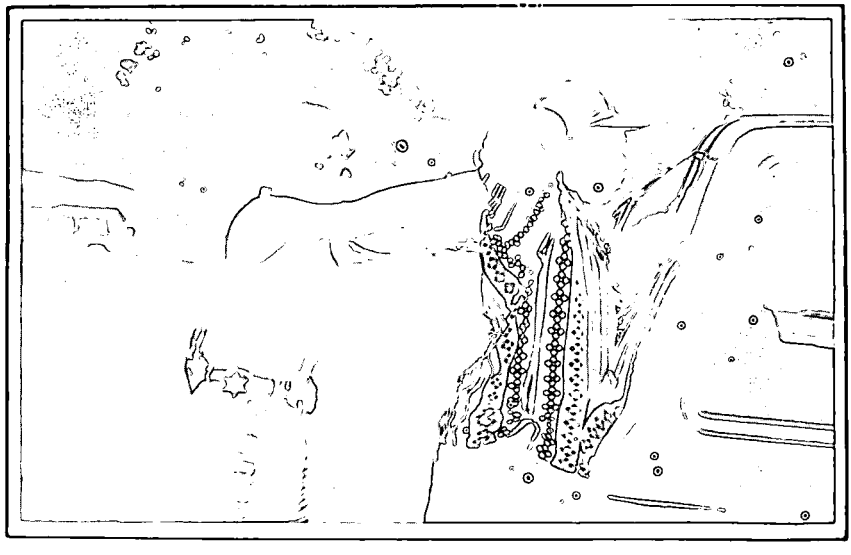
Motive of Officer Does Not Invalidate Stop

Petitioners also rely upon *Colorado v. Bannister,* a case which, like this one, involved a traffic stop as the prelude to a plain-view sighting and arrest on charges wholly unrelated to the basis for the stop. Petitioners point to our statement that "there was no evidence whatsoever that the officer's presence to issue a traffic citation was a pretext to confirm any other previous suspicion about the occupants" of the car. That dictum *at most* demonstrates that the Court in *Bannister* found no need to inquire into the question now under discussion; not that it was certain of the answer. And it may demonstrate even less than that: if by "pretext" the Court meant that the officer really had not seen the car speeding, the statement would mean only that there was no reason to doubt probable cause for the traffic stop.

It would, moreover, be anomalous, to say that least, to treat a statement in a footnote in the *per curiam Bannister* opinion as indicating a reversal of our prior law. Petitioners' difficulty is not simply a lack of affirmative support for their position.

Not only have we never held, outside the context of inventory search or administrative inspection (discussed above), that an officer's motive invalidates objectively justifiable behavior under the Fourth Amendment, but we have repeatedly held and asserted the contrary. In *United States v. Villamonte-Marquez,* we held that an

otherwise valid warrantless boarding of a vessel by customs officials was not rendered invalid "because the customs officers were accompanied by a Louisiana state policeman, and were following an informant's tip that a vessel in the ship channel was thought to be carrying marihuana." We flatly dismissed the idea that an ulterior motive might serve to strip the agents of their legal justification. In *United States v. Robinson,* we held that a traffic-violation arrest (of the sort here) would not be rendered invalid by the fact that it was "a mere pretext for a narcotics search," and that a lawful post-arrest search of the person would not be rendered invalid by the fact that it was not motivated by the officer-safety concern that justifies such searches. And in *Scott v. United States,* in rejecting the contention that wiretap evidence was subject to exclusion because the agents conducting the tap had failed to make any effort to comply with the statutory requirement that unauthorized acquisitions be minimized, we said that "[s]ubjective intent alone . . . does



The temporary detention of individuals during a stop, constitutes a "seizure" of "persons" in the meaning of the Fourth Amendment.

not make otherwise lawful conduct illegal or unconstitutional." We described *Robinson* as having established that "the fact that the officer does not have the state of mind which is hypothecated 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 that action."

Equal Protection Clause Prohibits *Discriminatory* Enforcement of the Laws

We think these cases foreclose any argument that the constitutional reasonableness of traffic stops depends on the actual motivations of the individual officers involved. We of course agree with petitioners that the Constitution prohibits selective enforcement of the law based on considerations such as race. But the constitutional basis for objecting to intentionally discriminatory application of laws is the Equal Protection Clause, not the Fourth Amendment. Subjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis.

Usual Police Practices Not the Proper Standard

Recognizing that we have been unwilling to entertain Fourth Amendment challenges based on the actual motivations of individual officers, petitioners disavow any intention to make the individual officer's subjective good faith the touchstone of "reasonableness." They insist that the standard they have put forward—whether the officer's conduct deviated materially from usual police practices, so that a reasonable officer in the same circumstances would not have made the stop for the reasons given—is an "objective" one.

But although framed in empirical terms, this approach is plainly and indisputably driven by subjective considerations. Its

whole purpose is to prevent the police from doing under the guise of enforcing the traffic code what they would like to do for different reasons. Petitioners' proposed standard may not use the word "pretext," but it is designed to combat nothing other than the perceived "danger" of the pretextual stop, albeit only indirectly and over the run of cases. Instead of asking whether the individual officer had the proper state of mind, the petitioners would have us ask, in effect, whether (based on general police practices) it is plausible to believe that the officer had the proper state of mind.

Why one would frame a test designed to combat pretext in such fashion that the court cannot take into account *actual and admitted pretext* is a curiosity that can only be explained by the fact that our cases have foreclosed the more sensible option. If those cases were based only upon the evidentiary difficulty of establishing subjective intent, petitioners' attempt to root out subjective vices through objective means might make sense. But they were not based only upon that, or indeed even principally upon that. Their principal basis—which applies equally to attempts to reach subjective intent through ostensibly objective means—is simply that the Fourth Amendment's concern with "reasonableness" allows certain actions to be taken in certain circumstances, *whatever* the subjective intent. ("Since it is the fact of custodial arrest which gives rise to the authority to search, it is of no moment that [the officer] did not indicate any subjective fear of the [arrestee] or that he did not himself suspect that [the arrestee] was armed"); But even if our concern had been only an evidentiary one, petitioners' proposal would by no means assuage it. Indeed, it seems to us somewhat easier to figure out the intent of an individual officer than to plumb the collective consciousness of law enforcement in order to determine whether a "reasonable officer" would have been moved to act upon the traffic violation. While police manuals

POST-TEST

SEPTEMBER 1996

The **Crime to Court** Post-Test should be used by the departmental discussion leader for testing purposes in conjunction with this month's program.

Note: Some questions are from the commentary contained in the booklet and not from the principal case.

Name _____

Social Security Number _____

Date _____

Score _____

1. The stop and brief detention of a motorist by a police officer constitutes a Fourth Amendment *seizure* of the motorist.
   Check one.
   _____ (a) True
   _____ (b) False

2. It is unreasonable under the Fourth Amendment for a police officer in plainclothes [driving an unmarked vehicle] to stop a motorist for a minor traffic violation.
   Check one.
   _____ (a) True
   _____ (b) False

3. A police officer's *motive* in stopping a traffic violator *can* make evidence discovered as a result of the stop inadmissible.
Check one.
_____ (a) True
_____ (b) False

4. Traffic laws *can* be so complex in some jurisdictions that it is unreasonable for police to stop a motorist for an offense that poses no immediate danger to others.
Check one.
_____ (a) True
_____ (b) False

5. A police officer's violation of department regulations in making a traffic stop does not *in itself* make the stop unreasonable under the Fourth Amendment.
Check one.
_____ (a) True
_____ (b) False

6. Police enforcement practices in a jurisdiction do not affect the Fourth Amendment reasonableness of a traffic stop.
Check one.
_____ (a) True
_____ (b) False

7. The *pretextual stop* doctrine is no longer valid—even when the stop is a random, unscheduled stop to check driver license and registration.
Check one.
_____ (a) True
_____ (b) False

8. The stop of a motorist for a traffic violation is not an unlawful invasion of the motorist's privacy under the Fourth Amendment.
Check one.
_____ (a) True
_____ (b) False

9. The use of *deadly force* [if necessary] is reasonable under the Fourth Amendment to stop a motorist who has violated a traffic law.
Check one.
_____ (a) True
_____ (b) False

10. An officer's true [or principal] *motive* in stopping a traffic violator does not affect the Fourth Amendment reasonableness of the stop.
Check one.
_____ (a) True
_____ (b) False

Answers to August 1996 Post-Test

1. b
2. b
3. a
4. b
5. a
6. a
7. a
8. b
9. a
10. b

and standard procedures may sometimes provide objective assistance, ordinarily one would be reduced to speculating about the hypothetical reaction of a hypothetical constable—an exercise that mightbe called virtual subjectivity.

Department Regulations Not Proper Test of Fourth Amendment *Reasonableness*

Moreover, police enforcement practices, even if they could be practicably assessed by a judge, vary from place to place and from time to time. We cannot accept that the search and seizure protections of the Fourth Amendment are so variable, and can be made to turn upon such trivialities. The difficulty is illustrated by petitioners' arguments in this case. Their claim that a reasonable officer would not have made this stop is based largely on District of Columbia police regulations which permit plainclothes officers in unmarked vehicles to enforce traffic laws "only in the case of a violation that is so grave as to pose an *immediate threat* to the safety of others." This basis of invalidation would not apply in jurisdictions that had a different practice. And it would not have applied even in the District of Columbia, if Officer Soto had been wearing a uniform or patrolling in a marked police cruiser.

Petitioners argue that our cases support insistence upon police adherence to standard practices as an objective means of rooting out pretext. They cite no holding to that effect, and dicta in only two cases. In *Abel v. United States,* the petitioner had been arrested by the Immigration and Naturalization Service (INS), on the basis of an administrative warrant that, he claimed, had been issued on pretextual grounds in order to enable the Federal Bureau of Investigation (FBI) to search his room after his arrest. We regarded this as an allegation of "serious misconduct," but rejected Abel's claims on the ground that "[a] finding of bad faith is . . . not open

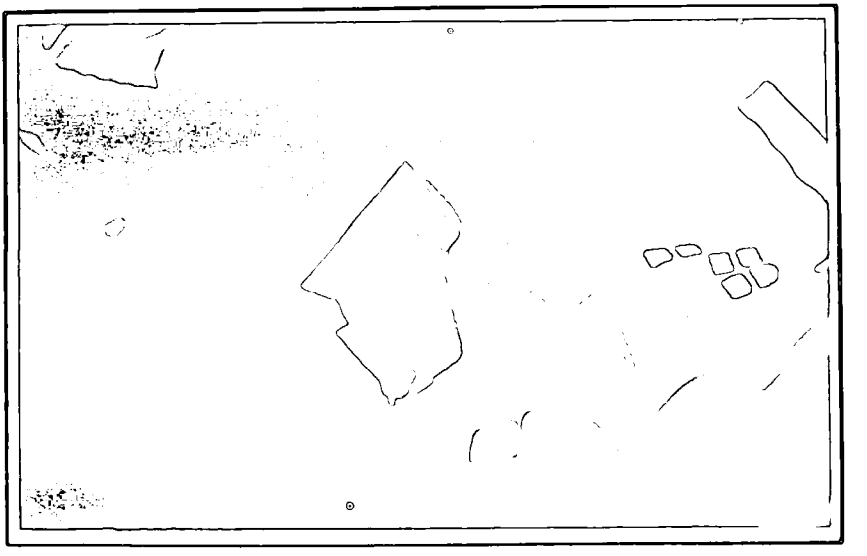
to us on th[e] record" in light of the findings below, including the finding that " 'the proceedings taken by the [INS] differed in no respect from what would have been done in the case of an individual concerning whom [there was no pending FBI investigation].' " But it is a long leap from the proposition that following regular procedures is some evidence of lack of pretext to the proposition that failure to follow regular procedures *proves* (or is an operational substitute for) pretext. *Abel,* moreover, did not involve the assertion that pretext could invalidate a search or seizure for which there was probable cause—and even what it said about pretext in other contexts is plainly inconsistent with the views we later stated in *Robinson, Gustafson, Scott,* and *Villamonte-Marquez.* In the other case claimed to contain supportive dicta, *United States v. Robinson,* in approving a search incident to an arrest for driving without a license, we noted that the arrest was "not a departure from established police department practice." That was followed, however, by the statement that "[w]e leave for another day questions which would arise on facts different from these." This is not even a dictum that purports to provide an answer, but merely one that leaves the question open.

Only Extreme Cases Justify Balancing of Interests Between Individual Rights and Law Enforcement Interests

In what would appear to be an elaboration on the "reasonable officer" test, petitioners argue that the balancing inherent in any Fourth Amendment inquiry requires us to weigh the governmental and individual interests implicated in a traffic stop such as we have here. That balancing, petitioners claim, does not support investigation of minor traffic infractions by plainclothes police in unmarked vehicles; such investigation only minimally advances the

government's interest in traffic safety, and may indeed retard it by producing motorist confusion and alarm—a view said to be supported by the Metropolitan Police Department's own regulations generally prohibiting this practice. And as for the Fourth Amendment interests of the individuals concerned, petitioners point out that our cases acknowledge that even ordinary traffic stops entail "a possibly unsettling show of authority"; that they at best "interfere with freedom of movement, are inconvenient, and consume time" and at worst "may create substantial anxiety." That anxiety is likely to be even more pronounced when the stop is conducted by plainclothes officers in unmarked cars.

It is of course true that in principle every Fourth Amendment case, since it turns upon a "reasonableness" determination, involves a balancing of all relevant factors. With rare exceptions not applicable here, however, the result of that balancing is not in



The traffic stop was rendered reasonable under the Fourth Amendment, therefore, the evidence discovered was admissible.

doubt where the search or seizure is based upon probable cause. That is why petitioners must rely upon cases like *Prouse* to provide examples of actual "balancing" analysis. There, the police action in question was a random traffic stop for the purpose of checking a motorist's license and vehicle registration, a practice that—like the practices at issue in the inventory search and administrative inspection cases upon which petitioners rely in making their "pretext" claim—involves police intrusion *without the probable cause that is its traditional justification.* Our opinion in *Prouse* expressly distinguished the case from a stop based on precisely what is at issue here: "probable cause to believe that a driver is violating any one of the multitude of applicable traffic and equipment regulations." It noted approvingly that "[t]he foremost method of enforcing traffic and vehicle safety regulations . . . is acting upon observed violations, which afford the " 'quantum of individualized suspicion' " necessary to ensure that police discretion is sufficiently constrained. What is true of *Prouse* is also true of other cases that engaged in detailed "balancing" to decide the constitutionality of automobile stops, such as *Martinez-Fuerte, supra,* which upheld checkpoint stops, and *Brignoni-Ponce, supra,* which disallowed so-called "roving patrol" stops, the detailed "balancing" analysis was necessary because they involved seizures without probable cause.

Where probable cause has existed, the only cases in which we have found it necessary actually to perform the "balancing" analysis involved searches or seizures conducted in an extraordinary manner, unusually harmful to an individual's privacy or even physical interests—such as, for example, seizure by means of deadly force, unannounced entry into a home, entry into a home without a warrant, or physical penetration of the body. The 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.

Multiplicity of Traffic Laws Does Not Render Traffic Stop Unreasonable

Petitioners urge as an extraordinary factor in this case that the "multitude of applicable traffic and equipment regulations" is so large and so difficult to obey perfectly that virtually everyone is guilty of violation, permitting the police to single out almost whomever they wish for a stop. But we are aware of no principle that would so allow us to decide at what point a code of law becomes so expansive and so commonly violated that infraction itself can no longer be the ordinary measure of the lawfulness of enforcement. And even if we could identify such exorbitant codes, we do not know by what standard (or what right) we would decide, as petitioners would have us do, which particular provisions are sufficiently important to merit enforcement.

For the run-of-the-mi[ll] case, which this surely is, we think there is no realistic alternative to the traditional common-law rule that probable cause justifies a search and seizure.

Probable Cause that Traffic Law Has Been Violated Renders Traffic Stop Reasonable

Here the District Court found that the officers had probable cause to believe that petitioners had violated the traffic code. That rendered the stop reasonable under the Fourth Amendment, the evidence thereby discovered admissible, and the upholding of the convictions by the Court of Appeals for the District of Columbia Circuit correct.

LEGAL COMMENTARY

by Joseph C. Coleman, Legal Advisor and Writer

Extreme Acts *Can* Invalidate Police Action

Searches and seizures by police can sometimes be subject to a balancing of the rights of the individual against the rights of law enforcement [or the interest of the government in enforcing the laws] if and when the actions of police are so extreme as to be unreasonable under the Fourth Amendment. *Whren and Brown v. United States,* 59 CrL 2121 [1996], citing *Tennessee v. Garner,* 471 US 1 [use of deadly force], *Welch v. Wisconsin,* 466 US 740 [unlawful police entry into a home], and *Winston v. Lee,* 470 US 753 [serious physical penetration of the body].

Random License and Registration Checks

Random, unscheduled stops by police to check driver's licenses and vehicle registration are likely to be found to be pretextual. *Delaware v. Prouse,* 440 US 648, 653.

Checkpoint Stops to Check License and Registration

Checkpoint stops by police to check driver's licenses and registration are reasonable under the Fourth Amendment. *United States v. Martinez-Fuerte,* 428 US 543, 556.

Roving Patrol Stops

Roving patrol stops to check license and registration are unreasonable under the Fourth Amendment. *United States v. Brignoni-Ponce,* 422 US 873, 878.

Inventory Searches of Seized Property

An inventory search of property lawfully seized and detained [is for the lawful purpose of] ensuring that the property and contents are harmless, to secure valuable items [such as might be kept in a towed car], and to protect against false claims of loss or damage. *South Dakota v. Opperman,* 428 US 364, 369.

Administrative Inspections

An administrative inspection is the inspection of business premises conducted by authorities for enforcing a pervasive regulatory scheme—for example, unannounced inspection of a mine for compliance with health and safety standards. *Donovan v. Dewey,* 452 US 594, 599-605.

Lawful Boarding of Vessel by United States Customs Officers

The lawful boarding of a vessel by United States Customs officers was not made unlawful because the officers had a tip that the vessel was carrying marijuana. *United States v. Villamonte-Marquez,* 462 US 579, 584, Note 3.

Traffic-Violation Stop Valid Despite *Pretextual* Claim

The stop of a motor vehicle for a traffic violation was valid even if found to be only a pretext for a narcotics search. *United States v. Robinson,* 414 US 218.

There is no such thing as a "routine" traffic stop. No matter how many you have made, no matter how uneventful the most recent ones have been, you cannot predict the outcome of the next one. All stops must be considered either "high risk," "suspicious activity," or "unknown risk."

PROCEDURAL

Hindsight: In Memory of Trooper Mark Coates, Part 2

In the Part 1 of this Hindsight series, we covered the Approach to the vehicle, and the Position Trooper Coates assumed in relation to the suspect. We will now examine the Control the trooper exercises over the suspect.

There were indications that the violator might be armed.

While standing in the open door of his vehicle, the violator touched his left front pants pocket. A slight bulge is apparent in the pocket.

These are indicators of a weapon. Persons not used to carrying firearms might touch the weapon, perhaps to make sure it is still there.

The first search an officer does of a suspect is a visual scan of those areas that are likely to conceal weapons of opportunity. Pockets and waistbands are the most common.

The violator hesitated when asked if he had any weapons.

Officers are reminded to listen to what the violator is saying as well as watch his actions when references to searches or weapons are made.

Troopers Coates turned his back on the violator three times during the stop.

It is never a good idea for an officer to turn his back on a violator, especially when he has informed the violator of his intention

to search. It is also not a good idea to walk with your back toward traffic. This makes another good case for a passenger-side approach.

Improper search techniques were employed.

If the violator has a real problem with being searched, officers should be in a good defensive position to counter. In this incident, Trooper Coates was not.

The trooper has now changed the nature of the situation, from an unknown risk traffic stop to the higher level of an interdiction. Officers employing such methods are reminded that this procedure requires backup, and the use of the "cover-contact concept." And since the trooper, along with others in the immediate vicinity was involved in Aggressive Criminal Enforcement, backup was immediately available for him. (Eight minutes have elapsed at this point since the stop, and backup has not been called.)

The violator should have been placed in a disadvantageous position, that is, facing away from the officer in a safe area.

Standing frisks or searches should be conducted from the rear only, not face-to-face with the violator. Commands such as "take your hands out of your pocket," should be given during the visual search of the violator and prior to the beginning of the physical search. These commands should be given outside the reactionary gap distance, and, when appropriate, from behind cover.

The posture of Trooper Coates is a clear indication that he is in no position to ward off an attack. The assault begins one minute after Trooper Coates announced his intention to frisk the subject.

The following tactical errors were made during the **Control**.

1. Clues that the suspect was apparently armed were not observed.

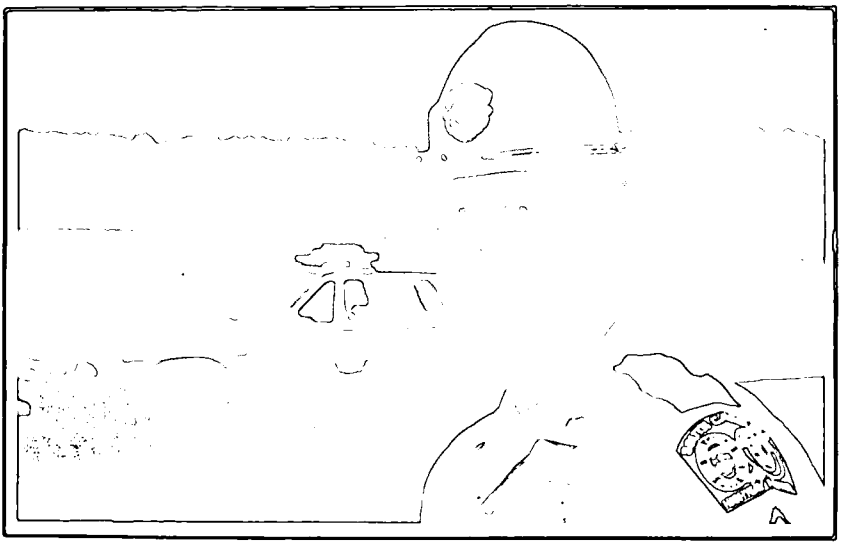
2. Trooper Coates repeatedly turned his back on the suspect.

3. Proper search techniques were not employed.

Officers are reminded that they should have a plan on all contacts, whether stops or arrests, and this plan should include his approach, an advantageous position, and the control he will exercise during the event.

Additionally, officers are advised to anticipate the possible suspect reactions of **assault**, **escape**, and **self-destruction**. The officer must have a plan to counter these moves.

In this incident, we must also look at the actions of the backup officers. There was enormous room for further tragedy.



Trooper First Class Mark Hunter Coates.

Anticipate a suspect's reactions of *assault, escape,* and *self-destruction.* Have a plan to counter these moves.

The first backup arrives on the scene in one minute, 22 seconds indicating that he was immediately available for proper interdiction procedures. **If we can get backup after we've been shot, we should be able to get backup to keep us from being shot!**

The officer uses the violator's car for cover as he orders the subjects to the ground. He then breaks cover to search for additional suspects before turning his attention to the fallen trooper.

While this is understandable, the backup should have remained in a defensive fighting position to keep the situation from becoming worse. The violent offender might be capable of renewing the assault.

Given that additional units are on the way, the backup should maintain cover until he has a superiority of firepower lest he becomes a casualty of over pursuit.

There was no apparent communication between the first and second officers on the scene. As the first officer moved in on the now identified violent offender, he does not communicate this to the second officer who instead runs to Trooper Coates. **During the stress of an emotional event, staying focused is extremely difficult.**

The officers should have used their superiority of manpower and firepower to control the offender with one officer acting as a cover officer keeping target acquisition while the other acting as the contact officer handcuffed and searched.

There is no such thing as a "routine" traffic stop. No matter how many you have made, no matter how uneventful the most recent ones have been. You cannot predict the outcome of the next one. All stops must be considered either "high risk," "suspicious activity," or "unknown risk."

Because of the risks involved in law enforcement, safety procedures have been established. While these procedures cannot cover every situation, they are still proven to save lives. They cannot work unless the officer uses them.

As a reminder, Trooper Coates was wearing a vest. One of the 25-magnum bullets went through the armhole in his vest and is believed to be the bullet that killed him.

Mark Hunter Coates was born in Columbia, South Carolina. He was the son of Dave and Beverly Carpenter Coates. Mark graduated from Irmo High School where he played football for the Irmo Yellow Jackets in 1978 and 1979, wearing Number 54. He joined the South Carolina Highway Patrol in 1987. He was a member of the South Carolina Troopers Association, and a former member of the Lexington County Emergency Management Team.

While serving as a member of the state's highway patrol, Trooper Coates was a member of its ACE team.

An avid church member, he was a member of Chapin Baptist Church, Chapin, South Carolina.

Trooper Coates, 31, was married to Lualice Coates and the father of four children.

For information about the procedures involved in this incident, contact, Robert "Bud" Masterson, South Carolina Criminal Justice Academy, 5400 Broad River Road, Columbia, South Carolina 29210, (803) 896-7769. For any other information about the incident, contact, Major Joseph Hood, South Carolina Highway Patrol, 5420 Broad River Road, Columbia, South Carolina 29210, (803) 896-7920.

Lessons Learned

1. There is no such thing as a "routine" traffic stop. No matter how many you've made, no matter how uneventful the most recent ones have been, you cannot predict the outcome of the next one. Hence, all stops must be considered either "high risk," "suspicious activity," or "unknown risk."

2. Use proper radio procedure. The radio is your lifeline. Always call in your activity.

3. Be observant for and anticipate danger signs. If the violator door opens, where are you going to be? If the violator exits, where are you going to tell him to go? If the violator "signals" by word or action that he may have hostile intent, what are you going to do?

4. Maintain an advantageous position. Think weapon retention, keep that reactionary gap, and never, never turn your back on a subject.

5. Call for backup. A good officer knows his limitations and knows it takes two officers to perform two tasks such as cover/contact.

6. Utilize proper search techniques. Always from the rear, never from the front.

7. Remember the lessons learned in Basic Law Enforcement Training: no matter how good your approach or your position, if you are out of control or you relinquish control to the suspect, you cannot win.

8. Finally, the "attitude" of the officer is the number one reason why officers are assaulted and killed.

References

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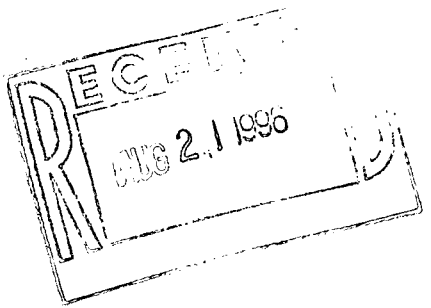

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