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People v. Williams and Haynes: A New York Supreme Court concludes that pretextual traffic stops violate the New York State Constitution

Freedom from unreasonable searches\(^1\) and seizures\(^2\) is among the most precious rights possessed by citizens of the United States of America.\(^3\) Both the United States Constitution\(^4\)

\(^1\) Since the term "search" is not readily defined, for an extensive discussion of the topic, see 1 WAYNE R. LAFAVE, SEARCH AND SEIZURE: A TREATISE ON THE FOURTH AMENDMENT § 2.1(a) (2d ed. 1987). The traditional meaning of the term "search" is:

some exploratory investigation, or an invasion and quest, a looking for or seeking out. The quest may be secret, intrusive, or accomplished by force, and it has been held that a search implies some sort of force, either actual or constructive, much or little. A search implies a prying into hidden places for that which is concealed and that the object searched for has been hidden or intentionally put out of the way. While it has been said that ordinarily searching is a function of sight, it is generally held that the mere looking at that which is open to view is not a "search."

\(^2\) "A 'seizure' of property occurs when there is some meaningful interference with an individual's possessory interests in that property." Jacobsen, 466 U.S. at 113; see also Hale, 201 U.S. at 76 (stating that "seizure contemplates a forcible dispossession of the owner").

Under the Fourth Amendment a person is seized if, "in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave." United States v. Mendenhall, 446 U.S. 544, 554 (1980). For a general discussion of seizure, see 1 LAFAVE, supra note 1, § 2.1(a).

\(^3\) See Wolf v. Colorado, 338 U.S. 25, 27-28 (1949) ("The security of one's privacy against arbitrary intrusion by the police—which is at the core of the Fourth Amendment—is basic to a free society. It is therefore implicit in 'the concept of ordered liberty' and as such enforceable against the States through the Due Process Clause."); In re Pacific Ry. Comm'n, 32 F. 241, 250 (N.D. Cal. 1887) ("Of all the rights of the citizen, few are of greater importance or more essential to his peace and happiness than the right of personal security .... Without the enjoyment of this right, all other rights would lose half their value."). For the historical background underlying the search and seizure provision contained in the Fourth Amendment to the United States Constitution, see 1 LAFAVE, supra note 1, § 1.1. See generally MELVYN ZARR, THE BILL OF RIGHTS AND THE POLICE 19-24 (2d ed. 1980) (discussing Fourth Amendment); 1 JOSEPH G. COOK, CONSTITUTIONAL RIGHTS OF THE ACCUSED (2d ed. 1985) (providing an in depth analysis of Fourth Amendment).

\(^4\) The search and seizure provision of the Fourth Amendment states:

The right of the people to be secure in their persons, houses, papers, and
and the New York State Constitution specifically prohibit intrusive governmental searches and seizures. Although the federal Fourth Amendment protects this fundamental right by requiring a warrant before a valid search can be conducted. California v. Carney, 471 U.S. 386, 390 (1985). There are, however, exceptions to this rule. See, e.g., Carroll v. United States, 267 U.S. 132, 153 (1925) (establishing "automobile exception" because of ability to expeditiously move vehicles out of jurisdiction where warrant must be secured).

A search and seizure is considered intrusive if it is not predicated on probable cause. See New Jersey v. T.L.O., 469 U.S. 325, 340 (1985) (recognizing that searches ordinarily require probable cause). Probable cause, as traditionally defined, exists "[i]f the facts and circumstances before the officer are such as to warrant a man of prudence and caution in believing that an offence has been committed." Stacey v. Emery, 97 U.S. 642, 645 (1878). In Henry v. United States, 361 U.S. 98, 102 (1959), the Court added that good faith on the part of the arresting officer is insufficient to establish probable cause. For a general discussion of probable cause, see 1 COOK, supra note 3, § 3:10, at 391-402 and 1 LAFAVE, supra note 1, § 3.1.

Constitutional protection from unreasonable searches and seizures generally restricts only governmental action. See Coolidge v. New Hampshire, 403 U.S. 443, 487-88 (1971) (noting policy of Fourth Amendment is such that private citizens are not bound by same restraints as government and citizen's arrest may be upheld even though same action by governmental agent would violate Fourth Amendment); Burdeau v. McDowell, 256 U.S. 465, 475 (1921) (holding that Fourth Amendment applies only to governmental action and stating that "history clearly show[s] that it was intended as a restraint upon the activities of sovereign authority, and was not intended to be a limitation upon other than governmental agencies"); Weeks v. United States, 232 U.S. 383, 391-92 (1914) (stating that Fourth Amendment limits federal officials, in exercise of their power and authority, from engaging in unreasonable searches and seizures, and is obligatory upon all officials of federal system); People v. Gleeson, 36 N.Y.2d 462, 465, 330 N.E.2d 72, 74, 369 N.Y.S.2d 113, 116 (1975) (indicating that search and seizure provisions of United States and New York Constitutions are directed at governmental activity); People v. Horman, 22 N.Y.2d 378, 381, 239 N.E.2d 625, 627, 292 N.Y.S.2d 874, 876-77 (1968) (emphasizing that
eral and New York search and seizure provisions are virtually identical,\(^8\) and have been interpreted by most courts as coextensive,\(^9\) some courts have held that the New York State provision provides a greater degree of protection than its federal counterpart.\(^10\) Recently, in People v. Williams and Haynes,\(^11\) the New

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\(^8\) See supra notes 4-5. New York may have been the last state to enact a search and seizure provision when, in 1938, it took article I, section 12 verbatim from the Fourth Amendment. Judith S. Kaye, Dual Constitutionalism in Practice and Principle, 61 St. John's L. Rev. 399, 416 (1987). The only difference between the search and seizure provisions of the Federal and New York Constitutions is that the New York Constitution contains an additional provision against the unreasonable search and seizure of its citizens' communications. N.Y. Const. art. I, § 12 ("The right of the people to be secure against unreasonable interception of telephone and telegraph communications shall not be violated."); see People v. Scott, 79 N.Y.2d 474, 486, 593 N.E.2d 1328, 1335, 553 N.Y.S.2d 920, 927 (1992) (pointing out absence of this provision in Fourth Amendment); see also People v. Belton, 55 N.Y.2d 49, 57, 432 N.E.2d 745, 749, 447 N.Y.S.2d 873, 877 (1982) (Gabrielli, J., concurring) ("The operative language of section 12 of article I of our State Constitution is identical to the language of the Fourth Amendment to the United States Constitution."); People v. Ponder, 54 N.Y.2d 160, 165, 429 N.E.2d 735, 737, 445 N.Y.S.2d 57, 59 (1981) (stating that article I, section 12 of New York Constitution and Fourth Amendment of Federal Constitution are same and "this identity of language supports a policy of uniformity in both State and Federal courts").


\(^10\) A state can extend more protection to its citizens under its constitution than is provided by the Federal Constitution; courts have done so with search and seizure law when doing so "best promotes 'predictability and precision in judicial review of search and seizure cases and the protection of the individual rights of our citizens.'" P.J. Video, 68 N.Y.2d at 304, 501 N.E.2d at 561, 508 N.Y.S.2d at 913 (citation omitted); see Scott, 79 N.Y.2d at 486, 593 N.E.2d at 1335, 553 N.Y.S.2d at 927 (rejecting federal "open fields" doctrine, thus granting New York citizens more protection); People v. Harris, 77 N.Y.2d 434, 437, 570 N.E.2d 1051, 1053, 558 N.Y.S.2d 702, 704 (1991) (noting that state courts may give its citizens more protection than Supreme Court); People v. Dunn, 77 N.Y.2d 19, 21, 564 N.E.2d 1054, 1055, 563 N.Y.S.2d 388, 389 (1990) (holding that, unlike Fourth Amendment, canine sniff constitutes search under article I, section 12 of New York Constitution); People v. Torres, 74 N.Y.2d...
York State Supreme Court, Bronx County, reaffirmed this higher level of protection, and further clarified the distinction between state and federal search and seizure jurisprudence.\(^1\) The court concluded that the New York State Constitution prohibits police officers from using traffic violations as a pretext to stop vehicles in order to investigate possible unrelated offenses for which no reasonable suspicion exists.\(^1\)

Defendants, Williams and Haynes, were observed entering a livery cab late at night by two New York City police officers patrolling in an unmarked car.\(^1\) Shortly thereafter, the officers stopped the cab after it "made an abrupt turn [at an angled intersection] ... without signaling."\(^2\) One officer testified that they had pulled the car over on the basis of the traffic violation and for "other things."\(^3\) Upon the police officer's request, the driver produced his car registration, and the defendants then agreed to step out of the car.\(^4\) While both defendants stood at the rear of the cab speaking to one of the officers, the cab driver informed the other officer that the defendants had "dropped something" and that he should take a look under the seat.\(^5\) The officer found a hand-gun hidden under the front passenger seat.\(^6\) Both defendants were arrested and, upon conducting a routine search at the precinct, the police recovered twenty-four packages of cocaine from Williams.\(^7\) Williams and Haynes were each indicted for criminal possession of a weapon; Williams was also charged with drug possession.\(^8\)

The Supreme Court, Bronx County, held that the state had

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\(^2\) See id. at 29, col. 2 (discussing New York's permissible expansion of Federal Constitutional rights).

\(^3\) Id. at 29, cols. 2-3.

\(^4\) Id. at 29, col. 1.

\(^5\) Id. at 29, col. 1.

\(^6\) Williams and Haynes, N.Y. L.J., Aug. 5, 1996, at 29, col. 1. The officer testified that "there might have been something wrong in the cab and that is why he stopped it, 'to find out if there was a crime committed.'" Id.

\(^7\) Id. There was a factual dispute as to whether the police officers immediately asked Mr. Windlay, the cab driver, for his license and registration. Id. The driver claimed they did not. Id.


\(^9\) Id. at 29, col. 2.

\(^10\) Id.

\(^11\) Id. at 29, col. 1.
not sustained its initial burden of showing the legality of the officers’ conduct. Accordingly, it granted the defendants’ motion to suppress all evidence recovered at the scene and at the precinct. Although the court acknowledged that an officer may stop a vehicle if he or she has a “reasonable suspicion” that the Vehicle and Traffic Law has been violated, it found that no traffic law had, in fact, been violated because no signal was necessary to make the disputed turn. Thus, the court concluded that the stop was unlawful and, therefore, suppressed the evi-

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24 Reasonable suspicion is defined as “the quantum of knowledge sufficient to induce an ordinarily prudent and cautious man under the circumstances to believe criminal activity is at hand.” People v. Cantor, 36 N.Y.2d 106, 112-13, 324 N.E.2d 872, 877, 365 N.Y.S.2d 509, 516 (1975). Reasonable suspicion must be grounded in some demonstrable root, and cannot be based on a mere “hunch” or “gut reaction.” People v. Sobotker, 43 N.Y.2d 559, 564, 373 N.E.2d 1218, 1220, 402 N.Y.S.2d 993, 996 (1978).


It should be noted that when the police temporarily detain an automobile, “even if only for a brief period and for a limited purpose,” it is considered a seizure of persons and is subject to constitutional requirements. See Whren v. United States, 116 S. Ct. 1769, 1772 (1996); Delaware v. Prouse, 440 U.S. 648, 653 (1979); Ingle, 36 N.Y.2d at 419, 330 N.E.2d at 43, 369 N.Y.S.2d at 74 (holding that routine traffic stop is impermissible unless there is reasonable suspicion of violation of Vehicle and Traffic Law). Thus, it is unconstitutional for the police to arbitrarily stop vehicles. Ingle, 36 N.Y.2d at 419, 330 N.E.2d at 43, 369 N.Y.S.2d at 74. As a general matter, however, such a “seizure” is not unreasonable where the police have probable cause to believe a traffic violation has occurred. See Prouse, 440 U.S. at 655.

26 Williams and Haynes, N.Y. L.J., Aug. 5, 1996, at 29, col. 2. New York law requires an appropriate signal be given at an intersection to evidence a driver’s intent to make a turn. N.Y. VEH. & TRAF. LAW § 1163 (McKinney 1996). The court concluded, based on testimony from one of the officers and the cab driver that, although technically an intersection, the action in question was not really a “turn.” Williams and Haynes, N.Y. L.J., Aug. 5, 1996, at 29, col. 2. As such, the court concluded that a signal was unnecessary and a traffic violation had not occurred. Id.
dence against the defendants.27

The court hypothesized, however, that even if a traffic infraction had occurred, the officers' conduct still would have violated the New York State Constitution.28 Citing several New York precedents, the court stated that “[t]he police may not use traffic violations as a mere pretext to investigate the defendant on an unrelated matter.”29 The court found that although the officers did believe a traffic violation had occurred, they had merely used it as a pretext and instead acted on a “gut reaction” that defendants were engaged in some form of criminal activity.30 Since the officers’ “intent was to use the traffic stop to investigate an unrelated matter,”31 and they otherwise lacked

27 Id. at 29, col. 2. The “exclusionary rule” mandates that all illegally seized evidence be suppressed, or excluded, from the courtroom. ZARR, supra note 3, at 86. One of the primary purposes of the exclusionary rule is to deter unreasonable searches and seizures. See People v. Cardaio, 30 A.D.2d 843, 844, 294 N.Y.S.2d 579, 582 (2d Dep't 1968) (finding that one purpose of exclusionary rule is to deter illegal police conduct), aff'd as amended, 24 N.Y.2d 988, 250 N.E.2d 227, 302 N.Y.S.2d 818 (1969); 1 LAFAVE, supra note 1, § 1.1(f), at 16-20.


29 Id. (quoting People v. David, 223 A.D.2d 551, 553, 636 N.Y.S.2d 374, 376 (2d Dep't 1996) (citations omitted). The law in New York prohibiting the use of traffic violations as a pretext to investigate unrelated matters is well established. See People v. Laws, 213 A.D.2d 226, 227, 623 N.Y.S.2d 860, 861 (1st Dep't) (finding suppression proper where evidence seized was fruit of pretextual stop), appeal denied, 85 N.Y.2d 975, 653 N.E.2d 631, 629 N.Y.S.2d 735 (1995); People v. Lewis, 195 A.D.2d 523, 524, 600 N.Y.S.2d 272, 273 (2d Dep't 1993) (suppressing evidence where officer's testimony on reason for stop was not credible and seemed partially tailored to nullify constitutional objections); People v. Smith, 181 A.D.2d 802, 803, 581 N.Y.S.2d 240, 240-41 (2d Dep't 1992) (finding stop of taxicab, based on cab's illegal U-turn, impermissible pretext when officer admitted to following passenger for suspected drug possession, failed to give cab driver summons, and failed to request license or registration); People v. Watson, 157 A.D.2d 476, 477, 549 N.Y.S.2d 27, 27 (1st Dep't 1990) (holding that traffic violations could not justify stop where officers admitted violations were not reason for stop); People v. Llopis, 125 A.D.2d 416, 417, 509 N.Y.S.2d 135, 136 (2d Dep't 1986) (concluding that parking infraction and alleged speeding violation were mere pretext where officer testified he stopped car because of occupants' reactions to his presence).

30 Williams and Haynes, N.Y. L.J., Aug. 5, 1996, at 29, col. 1. The court supported this conclusion with the officer's testimony, see supra note 17 and accompanying text, the fact that the driver was not issued a traffic summons, and the driver's testimony that his license and registration were not immediately requested. Williams and Haynes, N.Y. L.J., Aug. 5, 1996, at 29, col. 1.

31 Id. at 29, col. 2. The court stated that the officer's observation of two black men (the defendants) getting into a cab at 12:10 A.M. was not enough to provide the officer with a reasonable suspicion of criminal activity. Id. Thus, the court concluded that the officers stopped the cab because of a "mere hunch" or "gut reaction." Id.

32 Id. The court stated, "When it is clear from the officer's testimony that the reason he stopped the cab was to investigate unsupported criminal activity, and not
any reasonable suspicion of criminal behavior, the court concluded that the evidence against the defendants "must be suppressed as 'the fruits of the poisonous tree.'" In reaching this conclusion, the Williams court recognized that the Supreme Court's recent decision in Whren v. United States foreclosed Federal Constitutional challenges to the reasonableness of a traffic stop based upon the actual motivation of the police officer where the officer had probable cause to believe a traffic violation had occurred. In Whren, the Court concluded that a police officer's motives were irrelevant so long as there was probable cause to make the traffic stop and, accordingly an inquiry into whether a traffic stop was pretextual was unnecessary under the Fourth Amendment to the Federal Constitution. The Williams court rejected this conclusion, opting instead to follow New York Court of Appeals precedent which "stated in dicta that 'in this State [police stops] are legal only pursuant to routine, nonpretextual traffic checks to enforce traffic regulations.' Although the Williams court noted that the previous

because of a traffic violation, the stop is unjustifiable." Williams and Haynes, N.Y. L.J., Aug. 5, 1996, at 29, col. 2.

33 Id. The "fruit of the poisonous tree" doctrine provides that evidence obtained as an indirect result of a Fourth Amendment violation is inadmissible; thus, precluding the use of evidence that would not have been obtained but for the illegal search or seizure. Nardone v. United States, 308 U.S. 338 (1939).

34 116 S. Ct. 1769 (1996). In Whren, as in Williams and Haynes, a traffic violation led to the arrest of defendants on an unrelated matter. Id. at 1772. Plainclothes policemen were patrolling a high drug area in an unmarked car when they observed a truck waiting at a stop sign for an unusually long time, "more than 20 seconds." Id. After changing direction in order to head back toward the truck, the officers saw the truck turn suddenly and speed off at an "unreasonable speed." Id. The officers stopped the truck, allegedly to give the driver a warning regarding the traffic violations. Id. Upon approaching the truck, one of the officers "observed two large plastic bags of what appeared to be crack cocaine" in the hands of one of the defendants. Id.

35 Whren, 116 S. Ct. at 1774.

36 The Whren Court rejected the proposition that more than probable cause is necessary before police may validly stop an individual for a traffic violation. Id. Moreover, the Court flatly dismissed the notion that police officers' ulterior motives, or subjective intent, could render otherwise lawful conduct illegal or unconstitutional. Id. at 1773-75. The Court stated 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." Id. (quoting Scott v. United States, 436 U.S. 128, 138 (1978)).

New York precedents derived their holdings from cases in which federal and state law intertwined, the court nevertheless concluded that New York courts had independently interpreted the state constitution to prohibit pretextual traffic stops. Thus, the Williams court based its decision solely on state constitutional grounds.

It is submitted that New York courts should not delve into the subjective motivations of a police officer in making an otherwise valid traffic stop where circumstances, viewed objectively, provide justification for such action. Although a state may extend greater protection to its citizens under its constitution than under the Federal Constitution, it would be a mistake to extend such protection, in the context of traffic stops, beyond that of probable cause. Such a rule would encourage courts to determine an officer's subjective motives based purely on conjecture, because an officer is unlikely to reveal these motivations. As the Supreme Court noted in Whren, “police manuals and standard procedures may sometimes provide objective assistance, [but] ordinarily one would be reduced to speculating about the hypothetical reaction of a hypothetical constable—an exercise that might be called virtual subjectivity.” Thus, absent an admission by an offending officer, courts would need to apply some


59 Williams and Haynes, N.Y. L.J., Aug. 5, 1996, at 29, col. 3. The court asserted that phrases such as “In this State” or “this Commonwealth’s jurisprudence” indicate that a court is interpreting the constitution of the state in which it sits. Id.

40 See id. at 29, cols. 2-3. The court noted that although state courts may not remove rights protected by the Federal Constitution, they may interpose their own laws to supplement those rights. Id.

41 See generally Kaye, supra note 8 (discussing extent to which state constitution should be interpreted in accordance with federal precedent dealing with identical constitutional provisions).

42 Search and seizure doctrine requires the balancing of governmental and individual interests. Whren v. United States, 116 S. Ct. 1769, 1776-77 (1996). “The rule of probable cause is a practical, non-technical conception affording the best compromise that has been found for accommodating these often opposing interests.” Terry v. Ohio, 392 U.S. 1, 36 n.3 (1968) (Douglas, J., dissenting) (quoting Brinegar v. United States, 338 U.S. 160, 176 (1949)). Usually, where there is probable cause to believe that there has been a violation of the law, the private interest in avoiding police contact is “outbalanc[ed].” Whren, 116 S. Ct. at 1777.

43 Id. at 1775. For a comprehensive pre-Whren decision examining the “pretextual search doctrine,” see United States v. Scopo, 814 F. Supp. 292 (E.D.N.Y. 1993) (discussing “usual police practices” approach as one of two popularly used objective methods of assessing pretext), rev’d, 19 F.3d 777 (2d Cir. 1994).
type of "reasonable officer" test to decipher the motivation for the stop.\footnote{See \textit{Whren}, 116 S. Ct. at 1774-77 (critiquing "reasonable officer" test). Under the "reasonable officer" test, unless the police officer admits that his or her motivation for enforcing the traffic law was a pretext to investigate an unrelated matter, the court would need to determine whether the officer would have made the traffic stop absent suspicion of any other criminal activity. This seemingly necessitates an inquiry into whether a reasonable, similarly situated officer would have stopped a defendant for the traffic violation involved. In other words, a court would need to determine whether, based on standard police practice, it is plausible that the officer had the proper state of mind. \textit{Id.} at 1774. It is submitted that such an approach would be extremely difficult to apply.}

Not only would the reasonable officer approach be impractical, but it also could lead to inconsistent\footnote{\textit{Whren}, 116 S. Ct. at 1775-77. As the \textit{Whren} Court observed, even if the courts could practically assess police enforcement policies, such policies "vary from place to place and from time to time." \textit{Id.} at 1775. The Court rejected the notion that search and seizure protections should be so varied. \textit{See id.} It is apparent that the Supreme Court was concerned with the potential for widely disparate applications of the Fourth Amendment. It is submitted that application of article I, section 12 of the New York State Constitution similarly should not depend on which part of the state one happens to commit a traffic infraction.} and undesirable results.\footnote{\textit{See id.} at 1777 ("[W]e are aware of no principle that would allow [the Court] 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.") (emphasis added).} As illustrated by \textit{Williams}, the court could, in hindsight and on the basis of a methodical review of the law, rationally conclude that no infraction had occurred. At the time of the incident, however, the decision had to be made in a split second, because had the officers hesitated, the car would have been gone. Accordingly, given facts similar to \textit{Williams}, where it was not clear whether a traffic violation had occurred, it would be error to second guess the police officer's assessment of the situation by applying a subjectivity test to ensure that the officer's motives were pure.

Moreover, it is submitted that additional protection from pretextual traffic stops is unnecessary. The underlying fear
seems to be that, since most drivers commit only minor traffic infractions, the *Whren* decision gives the police carte blanche to stop and search any vehicle at any time.\(^\text{47}\) Prior New York precedent, however, seems to provide adequate protection against such arbitrary searches.\(^\text{48}\) Under the standards set forth by these cases, a search or seizure that extends beyond what is required by the exigent circumstances is deemed unreasonable and a violation of the motorist's constitutional rights.\(^\text{49}\) Additionally, any argument that police may enforce the traffic code in a discriminatory manner is sufficiently addressed by other constitutional provisions.\(^\text{50}\)

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\(^\text{47}\) See, e.g., Brief for the Petitioners at 21, *Whren* v. United States, 116 S. Ct. 1769 (1996) (No. 95-5841) (discussing police officers who admitted following drivers until traffic violation was committed so search could be conducted).


\(^\text{49}\) In the *Banks* case, the court held that the observed seat belt violations involved did not justify the length of the ensuing detention. *Banks*, 85 N.Y.2d at 562, 650 N.E.2d at 835, 626 N.Y.S.2d at 988. Once the license and stolen vehicle radio checks came back negative, the defendants should have been released, rendering subsequently discovered evidence of drug violations inadmissible. *Id.* The *Marsh-Troiano-Howell* line of cases, however, clearly indicate that police officers may conduct searches when necessary to ensure officer safety. *See Troiano*, 35 N.Y.2d at 480, 323 N.E.2d at 186, 363 N.Y.S.2d at 946-47 (Rabin, J., concurring). Even when an arrest accompanies a violation of the traffic law, the police are constrained to the permissible scope of search. *See id.* Accordingly, at least in New York, the police may not search an individual and his or her vehicle simply because a technical violation of the traffic code occurred. *Banks*, 85 N.Y.2d at 562, 650 N.E.2d at 835, 626 N.Y.S.2d at 998.

\(^\text{50}\) See *Whren*, 116 S. Ct. at 1774 (stating that Equal Protection Clause, not Fourth Amendment, is appropriate constitutional basis for objecting to selective enforcement of law by police officers).
There is a real tension in our society between the need for more effective police work to combat the rising tide of crime and our constitutional aversion to a police state .... The tension requires society to strike a balance between its citizens security and liberty. This balance is upset when officers are required to have impeccable thoughts in addition to impeccable actions. While the state is the primary guarantor of individual liberties, judges should be cautious and should engage in comprehensive analysis before extending state constitutional protections. Despite New York's tradition of providing substantially more protection under its constitution than is afforded by the Federal Constitution, the Williams decision sets a dangerous precedent in providing overly broad protection when the Supreme Court's guidance adequately protects New Yorkers from unconstitutional searches and seizures.

Seth D. Amera


52 See Kaye, supra note 8, at 407-08 (discussing Justice Stevens' reprimand of Supreme Judicial Court of Massachusetts for basing decision on federal, rather than state, constitutional grounds) (referring to Massachusetts v. Upton, 466 U.S. 727, 737 (1984) (Stevens, J., concurring)).


54 See Titone, supra note 53, at 465-66.