NYS Court of Appeals Criminal Decision for September 1, 2020

People v. Hinshaw

This decision was authored by Judge Wilson, with Judge Stein concurring and Judge Garcia authoring a strongly-worded dissent. The Fourth Department's 3 to 2 decision is reversed and the motion to suppress is granted. Mr. Hinshaw was pulled over in Buffalo after an experienced NYS Police trooper received a three-week-old DMV notice that defendant's car had been reported as "an impounded vehicle" but that the notice should not be "treated as a stolen vehicle hit." Further, the notice indicated that "no further action should be taken based solely upon this impounded notice." No moving VTL violations had been observed. The inspection sticker was not expired. Marijuana and a loaded gun were ultimately seized.

The majority held that "[b]ecause the state trooper lacked an objectively reasonable suspicion that a crime had occurred or probable cause to stop Mr. Hinshaw's vehicle for a traffic infraction, we conclude the automobile stop was unlawful." The majority reminds us that probable cause, regardless of law enforcement's motivation, is needed to stop a vehicle for a traffic infraction, People v. Robinson, 97 NY2d 341, 349-350 (2001); People v. Bushey, 29 NY3d 158, 160 (2017) (where a DMV database report provided probable cause for a traffic stop), and reasonable suspicion is needed to stop a vehicle for a crime. People v. Spencer, 84 NY2d 749, 752 (1995). Moreover, a vehicle stop may also be effectuated pursuant to "nonarbitrary, nondiscriminatory, uniform" highway traffic procedures. People v. Sobotker, 43 NY2d 559, 563 (1978).

People v. De Bour, 40 NY2d 210, 216, 223 (1976), which applies to traffic stops, People v. Garcia, 20 NY3d 317, 324 (2012), affords greater protection than the federal standard to be free from "aggressive interference" during brief investigative stops by law enforcement. *See also*, Terry v. Ohio, 392 US 1, 16-22 (1968). Though the dissent does not believe that the majority arrives at its holding with any coherent precedent as a foundation, the rationale for the so-called Robinson / Spencer standards is made clear here: the probable cause requirement for pulling over a vehicle for a traffic violation reflects the government's lesser interest in investigating such conduct, as opposed to a crime, which will requires reasonable suspicion. In doing so, Judge Wilson emphasizes that the New York Constitution (article 1, § 12) affords more protections in this regard than its federal counterpart.

Judge Stein's concurrence pointed out that the issue of whether probable cause is required to effect a traffic stop for a VTL violation was not properly before the Court. Judge Stein agreed, however, that the trooper lacked even reasonable suspicion to pull the vehicle over.

In his 35-page densely researched dissent, Judge Garcia points out that Robinson came on the heels of Whren v. United States, 517 US 806, 809-811 (1996), wherein the High Court's reference to probable cause and traffic stops has been uniformly interpreted by federal circuit courts, *e.g.*, United States v. Stewart, 551 F3d 187, 192 (2d Cir. 2009), and state courts of last resort as being merely dictum. If you want to be really confused, just read the back-and-fourth between the majority (at fn 7) and the dissent on what the true holding of People v. Ingle, 36 NY2d 413, 414-416, 420 (1975) is. According to the dissent, the Ingle court held that a traffic stop only requires reasonable suspicion. No doubt that Ingle and Robinson have created "confusion among courts." *See*, *e.g.*, Barry Kamins*, Is 'Ingle' on Life Support After 'Robinson' and 'Whren'?,* NYLJ, March 30, 2018 (cited by the dissent, pg. 17). Regardless, the majority gets to say what the state of New York law is in 2020. In doing so, the dissent describes the majority's decision here as "[a]nnouncing a sea change in New York constitutional law…" Raise your hand if you think this settles the question.