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CONSTITUTIONALITY OF MOTOR VEHICLE LICENSE CHECKS

by

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In *Delaware v. Prouse*, (24 Crim. L. Rep. 3079, U.S. Supreme Court, March 27, 1979) the Court held that a police officer may not stop a vehicle to check the motorist's driver's license, vehicle registration, or equipment unless (1) the officer has an "articulable and reasonable suspicion" that the driver is unlicensed, or that the vehicle is improperly registered or equipped, or (2) the driver or an occupant of the vehicle is subject to seizure for some violation of law; or (3) the stopping is accomplished pursuant to a plan for spot checks that does not "involve the unconstrained exercise of discretion." This memo is intended to summarize the facts and reasoning of the case and to discuss some of the implications of the decision.

Facts

The case began on November 30, 1976 at 7:20 p.m. when a Delaware patrolman stopped a vehicle occupied by and registered to William J. Prouse, III. The officer testified that he observed no rule of the road or equipment violation, nor any suspicious activity before stopping the vehicle. It was simply a routine and random stop to check for driver's license and vehicle registration violations; the kind of activity an officer on patrol sometimes engages in when he is not otherwise occupied or responding to a call. After the officer approached the stopped vehicle, he smelled marijuana, he seized some marijuana from the seat (in plain view) and he arrested Prouse for a drug law violation. At trial Prouse moved to suppress the marijuana arguing that the stopping, detention, and seizure of the evidence were in violation of the Fourth and Fourteenth Amendments prohibition against unreasonable searches and seizures. The Delaware trial court agreed, as did the Delaware Supreme Court. The Supreme Court agreed to hear the case to resolve a conflict that had arisen in lower courts over the issue.¹

1. Five other jurisdictions have agreed with the Delaware Court; six others have held similar stops to be constitutional. One of the cases upholding the practice is *State v. Allen*, 282 N.C. 503 (1973). That case is presumably overruled to the extent that it relied on that holding.

Majority Opinion

Justice White, speaking for the six-member majority (two justices concurred in the result and one dissented) affirmed the judgment of the Delaware Supreme Court. Noting that the stopping of the vehicle is a seizure, he stated the basic rule that the seizure must be reasonable to be constitutional. To determine if this particular seizure was reasonable, the Court balanced the intrusion into the individual's privacy against the extent to which the intrusion accomplished a legitimate governmental interest. In this case, the Court determined that the intrusion caused by a random stop to check for a driver's license violation, while it is minimal, is not justified because the random stop technique is not effective enough in keeping unsafe drivers or vehicles off the highways. Specifically, the Court indicated that random stops for driver's license violations stop too many innocent people and they do not sufficiently deter unlicensed drivers. It also indicated that registration or equipment violations are generally detectable without stopping the car, so random stops are not necessary for those purposes, either. In concluding, the Court held that a random stop to check for driver's license, registration, or equipment law violations is not reasonable unless the officer has a reasonable and articulable suspicion that the driver or vehicle is in violation of some law or unless the technique used does not select motorists on a purely random basis.

Implications of Prouse for North Carolina

1. At least two statutes in the motor vehicle law (G.S. 20-29 and 20-183) have provisions that apparently allow officers to stop vehicles to check the driver's license or the vehicle's equipment or registration. Those sections, to the extent that they allow stops without reasonable suspicion of a violation (unless made pursuant to a nonrandom scheme of enforcement, such as a road-block), are clearly invalidated by this case.

2. The majority opinion allows stops of vehicles for license or registration checks upon an "articulable and reasonable suspicion" that the driver or vehicle is in violation of the law. That standard seems to require that the officer be able to explain the facts that led to the suspicion and it requires that the suspicion be reasonable (that is, that a reasonable officer would have a suspicion based on the facts). It is clear that a hunch or feeling that something is suspicious is not enough; the officer must have facts he can list later in court. In other contexts, facts that have been relevant are (1) the defendant is a stranger to a policeman on a beat; (2) he is in a high crime area at night;

2. Unless there is a good reason for proceeding without a warrant, searches and seizures must be authorized by a warrant issued by a judicial official. A warrant is required in this case because (1) it is an automobile and most automobile searches are emergencies and (2) it is an investigative stop which must be made quickly to be effective.

In addition searches and seizures must generally be based on probable cause that a violation or that some particular evidence is present. In investigative stops, however, the Court has approved brief stops of persons on a basis that is less stringent than the probable cause standard since there is only a limited intrusion upon the person's privacy. The Court treats the issue in *Prouse* as an investigative stop and thus probable cause is not required.

(3) he is carrying a TV set on a street at night after stores have closed; (4) radio reports suggest a car similar to the one stopped has been stolen; or (5) an informer's tips about the defendant's imminent or recent criminal activity.

Demonstrating an articulable suspicion of a driver's license violation is not as easy as demonstrating it for many other types of violations, however. Driver's license violations do not depend on suspicious conduct, but on a status that can only be tested by stopping the car and asking the driver for a driver's license. Possible factors that might be useful in proving an articulable suspicion could be (1) knowledge that the driver previously had been unlicensed; (2) a youthful appearance or small size suggesting the driver is under age; (3) a tip by an informer; or (4) some indication (such as failing to look policeman in eye) that the driver had something to hide. Each case will have to be determined on its own merits.

For registration violations, other than the obvious violation of not having a registration plate, it is similarly difficult to establish articulable suspicion. A vehicle with a registration number that does not match the description of the vehicle to which that number is assigned by the Division of Motor Vehicles would probably be held to justify an articulable suspicion of a violation. Other types of violations of the registration law will require different types of facts.

Equipment violations also will require an articulable suspicion of a violation. Obvious examples are tires that skid or slide in wet weather, brakes that require a long distance to stop a car, or mufflers that make an unusually loud noise. This type of violation will generally give rise to an articulable suspicion more easily than will driver's license or registration violations.

3. To what extent does *Prouse* affect stops for driving under the influence or other crimes? *Prouse* deals with stops of vehicles to check driver's licenses, vehicle registration, or equipment. It does not by its facts, or in the discussion of the Court, affect existing practice with respect to stops of vehicles when the officer has a reasonable suspicion that a driver is under the influence. Generally speaking, existing case law seems to allow such stops. *Terry v. Ohio*, 392 U.S. 1 (1968) implicitly recognized the right of a policeman to stop a person who is engaging in suspicious activity. *Adams v. Williams*, 407 U.S. 143 (1972) extended that principle to allow a stop of a person seated in a parked car when the officer had been given an unverified tip that the person was carrying a gun and narcotics. No case has reached the Court dealing with a stopping of a vehicle to investigate a suspected driving under the influence charge. The holding in *Prouse*, while it does involve stopping of vehicles, applies only to stops of vehicles for the purposes described in the case.

Driving under the influence, like any other crime, can be the subject of an investigation and that investigation apparently can include stopping of the vehicle if the officer has a reasonable suspicion that the driver is under the influence. Other states have approved stops for drunk driving based on a driver's slow driving and his sitting through a green light, or based on a driver's slow driving and the slow, jerky movements he made with the vehicle. Stops in these instances intrude on the privacy of a citizen (as do the stops in *Terry* and *Adams*), and later Court decisions may require a higher standard than reasonable suspicion to stop, but *Prouse* does not do so.

Non-motor vehicle crimes also apparently are unaffected by *Prouse*; stops of vehicles to investigate those crimes, based on reasonable suspicion, are allowed to the same extent they were allowed before *Prouse*. The stop must be based on reasonable suspicion of criminal activity; it does not have to be a specific crime. Further, a stop based on a reasonable suspicion of one crime (that a driver is under the influence) can legally result in an arrest for another crime (drug violation). Similarly, a valid stop to investigate a motor vehicle violation (like improper brakes) can result in an arrest for driving under the influence.

With the result in *Prouse*, however, it is more likely that the level of probability required for stops for DUI or general criminal law violations will be litigated. Before *Prouse*, the officer could always base his initial stop on the driver's license check and from there his inquiry could proceed to the subject of his suspicion. Without the driver's license justification for the stop, the suspicion of the officer on the DUI or other criminal activity becomes more important in later litigation.

One other factor is relevant to the problem of stops for other crimes. *Prouse* also holds that a vehicle may be stopped to charge an occupant or the driver with a violation of the motor vehicle law (or any other law). At that time, after a valid stop, an officer can also check the driver's license and the registration of the vehicle. Although it is probably not intended by *Prouse*, one of its results may be to increase the number of charges made for minor motor vehicle violations. That would happen if officers who in the past have stopped vehicles on an unarticulable hunch to check licenses, etc. now, to protect themselves, begin charging the driver with a minor violation to achieve the same result of stopping the vehicle. If the charge is a pretext to avoid *Prouse*, and that fact can be proven, then any search and/or seizure that follows the stop might be invalidated.

4. What application does *Prouse* have to other random stops, such as the type game wardens make to check licenses? In his concurring opinion, Justice Blackmun, joined by Justice Powell, specifically noted that the interests of the state, as well as the alternatives to random stops, are different for game law enforcement, and he specifically noted that "the Court's balancing process, and the value factors under consideration, would be quite different" in such a case. In a footnote to the majority opinion, the Court noted that "roadside truck weigh-stations" and "inspection checkpoints" at which some vehicles are detained for additional inspection are not affected by its holding. While it does not say so, stops of vehicles transporting liquor with a permit are probably unaffected by the holding as well.

5. What kind of non-random stops of vehicles are allowed where there is no articulable and reasonable suspicion of a driver's license, registration, or equipment violation? In its holding the Court stated that it did not intend to prevent a state "from developing methods for spot checks that do not involve the unconstrained exercise of discretion. Questioning of all oncoming traffic at roadblock type stops is one possible alternative." (footnote omitted) Justice Blackmun, in his concurring opinion, noted that he interpreted that language to include other non-random stops, such as stopping every 10th vehicle to check for license or registration violations. One other possibility, not specifically

approved by the Court, is the establishment of departmental guidelines and procedures for document checks in non-roadblock situations.

The evil in random stops is that it is subject to an abuse of discretion by the officer. Roadblocks tend to minimize that abuse because they stop lots of people, and they do not single out an individual. In *U.S. v. Martinez-Fuerte*, 428 U.S. 543 (1976), the Court approved the use of permanent checkpoints by the Border Patrol, even though no reasonable ground of suspicion existed for checking most of the vehicles coming through the checkpoint. The Court justified this result because (1) the intrusion is limited to a brief inquiry and the display of a document or two; (2) the subjective concern of a motorist at being stopped is lessened when everyone is being stopped; (3) there are visible signs of the officer's authority at a checkpoint that are not present on roving patrols; (4) the checkpoints intrude only at the scene of the checkpoint, while roving patrols potentially intrude anywhere that a patrol car can go; (5) the checkpoints involve less discretionary activity because they don't involve random decisions about who is to be stopped. Most of those justifications can also apply to roadblocks.

One question that *Prouse* does not answer concerning the use of roadblocks is the extent to which they must be planned in advance. For example, it seems likely that a court would find unreasonable a roadblock in which an officer overtook a suspicious (although not suspicious enough to meet the *Prouse* standard) person, set up a roadblock in front of him and then stopped the suspicious driver and the next three cars. If that is unreasonable because of the obvious pretext involved, then it suggests that the roadblock must be planned and set up in advance. Some guidance on this issue may come from *Martinez-Fuerte*; in that case another issue the Court had to decide was whether a warrant should be obtained before operating a checkpoint. It held that a warrant is not required, even though in other analagous contexts warrants have been required where no individual person or location is suspected of a violation (OSHA inspections, fire and building inspections, etc.). They did not require a warrant because (1) the checkpoint clearly indicated to the driver of a vehicle that the person stopping the vehicles is representing the state; (2) the reasonableness of the checkpoint can be determined from objective factors such as the location, time and manner of operation; in inspections of single locations or vehicles subsequent circumstances (i.e., the results of the search) tend to make it difficult to ascertain if the search was reasonable; and (3) the need for a judicial officer's review of the search or seizure is not as great where a checkpoint is involved because of the importance attached to the supervisor's choice of location of the checkpoint; that choice effectively removes much of the discretion from the officer. Those factors were not discussed in *Prouse*, but it seems reasonable to expect similar considerations to be used in deciding if a roadblock is reasonable under the circumstances. With those factors in mind, the safe thing for a police department to do is to involve a supervisor in a decision to establish a roadblock.

CORRECTION

Footnote 2 on page 2 of the Administration of Justice Memorandum on Constitutionality of Motor Vehicle License Checks states that a warrant was required in *Prouse* because it was an automobile stop and because it was an investigative stop. That statement is incorrect; for those reasons, a warrant was not required.