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# Constitutional Law - Search and Seizure - Random Automobile Stops Lacking Reasonable Suspicion of Criminal Violation Held Unconstitutional

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# CASE COMMENT

## CONSTITUTIONAL LAW — SEARCH AND SEIZURE — RANDOM AUTOMOBILE STOPS LACKING REASONABLE SUSPICION OF CRIMINAL VIOLATION HELD UNCONSTITUTIONAL.

A patrolman stopped an automobile occupied[1] by the respondent and seized marihuana which was in plain view on the floor.[2] At a hearing to suppress the marihuana seized as a result of

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1. Delaware v. Prouse, ____U.S. ____, ____, 99 S. Ct. 1391, 1394 (1979). The Delaware Supreme Court referred to respondent as the operator of the vehicle, *see* State v. Prouse, 382 A.2d 1359, 1361 (1978). The arresting officer testified to the contrary, and the trial court in its ruling on the motion to suppress referred to respondent as one of the four "occupants" of the vehicle. The vehicle was registered to respondent. *Id.* at ____, 99 S. Ct. at 1394 n.1.

2. *Id* at ____, 99 S. Ct. at 1394. The respondent was indicted for possession of a non-narcotic substance under title 16 section 4754 of the Delaware Code which provides:

> It is unlawful for any person knowingly or intentionally to possess, use or consume any controlled substance or counterfeit substance classified in Schedule I, II, II, IV or V not a narcotic drug unless the substance was obtained directly from or pursuant to a valid prescription or order of a practitioner while acting in the course of his professional practice or except as otherwise authorized by this chapter. Any person who violates this section upon conviction shall be fined not more than $500 and imprisoned not more than 2 years.

16 DEL. CODE ANN. § 4754 (Supp. 1978).

Title 16, Section 4701(5) of the Delaware Code, in pertinent part, defines a "controlled substance" as "a drug, substance, or immediate precursor in Schedules I through V of Subchapter II." 16 DEL. CODE ANN. §4701 (5) (1975).

Title 16, section 4714 of the Delaware Code states, in pertinent part: "(a) The controlled substances listed in this section are included in Schedule I. . . .(e) Any material, compound, combination, mixture, synthetic substitute or preparation which contains any quantity of marihuana. . . ." 16 DEL. CODE ANN. §4714(a) (e) (1975 and Supp. 1978).

The Court in *Prouse* stated that the marihuana seized was in "plain view" on the car floor. ____U.S. at ____, 99 S. Ct. at 1394. In certain situations, police may make a warrantless seizure of evidence which is in plain view. Coolidge v. New Hampshire, 403 U.S. 443, 465 (1971). In order to make a plain view seizure three conditions must be met: (1) There must be prior justification for the officer's presence at the place where the object is in plain view; (2) discovery of the evidence must be inadvertant; and (3) it must be immediately apparent to the officer that he has incriminating evidence before him. *Id.* at 466. Thus, "objects falling in the plain view of an officer who has a right to be in the position to have that view are subject to seizure and may be introduced into evidence." Harris v. United States, 390 U.S. 234, 236 (1968).

the stop, the patrolman testified that prior to the stop he had observed neither traffic nor equipment violations, nor had he any indication that criminal activity had been or would be perpetrated by the respondent.[3] The patrolman testified that the respondent's car was randomly chosen from other vehicles on the road to be the subject of a license and registration check that was routinely made when not answering complaints.[4] The patrolman was not acting pursuant to any standards, guidelines, or procedures pertaining to document spot checks, promulgated either by his department or by the state attorney general.[5] The trial court granted the respondent's motion to suppress the seized marihuana[6] and, upon appeal, the Delaware Supreme Court affirmed.[7] On writ of certiorari, the United States Supreme Court affirmed, *holding* that except in situations where the police have "reasonable and articulable" suspicion that a driver is operating his vehicle without a valid driver's license or automobile registration certificate, or has otherwise violated a criminal law making him subject to seizure, stopping an automobile to check the driver's license and automobile registration is an unreasonable search and seizure in violation of the fourth amendment to the United States Constitution.[8] *Delaware v. Prouse,* ____ U. S. ____, 99 S. Ct. 1391 (1979).

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3. Delaware v. Prouse, ____U.S. ____, ____, 99 S. Ct. 1391, 1394 (1979).

4. State v. Prouse, 382 A.2d 1359, 1361 (Del. 1978).

5. ____U.S. at ____, 99 St. Ct. at 1394.

6. *Id.* at ____, 99 S. Ct. at 1394. The trial court held the stop and detention wholly capricious and, therefore, in violation of the fourth amendment. *Id.*

7. 382 A.2d at 1364. On appeal, the Delaware Supreme Court held that "a random stop of a motorist in the absence of specific articulable facts which justify the stop by indicating a reasonable suspicion that a violation of the law has occurred is constitutionally impermissible and violative of the Fourth and Fourteenth Amendments to the United States Constitution." *Id.*

The respondent appealed pursuant to Section 9902 of Title Ten of the Delaware Code which provides in part as follows:

> (b) When any order is entered before trial in any court suppressing or excluding substantial and material evidence, the court, upon certification by the Attorney General that the evidence is essential to the prosecution of the case, shall dismiss the complaint, indictment or information or any count thereof to the proof of which the evidence suppressed or excluded is essential. Upon ordering the complaint, indictment or information or any count thereof dismissed pursuant to the Attorney General's certification, the resons of the dismissal shall be set forth in the order entered upon the record.
> (c) The State shall have an absolute right of appeal to an appellate court from an order entered pursuant to subsection (b) of this section and if the appellate court upon review of the order suppressing evidence shall reverse the dismissal, the defendant may be subjected to trial.

10 DEL. CODE ANN. § 9902 (b)(c) (1975).

North Dakota provides for a similar procedure in Section 29-28-07 (5) of the North Dakota Century Code (Supp. 1979).

8. ____U.S. at ____, 99 S. Ct. at 1401. The Court immediately narrowed its holding by declaring that the states are not precluded from developing methods for spot checks that involve less intrusion and do not allow unconstrained discretion. *Id.* Nor are the states restricted from using truck

The fourth amendment to the United States Constitution protects people from unreasonable searches and seizures.[9] Historically, this procedural safeguard was a direct result of the events preceding the revolutionary struggle against England.[10] The fourth amendment was a response to English monarchial and parliamentary police practices, some of which were later adopted in colonial America.[11]

The suggestion that the fourth amendment protects people from conviction for crimes proved by evidence procured through an unreasonable search and seizure was first made in *Boyd v. United States*.[12] In *Boyd*, the United States Supreme Court implied that evidence secured by means of an unconstitutional search and seizure is inadmissible in federal court.[13] The implication in *Boyd* was made explicit in *Weeks v. United States*,[14] in which the Court enunciated the exclusionary rule under which evidence seized during an unlawful search could not constitute proof against the defendant in a federal criminal prosecution.[15] The Court in *Weeks* reasoned that if evidence seized in violation of the Constitution could be introduced at trial, the protection of the fourth

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weigh station and inspection checkponts at which some vehicles might be detained for safety and regulatory inspections. *Id.* at ____, 99 S. Ct. at 1401 n.26.

9. The fourth amendment provides as follows:

> 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, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. CONST. amend. IV.

10. Weeks v. United States, 232 U.S. 383, 390 (1914); Boyd v. United States, 116 U.S. 616, 623-35 (1886). *See also* J. LANDYNSKI, SEARCH AND SEIZURE AND THE SUPREME COURT, 19 (1966).

11. Weeks v. United States, 232 U.S. 383, 390 (1914); Boyd v. United States, 116 U.S. 623-35 (1886). *See also* W. LAFAVE, SEARCH & SEIZURE, A TREATISE ON THE FOURTH AMENDMENT 4 (1978). In England, the power to search was originally used to restrict fredom of the press. In 1538, Henry VIII expanded the scope of searches under a licensing system. Later, these powers became almost unlimited under authorization by the Star Chamber and, later, Parliament. Not until Howe v. Wood, 19 Howell's State Trials 1153 (1763), and Entick v. Carrington, 19 Howell's State Trials 1029 (1765), did the idea that people should be protected from arbitrary searches under general warrants gain recognition.

Similarly, in the pre-revolution colonies, writs of assistance were commonly used to authorize general customs searches for smuggled goods. The use of writs was vigorously opposed by the wealthy merchant interests. Protection from writs of assistance, however, was not mandated in the grievances in the Declaration of Independence, and was not provided for in the draft constitution drawn during the Constitutional Convention in 1789. As a result of national criticism, a bill of rights was later added which included the fourth amendment in its present form. W. LAFAVE, SEARCH & SEIZURE, A TREATISE ON THE FOURTH AMENDMENT 3-5 (1978).

12. 116 U.S. 616 (1886).

13. Boyd v. United States, 116 U.S. 616, 638 (1886). The Court held that the compulsory production of private books and papers by the owner of goods in a customs revenue suit, to be used as evidence against him at trial was, in effect, compelling the owner to be a witness against himself, contrary to the fifth amendment of the Constitution. Further, the Court equated this compulsory production of evidence with an unreasonable search and seizure under the fourth amendment. *Id.* at 635, and called unconstitutional the proceeding during which such evidence was introduced. *Id.* at 638. *See also* J. LANDYNSKI, SEARCH AND SEIZURE AND THE SUPREME COURT, 62 (1966).

14. 232 U.S. 383 (1914).

15. Weeks v. United States, 232 U.S. 383, 398 (1914).

amendment would be illusory.[16] Thus, the exclusionary rule was envisioned as protecting fourth amendment rights by removing from the government any evidentiary incentive for disregarding those rights.[17]

The exclusionary rule was extended to state criminal prosecutions in *Mapp v. Ohio*.[18] In *Mapp*, the Court held that the fourth amendment was applicable to the states through the due process clause of the fourteenth amendment and, therefore, that all evidence obtained by searches and seizures in violation of the fourth amendment was inadmissible in a state court proceeding.[19]

Although the fourth amendment requires that "no Warrants shall issue, but upon probable cause,"[20] searches and seizures, under certain circumstances, may be made without a warrant.[21] In *Wong Sun v. United States*,[22] the Court stated that where an officer

16. *Id.* at 393. This rationale was adopted in Mapp v. Ohio, 367 U.S. 643, 656 (1961), in which the Court extended the exclusionary rule to states under the fourth and fourteenth amendments. *Id.*

17. Elkins v. United States, 364 U.S. 206, 216 (1960). This rationale has been repeated in cases subsequent to *Elkins*. *See, e.g.*, Stone v. Powell, 428 U.S. 465, 486, 492 (1976) (denying habeas corpus relief to state prisoner in order to raise unconstitutional search and seizure defense to introduction of evidence when state has provided earlier opportunity for fourth amendment claim); United States v. Calandra, 414 U.S. 338, 348 (1974) (holding that grand jury questions based on illegally seized evidence did not violate defendant's fourth amendment rights); Mapp v. Ohio, 367 U.S. 643, 655 (1961) (holding that evidence illegally seized by the government is inadmissible in state courts).

18. 367 U.S. 643 (1961).

19. 367 U.S. 643, 655 (1961). In so holding, the Court in *Mapp* overruled Wolf v. Colorado, 338 U.S. 25 (1949), in which the Court held that although the fourth amendment was incorporated by the fourteenth amendment, state courts were not required to exclude evidence obtained in violation of the fourth amendment. *Id.* at 27-28. The Court in *Mapp* stressed the need for healthy federalism by avoidance of needless inconstitencies between federal and state courts concerning the admissibility of illegally seized evidence under the fourth amendment. 367 U.S. at 657. In addition, the Court's holding sought to preserve judicial integrity by not allowing state courts, through admission of illegally seized evidence, to participate in or perpetuate unconstitutional state practices. *Id.* at 659.

The dissent in *Mapp* urged that "[i]t would not be proper to expect or impose any precise equivalence, either as regards the scope of the right or the means of its implementation, between the requirements of the Fourth and Fourteenth amendments." *Id.* at 679 (Frankfurter, Whitaker, Harlan, J.J., dissenting).

20. U.S. CONST. amend. IV. The police must, whenever practicable, obtain advance judicial approval of searches and seizures through the warrant procedure. *See, e.g.*, Katz v. United States, 389 U.S. 347 (1967) (holding unconstitutional electronic surveillance conducted without prior procurement of warrant); Beck v. Ohio, 379 U.S. 89, 96 (1964) (evidence seized after arrest based on less than probable cause was inadmissible); Chapman v. United States, 365 U.S. 610 (1961) (evidence seized by forcible entry into defendant's apartment in his absence and without consent and without warrant held inadmissible). Most searches, however, are made without a search warrant. L. TIFFANY, D. MCINTYRE & D. ROTENBERG, DETECTION OF CRIME 100-05 (1967).

21. Coolidge v. New Hampshire, 403 U.S. 443, 454-55 (1971). A categorical exception to the warrant requirement is made where a search is conducted incident to a lawful arrest. *See, e.g.*, United States v. Robinson, 414 U.S. 218 (1973) (allowing full search of arrestee's person following lawful custodial arrest); Gustafson v. Florida, 414 U.S. 260 (1973) (companion case to Robinson); Chimel v. California, 395 U.S. 752 (1969) (restricting the scope of search incident to a lawful arrest).

The second exception to the warrant requirement is made where exigent circumstances are present. *See, e.g.*, Warden v. Hayden, 387 U.S. 294 (1967) (hot pursuit); *cf.*, Preston v. United States, 376 U.S. 364, 367-68 (1964). *See also* Schmerber v. California, 384 U.S. 757 (1966) (allowing blood extraction from defendant where delay to procure warrant threatened destruction of evidence); Carroll v. United States, 267 U.S. 132 (1925) (allowing warrantless search of automobile due to its ambulatory nature).

22. 371 U.S. 471 (1963).

makes a warrantless arrest, the quantum of information upon which the officer bases that arrest must equal the probable cause required to justify issuance of a warrant.[23]

When a warrantless search and seizure amounting to an arrest occurs, however, cases decided after *Wong Sun* have interpreted the fourth amendment as requiring something less than probable cause. In *Terry v. Ohio*,[24] the Court held constitutional a seizure and search of suspected conspirators where less than probable cause for an arrest existed.[25] Rather than applying the probable cause requirement of the fourth amendment, the Court ruled that the actions of the police officer in that case must be tested by the fourth amendment's general proscription against unreasonable searches and seizures.[26]

In each case, a court determines the constitutional reasonableness of the search and seizure by balancing the relative interests sought to be protected by the individual and the government.[27] In addition, the search and seizure must be based on specific articulable facts[28] and rational inferences from which a detached and neutral magistrate can judge the reasonableness of the search and seizure in light of the particular circumstances.[29]

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23. Wong Sun v. United States, 371 U.S. 471, 479 (1963). The Court reasoned that relaxation of the fundamental requirement of probable cause would "leave law-abiding citizens at the mercy of the officers' whim or caprice." *Id* (citing Brinegar v. United States, 338 U.S. 160, 176 (1949)).

24. 392 U.S. 1 (1968).

25. Terry v. Ohio, 392 U.S. 1, 28 (1968). The police officer in *Terry* stopped and frisked the defendants, *id.* at 6, after observing them make numerous passes in front of a local store. During the course of the frisk, two unregistered firearms were discovered and seized. *Id.* at 7. The trial court referred to the police action in *Terry* as a stop and frisk, as distinguished from an arrest and full blown search. *Id.* at 8. The state asserted that stop and frisk activity was, on a continuum of police activity, lower than a search and seizure and, thus, was not subject to the proscriptions of the fourth amendment. *Id.* at 10-11. This line of reasoning was used earlier in People v. Rivera, 14 N.Y.2d 441, 252 N.Y.S.2d 458, 201 N.E.2d 32 (1964), *cert. denied,* 379 U.S. 978 (1965), where the Court stated that "[t]he sense of exterior touch here involved is not very far different from the sense of sight or hearing — senses upon which police customarily act." 201 N.E.2d at 35. The Court in *Terry* rejected this reasoning, however, and held that the stop and frisk was a seizure and search subject to the fourth amendment. 392 U.S. at 19.

26. 392 U.S. at 20-21.

27. *Id.* at 21. In Camara v. Municipal Court, 387 U.S. 523, 534 (1967), the Court explained that "[i]n cases in which the Fourth Amendment requires that a warrant to search be obtained, 'probable cause' is the standard by which a particular decision to search is tested against the constitutional mandate of reasonableness." *Id.* Thus, where a warrant is not required, the standard of reasonableness might be lower than probable cause. *See, e.g.,* United States v. Brignoni-Ponce, 422 U.S. 873, 884 (1975) (articulable facts and rational inferences justifying reasonable suspicion); *cf.,* Delaware v. Prouse, ____U.S.____, 99 S. Ct. 1391, 1400 (1979); Terry v. Ohio, 392 U.S. 1, 27 (1968) (stop and search reasonable where officer *has reason to believe* that he is dealing with an armed and dangerous individual). Thus, a warrantless search and seizure may be constitutionally reasonable in situations lacking probable cause where the governmental interest in making the search and seizure outweighs the invasion of protected fourth amendment rights which the search and seizure entails. *Id.* at 21.

28. The Court, in Terry v. Ohio, 392 U.S. 1, 21 n.18, stressed that the "demand for specificity in the information upon which police action is predicated is the central teaching of this Court's Fourth Amendment jurisprudence." *Id.*

29. *Id.* at 20-21. *See also* Chimel v. California, 395 U.S. 752, 765 (1969); Katz v. United States, 389 U.S. 347, 354-57 (1967); Berger v. New York, 388 U.S. 41, 54-60 (1967); Aguilar v. Texas, 378 U.S. 108, 110-115 (1964); Wong Sun v. United States, 371 U.S. 471, 479-80 (1963). The Court

Based on *Terry*, therefore, the constitutionality of a warrantless[30] search or seizure must be determined by a two step analysis. First, the court must determine whether the challenged police action constitutes a search or seizure subject to the fourth amendment proscription against unreasonable searches and seizures.[31] Upon a finding that a search or seizure occurred, the court must then determine whether the search or seizure was reasonable by balancing the competing interests of the government and the individual.[32]

In *Delaware v. Prouse*, the Court applied this two-phase analysis to random investigatory seizures of automobile drivers by police seeking to discover automobile registration and driver's license violations.[33] Citing earlier cases, the Court summarily declared that stopping an automobile and briefly detaining its occupants constituted a seizure within the meaning of the fourth amendment.[34] Proceeding to judge the fourth amendment reasonableness of the seizure caused by the investigatory stop, the Court applied the same balancing test used in earlier cases, under which the reasonableness of a particular law enforcement practice is judged by "balancing its intrusion on the fourth amendment interests against its promotion of legitimate governmental interests."[35]

In weighing the balance in the case at bar, the Court in *Prouse* reviewed and contrasted its earlier decisions in similar cases involving investigatory stops of automobiles where there is no suspicion that a criminal violation has taken place.[36] The Court

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in *Terry* cited one governmental interest as that of effective crime prevention. 392 U.S. at 22. In addition, there was a more immediate interest, under the particular facts, of the police officer in taking steps to assure himself that the person with whom he was dealing was not armed with a dangerous weapon that could unexpectedly be used against him. *Id.* at 23.

30. The police must still obtain a warrant whenever practicable in advance of the search or seizure. Terry v. Ohio, 392 U.S. 1379 U.S. 1,20 (1968). *See also* Katz v. United States, 389 U.S. 347 (1967); Beck v. Ohio, 379 U.S. 89, 96 (1964). However, today an arrest warrant is not required in felony cases even where there is time to procure one. *See* United States v. Watson, 423 U.S. 411, 423-24, (1976).

31. 392 U.S. at 16.

32. *Id.* at 27.

33. ____U.S. at ____, 99 S. Ct. at 1396-1401.

34. *Id.* at ____, 99 S. Ct. at 1396. *See also* United States v. Martinez- Fuerte, 428 U.S. 543, 556 (1976); United States v. Brignoni-Ponce, 422 U.S. 873, 878 (1975). *Cf.*, Terry v. Ohio, 392 U.S. 1, 16 (1968).

35. ____ U.S. at ____, 99 S. Ct. at 1396. In Terry v. Ohio, 392 U.S. 1, 21-22 (1968), the Court phrased the objective reasonableness test as follows: "[W]ould the facts available to the officer at the moment of the seizure or the search 'warrant a man of reasonable caution in the belief' that the action taken was appropriate?" *Cf.*, Beck v. Ohio, 379 U.S. 89, 96-97 (1964); Carrol v. United States, 267 U.S. 132, 149, (1925).

36. ____U.S. at ____, 99 S. Ct. at 1396 (1979). Cases dealing with investigatory detentions or seizures have arisen in other contexts. *See, e.g.*, Dunaway v. New York, ____U.S. ____, 99 S. Ct. 2248 (1979) (physical restraint of defendant at stationhouse for purposes of investigatory questioning where probable cause to arrest was lacking held unconstitutional); Davis v. Mississippi, 394 U.S.

noted that while it had previously held roving border patrol searches which lacked any articulable suspicion of criminal activity unconstitutional,[37] it had upheld similarly unfounded *en masse* border checkpoint stops because of their less intrusive effect on motorists' fourth amendment interests.[38]

The investigatory stops in *Prouse* stood on the same footing as the roving border patrol held unconstitutional earlier by the Court.[39] The Court conceded that "the States have a vital interest in ensuring that only those qualified to do so are permitted to operate motor vehicles, that these vehicles are fit for safe operation, and hence that licensing, registration, and vehicle inspection requirements are being observed."[40] The Court ruled, however, that given (1) the available alternative methods of ensuring that only registered drivers use the highways,[41] (2) the incremental contribution of random spot checks to affect that purpose, (3) the possible dangers of unconstrained police discretion in the field,[42] and (4) the psychological intrusion visited upon drivers due to the stops,[43] the random stops involved constituted an unreasonable

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721 (1969) (repeated warrantless detention of suspect at stationhouse for fingerprinting held unconstitutional).

37. ___U.S. at ___, 99 S. Ct. at 1397. *Prouse* was referring to United States v. Brignoni-Ponce, 422 U.S. 873-84 (1975), in which the Court considered the fourth amendment ramifications of roving border patrol stops and searches for illegal aliens not limited to the border alone. Although recognizing an important governmental interest in developing effective measures to prevent the illegal entry of aliens at the borders, the Court in *Brignoni-Ponce* declared that even minimal fourth amendment intrusions, such as brief investigatory stops removed from the border itself, required some articulable suspicion on which to base the stop. *Id.* at 881-82. This minimal requirement reflects the Court's concern for the important fourth amendment interest of law-abiding residents living near the border to be free from arbitrary border patrol stops. *Id.* at 882-83.

38. ___U.S. at ___, 99 S. Ct. at 1397, referring to United States v. Martinez-Fuerte, 428 U.S. 543 (1976). In *Martinez-Fuerte*, the Court ruled that the practical impossibility of identifying a possible carrier of illegal aliens, the need to prevent the flow of illegal aliens into the country, and the narrower margin for abusive discretionary police action at designated checkpoints justified such checkpoint stops even when no suspicion of illegal activity existed. *Id.* at 556-57. The Court in that case declared that while the objective intrusion of the stop existed in both *Martinez-Fuerte* and *Brignoni-Ponce*, the less intrusive nature of checkpoint stops was its distinguishing and saving feature. *Id.* at 558. Thus, in view of the countervailing state interests at stake, and the minimal intrusion involved, the checkpoint border stops in *Martinez-Fuerte* were held to be reasonable in spite of the absence of any suspicion upon which to base the stops. *Id.* at 562.

39. ___U.S. at ___, 99 S. Ct. at 398-99.

40. *Id.* at ___, 99 S. Ct. at 1398.

41. *Id.* at ___, 99 S. Ct. at 1399. The Court suggested that questioning all oncoming traffic at roadblock-type stops might be one possible alternative. *Id.* at ___, 99 S. Ct. at 1401. The Court also stated that acting on observed violations of the law was probably the surest way to locate unlicensed drivers. *Id.* at ___, 99 S. Ct. at 1399.

42. *Id.* at ___, 99 S. Ct. at 1400. The Court pointed out that the practice of random stops was unlike situations where consent to the regulation was presumed from participation in the regulated enterprise. *Id. See, e.g.,* United States v. Biswell, 406 U.S. 311 (1972) (federal regulation of firearms); Colonnade Catering Corp v. United States, 397 U.S. 72 (1970) (federal regulation of liquor). In the absence of such circumstances, "discretion of the official in the field [must] be circumscribed, at least to some extent." ___U.S. at ___, 99 S. Ct. at 1400 (citing Almeida-Sanchez v. United States, 413 U.S. 266, 270 (1973); Camara v. Municipal Court, 387 U.S. 523, 532-33 (1967).

43. ___U.S. at ___, 99 S. Ct. at 1398. The Court likened the stop in *Prouse* to that in United States v. Brignoni-Ponce, 422 U.S. 873 (1975), stating that in both cases the stop involved an unsettling show of authority. Both also involved an interference with the freedom of movement which is inconvenient and time consuming. ___U.S. at ___, 99 S. Ct. 1398.

invasion of fourth amendment rights.[44] On balance, therefore, the Court held that in the absence of articulable and reasonable suspicion that some violation of the law has occurred, a random stop of a driver in order to check his license and automobile registration was an unreasonable seizure under the fourth and fourteenth amendments.[45]

The holding in *Delaware v. Prouse* has an impact on two North Dakota statutes.[46] The first statute requires that the registration card for a vehicle shall be carried in the driver's compartment of the vehicle at all times, subject to inspection by any peace officer or highway patrolman.[47] The second statute requires every licensee to have his operator's license in his possession at all times when operating a motor vehicle, and to display his license upon demand of any patrolman or peace officer, among others.[48]

The scope of the former statute was considered in *State v. Stockert*,[49] in which the North Dakota Supreme Court, in dictum,

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44. *Id.* at ____, 99 S. Ct. at 1398-1401.

45. *Id.* at ____, 99 S. Ct. at 1401. The dissent in *Prouse* found the Court's allowance of *Martinez-Fuerte*-type *en masse* checkpoint stops lacking any suspicion, and its disallowance of the intermittent random stops in *Prouse*, to be inconsistent with the idea of preventing unfounded intrusions into fourth amendment rights. In addition, while the Court stated that acting on observed violations was the best way to ascertain which drivers were unlicensed, *id.* at ____, 99 S. Ct. at 1399, the dissent stated that preventing actual violations from occurring in the first place was the object of the stops. *Id.* at ____, 99 S. Ct. at 1402 (Rehnquist, J., dissenting).

46. The text of these two statutes follows. Section 39-04-55 of the North Dakota Century Code provides as follows:

> The registration card issued for a vehicle shall be carried in the driver's compartment of the vehicle or, in the case of a house trailer or mobile home or a trailer or semitrailer, regardless of when such vehicle was acquired, inside or on such vehicle, at all times while the vehicle is being operated upon a highway in this state. Such card shall be subject to inspection by any peace officer or highway patrolman. Any person violating any of the provisions of this section shall be assessed a fee of twenty dollars, provided that a person cited for violation of this section shall not be found to have committed a violation if he shall, within forty-eight hours after being cited, produce and display to a peace officer or highway patrolman, or to the hearing official before whom the person was to appear, a registration card valid at the time the person was cited. A peace officer or highway patrolman receiving evidence of the existence of a valid registration card as herein provided shall notify the hearing official of the appropriate jurisdiction of that fact.

N.D. CENT. CODE § 39-04-55 (Supp. 1979).

Section 39-06-16 of the North Dakota Century Code provides:

> Every licensee shall have his operator's license or permit in his immediate possession at all times when operating a motor vehicle and shall display the same, upon demand of any court, municipal court, a county justice, a patrolman, peace officer, or field deputy or inspector of the highway department. However, no person charged with violating this section shall be convicted or assessed any court costs if he produces in court, to the chief of police or in the office of the arresting officer an operator's license or permit theretofore issued to him and valid and not under suspension, revocation or cancellation at the time of his arrest.

N.D. CENT. CODE § 39-06-16 (1972).

47. N.D. CENT. CODE § 39-04-55 (Supp. 1979).

48. N.D. CENT. CODE § 39-06-16 (1972).

49. 245 N.W.2d 266, 270 (N.D. 1976). *State v. Stockert* dealt with the admissibility of evidence in a felony case. The evidence was obtained during a search of the defendant's automobile although no

stated that a statute requiring drivers to carry their registration cards "does not authorize an officer to. . . stop single automobiles. . . in the absence of any indication of violation of law or ordinance."[50]

While *Stockert* declares that the automobile registration statute[51] may not be used as a subterfuge for an otherwise unconstitutional investigation of other crimes, *Prouse* seems to extend *Stockert* and require some articulable suspicion prior to a vehicle stop even if the avowed purpose of the stop is actually to check the driver's registration and license pursuant to the statutes. Thus, the holding in *Prouse*[52] should be equally applicable to both the North Dakota registration and driver's license statutes.

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reasonable suspicion justified the search. The state attempted to justify the search on the basis of section 39-04-55 of the North Dakota Century Code, which requires a driver to keep his automobile registration card in his automobile at all times. The court stated that the search was impermissible under both state and federal constitutional standards. *Stockert* was reversed and remanded for a new trial. *Id.* at 271.

50. State v. Stockert, 245 N.W.2d 266, 270 (N.D. 1976). "[Section 39-04-55] cannot be used as a mere subterfuge to obtain information or evidence not related to the licensing requirement." *Id.*, (citing People v. Harr, 93 Ill. App.2d 146, 235 N.E.2d 1 (1968), and cases cited therein).

51. N.D. CENT CODE § 39-04-55 (Supp. 1979).

52. ___U.S. at ___, 99 S. Ct. at 1401.