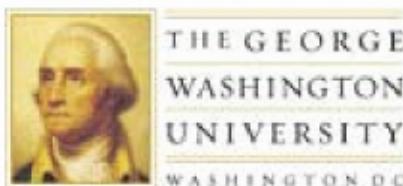


The Burger Court Opinion Writing Database

Delaware v. Prouse

440 U.S. 648 (1979)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University



Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

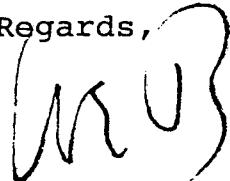
March 23, 1979

Dear Byron:

Re: 77-1571 Delaware v. Prouse

I join.

Regards,



Mr. Justice White

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20542

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

March 5, 1979

RE: No. 77-1571 Delaware v. Prouse

Dear Byron:

I agree but I too concur in John's suggestion.

Sincerely,

Bill

Mr. Justice White

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

March 5, 1979

Re: 77-1571 - Delaware v. Prouse

Dear Byron:

I am glad to join your opinion for the
Court.

Sincerely yours,

P.S.
P.

Mr. Justice White

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

March 5, 1979

Re: 77-1571 - Delaware v. Prouse

Dear Byron:

The suggestion contained in John's letter to you of today is entirely satisfactory with me.

Sincerely yours,

P.S.

Mr. Justice White

Copies to the Conference

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice White
28 FEB 1979

Circulated: _____

Recirculated: _____

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77-1571

State of Delaware, Petitioner,
v.
William J. Prouse, III. } On Writ of Certiorari to the
Supreme Court of Delaware.

[March —, 1979]

MR. JUSTICE WHITE delivered the opinion of the Court.

The question is whether it is an unreasonable seizure under the Fourth and Fourteenth Amendments to stop an automobile, being driven on a public highway, for the purpose of checking the driving license of the operator and the registration of the car, where there is neither probable cause to believe nor reasonable suspicion that the car is being driven contrary to the laws governing the operation of motor vehicles or that either the car or any of its occupants is subject to seizure or detention in connection with the violation of any other applicable law.

I

At 7:20 p. m. on November 30, 1976, a New Castle County, Del. patrolman in a police cruiser stopped the automobile occupied by respondent.¹ The patrolman smelled marihuana smoke as he was walking toward the stopped vehicle, and he seized marihuana in plain view on the car floor. Respondent was subsequently indicted for illegal possession of a controlled

¹ In its opinion, the Delaware Supreme Court referred to respondent as the operator of the vehicle, see 382 A. 2d, at 1361. However, the arresting officer testified that "I don't believe [respondent] was the driver. . . . As I recall, he was in the backseat . . .," App. 12, and the trial court in its ruling on the motion to suppress referred to respondent as one of the four "occupants" of the vehicle, *id.*, at 17. The vehicle was registered to respondent. *Id.*, at 10.

BRW
Please sign me

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
 Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice White

Circulated: _____

2 MAR 1979

Recirculated: _____

9.13.15

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77-1571

State of Delaware, Petitioner,
v.
William J. Prouse, III. } On Writ of Certiorari to the
Supreme Court of Delaware.

[March —, 1979]

MR. JUSTICE WHITE delivered the opinion of the Court.

The question is whether it is an unreasonable seizure under the Fourth and Fourteenth Amendments to stop an automobile, being driven on a public highway, for the purpose of checking the driving license of the operator and the registration of the car, where there is neither probable cause to believe nor reasonable suspicion that the car is being driven contrary to the laws governing the operation of motor vehicles or that either the car or any of its occupants is subject to seizure or detention in connection with the violation of any other applicable law.

II

At 7:20 p. m. on November 30, 1976, a New Castle County, Del. patrolman in a police cruiser stopped the automobile occupied by respondent.¹ The patrolman smelled marihuana smoke as he was walking toward the stopped vehicle, and he seized marihuana in plain view on the car floor. Respondent was subsequently indicted for illegal possession of a controlled

¹ In its opinion, the Delaware Supreme Court referred to respondent as the operator of the vehicle, see 382 A. 2d, at 1361. However, the arresting officer testified that "I don't believe [respondent] was the driver. . . . As I recall, he was in the backseat . . . , " App. 12, and the trial court in its ruling on the motion to suppress referred to respondent as one of the four "occupants" of the vehicle, *id.*, at 17. The vehicle was registered to respondent. *Id.*, at 10.

2
and
STYLISTIC CHANGES THROUGHOUT.
SEE PAGES: 6, 8, 9, 11

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
✓ Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice White

Circulated: _____
19 MAR 1979
Recirculated: _____

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77-1571

State of Delaware, Petitioner,
v.
William J. Prouse, III. } On Writ of Certiorari to the
Supreme Court of Delaware.

[March —, 1979]

MR. JUSTICE WHITE delivered the opinion of the Court.

The question is whether it is an unreasonable seizure under the Fourth and Fourteenth Amendments to stop an automobile, being driven on a public highway, for the purpose of checking the driving license of the operator and the registration of the car, where there is neither probable cause to believe nor reasonable suspicion that the car is being driven contrary to the laws governing the operation of motor vehicles or that either the car or any of its occupants is subject to seizure or detention in connection with the violation of any other applicable law.

I

At 7:20 p. m. on November 30, 1976, a New Castle County, Del. patrolman in a police cruiser stopped the automobile occupied by respondent.¹ The patrolman smelled marihuana smoke as he was walking toward the stopped vehicle, and he seized marihuana in plain view on the car floor. Respondent was subsequently indicted for illegal possession of a controlled

¹ In its opinion, the Delaware Supreme Court referred to respondent as the operator of the vehicle, see 382 A. 2d 1359, 1361 (1978). However, the arresting officer testified that "I don't believe [respondent] was the driver . . . As I recall, he was in the backseat . . .," App. 12, and the trial court in its ruling on the motion to suppress referred to respondent as one of the four "occupants" of the vehicle, *id.*, at 17. The vehicle was registered to respondent. *Id.*, at 10.

ykd
 Supreme Court of the United States
 Washington, D. C. 20543

CHAMBERS OF
 JUSTICE BYRON R. WHITE

March 27, 1979

MEMO TO THE CONFERENCE

Case Held for No. 77-1571 - Delaware v. Prouse

The only case held is Ketchmar v. Nebraska, No. 78-558. A Nebraska State Patrol officer stopped an automobile, and after checking the driver's license and registration smelled marijuana. At the hearing to suppress marijuana found as a result of the stop, the officer testified that he stopped the car because he had an "inkling" it might be stolen. The facts behind this inkling were that the driver was a Mexican and therefore might be an illegal alien, and therefore might be driving a stolen car, and because, additionally, later model cars are more likely to be stolen than are older cars.

Affirming, 4-3, the Nebraska Supreme Court noted that R.R.S. 60-435 permits an officer "to require the driver [of a vehicle] to stop and exhibit his operator's license and registration card . . .," and that that statute had been upheld in State v. Holmberg, 194 Neb. 337 (1975). The court further held that the stop in this case was within the ambit of that statute. The dissenters relied on, inter alia, Terry v. Ohio, 392 U.S. 1 (1968); United States v. Brignoni-Ponce, 422 U.S. 873 (1975); United States v. Montgomery, 571 F.2d 875 (CA DC 1977); and State v. Prouse, 382 A.2d 1359 (Del. 1978). In fn 2 of our decision in Delaware, Holmberg is cited as being contrary to the decisions in Montgomery and State v. Prouse.

It does not appear that the officer in this case had articulable and reasonable suspicion as required under Delaware. That there was a state statute allowing stops for document spotchecks and that the statute had been judicially sustained may make this a hold for Michigan v. DeFillippo, No. 77-1680. Otherwise it is a GVR on Delaware.

BRW

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

March 6, 1979

Re: 77-1571 - Delaware v. Prouse

Dear Byron:

Please join me.

Sincerely,

T.M.

T.M.

Mr. Justice White

cc: The Conference

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Blackmun

Circulated: 5 MAR 1979

Recirculated: _____

No. 77-1571 - Delaware v. Prouse

MR. JUSTICE BLACKMUN, concurring.

The Court, ante, at 15, carefully protects from the reach of its decision other less intrusive spot checks "that do not involve the unrestrained exercise of discretion." The roadblock stop for all traffic is given as an example. I necessarily assume that the Court's reservation also includes other not purely random stops (such as every tenth car to pass a given point) that equate with, but are less intrusive than, a 100% roadblock stop. And I would not regard the present case as a precedent that throws any constitutional shadow upon the necessarily somewhat individualized and perhaps largely

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Blackmun

Circulated: _____

1st DRAFT

Recirculated: 6 MAR 1979

SUPREME COURT OF THE UNITED STATES

No. 77-1571

State of Delaware, Petitioner,
v.
William J. Prouse, III.] On Writ of Certiorari to the
Supreme Court of Delaware.

[March —, 1979]

MR. JUSTICE BLACKMUN, concurring.

The Court, *ante*, at 15, carefully protects from the reach of its decision other less intrusive spot checks "that do not involve the unrestrained exercise of discretion." The roadblock stop for all traffic is given as an example. I necessarily assume that the Court's reservation also includes other not purely random stops (such as every 10th car to pass a given point) that equate with, but are less intrusive than, a 100% roadblock stop. And I would not regard the present case as a precedent that throws any constitutional shadow upon the necessarily somewhat individualized and perhaps largely random examinations by game wardens in the performance of their duties. In a situation of that type, it seems to me, the Court's balancing process, and the value factors under consideration, would be quite different.

With this understanding, I join the Court's opinion and its judgment.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

March 1, 1979

77-1571 Delaware v. Prouse

Dear Byron:

Please join me.

Sincerely,

L. Powell

Mr. Justice White

lfp/ss

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

March 10, 1979

77-1571 Delaware v. Prouse

Dear Harry:

Please join me in your concurring opinion.

Sincerely,



Mr. Justice Blackmun

lfp/ss

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20542

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

March 5, 1979

Re: No. 77-1571 - Delaware v. Prouse

Dear Byron:

In short order I anticipate circulating a dissent in this case; I will try not to hold you up unnecessarily.

Sincerely,



Mr. Justice White

Copies to the Conference

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Stevens

From: Mr. Justice Rehnquist

Circulated: 21 MAR 1979

1st DRAFT

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 77-1571

State of Delaware, Petitioner, *v.* William J. Prouse, III. } On Writ of Certiorari to the Supreme Court of Delaware.

[March —, 1979]

MR. JUSTICE REHNQUIST, dissenting.

The Court holds, in successive sentences, that absent an articulable, reasonable suspicion of unlawful conduct, a motorist may not be subjected to a random license check, but that the States are free to develop "methods for spot checks that . . . do not involve the unconstrained exercise of discretion," such as "[q]uestioning . . . all on-coming traffic at road-block-type stops . . ." *Ante*, at 14-15. Because motorists, apparently like sheep, are much less likely to be "frightened" or "annoyed" when stopped en masse, a highway patrolman needs neither probable cause nor articulable suspicion to stop *all* motorists on a particular throughfare, but he cannot without articulable suspicion stop *less* than all motorists. The Court thus elevates the adage "misery loves company" to a novel role in Fourth Amendment jurisprudence. The rule becomes "curiouser and curiouser" as one attempts to follow the Court's explanation for it.

As the Court correctly points out, people are not shorn of their Fourth Amendment protection when they step from their homes onto the public sidewalks or into their automobiles. But a random license check of a motorist operating a vehicle on highways owned and maintained by the State is quite different from a random stop designed to uncover violations of laws that have nothing to do with motor vehicles.* No one

*Indeed, this distinction was expressly recognized in *United States v. Brignoni-Ponce*, 422 U. S. 873, 883 n. 8 (1975):

"Our decision in this case takes into account the special function of the

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

March 5, 1979

Re: 77-1571 - State of Delaware v. Prouse

Dear Byron:

With one small exception, I think your opinion is fine and am prepared to join it.

In the paragraph at the bottom of page 8 and the top of page 9 you argue that the Delaware practice is especially intrusive because, if the stop were permitted, the driver could also be ordered out of the car. I do not believe this necessarily follows from Mimms. It is true that the driver can be ordered to get out when a valid Terry stop has been made, but I believe the assumption made in Martinez-Fuerte was that one reason the routine stop was reasonable was that nothing more than a question or two and the production of a document would be required. See 428 U.S., at 558.

Since the paragraph to which I refer is not necessary to the decision, would you be willing to omit it?

Respectfully,



Mr. Justice White

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

March 22, 1979

Re: 77-1571 - Delaware v. Prouse

Dear Byron:

Please join me.

Respectfully,



Mr. Justice White

Copies to the Conference