10-1985

New York v. Class

Lewis F. Powell Jr.

Reviewed 10/30 Excellent & carefully reasoned memo though longer than I would have needed. See Summary w/ which I am inclined to agree.

amc 10/29/85

BENCH MEMORANDUM

To: Mr. Justice Powell October 29, 1985

From: Anne

No. 84-1184, New York v. Class
(cert. to N.Y. Ct. App.) (argument November 4, 1985)

Question Presented

Does the Fourth Amendment prohibit a police officer, who has lawfully stopped an automobile for a traffic violation, from inspecting the vehicle identification number ("VIN") unless the officer has reasonable grounds to believe that the automobile is stolen?

Background

This case concerns the Fourth Amendment implications of police inspection of VIN's. The VIN is a serial number that, under mandatory federal and state regulatory schemes, must be

affixed by manufacturers to motor vehicles that will operate in the United States. The VIN provides a reliable means by which to identify a particular vehicle. In coded form, it identifies manufacturer, make, model, body type, engine type, country of manufacture, year of manufacture, plant of manufacture, year of production, and production number sequence of the specific vehicle. For all cars produced during 1969 or later, a "public" VIN must be affixed on the left side of the top of the dashboard and be viewable through the windshield. See 49 C.F.R. § 571.115 (S 4.6). In older cars, the public VIN ordinarily was placed on the door jamb of the driver's-side front door. Or the public VIN may be engraved on the engine. In addition to the public VIN, all vehicles carry a "confidential" VIN affixed in an obscure location, the position of which ordinarily is known only by the manufacturer and police. By comparing the public with the confidential VIN, police can determine if the vehicle bears an illegally transferred or altered VIN plate.

Petr New York State describes why police want to inspect the VIN. The VIN is the most effective and reliable means for achieving positive identification of a particular vehicle. When police stop a vehicle engaged in a traffic or safety violation, they have an interest in identifying not only the driver responsible for the violation but also in identifying the vehicle involved. Because the appearance of a car can be altered with paint and with transfer of license plates, the VIN may be the only method to identify the car. Moreover, the police cannot ascertain if the vehicle is properly registered unless they may

inspect the VIN. This is so because the registration document sets forth the VIN. Thus, to decide if the automobile is properly registered, officers must compare the actual VIN with the number contained on the registration document. Similarly, the card showing that the automobile is insured must be displayed to officers on a traffic violation stop. That card relies on the VIN as the basis for establishing that the particular vehicle is insured. In short, law enforcement has an interest in inspecting the VIN in order to determine if a vehicle is stolen.

Two police officers observed resp driving five to ten miles per hour above the speed limit in a car with a cracked windshield. The officers instructed resp to pull over. Resp obeyed, emerged from his car, and approached the officer driving the police car. Resp gave this officer his registration and proof of insurance, and stated that he had no driver's license in his possession. Meanwhile, the other officer had approached resp's car, opened the door, and inspected the left door jamb for the VIN. Since the VIN was not located there, the officer reached into the car and moved papers located on the dashboard in order to view the VIN. In doing so, the officer saw a gun protruding from beneath the driver's seat, seized it, and arrested resp.

Resp moved in the TC to suppress the gun. The TC denied the motion. Though the officers had no reason to believe that the car was stolen, the TC believed that their action was "reasonable" in light of resp's conduct in immediately exiting his car and in light of the fact that resp had no license in his possession.

N.Y. Appellate Division affirmed without opinion. One judge dissented, finding the "search" impermissible because "there was absolutely no predicate for believing the car was stolen."

The New York Court of Appeals reversed. The court concluded that, on the facts of this case, the officer conducted a search of resp's car. The Fourth Amendment "protects people from unreasonable government intrusions into their legitimate expectations of privacy." United States v. Chadwick, 433 U.S. 1, 7. A person has no such expectation in locations of his car exposed to the view of passersby. Thus, there would have been no search had the officer merely peered inside resp's car. Texas v. Brown, 103 S.Ct. 1535. But a person does have a legitimate expectation of privacy in areas of a car that cannot be viewed from the outside. Here, the government intrusion accomplished by the officer who opened the car door and reached inside was undertaken "to obtain information" and "exposed these hidden areas." Therefore, the intrusion constituted a search.

N.Y. Ct. App. then turned to the question of whether the search was justified. The court observed that lesser justification than probable cause might be sufficient to support police inspection of VIN's. This was so because a VIN inspection is ordinarily less intrusive than a full-blown search and because the police have a compelling interest in positive identification of vehicles. The court did not decide this issue for here there was no justification for the inspection. The TC decided that the search was reasonable because resp got out of his car and he had no license. But a driver's emergence from his car upon

being stopped by the police did not suggest criminal activity. And the officer who searched for the VIN was not aware, at the time he did so, that resp lacked a license. The sole predicate for the VIN search was resp's "commission of an ordinary traffic infraction." In the view of N.Y. Ct. App., that offense did not justify the VIN inspection." My reading of N.Y. Ct. App.'s opinion suggests that the court would require that officers have "reasonable suspicion" that a car is stolen before they may inspect the VIN.

Finally, N.Y. Ct. App. noted that some lower court decisions in New York had construed section 401 of the state Vehicle and Traffic Law as authorizing VIN inspections. N.Y. Ct. App. rejected those decisions. Section 401 authorized police to demand inspection of the VIN. It did not authorize police to intrude into a car without the driver's consent.

Two judges dissented. Once a car is on the highway, its owner has no expectation of privacy in the VIN. The purpose of the VIN is to proclaim the identity of the vehicle, a purpose that is inconsistent with the owner's privacy interests. On the other hand, the police have a compelling interest in positive identification of motor vehicles. Concepts of probable cause should have no application where the purpose of the police inspection was only to identify the vehicle, not to seize physical evidence in connection with suspected criminal activity. The dissenting judges would hold that, where the police are justified in making a traffic stop, they are authorized to inspect the VIN.

Discussion

1. Adequate and Independent State Grounds

Before reaching the merits of this case, the Court must consider resp's threshold argument that the decision of N.Y. Ct. App. rests on "adequate and independent state grounds." Because it seems likely that the Court considered and rejected this contention at the time it decided to grant cert., my discussion of this point will be brief. The leading case on how to determine if a state court decision rests on "adequate and independent state grounds" is Michigan v. Long, 463 U.S. 1032 (1983).

In Long, the Court stated that, when "a state court decision fairly appears to rest primarily on federal law, or to be interwoven with federal law, and when the adequacy and independence of any possible state law ground is not clear from the face of the opinion, we will accept as the most reasonable explanation that the state court decided the case the way it did because it believed that federal law required it to do so." Id. at 1040-41. Of course, if a state decision clearly states that it is "alternatively based on bona fide separate, adequate, and independent grounds," the Court will not undertake to review it. The Court adopted this approach in order to obviate the necessity to examine state law to decide the nature of the state decision and to avoid the intrusive practice of requiring state courts to clarify the grounds for their decisions. In short, my reading of Long is that the adequacy and independence of the state ground must be "plain" on the face of the state decision. In Long, the

Court concluded that the state decision did not rest on state grounds; apart from two citations to the state constitution, the decision relied exclusively on federal law.

In this case, N.Y. Ct. App. stated that the search violated the federal and state constitutions. Moreover, the court, unlike the state court in Long, did cite some state decisions to support its conclusion. But the decision discusses only the Fourth Amendment of the federal Constitution, using the reasonable expectation of privacy analysis developed in the federal case law. Thus, while I do not think that it is as clear in this case, as it was in Long, that the state court rested decision primarily on federal law, the state decision certainly is "interwoven" with federal law and contains no "plain statement" that it rests on adequate and independent state grounds.

In his brief, resp gives an analysis of the state cases cited by N.Y. Ct. App. in order to show that its decision rests on adequate and independent grounds. But my reading of Long suggests that this sort of inquiry into state law is precisely what Long was designed to avoid. Instead, the adequacy and independence of the state grounds must be reflected on "the face of the opinion." 463 U.S. 1040-41.

II. The Merits

I believe that the appropriate resolution of this case depends largely on two decisions of this Court. These decisions demonstrate that the officer's conduct does implicate Fourth Amendment concerns and that, therefore, it is necessary to apply

to this case Fourth Amendment principles as they have been developed in the context of motor vehicles. Before turning to the recent decisions, I will discuss the governing Fourth Amendment principles as applied to automobiles.

The Fourth Amendment protects "the privacy and security of individuals against arbitrary invasions by government officials." South Dakota v. Opperman, 428 U.S. 364, 377 (1976) (Powell, J., concurring). As in every Fourth Amendment case, resolution of the question presented here "requires a weighing of the governmental and societal interests advanced to justify such intrusions against the constitutionally protected interest of the individual citizen in the privacy of his effects." Id. at 378. The Court has recognized that individuals do have an expectation of privacy in their automobiles, but that such expectation is "limited." Two factors have been identified to justify the conclusion that a person's expectation of privacy in his automobile is entitled to less protection than such expectation in, for example, his home.

First, cars, unlike homes, "are subjected to pervasive and continuing governmental regulation and controls, including periodic inspection and licensing requirements." South Dakota v. Opperman, 428 U.S. at 368. Thus, as a routine, everyday occurrence, "police stop and examine" vehicles when they observe traffic, registration, or safety infractions. Id. Second, the expectation of privacy with respect to automobiles is "further diminished by the obviously public nature of automobile travel." Id. Moreover, the Court has pointed out that expectation of

privacy in the passenger compartment of a car is diminished because that compartment is "relatively open to plain view." California v. Carney, 105 S.Ct. 2066, 2069 (1985). This diminished expectation of privacy, combined with the mobility of automobiles, led the Court to recognize the "automobile exception" to the warrant requirement of the Fourth Amendment. Id.

Under the governing principles, therefore, you must decide if the VIN inspection that occurred in this case was "reasonable." Reasonableness, in turn, requires you to weigh the public interest in law enforcement against resp's interest in being free of governmental intrusion. Two facts in this case are important. First, the police had properly stopped resp for traffic and safety infractions. Therefore, the initial stop, which is clearly subject to Fourth Amendment scrutiny, was proper. See Pennsylvania v. Mimms, 434 U.S. 106, 109 (1977) (per curiam). Second, the further intrusion was conducted in connection with the VIN, which is part of the pervasive governmental regulation of vehicles that has led the Court to recognize a diminished expectation of privacy in motor vehicles. With these facts in mind, I will briefly describe two decisions of this Court that suggest that the VIN inspection was reasonable.

In Deleware v. Prouse, 440 U.S. 650 (1979), the Court held that, "except in those situations in which there is at least articulable and reasonable suspicion that a motorist is unlicensed or that an automobile is not registered, or that

either the vehicle or an occupant is otherwise subject to seizure for violation of law, stopping an automobile and detaining the driver in order to check his driver's license and the registration of the automobile are unreasonable under the Fourth Amendment." Id. at 663 (emphasis added). In other words, the police do not have unbridled discretion to select cars at random for inspection of license and registration. But, under my reading of the case, police may check license and registration documents when they have stopped a vehicle for a traffic violation even in the absence of suspicion that the driver lacks such documents. As the Court stated, "Vehicle stops for traffic violations occur countless times each day; and on these occasions, licenses and registration papers are subject to inspection and drivers without them will be ascertained." Id. at 659. The Court did observe that "drivers without licenses" will probably be stopped more often for traffic infractions because they are presumably "the less safe drivers." But the Court's concern was that police discretion in deciding whom to stop should not be unbridled in light of the substantial intrusion of the stop on individual rights.

Prouse on point

In this case, the officers' discretion with respect to their initial decision to stop resp's car was properly exercised. That is, they stopped resp, not on a random hunch, but because he was engaged in traffic and safety infractions. I have no doubt that the officers were then, under Delaware v. Prouse, entitled to inspect resp's license and registration papers. If they could inspect those papers, it is difficult to understand why they

Yes

could not also inspect the VIN. Like the license and registration, the VIN is a part of the regulatory scheme for motor vehicles that police have a legitimate interest in enforcing. I am unable to discern a meaningful distinction between inspection of license and registration papers and inspection of a VIN except for the fact that VIN inspection does involve an additional intrusion. That is, to inspect the VIN, police must peer through the windshield, inspect the door jamb, or open the hood and examine the engine. I believe that the reasoning in Pennsylvania v. Mimms, 434 U.S. 106 (1977) (per curiam), suggests that such intrusion is not necessarily unreasonable within the meaning of the Fourth Amendment.

In Pennsylvania v. Mimms, two police officers observed defendant driving a car with an expired license plate. The officers stopped the car to issue a traffic summons. An officer approached and asked defendant to get out of his car and to produce his license and registration. When defendant complied, the officer noticed a bulge beneath his jacket. Fearing that the bulge might be a gun, the officer frisked defendant and found a revolver. The portion of the Court's reasoning that I believe is most relevant to this case relates to the officer's order that defendant get out of his car.

First, the Court observed that the case raised no questions concerning the propriety of "the initial restrictions on [defendant's] freedom of movement." The officers properly stopped him for an infraction of the state's motor vehicle code. Second, the Court considered the question of whether "the order

to get out of the car, issued after the driver was lawfully detained, was reasonable and thus permissible under the Fourth Amendment." Id. at 109. The Court focused "on the incremental intrusion resulting from the request to get out of the car once the vehicle was lawfully stopped." Id. The officer had adopted the practice of ordering all drivers to get out of their cars even though he had no reason to believe that the driver was dangerous. He did this as a precautionary measure to reduce the possibility that the driver could make unobserved movements. The Court concluded that this safety justification was both "legitimate and weighty." On the other side of the balance, the Court weighed the intrusion occasioned by the order to get out of the car and concluded that this "additional intrusion," beyond the intrusion caused by the lawful stop, was "de minimis." Asking the driver to get out of his car and expose to view little more than would be exposed if he remained in the car was at "most a mere inconvenience" when balanced against the state's legitimate safety concerns. Finally, the Court decided that, upon observing the bulge, the officer was entitled to frisk the defendant.

In this case, one must focus on the incremental intrusion, beyond that occasioned by the lawful stop, caused by the VIN inspection. The incremental intrusion in this case consists of the officer's action in opening the car door, inspecting the door jamb for the VIN, and then reaching into the car to move papers on the dashboard to reveal the VIN plate. While the nature of the intrusion in this case is different from

that involved in Pennsylvania v. Mimms, I tend to think that the intrusion is reasonable.

First, it is necessary to consider the public interest in law enforcement served by VIN inspection. Based on petr's discussion of the function of the VIN, which resp does not appear to dispute, it seems that the State has a legitimate interest in permitting police to view the VIN. Unless police do so, they are not certain that registration or insurance documents accurately reflect the status of the vehicle. Moreover, stolen cars do pose an enormous problem, and inspection of the VIN permits the police to ascertain if a vehicle involved in a traffic violation has been stolen.

Second, it is necessary to weigh the interest of the individual against the State's interest. Though the driver clearly has an expectation of privacy in his car, that expectation is limited. Significantly, the driver does not appear to have any expectation of privacy in the VIN itself. The VIN is placed on the car to identify it; implementation of the regulatory scheme depends on official inspection of the VIN. While inspection of the VIN may in some cases (such as where the police must inspect the door jamb) expose to view areas that would not otherwise be exposed, inspection of the VIN does not require a full-blown search of the car. Rather, because the VIN is known to be affixed only in particular locations, police intrusion will be limited to those locations. Finally, in my view, the VIN inspection is less intrusive than the conduct approved in Pennsylvania v. Mimms. My own feeling as a driver

is that an official order to get out of my car is more intrusive than an order to open the car door to permit VIN inspection.

I believe that the balance in this case tips in favor of the State interest in inspecting the VIN. I feel a bit hesitant about this conclusion because I treasure the interests secured by the Fourth Amendment. But, in light of Deleware v. Prouse and Pennsylvania v. Mimms, my balancing of the interests leads me to conclude that police may, upon a lawful stop of a motor vehicle for traffic violations, inspect the VIN.

The CAs have reached conflicting decisions on this issue. In my view, none of the decisions provides a wholly satisfactory framework of analysis. Some of the CAs have ruled that inspection of the VIN is not a "search" within the meaning of the Fourth Amendment. See, e.g., United States v. Kitowski, 729 F.2d 1418 (CA11 1984); United States v. Forrest, 620 F.2d 446, 454-55 (CA5 1980). That conclusion is not satisfactory for it suggests that VIN inspection implicates no Fourth Amendment concerns. A holding that a VIN inspection is not a "search" suggests that there are no limits on police discretion in selecting vehicles for VIN inspection. As I discuss above, I believe that the Fourth Amendment does restrict police authority to inspect VINs. Moreover, many of the cases holding that a VIN inspection is not a search also state that, even if the inspection was a search, the search was reasonable for the facts of the case gave rise to a reasonable suspicion that the car was stolen or being used for criminal activity. See, e.g., United States v. Forrest, supra; United States v. Duckett, 583 F.2d

1309, 1313 (CA5 1978). Thus, these decisions do not provide useful analysis in a case where the officers have properly stopped a car for a traffic infraction but lack any basis to believe that the car was stolen.

On the other hand, a decision of CA10 holds that a warrantless intrusion into a car to inspect a VIN violated the Fourth Amendment. See Simpson v. United States, 346 F.2d 291 (CA10 1965). Where the police seek to inspect the VIN of a vehicle not otherwise subject to seizure, they should be required to justify their action on the basis of at least a reasonable suspicion that the vehicle is stolen or being used for criminal activity. But, in this case, resp's car was subject to seizure for traffic violations. At that point, the question becomes for me the extent to which the additional intrusion occasioned by VIN inspection can be said to outweigh the police interest in such inspection.

While it does not rest on the precise facts presented here, the most persuasive CA decision on VIN inspection is United States v. Powers, 439 F.2d 374 (CA4 1971). In that case, CA4 held that "when there is a legitimate reason to identify a motor vehicle, inspection of its confidential number is not an unreasonable search." CA4 decided that a VIN inspection is subject to the proscriptions of the Fourth Amendment. But the court noted that the mobility of cars makes them attractive to criminals: cars are frequently stolen and are often used as instruments of crime. Police have an interest in checking the VIN expeditiously before a car is moved. Though a person has an

expectation of privacy in his vehicle, he has no expectation of privacy in identification of the vehicle. And search of that part of the vehicle displaying the VIN "is but a minimal invasion of a person's privacy." Accordingly, police should be freer to inspect the VIN than they are to search for private property. On the facts of the case before it, CA4 concluded that police had a legitimate reason to search for the confidential VIN because they noticed that the public VIN was missing from the doorpost. CA4 declined to say what other circumstances would supply police with a legitimate reason to inspect a VIN. In my view, this reasoning is sound and can be extended to the facts of this case. Here, police properly had stopped resp for a traffic violation; they had a legitimate interest in identifying the vehicle involved in the violation; intrusion for the purpose of locating the VIN is limited.

While I believe that the above discussion resolves the issue raised in this case, I would like to make the following additional points.

(1) Though petr New York State agrees that police could not arbitrarily select vehicles for a VIN inspection, petr relies on the CA cases holding that a VIN inspection is not a search within the meaning of the Fourth Amendment. Petr emphasizes the driver's lack of a reasonable expectation of privacy in the VIN, but ignores the fact that a driver does have an expectation of privacy ~~in~~ his car, which is the area into which police must intrude in order to inspect the VIN. As I note above, this argument should be rejected for it suggests that police

inspection of the VIN implicates no Fourth Amendment concerns whatsoever. This point may be more semantic than real, but I believe that a holding that VIN inspection is not a "search" for Fourth Amendment purposes could lead to doctrinal incoherence. Rather, the Court should hold that VIN inspection is an intrusion subject to Fourth Amendment restrictions and then engage in the traditional balancing of interests outlined in Pennsylvania v. Mimms.

(2) Petr argues that the inspection was justified on the ground that resp had no driver's license. The argument boils down to the assertion that, because he was unlicensed, resp had virtually no expectation of privacy in the passenger compartment of the car. Petr's contentions in this connection are not entirely unconvincing. For example, petr points out that police must prevent the unlicensed driver from continuing to operate the vehicle and must impound the vehicle. These steps will require the police to intrude into the interior of the car. But if you agree with my balancing of interests, you need not reach this argument. On this record, it would be better not to do so for two reasons. First, adoption of the argument might be impeded by a factual problem. Resp points out that the officer who inspected the VIN was not aware at the time he did so that resp had no license. Accordingly, the Court would have to impute the knowledge of the officer who requested license and registration to the officer who inspected the VIN. Second, adoption of the argument would lead to a holding broader than necessary to

resolve the issue in this case. This argument was not raised in N.Y. Ct. App.

(3) Petr invites the Court to decide a question left open in Michigan v. Long, 463 U.S. 1032 (1983). In that case, the Court held that police could search the passenger compartment of a car for weapons "as long as they possess an articulable and objectively reasonable belief that the suspect is potentially dangerous." Id. at 1051. The Court noted that, in Long, the police could have arrested defendant for speeding or for driving while intoxicated, but that they did not do so. The Court did not answer the question whether, where probable cause to arrest exists, "but the officers do not actually effect the arrest," they may nevertheless conduct a search as broad as that permitted incident to an arrest. Id. at 1035 n.1. In this case, petr points out that the officers had probable cause to arrest resp for traffic violations at the time of the VIN inspection. In my view, the Court need not reach the question reserved in Long in order to uphold the VIN inspection. The VIN inspection is much more limited than that permitted incident to a lawful arrest. See New York v. Belton, 453 U.S. 454 (1981) (where police arrested driver of car based on probable cause to believe that driver possessed marijuana, police were entitled to search entire passenger compartment). I see no reason to give the police far broader authority to search than that needed to permit the intrusion that occurred in this case. Petr did not raise this argument in N.Y. Ct. App.

(4) While I believe that my balancing of the interests involved in this case is appropriate, I must acknowledge that resp's arguments have force. Resp argues that, before police may inspect the VIN, they must have an objectively reasonable basis to believe that the car is stolen. By opening the car door, the officer did expose to view otherwise hidden areas in which resp had an expectation of privacy. The fact that resp had no expectation of privacy in the VIN itself is irrelevant for he had such an expectation in the car. Though the Court has discarded the warrant requirement with respect to automobile searches, the Court has always held that intrusion into the interior of a car must be justified on the basis of probable cause or reasonable suspicion. Resp claims that Pennsylvania v. Mimms is distinguishable. In Mimms, the officer's order to the driver to get out of the car meant only that the driver would be detained outside the car rather than inside the car. Mimms did not involve any search as did this case. Resp also contends that police could use less intrusive means to inspect the VIN, such as securing the driver's consent. Indeed, as N.Y. Ct. App. noted, New York law permits an officer to demand exhibition of the VIN. If the officer had done so here, resp would have complied, and no intrusion would have occurred. Moreover, through a check of the car's license plates, the police will often be able to determine that a car is stolen. Resp also believes that this case should be governed by the reasoning of Michigan v. Long in which the Court held that the police may search a vehicle for weapons only

if they have reasonable suspicion that the driver is potentially dangerous.

I think that resp's arguments are not unreasonable and that you could decide to strike the balance in favor of the driver's interest in being free of governmental intrusion. But resp's arguments fail to take account of the fact that police are authorized, on a valid stop for traffic violations, to inspect other documents and that a VIN inspection would not allow police to rummage through the entire passenger compartment. Moreover, resp gives very little weight to the public interest in permitting police to determine if a vehicle is in compliance with the VIN regulatory scheme.

(5) Finally, one question that might be answered at oral argument is what police may do if they order a driver to exhibit his license and registration, and he refuses. I assume that the driver may not withhold his consent. Then, can the police search the driver or the car for those documents? Or must they arrest the driver? Similarly, if the police are entitled to demand exhibition of the VIN, may the driver withhold consent? If not, are the police entitled to look for the VIN, or must they arrest the driver? It seems to me that, in many cases, it would be less intrusive for the officer simply to look for the VIN on the spot rather than arrest the driver.

Conclusion

VIN inspection does implicate Fourth Amendment concerns for it requires police intrusion into a vehicle, an area in which citizens have an expectation of privacy. Accordingly, police are

not entitled arbitrarily to select vehicles for VIN inspections. But, where police lawfully have detained a vehicle for a traffic violation or on reasonable suspicion that the vehicle is involved in criminal activity, I believe that they should be entitled to inspect the VIN. I reach this result upon balancing the strong law enforcement interest in permitting the police to enforce the VIN regulatory scheme against the limited intrusion on individual interests caused by the VIN inspection.

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84-1184 N.Y. v. Class (NY Ct App)

Summary Outline - VIN case

Reverse

1. "VIN" inspection implicates 4th Amend Rts

Requires (in cases where not visible from outside) opening of door to see "door jamb" or to read the top of dashboard - or here.

- This is an intrusion - though privacy is limited

2. Police must have cause to stop the vehicle

Can't stop at random - must have reasonable cause to stop vehicle & ask for license & registration. Here Rasey properly stopped for traffic violations because of traffic violation

3. On "balance of interest" analysis, right to inspect VIN is supported by strong public interest (auto's used in criminal conduct & thousands are stolen)

Brief authorities: Delaware v. Prouse and N.C. v. Pearce v. Mimms

84-1181 NEW YORK v. CLASS (NY Ct Appeals - Reverse) Argued 11/4/85

"VIN" case

Kantagenat (ant DA-Brown)

A VIN inspection - at least in this case - does not constitute a "search". There is no reasonable expectation of privacy in the VIN.

(Responding to HAB Q as to N.Y. Const., Counsel said State Const. was mentioned only once, & otherwise relied on Fed Const & Fed law. Did not meet Mich v. Long standard as claimed)

Cogan (for Resp)

Argued independent & adequate state ground.

Reaching into the car w/o ~~[illegible]~~ reasonable suspicion that ~~[illegible]~~ contraband was inside, is an unlawful search

Top part of body was inside car because officer looked down to see gun.

Even if only the VIN had been "swiped" the search still would have been unlawful. Nothing in record to suggest VIN was deliberately covered up.

(VIN is attached to the vehicle)

Under N.Y. Law, ~~officer could have demanded that it be~~ it is not clear what would have been the result if driver had refused to remove the paper covering up the VIN. No right to "search" because driver refuses to uncover VIN

Check Transcript on this

The Chief Justice Reverse

limited expectation of privacy.

Officer acted reasonably in looking into the car. Did it w/o car.

VIN on dashboard permits view even when door is locked

State of car was lawful

Police would not have permitted car to be driven away

Justice Brennan Affirm

Some expectation of privacy remains

Officer violated that by putting head & shoulders in car.

Can was decided on Fed law.

Justice White Affirm

Not easy to draw line.

There was a "search" & Q is whether it was reasonable under 4th Amend.

If was not reasonable. Could have arrested driver if he refused to uncover VIN.

Justice Marshall Affirm

Justice Blackmun Reverse (Ten tablets)

A VIN should be visible & search may have been reasonable

Justice Powell Reverse

4th Amend was implicated, but on balance of interests the right to inspect VIN is supported by strong pub. interest

The VIN here was covered up.

Justice Rehnquist Reverse

Agree there was a search, but here it was reasonable.

Officer was merely seeking to see the VIN

Justice Stevens Aff'm

Officer did it even look at VIN.

There was a 4th Amend violation

Justice O'Connor Rev.

~~No~~

There was a search & it was reasonable.

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens

L.F.P. ✓

From: **Justice O'Connor**

Circulated: DEC 16 1985

Recirculated: _____

I have drafted a concurring op & sent it to Anne 12/31/85

Reviewed 12/19

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1181

NEW YORK, PETITIONER *v.* BENIGNO CLASS

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF NEW YORK

[December —, 1985]

JUSTICE O'CONNOR delivered the opinion of the Court.

In this case, we must decide whether, in order to observe a Vehicle Identification Number (VIN) generally visible from outside an automobile, a police officer may reach into the passenger compartment of a vehicle to move papers obscuring the VIN after its driver has been stopped for a traffic violation and has exited the car. We hold that, in these circumstances, the police officer's action does not violate the Fourth Amendment.

I

On the afternoon of May 11, 1981, New York City police officers Lawrence Meyer and William McNamee observed respondent Benigno Class driving above the speed limit in a car with a cracked windshield. Both driving with a cracked windshield and speeding are traffic violations under New York law. See N. Y. Vehicle & Traffic Law §§ 375(22), 1180(d) (McKinney 1970). Respondent followed the officers' ensuing directive to pull over. Respondent then emerged from his car and approached Officer Meyer. Officer McNamee went directly to respondent's vehicle. Respondent provided Officer Meyer with a registration certificate and proof of insurance, but stated that he had no driver's license.

Meanwhile, Officer McNamee opened the door of respondent's car to look for the Vehicle Inspection Number (VIN), which is located on the left door jamb in automobiles manufactured before 1969. When the officer did not find the VIN

If it is not visible from outside, police may enter to see it

This op. is "over-written" & reasoning is complex — with too much emphasis on officer's safety as justifying what SOC finds was both a "seizure" & a "search". I might write briefly to say that there is no expectation of privacy as to the VIN &

on the door jamb, he reached into the interior of respondent's car to move some papers obscuring the area of the dashboard where the VIN is located in all post-1969 models. In doing so, Officer McNamee saw the handle of a gun protruding about one inch from underneath the driver's seat. The officer seized the gun, and respondent was promptly arrested. Respondent was also issued summonses for his traffic violations.

It is undisputed that the police officers had no reason to suspect that respondent's car was stolen, that it contained contraband, or that respondent had committed an offense other than the traffic violations. Nor is it disputed that respondent committed the traffic violations with which he was charged, and that, as of the day of the arrest, he had not been issued a valid driver's license.

After the state trial court denied a motion to suppress the gun as evidence, respondent was convicted of criminal possession of a weapon in the third degree. See N. Y. Penal Law § 265.02(4) (McKinney 1980). The Supreme Court for Bronx County upheld the conviction without opinion. The New York Court of Appeals reversed. It reasoned that the police officer's "intrusion . . . was undertaken to obtain information and it exposed . . . hidden areas" of the car, and "therefore constituted a search." *People* v. *Class*, 63 N. Y.2d 491, 495, 472 N. E. 2d 1009, 1011 (1984). Although it recognized that a search for a VIN generally involves a minimal intrusion because of its limited potential locations, and agreed that there is a c ter-est in positively identifying vehicles involved in accidents or auto thefts, the court thought it decisive that the facts of this case "reveal no reason for the officer to suspect other criminal activity [besides the traffic infraction] or to act to protect his own safety." *Id.*, at 495–496. The state statutory provision that authorizes officers to demand that drivers reveal their VIN "provided no justification for the officer's entry of [respondent's] car." *Id.*, at 497. If the officer had taken

advantage of that statute and asked to see the VIN, respondent could have moved the papers away himself and no intrusion would have occurred. In the absence of any justification for the search besides the traffic infraction, the New York Court of Appeals ruled that the gun must be excluded from evidence.

We granted certiorari, —— U. S. —— (1984), and now reverse.

II

Respondent asserts that this Court is without jurisdiction to hear this case because the decision of the New York Court of Appeals rests on an adequate and independent state ground. We disagree.

The opinion of the New York Court of Appeals mentions the New York Constitution but once, and then only in direct conjunction with the United States Constitution. 63 N. Y.2d, at 493, 472 N. E. 2d, at 1010. Cf. *Michigan* v. *Long*, 463 U. S. 1032, 1043 (1983). The opinion below makes use of both federal and New York cases in its analysis, generally citing both for the same proposition. See, *e. g.*, 63 N. Y.2d, at 494, 495, 472 N. E. 2d, at 1011. The opinion lacks the requisite "plain statement" that it rests on state grounds. *Michigan* v. *Long*, *supra*, at 1042, 1044. Accordingly, our holding in *Michigan* v. *Long* is directly applicable here:

> "[W]hen . . . a state court decision fairly appears to rest primarily on federal law, or to be interwoven with the federal law, and when the adequacy and independence of any possible state law ground is not clear from the face of the opinion, we will accept as the most reasonable explanation that the state court decided the case the way it did because it believed that federal law required it to do so." *Id.*, at 1040–1041.

See also *California* v. *Carney*, —— U. S. ——, —— n. 1 (1985).

Respondent's claim that the opinion below rested on independent and adequate state *statutory* grounds is also without merit. The New York Court of Appeals did not hold that § 401 of New York's Vehicle and Traffic Law prohibited the search at issue here, but, in rejecting an assertion of the petitioner, merely held that § 401 "provided no *justification*" for a search. 63 N. Y.2d, at 497, 472 N. E. 2d, at 1013 (emphasis added). In determining that the police officer's action was prohibited, the court below looked to the Federal Constitution, not the State's statute. Moreover, New York adheres to the general rule that, when statutory construction can resolve a case, courts should not decide constitutional issues. See *Ashwander* v. *Tennessee Valley Authority*, 297 U. S. 288, 346–347 (Brandeis, J., concurring); *In re Peters* v. *New York City Housing Authority*, 307 N. Y. 519, 527, 121 N. E. 2d 529, 531 (1954). Since the New York Court of Appeals discussed both statutory and constitutional grounds, we may infer that the court believed the statutory issue insufficient to resolve the case. The discussion of the statute therefore could not have constituted an independent and adequate state ground.

III

A

The officer here, after observing respondent commit two traffic violations and exit the car, attempted to determine the VIN of respondent's automobile. In reaching to remove papers obscuring the VIN, the officer intruded into the passenger compartment of the vehicle.

The VIN consists of more than a dozen digits, unique to each vehicle and required on all cars and trucks. See 49 CFR § 571.115 (1984). The VIN is roughly analogous to a serial number, but it can be deciphered to reveal not only the place of the automobile in the manufacturer's production run, but the make, model, engine type, and place of manufacture of the vehicle. See *id.*, § 565.4.

The VIN is a significant thread in the web of regulation of the automobile. See generally 43 Fed. Reg. 2189 (1978). The ease with which the VIN allows identification of a particular vehicle assists the various levels of government in many ways. For the federal government, the VIN improves the efficacy of recall campaigns, and assists researchers in determining the risks of driving various makes and models of automobiles. In combination with state insurance laws, the VIN reduces the number of those injured in accidents who go uncompensated for lack of insurance. In conjunction with the state's registration requirements and safety inspections, the VIN helps to ensure that automobile operators are driving safe vehicles. By making auto theft more difficult, the VIN safeguards not only property but life and limb. See 33 Fed. Reg. 10,207 (1968) (noting that stolen vehicles are disproportionately likely to be involved in automobile accidents).

To facilitate the VIN's usefulness for these laudable governmental purposes, federal law requires that the VIN be placed in the plain view of someone *outside* the automobile:

> "The VIN for passenger cars [manufactured after 1969] shall be located inside the passenger compartment. It shall be readable, without moving any part of the vehicle, through the vehicle glazing under daylight lighting conditions by an observer having 20/20 vision (Snellen) whose eye point is located *outside the vehicle* adjacent to the left windshield pillar. Each character in the VIN subject to this paragraph shall have a minimum height of 4 mm." 49 CFR §571.115 (S 4.6) (1984) (emphasis added).

In *Delaware* v. *Prouse*, 440 U. S. 648, 658 (1979), we recognized the "vital interest" in highway safety and the various programs that contribute to that interest. In light of the important interests served by the VIN, the federal and state governments are amply justified in making it a part of the web of pervasive regulation that surrounds the automobile,

and in requiring its placement in an area ordinarily in plain view from outside the passenger compartment.

B

A citizen does not surrender all the protections of the Fourth Amendment by entering an automobile. See *Delaware* v. *Prouse*, *supra*, at 663; *Almeida-Sanchez* v. *United States*, 413 U. S. 266, 269 (1973). Nonetheless, the state's intrusion into a particular area, whether in an automobile or elsewhere, cannot result in a Fourth Amendment violation unless the area is one in which there is a "constitutionally protected reasonable expectation of privacy." *Katz* v. *United States*, 389 U. S. 347, 360 (Harlan, J., concurring). See *Oliver* v. *United States*, 466 U. S. 170, —— (1984); *Maryland* v. *Macon*, —— U. S. ——, at —— (1985).

The Court has recognized that the physical characteristics of an automobile and its use result in a lessened expectation of privacy therein:

> "One has a lesser expectation of privacy in a motor vehicle because its function is transportation and it seldom serves as one's residence or as the repository of personal effects. A car has little capacity for escaping public scrutiny. It travels public thoroughfares where both its occupants and its contents are in plain view." *Cardwell* v. *Lewis*, 417 U. S. 583, 590 (1974) (plurality opinion).

Moreover, automobiles are justifiably the subject of pervasive regulation. Every operator knows that the state, in enforcing its regulations, will intrude to some extent upon that operator's privacy:

> "Automobiles, unlike homes, are subject to pervasive and continuing governmental regulation and controls, including periodic inspection and licensing requirements. As an everyday occurrence, police stop and examine vehicles when license plates or inspection stickers have expired, or if other violations, such as exhaust fumes or excessive noise, are noted, or if headlights or other safety

equipment are not in proper working order." *South Dakota* v. *Opperman*, 428 U. S. 364, 368 (1976).

See also *Cady* v. *Dombrowski*, 413 U. S. 433, 441–442 (1973); *California* v. *Carney*, *supra*, at ——.

The factors that generally diminish the reasonable expectation of privacy in automobiles are applicable *a fortiori* to the VIN. As we have discussed above, the VIN plays an important part in the pervasive regulation by the government of the automobile. A motorist must surely expect that such regulation will on occasion require the State to determine the VIN of his or her vehicle, and the individual's reasonable expectation of privacy in the VIN is thereby diminished. This is especially true in the case of a driver who has committed a traffic violation. See *Delaware* v. *Prouse*, *supra*, at 659 ("The foremost method of enforcing traffic and vehicle safety regulations . . . is acting upon observed violations. *Vehicle stops for traffic violations occur countless times each day; and on these occasions, license and registration papers are subject to inspection and drivers without them will be ascertained.*") (emphasis added). In addition, it is unreasonable to have an expectation of privacy in an object required by law to be located in a place ordinarily in plain view from the exterior of the automobile. The VIN's mandated visibility makes it more similar to the exterior of the car than to the trunk or glove compartment. The exterior of a car, of course, is thrust into the public eye, and thus to examine it does not constitute a "search." See *Cardwell* v. *Lewis*, *supra*, at 588–589. In sum, because of the important role played by the VIN in the pervasive governmental regulation of the automobile and the efforts by the federal government to ensure that the VIN is placed in plain view, we hold that there was no reasonable expectation of privacy in the VIN.

We think it makes no difference that the papers in respondent's car obscured the VIN from the plain view of the officer. We have recently emphasized that efforts to restrict access to an area do not generate a reasonable expectation of pri-

vacy where none would otherwise exist. See *Oliver* v. *United States*, *supra*, at —— (placement of "No Trespassing" signs on secluded property does not create "legitimate privacy interest" in marijuana fields). Here, where the object at issue is an identification number behind the transparent windshield of an automobile driven upon the public roads, we believe that the placement of the obscuring papers was insufficient to create a privacy interest in the VIN. The mere viewing of the formerly obscured VIN was not, therefore, a violation of the Fourth Amendment.

C

The evidence that respondent sought to have suppressed was not the VIN, however, but a gun, the handle of which the officer saw from the interior of the car while reaching for the papers that covered the VIN. While the interior of an automobile is not subject to the same expectations of privacy that exist with respect to one's home, a car's interior as a whole is nonetheless subject to Fourth Amendment protection from unreasonable intrusions by the police. We agree with the New York Court of Appeals that the intrusion into that space constituted a "search." 63 N. Y.2d, at 495, 472 N. E. 2d, at 1011. Cf. *Delaware* v. *Prouse*, *supra*, at 653 ("stopping an automobile and detaining its occupants constitute a 'seizure' . . . even though the purpose of the stop is limited and the resulting detention quite brief"). We must decide, therefore, whether this search was constitutionally permissible.

If respondent had remained in the car, the police would have been justified in asking him to move the papers obscuring the VIN. New York law authorizes a demand by officers to see the VIN, see 63 N. Y.2d, at 496–497, 472 N. E. 2d, at 1012–1013, and even if the state law were not explicit on this point we have no difficulty in concluding that a demand to inspect the VIN, like a demand to see license and registration papers, is within the scope of police authority pursuant to a

traffic violation stop. See *Prouse*, *supra*, at 659. If respondent had stayed in his vehicle and acceded to such a request from the officer, the officer would not have needed to intrude into the passenger compartment. Respondent chose, however, to exit the vehicle without removing the papers that covered the VIN; the officer chose to conduct his search without asking respondent to return to the car. We must therefore decide whether the officer acted within the bounds of the Fourth Amendment in conducting the search. We hold that he did.

Keeping the driver of a vehicle in the car during a routine traffic stop is probably the typical police practice. See D. Schultz and D. Hunt, Traffic Investigation and Enforcement 17 (1983). Nonetheless, out of a concern for the safety of the police, the Court has held that officers may, consistent with the Fourth Amendment, exercise their discretion to require a driver who commits a traffic violation to exit the vehicle. *Pennsylvania* v. *Mimms*, 434 U. S. 106 (1977) *(per curiam)*. While we impute to respondent no propensity for violence, and while we are conscious of the fact that respondent here voluntarily left the vehicle, the facts of this case may be used to illustrate one of the principal justifications for the discretion given police officers by *Pennsylvania* v. *Mimms:* while in the driver's seat, respondent had a loaded pistol at hand. *Mimms* allows an officer to guard against that possibility by requiring the driver to exit the car briefly. Clearly, *Mimms* also allowed the officers here to detain respondent briefly outside the car that he voluntarily exited while they completed their investigation.

The question remains, however, as to whether the officers could not only effect the seizure of respondent necessary to detain him briefly outside the vehicle, but also effect a search for the VIN that may have been necessary only because of that detention. The pistol beneath the seat did not, of course, disappear when respondent closed the car door behind him. To have returned respondent immediately to the

automobile would have placed the officers in the same situation that the holding in *Mimms* allows officers to avoid—permitting an individual being detained to have possible access to a dangerous weapon and the benefit of the partial concealment provided by the car's exterior. See *Pennsylvania* v. *Mimms*, *supra*, at 110. In light of the danger to the officers' safety that would have been presented by returning respondent immediately to his car, we think the search to obtain the VIN was not prohibited by the Fourth Amendment.

The Fourth Amendment by its terms prohibits "unreasonable" searches and seizures. We have noted that

> "there is 'no ready test for determining reasonableness other than by balancing the need to search [or seize] against the invasion which the search [or seizure] entails.' *Camara* v. *Municipal Court*, 387 U. S. 523, 534–535, 536–537 (1967). And in justifying the particular intrusion the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, justifiably warrant that intrusion." *Terry* v. *Ohio*, 392 U. S. 1, 21 (1968) (footnote omitted) (brackets as in *Terry*).

This test generally means that searches must be conducted pursuant to a warrant backed by probable cause. See *United States* v. *Ventresca*, 380 U. S. 102, 105–109 (1965); *United States* v. *Karo*, —— U. S. ——, at —— (1984). When a search or seizure has as its immediate object a search for a weapon, however, we have struck the balance to allow the weighty interest in the safety of police officers to justify warrantless searches based only on a reasonable suspicion of criminal activity. See *Terry* v. *Ohio*, 392 U. S. 1 (1968); *Adams* v. *Williams*, 407 U. S. 143 (1972). Such searches are permissible despite their substantial intrusiveness. See *Terry* v. *Ohio*, *supra*, at 24–25 (search was "a severe, though brief, intrusion upon cherished personal security, and . . . must surely [have] b[een] an annoying, frightening, and perhaps humiliating experience").

When the officer's safety is less directly served by the detention, something more than objectively justifiable suspicion is necessary to justify the intrusion if the balance is to tip in favor of the legality of the governmental intrusion. In *Pennsylvania* v. *Mimms*, *supra*, at 107, the officers had personally observed the seized individual in the commission of a traffic offense before requesting that he exit his vehicle. In *Michigan* v. *Summers*, 452 U. S. 692, 693 (1981), the officers had obtained a warrant to search the house that the person seized was leaving when they came upon him. While the facts in *Pennsylvania* v. *Mimms* and *Michigan* v. *Summers* differ in some respects from the facts of this case, the similarities are strong enough that the balancing of governmental interests against governmental intrusion undertaken in those cases is also appropriate here. All three of the factors involved in *Mimms* and *Summers* are present in this case: the safety of the officers was served by the governmental intrusion; the intrusion was minimal; and the search stemmed from some probable cause focusing suspicion on the individual affected by the search. Indeed, here the officer's probable cause stemmed from directly observing respondent commit a violation of the law.

When we undertake the necessary balancing of "the nature and quality of the intrusion on the individual's Fourth Amendment interests against the importance of the governmental interests alleged to justify the intrusion," *United States* v. *Place*, 462 U. S. 696, 703 (1983), the conclusion that the search here was permissible follows. As we recognized in *Delaware* v. *Prouse*, *supra*, at 658, the governmental interest in highway safety served by obtaining the VIN is of the first order, and the particular method of obtaining the VIN here was justified by a concern for the officer's safety. The "critical" issue of the intrusiveness of the government's action, *United States* v. *Place*, *supra*, at 722 (BLACKMUN, J., concurring in the judgment), also here weighs in favor of allowing the search. The search was focused in its objective

and no more intrusive than necessary to fulfill that objective. The search was far less intrusive than a formal arrest, which would have been permissible for a traffic offense under New York law, see N. Y. Vehicle and Traffic Law, § 155 (McKinney 1970 & 1984–1985 Pocket Part); *id.*, Criminal Procedure Law, § 140.10(1) (1981), and little more intrusive than a demand that the respondent—under the eyes of the officers—move the papers himself. The VIN, which was the clear initial objective of the officer, is by law present in one of two locations—either inside the door jamb, or atop the dashboard and thus ordinarily in plain view of someone outside the automobile. Neither of those locations is subject to a reasonable expectation of privacy. The officer here checked both those locations, and only those two locations. The officer did not root about the interior of the respondent's automobile before proceeding to examine the VIN. He did not reach into any compartments or open any containers. He did not even intrude into the interior at all until after he had checked the door jamb for the VIN. When he did intrude, the officer simply reached directly for the unprotected space where the VIN was located to move the offending papers. We hold that this search was sufficiently unintrusive to be constitutionally permissible in light of the lack of a reasonable expectation of privacy in the VIN and the fact that the officers observed respondent commit two traffic violations. Any other conclusion would expose police officers to potentially grave risks without significantly reducing the intrusiveness of the ultimate conduct—viewing the VIN—which, as we have said, the officers were entitled to do as part of an undoubtedly justified traffic stop.

We note that our holding today does not authorize police officers to enter a vehicle to obtain a dashboard-mounted VIN when the VIN is visible from outside the automobile. If the VIN is in the plain view of someone outside the vehicle,

there is no justification for governmental intrusion into the passenger compartment to see it.*

The judgment of the New York Court of Appeals is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

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*Petitioner invites us to hold that respondent's status as an unlicensed driver deprived him of any reasonable expectations of privacy in the vehicle, because the officers would have been within their discretion to have prohibited respondent from driving the car away, to have impounded the car, and to have later conducted an inventory search thereof. Cf. *South Dakota* v. *Opperman*, *supra* (police may conduct inventory search of car impounded for multiple parking violations); *Nix* v. *Williams*, 467 U. S. 431 (1984) (discussing the "inevitable discovery" exception to the exclusionary rule). Petitioner also argues that there can be no Fourth Amendment violation here because the police could have arrested respondent, see N. Y. Vehicle and Traffic Law, § 155 (McKinney 1970 & 1984–1985 Pocket Part); *id.*, Criminal Procedure Law, § 140.10(1) (1981), and could then have searched the passenger compartment at the time of arrest, cf. *New York* v. *Belton*, 453 U. S. 454 (1981), or arrested respondent and searched the car after impounding it pursuant to the arrest, see *Cady* v. *Dombrowski*, *supra*. We do not, however, reach those questions here.

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

December 19, 1985

Re: No. 84-1181-New York v. Benigno Class

Dear Sandra:

I await the dissent.

Sincerely,

T.M.

Justice O'Connor

cc: The Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

December 19, 1985

No. 84-1181

New York v. Class

Dear Sandra,

I shall be circulating a dissent in the above in due course.

Sincerely,

Bill

Justice O'Connor

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

December 19, 1985

84-1181 - New York v. Class

Dear Sandra,

I await the dissent.

Sincerely yours,

Justice O'Connor

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

December 20, 1985

Re: 84-1181 - New York v. Class

Dear Sandra:

I shall await the dissent.

Respectfully,

John Paul Stevens / sjm

Justice O'Connor

Copies to the Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

December 20, 1985

Re: No. 84-1181, New York v. Class

Dear Sandra:

I am fairly certain I shall be with you in this case, but, for now, I shall wait to see what the dissent has to say.

Sincerely,

Harry

Justice O'Connor

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

December 20, 1985

Re: No. 84-1181 New York v. Class

Dear Sandra,

Please join me.

Sincerely,

WHR

Justice O'Connor

cc: The Conference

re 12/29/85

Anne. Tele him until we see the court op. My guess is that it will be written along the lines of your draft. I will then want your advice to whether & what to write.

With these drafts, we can act promptly.

Date ?

Reviewed 12/29/85
Good draft.
It differs from my draft of 12/20 in that I think where VIN is obscured, & driver ~~is~~ doesn't consent (or has left the vehicle), the state interest justifies entry into the vehicle sufficient (but only sufficient) to uncover & see the VIN. The Q is whether there was an excessive (unnecessary) intrusion.

84-1181
NEW YORK v. CLASS

JUSTICE POWELL, concurring.

I join the Court's opinion, but write ~~separately to state my understanding~~ to suggest could that we reverse the judgment of the New York Court of Appeals on the ground that, in light of the unique and important governmental interests served by inspection of the Vehicle Identification Number (VIN), the limited intrusion ~~effected~~ by the officer in this case was not an unreasonable search of respondent's automobile.

B As the Court explains, the VIN essentially is a serial number that, by identifying certain features of the vehicle to which it is affixed, provides an effective and reliable means for

positive identification of the vehicle. Accordingly, the VIN occupies a central position in the elaborate federal and state regulation of automobiles, ~~which~~ that, frequently depend on such positive identification. ~~For the VIN to serve the important purposes for which it was designed,~~ Federal regulations now direct manufacturers to place the VIN in a location where it is in the plain view of an observer standing outside the vehicle. 49 C.F.R. §571.115 S4.6 (1984).

Anne - I try to avoid beginning a sentence with a preposition

When an officer lawfully has stopped a motor vehicle for violation of traffic or other law, the officer is entitled to inspect license and registration documents. See Deleware v. Prouse, 440 U.S. 650 (1979); Pennsylvania v. Mimms, 434 U.S. 106 (1977) (per curiam). Unquestionably, the officer also may look through the windshield, observe the VIN, and record it without implicating any Fourth Amendment concerns. Resp does not contend, nor could it reasonably be contended, that such action violates the federal Constitution. The question raised on the facts of this case, therefore, is whether the Fourth Amendment

was offended by the "incremental intrusion" resulting from the officer's efforts to observe the VIN once respondent's vehicle lawfully was stopped. Cf. Pennsylvania v. Mimms, supra, at 109.

The answer to this question may be simply stated. Whether the intrusion into respondent's vehicle offended the Fourth Amendment "requires a weighing of the governmental and societal interests advanced to justify" the intrusion "against the constitutionally protected interest of the individual citizen in the privacy of his effects." South Dakota v. Opperman, 428 U.S. 364, 378 (1976) (Powell, J., concurring). As the Court observes, the State has a legitimate and ~~weighty~~ substantial interest in permitting its police officers to inspect the VIN on a car stopped for a traffic violation. Ante at __. On the other side of the balance, ~~it is necessary to weigh the~~ there may be some intrusion on ~~respondent's~~ privacy ~~effected~~ when ~~the~~ it is necessary for an officer opened the car door and then moved ~~the~~ papers obscuring the VIN from plain view. This additional intrusion, undertaken to accomplish a law enforcement purpose that the officer was then entitled to pursue, was limited to that area of

the vehicle where the VIN is found. While it may be better practice for officers to ask the driver to move papers or objects obscuring the VIN, the minor additional intrusion caused by the officer's undertaking that step himself does not outweigh the important public interests served by VIN inspection.

Accordingly, where a police officer lawfully stops a motor vehicle, the officer is entitled to inspect the VIN. If the driver of the car is unavailable or declines to cooperate, the Fourth Amendment presents no barrier to the officer's taking reasonable steps, such as those reflected in this case, to inspect the VIN.

December 20, 1983

CLASS GISA-POW

DRAFT

84-1181 New York v. Class

Justice Powell concurring.

I join the Court's opinion, but write to suggest that we could reverse the judgment of the New York Court of Appeals because of the unique purpose and importance of the federally required Vehicle Identification Number (VIN).

As the Court notes, the VIN is analogous to a serial number that identifies the make, model, engine type, and place of manufacture of the vehicle. See 49 CFR Section 565.4. The importance of the VIN in the federal and state elaborate system of regulating motor vehicles is well summarized in the Court's opinion. See ante, particularly at pp ____. Federal Regulations now require that the VIN be placed somewhere outside the vehicle in plain view. Under current practice, the manufacturer locates the VIN on the inside of the windshield of the vehicle, usually on

the top of the "dashboard", where it is in plain view of one standing beside the vehicle.

Whenever a motor vehicle is stopped lawfully because of a traffic or other violation law, the police officer who makes the stop - or another officer present, may observe a visible VIN and make a record of it without this constituting either a search or a seizure under the Fourth Amendment. The purpose of the federal regulations requiring the location of the VIN in plain view from the outside contemplates this. It is not contended - nor could it reasonably be contended - that the requirement violates any constitutional right.

The problem presented by this case ~~is the fact~~ that the VIN, located on the dashboard just behind the ~~transparent~~ windshield, was obscured by papers either deliberately or inadvertantly placed there. The officer standing on the outside was prevented by this obstruction from viewing the VIN. Moreover, respondent - the driver of the vehicle - had left it when he was directed to "pull over" for violating the speed limit, and driving with a cracked windshield contrary to New York State law. The sequence of events that transpired is well-stated in the Court's opinion. Suffice it to say here that

respondent had left his vehicle to talk to one of the officer when the other officer sought to observe the VIN number of the stopped automobile. This officer did what ~~any sensible person would have done~~ his duty required. When he could not see the VIN from the outside ~~because it was obscured by papers~~, and with the driver having left the vehicle, the officer simply looked inside sufficiently to remove the papers ~~to enable the viewing contemplated by law~~ that obstructed his view. It was only then that the officer happened to observe a portion of a handgun protruding from beneath the front seat. The Court of Appeals of New York held that this intrusion was an unlawful search and seizure. This Court today agrees there were both a search and seizure, and justified these by reasoning familiar in automobile cases. End

~~I would find it unnecessary to go through this somewhat elaborate process.~~ Although the Fourth Amendment Where the VIN, ~~required by law to be visible from the outside,~~ is obscured deliberately or by the negligence of the person driving the vehicle, I would hold that (- absent consent -) the officer has a legal right to enter the vehicle sufficiently to remove any obstruction. There is no finding in this case that the officer's entry - ~~actually~~ limited to leaning through an open door - was unnecessary to achieve the lawful purpose. If the

driver had remained in his seat, as the Court observes, the proper procedure would have been to request that the papers obstructing the VIN be removed. In the absence of compliance with such a request, an arrest would have been lawful.

In summary, in view of the important public purposes served by the VIN identification system, I would hold that where a lawful stop of a motor vehicle is made by a police officer, he has a legal right — and often a duty — to see the VIN, and to remove any obstruction that presents this where the driver of the vehicle is either not available or declines to cooperate. ~~There simply is no reasonable~~ The expectation of privacy with respect to this motor vehicle identification is minimal.

(Cite cases, if any!)

One more draft
& give cc to Anne.

lfp/ss 12/30/85 NYC SALLY-POW

84-1181 New York v. Class

JUSTICE POWELL, concurring.

I join the Court's opinion but write to ~~suggest~~ emphasize that because of the unique and important governmental interests served by inspection of the Vehicle Identification Number (VIN), an officer making a lawful stop of a vehicle ~~the officer~~ has a legal right and often a duty to inspect the VIN. Where it is not visible from outside the vehicle or voluntarily disclosed by the driver, the officer may enter - i.e. look into - the inside of the vehicle to the extent necessary to read the VIN.

As the Court explains, the VIN essentially is a serial number that, by identifying certain features of the vehicle to which it is affixed, provides an effective and

reliable means for positive identification of the vehicle. ~~Accordingly,~~ The VIN occupies a central position in the elaborate federal and state regulation of automobiles, that frequently depend on such positive identification. Federal regulations now direct manufacturers to place the VIN in a location where it is in the plain view of an observer standing outside the vehicle. 49 C.F.R. §571.115 S4.6 (1984).

The Court has correctly answered ~~this~~ the question presented in this case by applying conventional Fourth Amendment analysis. I believe, however, that the right of an officer to observe the VIN need not be subjected to the same level of scrutiny that courts properly apply when there has been a police intrusion of a vehicle to arrest or search for evidence of crime.

When an officer lawfully has stopped a motor vehicle for violation of traffic or other law, the officer is entitled to inspect license and registration documents. See Deleware v. Prouse, 440 U.S. 650 (1979); Pennsylvania v. Mimms, 434 U.S. 106 (1977) (per curiam). Unquestionably, the officer also may look through the windshield, observe the VIN, and record it without implicating any Fourth Amendment concerns. Respondent does not contend, nor could it reasonably be contended, that such action violates the federal Constitution. The question raised on the facts of this case, therefore, is whether the Fourth Amendment was offended by the incremental intrusion resulting from the officer's efforts to observe the VIN once respondent's vehicle

lawfully was stopped. Cf. Pennsylvania v. Mimms, supra, at 109.

The problem presented the officer in this case was that the VIN, located on the dashboard just behind the windshield, was obscured by papers either deliberately or inadvertently placed there. The officer standing on the outside was prevented by this obstruction from viewing the VIN. ~~Moreover,~~ respondent - the driver of the vehicle - had left it ~~when~~ after he was directed to "pull over" for violating the speed limit, and driving with a cracked windshield contrary to New York State law. The sequence of events that transpired is well-stated in the Court's opinion. Suffice it to say here that respondent had left his vehicle to talk to one of the ~~officer~~ officers when the other officer sought to observe the VIN

number of the stopped automobile. This officer did what his duty required. When he could not see the VIN from the outside, and the driver having left the vehicle, the officer simply looked inside sufficiently to remove the papers that obstructed his view. It was only then that the officer observed a portion of a handgun protruding from beneath the front seat. The Court of Appeals of New York held that this intrusion was an unlawful search and seizure. This Court today agrees there were both a search and seizure, and justified these by reasoning familiar in automobile cases.

In my view, the Fourth Amendment question is a more limited one. It is simply whether the officer's efforts to see the VIN were unreasonable. Where the VIN is obscured deliberately or by the negligence of the

person driving the vehicle, I would hold that - absent consent - the officer has a legal right to enter the vehicle sufficiently to remove any obstruction. There is no finding in this case that the officer's entry - limited to a leaning through an open door - was not reasonably unnecessary to achieve the lawful purpose. If the driver had remained in his seat, as the Court observes, the proper procedure would have been to request that the papers obstructing the VIN be removed. In the absence of compliance with such a request, an arrest would have been lawful.

In summary, in view of the important public purposes served by the VIN identification system, I would hold that where a lawful stop of a motor vehicle is made by a police officer, he has a legal right - and often a duty - to see the VIN, and to remove any obstruction that presents this

where the driver of the vehicle is either not available or declines to cooperate. The expectation of privacy with respect to this motor vehicle identification is minimal.[1]

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1. I do not suggest, of course, that the Fourth Amendment is inapplicable. An officer could use the right to observe the VIN as a pretext for looking inside the vehicle for contraband or weapons, or that the entry - for whatever purpose - was ~~far~~ reasonably more extensive than necessary to remove any obstruction and read the numbers of the VIN.

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice Powell**

Circulated: _____

Recirculated: _____

CHAMBERS DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1181

NEW YORK, PETITIONER *v.* BENIGNO CLASS

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF NEW YORK

[January ——, 1986]

JUSTICE POWELL, concurring.

I join the Court's opinion but write to emphasize that, because of the unique and important governmental interests served by inspection of the Vehicle Identification Number (VIN), an officer making a lawful stop of a vehicle has the right and duty to inspect the VIN. Where the VIN is not visible from outside the vehicle or voluntarily disclosed by the driver, the officer may enter the vehicle to the extent necessary to read the VIN.

As the Court explains, the VIN essentially is a serial number that, by identifying certain features of the vehicle to which it is affixed, provides an effective and reliable means for positive identification of the vehicle. The VIN occupies a central position in the elaborate federal and state regulation of automobiles, that frequently depend on such positive identification. Federal regulations now direct manufacturers to place the VIN in a location where it is in the plain view of an observer standing outside the vehicle. 49 CFR §571.115 S4.6 (1984).

The Court has answered correctly the question presented in this case by applying conventional Fourth Amendment analysis. I believe, however, that an officer's efforts to observe the VIN need not be subjected to the same scrutiny that courts properly apply when police have intruded into a vehicle to arrest or to search for evidence of crime. When an officer lawfully has stopped a motor vehicle for a traffic in-

fraction, the officer is entitled to inspect license and registration documents. *See Deleware* v. *Prouse*, 440 U. S. 650 (1979); *Pennsylvania* v. *Mimms*, 434 U. S. 106 (1977) *(per curiam)*. Unquestionably, the officer also may look through the windshield, observe the VIN, and record it without implicating any Fourth Amendment concerns. Respondent does not contend, nor could it reasonably be contended, that such action violates the federal Constitution. The question raised on the facts of this case, therefore, is whether the Fourth Amendment was offended by the incremental intrusion resulting from the officer's efforts to observe this VIN once respondent's vehicle lawfully was stopped. Cf. *Pennsylvania* v. *Mimms*, *supra*, at 109.

The problem for the officer was that the VIN, located on the dashboard just behind the windshield, was obscured by papers. The sequence of events that transpired is well-stated in the Court's opinion. Suffice it to say here that, when respondent left his vehicle to talk to one of the officers, the other officer sought to determine the VIN of the automobile. This officer did what his duty required. When he could not see the VIN from outside the car, and the driver having exited the vehicle, the officer intruded into the car to the extent necessary to remove the papers that obstructed his view. It was only then that he observed a handgun protruding from beneath the front seat. The Court of Appeals of New York held that this intrusion was an unlawful search and seizure. While agreeing that a search and seizure occurred, this Court today sustains the validity of both on reasoning familiar in cases applying Fourth Amendment principles to automobiles.

In my view, the Fourth Amendment question may be stated simply as whether the *extent* of the officer's efforts to inspect the VIN ~~were~~ was reasonable. Where the VIN is obscured deliberately or by the negligence of the driver, I

would hold that, absent consent, the officer may enter the vehicle sufficiently to remove the obstruction. There is no finding in this case that the officer's entry—opening the car door and reaching his hand to the dashboard—was not reasonably necessary to achieve his lawful purpose. If the driver had remained in his seat, as the Court observes, the officer properly should have requested the driver to remove the papers obstructing the VIN. In the absence of compliance with such a request, an arrest would have been lawful.

In view of the important public purposes served by the VIN system and the minimal expectation of privacy in the legally required VIN, I would hold that where a police officer lawfully stops a motor vehicle, he may inspect the VIN, and remove any obstruction preventing VIN inspection, where the driver of the vehicle either is not available or declines to cooperate.*

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*I do not suggest, of course, that the Fourth Amendment is inapplicable in this context. An officer may not use VIN inspection as a pretext for searching a vehicle for contraband or weapons. Nor may the officer undertake an entry more extensive than reasonably necessary to remove any obstruction and read the VIN.

January 6, 1986

No. 84-1181
New York v. Class

Dear Sandra,

Please join me. I also am circulating a concurring opinion.

Sincerely,

Lewis

cc: The Conference

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Rehnquist
Justice Stevens
Justice O'Connor

P. 1

From: **Justice Powell**

Circulated: _____

Recirculated: JAN 8 1986

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1181

NEW YORK, PETITIONER *v.* BENIGNO CLASS

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF NEW YORK

[January ——, 1986]

JUSTICE POWELL, with whom THE CHIEF JUSTICE joins, concurring.

I join the Court's opinion but write to emphasize that, because of the unique and important governmental interests served by inspection of the Vehicle Identification Number (VIN), an officer making a lawful stop of a vehicle has the right and duty to inspect the VIN. Where the VIN is not visible from outside the vehicle or voluntarily disclosed by the driver, the officer may enter the vehicle to the extent necessary to read the VIN.

As the Court explains, the VIN essentially is a serial number that, by identifying certain features of the vehicle to which it is affixed, provides an effective and reliable means for positive identification of the vehicle. The VIN occupies a central position in the elaborate federal and state regulation of automobiles, which frequently depends on such positive identification. Federal regulations now direct manufacturers to place the VIN in a location where it is in the plain view of an observer standing outside the vehicle. 49 CFR §571.115 S4.6 (1984).

The Court has answered correctly the question presented in this case by applying conventional Fourth Amendment analysis. I believe, however, that an officer's efforts to observe the VIN need not be subjected to the same scrutiny that courts properly apply when police have intruded into a vehicle to arrest or to search for evidence of crime. When an

officer lawfully has stopped a motor vehicle for a traffic infraction, the officer is entitled to inspect license and registration documents. *See Delaware* v. *Prouse*, 440 U. S. 648 (1979); *Pennsylvania* v. *Mimms*, 434 U. S. 106 (1977) *(per curiam)*. Unquestionably, the officer also may look through the windshield, observe the VIN, and record it without implicating any Fourth Amendment concerns. Respondent does not contend, nor could it reasonably be contended, that such action violates the federal Constitution. The question raised on the facts of this case, therefore, is whether the Fourth Amendment was offended by the incremental intrusion resulting from the officer's efforts to observe this VIN once respondent's vehicle lawfully was stopped. *Cf. Pennsylvania* v. *Mimms, supra*, at 109.

The problem for the officer was that the VIN, located on the dashboard just behind the windshield, was obscured by papers. The sequence of events that transpired is well-stated in the Court's opinion. Suffice it to say here that, when respondent left his vehicle to talk to one of the officers, the other officer sought to determine the VIN of the automobile. This officer did what his duty required. Because he could not see the VIN from outside the car, and because the driver had exited the vehicle, the officer entered the car to the extent necessary to move the papers covering the VIN. It was only then that he observed a handgun protruding from beneath the front seat. The Court of Appeals of New York held that this intrusion was an unlawful search. While agreeing that a search occurred, this Court today sustains the officer's action on reasoning familiar in cases applying Fourth Amendment principles to automobiles.

In my view, the Fourth Amendment question may be stated simply as whether the officer's efforts to inspect the VIN were reasonable. There is no finding in this case that the officer's entry into respondent's vehicle—opening the

door and reaching his hand to the dashboard—was not reasonably necessary to achieve his lawful purpose. If respondent had remained in his seat, as the Court observes, the officer properly should have requested him to remove the papers obstructing the VIN. In the absence of compliance with such a request, an arrest would have been lawful. Cf. *People* v. *Ellis*, 62 N. Y. 2d 393, 477 N. Y. S. 2d 106, 465 N. E. 2d 826 (1984) (on lawful traffic stop, officers properly arrested driver for failure to produce license or other identification).

In view of the important public purposes served by the VIN system and the minimal expectation of privacy in the VIN, I would hold that where a police officer lawfully stops a motor vehicle, he may inspect the VIN, and remove any obstruction preventing such inspection, where the driver of the vehicle either is unwilling or unable to cooperate.*

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*I do not suggest, of course, that the Fourth Amendment is inapplicable in this context. An officer may not use VIN inspection as a pretext for searching a vehicle for contraband or weapons. Nor may the officer undertake an entry more extensive than reasonably necessary to remove any obstruction and read the VIN.

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

January 29, 1986

Re: No. 84-1181-New York v. Benigno Class

Dear Bill:

Please join me in your dissent.

Sincerely,

T.M.

Justice Brennan

cc: The Conference

Stylistic Changes Throughout

P. 9

Sally - I believe I've found SO'C in addition to writing a concur. Am I right? 2/5

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens

From: **Justice O'Connor**

Circulated: _____

Recirculated: JAN 30 1986

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1181

NEW YORK, PETITIONER *v.* BENIGNO CLASS

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF NEW YORK

[January —, 1986]

JUSTICE O'CONNOR delivered the opinion of the Court.

In this case, we must decide whether, in order to observe a Vehicle Identification Number (VIN) generally visible from outside an automobile, a police officer may reach into the passenger compartment of a vehicle to move papers obscuring the VIN after its driver has been stopped for a traffic violation and has exited the car. We hold that, in these circumstances, the police officer's action does not violate the Fourth Amendment.

I

On the afternoon of May 11, 1981, New York City police officers Lawrence Meyer and William McNamee observed respondent Benigno Class driving above the speed limit in a car with a cracked windshield. Both driving with a cracked windshield and speeding are traffic violations under New York law. See N. Y. Vehicle & Traffic Law §§ 375(22), 1180(d) (McKinney 1970). Respondent followed the officers' ensuing directive to pull over. Respondent then emerged from his car and approached Officer Meyer. Officer McNamee went directly to respondent's vehicle. Respondent provided Officer Meyer with a registration certificate and proof of insurance, but stated that he had no driver's license.

Meanwhile, Officer McNamee opened the door of respondent's car to look for the Vehicle Inspection Number (VIN), which is located on the left door jamb in automobiles manufactured before 1969. When the officer did not find the VIN

on the door jamb, he reached into the interior of respondent's car to move some papers obscuring the area of the dashboard where the VIN is located in all post-1969 models. In doing so, Officer McNamee saw the handle of a gun protruding about one inch from underneath the driver's seat. The officer seized the gun, and respondent was promptly arrested. Respondent was also issued summonses for his traffic violations.

It is undisputed that the police officers had no reason to suspect that respondent's car was stolen, that it contained contraband, or that respondent had committed an offense other than the traffic violations. Nor is it disputed that respondent committed the traffic violations with which he was charged, and that, as of the day of the arrest, he had not been issued a valid driver's license.

After the state trial court denied a motion to suppress the gun as evidence, respondent was convicted of criminal possession of a weapon in the third degree. See N. Y. Penal Law § 265.02(4) (McKinney 1980). The Supreme Court for Bronx County upheld the conviction without opinion. The New York Court of Appeals reversed. It reasoned that the police officer's "intrusion . . . was undertaken to obtain information and it exposed . . . hidden areas" of the car, and "therefore constituted a search." *People* v. *Class*, 63 N. Y.2d 491, 495, 472 N. E. 2d 1009, 1011 (1984). Although it recognized that a search for a VIN generally involves a minimal intrusion because of its limited potential locations, and agreed that there is a compelling law-enforcement interest in positively identifying vehicles involved in accidents or auto thefts, the court thought it decisive that the facts of this case "reveal no reason for the officer to suspect other criminal activity [besides the traffic infraction] or to act to protect his own safety." *Id.*, at 495–496. The state statutory provision that authorizes officers to demand that drivers reveal their VIN "provided no justification for the officer's entry of [respondent's] car." *Id.*, at 497. If the officer had taken

advantage of that statute and asked to see the VIN, respondent could have moved the papers away himself and no intrusion would have occurred. In the absence of any justification for the search besides the traffic infraction, the New York Court of Appeals ruled that the gun must be excluded from evidence.

We granted certiorari, —— U. S. —— (1984), and now reverse.

II

Respondent asserts that this Court is without jurisdiction to hear this case because the decision of the New York Court of Appeals rests on an adequate and independent state ground. We disagree.

The opinion of the New York Court of Appeals mentions the New York Constitution but once, and then only in direct conjunction with the United States Constitution. 63 N. Y.2d, at 493, 472 N. E. 2d, at 1010. Cf. *Michigan* v. *Long*, 463 U. S. 1032, 1043 (1983). The opinion below makes use of both federal and New York cases in its analysis, generally citing both for the same proposition. See, *e. g.*, 63 N. Y.2d, at 494, 495, 472 N. E. 2d, at 1011. The opinion lacks the requisite "plain statement" that it rests on state grounds. *Michigan* v. *Long*, *supra*, at 1042, 1044. Accordingly, our holding in *Michigan* v. *Long* is directly applicable here:

> "[W]hen . . . a state court decision fairly appears to rest primarily on federal law, or to be interwoven with the federal law, and when the adequacy and independence of any possible state law ground is not clear from the face of the opinion, we will accept as the most reasonable explanation that the state court decided the case the way it did because it believed that federal law required it to do so." *Id.*, at 1040–1041.

See also *California* v. *Carney*, —— U. S. ——, —— n. 1 (1985).

Respondent's claim that the opinion below rested on independent and adequate state *statutory* grounds is also without merit. The New York Court of Appeals did not hold that § 401 of New York's Vehicle and Traffic Law prohibited the search at issue here, but, in rejecting an assertion of petitioner, merely held that § 401 "provided no *justification*" for a search. 63 N. Y.2d, at 497, 472 N. E. 2d, at 1013 (emphasis added). In determining that the police officer's action was prohibited, the court below looked to the Federal Constitution, not the State's statute. Moreover, New York adheres to the general rule that, when statutory construction can resolve a case, courts should not decide constitutional issues. See *Ashwander* v. *Tennessee Valley Authority*, 297 U. S. 288, 346–347 (Brandeis, J., concurring); *In re Peters* v. *New York City Housing Authority*, 307 N. Y. 519, 527, 121 N. E. 2d 529, 531 (1954). Since the New York Court of Appeals discussed both statutory and constitutional grounds, we may infer that the court believed the statutory issue insufficient to resolve the case. The discussion of the statute therefore could not have constituted an independent and adequate state ground.

III

A

The officer here, after observing respondent commit two traffic violations and exit the car, attempted to determine the VIN of respondent's automobile. In reaching to remove papers obscuring the VIN, the officer intruded into the passenger compartment of the vehicle.

The VIN consists of more than a dozen digits, unique to each vehicle and required on all cars and trucks. See 49 CFR § 571.115 (1984). The VIN is roughly analogous to a serial number, but it can be deciphered to reveal not only the place of the automobile in the manufacturer's production run, but the make, model, engine type, and place of manufacture of the vehicle. See *id.* § 565.4.

The VIN is a significant thread in the web of regulation of the automobile. See generally 43 Fed. Reg. 2189 (1978). The ease with which the VIN allows identification of a particular vehicle assists the various levels of government in many ways. For the federal government, the VIN improves the efficacy of recall campaigns, and assists researchers in determining the risks of driving various makes and models of automobiles. In combination with state insurance laws, the VIN reduces the number of those injured in accidents who go uncompensated for lack of insurance. In conjunction with the state's registration requirements and safety inspections, the VIN helps to ensure that automobile operators are driving safe vehicles. By making auto theft more difficult, the VIN safeguards not only property but life and limb. See 33 Fed. Reg. 10,207 (1968) (noting that stolen vehicles are disproportionately likely to be involved in automobile accidents).

To facilitate the VIN's usefulness for these laudable governmental purposes, federal law requires that the VIN be placed in the plain view of someone *outside* the automobile:

> "The VIN for passenger cars [manufactured after 1969] shall be located inside the passenger compartment. It shall be readable, without moving any part of the vehicle, through the vehicle glazing under daylight lighting conditions by an observer having 20/20 vision (Snellen) whose eye point is located *outside the vehicle* adjacent to the left windshield pillar. Each character in the VIN subject to this paragraph shall have a minimum height of 4 mm." 49 CFR §571.115 (S 4.6) (1984) (emphasis added).

In *Delaware* v. *Prouse*, 440 U. S. 648, 658 (1979), we recognized the "vital interest" in highway safety and the various programs that contribute to that interest. In light of the important interests served by the VIN, the federal and state governments are amply justified in making it a part of the web of pervasive regulation that surrounds the automobile,

and in requiring its placement in an area ordinarily in plain view from outside the passenger compartment.

B

A citizen does not surrender all the protections of the Fourth Amendment by entering an automobile. See *Delaware* v. *Prouse*, *supra*, at 663; *Almeida-Sanchez* v. *United States*, 413 U. S. 266, 269 (1973). Nonetheless, the state's intrusion into a particular area, whether in an automobile or elsewhere, cannot result in a Fourth Amendment violation unless the area is one in which there is a "constitutionally protected reasonable expectation of privacy." *Katz* v. *United States*, 389 U. S. 347, 360 (Harlan, J., concurring). See *Oliver* v. *United States*, 466 U. S. 170, —— (1984); *Maryland* v. *Macon*, —— U. S. ——, —— (1985).

The Court has recognized that the physical characteristics of an automobile and its use result in a lessened expectation of privacy therein:

> "One has a lesser expectation of privacy in a motor vehicle because its function is transportation and it seldom serves as one's residence or as the repository of personal effects. A car has little capacity for escaping public scrutiny. It travels public thoroughfares where both its occupants and its contents are in plain view." *Cardwell* v. *Lewis*, 417 U. S. 583, 590 (1974) (plurality opinion).

Moreover, automobiles are justifiably the subject of pervasive regulation by the state. Every operator of a motor vehicle must expect that the state, in enforcing its regulations, will intrude to some extent upon that operator's privacy:

> "Automobiles, unlike homes, are subject to pervasive and continuing governmental regulation and controls, including periodic inspection and licensing requirements. As an everyday occurrence, police stop and examine vehicles when license plates or inspection stickers have expired, or if other violations, such as exhaust fumes or excessive noise, are noted, or if headlights or other safety

> equipment are not in proper working order." *South Dakota* v. *Opperman*, 428 U. S. 364, 368 (1976).

See also *Cady* v. *Dombrowski*, 413 U. S. 433, 441–442 (1973); *California* v. *Carney*, *supra*, at ——.

The factors that generally diminish the reasonable expectation of privacy in automobiles are applicable *a fortiori* to the VIN. As we have discussed above, the VIN plays an important part in the pervasive regulation by the government of the automobile. A motorist must surely expect that such regulation will on occasion require the State to determine the VIN of his or her vehicle, and the individual's reasonable expectation of privacy in the VIN is thereby diminished. This is especially true in the case of a driver who has committed a traffic violation. See *Delaware* v. *Prouse*, *supra*, at 659 ("The foremost method of enforcing traffic and vehicle safety regulations . . . is acting upon observed violations. *Vehicle stops for traffic violations occur countless times each day; and on these occasions, license and registration papers are subject to inspection and drivers without them will be ascertained.*") (emphasis added). In addition, it is unreasonable to have an expectation of privacy in an object required by law to be located in a place ordinarily in plain view from the exterior of the automobile. The VIN's mandated visibility makes it more similar to the exterior of the car than to the trunk or glove compartment. The exterior of a car, of course, is thrust into the public eye, and thus to examine it does not constitute a "search." See *Cardwell* v. *Lewis*, *supra*, at 588–589. In sum, because of the important role played by the VIN in the pervasive governmental regulation of the automobile and the efforts by the federal government to ensure that the VIN is placed in plain view, we hold that there was no reasonable expectation of privacy in the VIN.

We think it makes no difference that the papers in respondent's car obscured the VIN from the plain view of the officer. We have recently emphasized that efforts to restrict access to an area do not generate a reasonable expectation of pri-

vacy where none would otherwise exist. See *Oliver* v. *United States*, *supra*, at —— (placement of "No Trespassing" signs on secluded property does not create "legitimate privacy interest" in marijuana fields). Here, where the object at issue is an identification number behind the transparent windshield of an automobile driven upon the public roads, we believe that the placement of the obscuring papers was insufficient to create a privacy interest in the VIN. The mere viewing of the formerly obscured VIN was not, therefore, a violation of the Fourth Amendment.

C

The evidence that respondent sought to have suppressed was not the VIN, however, but a gun, the handle of which the officer saw from the interior of the car while reaching for the papers that covered the VIN. While the interior of an automobile is not subject to the same expectations of privacy that exist with respect to one's home, a car's interior as a whole is nonetheless subject to Fourth Amendment protection from unreasonable intrusions by the police. We agree with the New York Court of Appeals that the intrusion into that space constituted a "search." 63 N. Y.2d, at 495, 472 N. E. 2d, at 1011. Cf. *Delaware* v. *Prouse*, *supra*, at 653 ("stopping an automobile and detaining its occupants constitute a 'seizure' . . . even though the purpose of the stop is limited and the resulting detention quite brief"). We must decide, therefore, whether this search was constitutionally permissible.

If respondent had remained in the car, the police would have been justified in asking him to move the papers obscuring the VIN. New York law authorizes a demand by officers to see the VIN, see 63 N. Y.2d, at 496–497, 472 N. E. 2d, at 1012–1013, and even if the state law were not explicit on this point we have no difficulty in concluding that a demand to inspect the VIN, like a demand to see license and registration papers, is within the scope of police authority pursuant to a

traffic violation stop. See *Prouse, supra*, at 659. If respondent had stayed in his vehicle and acceded to such a request from the officer, the officer would not have needed to intrude into the passenger compartment. Respondent chose, however, to exit the vehicle without removing the papers that covered the VIN; the officer chose to conduct his search without asking respondent to return to the car. We must therefore decide whether the officer acted within the bounds of the Fourth Amendment in conducting the search. We hold that he did.

Keeping the driver of a vehicle in the car during a routine traffic stop is probably the typical police practice. See D. Schultz and D. Hunt, Traffic Investigation and Enforcement 17 (1983). Nonetheless, out of a concern for the safety of the police, the Court has held that officers may, consistent with the Fourth Amendment, exercise their discretion to require a driver who commits a traffic violation to exit the vehicle even though they lack any particularized reason for believing the driver possesses a weapon. *Pennsylvania* v. *Mimms*, 434 U. S. 106, 108–111 (1977) *(per curiam)*. While we impute to respondent no propensity for violence, and while we are conscious of the fact that respondent here voluntarily left the vehicle, the facts of this case may be used to illustrate one of the principal justifications for the discretion given police officers by *Pennsylvania* v. *Mimms:* while in the driver's seat, respondent had a loaded pistol at hand. *Mimms* allows an officer to guard against that possibility by requiring the driver to exit the car briefly. Clearly, *Mimms* also allowed the officers here to detain respondent briefly outside the car that he voluntarily exited while they completed their investigation.

The question remains, however, as to whether the officers could not only effect the seizure of respondent necessary to detain him briefly outside the vehicle, but also effect a search for the VIN that may have been necessary only because of that detention. The pistol beneath the seat did not, of course, disappear when respondent closed the car door be-

hind him. To have returned respondent immediately to the automobile would have placed the officers in the same situation that the holding in *Mimms* allows officers to avoid—permitting an individual being detained to have possible access to a dangerous weapon and the benefit of the partial concealment provided by the car's exterior. See *Pennsylvania* v. *Mimms*, *supra*, at 110. In light of the danger to the officers' safety that would have been presented by returning respondent immediately to his car, we think the search to obtain the VIN was not prohibited by the Fourth Amendment.

The Fourth Amendment by its terms prohibits "unreasonable" searches and seizures. We have noted that

> "there is 'no ready test for determining reasonableness other than by balancing the need to search [or seize] against the invasion which the search [or seizure] entails.' *Camara* v. *Municipal Court*, 387 U. S. 523, 534–535, 536–537 (1967). And in justifying the particular intrusion the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, justifiably warrant that intrusion." *Terry* v. *Ohio*, 392 U. S. 1, 21 (1968) (footnote omitted) (brackets as in *Terry*).

This test generally means that searches must be conducted pursuant to a warrant backed by probable cause. See *United States* v. *Ventresca*, 380 U. S. 102, 105–109 (1965); *United States* v. *Karo*, —— U. S. ——, —— (1984). When a search or seizure has as its immediate object a search for a weapon, however, we have struck the balance to allow the weighty interest in the safety of police officers to justify warrantless searches based only on a reasonable suspicion of criminal activity. See *Terry* v. *Ohio*, 392 U. S. 1 (1968); *Adams* v. *Williams*, 407 U. S. 143 (1972). Such searches are permissible despite their substantial intrusiveness. See *Terry* v. *Ohio*, *supra*, at 24–25 (search was "a severe, though brief, intrusion upon cherished personal security, and . . .

must surely [have] b[een] an annoying, frightening, and perhaps humiliating experience").

When the officer's safety is less directly served by the detention, something more than objectively justifiable suspicion is necessary to justify the intrusion if the balance is to tip in favor of the legality of the governmental intrusion. In *Pennsylvania* v. *Mimms*, *supra*, at 107, the officers had personally observed the seized individual in the commission of a traffic offense before requesting that he exit his vehicle. In *Michigan* v. *Summers*, 452 U. S. 692, 693 (1981), the officers had obtained a warrant to search the house that the person seized was leaving when they came upon him. While the facts in *Pennsylvania* v. *Mimms* and *Michigan* v. *Summers* differ in some respects from the facts of this case, the similarities are strong enough that the balancing of governmental interests against governmental intrusion undertaken in those cases is also appropriate here. All three of the factors involved in *Mimms* and *Summers* are present in this case: the safety of the officers was served by the governmental intrusion; the intrusion was minimal; and the search stemmed from some probable cause focusing suspicion on the individual affected by the search. Indeed, here the officer's probable cause stemmed from directly observing respondent commit a violation of the law.

When we undertake the necessary balancing of "the nature and quality of the intrusion on the individual's Fourth Amendment interests against the importance of the governmental interests alleged to justify the intrusion," *United States* v. *Place*, 462 U. S. 696, 703 (1983), the conclusion that the search here was permissible follows. As we recognized in *Delaware* v. *Prouse*, *supra*, at 658, the governmental interest in highway safety served by obtaining the VIN is of the first order, and the particular method of obtaining the VIN here was justified by a concern for the officer's safety. The "critical" issue of the intrusiveness of the government's action, *United States* v. *Place*, *supra*, at 722 (BLACKMUN, J.,

concurring in the judgment), also here weighs in favor of allowing the search. The search was focused in its objective and no more intrusive than necessary to fulfill that objective. The search was far less intrusive than a formal arrest, which would have been permissible for a traffic offense under New York law, see N. Y. Vehicle and Traffic Law, § 155 (McKinney 1970 & 1984–1985 Pocket Part); *id.*, Criminal Procedure Law, § 140.10(1) (1981), and little more intrusive than a demand that the respondent—under the eyes of the officers—move the papers himself. The VIN, which was the clear initial objective of the officer, is by law present in one of two locations—either inside the door jamb, or atop the dashboard and thus ordinarily in plain view of someone outside the automobile. Neither of those locations is subject to a reasonable expectation of privacy. The officer here checked both those locations, and only those two locations. The officer did not root about the interior of the respondent's automobile before proceeding to examine the VIN. He did not reach into any compartments or open any containers. He did not even intrude into the interior at all until after he had checked the door jamb for the VIN. When he did intrude, the officer simply reached directly for the unprotected space where the VIN was located to move the offending papers. We hold that this search was sufficiently unintrusive to be constitutionally permissible in light of the lack of a reasonable expectation of privacy in the VIN and the fact that the officers observed respondent commit two traffic violations. Any other conclusion would expose police officers to potentially grave risks without significantly reducing the intrusiveness of the ultimate conduct—viewing the VIN—which, as we have said, the officers were entitled to do as part of an undoubtedly justified traffic stop.

We note that our holding today does not authorize police officers to enter a vehicle to obtain a dashboard-mounted VIN when the VIN is visible from outside the automobile. If the VIN is in the plain view of someone outside the vehicle,

there is no justification for governmental intrusion into the passenger compartment to see it.*

The judgment of the New York Court of Appeals is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

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*Petitioner invites us to hold that respondent's status as an unlicensed driver deprived him of any reasonable expectations of privacy in the vehicle, because the officers would have been within their discretion to have prohibited respondent from driving the car away, to have impounded the car, and to have later conducted an inventory search thereof. Cf. *South Dakota* v. *Opperman*, 428 U. S. 364 (1976) (police may conduct inventory search of car impounded for multiple parking violations); *Nix* v. *Williams*, 467 U. S. 431 (1984) (discussing the "inevitable discovery" exception to the exclusionary rule). Petitioner also argues that there can be no Fourth Amendment violation here because the police could have arrested respondent, see N. Y. Vehicle and Traffic Law, § 155 (McKinney 1970 & 1984–1985 Pocket Part); *id.*, Criminal Procedure Law, § 140.10(1) (1981), and could then have searched the passenger compartment at the time of arrest, cf. *New York* v. *Belton*, 453 U. S. 454 (1981), or arrested respondent and searched the car after impounding it pursuant to the arrest, see *Cady* v. *Dombrowski*, 413 U. S. 433 (1973). We do not, however, reach those questions here.

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

January 31, 1986

Re: 84-1181 - New York v. Class

Dear Bill:

Please join me in your dissent.

Respectfully,

John P. S.

Justice Brennan

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

February 4, 1986

Re: 84-1181 - New York v. Class

Dear Byron:

Please join me.

Respectfully,

John / sjm

Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

February 4, 1986

Re: No. 84-1181, New York v. Class

Dear Sandra:

Please join me.

Sincerely,

Harry

Justice O'Connor

cc: The Conference

84-1181 New York v. Class (Anne)

SOC for the Court 11/16/85
1st draft 12/18/85
2nd draft 1/30/86
3rd draft 2/18/86
Joined by WHR 12/20/85
LFP 1/6/86
HAB 2/4/86
LFP concurring opinion
1st draft 1/6/86
Joined by CJ 1/7/86
BRW dissenting
1st draft 2/3/86
2nd draft 2/18/86
Joined by JPS 2/4/86
BRW awaiting dissent 12/19/85
TM awaiting dissent 12/19/85
WJB will dissent 12/19/85
HAB awaiting dissent 12/20/85
JPS awaiting dissent 12/20/85
WJB dissent 1/28/86
Joined by TM 1/29/86
Joined by JPS