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Is police ignorance of the law an excuse?

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On July 1, the New York State Court of Appeals affirmed the local case of *People v. Estrella*, NY Slip Op 05962 (facts are found in the decision of *People v. Estrella*, 48 A.D.3d 1283 [Fourth Dept. 2008]).

The Rochester police wanted to stop a Mercedes Benz on Lyell Avenue. Needing a basis to do so, they found one in the car's excessive window tint, a violation under Vehicle and Traffic Law Sect. 375 (12-a)(b)(4). The stop was admittedly pretextual, but that doesn't render it unlawful under *Whren v. U.S.*, 517 U.S. 806 (1996) and *People v. Robinson*, 97 N.Y.2d 341 (2001).

Still, it's not that simple. Estrella's car had Georgia license plates. Under V&TL Sect. 250 (1), the owner of an out-of-state vehicle that complies with the equipment requirements of his home state is exempt from New York's requirements. As the Fourth Department dissent duly noted: "[T]here was no window tint law in effect" in Georgia at the time of the stop.

The Court of Appeals found this irrelevant, declaring the "officer was not chargeable with knowledge that the tinting was legal in Georgia."

On July 2, the U.S. Court of Appeals for the Ninth Circuit took a contrary view in *Center for Bio-Ethical Reform, Inc. v. Los Angeles County Sheriff Department*, 2008 U.S. App. LEXIS 13975. The plaintiffs drove a truck bearing anti-abortion messages and photographs on streets surrounding a middle school. They were stopped by police and detained for 75 minutes. The police cited a statute prohibiting interference with the "peaceful conduct of the activities of the school" as justification for the stop, but the Ninth Circuit held the statute did not apply to the plaintiffs' acts, and the police should have known this.

The Fourth Department majority held that Estrella's "stop itself was necessary to obtain information [as to] whether section 250 (1) was applicable."

The Ninth Circuit, in contrast, held that the truck stop was not justified as the officers lacked "reasonable suspicion that any particular crime had been committed" and, instead, initiated the stop to "help them figure out whether any crime had been committed."

The Fourth Department majority expressed concern that it would be "unreasonable to require that police officers be familiar with the equipment requirement laws of every state, and presumably other countries".

Eight years ago the Ninth Circuit invalidated a stop based on the

mistaken belief that Baja Mexico required autos to display a registration sticker visible from the rear of a vehicle. To hold otherwise "would remove the incentive for police to make certain that they properly understand the law that they are entrusted to enforce and obey." See *U.S. v. Lopez-Soto*, 205 F.3d 1101, 1106 (Ninth Cir. 2000).

Under *Whren* and *Robinson*, police may stop a vehicle for any traffic infraction, no matter how minor, providing a great deal of leeway to conduct pretextual stops. On the flip side of such leeway is the fact that the legal justification must be objectively grounded. "[I]f officers are allowed to stop vehicles based upon their subjective belief that traffic laws have been violated, even where no such violation has, in fact, occurred, the potential for abuse of traffic infractions as pretext for effecting stops seems boundless and the costs to privacy rights excessive." See *U.S. v. Lopez-Valdez*, 178 F.3d 282, 289 (Fifth Cir. 1999).

I worry, especially, about the citizens of Michigan, where cars are required only to display one license plate. In *U.S. v. Twilley*, 222 F.3d 1092 (Ninth Cir. 2000), the court held that a California officer's stop of a Michigan vehicle for failing to display a second plate was unlawful, rejecting the officer's plea that he "did not know Michigan law."

Yet, under *People v. Estrella*, any Michigan driver who ventures into New York (where two plates are required by V&TL Sect. 402) apparently is subject to a stop at any time, so long as the officer is willing to plead ignorance of the law.

Perhaps *People v. Estrella* can be distinguished: Estrella's window tint would have been illegal under a Georgia law, but the Georgia Supreme Court ruled that law to be unconstitutional only months before Estrella was stopped. See *Ciak v. State*, 278 Ga. 27 (2004).

Perhaps the New York State Court of Appeals felt it would be "unreasonable" to expect Rochester police to stay abreast of Georgia case law, as well as its statutes.

Several federal Circuit Courts have noted "the fundamental unfairness of holding citizens to the traditional rule that ignorance of the law is no excuse, while allowing those entrusted to enforce the law to be ignorant of it." See, e.g., *U.S. v. Chanthasouxat*, 342 F.3d 1271, 1278 (11th Cir. 2003).

Ignorance may be bliss, but the law should not hold that ignorance is power.

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