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Shooting an Elephant - Massachusetts Maintains Reasonable Suspicion: Protecting Individual Privacy during Traffic Stops and Battling Racial Profiling

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"SHOOTING AN ELEPHANT" — MASSACHUSETTS MAINTAINS REASONABLE SUSPICION: PROTECTING INDIVIDUAL PRIVACY DURING TRAFFIC STOPS AND BATTLING RACIAL PROFILING

"...[T]o eliminate any requirement that the officer be able to explain that reasons for his actions signals an abandonment of effective judicial supervision...leaves police discretion utterly without limits. Some citizens will be subjected to this minor indignity while others -- perhaps those with more expensive cars, or different bumper stickers, or different-colored skin -- may escape it entirely." 2

I. INTRODUCTION

Almost every American has encountered the police while driving on the American roadways.3 The pervasiveness of automobile ownership in our culture increases the potential for police-citizen contact.4 However, the United States Supreme Court views the citizen’s expectation of privacy in automobiles as significantly lower than in homes because of a car’s inherent mobility, its exposure to public view, and the fact that its use is extensively regulated.5 In a case not directly relating to automobiles, the

1 Title of a George Orwell essay, describing his service as an officer in British controlled Burma. Orwell’s first hand account of his encounter with a “must” elephant symbolizes official power and discretionary authority. GEORGE ORWELL, SHOOTING AN ELEPHANT AND OTHER ESSAYS (1978).


Court transformed Fourth Amendment jurisprudence in *Terry v. Ohio*, when it permitted for the first time a search and seizure without probable cause. This transformation marked the beginning of a federal trend to shift the balance of interests under the Fourth Amendment from individual liberty to increased law enforcement and public safety.

As our Fourth Amendment rights continue to diminish, the Massachusetts Supreme Judicial Court ("SJC") has utilized an alternative source of protection against unreasonable searches and seizures. This alternative protection has signaled important progress in the battle against racial profiling. Article Fourteen of the Massachusetts Constitution ("Article 14"), the model from which the founding fathers drafted the Fourth Amendment to the United States Constitution, provides Massachusetts citizens with an alternative basis to support unreasonable search and seizure claims.

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6 See 392 U.S. 1 (1968) (Recognizing need for warrantless searches and seizures).

7 See id. (permitting brief stops and frisks without probable cause).


9 See U.S. CONST. amend. IV. The Fourth Amendment provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Id.

10 See id. See also Harris, supra note 4, at 556; Sklansky, supra note 3, at 308.

11 See MASS. CONST. pt. I, art. XIV (1780). Article Fourteen provides:

> Every subject has a right to be secure from all unreasonable searches, and seizures, of his person, his houses, his papers, and all his possessions. All Warrants, therefore, are contrary to this right, if the cause or foundation of them be not previously supported by oath or affirmation; and if the order in the warrant to a civil officer, to make search in suspect places, or to arrest one or more suspected persons, or to seize their property, be not accompanied with a special designation of the persons or objects of search, arrest, or seizure: and no warrant ought to be issued but in cases, and with the formalities prescribed by the laws.
Given the continued weakening of Fourth Amendment rights through federal jurisprudence, Article 14 is an important source for protecting citizens against racial profiling, police practice of targeting suspects based on race.\(^\text{12}\)

This note focuses narrowly on an officer's authority to order occupants out of lawfully detained automobiles, Massachusetts' response to the federal constitutional requirements regarding searches and seizures, and the impact this response has on the pervasive and disturbing practice of racial profiling. Part I of this note examines the Supreme Court decisions in Pennsylvania v. Mimms\(^\text{13}\) and Maryland v. Wilson\(^\text{14}\); emphasizing their application of search and seizure law to police exit orders during routine traffic stops.\(^\text{15}\) Section II discusses Massachusetts' response to the Supreme Court decisions, in the above-mentioned cases, to weaken search and seizure protections under the Fourth Amendment.\(^\text{16}\) Section III compares Article 14 of the Massachusetts Constitution to the Fourth Amendment of the United States Constitution.\(^\text{17}\) Section IV analyzes the importance of search and seizure jurisprudence in protecting against racial profiling.\(^\text{18}\) Finally, this note concludes by suggesting that Massachusetts provide a national example in the battle against racial profiling by continuing its efforts to preserve strong protections against unreasonable searches and seizures.

II. THE SUPREME COURT AND EXIT ORDERS

The Supreme Court cases Pennsylvania v. Mimms\(^\text{19}\) and Maryland v. Wilson\(^\text{20}\) have been integral to the Court's application of Fourth

\(^{12}\) See Harris, Supra note 4, at 556; Sklansky, supra note 3 at 308; Abraham Abramovksy and Jonathan I. Edelstein, Pretext Stops and Racial Profiling After Whren v. United States: The New York and New Jersey Responses Compared, 63 Alb. L. Rev. 725, 730 (2000).

\(^{13}\) 434 U.S. 106 (1977) (applying Fourth Amendment law to police traffic stops).

\(^{14}\) 519 U.S. 408 (1997) (applying Fourth Amendment protections to passengers during traffic stops).

\(^{15}\) See infra notes 19-47 and accompanying text.

\(^{16}\) See infra notes 48-87 and accompanying text.

\(^{17}\) See infra notes 88-103 and accompanying text.

\(^{18}\) See infra notes 104-123 and accompanying text.

\(^{19}\) 434 U.S. 106 (1977) (applying Fourth Amendment law to police traffic stops).

\(^{20}\) 519 U.S. 408 (1997) (applying Fourth Amendment protections to passengers during traffic stops).
Amendment law to traffic stops. In Pennsylvania v. Mimms, a divided Supreme Court held that under the Fourth Amendment an officer may order a driver out of a lawfully detained vehicle without articulable reasonable suspicions. Twenty years later, in Maryland v. Wilson, the Court extended the Mimms holding to include passengers.

A. Pennsylvania v. Mimms

Two Philadelphia police officers stopped Harry Mimms ("Mimms") for driving his vehicle with an expired license plate. One of the officers ordered Mimms out of his automobile and to produce his owner's card and driver's license. As Mimms complied, the officer noticed a bulge under Mimms' jacket. The officer then frisked Mimms out of fear that the bulge might have been a weapon. The frisk uncovered a loaded revolver, and Mimms was subsequently arrested and indicted on weapons charges. The lower court denied Mimms' request to suppress the revolver as evidence discovered pursuant to an unlawful search and seizure, and the jury ultimately convicted him.

The Supreme Court of Pennsylvania reversed Mimms' conviction, holding that the seizure of the revolver was unreasonable under the Fourth Amendment. On appeal from that decision, the United States Supreme Court reversed, holding the officer's exit order reasonable and permissible under the Fourth Amendment, despite the lack of reasonable suspicion in

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22 Cf. Mimms, 434 U.S. at 106 (holding exit order lawful).


24 Wilson, 519 U.S. at 408.

25 Id at 410.

26 Mimms, 434 U.S. at 107.

27 Id.

28 Id.

29 Id.

30 Id.

31 Mimms, 434 U.S. at 112 (holding police exit order reasonable).

the circumstances. Thus, the Court departed from its longstanding requirement of "reasonable suspicion" for searches and seizures under the Fourth Amendment, reasoning that additional restrictions on personal freedom of movement during lawful traffic detentions were a minor inconvenience when weighed against threats to officer safety.

B. Maryland v. Wilson

Whereas *Mimms* involved additional intrusions into a driver’s freedom of movement, *Wilson* focused on additional intrusions into a passenger’s freedom of movement. Jerry Lee Wilson ("Wilson") rode in the front passenger seat of a rental car that Officer Hughes pulled over for traveling sixty-four miles per hour in a fifty-five mile an hour zone. Officer Hughes, after noticing Wilson "sweating" and appearing "extremely nervous", ordered him out of the car. As Wilson exited the car, crack cocaine fell to the ground. Wilson was arrested and indicted on drug charges. At the preliminary hearing, Wilson moved to suppress the cocaine, arguing that Officer Hughes’ exit order constituted an unreasonable seizure under the Fourth Amendment. The Baltimore County Circuit Court granted Wilson’s motion and the Court of Special Appeals of Maryland affirmed. After the Maryland Court of Appeals denied review, the Supreme Court granted certiorari. In a 7-2 decision, the Court reversed and extended the principle set forth in *Mimms* to passengers of law-

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33 Pennsylvania v. Mimms, 434 U.S. at 111, n.6 (countering dissent’s suggestion that Per Curiam opinion allows officer’s at will order of drivers from vehicles).
34 See id. at 112; see also Terry v. Ohio, 392 U.S. 1, 30 (1968) (allowing “pat frisks” for officer safety where reasonable suspicion of criminal activity exists); Brown v. Texas, 443 U.S. 47, 51 (1979) (requiring specific, objective facts for lawful seizure under Fourth Amendment).
35 See Maryland v. Wilson, 519 U.S. 408 (1997) (allowing officer’s authority to demand passengers out of lawfully stopped vehicles).
36 Id. at 410.
37 Id. at 410-11.
38 Id.
39 Id.
fully stopped vehicles. The Court again found that officer safety outweighed a passenger's liberty interests. The Court suggested that a presumption of serious crime and a motivation to employ violence to prevent apprehension justifies this "minimal change in circumstance" to avert a passenger's possible access to weapons. Coupled with the Court's decision in Mimms, the Court's holding in Wilson provides police officers with unfettered control over the freedom of movement of all occupants of lawfully detained vehicles enjoy until the officer deems appropriate. Justice Kennedy noted that with the Wilson decision "the Court puts tens of millions of passengers at risk of arbitrary control by the police.”

III. THE MASSACHUSETTS RESPONSE

Established case law dictates that a traffic stop ends once the driver has produced a valid license and registration, unless the police have sufficient grounds to suspect current or prior criminal activity. Massachusetts courts have cited Mimms with approval but they have required some objective grounds for the exit orders during routine traffic stops. In Com-

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43 Wilson, 519 U.S. at 415 (reasoning passengers pose greater danger to officers during routine traffic stops).
44 See id. at 413-14 (acknowledging stronger sense of personal liberty for passengers than drivers).
45 See id. at 414-15 (characterizing police traffic stops as conduits to uncover other "serious crimes").
46 See id. at 415; see also Mimms, 434 U.S. at 111 (announcing officer's automatic entitlement to give exit orders).
47 Wilson, 117 S. Ct. at 890 (Kennedy, J., dissenting) (commenting on affect of recent Court decision).
2001] PROTECTING PRIVACY DURING TRAFFIC STOPS 221

the SJC restated the Mimms holding that Massachusetts police may give exit orders to occupants of lawfully stopped vehicles. However, the SJC required an objective standard for determining whether the perceived threat to an officer or public safety justifies an exit order. In Commonwealth v. Ferrara, the SJC ruled that after verification of the license and registration, no reasonable suspicion existed to justify an exit order or further interrogation.

The SJC further demonstrated its unwillingness to follow the Supreme Court's lead in diminishing protection from unreasonable searches and seizures in Commonwealth v. Gonsalves, where Justice Greaney explicitly declined to adopt either Mimms or Wilson. In Gonsalves, a Massachusetts State Trooper ("Trooper") immediately ordered Mr. Gonsalves out of the back seat of a lawfully stopped taxicab. The Trooper interrogated Mr. Gonsalves, searched the back seat of the taxicab, and seized a bag of cocaine. The Superior Court granted Mr. Gonsalves' motion to suppress both the cocaine and his statements due to the Trooper's failure to provide an objective basis for his exit order. Relying on Article 14, the Appeals Court affirmed the suppression order and rejected the Commonwealth's request that the SJC follow the Mimms and Wilson progeny. Justice Greaney acknowledged the SJC's practice of granting greater protections to occupants of vehicles under Article 14 than are recognized under the Fourth Amendment. In his majority opinion, Justice Greaney acknowledged that "[t]he nature of federalism requires that State Supreme

50 Santana, 420 Mass. at 212-13, 649 N.E.2d at 722.
51 Id. (explaining officer's right to order occupants from vehicle so long as objective suspicions exist to determine justification of exit orders).
52 Id.
53 376 Mass. at 505, 381 N.E.2d at 144.
54 Id. (accepting Mimms principle but further requiring articulable reasonable suspicion for exit order).
56 Id. at 663, 711 N.E.2d at 112 (acknowledging state constitution's power to circumvent Fourth Amendment argument).
57 Id. at 659, 711 N.E.2d at 109.
58 Id.
59 Id.
61 See Gonsalves, 429 Mass. at 662, 711 N.E.2d at 111 (affirming court's departure from Supreme Court's view of search and seizure protections).
Courts and State Constitutions be strong and independent repositories of authority in order to protect the rights of their citizens. In *Gonsalves*, the SJC outlined an objective test for determining a justifiable exit order as, "whether a reasonably prudent man in the policeman's position would be warranted in the belief that the safety of the police or that of other persons was in danger." The SJC concluded that Article 14 protects Massachusetts motorists by requiring police officers to articulate a reasonable suspicion of danger to safety in order to justify an exit order. This requirement emphasizes the Massachusetts position that an intrusion into an automobile occupant's privacy is significant, and therefore requires judicial protection. The SJC supports a passenger's reasonable expectation of a higher sense of privacy than a driver's. The SJC contemplated the inherent dangers police officers face during routine traffic stops, but stressed the need for specific, articulable facts indicating that danger exists to prevent random, disparate treatment of motorists.

The reasonable suspicion standard does not create a high threshold of factual information. The SJC acknowledged that the objective test is based on professional experience, not just ordinary reasonableness. Furthermore, reasonable suspicion must relate to an officer's heightened awareness of danger to safety, not just potential criminal activity.

The SJC found reasonable suspicion to exist in *Commonwealth v.*

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62 *Id.* at 668, 711 N.E. 2d at 115 (explaining ability of states to provide greater privacy protection).


64 *Id.* at 662-3, 711 N.E.2d at 111-12 (repeating Article Fourteen principles expressed in Massachusetts case law). But Cf. *Loughlin*, 385 Mass. at 62. (stating proper exit orders exist without reasonable suspicion when occur before justified threshold inquiry).

65 See *Gonsalves*, 429 Mass. at 663, 711 N.E.2d at 112 (balancing private interests of personal autonomy with safety needs of police and public).

66 See id. at 663, 711 N.E.2d at 112-13; *Torres*, 424 Mass. at 157, 674 N.E.2d at 641 (reasoning passengers harbor more privacy concerns because of lack of participation in motor vehicle operation).

67 See *Gonsalves*, 429 Mass. at 663-664, 711 N.E.2d at 112-13 (addressing social concerns of police abuse based on race, gender, and age).

68 See *Gonsalves*, 429 Mass. at 664, 711 N.E.2d at 113 (declaring need for more than a hunch).

69 See id. at 661, 711 N.E.2d at 110 (stating justified exit order exists if "reasonably prudent man in policeman's position" would believe threat of safety).

70 See id. at 662-663, 711 N.E.2d at 112-13 (concluding Article Fourteen requires reasonable belief of danger to officer or public safety).
Almeida,71 where a driver, driving late at night in a known high crime area, failed to supply an officer with the vehicle registration, and cautiously opened the glove compartment only enough to retrieve his wallet.72 Likewise, the court found reasonable suspicion for an exit order existed in Commonwealth v. Johnson73 when, after a high-speed chase, the officer noticed the driver place something in his pants.74 The SJC also found reasonable suspicion where a passenger reached between the seats after the driver tried to evade police.75

Although applying federal constitutional law, the court in United States v. Woodrum76 explained the necessary requirements for reasonable suspicion.77 In Woodrum, the defendant slouched in the back seat, kept his hand moving inside his jacket, and then placed his other hand inside his jacket.78 After the appellant refused the officer’s request to remove his hands, the officers ordered him out of the vehicle.79 The court found these objective articulations sufficient to raise reasonable suspicion for a legitimate exit order despite recognizing that Mimms permits officers to order passengers out of a vehicle absent reasonable suspicion.80

Massachusetts courts concur that an officer’s “hunch” fails to adequately satisfy the reasonable suspicion threshold.81 In Commonwealth v. Torres,82 the court found detentions based upon “hunches” arbitrary and inconsistent with Article 14.83 Although the passenger in Torres exited the

72 Id.at 271-72, 366 N.E.2d at 760.
74 Id.
76 202 F. 3d 1 (2000) (holding taxi driver’s consent legitimimized the stop).
77 Id. at 6-8 (finding reasonable suspicion to justify exit order).
78 Id. at 13 (noting objective facts required to show reasonable suspicion).
79 Id. (stating justification for officer’s exit order).
80 Id. (finding objective reasonable suspicion for officer’s exit order).
81 See Gonsalves, 429 Mass. at 664, 711 N.E.2d at 112-113 (announcing minimum requirement for objective reasonable suspicion to justify exit orders); see also Commonwealth v. Kimball, 37 Mass. App. Ct. 604, 605, 641 N.E.2d 1066 (1994) (holding no reasonable suspicion existed to justify further interrogation or vehicle protective search). The court found that the officer stopped the defendant’s vehicle because of a hunch that the “disreputable looking jalopy” was stolen. Id. at 604, 641 N.E.2d at 1066.
82 424 Mass. at 159 (finding lack of objective reasonable suspicion).
83 Torres, 424 Mass. at 160, 674 N.E.2d at 644 (explaining failure of multitude of non-offenses to reach reasonable suspicion threshold); see also Commonwealth v. Silva, 366 Mass. 403, 406, 318 N.E.2d 895, 898 (1974) (applying objective test to officer’s rea-
vehicle on his own accord, the SJC found his subsequent detention unlawful because exiting the vehicle and a slight delay in responding to the officer did not amount to reasonable suspicion. Accordingly, these cases reinforce the present rule that an officer must justify his exit order with articulable reasonable suspicions that danger to the officer's safety exists. Once the suspicion of danger subsides, any justification for further detention disappears. If no justification exists for further detention, the motorists should be permitted to leave.

IV. HISTORICAL COMPARISON OF THE FOURTH AMENDMENT AND ARTICLE FOURTEEN

The Massachusetts Declaration of Rights, enacted seven years before the enactment of the Federal Constitution, was first in providing protections for citizens from unreasonable searches and seizures. The British general writs of assistance, which permitted the Crown's officers to search and seize at their absolute and unlimited discretion, provoked an anti-British response in Massachusetts. James Otis argued before the
Superior Court of the Massachusetts Bay Colony against the issuances of general writs of assistance in 1761.90 Otis' argument, where he is said to have condemned the writs as "the worst instrument of arbitrary power...a power that places the liberty of every man in the hands of every petty officer," is generally considered the earliest opposition to the Crown.91 Article 14 was later enacted in large part to protect Massachusetts' citizens from abuse of these writs of assistance.92

In rejecting the Commonwealth's argument in Gonsalves, that the SJC must follow the Supreme Court's interpretation of the Fourth Amendment, Justice Greaney explained that Article 14 provided a model for the drafters of the Fourth Amendment.93 Although Massachusetts maintained Article 14, the Fourth Amendment's protections extended to the states in 1949, through the Fourteenth Amendment.94 Thus, until recently, state courts primarily relied upon Federal Constitutional interpretations when deliberating privacy matters.95

Chief Justice Herbert P. Wilkins of the SJC noted that "the [United States] Supreme Court describ[ed] a common base from which [states] can..."
go up. In other words, the provisions of state constitutions guaranteeing liberties must therefore not provide fewer protections than those provided by the Federal Constitution. A state court’s authority to enforce rights guaranteed by the state constitution requires the justices to interpret the provisions according to their views. State court reliance upon state constitutions in protecting civil liberties does not invalidate the Supreme Court’s interpretation of corresponding Federal Constitutional rights. In fact, state courts should faithfully deliberate federal court constitutional decisions and, if opposed, raise state law as an alternative source of protection. The present concern is not whether to use state constitutions but how to use them. A state’s focus on state constitutional provisions may be the result of concerns about the Supreme Court’s continuing support for broad police power. As one commentator alleges, “the Supreme Court’s Fourth Amendment jurisprudence, as tattered and full of holes as a beggar’s winter coat, calls into question whether the remaining protection it offers to citizens against government searches and seizures has any value.”

96 See Wilkins, supra note 93, at 1213 (discussing changes in legal profession and substantive law).
97 See Brennan, supra note 94, at 491 (observing increase use of state constitutional provisions by state courts as source of additional protection); Wilkins, supra note 93, at 1213 (indicating Federal Constitution only affords minimal protection); see also Gonsalves, 429 Mass. at 668, 711 N.E.2d at 115 (offering state constitution as source for greater protection).
98 See Gonsalves, 429 Mass. at 668, 711 Mass. N.E.2d at 115 (explaining need for justices to interpret state constitution not solely in-line with United States Supreme Court); see Brennan supra note 94, at 491 (emphasizing importance of state courts use of state constitutions as source of individual liberties).
99 See Wilkins, supra note 93, at 1213 (Summer 1997) (explaining states reliance on state law not contrary to Supreme Court); Brennan, supra note 94, at 501-02 (enhancing notion that Supreme Court decisions not dispositive of individual rights).
100 See Brennan, supra note 94, at 491; see also Wilkins, supra note 93, at 1213.
101 See Linde, supra note 95, at 166 (discussing state courts returning to state constitutions to resolve liberty issues).
102 See Harris, supra note 4, at 556 (criticizing the Supreme Courts failure to protect citizens from unreasonable searches and seizures); Brennan, supra note 94, at 495 (considering reasons for states reemphasis on state constitutions).
103 See Harris, supra note 4, at 556 (asserting no protection available to motorist in Fourth Amendment).
V. DRIVING UNDER THE LAW

As Fourth Amendment protections diminish, an officer's abuse of his discretionary authority evokes real and enduring concerns for motorists and, indeed, all citizens. In fact, Justice Brennan, concerned with the path of the Court’s Fourth Amendment jurisprudence, described its balancing of interests as done with “the judicial thumb...planted firmly on the law enforcement side of the scales.” Traffic stops based upon race occur frequently and arbitrarily. Racial profiling occurs when police use race as a negative indicator that triggers an officer's suspicion. The general public disapproves of racial profiling and further, they believe it is widespread. An ACLU report found that blacks drove seventy-three percent of cars stopped and searched on Maryland's Interstate 95, despite the fact that blacks only comprise fourteen percent of those driving in that area. Police found no illegal contraband in seventy percent of those vehicles searched. Similarly, on a stretch of Interstate 95 in Florida, blacks make up less than ten percent of drivers but seventy percent of persons stopped and searched.

The pervasiveness of automobile ownership in American culture increases the potential for police-citizen contact. Increased contact results in de facto decreased personal privacy. The motorist becomes the target of unfettered police authority, despite the legitimate governmental

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108 Id.
110 Id.
111 See Harris, supra note 106, at 561-63.
112 See Harris, supra note 4 at 576-579.
113 See id.
interest in a traffic stop ending with the completion of a citation. The state's safety interests extend to unnecessary or improper police encounters with citizens.

Many automobile stops are executed for reasons beyond simple traffic law enforcement. In fact, police acknowledge the potential revelation of a more serious crime in every stop. However, in those circumstances where vehicles are stopped under the pretext of a traffic violation, the traffic stop objective changes from routine traffic violation enforcement to drug and violent crime investigations. In an attempt to cure these pretextual stops, the petitioners in Whren v. United States unsuccessfully sought to have the Court adopt a Fourth Amendment test of whether a police officer, acting reasonably, would have made the stop for the reasons given in the particular circumstance.

The reasonable suspicion requirement demands that officers provide objective articulable reasons for exit orders. "Insisting that police officers explain their decision to single out a particular passenger for questioning would help prevent their reliance on impermissible criteria such as race." However, when the Supreme Court granted officers non-reviewable authority to order drivers and passengers from their vehicles, the Court removed another protective procedure in the war against racial profiling.

V. CONCLUSION

While cities across the country conduct studies and state legis-

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114 See id.; Traffic Stops, supra note 104, at 302 (explaining extent of police authority during routine traffic stops).
115 See Traffic Stops, supra note 104, at 302.
116 See Harris, supra note 4, at 567; Traffic Stops, supra note 104, at 302.
117 See id.
118 See id.
119 517 U.S. 806 (1996)
120 Id. at 809 (holding subjective intent of officers actions inapplicable to traffic stops).
121 See Gonsalves, 429 Mass. at 661, 711 N.E.2d at 110 (stating justified exit order exists if "reasonably prudent man in policeman's position" would believe threat of safety).
123 See Mimms, 434 U.S. at 333-34; Wilson, 519 U.S. at 410; Harris, supra note 4, at 582-83; Traffic Stops, supra note 104, at 302.
turers propose bills regarding the use of racial profiling, Massachusetts’ courts have maintained a search and seizure procedure that provides a small but effective safeguard against biased and arbitrary police power. The pervasive use of the automobile in American culture results in a figurative collision course between a majority of the citizens and the police. The Supreme Court has continued its trend toward greater police discretion and less privacy protection for motorists. Massachusetts, however, continues to lead a growing number of states that are unwilling to follow the Supreme Court’s interpretation of the Fourth Amendment, and are therefore using their own constitutional provisions as an alternate source of protection for motorists. The ultimate benefit of this non-reviewable path is not just broader protection from unreasonable searches and seizures, but also protection from race based crime prevention tactics. The SJC should be commended for its leadership in search and seizure jurisprudence and the protection of citizens’ personal autonomy. Massachusetts should be regarded as a model for other states because of its efforts to utilize the state constitution to provide citizens with greater privacy protection in their vehicle.

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