

Recent Case Report

People v. Brendlin

(2006) 38 Cal.4th 1107

ISSUE

When officers make a traffic stop, is everyone in the car automatically detained, or just the driver?

FACTS

A Sutter County sheriff's deputy made a traffic stop on a vehicle for expired registration tabs. Before making the stop, however, he was notified by his dispatcher that a registration application for the vehicle had been filed and was being processed. He also noticed a temporary registration sticker on the rear window.

While speaking with the driver, the deputy recognized the passenger, Brendlin, as a possible parolee-at-large. When he confirmed it, he ordered him out of the car and arrested him. During a search of the vehicle incident to the arrest, the deputy found items used in the manufacture of methamphetamine. When Brendlin's motion to suppress the evidence was denied, he pled guilty to manufacturing the drug.

DISCUSSION

Brendlin contended the evidence should have been suppressed because the deputy lacked grounds to stop the vehicle. Prosecutors conceded the stop was unlawful because the deputy had no reason to believe the temporary operating permit was invalid. Nevertheless, they argued that the evidence could not be suppressed because Brendlin was merely a passenger in the vehicle and was, therefore, not automatically detained by virtue of the stop.

Brendlin urged the court to adopt a rule that, whenever officers make a traffic stop, *everyone* in the vehicle is automatically seized from the moment the driver starts pulling over. The court declined.

It is settled that a person is seized only if a reasonable person under the circumstances would have believed he was not free to terminate the encounter.¹ Furthermore, in making this determination the circumstances are viewed through the eyes of a reasonable person in the suspect's position who is *innocent* of the crime under investigation.² This is significant because a passenger in a vehicle that, from all outward

¹ See *Florida v. Bostick* (1991) 501 U.S. 429, 436; *Kaupp v. Texas* (2003) 538 U.S. 626, 629 [seizure occurs when "the police conduct would have communicated to a reasonable person that he was not at liberty to ignore the police presence and go about his business."]; *In re Manuel G.* (1997) 16 Cal.4th 805, 821.

² See *United States v. Drayton* (2002) 536 U.S. 194, 202 ["The reasonable person test is objective and presupposes an *innocent* person."]; *Florida v. Bostick* (1991) 501 U.S. 429, 438 ["[T]he

appearances, is being stopped for a traffic violation would have no reason to believe that he, too, was being detained.³ As the Court of Appeal previously observed:

When the siren and the light on top of a police car are turned on, it is the driver's attention the officer is hoping to capture—not the passenger's. The passenger has typically done nothing wrong and has no power to respond to the police directive. His or her presence in the car is merely fortuitous. The driver is the one the officer is seeking to restrain, and the driver is the one who, by stopping the car, submits to the officer's assertion of authority. The passenger simply has no say in the matter.⁴

Accordingly, the court ruled that Brendlin was not seized until he was ordered out of the car. Said the court, "We find that the passenger, whose progress is momentarily stopped as a practical matter, is not seized as a constitutional matter in the absence of additional circumstances that would indicate to a reasonable person that he or she was the subject of the peace officer's investigation or show of authority."

Brendlin's conviction was affirmed.

COMMENT

It is important for officers to keep in mind that because the passenger is not automatically detained as the result of the stop, he must be treated accordingly, at least until they develop grounds to detain or arrest him. POV

'reasonable person' test presupposes an *innocent* person."]; *People v. Cartwright* (1999) 72 Cal.App.4th 1362, 1373; *In re Kemonte H.* (1990) 223 Cal.App.3d 1507, 1512.

³ See *People v. Grant* (1990) 217 Cal.App.3d 1451, 1460 [the stop of the passenger is "merely incident to his being a passenger in a lawfully stopped vehicle."]; *People v. Fisher* (1995) 38 Cal.App.4th 338, 343-4 ["[The passenger] had no indication that the red light on the police car was directed at him, rather than at the driver of the car for speeding."].

⁴ *People v. Cartwright* (1999) 72 Cal.App.4th 1362, 1367.