

Recent Case Report

Brendlin v. California

(June 18, 2007) __ U.S. __ [2007 WL 1730143]

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 decided to stop a vehicle for expired registration tabs. But before making the stop, he was notified by his dispatcher that a registration application for the vehicle was being processed. He also saw a current temporary registration permit on the rear window.

Nevertheless, he stopped the car and, while speaking with the driver, he recognized the passenger, Brendlin, as a possible parolee-at-large. When he confirmed it, he ordered Brendlin 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 since the deputy had no reason to believe the temporary operating permit was invalid. Still, they argued that this illegality should not result in the suppression of evidence against Brendlin because, as merely a passenger in the vehicle, was not detained.

The California Supreme Court had agreed with this analysis, ruling that passengers in stopped vehicles are not automatically detained if it reasonably appeared that it was nothing more than a traffic stop. Brendlin appealed this ruling to the United States Supreme Court which, in a unanimous decision, ruled that passengers in stopped vehicles *are* necessarily detained as the result of the stop.

When officers make a car stop that, from all outward appearances, appears to be a traffic stop, the passengers would probably feel that it is only the driver who is in trouble. Thus, based on this circumstance alone, the passengers would not feel that they were being detained.

But the United States Supreme Court noted that there is another circumstance that must be considered. Because of officer-safety concerns, officers must be allowed to exercise "unquestioned police command" over *all* the occupants for the duration of the stop. For example, officers may order the passengers to stay in the car, step outside, sit on the curb, or stand at a certain place. As the Court pointed out, "[U]nquestioned police

command [is] at odds with any notion that a passenger would feel free to leave, or to terminate the personal encounter any other way, without advance permission.”

In other words, said the Court, a passenger such as Brendlin “will expect to be subject to some scrutiny, and his attempt to leave the scene would be so obviously likely to prompt an objection from the officer that [he would not] feel free to leave in the first place.” For this reason, the Court ruled that the passengers in the vehicle, as well as the driver, are automatically detained when the vehicle is stopped for a traffic violation.

Accordingly, the evidence against Brendlin was suppressed because the stop was, as noted, unlawful.¹

COMMENT

Three things should be noted about this decision. First, although the Court ruled that the passengers in stopped vehicles are automatically seized, it did not explain the nature of the seizure that results. Presumably it is a lawful seizure. Thus, these types of seizures would probably be deemed “special needs” detentions, which would mean that, in dealing with passengers, officers may do those things that are reasonably necessary to ensure their safety or to carry out the purpose of the stop.²

Second, the Court had previously ruled that, in determining whether a person was detained, the test is whether a reasonable *innocent* person in his position would have believed he was free to terminate the encounter.³ At first glance, it might seem that *Brendlin* undermined this principle because it had ruled that Brendlin was detained even though he was an innocent bystander as to the Vehicle Code violation and was therefore of no investigatory interest to the officer. But the reason he was detained was not that he was the target of the officer’s investigation. He was detained because, as the passenger in a stopped vehicle, he was automatically subject to the officer’s complete control due to the overriding officer-safety concerns that exist whenever a car is stopped.⁴ Consequently,

¹ **NOTE:** The Court added that its ruling would not apply to passengers in taxicabs and busses because “the relationship between driver and passenger is not the same in a common carrier as it is in a private vehicle.”

² See *Illinois v. McArthur* (2001) 531 U.S. 326, 330 [“When faced with special law enforcement needs . . . the Court has found that certain general, or individual circumstances may render warrantless search or seizure reasonable.”]; *Indianapolis v. Edmond* (2000) 531 U.S. 32, 37 [“[W]e have upheld certain regimes of suspicionless searches where the program was designed to serve special needs, beyond the normal need for law enforcement.”]; *Michigan v. Summers* (1981) 452 U.S. 692, 700 [“limited intrusions” not supported by probable cause “may be justified by special law enforcement interests”].

³ 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 ‘reasonable person’ test presupposes an *innocent* person.”].

⁴ See *Maryland v. Wilson* (1997) 519 U.S. 408, 413 [“[T]he same weighty interest in officer safety is present regardless of whether the occupant of the stopped car is a driver or passenger. Regrettably, traffic stops may be dangerous encounters . . . [T]he fact that there is more than one occupant of the vehicle increases the possible sources of harm to the officer.”]; *U.S. v. Brown* (7th Cir. 1999) 188 F.3d 860, 864 [“[T]he confrontation between a police officer and a citizen stopped for a traffic violation can be fraught with danger”]; *U.S. v. Holt* (10th Cir. 2001) 264 F.3d 1215, 1223 [“An officer in today’s reality has an objective, reasonable basis to fear for his or her life every time a motorist is stopped. Every traffic stop, after all, is a confrontation.”]; *U.S. v. Rice* (10th Cir. 2007) __ F.3d __ [2007 WL 1180421] [“[D]uring traffic stops, we have consistently

even an “innocent” passenger would have known that he was under the officer’s control—and was therefore detained.

Third, the Court’s ruling should prove helpful to officers and prosecutors because the Court made it clear that officers who have stopped a vehicle for even a minor traffic violation have significant latitude in determining how to ensure their safety. It is noteworthy that if the Court had ruled that passengers were not automatically detained, officers might not have been permitted to control the passengers’ movements after the car had stopped unless they had some specific reason to believe the passenger constituted a threat.

For example, in a case decided a few weeks before *Brendlin*, *People v. Vibanco*,⁵ the Court of Appeal had to decide whether San Jose police officers, who had stopped a car for a minor traffic violation, could lawfully order the passengers to exit and sit on the curb. The court ruled they could, but its ruling was based on additional circumstances that indicated the passengers posed a threat; e.g., a backseat passenger started to exit the car as officers approached, while another backseat passenger was “reaching in underneath her shirt into her waistband area.” Thus, in discussing the justification for the officers’ actions, the court noted that one of the officers had testified he believed these precautions were necessary “to stabilize the situation because there were too many things going on at one time, and he was afraid the officers were starting to lost control of the car stop.”

Under *Brendlin*, however, the officers may take these precautions as a matter of routine. As the Court observed, “[A] sensible person would not expect a police officer to allow [the passengers] to come and go freely.” POV

recognized that the risk to officer safety is heightened by the confrontational nature of the encounter”].

⁵ (2007) __ Cal.App.4th __ [2007 WL 1244326].