

People v. Linn

(2015) 241 Cal.App.4th 46

Issue

During a traffic stop based on the actions of a passenger, was the driver automatically detained because the officer had taken temporary possession of the driver's license she had handed to him?

Facts

A Napa police motorcycle officer was on patrol when he noticed that the passenger in a car passing by was holding a lit cigarette out the window. Just then, he saw the passenger flick the cigarette, causing some ashes to fly out. Thinking this constituted a violation of the Vehicle Code,¹ the officer pulled behind the car intending to make a traffic stop. But before he could turn on his red lights, the driver, Nicole Linn, pulled into a parking space.

The officer stopped his motorcycle in the parking space next to Linn's and, after she and the passenger had exited, told them he wanted to talk to them, and he explained why. At some point during this discussion, the officer commanded Linn to put down the cigarette and a can of soda pop she was holding.² She complied. The officer also asked Linn and her passenger to hand him their driver's licenses. They complied, and the officer used the information on the licenses to run warrant checks. Apparently when the records check came back negative, Linn then started to walk away, but the officer told her to "stay there." Linn complied. The officer testified that, at about this time, he detected the odor of alcohol on Linn's breath. When Linn denied that she had been drinking, the officer checked her horizontal gaze nystagmus and administered a breath test. The results of the test were not included in the court's opinion. All we know is that Linn was arrested and charged with DUI.

Before trial, Linn filed a motion to suppress, claiming that she was illegally detained by the time the officer smelled the odor of alcohol; and, therefore, the test results and the officer's observations should be suppressed. The trial court granted the motion based on the 1995 case of *People v. Castaneda*³ in which a panel of the Court of Appeal ruled that a person who is contacted by an officer is automatically detained if the officer takes hold of the person's driver's license, even if the person voluntarily handed it to the officer. Said the court, "Although Castaneda was not restrained by the officer asking for identification, once Castaneda complied with his request and submitted his identification card to the officers, a reasonable person would not have felt free to leave." Although the trial court granted Linn's motion to suppress, the trial court's appellate division overturned because it disagreed with the ruling in *Castaneda*. Linn appealed.

¹ See Veh. Code § 23111. **NOTE:** Although the passenger's actions might not have constituted a violation of the Vehicle Code (because an ash is by definition, not burning) the defendant did not raise this issue on appeal.

² **NOTE:** Although the officer testified that he did not "command" Linn to do these things, the trial court concluded that he had. As discussed below, this did not affect the outcome.

³ (1995) 35 Cal.App.4th 1222.

Discussion

The central issue on appeal was whether Linn had been detained at the point the officer smelled alcohol on her breath. If so, and if the officer lacked grounds to detain her, the court should have suppressed all of his observations and other evidence because it would have been the fruit of an illegal detention.

A basic rule of detentions is that an encounter between an officer and a civilian encounter ordinarily becomes a detention if the officer's words or actions reasonably indicated that the person was not free to decline the officer's request or otherwise terminate the encounter.⁴ Although certain circumstances will, in and of themselves, result in a detention (e.g., an encounter at gunpoint), in most cases the determination must be based on the totality of circumstances.⁵

As noted, however, the trial court ruled that a single circumstance—the officer's act of taking temporary possession of Linn's license—had transformed the encounter into a detention. For this reason alone, it was apparent that *Castaneda* was wrongly decided because the court failed to consider the totality of circumstances. But it was also contrary to common sense. After all, it makes no sense to say that an officer does not need legal grounds to ask to see a person's driver's license, but that he needs reasonable suspicion to actually take hold of it.

Consequently, the court in *Linn* ruled, as did two previous appellate panels, that the above-quoted language in *Castaneda* was contrary to the "totality of the circumstances" rule.⁶ Said the court, "[A]n officer's taking of a voluntary offered identification card, while it may be considered as a factor in evaluating whether a detention has occurred ... is not alone definitive in resolving that question."

The issue, then, was whether the totality of circumstances would have caused Linn to reasonably believe—*before* the officer smelled the odor of alcohol on her breath—that she was not free to leave. The court concluded she reasonably believed she was not free to leave at that point mainly because (1) the officer seemed to have focused his investigation on her, rather than the passenger, (2) the officer had not only taken hold of Linn's driver's license, but had held on to it while running a warrant check, and especially (3) the officer commanded that Linn put out her cigarette and put down her can of soda.

Said the court, "Whether characterized as requests or commands, these directives represent a significant exercise of coercive authority."⁷

Consequently, the court ruled that Linn had been illegally detained when the officer smelled alcohol on her breath, and that Linn's motion to suppress should have been granted.

⁴ See *Florida v. Bostick* (1991) 501 U.S. 429, 436; *Brendlin v. California* (2007) 551 U.S. 249, 256-57; *California v. Hodari D.* (1991) 499 U.S. 621, 626.

⁵ See *Florida v. Bostick* (1991) 501 U.S. 429, 437-38.

⁶ *People v. Leath* (2013) 217 Cal.App.4th 344, 353 ["The right to ask an individual for identification in the absence of probable cause is meaningless if the officer needs probable cause to accept the individual's proof of identification."]; *People v. Terrell* (1999) 69 Cal.App.4th 1246, 1254. Also see *U.S. v. Tavalacci* (D.C. Cir 1990) 895 F.2d 1423, 1425 ["A seizure is not established by a mere request for identification, nor by the initial holding and review of such documentation."].

⁷ **NOTE:** Because the testimony of the parties was conflicting on the issue, the Court of Appeal disregarded the allegation that the officer had commanded Linn to "stay there."

Comment

Although the court in *Linn* did not address the issue, the Supreme Court in *Brendlin v. California*⁸ ruled that, when an officer makes a traffic stop, all of the occupants of the vehicle are automatically—and legally—detained. This is because the officer has a right to issue commands to the occupants in order to control the situation. As the Court in *Brendlin* pointed out, “An officer who orders one particular car to pull over acts with an implicit claim of right based on fault of some sort, and a sensible person would not expect a police officer to allow people to come and go freely from the physical focal point of an investigation into faulty behavior or wrongdoing.”

This means that if the officer in *Linn* had grounds to stop Linn’s car (which the defense did not challenge) she would have been *lawfully* detained, at least at the outset. Even so, it is likely the evidence would have been suppressed because, by the time the officer smelled alcohol, his actions were apparently in excess of those that were reasonably necessary to maintain control. POV

Date posted: November 12, 2015

⁸ (2007) 551 U.S. 249 Also see *Arizona v. Johnson* (2009) 555 U.S. 323, 332 [“a passenger is seized, just as the driver is, from the moment a car stopped by the police comes to a halt on the side of the road”]; *U.S. v. Jones* (6th Cir. 2009) 562 F.3d 768, 774 [“*Brendlin* makes it clear that, generally, when a police officer pulls over a vehicle during a traffic stop, the officer seizes everyone in the vehicle”].