

U.S. v. Landeros

(9th Cir. 2019) 913 F.3d 862

Issue

While conducting a traffic stop, may officers demand that passengers identify themselves?

Facts

In the early morning hours, an officer in Arizona stopped a car for speeding. In addition to the driver, there were two young women in the back seat and a man on the front passenger seat. The man was Alfredo Landeros. According to the officer, the women “looked younger” than 18 years old. This circumstance was undisputed.¹ While speaking with the driver, the officer detected the odor of alcohol from the passenger compartment. He then asked Landeros to identify himself because, as he later testified, it was “standard” procedure to identify the passengers in a vehicle that had been stopped for a traffic violation.

Landeros refused to identify himself, saying that he “was not required to do so.” The officer called for backup and, when other officers arrived, he “commanded Landeros to exit the car because he was not being ‘compliant.’” Landeros eventually exited, at which point the officer saw “pocketknives, a machete, and two open beer bottles on the floorboard in front of Landeros. The officer then arrested Landeros pursuant to an Arizona statute that, like California’s Vehicle Code,² prohibits open containers of alcohol in vehicles.

During a consent search of Landeros’s pockets, the officer found six bullets. As the result, Landeros was charged in federal court with possession of ammunition by a convicted felon. When his motion to suppress the ammunition was denied, he pled guilty.

Discussion

As a general rule, officers who are conducting traffic stops may do only those things that are reasonably necessary to carry out their duties.³ Citing this rule, Landeros argued that it is not reasonably necessary for officers identify the passengers in cars they have stopped for traffic violations. The court agreed, saying, “A demand for a passenger’s identification is not part of the mission of the traffic stop” because it “will ordinarily have no relation to a driver’s safe operation of a vehicle.”

The court acknowledged, however, that passengers may be required to identify themselves if officers can articulate a reason to believe they were committing or had committed a crime, or if the intrusion was necessary for officer safety. But, according to the court, neither of these circumstances existed. Consequently, it ruled that, by asking Landeros to identify himself, the officer had unduly prolonged the stop and, therefore,

¹ NOTE: The officer later learned that one of the women was 19-years old and the other was 21. Their actual age was, however, irrelevant because the legality of an officer’s actions depends on whether it were reasonable—not true.

² See Veh. Code § § 23222(a), 23223.

³ See *Rodriguez v. United States* (2015) __ U.S. __ [135 S.Ct. 1609, 1616]; *U.S. v. Gorman* (9th Cir. 2017) 859 F3 706, 715; *Gallegos v. Los Angeles* (9th Cir. 2002) 308 F3 987, 991.

the ammunition found in Landeros's pocket was the fruit of an illegal detention and should have been suppressed.⁴

Comment

While we do not question the court's conclusion that officers cannot *routinely* demand ID from the passengers in vehicles stopped for traffic violations, the officer in this case had good reason to believe that the women were underage and that Landeros was furnishing alcohol to them.⁵ After all, they were riding around in a vehicle smelling of alcohol in the early morning hours with two adult men. To put it another way, any parent of an underage girl who learned that an officer had not bothered to investigate her safety under such circumstances would be outraged. And so would the officer's chief, the news media, and the general public. The failure of the court to address this issue was inexcusable.

Fortunately, a reasoned analysis of this issue is found in another recent case, *U.S. v. Clark*,⁶ in which the First Circuit ruled that an officer's request that a passenger identify himself was lawful because the inquiry extended the traffic stop for only about a minute, and that such a "negligibly burdensome precaution" was "justified by the unique safety threat posed by traffic stops." As we discussed in the Fall 2018 edition, the courts are having a terrible time trying to resolve this issue because the Supreme Court has announced three different and inconsistent rules that arguably apply. POV

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⁴ But also see *U.S. v. Clark* (1st Cir. 2018) 879 F.3d 1, 4 ["Although the Supreme Court has not explicitly held that an inquiry into a passenger's identity is permissible, its precedent inevitably leads to that conclusion." Citations omitted.].

⁵ **NOTE:** The court attempted to sidestep this issue by saying at the end of its opinion that, "[a]s explained above," the officer had "no reasonable suspicion that Landeros had committed an offense." The opinion contained no such explanation.

⁶ (1st Cir. 2019) 879 F.3d 1.