

Recent Case Report

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Arizona v. Johnson

(2008) __ U.S. __ [2009 WL 160434]

Issue

During a traffic stop, if officers have grounds to pat search a passenger, are they prohibited from doing so because they lacked independent grounds to detain him?

Facts

At about 9 P.M., three gang task force officers in Tucson, Arizona stopped a vehicle for suspended registration. There were three men in the vehicle. One of the officers ordered the driver to step out; the other two officers spoke with the passengers. The officer who spoke with the back-seat passenger, Johnson, wanted to talk to him about gang activity, so she asked him to step outside.

As he did so, she decided to pat search him because there were several things that, in combination, caused her to suspect “he might have a weapon on him.” Those circumstances were as follows: (1) as she approached the car, Johnson “looked back and kept his eyes on the officers”; (2) Johnson was carrying a police scanner which was “cause for concern” because it was an indication that he was “going to be involved in some kind of criminal activity” or was “going to try to evade the police by listening to the scanner”; (3) Johnson said he lived in Eloy, Arizona, which was “home” to a Crips gang, and he was wearing a blue bandana, an article often worn by Crips’ members; and, (4) Johnson said he had been released from prison about a year earlier after serving time for burglary.

The officer’s concern was confirmed when, during the pat search, she felt a handgun at Johnson’s waist. Johnson was subsequently found guilty of possession of a firearm by a convicted felon. But the Arizona Court of Appeals reversed the conviction, ruling the pat search of Johnson was unlawful because the officer did not have independent grounds to detain him. The State of Arizona appealed to the United States Supreme Court.

Discussion

It is basic Fourth Amendment law that officers may pat search a detainee who is reasonably believed to be armed or dangerous.¹ It would appear, therefore, that the pat

¹ See *Terry v. Ohio* (1968) 392 U.S. 1, 27-28. **NOTE:** Although the courts sometimes say that officers must have reasonably believed that the detainee was armed *and* dangerous, either is sufficient. This is because it is apparent that a suspect who is armed with a weapon is necessarily “dangerous” to any officer who is detaining him, even if he was cooperative and exhibited no hostility. Similarly, a pat search is justified when officers reasonably believe that a detainee constituted an immediate threat, even if there was no reason to believe he was armed. See *Michigan v. Long* (1983) 463 U.S. 1032, 1049 [“Our past cases indicate that the protection of police and others can justify protective searches when police have a reasonable belief that the

search of Johnson was lawful because, (1) he was being lawfully detained at the time because the Supreme Court recently ruled in *Brendlin v. California*² that all passengers in a lawfully-stopped vehicle are automatically detained pending completion of the stop; and (2) based on Johnson's nervousness, scanner, apparent membership in a violent street gang, and at least one felony conviction, it would appear that the officer reasonably believed that he was armed or dangerous.

But the Arizona Court of Appeals had ruled that a passenger-detention under *Brendlin* is somehow transformed into a consensual encounter when an officer questions the passenger about matters unrelated to the purpose of the stop. And thus the court thought that, because Johnson was no longer being detained when the search occurred, the gun should have been suppressed.

In a unanimous opinion, the Supreme Court disagreed with the court's analysis of the situation. It ruled that a passenger in a stopped car remains detained—lawfully detained—until the stop is terminated. It is, therefore, immaterial that officers briefly questioned the passenger about matters unrelated to traffic infraction. Said the Court:

An officer's inquiries into matters unrelated to the justification for the traffic stop, this Court has made plain, do not convert the encounter into something other than a lawful seizure, so long as those inquiries do not measurably extend the duration of the stop.

Consequently, the Court ruled that, because a passenger in a stopped car remains lawfully detained until the stop is terminated, officers may pat search the passenger if they reasonably believe he is armed or dangerous. The Court did not, however, decide whether there were grounds to pat search Johnson. Instead, it remanded the case back to Arizona for that purpose. POV

suspect poses a danger"]; *Pennsylvania v. Mimms* (1977) 434 U.S. 106, 112 ["The bulge in the jacket permitted the officer to conclude that Mimms was armed *and thus* posed a serious and present danger to the safety of the officer." Emphasis added]; *People v. Superior Court (Brown)* (1980) 111 Cal.App.3d 948, 956 ["[A] pat-down search for weapons may be made predicated on specific facts and circumstances giving the officer reasonable grounds to believe that defendant is armed *or* on other factors creating a potential for danger to the officers." Emphasis added]; *US v. Bell* (6th Cir. 1985) 762 F.2d 495, 500, fn.7 ["The focus of judicial inquiry is whether the officer reasonably perceived the subject of a frisk as potentially dangerous, not whether he had an indication that the defendant was in fact armed."].

² (2007) 551 U.S. 249.