

# **THIRD DEGREE COMMUNICATIONS, INC.**

## TRAINING BULLETIN: LEGAL UPDATE

### *Are Passengers in a Car Stop Detained?*

**By Charles Gillingham**

The United States Supreme Court recently decided a case that posed the question: when a car is stopped, who is detained, all passengers or just the driver? The issue is important because if it is only the driver who is detained, a passenger who is discovered to be violation of the law cannot challenge the legality of the stop. The United States Supreme Court reversed the California Supreme Court, holding that everyone in the car is detained, not just the driver.<sup>1</sup>

#### **The Car Stop**

A deputy spotted a parked Buick with expired registration tags. The deputy called into dispatch and learned that a registration application for the car was in process. The deputy then saw the car on the road and saw a temporary registration permit in the window indicating that it was legal to drive. The deputy made the car stop anyway. When the deputy approached the car, he recognized Brendlin as a possible parolee-at-large. The officer radioed dispatch and confirmed the warrant for Brendlin. At that point, the deputy ordered Brendlin out of the car and arrested him. A search incident to arrest revealed that of precursors for the production of methamphetamine and narcotics paraphernalia. Brendlin moved to suppress the fruits of the search arguing that officers did not have cause to stop the car.

#### **Was the car stop legal?**

No. The deputy had no legal reason to stop the car. But in California, up until this case, the law said that in a car stop, only the driver was actually detained. Had the driver possessed methamphetamine, he could have challenged the stop and probably had the evidence suppressed. Brendlin could not challenge his search because legally he was not detained during the car stop. Brendlin's motion ultimately made it to the California Supreme Court where they denied his motion. As the legal update page has learned, however, bad facts make bad law. The deputy here made an illegal car stop and the U.S. Supremes didn't like it.

#### **Who is detained during a car stop?**

A person is seized by the police and thus able to challenge the officer's actions when the officer, by means of force or show of authority terminates or restrains his freedom of movement.<sup>2</sup> Of course, the test is whether, "in view of all of the circumstances

surrounding the incident, a reasonable person would have believed that he was not free to leave.”<sup>3</sup> It was always clear that a traffic stop entails the seizure of the driver even though the purpose of the stop is limited and the detention brief.<sup>4</sup> The question that remained was whether the passenger is detained during a traffic stop.

### **Passengers are detained during a car stop.**

The United States Supreme Court held that everyone in a car during a car stop is under police command. The Court found that everyone in the vehicle during a traffic stop, passengers included, “will expect to be subject to some scrutiny, and his attempt to leave the scene would be so obviously likely to prompt an objection that (he would not) feel free to leave in the first place.”<sup>5</sup> The Court further held that passengers would expect that police will not let them move around in ways that might jeopardize the officer’s safety. The Court stated that officers have unquestioned command of the car stop; officers can order people out of the car, order them to stay in, sit on a curb etc.<sup>6</sup> Consequently, Brendlin would have thought he was not free to leave and therefore had standing to challenge the stop. The Court reversed the California Supreme Court and all the evidence was suppressed.

### **Thoughts**

While the Court did not explain the nature of the detention of passengers, presumably it is lawful and you should deal with the passengers as you would deal with anyone in a lawful detention. The Court has given you the latitude to determine how best to ensure your safety, but a detention can last no longer than it takes to do your business.

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<sup>1</sup> *Brendlin v. California*, 2007 W.L. 1730143

<sup>2</sup> *Florida v. Bostick*, 501 U.S. 429, 434. Of course, if the suspect does not comply, there is no seizure. *California v. Hodari D.*, 499 U.S. 621, n.2.

<sup>3</sup> *U.S. v. Mendenhall*, 446 U.S. 544 .

<sup>4</sup> *Delaware v. Prouse*, 440 U.S. 648.

<sup>5</sup> The Court excluded passengers in a taxi or bus as the relationship is different from that of a driver and passenger in a private vehicle. But stated that in those cases the test would be whether a reasonable person would feel free to terminate the encounter.

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<sup>6</sup> *Maryland v. Wilson*, 519 U.S. 408 (1997); “[T]he risk of harm to both the police and the occupants is minimized if the officers routinely exercise unquestioned command of the situation.” Because of that unquestioned command, a passenger would not feel free to leave or to terminate the contact without police permission.