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TRAINING BULLETIN: LEGAL UPDATE

Vehicle Stops and Passengers: When Does the Fourth Amendment Apply?

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You have probably lost count of the number of routine traffic stops you have made in your career. In each case that traffic stop was required to be supported by a reasonable suspicion that there was some criminal violation, usually of the Vehicle Code. Clearly the driver of the car is detained, and there must be a reasonable suspicion of criminal activity by him or her to justify the stop. Is the passenger automatically detained by the stop as well? According to a close (4-3) recent decision by the California Supreme Court in *People v. Brendlin*, the answer is no.

Here are the facts in *Brendlin*. An officer observed a moving vehicle with an apparently valid temporary operating permit taped to the rear window. A records check revealed that the car's registration had expired two months earlier but an application was "in process" to renew the registration. The officer made a traffic stop to investigate further (and you're right, that's a *very* thin reason for a vehicle stop). After the stop, the officer recognized the passenger as a possible parole violator, ran a records check, confirmed that the passenger had a no-bail warrant for his arrest, and ordered him out of the car at gunpoint. A search incident to arrest yielded marijuana and methamphetamine on the passenger/defendant's person.

The defendant argued that he was "seized" at the moment of the vehicle stop, and because the stop was unlawful, the evidence should be suppressed. The trial court held that the defendant was not "seized" within the meaning of the Fourth Amendment by the vehicle stop because, as a passenger, he was free to leave. He was seized by the arrest, but at that point the officer had probable cause to believe, based on the records check, that the defendant had a no-bail warrant for his arrest. The appellate court reversed, but a bare majority of the California Supreme Court agreed with the trial court.

The issue here is not whether the officer can order the defendant to stay in or get out of the vehicle for officer safety purposes; the officer can do either (*People v. Castellon* [1999] 76 Cal.App.4th 1369; *Maryland v. Wilson* [1997] 519 U.S. 408). The issue is whether a passenger is automatically "seized" by the traffic stop. The majority observed that the passenger is free to do what the driver cannot, that is, leave and go about his business. The fact that he might choose to stay rather than walk home is not relevant to a legal analysis. Until the passenger, not the driver, is the subject of the investigation or some show of authority, there is no seizure within the meaning of the Fourth Amendment and no application of the exclusionary rule.

The majority noted that a passenger/defendant subjected to an unlawful stop of the driver could still sue in civil court, and would have standing for a motion to suppress in criminal court if he were detained *after* the stop without at least reasonable suspicion. This was not persuasive to the dissent, who argued that a vehicle stop by its very nature interferes with the passenger's freedom of movement as well as the driver's. They also point out that the newly established rule of the majority has not been followed in many other jurisdictions.

This case assists law enforcement in that it focuses reasonable suspicion for a vehicle stop on the conduct of the driver, not the passenger, but it would be wise to remember that *any* show of authority directed to the passenger after the stop would require at least a reasonable suspicion of criminal activity by that passenger.

Michele McKay McCoy is a veteran prosecutor who currently teaches criminal law and related subjects to law students, law enforcement, and college students.

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