

CRIMINAL LAW

United States Supreme Court Upholds Rights for Car Passengers

By

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“The History of Liberty is a History of Limitation of Governmental Power Not The Increase of It” -- Woodrow Wilson

Recently, in a unanimous decision, the United States Supreme Court decided a case that impacts the individual rights for car passengers and overturns an opinion of the California Supreme Court. In *Brendlin v. California* (2007) 551 U.S. ___, 127 S.Ct. 1145 (Slip No. 068120), the issue before the High Court was whether a passenger in a vehicle that is **unlawfully** stopped and searched, can challenge the basis of the stop when evidence is discovered relative to the passenger. In other words, do the passengers have an expectation of privacy in a vehicle in which they are riding so that they can challenge evidence obtained in an illegal stop by law enforcement?

Brendlin was a passenger in a car driven by another person that was stopped on November 27, 2001, because the car displayed expired registration tags. Prior to the stop, the officer had checked the car registration and determined that an application for registration was in progress and the car had a temporary tag indicating valid registration. Notwithstanding his knowledge that the vehicle was properly registered, the officer stopped the car under the pretext of an expired registration. The officer soon ascertained that Mr. Brendlin had an outstanding warrant for a parole violation. He was placed under arrest. An ensuing search of the driver, the car, and Mr. Brendlin followed which revealed methamphetamine supplies. *Id.* at 1.

Eventually, Brendlin pled guilty to a drug offense and received a four-year prison sentence. He appealed on the issue of whether the drug evidence was the product of an illegal search that should have been suppressed because of the Fourth Amendment’s protection against unreasonable searches and seizures.

The California Supreme Court found that, constitutionally speaking, only the driver of the car had been “seized” by the stop, and therefore Brendlin had no basis for challenging the search that turned up drugs. The United States Supreme Court rejected the California Supreme Court’s opinion that a passenger is not seized when the car’s driver is seized, noting that California’s view defies common sense. The U.S. Supreme Court emphasized that its decision comports with the views of all nine Federal Court of Appeals and nearly every state court which has ruled on the question. *Id.* at 8.

Justice Souter opined that to go along with the California court's interpretation would "invite police officers to stop cars with passengers regardless of probable cause or reasonable suspicion of anything illegal." *Id.* at 13. Justice Souter stressed "that passengers, like the driver, are 'seized' by the police when the vehicle they are traveling in is stopped and are thus covered by the Fourth Amendment and allowed to challenge unreasonable searches and seizures." *Id.*

The High Court focused on *when* a seizure occurs. Justice Souter noted that a physical seizure occurs when there is a stopping of movement by means of an intentionally-applied show of authority and the subject complies with that show of authority in stopping the vehicle. *Id.* The Supreme Court firmly stated that any "reasonable passenger" of a car pulled over would understand that he is under the control of the police until given permission to leave. *Id.* And under the Court's long-standing interpretation of the Fourth Amendment, a person is "seized" by authorities when he is stopped and is not free to leave. As described by the High Court in *Brendlin*: "A person is seized if a reasonable person would believe that he or she isn't free to leave or would not feel free to decline the officer's requests or otherwise terminate the encounter." *Brendlin v. California, supra*, 551 U.S. at 10, citing *U.S. v. Mendenhall* (1980) 446 U.S. 544.

The court acknowledges the history of cases supporting the premise that the limitation on the freedom of passengers to leave during a traffic stop was merely for purposes of officer safety:

It is also reasonable for passengers to expect that a police officer at the scene of a crime, arrest, or investigation will not let people move around in ways that could jeopardize his safety. We held that during a lawful traffic stop an officer may order a passenger out of the car as a precautionary measure, without reasonable suspicion that the passenger poses a safety risk. In fashioning this rule we invoked our earlier statement that the risk of harm to both the police and the occupants is minimized if the officers routinely exercise unquestioned command of the situation. What we have said in these opinions probably reflects a societal expectation of "unquestioned [police] command at odds with any notion that a passenger would feel free to leave, or terminate the personal encounter any other way without advance permission.

Brendlin v. California, supra, 551 U.S. at 7, citing *Maryland v. Wilson* (1997) 519 U.S. 407 (1997).

Ultimately, the Court concluded that the passengers in a car are seized during a traffic stop and, therefore, can challenge the validity of the seizure. The *Brendlin* decision is a significant ruling; however, on a practical level, it affects a small number of cases in which a judge concludes the traffic stop itself was unjustified. Such cases are rare because officers have broad authority to stop cars for suspected traffic violations. The observations made by the officer can then support a warrantless search of the vehicle.

The unanswered question raised in this case is -- when the stop is justified, what is the permissible scope of the search and seizure of the passenger? This recent ruling does not appear to threaten the seizure of passengers if the stop was justified; however, their subsequent search should be limited in order to protect their privacy interests. Again, in the words of Woodrow Wilson, "Liberty has never come from government; liberty has always come from the subjects of it."