



DPS TRAINING BULLETIN



LEGAL BULLETIN NO. 335
February 2, 2009

EVIDENCE OBTAINED FROM LEGALLY SEIZED PASSENGER IS ADMISSIBLE

Reference: Arizona U.S. Supreme Court
v. Opinion No. 07-1122
Lemon Montrea Johnson U.S.
January 26, 2009

FACTS:

Three Tucson police officers assigned to Arizona's gang task force were patrolling a neighborhood associated with the Crips gang. The officers stopped a vehicle after a license check revealed that the vehicle's registration had been suspended for an insurance violation. Under Arizona law, the violation for which the vehicle was stopped constituted a civil infraction warranting a citation. The vehicle had three occupants - the driver, a front seat passenger, and a passenger in the back seat, Lemon JOHNSON. At the time the vehicle was stopped, the officers had no reason to suspect anyone in the vehicle of criminal activity.

The three officers approached the vehicle and instructed all the occupants to keep their hands visible. JOHNSON looked back and kept his eyes on the officers. One of the officers observed that JOHNSON was wearing clothing (including a blue bandana), that the officer considered consistent with Crips membership. The officer also noticed a (police) scanner in JOHNSON's jacket pocket. The officer thought this highly unusual and cause for concern, because most people would not carry around a scanner that way unless they were going to be involved in some kind of criminal activity or were going to try to evade the police by listening to the scanner.

When asked, JOHNSON provided his name and date of birth, but said he had no identification with him. The officer wanted to question JOHNSON away from the front seat passenger to gain intelligence information about the gang JOHNSON might be in. JOHNSON was asked to get out of the car; he complied. The officer, based on JOHNSON's answer to questions while in the car, felt that JOHNSON might have a weapon on him. When JOHNSON exited the vehicle the officer "patted him down for officer's safety." The officer felt the butt of a gun near JOHNSON's waist. JOHNSON began to struggle and was placed in handcuffs. JOHNSON was charged with possession of a weapon by a prohibited possessor (he was a convicted felon).

JOHNSON argued, successfully in Arizona courts, that the weapon should be suppressed because although JOHNSON was lawfully seized when the officers stopped the car, they (police) had no right to pat him down for weapons even if the officer had reason to suspect he was armed.

Arizona appealed this decision to the U.S. Supreme Court.

ISSUE:

Did the police have the authority to "stop and frisk" a passenger in a motor vehicle temporarily seized upon police detection of a traffic infraction?

HELD:

"Yes" - this is constitutionally permissible if two conditions are met (1) the investigatory stop must be lawful; and (2) to proceed from a stop (seizure) to a frisk (search) the police officer must reasonably suspect that the person stopped is armed and dangerous.

REASONING:

1. For the duration of a traffic stop, a police officer effectively seizes "everyone in the vehicle", the driver and all passengers (See Brendlin v. California, Legal Bulletin No. 321).

2. In a traffic stop setting the first Terry (Terry v. Ohio) condition - a lawful investigatory stop - is met whenever it is lawful for police to detain an automobile and its occupants pending inquiry into a vehicle violation.

3. To justify a patdown of the driver or a passenger during a traffic stop, however, just as in the case of a pedestrian reasonably suspected of criminal activity, the police must harbor reasonable suspicion that the person subjected to the frisk is armed and dangerous.

4. A traffic stop of a car communicates to a reasonable passenger that he or she is not free to terminate the encounter with the police and move about at will.

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