



DPS TRAINING BULLETIN

LEGAL BULLETIN NO. 321

June 25, 2007

EVIDENCE OBTAINED FROM ILLEGALLY SEIZED PASSENGER MUST BE SUPPRESSED

Reference: Bruce Edward Brendlin U. S. Supreme Court
v. Opinion No. 06-8120
California U.S. _____
June 18, 2007

FACTS:

Police saw a Buick with expired license plates. A radio check revealed that an application for registration renewal was being processed. Police also noticed a temporary operating permit with the number "11" indicating it was legal to drive the car through November. This event occurred on November 27. Police decided to pull the Buick over and verify the permit even though, as the officer later testified, there was nothing unusual about the permit or the way it was affixed to the vehicle.

The Buick was being driven by Karen Simeroth. Police recognized the passenger as Brendlin who they thought might be a parolee. A radio check revealed that Brendlin was a parole violator with an outstanding no-bail warrant for his arrest. When police searched Brendlin incident to arrest, they found an orange syringe cap on his person. Officers then searched the car and found tubing, a scale and other things used to produce methamphetamine.

Brendlin was charged with possession and manufacture of methamphetamine. He argued that the evidence should be suppressed because police lacked probable cause or reasonable suspicion to make the traffic stop. The State (CA) conceded that police had no adequate justification to pull the car over, but argues that the passenger was not

seized (until after his arrest) and thus cannot claim that the evidence was tainted by an unconstitutional stop.

ISSUE:

Does a traffic stop subject a passenger, as well as the driver, to Fourth Amendment seizure?

HELD: Yes--an officer seizes everyone in the vehicle during a traffic stop, not just the driver. A seizure occurs if a reasonable person would believe that he was not free to leave.

REASONING:

1. Brendlin was seized from the moment the car came to a halt on the side of the road, and it was error to deny his suppression motion on the ground that the seizure occurred at the formal arrest.

2. Holding that the passenger in a private car is not (without more) seized in a traffic stop would invite police officers to stop cars with passengers regardless of probable cause or reasonable suspicion of anything illegal.

3. 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 their safety. In some circumstances, passengers may be ordered to remain in the vehicle or to get out of the vehicle, depending on officer safety concerns. (emphasis added)

NOTES:

Review of the following is recommended:

Legal Bulletin No. 241, Castle v. State, where police lacked probable cause or reasonable suspicion to seize a passenger.

Legal Bulletin No. 263, Hamilton v. State, where police were allowed to stop a vehicle that was in the area where a violent crime had just occurred.

Legal Bulletin No. 291, Adams v. State, where police had the right to conduct investigatory stop (seizure) but lacked probable cause to frisk (search) a passenger.

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