



Arizona v. Lemon Montrea Johnson
(2009 U.S. LEXIS 868)
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SEARCH AND SEIZURE LAW:

This case concerns the authority of police officers to "stop and frisk" a passenger in a motor vehicle temporarily seized upon police detection of a traffic infraction. In a landmark decision, Terry v. Ohio, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968), the Court considered whether an investigatory stop (temporary detention) and frisk (patdown for weapons) may be conducted without violating the Fourth Amendment's ban on unreasonable searches and seizures. The Court upheld "stop and frisk" as constitutionally permissible if two conditions are met. First, the investigatory stop must be lawful. That requirement is met in an on-the-street encounter, Terry determined, when the police officer reasonably suspects that the person apprehended is committing or has committed a criminal offense. Second, to proceed from a stop to a frisk, the police officer must reasonably suspect that the person stopped is armed and dangerous.

For the duration of a traffic stop, we recently confirmed, a police officer effectively seizes "everyone in the vehicle," the driver and all passengers. Brendlin v. California, 551 U.S. 249, 255, 127 S. Ct. 2400, 168 L. Ed. 2d 132 (2007). Accordingly, we hold that, in a traffic-stop setting, the first Terry condition - - a lawful investigatory stop - - is met whenever it is lawful for police to detain an automobile and its occupants pending inquiry into a vehicular violation. The police need not have; in addition, cause to believe any occupant of the vehicle is involved in criminal activity. 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.

RELEVANT FACTS:

On April 19, 2002, Officer Maria Trevizo and Detectives Machado and Gittings, all members of Arizona's gang task force, were on patrol in Tucson near a neighborhood associated with the Crips gang. At approximately 9 p.m., the officers pulled over an automobile after a license plate check revealed that the vehicle's registration had been suspended for an insurance-related violation. Under Arizona law, the violation for which the vehicle was stopped constituted a civil infraction, warranting a citation. At the time of the stop, the vehicle had three occupants - - the driver, a front-seat passenger, and a passenger in the back seat, Lemon Montrea Johnson, the respondent here. In making the stop the officers had no reason to suspect anyone in the vehicle of other criminal activity.

Trevizo noticed that, as the police approached, Johnson looked back and kept his eyes on the officers. When she drew near, she observed that Johnson was wearing clothing, including a blue bandana that she considered consistent with Crips membership. She also noticed a scanner in Johnson's jacket pocket, which "struck [her] as highly unusual and cause [for] concern," because "most people" would not carry around a scanner that way "unless they're going to be involved in some kind of criminal activity or [are] going to try to evade the police by listening to the scanner." In response to Trevizo's questions, Johnson provided his name and date of birth but said he had no identification with him. He volunteered that he was from Eloy, Arizona, a place Trevizo knew was home to a Crips gang. Johnson further told Trevizo that he had served time in prison for burglary and had been out for about a year.

Trevizo wanted to question Johnson away from the front-seat passenger to gain "intelligence about the gang [Johnson] might be in." For that reason, she asked him to get out of the car. Johnson complied. Based on Trevizo's observations and Johnson's answers to her questions while he was still seated in the car, Trevizo suspected that "he might have a weapon on him." When he exited the vehicle, she therefore "patted him down for officer safety." During the pat down, Trevizo felt the butt of a gun near Johnson's waist. At that point Johnson began to struggle, and Trevizo placed him in handcuffs.

PROCEDURAL HISTORY:

Johnson was charged in state court with, *inter alia*, possession of a weapon by a prohibited possessor. He moved to suppress the evidence as the fruit of an unlawful search. The trial court denied the motion, concluding that the stop was lawful and that Trevizo had cause to suspect Johnson was armed and dangerous. A jury convicted Johnson of the gun-possession charge.

A divided panel of the Arizona Court of Appeals reversed Johnson's conviction. The Arizona Supreme Court reversed and reinstated the conviction.

DISCUSSION:

"[M]ost traffic stops," "resemble, in duration and atmosphere, the kind of brief detention authorized in Terry." Furthermore, the Court recognized that traffic stops are "especially fraught with danger to police officers." Michigan v. Long, 463 U.S. 1032, 1047, 103 S. Ct. 3469, 77 L. Ed. 2d 1201 (1983). "The risk of harm to both the police and occupants [of a stopped vehicle] is minimized," we have stressed, "if the officers routinely exercise unquestioned command of the situation." Maryland v. Wilson, 519 U.S. 408, 414, 117 S. Ct. 882, 137 L. Ed. 2d 41 (1997) (quoting Michigan v. Summers, 452 U.S. 692, 702-703, 101 S. Ct. 2587, 69 L. Ed. 2d 340 (1981)); see Brendlin, 551 U.S., at 258, 127 S. Ct. 2400, 168 L. Ed. 2d 132. Three decisions cumulatively portray Terry's application in a traffic-stop setting: Pennsylvania v. Mimms, 434 U.S. 106, 98 S. Ct. 330, 54 L. Ed. 2d 331 (1977) (*per curiam*); Maryland v. Wilson, 519 U.S. 408, 117 S. Ct. 882, 137 L. Ed. 2d 41 (1997); and Brendlin v. California, 551 U.S. 249, 127 S. Ct. 2400, 168 L. Ed. 2d 132 (2007).

In Mimms, the Court held that "once a motor vehicle has been lawfully detained for a traffic violation, the police officers may order the driver to get out of the vehicle without violating the Fourth Amendment's proscription of unreasonable searches and seizures."

Wilson held that the Mimms rule applied to passengers as well as to drivers. The Court emphasized, the risk of a violent encounter in a traffic-stop setting "stems not from the ordinary reaction of a motorist stopped for a speeding violation, but from the fact that evidence of a more serious crime might be uncovered during the stop."

Brendlin held that a passenger is seized, just as the driver is, "from the moment [a car stopped by the police comes] to a halt on the side of the road." 551 U.S. at 263, 127 S. Ct. 2400, 168 L. Ed. 2d 132. A passenger therefore has standing to challenge a stop's constitutionality. Id. at 256-259, 127 S. Ct. 2400, 168 L. Ed. 2d 132.

After Wilson, but before Brendlin the Court had stated, in dictum, that officers who conduct "routine traffic stop[s]" may "perform a 'patdown' of a driver and any passengers upon reasonable suspicion that they may be armed and dangerous." Knowles v. Iowa, 525 U.S. 113, 117-118, 119 S. Ct. 484, 142 L. Ed. 2d 492 (1998). That forecast, we now confirm, accurately captures the combined thrust of the Court's decisions in Mimms, Wilson, and Brendlin.

A lawful roadside stop begins when a vehicle is pulled over for investigation of a traffic violation. The temporary seizure of driver and passengers ordinarily continues, and remains reasonable, for the duration of the stop. Normally, the stop ends when the police have no further need to control the scene, and inform the driver and passengers they are free to leave. See Brendlin, 551 U.S., at 258, 127 S. Ct. 2400, 168 L. Ed. 2d 132. An officer's inquiries into matters unrelated to the justification for the traffic stop, this Court

has made plain, do not convert the encounter into something other than a lawful seizure, so long as those inquiries do not measurably extend the duration of the stop. See Muehler v. Mena, 544 U.S. 93, 100-101, 125 S. Ct. 1465, 161 L. Ed. 2d 299 (2005).

In sum, as stated in Brendlin, 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. See 551 U.S. at 257, 127 S. Ct. 2400, 168 L. Ed. 2d 132. Nothing occurred in this case that would have conveyed to Johnson that, prior to the frisk, the traffic stop had ended or that he was otherwise free "to depart without police permission." Officer Trevizo surely was not constitutionally required to give Johnson an opportunity to depart the scene after he exited the vehicle without first ensuring that, in so doing, she was not permitting a dangerous person to get behind her.