Chapter 10—Searches of People in Vehicles

Introduction

Also falling under the automobile exception are the searches of people who are stopped in an automobile. As with vehicle searches, searches of passengers in vehicles are excluded from the warrant requirement because motor vehicles are mobile and can be driven away at any time, making obtaining a warrant impractical. Such searches do not need a warrant, but probable cause must be present or the search is invalid.

Court decisions have established that, after a vehicle is stopped, the officer may legally do the following:

1. Order the driver to exit the vehicle;
2. Order the passengers to exit the vehicle;
3. Ask the driver to produce a driver's license and other documents required by state law;
4. Ask questions of the driver and occupants;

The Court has also held that the the reasonableness of a traffic stop does not depend on the initial motives of the police officer.

It is important to note that vehicle stops and searches also include passengers traveling on public transportation. The foundation of this, and other searches of persons in vehicles, is found in the most recent case in this line of Court decisions: *Brendlin v. California*, 551 U.S. 1 (2007). This case held that, like the driver of a vehicle, the passenger is seized within the meaning of the Fourth Amendment during a traffic stop. This is applied in public transportation issues where the Court also held that the Fourth Amendment permits police officers to approach bus passengers, ask questions, and request their consent to search, provided that a reasonable person would understand that he or she is free to refuse.

The leading cases briefed in this chapter are *Florida v. Bostick, Whren v. United States, Ohio v. Robinette*, and *Brendlin v. California*.

Florida v. Bostick
501 U.S. 429 (1991)

CAPSULE: The test to determine whether a police/citizen encounter on a bus is a seizure is whether, taking into account all the circumstances, a reasonable passenger would feel free to decline the officers' requests or otherwise terminate the encounter.

FACTS: Without any suspicion and with the intention of catching drug smugglers, two uniformed law enforcement officers boarded a bus in Fort

Lauderdale, Florida, that was en route from Miami to Atlanta. The officers approached Bostick and asked for identification and his bus ticket. The officers then asked Bostick for consent to search his bag and told Bostick he could refuse consent. Bostick consented to the search of his luggage and cocaine was found. He later sought to suppress the evidence in court, alleging that it was improperly seized.

ISSUE: Did the police conduct in this case constitute a seizure of Bostick under the Fourth Amendment, such that he felt compelled to consent to the officer's request? NO.

SUPREME COURT DECISION: "The Florida Supreme Court erred in adopting a per se rule that every encounter on a bus is a seizure. The appropriate test is whether, taking into account all of the circumstances surrounding the encounter, a reasonable passenger would feel free to decline the officers' requests or otherwise terminate the encounter."

REASON: "Our cases make it clear that a seizure does not occur simply because a police officer approaches an individual and asks a few questions. So long as a reasonable person would feel free 'to disregard the police and go about his business,' the encounter is consensual and no reasonable suspicion is required. The encounter will not trigger Fourth Amendment scrutiny unless it loses its consensual nature."

"Since *Terry*, we have held repeatedly that mere police questioning does not constitute a seizure. In *Florida v. Royer*, 460 U.S. 491 (1983) (plurality opinion), for example, we explained that 'law enforcement officers do not violate the Fourth Amendment by merely approaching an individual on the street or in another public place, by asking him if he is willing to answer some questions, by putting questions to him if the person is willing to listen, or by offering in evidence in a criminal prosecution his voluntary answers to such questions.'"

"There is no doubt that if this same encounter had taken place before Bostick boarded the bus or in the lobby of the bus terminal, it would not rise to the level of a seizure. The Court has dealt with similar encounters in airports and has found them to be 'the sort of consensual encounters that implicate no Fourth Amendment interests.' We have stated that even when officers have no basis for suspecting a particular individual, they may generally ask questions of that individual and request consent to search his or her luggage—as long as the police do not convey a message that compliance with their requests is required."

CASE SIGNIFICANCE: This case is significant because it clarifies what test is to be used when determining whether a bus encounter constitutes a seizure. The Florida Supreme Court had adopted an inflexible rule stating that the Broward County Sheriff's practice of "working the buses" was per se

unconstitutional. The U.S. Supreme Court said that the "result of this decision is that police in Florida, as elsewhere, may approach persons at random in most public places, ask them questions and seek consent to a search, but they may not engage in the same behavior on a bus." The Court rejected this rule, saying that "the appropriate test is whether, taking into account all of the circumstances surrounding the encounter, a reasonable passenger would feel free to decline the officers' requests or otherwise terminate the encounter." The case was therefore remanded for the Florida courts "to evaluate the seizure question under the correct legal standard." This was because Florida's Supreme Court based its decision on a single fact—that the encounter took place on a bus and was therefore unconstitutional. The Court remanded the case so Florida courts could use the "totality of circumstances" standard instead.

Whren v. United States
517 U.S. 806 (1996)

CAPSULE: The temporary detention of a motorist upon probable cause to believe that he has violated the traffic laws does not violate the Fourth Amendment's prohibition against unreasonable seizures, even if a reasonable officer would not have stopped the motorist absent some additional law enforcement objective.

FACTS: Plainclothes vice officers were patrolling a high drug activity area in an unmarked car when they noticed a vehicle with temporary license plates and youthful occupants waiting at a stop sign. The truck remained stopped at the intersection for what appeared to be an unusually long time while the driver stared into the lap of the passenger. When the officers made a U-turn and headed toward the vehicle, it made a sudden right turn without signaling and sped off at an "unreasonable" speed. The officers overtook the vehicle when it stopped at a red light. When one of the officers approached the vehicle, he observed two large plastic bags of what appeared to be crack cocaine in Whren's hands. At trial, Whren sought to suppress the evidence, saying that the plainclothes officer would not normally stop traffic violators and that there was no probable cause to make a stop on drug charges; therefore, the stop on the traffic violation was merely a pretext to determine whether Whren had drugs. This motion to suppress was denied and Whren and his accomplice were convicted of drug charges.

ISSUE: Is the temporary detention of a motorist who the police have probable cause to believe has committed a civil traffic violation constitutional under the Fourth Amendment if the officer in fact had some other law enforcement objective? YES.

SUPREME COURT DECISION: "The temporary detention of a motorist upon probable cause to believe that he has violated the traffic laws does not violate the Fourth Amendment's prohibition against unreasonable seizures, even if a reasonable officer would not have stopped the motorist absent some additional law enforcement objective."

REASON: "We think these cases [discussed in the preceding paragraphs] foreclose any argument that the constitutional reasonableness of traffic stops depends on the actual motivations of the individual officers involved. We of course agree with petitioners that the Constitution prohibits selective enforcement of the law based on considerations such as race. But the constitutional basis for objecting to intentionally discriminatory application of laws is the equal protection clause, not the Fourth Amendment. Subjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis."

CASE SIGNIFICANCE: This case is important because it gives law enforcement officers an additional tool to make valid searches and seizures. In this case, the defendant alleged that what the police did was illegal because they did not have probable cause to search him for drugs. Although it was true that they had probable cause to believe that he committed a civil traffic violation (waiting at a stop sign at an intersection for an unusually long time, then turning suddenly without signaling, and speeding off at an unreasonable speed), but that alone would not ordinarily have caused the police to make a stop. He claimed that the stop was merely a pretext for the officers to be able to search for drugs, which they in fact found. The Court disagreed, saying that the officers' probable cause to believe that the motorist had committed a traffic violation made the stop valid even if the actual purpose was to look for drugs, making the stop for a traffic violation merely a pretext for another law enforcement objective. The Court in effect said that whether ordinarily the police officers "would have" made the stop is not the test for validity; instead, the test is whether the officers "could have" made the stop. The fact that they "could have" made a valid stop because there was a traffic violation made the stop valid even if the actual purpose for making the stop was to look for drugs. The message for the police from this case is this: the real purpose of the stop does not render the stop and subsequent search invalid if there was in fact a valid reason for the stop.

Maryland v. Wilson
519 U.S. 408 (1997)

CAPSULE: "... an officer making a traffic stop may order passengers to get out of the car pending completion of the stop."

FACTS: A state trooper attempted to stop a car, in which Wilson was a passenger, for speeding and an irregular license plate. After activating his blue lights, the trooper followed the car for more than a mile before it stopped. During this time, two of the three passengers in the car kept looking back at the trooper, ducking below the line of sight and then reappearing. As the trooper approached the car after it stopped, the driver got out and met him halfway. The trooper reported that the driver was trembling and appeared very nervous, but did produce a valid driver's license. When the driver returned to the car to retrieve the rental papers, the trooper noticed that Wilson was sweating and appeared very nervous. When the trooper ordered Wilson out of the car, a quantity of crack cocaine fell to the ground. Wilson was arrested and charged with possession of cocaine with intent to distribute.

ISSUE: After stopping a car, may an officer order the passengers to exit the vehicle? YES.

SUPREME COURT DECISION: After a traffic stop, the officer may also order the passengers, not just the driver, to exit the car.

REASON: In *Pennsylvania v. Mimms*, 434 U.S. 106 (1977), the Supreme Court ruled that "[t]he touchstone of our analysis under the Fourth Amendment is always 'the reasonableness in all the circumstances of the particular governmental intrusions on a citizen's personal security' ... and ... that reasonableness depends on 'a balance between the public's interest and the individual's right to personal security.... '" (*Pennsylvania v. Mimms*, 434 U.S. at 108–109). Here, the Court ruled that "[o]n the public interest side of the balance, the same weighty interest in officer safety is present regardless of whether the occupant of the stopped car is a driver or passenger. Regrettably, traffic stops may be dangerous encounters.... On the personal liberty side of the balance, the case for the passengers is in one sense stronger than that for the driver. There is probable cause to believe that the driver has committed a minor vehicular offense, but there is no such reason to stop or detain the passengers. But as a practical matter, the passengers are already stopped by virtue of the stop of the vehicle. The only change in their circumstances which will result from ordering them out of the car is that they will be outside of, rather than inside of, the stopped car." "While there is [therefore] not the same basis for ordering the passengers out of the car as there is for ordering the driver out, the additional intrusion on the passenger is

minimal. We therefore hold that an officer making a traffic stop may order passengers to get out of the car pending completion of the stop."

CASE SIGNIFICANCE: In *Mimms*, the Supreme Court ruled that a law enforcement officer may, as a matter of course, order the driver to exit the car. It was not clear from *Mimms*, however, whether that rule also extended to passengers. The Court in *Wilson* clarified this issue and said that it did, thus both the driver and passenger can now be ordered by the police to exit the car after a stop. The reason for this rule is simple: officer safety. The Court said that the government's "legitimate and weighty" interest in protecting officers prevails against the minimal infringement on the liberties of both the car driver and the passengers. Although a passenger has a stronger claim of liberty than the driver (who is suspected to have committed a traffic offense), the passenger nonetheless "has the same motivation as a driver to use a weapon concealed in the car to prevent the officer from finding evidence of more serious crime." Given this danger, the Court said that the car driver and the passengers can be made to exit the car. The Court stopped short, however, of ruling that officers could forcibly detain the passenger for the entire duration of the stop absent exigent circumstances.

Ohio v. Robinette
519 U.S. 33 (1996)

CAPSULE: The Fourth Amendment does not require police officers to inform motorists who are lawfully stopped for traffic violations that the legal detention has concluded before any subsequent interrogation or search will be found to be consensual.

FACTS: After a deputy stopped Robinette for speeding, he asked Robinette to step out of the car, where he was issued a verbal warning. After the deputy returned Robinette's license, he asked "One question before you get gone: are you carrying any illegal contraband in your car?" When Robinette replied "no," the deputy asked if he could search the car. Robinette consented and the deputy searched the car, where he found a small amount of marijuana and a pill that turned out to be methylenedioxymethamphetamine. The evidence was admitted over Robinette's objection and he was convicted of possession of a controlled substance. Robinette later claimed that he should have been informed that he was "free to go" for the consent to search the car to be valid.

ISSUE: Does the Fourth Amendment require "that a lawfully seized defendant must be advised that he is 'free to go' before his consent to search will be recognized as voluntary"? NO.

SUPREME COURT DECISION: The Fourth Amendment does not require "… police officers to inform motorists lawfully stopped for traffic violations that the legal detention has concluded before any subsequent interrogation or search will be found to be consensual."

REASON: The Court ruled in *Pennsylvania v. Mimms*, 434 U.S. 106 (1977) "… 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." The Court then found that "there is no question that, in light of the admitted probable cause to stop Robinette for speeding, [the deputy] was objectively justified in asking Robinette to get out of the car …" Using the standard of the totality of the circumstances, the Court ruled that: (1) "voluntariness is a question of fact to be determined from all the circumstances"; (2) while "knowledge of the right to refuse consent is one factor to be taken into account, the government need not establish such knowledge as the *sine qua non* of an effective consent"; and (3) it would "be unrealistic to require police officers to always inform detainees that they are free to go before a consent to search may be deemed voluntary."

CASE SIGNIFICANCE: There is no requirement under the Fourth Amendment for the officer to first inform the detained motorist that "you are free to go" before consent to search the car will be held voluntary and therefore valid. The Court added that "the voluntariness of a consent to search is a question of fact to be determined from all the circumstances," and not on a per se rule that requires an officer to inform the motorist that he or she is "free to go." This case confirms and extends the Court's ruling that the totality of circumstances applies in search and seizure cases. Here, the Court ruled that officers may obtain consent to search a vehicle from stopped motorists without the requirement to first inform them that they are free to go.

United States v. Drayton
536 U.S. 194 (2002)

CAPSULE: The Fourth Amendment permits police officers to approach bus passengers, to ask questions, and to request their consent to search, provided that a reasonable person would understand that he or she is free to refuse. There is no requirement in the Fourth Amendment for officers to advise the persons of their right to refuse to cooperate.

FACTS: Drayton and Clifton Brown were traveling on a Greyhound bus from Ft. Lauderdale, Florida, to Detroit, Michigan, when it made a scheduled stop in Tallahassee, Florida. While the bus driver left to complete paperwork, three police officers boarded the bus as a part of a drug interdiction program. One of the officers knelt in the driver's seat and watched the passengers. The other

two officers went to the back of the bus. One officer stayed at the back to watch passengers while the other began to move forward, speaking with individual passengers as he went. He asked passengers about their travel and attempted to match passengers with luggage. To avoid blocking the aisle, the officer stood behind the passenger's seat while speaking. Passengers who declined to speak to the officer or who left the bus were allowed to do so. As the officer approached Drayton and Brown, he leaned forward from the rear and spoke in a tone just loud enough for them to hear. When asked if they had any bags, they both pointed to a single bag overhead. The officer examined the bag and found nothing. Both Drayton and Brown were wearing heavy coats and baggy pants despite the warm weather. Based on the officer's experience that this was typical for persons trafficking narcotics, he asked Brown if he could check his person. Brown agreed, leaned forward in his seat, and opened his jacket. The officer patted down Brown and felt objects on his legs consistent with drug packages he had detected on other occasions. The officer then arrested and handcuffed Brown. The officer then asked Drayton if he could check him, to which Drayton agreed. A pat-down of Drayton's thighs produced evidence of similar objects. Drayton was also arrested and both were found to have drugs taped to their thighs.

ISSUE: Does the Fourth Amendment require police officers to advise bus passengers of their right not to cooperate when asked questions and to refuse consent to a search? NO.

SUPREME COURT DECISION: The Fourth Amendment permits police officers to approach bus passengers, ask questions, and request their consent to search, provided a reasonable person under the same circumstances would understand that he or she is free to refuse to cooperate. The Fourth Amendment does not require officers to advise persons of their right to refuse to cooperate when asked questions and to refuse consent to a search.

REASON: "Law enforcement officers do not violate the Fourth Amendment prohibition of unreasonable seizures merely by approaching individuals on the street or in other public places and putting questions to them if they are willing to listen. Even when law enforcement officers have no basis for suspecting a particular individual, they may pose questions, ask for identification, and request consent to search luggage provided they do not induce cooperation by coercive means. If a reasonable person would feel free to terminate the encounter, then he or she has not been seized." [Citations omitted]. "Applying the *Bostick* framework to the facts of this particular case, we conclude that the police did not seize respondents when they boarded the bus and began questioning passengers. The officers gave the passengers no reason to believe that they were required to answer the officers' questions."

CASE SIGNIFICANCE: The Court in this case held that the police are not required to inform bus passengers of their right to refuse to cooperate when asked questions or when seeking consent to search, as long as a reasonable individual under the same circumstances would have believed that he or she did not have to cooperate. The Court stressed that "law enforcement officers do not violate the Fourth Amendment's prohibition of unreasonable seizures merely by approaching individuals on the street or in other public places and putting questions to them if they are willing to listen." This is true even if they do not have any basis for suspecting that an individual is involved in a criminal act. Officers are free to "pose questions, ask for identification, and request consent to search luggage—provided they do not induce cooperation by coercive means." There is no seizure under the Fourth Amendment if a reasonable person would feel free to terminate the encounter.

As in most cases involving the Fourth Amendment, the decision in this case was based on a totality of the circumstances. The Court further said: "'While knowledge of the right to refuse consent is one factor to be taken into account, the government need not establish such knowledge as the sine qua non of an effective consent.' Nor do this Court's decisions suggest that even though there are no per se rules, a presumption of invalidity attaches if a citizen consented without explicit notification that he or she was free to refuse to cooperate. Instead, the Court has repeated that the totality of the circumstances must control, without giving extra weight to the absence of this type of warning."

This decision informs law enforcement officers that no specific information about an individual's right to refuse to cooperate need be given, but that the confrontation itself should not be coercive and the officer must be prepared to establish, if the legality of the act is later challenged, that the totality of the circumstances was such that a reasonable person would have felt free to refuse to cooperate. It should be noted that the reality is that most suspects answer questions by the police and give permission to search even if they have something to hide. What makes suspects do that despite awareness that the police will find something incriminating is difficult to tell. Encounters with the police may be deemed by some to be so inherently coercive that they do not feel free to refuse. Or they may think that refusal to search in itself creates added suspicion and that the police can then go ahead and search anyway. Whatever the reason, suspects giving consent to the police to search even if they have something to hide, which will likely be discovered, is an interesting topic.

Brendlin v. California
551 U.S. 1 (2007)

CAPSULE: Like the driver, the passenger of a vehicle is seized within the meaning of the Fourth Amendment during a traffic stop.

FACTS: Officers stopped a vehicle to verify a temporary license tag, even though the officers admitted there was nothing unusual about the permit. The officer recognized the passenger of the vehicle, Brendlin, as potentially on parole and asked him to identify himself. After verifying that Brendlin was a parole violator and had a warrant for his arrest, the officer arrested him. A search incident to the arrest revealed a syringe cap. A pat-down search of the driver revealed syringes and marijuana. Drug production equipment was found in a search of the vehicle. After Brendlin's motion to suppress the evidence as fruits of a stop without probable cause was denied, he pleaded guilty to drug charges.

ISSUE: Is the passenger of a vehicle "seized" within the meaning of the Fourth Amendment during a traffic stop? Yes.

SUPREME COURT DECISION: "[Like the driver Simeroth] Brendlin was seized from the moment Simeroth's car came to a halt on the side of the road, and it was error to deny his suppression motion on the ground that seizure occurred only at the formal arrest."

REASON: "A person is seized by the police and thus entitled to challenge the government's action under the Fourth Amendment when the officer, 'by means of physical force or show of authority,' terminates or restrains his freedom of movement '*through means intentionally applied*.' Thus, an 'unintended person . . . [may be] the object of the detention,' so long as the detention is 'willful' and not merely the consequence of 'an unknowing act.'" [internal citations omitted, emphasis in original]. "The law is settled that in Fourth Amendment terms a traffic stop entails a seizure of the driver 'even though the purpose of the stop is limited and the resulting detention quite brief.' *Delaware v. Prouse*, 440 U.S. 648, 653 (1979). And although we have not, until today, squarely answered the question whether a passenger is also seized, we have said over and over in dicta that during a traffic stop an officer seizes everyone in the vehicle, not just the driver." "We resolve this question by asking whether a reasonable person in Brendlin's position when the car stopped would have believed himself free to 'terminate the encounter' between the police and himself. We think that in these circumstances any reasonable passenger would have understood the police officers to be exercising control to the point that no one in the car was free to depart without police permission." [internal citations omitted].

CASE SIGNIFICANCE: This case settles an issue that the Court had not previously decided authoritatively: Whether, like the driver, a car passenger is also "seized" under the Fourth Amendment when the driver of the vehicle is stopped. A unanimous Court said "yes" by asking whether a reasonable person in the position of the passenger would have "reasonably believed" himself or herself to be intentionally detained and subject to the authority of the police. Applying this standard, the Court held that under the circumstances of this case, passenger Brendlin would have reasonably believed he was intentionally detained and subject to police authority. In view of the reasonableness of this belief, Brendlin was seized under the Fourth Amendment and therefore could assert his Fourth Amendment right against unreasonable search and seizure. The Court added that to accept the state's arguments that detention of passengers started only after Brendlin was arrested would "invite police officers to stop cars with passengers regardless of probable cause or reasonable suspicion of anything illegal." It is important to note, however, that the Court stressed that the ruling in this case does not extend to instances of incidental motor vehicle restrictions, such as when motorists are forced to slow down or stop because other vehicles are being detained. It is also important to note that the Court in this case resolved a narrow legal issue: whether a vehicle passenger is seized when the vehicle is stopped. It said "yes" and therefore Brendlin could challenge the constitutionality of the seizure of the evidence used against him.