



# DPS Legal Review

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## U.S. SUPREME COURT EXPANDS PASSENGER'S RIGHTS

A deputy sheriff and his partner saw a parked Buick with expired registration tags. They learned from the police dispatcher that an application for renewal of registration was being processed. Later, they saw the same car on the road, and they decided to pull it over to verify that the displayed temporary permit matched the vehicle. There was nothing unusual about the permit or the way it was affixed. They asked the driver for her license, and they saw a passenger in the front seat. One of the deputies recognized the passenger as one of the Brendlin brothers. The deputy remembered that one of the brothers had dropped out of parole supervision. He asked the passenger to identify himself.

The deputy returned to his car, called for backup, and verified that Brendlin was a parole violator with an outstanding no-bail warrant for his arrest. While the deputy was in his car, Brendlin opened and closed the passenger door of the Buick. After reinforcements arrived, the deputy went to the passenger side of the Buick, ordered Brendlin out of the car at gunpoint, and placed him under arrest.

Incident to the arrest, Brendlin was searched and an orange syringe cap was discovered. A pat-down search of the driver revealed syringes and a plastic bag of a green leafy substance. The driver was also arrested. Officers 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 moved to suppress the evidence obtained in the searches of his person and the car as fruits of an unconstitutional seizure. He argued that the officers lacked probable cause or reasonable suspicion to make the traffic stop. He claimed that the traffic stop was an unlawful seizure of his person. The United States Supreme Court

granted certiorari<sup>1</sup> to decide whether a traffic stop subjects a passenger to Fourth Amendment seizure.

**HOLDING:** When police make traffic stops, a passenger, like the driver, is seized for Fourth Amendment purposes. Thus, the passenger may challenge the stop's constitutionality. Until this decision, the Court had never squarely answered the question whether a passenger is also seized. The Court resolved the question by analyzing whether a reasonable person in Brendlin's position, when the car stopped, would have believed they were free to terminate the encounter.

The Court held that 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. During a lawful traffic stop, an officer (as a matter of course) may order a passenger out of the car as a precautionary measure, without reasonable suspicion that the passenger poses a safety risk. "(T)he risk of harm to both the police and the occupants is minimized if the officers routinely exercise unquestioned command of the situation." *Brendlin v. California*, \_\_ U.S. \_\_, 127 S.Ct. 2400, 2007 WL 1730143 (2007).

## DURATION OF A ROAD BLOCK

Georgia State Patrol (GSP) Trooper Jay Williams was on duty in Tattnall County when he was instructed by his supervisor, Sergeant W.D. Lee, to conduct a roadblock. Sergeant Lee completed a Supervisory Initiation of Roadblock Approval Form which selected the date, time and place for it to occur. Neither the supervisor nor GSP policy established the duration of the roadblock.

During the course of the roadblock, a grey Chevrolet Aveo with two occupants

<sup>1</sup> The United State Supreme Court uses the writ of certiorari as a discretionary device to choose the cases it wishes to hear

approached. Trooper Williams motioned for the female driver to pull up to where he was standing and asked her to produce her license and proof of insurance. She indicated that the vehicle was a rental and produced the rental agreement. The rental agreement did not match the driver's license so he asked her to pull over to the shoulder to investigate the discrepancy.

She pulled over and stepped out of the vehicle with her paperwork. He noticed that she appeared nervous. He sought and received consent to search the vehicle. Prior to conducting a search of the vehicle, he asked another officer to check the status of a male passenger. A check of the passenger's license revealed that he was a wanted suspect. The passenger was asked to step to the rear of the vehicle. He indicated that his door would not open, and he slowly began to move from the passenger side of the vehicle into the driver's seat as if to exit. Instead of exiting the vehicle, he started the ignition and sped away. Trooper Williams gave chase and pursued him for some time before Trooper Mark Wright performed the PIT maneuver and ended the pursuit. The officers recovered crack cocaine, a Mossberg shotgun, a Tanita electronic scale and some currency from the vehicle. The defendant moved to suppress the evidence, arguing that the roadblock violated the Fourth Amendment because it was conducted for an improper purpose and the officers in the field were given unfettered discretion.

**HOLDING:** The defendant's motion was denied. The GSP policy for implementing the roadblock effectively eliminated the risk of random stops and appropriately circumscribed the discretion of the officers in the field. Courts have not insisted that all discretion be removed from field officers executing a roadblock. Affording field officers discretion as to the duration of a roadblock does not result in the random or arbitrary selection of motorists for a traffic check. The roadblock met the requirements of the Fourth Amendment as enunciated by the Supreme Court. U.S. v. Smith, 2007 WL 1589633 (S.D. Ga.).

### CLARIFYING INQUIRING MINDS

**Q:** May troopers randomly (without justification) check license tags?

**A:** YES. Last month's response to this question generated further inquiries. Note that,

as long as an officer has a right to be in a position to observe the license plate, any such observation and the corresponding use of the information on the plate does not violate the Fourth Amendment. "(T)he State's intrusion into a particular area. . .cannot result in a Fourth Amendment violation unless the area is one in which there is a 'constitutionally protected reasonable expectation of privacy.'"<sup>2</sup> Every Court squarely addressing this issue has concluded that a motorist has no reasonable expectation of privacy in the information contained on his license plate under the Fourth Amendment.<sup>3</sup>

### ALS REMINDERS

⊗ At ALS hearings, always include testimony regarding the name of the DUI defendant operating the vehicle. In instances involving a wreck, where the driver is out of the vehicle upon your arrival at the scene, it is essential that you establish the facts leading to your determination of the identity of the vehicle's operator.

⊗ The implied consent notice must be read immediately upon the arrest of a DUI defendant unless exigent circumstances exist to justify a delay.

### OPEN RECORDS REMINDER

⊗ When forwarding duplicate videotapes to the open records unit, please do not use orange evidence labels. Thanks for your cooperation.

### PROVERBIAL WISDOM WORKS

"Keep your fears to yourself, but share your courage with others."

Robert Lewis Stevenson

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<sup>2</sup> New York v. Class, 475 U.S. 106, 112 (1986).

<sup>3</sup> See U.S. v. Cambronne, 2006 WL 3618446 (S.D. Fla. Nov. 16, 2006); U.S. v. Ellison, 462 F.3d 557 (6<sup>th</sup> Cir. 2006); U.S. v. Matthews Walraven, 892 F.2d 972, 974 (10<sup>th</sup> Cir. 1989); Olabisiomotosho v. City of Houston, 185 F.3d 521, 529 (5<sup>th</sup> Cir. 1999); Hallstein v. City of Hermosa Beach, 87 Fed. Appx. 17, 19 (9<sup>th</sup> Cir. 2003); United States v. Sparks, 37 Fed. Appx. 826, 829 (8<sup>th</sup> Cir. 2002).