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BRENDLIN V. CALIFORNIA: WHO'S IN THE DRIVER'S SEAT WHEN YOU'RE NOT IN THE DRIVER'S SEAT?

by Andrew Bennett¹

On June 18, 2007, the Supreme Court of the United States handed down a 9–0 decision on the case of *Brendlin v. California*.² The case involved the seizure of drugs and the conviction of Bruce Brendlin, an automobile passenger who was not the initial focus of a police officer's illegal traffic stop. The court's unanimous decision siding with Bruce Brendlin established an influential precedent that tightens law enforcement procedure and expands the interpretation of Fourth Amendment constitutional rights. To understand the ramifications of this decision, this paper discusses the case's history, the importance of the Fourth Amendment, and how the amendment relates to this case. Furthermore, it examines past Supreme Court rulings applied to *Brendlin v. California* and the long term results that will come from the Supreme Court siding with Brendlin.

I. CASE HISTORY

On November 27, 2001, while on patrol in Yuba City, California, Officer Robert Brokenbrough noticed that the registration tags on a brown 1993 Buick Regal had expired. There was a temporary tag displayed in the rear windshield, but with both vehicles in motion Officer Brokenbrough could not tell if the temporary tag matched the car. He decided to pull the car over for a routine traffic stop. The vehicle belonged to Karen Simeroth. In the passenger seat of the ve-

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2 *Brendlin v. Cal* 551 U.S. (2007).

hicle was Bruce Brendlin who, at the time had a warrant out for his arrest for violating parole. While questioning the driver, Officer Brokenbrough recognized Brendlin, removed him from the vehicle, and placed him under arrest. While searching Brendlin, the officer found marijuana on Brendlin's person and found ingredients for making methamphetamines in the car.³

Brendlin was officially charged with manufacturing methamphetamines. He filed a motion to suppress the evidence on the grounds that under the Fourth Amendment he was a victim of "unreasonable searches and seizures" due to a lack of probable cause or reasonable suspicion for the initial stop. Brendlin's claim did not deal with the first half of the amendment, regarding searches, but instead focused on the second half, which deals with the protection against unreasonable seizures. The court did not grant Brendlin's motion, explaining Brendlin was not seized in the original stop but was seized when the officer had him step out of the vehicle. Brendlin plead guilty to the charges and received a four year prison sentence.

Brendlin filed an appeal which was heard in January of 2007 by California's third District Court of Appeals. The appellate court reversed the district court's decision finding that Brendlin was clearly seized with the driver when pulled over and could, therefore, challenge the legality of the original stop. The court also ruled that since the officer had no real evidence to make the initial stop that he acted unreasonably and unlawfully.

The case was then taken before the California Supreme Court in June of 2006. A 4-3 decision reversed the appellate court's decision siding with the district court's initial finding that as a passenger Brendlin was not seized with the driver of the vehicle. They expressed the opinion that because passengers are not seized with drivers, the passenger's fourth amendment rights were not violated, and Brendlin was not bound to the scene because the officer had not indicated otherwise. On January 19, 2007, the United States Supreme Court granted certiorari, agreeing to review the case, and on June 18, 2007, sided with Brendlin in a 9-0 decision.

3 See *People v. Brendlin*, 38 Cal. 4th 1107, 1108 (Cal.2006) for a more detailed history.

II. THE FOURTH AMENDMENT, UNDERSTANDING THE CENTRAL ISSUE

At the heart of this matter lies the Fourth Amendment which declares, “the right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, shall not be violated.”⁴ An accurate summary of this amendment was given by Justice Louise Brandeis (1916–1939) who said the Fourth Amendment secures “the right to be let alone—the most comprehensive of rights and the right most valued by civilized men.”⁵ One of the most basic human desires is to have some form of privacy, to know that one’s personal belongings and personal space are not in danger of being violated.

Privacy was a great concern for our fledgling nation when the Bill of Rights was drafted. The United States had just thrown off an oppressive government which showed little regard for the violation of basic human rights, especially privacy. Consequently, the new country was leery that an oppressive government would again take charge. This was the genesis behind the Bill of Rights: to make a list securing basic privileges to the people including, and especially, the right to privacy. But the interpretation of the amendment that protects this “most comprehensive of rights” is left up to the Supreme Court. Many recent landmark Supreme Court cases have focused on this amendment, and in post 9/11 America, attention to and concern for the Fourth Amendment has only heightened.

The intention of the phrase “persons, houses, papers and effects,” has been interpreted over time. One example is in the decision of *Katz v. United States*, where Justice Potter Stewart (1958–1981) stated, “The Fourth Amendment protects people, not places.”⁶ Meaning that wherever a person may be, they have a right to privacy, including in a vehicle. This requires law enforcement officers to have procedures in place so as not to seize or search drivers unreasonably.

4 U.S. const. amend. IV.

5 *Olmstead v. U.S.*, 277 U.S. 438, 478 (1982).

6 *Katz v. United States*, 389 U.S. 347, 351 (1967).

This also makes relevant Brendlin's claim of having his Fourth Amendment rights violated. It is true that Brendlin did have a parole violation and, once stopped, was found to be breaking other laws. It is a great victory when law enforcement officers catch someone who has broken the law, but when one views the case of *Brendlin v. California*, the wrongs that Brendlin committed must be set aside, and one must focus on the fact that Officer Brokenbrough was able to apprehend Brendlin only because he made an unjustified stop. Yes, a criminal was caught, this time. But, how would one view the situation if everyone in the seized car turned out to be an upstanding citizen, or if it were you in the vehicle? One must keep in mind that these fundamental laws of the Constitution must be respected regardless of the outcome from their violation.

III. DEFINING SEIZURE

As mentioned earlier, the main issue of the case does not deal so much with the element of unreasonable searches as it does with unreasonable seizures. Brendlin's attorney, Elizabeth Campbell, was able to show that Mr. Brendlin was, in fact, "detained" or "seized" when Officer Brokenbrough made the stop. He can, therefore, question the legality of the stop and argue that his search was unreasonable, making all the collected evidence subsequently inadmissible.

When one examines past Supreme Court cases that address the topic of seizure, it becomes quite clear that Bruce Brendlin was, for all intents and purposes, seized when Officer Brokenbrough stopped Ms. Simeroth's vehicle. During the past thirty years the Supreme Court has issued three major statements regarding seizure that apply specifically to Brendlin.

The most solid argument for Brendlin's claim can be found in the 1980 Supreme Court case *United States v. Mendenhall*. In this case the respondent was taken aside in a California airport by two Drug Enforcement Agency agents who felt she was acting suspiciously. She was asked if she would mind coming to the DEA office. The agents then asked permission to search her luggage, and a female officer asked permission to do a strip search, all to which the respondent agreed. She was caught with heroin in her possession and

was arrested but filed for suppression of evidence claiming Fourth Amendment violations. The Supreme Court gave the opinion that her Fourth Amendment rights were not violated due to her consent to the officers' requests.

Justice Stewart delivered the court's opinion in which he stated, "A person has been 'seized' within the meaning of the Fourth Amendment only if, in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave."⁷

This clear definition of seizure holds true when applied to *Brendlin v. California*. When in a moving vehicle, whether one is a passenger or the driver, if the vehicle is pulled over by a law enforcement officer a sense of being stopped or seized prevails for all the occupants of the vehicle. It is typically not until the officer approaches the automobile that the occupants have any idea as to what is the reason for the stop and on whom the stop is focused. Therefore, everyone in the car is seized. In the most basic of applications of this opinion, Rutgers University Law Professor Sherry Colb said:

As a passenger in the car that was stopped, [Brendlin] was necessarily made to stop as well. He was not free to leave, because he was relying on the vehicle in which he sat for transportation, and because the driver was stopped, the vehicle itself was not free to leave.⁸

Furthermore, in *Brendlin's* case even though Officer Brokenbrough was initially focusing on Ms. Simeroth, it was very unrealistic for *Brendlin* to, without saying a word, open his door and just walk away. If a police officer is on patrol when he makes a stop with multiple people inside the vehicle he is out numbered and is in a potentially dangerous situation. It is quite reasonable to assume that the officer would not look too favorably on a passenger getting out of the vehicle. The officer could feel threatened and interpret this as

7 Supreme Court U.S. v. Mendenhall, 446 U.S. 544, 554 (1979).

8 Colb, Sherry, Do Car Passengers Enjoy Fourth Amendment Rights? The Supreme Court Grants Review in *Brendlin v. California* (Feb. 21, 2007), <http://writ.news.findlaw.com/colb/20070221.html>.

a hostile act, or at least view this as a cause to further investigate the passenger thereby causing the passenger to incriminate himself or provide reasonable suspicion. It would only be a matter of time until an unnecessary action, such as a firearm drawn prematurely, would be made in the heat of the moment by law enforcement. Given all this, it is understandable why, contrary to the California Supreme Court's finding, Brendlin felt he could not walk away. He was "seized."

This clear definition of seizure resulting from *Mendehall* has since been used on many occasions as a test for the Supreme Court to determine if seizure actually took place.⁹

A further explanation of seizure with direct application to Brendlin can be found in the Supreme Court case *Brower v. Inyo County*, which was also used in Brendlin's case. Brower was represented by his descendents since he died in the incident. Brower lead police on a high speed chase with a stolen car and was stopped when he crashed into a police roadblock, which killed him. The descendents claimed unreasonable seizure occurred by excessive force. From this case came the simple statement that seizure consists of "the intentional acquisition of physical control."¹⁰ In Brendlin's case, Officer Brokenbrough's purpose for stopping the vehicle was in fact the "acquisition of physical control" of the vehicle and its occupants. For him to be able to take any action against any of the vehicle's occupants he first needed to have the vehicle in his control, or in other words it must be seized.

Additional insight can be gleaned from a case referred to by the Supreme Court which predates *Mendenhall*—*Terry v. Ohio*. In 1963 two Cleveland police officers approached John Terry for suspicious behavior. They patted Terry down and found he was armed. They charged him with having a concealed weapon. Terry petitioned for evidence to be suppressed on the grounds of illegal searches and seizures. His petition was denied. The Supreme Court upheld the original decision and gave the opinion that "[w]hen the officer, by means of physical force or show of authority, has in some way re-

9 See *I.N.S. v. Delgado*, 466 U.S. 210 (1984), *Florida v. Royer* 460 U.S. 491 (1983).

10 *Brower v. Inyo County* 489 U.S. 593, 596 (1984).

strained the liberty of a citizen may we conclude that a 'seizure' has occurred."¹¹ In Brendlin's case, his liberty was indeed restrained by the stop. Before the incident Brendlin and the others in the vehicle had the liberty to move about the state as they so desired. They also possessed the liberty to use the car involved to aid them in this purpose. But the stop had a direct affect on Brendlin's liberty to move. First the vehicle was literally stopped by Officer Brokenbrough so it was not at liberty to continue moving. Also, the moment the car was stopped Brendlin could no longer continue to enjoy the transportation provided to him by Ms. Simeroth's vehicle, so his liberty was restrained as well.

The argument could very well be presented that these cases may not fully apply to Brendlin because he was a passenger in a car and most Fourth Amendment precedents involving vehicles concern the driver, like Brower. As for the rest of the opinions mentioned in footnote 9, they are directed to a pedestrian and airline patron. Although the Supreme Court has not issued many official rulings specifically addressed to passengers of vehicles, a few cases do show that the court considers vehicle passengers part of the seizure.

One Supreme Court case in particular, *Delaware v. Prouse*, is strikingly similar to Brendlin's. An officer pulled a car over, not for traffic violations, but merely to check the driver's license and vehicle registration. Upon doing so the officer found marijuana in plain view. The initial motion by the driver to suppress the evidence was granted upon finding his Fourth Amendment rights had been violated. The Supreme Court upheld the ruling stating that "The Fourth and Fourteenth Amendments are implicated in this case because stopping an automobile and detaining its occupants constitute a "seizure" within the meaning of those Amendments."¹² The statement referred to the occupants as being seized, using the plural term to extend the opinion to more than just the driver, but also to the passengers, such as Brendlin.¹³

11 Terry v. Ohio 398 U.S. 1, 16 (1968).

12 Delaware v. Prouse 440 U.S. 648, 653 (1979).

13 For other rulings involving passengers see Maryland v. Wilson 519 U.S. 408 (1997) and Whren et al v. United States 517 U.S. 806 (1996).

IV. RESULTS OF THE DECISION

The overturning of the California Supreme Court's ruling was a decision that needed to happen. The Supreme Court's siding in favor of *Brendlin* has several beneficial results in defining and securing the Fourth Amendment rights of citizens of the United States. The first benefit is it will take the basic human right to privacy and extend its reach even further than before to encompass car passengers. A case like this may in some ways seem petty or irrelevant to many people. But, actually it is very beneficial and has an instantaneous impact on every United States citizen. The society we live in is constantly changing. As new technologies become norms, citizens should know how his or her Fourth Amendment rights apply to these new areas. These cases allow our Constitution to be interpreted to see how and where our privacy is protected in everyday life. In the case of car passengers, this ruling allows them to have a greater confidence and clearer understanding of what their rights actually are if stopped by law enforcement. Furthermore, it establishes legal grounds where upon these passengers can clearly contest illegal stops that directly effect their privacy.

Also, the ruling in favor of *Brendlin* will encourage law enforcement to be a bit more careful with their stops. Therefore, it is further reason to have a clear purpose behind their stops. As a result, law enforcement can not perform a stop without reason for suspicion. When these stops are made the officers lose the ability to prosecute the driver for illegal activity but the stop is still made in hopes of being able to prosecute the passengers for some sort of violation. It is almost a form of gambling in the sense that when officers do this they are taking a risk with expectations that there is a payoff at the end. Some might feel that this will serve as a hindrance to the law and law enforcement by making it easier for criminals to avoid apprehension. On the contrary; the necessity of law enforcement officers having clearer purposes for their stops will increase their awareness while on duty and offenders will be prosecuted with greater diligence and firmness. This will result in a drop in crime.

A byproduct of these two benefits is that there would be a decrease in the amount of racial profiling by law enforcement. Because

of this obvious effect, the NAACP, ACLU, and the AALDEF were heavily involved in the support of Brendlin, even going so far as to jointly file an amicus brief on Brendlin's behalf. Again, the subject of seizure among vehicle passengers may seem limited, but it will have a nationwide impact on all United States citizens because it can strengthen the trust we place in our nation's law enforcement officers. When the trust between civilians and police officers is weakened, liberty is impeded.

From all the precedence discussed above it is quite clear that Bruce Brendlin was indeed seized when Officer Brokenbrough pulled over Ms. Simeroth's car that November night. This argument was quite clear to the Supreme Court when they made their decision and gave their opinion. The results of the case can be summed up as increasing the privacy of citizens and encouraging better law enforcement, all of which will increase the peace of mind of this country's citizens and greater trust in their rights.