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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sutter)

THE PEOPLE, Plaintiff and Respondent, v. BRUCE EDWARD BRENDLIN, Defendant and Appellant.	C040754 (Super. Ct. No. CRF012703)

APPEAL from a judgment of the Superior Court of Sutter County, Chris Chandler, J. Reversed.

James F. Johnson, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Jo Graves, Senior Assistant Attorney General, John G. McLean and Clifford E. Zall, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant Bruce Edward Brendlin was the passenger in a car stopped by an officer who had a hunch that the temporary operating permit displayed in the window might not belong to the car and,

thus, it was being unlawfully operated as an unregistered vehicle. As a result of the vehicle stop, the officer discovered that a warrant had been issued for defendant's arrest. Searches of defendant and the car revealed evidence of drug offenses.

Following the denial of his motion to suppress evidence (Pen. Code, § 1538.5), defendant entered a negotiated plea of guilty to manufacturing methamphetamine (Health & Saf. Code, § 11379.6, subd. (a)) and admitted having served a prior prison term (Pen. Code, § 667.5, subd. (b)). He was sentenced to a term of four years in state prison.

On appeal, defendant claims the trial court erred in denying his suppression motion. We agree. In reaching this conclusion, we reject the holdings in three Court of Appeal opinions which have concluded that a passenger in another person's car cannot contest the validity of a traffic stop of the vehicle. As we will explain, we agree with the majority view that a passenger can challenge the vehicle stop. We further conclude that the stop in this case was unlawful since the facts and inferences therefrom were insufficient to support a reasonable suspicion that the temporary permit was not for that car. Hence, the evidence seized from defendant and the car should have been suppressed because it was the product of the unlawful stop. Accordingly, we shall reverse the judgment.

FACTS

At approximately 1:30 a.m. on November 27, 2001, Deputy Sheriff Robert Brokenbrough saw that a Buick parked in a Circle K market had an expired registration tag. Brokenbrough "ran the plates and they came back expired." Dispatch told him that the expiration date was

September 27, 2001, but that an application was "in process" for renewal of the registration.

Brokenbrough later saw the Buick being driven on Franklin Road. This time he noticed that, in the back window of the car, there was a red Department of Motor Vehicles temporary operating permit with the number "11," representing the month of November. The temporary permit was good until the last day of November 2001.

Based upon his 11 years of experience as a peace officer, Brokenbrough knew that drivers occasionally "remove [such temporary permits] and switch them around on vehicles" in order to avoid fines for expired registrations. Even though there was nothing unusual about the temporary permit on the Buick, e.g., the way it was affixed, to make him believe that it did not belong on the Buick, Brokenbrough "[m]ade a traffic stop" to "verify whether or not that sticker belonged to that vehicle."

Brokenbrough asked both the driver, Karen Simeroth, and the passenger, defendant, to identify themselves. Simeroth handed Brokenbrough her driver's license. Defendant said his name was Bruce Brown; however, from prior contacts, the officer recognized him as being one of the Brendlin brothers, either Scott or Bruce.

Believing that one of the Brendlin brothers was "a parolee at large," Brokenbrough "put Bruce Brendlin's name over the radio." Another officer responded, stating he thought the suspect was "absconding" on parole. When dispatch "confirmed that [defendant]

was a parolee at large," he "was taken into custody at gunpoint."[1] A syringe cap was seized from defendant during a search incident to his arrest. A pat down search of Simeroth revealed that she was possessing two syringes, one without a cap, and a bag containing a green leafy substance. She was placed under arrest.

During a search of the Buick, officers seized various items apparently related to the manufacturing of methamphetamine.

DISCUSSION

In denying defendant's motion to suppress evidence, the trial court found that (1) as just a passenger in the Buick, defendant was not detained until he was arrested when Deputy Sheriff Brokenbrough confirmed that he was a parolee at large, (2) the vehicle stop was lawful because the officer had sufficient cause to believe the car was unregistered, and (3) since defendant was merely a passenger in the Buick, he lacked "standing" to seek suppression of the items seized during a search of the car.

In reviewing a ruling on a motion to suppress, we "defer to the trial court's factual findings, express or implied, where supported by substantial evidence. In determining whether, on the facts so found, the search or seizure was reasonable under the Fourth Amendment, we exercise our independent judgment." (*People v. Glaser* (1995) 11 Cal.4th 354, 362.) "Pursuant to article I, section 28, of the California Constitution, a trial court may

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[1] Evidence established that, at the request of his parole agent, defendant's parole had been suspended and a no bail warrant had been issued for his arrest.

exclude evidence under Penal Code section 1538.5 only if exclusion is mandated by the federal Constitution." (*People v. Banks* (1993) 6 Cal.4th 926, 934.)

Asserting he was detained when Deputy Sheriff Brokenbrough stopped the Buick, defendant claims that the detention which led to the seizure of evidence was unlawful because the facts known to the officer did not give rise to a reasonable suspicion of criminal activity. In defendant's view, he had a reasonable expectation of privacy in the car and, therefore, he had "standing" to challenge its search.

The People retort that defendant "lacks standing to complain about the items seized from the vehicle," and "as to evidence seized from his person, he was not detained until ordered from the car . . . [a]t [a] point [when] the officer had probable cause to detain [him]."

For reasons to follow, we conclude (1) defendant can challenge the stop of the Buick, (2) the stop was unlawful because the facts and inferences therefrom were insufficient to support a reasonable suspicion that the temporary permit was not for the Buick, and (3) the evidence seized from defendant and the Buick should have been suppressed because it was the product of the unlawful stop.

Long ago, the United States Supreme Court emphasized that "'Fourth Amendment rights are personal rights which, like some other constitutional rights, may not be vicariously asserted.' [Citations.] A person who is aggrieved by an illegal search and seizure only through the introduction of damaging evidence secured by a search of a third person's premises or property has

not had any of his Fourth Amendment rights infringed. [Citation.] And since the exclusionary rule is an attempt to effectuate the guarantees of the Fourth Amendment [citation], it is proper to permit only defendants whose Fourth Amendment rights have been violated to benefit from the rule's protections. [Citation.]" (*Rakas v. Illinois* (1978) 439 U.S. 128, 133-134, fn. omitted [58 L.Ed.2d 387, 394-395].) Pointing out the "substantial social cost" of applying the exclusionary rule to keep relevant and reliable evidence from the trier of fact, and to deflect "the search for truth at trial," the Supreme Court noted the importance of limiting the class of persons who may invoke the rule. (*Id.* at pp. 137, 138 [58 L.Ed.2d at p. 397].)

Courts used to refer to this question as "standing" to raise a Fourth Amendment violation. However, since *Rakas v. Illinois, supra,* 439 U.S. 128 [58 L.Ed.2d 387]), "the United States Supreme Court has largely abandoned use of the word 'standing" in its Fourth Amendment analyses." (*People v. Ayala* (2000) 23 Cal.4th 225, 254, fn. 3.) "[T]he better analysis forthrightly focuses on the extent of a particular defendant's rights under the Fourth Amendment, rather than on any theoretically separate, but invariably intertwined concept of standing." (*Rakas v. Illinois, supra,* 439 U.S. at p. 139 [58 L.Ed.2d at p. 398].)

Thus, the issue is whether the defendant "is asserting his own legal rights and interests rather than basing his claim for relief upon the rights of third parties." (*Rakas v. Illinois, supra,* 439 U.S. at p. 139 [58 L.Ed.2d at p. 398].) Stated another way, "the question is whether the challenged search or seizure

violated the Fourth Amendment rights of a criminal defendant who seeks to exclude the evidence obtained during it. That inquiry in turn requires a determination of whether the disputed search and seizure has infringed an interest of the defendant which the Fourth Amendment was designed to protect." (*Id.* at p. 140 [58 L.Ed.2d at p. 399].)

There is a split of authority as to whether a passenger can challenge the legality of a traffic stop of the car.

One line of cases holds that a traffic stop constitutes a detention, or seizure, of not only the driver, but of passengers as well. (E.g., *People v. Bell* (1996) 43 Cal.App.4th 754, 765; *People v. Grant* (1990) 217 Cal.App.3d 1451, 1460; *U.S. v. Twilley* (9th Cir. 2000) 222 F.3d 1092, 1095; *U.S. v. Kimball* (1st Cir. 1994) 25 F.3d 1, 5; *U.S. v. Eylicio-Montoya* (10th Cir. 1995) 70 F.3d 1158, 1164; *U.S. v. Roberson* (5th Cir. 1993) 6 F.3d 1088, 1091.) The rationale of this majority view (see *People v. Bell, supra,* 43 Cal.App.4th at pp. 761-765) is that everyone in the vehicle is detained because the traffic stop "'significantly curtails the "freedom of action" of the driver and the passengers . . . .'" (*Id.* at p. 761, quoting *Berkemer v. McCarty* (1984) 468 U.S. 420, 436 [82 L.Ed.2d 317, 332]; see also *People v. Grant, supra,* 217 Cal.App.3d at p. 1458 [a passenger's "personal liberty and freedom of travel are intruded upon by" the stop]); *U.S. v. Twilley, supra,* 222 F.3d at p. 1095 [a "passenger's interests are affected when [the] vehicle is stopped"]; *U.S. v. Kimball, supra,* 25 F.3d at p. 5 ["a stop affects an occupant's interest in freedom from random, unauthorized, investigatory seizures"].)

Other decisions hold that a routine traffic stop does not subject a passenger to a seizure within the meaning of the Fourth Amendment. (E.g., *People v. Castellon* (1999) 76 Cal.App.4th 1369, 1373-1374; *People v. Cartwright* (1999) 72 Cal.App.4th 1362, 1367-1369; *People v. Fisher* (1995) 38 Cal.App.4th 338, 343-344.) The rationale of this minority view is that the traffic stop is intended to restrain the freedom of movement of only the driver; the passenger, whose presence in the car "is merely fortuitous," does not submit to the show of authority and, without more, is free to leave after the vehicle stops. (*People v. Cartwright, supra,* 72 Cal.App.4th at pp. 1367-1368; see also *People v. Castellon, supra,* 76 Cal.App.4th at p. 1374; *People v. Fisher, supra,* 38 Cal.App.4th at pp. 343-344.)

In our view, a common sense application of Fourth Amendment principles leads to the conclusion that a traffic stop constitutes at least a momentary seizure of everyone in the car. Certainly, it must be said that the freedom of action of the passenger, as well as the driver, is significantly curtailed by an officer's act of making the driver stop the car. (See *California v. Hodari D.* (1991) 499 U.S. 621, 625-626 [113 L.Ed.2d 690, 697] [a "seizure" within the meaning of the Fourth Amendment occurs when a person yields to an officer's use of physical force, or show of authority, and the person's liberty is actually restrained in some way].) Whether a passenger remains detained thereafter depends on whether, under the circumstances, a reasonable person would feel free to leave while the officer deals with the driver. (*United States v. Drayton* (2002) 536 U.S. __, __ [153 L.Ed.2d 242, 251].) But the

fact remains that, at the time of the initial traffic stop, the passenger is seized within the meaning of the Fourth Amendment. (See *California v. Hodari D., supra,* 499 U.S. at pp. 625-626 [113 L.Ed.2d at p. 697].) By no stretch of the imagination can it be said that the passenger is free to go from the point at which the driver yields to the officer's show of authority and the time that the seizure occurs when the car actually stops.

Consequently, although a passenger who asserts no property or possessory interest in the car "would not normally have a legitimate expectation of privacy" in the vehicle in order to contest its seizure and search (*Rakas v. Illinois, supra,* 439 U.S. at pp. 148-149 [58 L.Ed.2d at p. 404]), the passenger can challenge the legality of the traffic stop because the passenger is asserting his or her own legal right to be free from an unlawful seizure. (See *Berkemer v. McCarty, supra,* 468 U.S. at p. 436 [82 L.Ed.2d at p. 332]; *Colorado v. Bannister* (1980) 449 U.S. 1, 4, fn. 3 [66 L.Ed.2d 1, 4]; *Delaware v. Prouse* (1979) 440 U.S. 648, 653 [59 L.Ed.2d 660, 667].)

So it is in this case. As a passenger in the car stopped by Deputy Sheriff Brokenbrough, defendant can challenge the legality of the stop.

According to defendant, the stop was unlawful because "there were no facts to support [a reasonable] suspicion the Vehicle Code was being violated." We agree.

"An investigatory stop must be justified by some objective manifestation that the person stopped is, or is about to be, engaged in criminal activity." (*United States v. Cortez* (1981)

449 U.S. 411, 417, fn. omitted [66 L.Ed.2d 621, 628]; *People v. Souza* (1994) 9 Cal.4th 224, 231.) In other words, the officer "must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, [objectively] warrant [a reasonable suspicion that the suspect is, or is about to be, engaged in a crime]." (*Terry v. Ohio* (1968) 392 U.S. 1, 21 [20 L.Ed.2d 889, 906].) Such facts may include a "consideration of the modes or patterns of operation of certain kinds of lawbreakers." (*United States v. Cortez, supra,* 449 U.S. at p. 418 [66 L.Ed.2d at p. 629].) "The corollary to this rule, of course, is that an investigative stop or detention predicated on mere curiosity, rumor, or hunch is unlawful, even though the officer may be acting in complete good faith." (*People v. Loewen* (1983) 35 Cal.3d 117, 123.)

Here, the only basis for the traffic stop was Deputy Sheriff Brokenbrough's belief that the Buick's driver might be operating the car in violation of Vehicle Code section 4000, which provides in pertinent part that no person shall drive upon a highway, including a public street, any motor vehicle "unless it is registered and the appropriate fees have been paid . . . ." But the facts known to the officer did not warrant a reasonable suspicion of such criminal activity. Before stopping the vehicle on November 27, Brokenbrough ran a check on the registration and was informed that it had expired but that an application was in process to renew the registration. Also before stopping the vehicle, he observed that a temporary operating permit with the number 11, representing the month of November, was in the back window. Although the temporary permit

was good until the end of November and authorized defendant to drive the Buick on a public street (Veh. Code, § 4606), Brokenbrough knew from past law enforcement experience that some drivers "remove [temporary permits] and switch them around on vehicles" in order to avoid fines for expired registrations. However, he did not see anything unusual about the way the temporary permit was affixed to the Buick which would lead to the conclusion that it did not belong on the car. Indeed, he knew a registration renewal was in process for the Buick, which indicated the temporary permit was issued for it. Nevertheless, Brokenbrough stopped the Buick to verify whether the temporary permit was issued for that vehicle.

Because Deputy Sheriff Brokenbrough had at most a hunch that the driver of the Buick was operating an unregistered vehicle in violation of Vehicle Code section 4000, he acted unreasonably and unlawfully in stopping the vehicle for the purpose of determining whether the temporary operating permit belonged to the Buick. (Cf. *People v. Butler* (1988) 202 Cal.App.3d 602, 606-607 [an officer may not stop a vehicle simply for the purpose of determining whether its windows "were made of illegally tinted, rather than legally tinted, safety glass"; unless the officer is aware of articulable facts that suggest the tinting is illegal, "the detention rests upon the type of speculation which may not properly support an investigative stop"].)

But for the unlawful vehicle stop, Deputy Sheriff Brokenbrough would not have discovered and seized the evidence against defendant. Consequently, the trial court erred in not suppressing the evidence "under the 'fruit of the poisonous tree' doctrine." (*U.S. v.*

Kimball, supra, 25 F.3d at p. 6, citing *Wong Sun v. United States* (1963) 371 U.S. 471, 484-485 [9 L.Ed.2d 441, 453-454]; *People v. Butler, supra,* 202 Cal.App.3d at p. 607.)

DISPOSITION

The judgment is reversed.

SCOTLAND, P.J.

We concur:

BLEASE, J.

ROBIE, J.