

CASE NOTE

Brendlin v. California: Expansion of Fourth Amendment Standing or the End of a Legal Fiction?

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I. Introduction: A Question of Intent

Fourth Amendment law holds that a person is not seized for purposes of the Fourth Amendment unless an officer physically touches the suspect or the suspect submits to a show of the officer's authority.¹ But is a passenger seized when an officer pulls over the driver of a vehicle? Just along for the ride, a passenger does not expressly submit to the officer's authority, but does that mean he leaves his Constitutional rights on the sidewalk? To what degree is the officer's "intent" relevant to the question?

In 2007, in what one commentator called "one of the nuttiest Fourth Amendment decisions . . . in a long time,"² the California Supreme Court held that passengers are not seized during a traffic stop.³ Essentially conflating search with seizure, the state supreme court held that the passenger's Fourth Amendment claims amounted to improper third-party standing.

The United States Supreme Court reversed in a unanimous opinion that cleanly applied mainstream Fourth Amendment jurisprudence; in so doing, the Court clarified the primacy of the objective standard in standing cases. While the decision appears to contradict the rule against third-party standing announced in *Rakas v. Illinois*,⁴ deeper inquiry reveals that *Brendlin* supports that case's basic instruction that "Fourth Amendment rights are personal rights."⁵

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1. *California v. Hodari D.*, 499 U.S. 621 (1991).

2. Eugene Volokh, *CFR in Brendlin v. California? THE VOLOKH CONSPIRACY* (Jan. 3, 2007), at <http://www.volokh.com/posts/1167875679.shtml>.

3. *People v. Brendlin*, 38 Cal. 4th 1107, 1123 (2006), *rev'd*, 127 S. Ct. 2400 (2007).

4. *Rakas v. Illinois*, 439 U.S. 128 (1978).

5. *Id.* at 133.

In the instant case, the California Supreme Court held “that because the deputy effected a traffic stop of Simeroth’s vehicle without any indication that defendant, the driver’s passenger, was the *subject* of his investigation or show of authority, defendant was not seized when Simeroth submitted to the deputy’s show of authority and brought the vehicle to a stop.”⁶

The decision was in error, the United States Supreme Court held, noting that “almost all courts have rejected” the California court’s rule.⁷ The purpose of the Exclusionary Rule is to deter the police from conducting illegal searches and seizures.⁸ Quite simply, if car passengers have no standing—ever—to protest evidence gathered in searches and seizures, no matter their legality, the effect is to “invite police officers to stop cars with passengers regardless of probable cause or reasonable suspicion of anything illegal.”⁹

The result would be nothing less than a police state: “The fact that evidence uncovered as a result of an arbitrary traffic stop would still be admissible against any passengers would be a powerful incentive to run the kind of ‘roving patrols’ that would still violate the driver’s Fourth Amendment right.”¹⁰

How did the California court stray so far from the Fourth Amendment’s moorings? Under the thrall of *Rakas* and its progeny, the California court manifested deep-seated confusion over whether to apply Fourth Amendment standards for the *search of property* or the *seizure of persons*. The confusion stems from the fuzzy boundaries between search and seizure in the context of traffic stops. When an officer pulls over a car, is he seeking to interfere with an individual’s “possessory interests” in the vehicle¹¹ or seeking to control a person’s freedom of movement? By looking to the officer’s intent in a traffic stop and finding that it was not directed at the passenger, the state court lost sight of the true test for seizure: When “a reasonable person” would believe that “he or she is not free to leave.”¹²

II. Facts in the Case and the California Decision

On the morning of November 27, 2001, sheriff’s deputy Robert Charles Brokenbaugh noticed a brown 1993 Buick Regal with expired tags.

6. *Brendlin*, 38 Cal. 4th at 1123 (emphasis added).

7. *Brendlin v. California*, 127 S. Ct. 2400 (2007).

8. “This Court has ever since [*Weeks v. United States* 232 U.S. 383 (1914)] required of federal law officers a strict adherence to that command which this Court has held to be a clear, specific, and constitutionally required – even if judicially implied – deterrent safeguard without insistence upon which the Fourth Amendment would have been reduced to ‘a form of words.’” (Citation omitted.) *Mapp v. Ohio*, 367 U.S. 643, 647 (1961).

9. *Brendlin*, 127 S. Ct. at 2410.

10. *See id.*

11. *Rakas*, 439 U.S. at 148.

12. *United States v. Mendenhall*, 446 U.S. 544 (1980).

Despite the fact that the dispatcher informed him that an application was in process to renew the car's registration and his own observation that the car displayed a temporary operating permit valid through the end of November, Brokenbaugh stopped the car to investigate further. When he approached the car, he not only asked the driver, Karen Simeroth, to identify herself but also the passenger, "since he recognized defendant as one of the Brendlin brothers, Scott or Bruce, and recalled that one of them had absconded from parole supervision."¹³

During this conversation, the deputy observed paraphernalia typically used in manufacturing methamphetamine. After the passenger, Bruce Brendlin, identified himself as "Bruce Brown," the deputy confirmed that Brendlin was a parolee-at-large with an outstanding no-bail warrant for his arrest. During the encounter, Brendlin opened, then closed, his door. Brokenbaugh pointed his weapon at Brendlin and arrested him. In a search incident to arrest, an orange syringe cap was discovered on his person. A pat-down and search incident to arrest on Simeroth produced 12.43 grams of marijuana and .46 grams of methamphetamine. Police found materials used to manufacture methamphetamine in the car.¹⁴

The superior court found Brendlin had not been seized for purposes of the Fourth Amendment because, up until the time of the arrest, "he was free to leave. . . . [H]e wasn't detained because he never went anywhere; but he had a right to if he wanted to."¹⁵ The court found that even if the stop was unlawful, Brendlin lacked "standing" to suppress the seized items.¹⁶ Following the trial court's denial of his motion to suppress, Brendlin pleaded guilty to manufacturing methamphetamine and received an enhanced sentence due to a prior prison term.

The court of appeal of California for the third appellate district overturned the superior court, finding the evidence against Brendlin constituted the "fruits of a poisonous tree."¹⁷ The California Supreme Court, in upholding the superior court and overturning the court of appeal, dismissed the view of a majority of states (as well as the dissent) that "no principled basis exists" for distinguishing between driver and passenger.¹⁸ Indeed, the court pointed out, "the potential for unequal treatment has existed under similar circumstances" ever since *Rakas*.¹⁹

13. *Brendlin*, 38 Cal. 4th at 1111.

14. *See id.*

15. *Id.* at 1112.

16. *See id.*

17. *People v. Brendlin*, 115 Cal. App. 4th 206 (2004), *rev'd*, 38 Cal. 4th 1107. ("But for the unlawful vehicle stop, Deputy Sheriff Brokenbrough would not have discovered and seized the evidence against defendant.")

18. *People v. Brendlin*, 38 Cal. 4th 1107, 1117 (2006) (citing *State v. Eis*, 348 N.W.2d 224, 226 (Iowa 1984)).

19. *Brendlin*, 38 Cal. 4th at 1122.

III. Analysis

A. Ambiguous Intent and the Reasonable Person Standard

The California court relied heavily on the standards of *Terry*, *Hodari* and *Bostick* in fashioning its rule that a passenger is not seized when an officer directs the driver to pull over.

A seizure occurs when the police, by the application of physical force or show of authority, seek to restrain the person's liberty (*Terry*); the police conduct communicated to a reasonable innocent person that the person was not free to decline the officer's request or otherwise terminate the encounter (*Bostick*); and the person actually submitted to that authority (*Hodari*) for reasons not independent of the official show of authority (*Bostick*).²⁰

The California court thus argued that Brendlin wasn't seized because he didn't submit to the officer's show of authority—the driver did. Until the officer directs some show of authority at the passenger, he is “free to ignore the police presence and go about his or her business,” the court said. It is the passenger's choice “to wait until the investigation of the driver is completed. . . . The fact that the defendant's freedom of movement was momentarily curtailed by the traffic stop thus does not determine whether he was seized.”²¹ The court concluded: “[D]efendant has not shown that he, as the passenger, was the subject of the deputy's show of authority or that he actually submitted to it.”²²

The California court was essentially trying to fit a square peg into a round hole. *Terry/Hodari/Bostick* appeared to be the controlling law of seizure but somehow the court just couldn't make it fit. The problem is that the test of physical restraint or submission to authority is limited to *unambiguous* shows of authority: an officer frisking suspicious characters in *Terry* or chasing down a fleeing hoodlum in *Hodari*.

The officer's actions as to Brendlin were not unambiguous. Indeed, the officer had no knowledge of Brendlin's presence at the car at the time he pulled Simeroth's car over. Under such circumstances, the U.S. Supreme Court held, quite a different test applies.

When the actions of the police do not show an unambiguous intent to restrain or when an individual's submission to a show of governmental authority takes the form of passive acquiescence, there needs to be some test for telling when a seizure occurs in response to authority, and when it does not. The test was devised by Justice Stewart in *United States v. Mendenhall*. . . .²³

20. *Id.* at 1118 (citations omitted).

21. *Id.* at 1117 (citations omitted).

22. *Id.* at 1118.

23. *State of Kansas v. Robinson*, 170 P.3d 922, 937 (2007) (citation omitted) (citing *United States v. Mendenhall*, 446 U.S. 544 (1980)).

1. *The irrelevance of officer intent*

Under *Mendenhall*, a seizure occurs if “in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave.”²⁴ The *Mendenhall* test was restricted somewhat in *Bostick*, which held that when a person “has no desire to leave,” for reasons other than the police encounter, the question is whether “a reasonable person would feel free to decline the officers’ requests or otherwise terminate the encounter.”²⁵

Mendenhall looked at where the line between consent and seizure is drawn—and to what degree officer intent is relevant to that inquiry. If an officer asks to speak with someone walking down the street, the individual is theoretically free to decline the invitation; if he agrees, the encounter is said to be consensual.²⁶ But if the invitation is coercive enough, does the individual’s agreement become something less than consensual? Does it matter whether the officer’s intent was to ask for help in an investigation or to randomly stop passersby in an attempt to identify drug users?

In *Mendenhall*, a woman’s conduct at Detroit Metropolitan Airport suggested to two Drug Enforcement Administration (DEA) agents that she might be carrying narcotics. They approached her as she was walking through the concourse, identified themselves, and asked to see her identification and airline ticket. She produced her driver’s license and an airline ticket in someone else’s name. After brief questioning about why the ticket wasn’t in her name (she said she preferred not to travel under her own name), one of the agents asked her to come to the airport DEA office for further questioning. She agreed. She was asked to consent to a search of her body and luggage, to which she responded, “Go ahead,” and handed her purse to the agent. Before conducting the body search, a female police officer asked her if she consented to the search and she said she did. She undressed and removed two packets from her underwear and handed them to the police woman. She was arrested for possession of heroin.²⁷

On a motion to suppress, the District Court found that the stop was permissible under the *Terry* standard—that seizure only occurs when “by means of physical force or a show of authority” one’s freedom of movement is restrained—because the stop was “based on specific and articulable facts that justified a suspicion of criminal activity.”²⁸ In addition, the trial court found that the defendant was not arrested or detained when she went to the DEA office but accompanied the officers “voluntarily in a spirit of

24. *Mendenhall*, 446 U.S. at 554.

25. *Florida v. Bostick*, 501 U.S. 429, 435-36 (1991).

26. *United States v. Drayton*, 536 U.S. 194, 200 (2002). “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.”

27. *Mendenhall*, 446 U.S. at 547-49.

28. *Id.* at 549.

apparent cooperation.”²⁹ It was not until she produced the heroin that she was arrested, the court found.

On appeal, the government conceded that the officers had no probable cause for approaching Mendenhall, but argued that neither the stop nor the interview in the DEA office were improper because she had consented to both.³⁰ Upholding *Terry*, the Court in *Mendenhall* applied an objective standard to the question of consent: “We conclude that 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.”³¹

The Court added an important footnote: “We agree with the District Court that the subjective intention of the DEA agent in this case to detain the respondent, had she attempted to leave, is irrelevant except insofar as that may have been conveyed to the respondent.”³²

The irrelevance of officer intent proved to be one of the shoals on which the California Supreme Court ran aground. The court emphasized that the deputy’s “flashing lights were directed at the driver . . . and not at defendant.”³³ The court noted that the deputy was probably not even aware the defendant was in the car and didn’t block the defendant’s car door or attempt to intimidate him. “In these circumstances, one cannot say that defendant was the subject of the deputy’s investigation or show of authority prior to the time the deputy ordered him out of the vehicle.”³⁴

This inquiry into the deputy’s intent is exactly what *Mendenhall* forbids. Indeed, in overturning the California decision, the U.S. Supreme Court focused on precisely this language. The Supreme Court responded:

But that view of the facts ignores the objective *Mendenhall* test of what a reasonable passenger would understand. To the extent that there is anything ambiguous in the show of force (was it fairly seen as directed only at the driver or at the car and its occupants?), the test resolves the ambiguity, and here it leads to the intuitive conclusion that all the occupants were subject to like control by the successful display of authority.³⁵

The Court points out that the state court “shift[ed] the issues from the *intent* of the police as objectively manifested to the *motive* of the police for taking the intentional action to stop the car, and we have repeatedly rejected attempts to introduce this kind of subjectivity into Fourth Amendment analysis.”³⁶

29. *See id.*

30. *Id.* at 550.

31. *Id.* at 554.

32. *Id.* at 555 n.6.

33. *Brendlin*, 38 Cal. 4th at 1118.

34. *See id.*

35. *Brendlin*, 127 S. Ct. at 2408.

36. *See id.*

2. *No distinction between drivers and passengers*

In two cases dealing with unlawful seizures of passengers, the U.S. Supreme Court made no distinction between drivers and passengers in ruling that evidentiary fruits from illegal traffic stops must be excluded. In *Delaware v. Prouse*,³⁷ an officer – without observing any traffic violation – stopped a car driven by an unidentified person, for the sole purpose of examining the status of his license. Only upon approaching the vehicle did the officer smell, and then see, marijuana. The officer testified he had no basis for making the stop; he “saw the car in the area and wasn’t answering any complaints, so I decided to pull them over.”³⁸

There was some confusion as to whether Prouse was a passenger or the driver, but aside from noting the confusion in a footnote, the Court found the distinction of no particular interest. Nothing in *Prouse* suggests that drivers have Fourth Amendment interests that other occupants do not.

An individual operating or traveling in an automobile does not lose all reasonable expectation of privacy simply because the automobile and its use are subject to government regulation. . . . [P]eople are not shorn of all Fourth Amendment protection when they step from their homes onto the public sidewalks. Nor are they shorn of those interests when they step from the sidewalks into their automobiles.³⁹

In *Whren v. United States*,⁴⁰ decided eight years later, officers in an unmarked unit watched as a vehicle came to a stop sign and lingered – just a little too long. The car was filled with young adults, and the driver was looking at something in his front passenger’s lap. Without provocation, the car then burst from its position at an “unreasonable speed” and executed a turn without signaling. These actions were themselves violations of traffic laws, but the officers were more interested in the driver for reasons having to do with the area and its criminal nature. They conducted a traffic stop, and saw that the front passenger clutched two bags of crack cocaine.⁴¹ The trial court’s denial of the passenger’s motion to suppress was upheld because even the pretextual stop was sufficient to create probable cause. The point here is that the officer’s intent to use the traffic stop as a pretext for a drug investigation was irrelevant where his behavior was “objectively justifiable.”⁴² Both passenger and driver were seized – properly, as the Court held – for purposes of the Fourth Amendment.

The situation was not markedly different in *Brendlin*. As in *Whren*, the car was pulled over and at that moment the occupants – driver and passenger – were seized. “[A]ny reasonable passenger would have under-

37. *Delaware v. Prouse*, 440 U.S. 648 (1979).

38. *Id.* at 665.

39. *Id.* at 662-63.

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

41. *Id.* at 808-10.

42. *Id.* at 812.

stood the police officers to be exercising control to the point that no one in the car was free to depart without police permission.”⁴³

The U.S. Supreme Court’s analysis in this case is essentially one of common sense, not case law. Ask any average person, the Court essentially says, if a passenger is free to leave a traffic stop and she will say, “of course not.” In the Court’s opinion, no “sensible person” would expect officers to let occupants of a vehicle “come and go freely” from an investigation. Passengers will “reasonably feel subject to suspicion” if the purpose of the stop doesn’t appear to be bad driving – and even where the stop is clearly because of bad driving, a passenger’s “attempt to leave the scene would be so obviously likely to prompt an objection from the officer that no passenger would feel free to leave in the first place.”⁴⁴ It is an “intuitive conclusion,” Justice Souter says, that all occupants are subject to the same control when an officer successfully displays authority.⁴⁵

The reasonable person’s understanding of how much freedom of movement an officer would permit reflects the “societal understanding” that underlies numerous Court holdings that – both for investigative and safety considerations – officers should have “unquestioned control of the situation.”⁴⁶ From *Terry* (officer may pat down suspect) to *Mimms* (officer may order driver out of car) to *Wilson* (officer may order passenger out of car), the Supreme Court has upheld a long list of impositions on individual rights in the name of officer safety. It would be the height of hypocrisy to now forswear safety concerns and say that passengers are free to walk away.

B. Three Faulty Premises

The Supreme Court identified three basic errors in the California decision. First, the California Supreme Court’s reasoning that Brendlin was not seized because the officer’s intentions were directed to the driver; second, the theory that passengers have no ability to submit to authority and thus cannot be seized; third, the California court’s fear that extending standing to Brendlin would extend it to all drivers whose freedom of movement was impacted by the stop.

1. Officer motivation

The Supreme Court was most troubled by the state court’s focus on officer motivation. The California court noted that the deputy’s flashing lights were “directed at the driver . . . and not at defendant,” although the court does not explain how one would “direct” the lights. Since the lights cannot physically be pointed to one person or another, the court must mean

43. *Brendlin*, 127 S. Ct. at 2406-07.

44. *Id.* at 2407.

45. *Id.* at 2408.

46. *Maryland v. Wilson*, 519 U.S. 408, 414 (1997).

that the deputy's *thoughts*, rather than his lights, were on the driver, rather than the passenger.

In addition, the deputy was likely not even aware of Brendlin's presence in the passenger seat, according to the record. The deputy's behavior indicated concern with the driver, not the passenger, the court said. He didn't approach the passenger side of the car, brandish a weapon at him or make any intimidating movements toward him. "In these circumstances, one cannot say that defendant was the subject of the deputy's investigation or show of authority prior to the time the deputy ordered him out of the vehicle."⁴⁷

The California court appears to have felt required to deny "standing" to Brendlin because of *Rakas*'s insistence that rights to suppress a search are limited to those with a "possessory" interest in the area searched.

Rakas appears to be directly on point since it dealt with passenger standing during a traffic stop.⁴⁸ But, in fact, *Rakas* deals with a very different question than *Brendlin* presented: whether a passenger has standing to exclude the fruits of an illegal search made following a *legal traffic stop*.⁴⁹ To be clear, search, not seizure, was at issue in *Rakas*.

While *Brendlin* centered on whether the defendant's person was seized by the illegal stop, Brendlin himself showed a clearer understanding of the import of *Rakas* than did the court. Brendlin conceded that, per *Rakas*, he had no Fourth Amendment interests in the search of the car or its contents.⁵⁰ Brendlin's argument was that the seizure itself was improper and thus all of the ensuing searches were poisoned.

Relying on *Rakas*, the court concluded that the Fourth Amendment "does not concern itself with 'treat[ing] driver and passenger alike' in all circumstances nor does assuring equity between drivers and passengers justify expanding the reach of the exclusionary rule beyond what the Fourth Amendment requires (citation omitted)."⁵¹

In *Rakas*, a police officer received a radio call notifying him of a robbery and describing the getaway car. He followed and, after calling for assistance, stopped an automobile he thought was the car in question. The occupants were ordered out of the car, which the officers searched, discovering rifle shells in the locked glove box and a sawed-off rifle under the front passenger seat. Before trial, the petitioners—neither of whom owned

47. *Brendlin*, 38 Cal. 4th at 1118.

48. *Rakas*, 439 U.S. at 139. Of course, Justice Rehnquist famously dismissed the very concept of standing in *Rakas*, stating, "[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." Whether one speaks of standing or a "personal" Fourth Amendment interest, "the inquiry under either approach is the same."

49. "[W]e are not here concerned with the issue of probable cause . . ." *Rakas*, 439 U.S. at 129.

50. *Brendlin*, 38 Cal. 4th at 1114 n.3.

51. *Id.* at 1122.

the car, the rifle or the shells—moved to suppress the evidence of the search, which they claimed was illegal.⁵²

The trial court, upheld by the Appellate Court of Illinois, found that the petitioners had no standing to object to the proffered evidence, which was “gathered as a consequence of a search and seizure directed at someone else.”⁵³

For all of its reliance on *Rakas*, the California court appears to have missed one of the case’s key points: the rejection of the so-called “target” theory of Fourth Amendment standing. The *Rakas* petitioners urged the court to broaden the rule in *Jones v. United States*⁵⁴ – that to have standing “one must have been a victim of a search or seizure, one against whom the search was directed”—so that “any criminal defendant at whom a search was ‘directed’ would have standing to contest the legality of that search” and object to admission of the evidence.⁵⁵

In rejecting both this theory and the idea that petitioners had standing because they were “legitimately on the premises,” Justice Rehnquist determined that those who would seek to exclude the fruits of a search must assert either a “property or a possessory interest in the automobile” or “an interest in the property seized.”⁵⁶ What *Brendlin* made crystal clear in 2007, *Rakas* made perfectly clear 30 years earlier: An inquiry into subjective officer intent is not appropriate; the inquiry is an objective one as to whether the defendant’s personal rights were violated.

Rakas was correct: Fourth Amendment rights are personal. But Rehnquist’s “possessory interest” language had led many courts, not least the California Supreme Court, astray. Following *Rakas*, other cases looked upon a non-owner driver as having the same tenuous interests in the car as does the front-seat passenger in her purse. Such a driver could not stand in the shoes of the registered owner for purposes of challenging the stop, but could contest the search on the same property interest as a similarly situated passenger, if he or she were driving with the owner’s permission.⁵⁷

But isn’t the court saying that passengers can be unintentionally seized – without a “deliberate act of detention” and without an officer even knowing of the defendant’s existence? When someone’s freedom of movement is stopped through “means intentionally applied,” there is a seizure. Where a stop occurs only accidentally, there is no seizure. Thus where an officer engaged in a high-speed chase of a motorcycle and ran over the passenger who fell off during the chase, there was no seizure because the passenger’s

52. *Rakas*, 439 U.S. at 129.

53. *Alderman v. United States*, 394 U.S. 165, 571-72 (1969) (quoted in *People v. Rakas*, 46 Ill. App. 3d 569, 572 (1977)).

54. *Jones v. United States*, 362 U.S. 257, 261 (1960).

55. *Rakas*, 439 U.S. at 132.

56. *Id.* at 148.

57. *People v. Carvajal*, 202 Cal. App. 3d 487, 495 (1988); *People v. Leonard*, 197 Cal. App. 3d 235, 239 (1987).

freedom of movement was not terminated through “means intentionally applied.”⁵⁸

But where means are intentionally applied, no inquiry is permitted into the intended target of the restraint. “We think it enough for a seizure that a person be stopped by the very instrumentality set in motion or put in place in order to achieve that result.”⁵⁹ In *Brower*, a suspect was killed when he ran into a tractor-trailer police had parked across a highway, behind a curve, and positioned a police car with headlights on so the suspect would be blinded on his approach. The question of whether police hoped he would voluntarily stop or crash into the barrier was not relevant, the court held. “It was enough here (that) *Brower* was meant to be stopped by the physical obstacle of the roadblock—and that he was so stopped.”⁶⁰

Similarly, the Court reasons, Deputy Brokenbaugh intentionally applied the means to stop Brendlin and he was stopped. Objectively, “a reasonable passenger would have perceived that the show of authority was at least partly directed at him.”⁶¹

2. *Ability to submit*

As to the idea that Brendlin as a passenger had no ability to submit to the officer’s authority, the Court said, “what may amount to submission depends on what a person was doing before the show of authority: a fleeing man is not seized until he is physically overpowered, but one sitting in a chair may submit to authority by not getting up to run away.”⁶² Once the car was stopped, Brendlin’s failure to flee constituted submission; indeed, Brendlin actually opened the door as if considering a departure, and then closed it again. That action could reasonably be viewed as an act of submission. Even without this hesitation, the Court held, the mere act of staying inside a stopped vehicle constitutes submission to authority.

3. *Impact on other motorists*

The California court was also concerned that finding for Brendlin would mean that any Fourth Amendment protections would be extended to any motorist whose movement was stopped or even slowed by a traffic stop. But the rules of *Mendenhall* and *Brower* do not give rise to any such concerns. Someone who is stuck in traffic because of a traffic stop does not “perceive a show of authority as directed against him or his car,” thus, under *Mendenhall* there is no seizure. Such an incidental affect is the sort of accidental restriction of freedom that *Brower* makes clear does not rise to seizure.

58. *Sacramento v. Lewis*, 523 U.S. 833 (1998).

59. *County of Inyo v. Brower*, 489 U.S. 593, 598 (1989).

60. *Id.* at 599.

61. *Brendlin*, 127 S. Ct. at 2409.

62. *See id.*

IV. Conclusion

Brendlin has had widespread impact on criminal law cases in California and around the nation. The case has been cited or followed in virtually every federal circuit and quite a few state courts. Twenty-three California cases reference the case.

The case clarifies questions that go far beyond the particular case of an improper traffic stop. In *People v. Hoyos*,⁶³ decided just a month after *Brendlin*, for example, the California Supreme Court interpreted *Brendlin* to say that a seizure occurs when an officer orders occupants out of a car. This has been an accepted police action since *Pennsylvania v. Mimms*⁶⁴ and *Wilson*, but now we know such orders are seizures.

Ultimately, the purpose of the Exclusionary Rule is to deter law enforcement from violating Fourth Amendment rights. Fourth Amendment rights are personal, as *Rakas* declared. Just as defendants do not obtain rights merely by being in a certain location, neither do they lose those rights based on whether they sit in the driver's or passenger's seat. By putting an end to the myth that because passengers have no possessory interests in cars they have no Fourth Amendment standing, *Brendlin* re-establishes the basic rule that a traffic stop detains all occupants and that each individual has a Fourth Amendment interest in his or her own seizure.

63. *People v. Hoyos*, 41 Cal. 4th 872 (2007).

64. *Pennsylvania v. Mimms*, 434 U.S. 106 (1977).