

129 S. Ct. 781, *, 172 L. Ed. 2d 694, **;
2009 U.S. LEXIS 868, ***; 21 Fla. L. Weekly Fed. S 620

ARIZONA, PETITIONER v. LEMON MONTREA JOHNSON

No. 07-1122

SUPREME COURT OF THE UNITED STATES

129 S. Ct. 781; 172 L. Ed. 2d 694; 2009 U.S. LEXIS 868; 21 Fla. L. Weekly Fed. S 620

December 9, 2008, Argued
January 26, 2009, Decided

COUNSEL: **Joseph L. Parkhurst** argued the cause for petitioner **Toby J. Heytens** argued the cause for the United States, as amicus curiae, by special leave of court. **Andrew J. Pincus** argued the cause for respondent.

JUDGES: GINSBURG, J., delivered the opinion for a unanimous Court.

[*784] JUSTICE GINSBURG delivered the opinion of the Court.

This case concerns the authority of police officers to "stop and frisk" a passenger in a motor vehicle temporarily seized upon police detection of a traffic infraction. In a pathmarking decision, *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968), the Court considered whether an investigatory stop (temporary detention) and frisk (patdown for weapons) may be conducted without violating the *Fourth Amendment's* ban on unreasonable searches and seizures. The Court upheld "stop and frisk" as constitutionally permissible if two conditions are met. First, the investigatory stop must be lawful. That requirement is met in an on-the-street encounter, *Terry* determined, when the police officer reasonably suspects that the person apprehended is committing or has committed a criminal offense. Second, to proceed from a stop to a frisk, the police officer must reasonably suspect that the person stopped is armed and dangerous.

For the duration of a traffic stop, we recently confirmed, a police officer effectively seizes "everyone in the vehicle," the driver and all passengers. *Brendlin v. California*, 551 U.S. 249, 255, 127 S. Ct. 2400, 168 L. Ed. 2d 132 (2007). Accordingly, we hold that, in a traffic-stop setting, the first *Terry* condition -- a lawful investigatory stop -- is met whenever it is lawful for police to detain an automobile and its occupants pending inquiry into a vehicular violation. The police need not have, in addition, cause to believe any occupant of the vehicle is involved in criminal activity. To justify a patdown of the driver or a passenger during a traffic stop, however, just as in the case of a pedestrian reasonably suspected of criminal activity, the police must harbor reasonable suspicion that the person subjected to the frisk is armed and dangerous.

I

On April 19, 2002, Officer Maria Trevizo and Detectives Machado and Gittings, all members of Arizona's gang task force, were on patrol in Tucson near a neighborhood associated with the Crips gang. At approximately 9 p.m., the officers pulled over an automobile after a license plate check revealed that the vehicle's registration had been suspended for an insurance-related violation. Under Arizona law, the violation for which the vehicle was stopped constituted a civil infraction warranting a citation. At the time of the stop, the vehicle had three occupants -- the driver, a front-seat passenger, and a passenger in the back seat, Lemon Montrea Johnson, the respondent here. In making the stop the officers had no reason to suspect anyone in the vehicle of criminal activity. See App. 29-30.

The three officers left their patrol car and approached the stopped vehicle. Machado instructed all of the occupants to keep their hands visible. *Id.*, at 14. He asked whether there were any weapons in the vehicle; all responded no. *Id.*, at 15. Machado then directed the driver to get out of the car. Gittings dealt with the front-seat passenger, who stayed in the vehicle throughout the stop. See *id.*, at 31. While Machado was getting the driver's license and information about the vehicle's registration and insurance, see *id.*, at 42-43,, Trevizo attended to Johnson.

Trevizo noticed that, as the police approached, Johnson looked back and kept [*785] his eyes on the officers. *Id.*, at 12. When she drew near, she observed that Johnson was wearing clothing, including a blue bandana, that she considered consistent with Crips membership. *Id.*, at 17. She also noticed a scanner in Johnson's jacket pocket, which "struck [her] as highly unusual and cause [for] concern," because "most people" would not carry around a scanner that way "unless they're going to be involved in some kind of criminal activity or [are] going to try to evade the police by listening to the

scanner." *Id.*, at 16. In response to Trevizo's questions, Johnson provided his name and date of birth but said he had no identification with him. He volunteered that he was from Eloy, Arizona, a place Trevizo knew was home to a Crips gang. Johnson further told Trevizo that he had served time in prison for burglary and had been out for about a year. 217 *Ariz.* 58, 60, 170 P. 3d 667, 669 (*App.* 2007).

Trevizo wanted to question Johnson away from the front-seat passenger to gain "intelligence about the gang [Johnson] might be in." *App.* 19. For that reason, she asked him to get out of the car. *Ibid.* Johnson complied. Based on Trevizo's observations and Johnson's answers to her questions while he was still seated in the car, Trevizo suspected that "he might have a weapon on him." *Id.*, at 20. When he exited the vehicle, she therefore "patted him down for officer safety." *Ibid.* During the patdown, Trevizo felt the butt of a gun near Johnson's waist. 217 *Ariz.*, at 60, 170 P. 3d, at 669. At that point Johnson began to struggle, and Trevizo placed him in handcuffs. *Ibid.*

Johnson was charged in state court with, *inter alia*, possession of a weapon by a prohibited possessor. He moved to suppress the evidence as the fruit of an unlawful search. The trial court denied the motion, concluding that the stop was lawful and that Trevizo had cause to suspect Johnson was armed and dangerous. See *App.* 74-78. A jury convicted Johnson of the gun-possession charge. See 217 *Ariz.*, at 60-61, 170 P. 3d, at 669-670.

A divided panel of the Arizona Court of Appeals reversed Johnson's conviction. *Id.*, at 59, 170 P. 3d, at 668. Recognizing that "Johnson was [lawfully] seized when the officers stopped the car," *id.*, at 62, 170 P. 3d, at 671, the court nevertheless concluded that prior to the frisk the detention had "evolved into a separate, consensual encounter stemming from an unrelated investigation by Trevizo of Johnson's possible gang affiliation," *id.*, at 64, 170 P. 3d, at 673. Absent "reason to believe Johnson was involved in criminal activity," the Arizona appeals court held, Trevizo "had no right to pat him down for weapons, even if she had reason to suspect he was armed and dangerous." *Ibid.*

* * * *

The Arizona Supreme Court denied review. *No. CR-07-0290-PR, 2007 Ariz. LEXIS 154 (Nov. 29, 2007)*. We granted certiorari, 554 *U.S.* ___, 128 *S. Ct.* 2961, 171 *L. Ed.* 2d 884 (2008), and now reverse the judgment of the Arizona Court of Appeals.

[*786] II

A

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Terry established the legitimacy of an investigatory stop "in situations where [the police] may lack probable cause for an arrest." *Id.*, at 24, 88 *S. Ct.* 1868, 20 *L. Ed.* 2d 889. When the stop is justified by suspicion (reasonably grounded, but short of probable cause) that criminal activity is afoot, the Court explained, the police officer must be positioned to act instantly on reasonable suspicion that the persons temporarily detained are armed and dangerous. *Ibid.* Recognizing that a limited search of outer clothing for weapons serves to protect both the officer and the public, the Court held the patdown reasonable under the *Fourth Amendment*. *Id.*, at 23-24, 27, 30-31, 88 *S. Ct.* 1868, 20 *L. Ed.* 2d 889.

"[M]ost traffic stops," this Court has observed, "resemble, in duration and atmosphere, the kind of brief detention authorized in *Terry*." *Berkemer v. McCarty*, 468 *U.S.* 420, 439, n. 29, 104 *S. Ct.* 3138, 82 *L. Ed.* 2d 317 (1984). Furthermore, the Court has recognized that traffic stops are "especially fraught with danger to police officers." *Michigan v. Long*, 463 *U.S.* 1032, 1047, 103 *S. Ct.* 3469, 77 *L. Ed.* 2d 1201 (1983). "The risk of harm to both the police and the occupants [of a stopped vehicle] is minimized," we have stressed, "if the officers routinely exercise unquestioned command of the situation." *Maryland v. Wilson*, 519 *U.S.* 408, 414, 117 *S. Ct.* 882, 137 *L. Ed.* 2d 41 (1997) (quoting *Michigan v. Summers*, 452 *U.S.* 692, 702-703, 101 *S. Ct.* 2587, 69 *L. Ed.* 2d 340 (1981)); see *Brendlin*, 551 *U.S.*, at 258, 127 *S. Ct.* 2400, 168 *L. Ed.* 2d 132. Three decisions cumulatively portray *Terry*'s application in a traffic-stop setting: *Pennsylvania v. Mimms*, 434 *U.S.* 106, 98 *S. Ct.* 330, 54 *L. Ed.* 2d 331 (1977) (*per curiam*); *Maryland v. Wilson*, 519 *U.S.* 408, 117 *S. Ct.* 882, 137 *L. Ed.* 2d 41 (1997); and *Brendlin v. California*, 551 *U.S.* 249, 127 *S. Ct.* 2400, 168 *L. Ed.* 2d 132 (2007).

In *Mimms*, the Court held 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." 434 *U.S.*, at 111, n. 6, 98 *S. Ct.* 330, 54 *L. Ed.* 2d 331. The government's "legitimate and weighty" interest in officer safety, the Court said, outweighs the "*de minimis*" additional intrusion of requiring a driver, already lawfully stopped, to exit the vehicle. *Id.*, at 110-111, 98 *S. Ct.* 330, 54 *L. Ed.* 2d 331. Citing *Terry* as control-

ling, the Court further held that a driver, once outside the stopped vehicle, may be patted down for weapons if the officer reasonably concludes that the driver "might be armed and presently dangerous." 434 U.S., at 112, 98 S. Ct. 330, 54 L. Ed. 2d 331.

Wilson held that the *Mimms* rule applied to passengers as well as to drivers. Specifically, the Court instructed that "an officer making a traffic stop may order passengers to get out of the car pending completion of the stop." 519 U.S., at 415, 117 S. Ct. 882, 137 L. Ed. 2d 41. "[T]he same weighty interest [*787] in officer safety," the Court observed, "is present regardless of whether the occupant of the stopped car is a driver or passenger." *Id.*, at 413, 117 S. Ct. 882, 137 L. Ed. 2d 41.

It is true, the Court acknowledged, that in a lawful traffic stop, "[t]here 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." *Ibid.* On the other hand, the Court emphasized, the risk of a violent encounter in a traffic-stop setting "stems not from the ordinary reaction of a motorist stopped for a speeding violation, but from the fact that evidence of a more serious crime might be uncovered during the stop." *Id.*, at 414, 117 S. Ct. 882, 137 L. Ed. 2d 41. "[T]he motivation of a passenger to employ violence to prevent apprehension of such a crime," the Court stated, "is every bit as great as that of the driver." *Ibid.* Moreover, the Court noted, "as a practical matter, the passengers are already stopped by virtue of the stop of the vehicle," *id.*, at 413-414, 117 S. Ct. 882, 137 L. Ed. 2d 41, so "the additional intrusion on the passenger is minimal," *id.*, at 415, 117 S. Ct. 882, 137 L. Ed. 2d 41.

Completing the picture, *Brendlin* held that a passenger is seized, just as the driver is, "from the moment [a car stopped by the police comes] to a halt on the side of the road." 551 U.S., at 263, 127 S. Ct. 2400, 168 L. Ed. 2d 132. A passenger therefore has standing to challenge a stop's constitutionality. *Id.*, at 256-259, 127 S. Ct. 2400, 168 L. Ed. 2d 132.

After *Wilson*, but before *Brendlin*, the Court had stated, in dictum, that officers who conduct "routine traffic stop[s]" may "perform a 'patdown' of a driver and any passengers upon reasonable suspicion that they may be armed and dangerous." *Knowles v. Iowa*, 525 U.S. 113, 117-118, 119 S. Ct. 484, 142 L. Ed. 2d 492 (1998). That forecast, we now confirm, accurately captures the combined thrust of the Court's decisions in *Mimms*, *Wilson*, and *Brendlin*.

B

The Arizona Court of Appeals recognized that, initially, Johnson was lawfully detained incident to the legitimate stop of the vehicle in which he was a passenger. See 217 *Ariz.*, at 64, 170 P. 3d, at 673. But, that court concluded, once Officer Trevizo undertook to question Johnson on a matter unrelated to the traffic stop, *i.e.*, Johnson's gang affiliation, patdown authority ceased to exist, absent reasonable suspicion that Johnson had engaged, or was about to engage, in criminal activity. See *id.*, at 65, 170 P. 3d, at 674. In support of the Arizona court's portrayal of Trevizo's interrogation of Johnson as "consensual," Johnson emphasizes Trevizo's testimony at the suppression hearing. Responding to the prosecutor's questions, Trevizo affirmed her belief that Johnson could have "refused to get out of the car" and "to turn around for the pat down." App. 41.

It is not clear why the prosecutor, in opposing the suppression motion, sought to portray the episode as consensual. Cf. *Florida v. Bostick*, 501 U.S. 429, 111 S. Ct. 2382, 115 L. Ed. 2d 389 (1991) (holding that police officers' search of a bus passenger's luggage can be based on consent). In any event, Trevizo also testified that she never advised Johnson he did not have to answer her questions or otherwise cooperate with her. See App. 45. And during cross-examination, Trevizo did not disagree when defense counsel asked "in fact you weren't seeking [Johnson's] permission . . . ?" *Id.*, at 36. As the dissenting judge observed, "consensual" is an "unrealistic" characterization of the Trevizo-Johnson interaction. "[T]he encounter . . . took place within minutes of the stop"; the patdown followed "within mere moments" of Johnson's exit from the vehicle; beyond genuine [*788] debate, the point at which Johnson could have felt free to leave had not yet occurred. See 217 *Ariz.*, at 66, 170 P. 3d, at 675.¹

¹ [omitted]

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In sum, as stated in *Brendlin*, a traffic stop of a car communicates to a reasonable passenger that he or she is not free to terminate the encounter with the police and move about at will. See 551 U.S., at 257, 127 S. Ct. 2400, 168 L. Ed. 2d 132. Nothing occurred in this case that would have conveyed to Johnson that, prior to the frisk, the traffic stop had ended or that he was otherwise free "to depart without police permission." *Ibid.* Officer Trevizo surely was not constitu-

tionally required to give Johnson an opportunity to depart the scene after he exited the vehicle without first ensuring that, in so doing, she was not permitting a dangerous person to get behind her. ²

2 The Arizona Court of Appeals assumed, "without deciding, that Trevizo had reasonable suspicion that Johnson was armed and dangerous." *217 Ariz., at 64, 170 P. 3d, at 673*. We do not foreclose the appeals court's consideration of that issue on remand.

* * *

For the reasons stated, the judgment of the Arizona Court of Appeals is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.