

Detention and Frisking of Car Passenger was Proper

Description

This week we look at a traffic stop case, *United States v. Gurule*^[1], that touches on a number of issues – requiring passengers to exit the vehicle during the stop, consent to search, and frisking the passenger during a consent search. I often say that the success or failure of a case is often determined based on a matter of seconds and the quality of the officer's report or testimony. I think you will see those issues play out in today's case.

FACTS

A West Valley City officer was following a vehicle when he observed the operator commit several moving violations. The officer pulled over the vehicle and learned that none of the three occupants in the vehicle possessed a valid driver's license. Officers also determined that the operator was wanted on several outstanding misdemeanor warrants and was apparently living out of her car.

The officer advised the operator that he would not arrest her if she provided any contraband she was carrying in the vehicle. The operator consented to the search and officers proceeded to search the car. Due to the amount of property in the car, the officer asked the driver and 2 occupants to exit the vehicle to facilitate the search. One occupant consented to a frisk and the rear seat passenger – Tommy Gurule – refused to consent to a frisk. Gurule was directed to sit on the curb while the search continued. Based on Gurule's demeanor and answers to questions officers became concerned that Gurule might be armed. The officer directed Gurule to stand and could see a bulge in Gurule's pants pocket. As the officer grabbed Gurule's arm the officer saw the grip of a handgun and retrieved the gun from Gurule's pocket. Gurule later confessed to owning the pistol.

Gurule was charged with being a felon in possession of a firearm and filed a motion to suppress the gun and his subsequent confession. The trial court granted Gurule's motion, finding that Gurule should have been allowed to walk away from the traffic stop since he was only a passenger. The trial court also determined that even if Gurule's continued detention was lawful, the officers did not have the requisite reasonable suspicion to conduct the frisk. This appeal followed.

10th Circuit Findings

The government argued that the officers were authorized to detain Gurule until they completed the search and the officers had developed reasonable suspicion during the stop to frisk the defendant. The 10th Circuit agreed. Quoting the 1997 SCOTUS decision in *Maryland v. Wilson*^[2], the court recognized that while passengers enjoy a heightened liberty interest over the driver, "*the risk of harm to both the police and the occupants is minimized if the officers routinely exercise unquestioned command of the situation*".

Looking to the facts in this case, the court determined that the officers were still conducting enforcement activities – searching the car – that had been consented to by the driver. Under those circumstances, it was reasonable for the officers to require the passengers to remain until the enforcement actions were concluded.

The court then turned to the frisk. As we have discussed before, having the appropriate reasonable suspicion to conduct a stop does not automatically cloak officers with the authority to conduct a pat down. Rather, officers must have reasonable suspicion to support the stop AND a reasonable belief that the party may be armed. In this case Gurule argued that the frisk started the moment he was directed to stand. The government argued that the frisk did not begin until after Gurule stood up and the officer observed a large bulge and the butt of a gun in Gurule's pocket.

The court went on to list several factors that authorized the frisk even before the officers saw the gun. First, the officers asked Gurule several times if he was carrying any weapons and his answers were conflicting. Second, the officers had observed a large bulge in his pocket. Additionally, the court noted that the stop took place after dark in a secluded area and at least one of the occupants in the car was wanted on outstanding warrants. When all of these factors are taken together, the court determined it was reasonable for the officers to conduct the frisk. This case will now go back to the trial court for further proceedings.

WRAP UP

In this case, the court emphasizes that the requisite information required to reach the reasonable suspicion standard is minimal and the court has laid out a number of factors which, in their entirety, can support a pat down. The court also makes it clear that officers can control the scene during a traffic stop 'for the safety of the officers and the passengers'. More importantly, the court noted that it is concerning that an officer would turn his or her back on an unfrisked occupant while conducting the search of the car.

Taking the time to document all of the facts surrounding the case, including the factors outlined by the court here, will help the judge in your case understand that frisking the vehicle occupants meet 4th Amendment requirements.

1. *United States v. Gurule*, 2019 US App LEXIS 20558 (10th Cir UT July 2019) [?](#)
2. *Maryland v. Wilson* (1997) No. 95-1268 [?](#)

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