



Traffic Stops and Control of Passengers



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In 1997, the United States Supreme Court held, in *Maryland v. Wilson*, that it is reasonable for officers to order passengers in a lawfully stopped automobile to exit the vehicle.ⁱ The court reasoned that there must be a balance during a traffic stop between the need of the police to maintain officer safety and the Fourth Amendment rights of passengers. The court concluded that a passenger is only minimally inconvenienced, and basically, the most significant change in the passenger's circumstance is that they will be outside rather than inside the vehicle.

Given *Maryland v. Wilson*, the question has now become, "May the police require the passenger in a lawfully stopped automobile to remain inside the vehicle during a traffic stop?" The Eighth Circuit Court of Appeals recently addressed this very question when they decided the *United States v. Sanders*.ⁱⁱ The incident began when a deputy with the Jackson County, Missouri, Sheriff's Department conducted a lawful traffic stop based upon a traffic violation on a man named Wilson. Wilson pulled into an apartment complex that could be characterized as a "high crime" area and stopped next to a building. A passenger in Wilson's car named Sanders exited the car. The deputy repeatedly ordered Sanders to reenter the car and Sanders eventually complied. When the deputy approached the car, he observed a pistol grip protruding from Sanders' left, front pocket. Back-up arrived and Sanders was removed from the car; a handgun was removed from his pocket.

Sanders was charged federally with unlawful possession of a firearm.ⁱⁱⁱ He filed a motion to suppress and argued that the deputy violated his Fourth Amendment rights by ordering him to reenter the stopped car, thereby detaining him without reasonable suspicion that he was involved in criminal activity. Sanders reasoned that if he was unlawfully detained at the traffic stop, then the recovery of the handgun was a result of the unlawful detention, and therefore, fruit of the poisonous tree. The motion to suppress was denied by the district court and Sanders appealed to the Eighth Circuit Court of Appeals.

The Eighth Circuit noted that, while the United States Supreme Court has not specifically addressed this issue, they have addressed situations that offer guidance on this topic. First, as noted above, *Maryland v. Wilson* stands for the proposition that officers may order a passenger in a lawfully stopped vehicle to exit the vehicle during the traffic stop. The Supreme Court reasoned that "officer safety" is a "weighty

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interest” on a traffic stop given the number of assaults that occur on officers during traffic stops.^{iv} The presence of passengers only increases the risk to officers further justifying the need of officer control over the situation.^v

Second, in *Brendlin v. California*, the Supreme Court held that, when police stop a car, the passengers in the car, in addition to the driver, are seized because a reasonable passenger would not believe himself free to leave.^{vi} Specifically, the court said “a sensible person would not expect a police officer to allow people to come and go freely from the physical focal point of an investigation into faulty behavior or wrongdoing... even when the wrongdoing is only bad driving, the passenger will expect to be subject to some scrutiny, and his 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.”^{vii}

Next, the court considered *Michigan v. Summers*, where the Supreme Court held that officers could order a person leaving a house to reenter the house and remain there while officers executed a search warrant.^{viii} In fact, when the Supreme Court decided *Maryland v. Wilson*, they cited *Summers* and stated that “the risk of harm to both the police and the occupants is minimized if the officers routinely exercise unquestioned command of the situation.”^{ix}

The Eighth Circuit then, in light of the above analysis, stated that the reasoning in *Wilson* and *Summers* applies equally to the facts of *Sanders*; therefore, the deputy did not violate the Fourth Amendment when he ordered Sanders to reenter the car.^x The court also considered, in addition to the above analysis, the following: the officer was in a high crime area; it was dark; the officer was outnumbered by the occupants of the stopped car; and the officer testified it was his usual practice to have all occupants remain in the vehicle for his safety. Additionally, the intrusion to Sanders during this incident was minimal. The court noted that as soon as Sanders reentered the car, the deputy approached and saw the gun. Thus, the amount of time Sanders was detained without reasonable suspicion was *de minimis* (so minimal it is unimportant). Once the officer saw the gun, he then had reasonable suspicion to detain Sanders.

It is also important to note that the Eighth Circuit stated that it was **not** deciding whether an officer may forcibly detain a passenger for the entire duration of the stop without reasonable suspicion that the passenger is or was engaged in criminal activity.^{xi} The court did not need to decide this question because the facts of *Sanders* did not require it—once the officer saw the gun in Sanders’s pocket, the officer then possessed reasonable suspicion to detain him.

In conclusion, the rule we can take from *Sanders* is that **it is constitutionally reasonable for officers to order a passenger in lawfully stopped automobile to remain inside the automobile or to reenter the automobile.**^{xii} It is important to note that the rule of this case is only binding in the Eighth Circuit, although other Circuits have reached similar results.^{xiii} Other circuits or states may reach a different conclusion.

ⁱ 519 U.S. 408 (1997)

ⁱⁱ No. 07-1407, 2007 U.S. App. LEXIS 29393 (8th Cir. December 20, 2007)

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ⁱⁱⁱ 18 U.S.C. § 922(g)(1)

^{iv} *Wilson*, 519 U.S. at 413

^v *Id.*

^{vi} 127 S. Ct. 2400, 2407 (2007)

^{vii} *Id.*

^{viii} 452 U.S. 692 (1981)

^{ix} *Wilson*, 519 U.S. at 414 (quoting *Summers*, 452 U.S. at 702-703)

^x *Sanders* at 6-7

^{xi} *Id.* at 10 n. 7

^{xii} *Id.* at 6-7

^{xiii} *Id.* at 10 n. 7 See *United States v. Williams*, 419 F.3d 1029, 1034 (9th Cir.) ("We hold that HN7 under the Fourth Amendment it is reasonable for an officer to order a passenger back into an automobile . . . because the concerns for officer safety . . . and specifically the need for officers to exercise control . . . outweigh the marginal intrusion on the passenger's liberty interest."), cert. denied, 546 U.S. 1081, 126 S. Ct. 840, 163 L. Ed. 2d 715 (2005); ...*United States v. Moorefield*, 111 F.3d 10, 11 (3rd Cir. 1997) (holding that "police officers may constitutionally order occupants of cars to remain in the vehicle with their hands up in the air"); cf. *Rogala v. District of Columbia*, 333 U.S. App. D.C. 145, 161 F.3d 44, 53 (D.C. Cir. 1998) ,(involving a passenger who did not attempt to leave the scene; summarily affirming and reprinting the district court's opinion, which held that "it follows from *Maryland v. Wilson* that a police officer has the power to reasonably control the situation by requiring a passenger to remain in a vehicle during a traffic stop"); see also *United States v. Holt*, 264 F.3d 1215, 1223 (10th Cir. 2001) (en banc) (stating in dictum that "during a routine traffic stop, an officer may . . . order the passengers to remain in the vehicle").