

A police officer had a hunch, not amounting to probable cause or reasonable suspicion, that a man was a drug dealer. One day while the officer was on highway patrol, her radar gun clocked the man's car at 68 mph in an area where the maximum posted speed limit was 65 mph. The officer's usual practice was not to stop a car unless it was going at least 5 mph over the posted limit, but contrary to her usual practice, she decided to stop the man's car in the hope that she might discover evidence of drug dealing. After she stopped the car and announced that she would be writing a speeding ticket, the officer ordered the man and his passenger to step out of the car. When the passenger stepped out, the officer saw that the passenger had been sitting on a clear bag of what the officer immediately recognized as marijuana. The officer arrested both the man and the passenger for possession of marijuana.

At their joint trial, the man and the passenger claim that their Fourth Amendment rights were violated because the officer improperly (1) stopped the car for speeding as a pretext for investigating a hunch rather than for the stated purpose of issuing a traffic ticket and (2) ordered the passenger to step out of the car even though there was no reason to believe that the passenger was a criminal or dangerous.

Are the man and the passenger correct?

- A. No, as to both the stop of the car and the officer's order that the passenger step out of the car.
- B. No as to the stop of the car, but yes as to the officer's order that the passenger step out of the car.
- C. Yes, as to both the stop of the car and the officer's order that the passenger step out of the car.
- D. Yes as to the stop of the car, but no as to the officer's order that the passenger step out of the car.

Explanation:

A **vehicle stop violates** a driver's and a passenger's **Fourth Amendment** right against unreasonable seizures if the stop is conducted **without a warrant** or an **objectively justifiable basis** like:

reasonable suspicion – specific and articulable facts to support a belief that a vehicle occupant is, or will be, involved in criminal activity *or*

probable cause – a reasonable belief that an occupant has violated the law (including a traffic law).

A seizure is reasonable—even if it is used as a pretext or excuse to investigate a hunch—if there is an objectively justifiable basis for the vehicle stop. Therefore, the officer's **subjective motivation** for the stop is **irrelevant**. The **driver and passenger(s)** can then be **ordered out of the vehicle** while the officer addresses the matter justifying the stop since this additional intrusion is minimal and helps ensure officer safety. And evidence discovered during this process can create probable cause for an arrest.

Here, the officer stopped the car because she hoped to find evidence of drug dealing (subjective motivation). But she had probable cause to believe that the man had violated a traffic law since she clocked him driving 68 mph in a 65-mph zone (objectively justifiable basis). Therefore, the stop was reasonable under the Fourth Amendment (**Choices C & D**). As a result, the officer properly ordered the man and the passenger out of the car while she wrote the speeding ticket (**Choices B & C**). And since no Fourth Amendment rights were violated, the officer lawfully discovered the marijuana and validly arrested the man and the passenger.

Educational objective:

A warrantless vehicle stop is a reasonable Fourth Amendment seizure if the officer has an objectively justifiable basis for the stop—ie, reasonable suspicion or probable cause. The officer's subjective motivation is irrelevant. And during a legal stop, the officer can order the driver and passenger(s) to exit the vehicle.

References

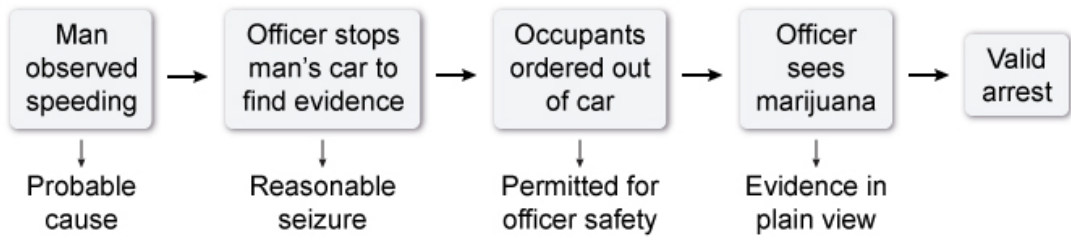
U.S. Const. amend. IV (prohibition against unreasonable searches and seizures).

Whren v. United States, 517 U.S. 806, 813 (1996) (recognizing that an officer's subjective intentions play no role in the reasonableness of a seizure under the Fourth Amendment).

Maryland v. Wilson, 519 U.S. 408, 415 (1997); Pennsylvania v. Mimms, 434 U.S. 106, 111 (1977) (holding that an officer can order a driver and passengers out of a vehicle during a valid traffic stop).

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