ANNOUNCEMENTS

On June 14th, the Supreme Court issued a supplemental opinion regarding **Administrative Order Number 10 – Child Support Guidelines**, and a copy was included in the weekly mailout.

This issue is the last issue of this term of court.

CRIMINAL

Pittman v. State **[suppression of evidence]** Following his arrest, appellant's vehicle was impounded and an inventory of its contents was performed. During this inventory, law enforcement officials discovered contraband. Appellant asserted that it was not reasonably necessary for the officers to impound the vehicle or conduct the inventory and that the evidence obtained from the vehicle should have been suppressed. A law enforcement official testified that the vehicle was impounded because: (1) the crimes for which appellant was accused were violent in nature; (2) appellant's vehicle was located at his victim's apartment complex; (3) appellant did not reside at that apartment complex; and (4) law enforcement officials did not want appellant to return to the apartment complex to retrieve his vehicle. The Court of Appeals concluded that the violent nature of appellant's attack on his victim justified the law enforcement official's desire to eliminate any justifiable reason for appellant's return to his victim's apartment complex. The appeals court further concluded that the vehicle was properly impounded pursuant to Rule 12.6 (b) of the Arkansas Rules of Criminal Procedure, which permits a vehicle to be impounded "for other good cause." (Singleton, H.; CACR 06-1120; 6-6-07; Glover).

Davis v. State **[suppression of evidence]** Appellant was stopped by law enforcement officials for exceeding the speed limit. During the stop, the officer asked for consent to search the vehicle. Appellant did not consent to a search of the vehicle. However, appellant agreed to permit the officer and his dog to walk around the vehicle. As the two circled the vehicle, the dog "alerted" on the back passenger door and the officer discovered contraband. Appellant requested suppression of the contraband, which he alleged was obtained after the purpose of the traffic stop had been completed. The Court of Appeals rejected appellant's argument and concluded that appellant "consented to an extension of the traffic stop for the canine sniff before the purposes of the stop had been completed." Accordingly, the trial court correctly denied appellant's motion to suppress. (Fogleman, J.; CACR 06-1367; 6-6-07; Robbins).

Prine v. State **[writ of prohibition]** The denial of a writ of prohibition is not an appealable order. (Jones, B.; SC 07-10; 6-7-07; Gunter).

Wilcox v. State **[revocation of suspended sentence]** Appellant's suspended sentence was revoked based upon an alleged violation of a condition of his probation. Specifically, a drug test performed on appellant's urine sample yielded a positive result. During the revocation hearing, the State failed to establish that proper procedures were followed during the drug test. Thus, the Court of Appeals concluded that the trial court erred when it revoked appellant's suspended sentence. In so holding, the appeals court noted "A drug sample that has been handled and tested in an unreliable manner cannot yield a reliable result that will enable a trier-of-fact to determine that it is more likely than not that a person used a controlled substance." (Wright, J.; CACR 06-1313; 6-13-07; Bird).

McBride v. State **[appellate procedure]** An appellant may challenge an illegal sentence for the first time on appeal. **[sentencing]** A sentence must be in accordance with the statutes in effect on the date of the crime. Accordingly, the trial court erred when it relied upon a statute that was not in effect at the time the appellant committed certain offenses as justification for denying appellant's request to expunge his criminal record. (Keith, T.; CACR 06-1225; 6-13-07; Hart).

Beasley v. State **[Rule 804 (b)(1) of the Arkansas Rules of Evidence]** The trial court, relying upon Rule 804 (b)(1) of the Rules of Evidence, permitted testimony from a bond-reduction hearing to be admitted during appellant's capital-murder trial. Rule 804 (b)(1) provides that an unavailable witness's former testimony may be admitted into evidence "if the party against whom the testimony is . . . offered. . . had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination." The Supreme Court concluded that a bond-reduction hearing is a limited hearing rather than a "full-fledged hearing." Thus, the Court noted that a party's motive in developing the testimony of a witness at a bond-reduction hearing is not similar to his motive in developing testimony during a trial. Accordingly, the trial court erred when it admitted the witness's prior testimony from the bond-reduction hearing at appellant's trial. (Humphrey, M.; SCCR 06-1400; 6-14-07; Hannah).

Fuller v. State **[sufficiency of the evidence; third-degree domestic battery]** Appellant was convicted of third-degree domestic battery. A person commits domestic battering in the third degree if he purposely or recklessly causes physical injury to a household member. The legislature has included within the definition of "household members" persons who have been in the past or are presently in a dating relationship. Appellant and his victim were involved in a romantic relationship for approximately five months. During their relationship, appellant and his victim spent time together outside of work and engaged in sexual relations. Approximately eight months after the relationship ended, the two became involved in an argument and the appellant struck the victim. Appellant argued that the evidence was insufficient to establish a dating relationship because the victim was married to another man during their relationship. The Court of Appeals rejected the appellant's argument and concluded that the legislature expressly included a broad definition of "household member" to include certain "dating relationships." Based upon a review of the facts, the Court concluded that the appellant and his victim were involved in the type of relationship that fell within the protection of the third-degree domestic battery statute and that there was substantial evidence to support the appellant's conviction. (Proctor, W.; CACR 06-1291; 6-20-07; Pittman).

Bell v. State **[sufficiency of the evidence; first-degree domestic battery]** Appellant left a fifteen- month-old child unattended in a bathtub that contained water, which was hot enough to burn the skin off of the child's feet. The appellant had previously bathed the child and was familiar with procedures for properly bathing a child. After the child was in the water, the appellant ignored the child's cries. Based upon the foregoing evidence, the Court of Appeals concluded that there was substantial evidence to support appellant's conviction of domestic battery in the first degree. (Wilson, R.; CACR 06-01286; 6-20-07; Baker).

Fowler v. State **[sufficiency of the evidence; arson]** Although appellant confessed that she had committed arson, the State failed to offer "other evidence," which established that the appellant actually carried out the act by setting fire to her home. Without additional evidence, the State could not overcome the common-law presumption against arson. Accordingly, the trial court erred when it denied appellant's directed-verdict motion. (Williams, C.; CACR 06-943; 6-20-07; Vaught).

White v. State **[sufficiency of the evidence; rape; sexual assault in the fourth degree; exposing another to Human Immunodeficiency Virus]** Appellant's two victims, who were fifteen-years-old, testified that appellant, who was at least twenty years old, had "vaginal-penile sex" with each of them. Appellant was the guardian of one of his victims. Although appellant knew that he was HIV positive at the time of the crimes, he did not advise his victims of his condition. Based upon the foregoing evidence, the Supreme Court concluded that there was substantial evidence to support appellant's convictions for rape, sexual assault in the fourth degree, and exposing another to Human Immunodeficiency Virus. **[severance of offenses]** The trial court did not abuse its discretion when it denied appellant's request to sever the charge of exposing another to HIV from the other charges because the crime of exposing another to HIV occurred in the course of appellant committing the offense of fourth-degree sexual assault. Thus, the actions were part of a single scheme and the same evidence was offered to prove both crimes. **[disclosure of HIV status; HIPAA]** The Health Insurance Portability and Accountability Act of 1996 permits disclosure of medical information for law enforcement purposes. The Act does not limit a state's authority to investigate crimes.

Accordingly, the trial court did not err when it permitted a nurse practitioner to testify about the appellant's HIV status during his trial for violations of certain criminal statutes. **[continuance]** Appellant requested a continuance of his trial to allow him additional time to locate a witness. The testimony, which would have been provided from the "missing witness," was offered by another witness. The Supreme Court concluded that the testimony from the "missing witness" would have been cumulative. Thus, the trial court did not err when it denied appellant's motion. **[admission of testimony; prior bad acts]** The trial court did not abuse its discretion when it admitted evidence of other sexual acts that occurred between the appellant and one of his child victims. (Langston, J.; SCCR 06-1187; 6-21-07; Hannah).

State v. Owens **[jurisdiction; Ark. Code Ann. 5-2-316]** Appellant was acquitted by reason of mental disease or defect for the murder of his father and was committed to the Arkansas State Hospital. Thereafter, beginning in 1993, several orders of conditional release, orders of modified conditional release, and orders revoking conditional release were entered. In 2006, the trial court entered another order of conditional release. The appellant, citing Ark. Code Ann. § 5-2-316, responded by asserting that the court lost jurisdiction over his case in 1998, five years after the initial order of conditional release was entered. The trial court agreed with appellant's position and entered an order of dismissal. After reviewing the language of the statute, the Supreme Court concluded that the trial court erred. Specifically, the Court held that Ark. Code Ann. § 5-2-316 does not limit a circuit court's jurisdiction to five years after the initial order of conditional release is entered. (Gray, A.; SC 07-58; 6-28-07; Danielson).

Ward v. State **[sufficiency of the evidence; rape]** Based upon the testimony of the child victim, the testimony of the victim's sister, and the appellant's actions after he discovered that he was suspected of sexually assaulting a minor, the Supreme Court concluded that there was substantial evidence to support appellant's rape conviction. **[preservation of issue on appeal]** Appellant sought to exclude several items of evidence. Prior to trial, the circuit court made "preliminary" or "qualified" rulings on the admission of the evidence. During the trial, the evidence was admitted and the appellant failed to object. Thus, the appellant was precluded from challenging the trial court's evidentiary rulings on appeal. (Langston, J.; SCCR 06-1327; Brown).

CIVIL

Jones v. Vowell: **[dismissal]** Plaintiff and her attorney were not present when case was called for trial, and trial court dismissed case with prejudice. Court abused its discretion and violated plaintiff's due process rights in dismissing her case. This was not a case in which there had been no activity, but plaintiff was pursuing the case. Court should have given notice under Rule 41 (b) of its intention to dismiss so as to give the plaintiff an opportunity to explain and for the court to determine whether the plaintiff had notice of the trial date. (Sims, B.; CA 06-1079; 6-6-07; Baker)

Bailey v. McRoy: **[new trial]** There was evidence supporting the jury's verdict and by granting new trial, the court substituted its view of the evidence for that of the jury. (Wood, K.; CA 06-878; 6-6-07; Glover)

Collie v. State Medical Board: **[revocation]** Evidence supported Medical Board's findings regarding violations of Board's regulations, but punishment imposed by the Board of revocation of medical license was too severe, and supreme court modified sanction to a year's suspension. (Fox, T.; SC 06-1042; 6-7-07; Corbin)

Omni Holding Corp. v. C.A.G. Investments: **[standing/corporation]** Corporation had standing to prosecute action in the state as its lapsed charter had been reinstated. Furthermore, corporation did not violate "transacting business in the state" statute. Its activities were exempt from requirement to obtain a certificate of authority as the activities involved creation, securing, and collection of debts and the ownership of property (4-27-1501). **[abandonment of property]** Evidence supported finding that tenant abandoned property remaining on the premises. (Honeycutt, P.; SC 06-1136; 6-7-07; Imber)

Wilson v. Weiss: **[special legislation]** Legislation is unconstitutional as it fails to state a distinct purpose as required by Article 5, Section 29 of the constitution. Other Acts violate the Fourteenth Amendment to the Arkansas Constitution (special legislation) as there are no legitimate reasons that the particular entities receiving funds should be treated differently from other equally worthy military and historic attractions in the state. (Proctor, W.; SC 07-204; 6-7-07; Brown)

City of Pine Bluff v. Jones: **[jails/prisoners]** Due to the settlement agreement involving the cost of housing city prisoners in county jail, there is no existing legal controversy; therefore, the appeal is dismissed. (Plegge, J.; SC 06-1032; 6-7-07; Glaze)

Centerpoint Energy v. Miller County Circuit Court: **[jurisdiction]** Public Service Commission has exclusive jurisdiction over consumer's complaint regarding rates charged by utility companies. (SC 06-1294; 6-7-07; Brown)

Franks v. Mountain View: **[administrative appeal]** Appeal from planning commission to circuit court was not properly perfected under Rule 9 of the Rules of District Court, which requires filing either the record or an affidavit within 30 days. (Weaver, T.; CA 06-1234; 6-13-07; Gladwin)

Shipp v. Franklin: **[civil justice reform act]** Challenge to constitutionality of Civil Justice Reform Act on separation of powers grounds was moot. (Williams, C.; SC 07-22; 6-14-07; Imber)

Wagner v. General Motors Corp.: **[summary judgment/negligence]** Summary judgment was not proper as fact questions exit regarding negligence claims and the component-parts doctrine. (Patterson, J.; SC 06-814; 6-14-07; Gunter)

State Auto Property Ins. Co. v. Dept. of Environmental Quality: **[Minerva precedent//insurance pollution exclusion]** Summary judgment was not in order. Trial court should consider extrinsic evidence to assist in determining meaning of ambiguous language in policy. (McGowan, M.; SC 06-1480; 6-14-07; Brown)

Valley v. Helena National Bank: **[service]** Service by mail was defective when the mail card was signed by an individual who was not the defendant nor his agent. Fact that several days later the defendant signed the green card did not cure the defective service when there was no evidence that the defendant was also supplied with the summons and complaint. (Yates, H.; CA 06-1075; 6-20-07; Bird)

Beverly Enterprises v. Thomas: **[class certification]** Predominance criterion was satisfied as the overarching issue of understaffing is common to the class and may be resolved before individual issues of damages needs to be addressed. Class action is the superior method to resolve the case. Party is an adequate class representative. (Harkey, J.; SC 06-877; 6-21-07; Brown)

Nash v. Arkansas Elevator Safety Board: **[admin. appeal]** Board properly found that there was no undue hardship in bringing the elevator up to code requirements. Board properly conditioned the granting of a variance upon the correction of existing code violations. (Proctor, W..; SC 06-1257; 6-21-07; Gunter)

McCoy v. Montgomery: **[malpractice]** There was sufficient evidence for the jury to have determined that the doctor engaged in malicious conduct in his treatment to warrant the awarding of punitive damages. (Wilkinson, N; SC 06-1243; 6-21-07; Gunter)

Jim Ray, Inc. v. Williams: **[punitive damages]** Car dealer deceived customer into paying more for his truck than the sticker price and tricked him into buying a warranty. $75,000 in punitive damages were awarded and approximately $4500 in compensatory damages. Punitive damages were found to be excessive based on an analysis of reprehensibility and the ratio to compensatory damages. The defendant's conduct both in quality and quantity are at the lower end of the range of reprehensible behavior. The ratio of 17:1 is excessive for the conduct and the facts dictate a single-digit ratio. (Marschewski, J.; CA 06-789; 6-27-07; Marshall)

Cavalry SPV v. Anderson: **[pleadings]** Court erred in striking amended complaint where there was no showing of prejudice or undue delay. (Harkey, J.; CA 06- 1370; 6-27-07; Robbins)

Magic Touch v. Hicks: **[wrongful discharge]** Evidence shows employee committed insubordination under the employee manual to justify termination for cause. (Fogleman, J.; CA 06-944; 6-27-07; Heffley)

Croney v. Lane: **[res judicata]** Prior dismissal order did not have res judicata effect because party did not have opportunity to litigate the issues. (Smith, V.; CA 06-904; 6-27-07; Miller)

Price v. Thomas Built Buses: **[school bus seat belts]** The General Assembly has affirmatively decided not to require passenger seat belts in school buses and has thereby preempted any common-law tort claims against school bus manufacturers that have complied with Department of Education design specifications. (Finch, J.; SC 06-1074; 6-28-07; Imber)

Johnson's Sales Co. V. Harris: **[class certification]** Class action against furniture company alleging that purchase agreements charged a usurious interest rate were properly certified for class action**.** (Culpepper, D.; SC 06-1237; 6-28-07; Corbin)

DOMESTIC RELATIONS

Crystal Dobbs v. Johnathan Dobbs: **[order of protection; appealable order]** The trial court conditioned the execution of a permanent order of protection on the appellee's paying $190 in fees within 30 days. The Court of Appeals held that the conditional nature of the order rendered it not final for purposes of appeal. The appeal was dismissed. (King, K.; No. CA06-1037; 6-6-07; Hart)

Paul A. Dee, Jr. v. Erin Dee: **[divorce; evidence of grounds]** Divorce is a creature of statute and can only be granted upon proof of statutory grounds. To obtain a divorce on the ground of general indignities, the plaintiff must show a habitual, continuous, permanent, and plain manifestation of settled hate, alienation, and estrangement on the part of one spouse, sufficient to render the condition of the other intolerable. Even though the appellant waived corroboration of grounds and failed to object to the sufficiency of proof of grounds at trial, the appellee was required to offer sufficient, non-conclusory proof of grounds, and she failed to do so. (Duncan, X.; No. CA06-1163; 6-6-07; Gladwin)

Kimberly Dawn Sykes v. Justin Warren: **[child custody]** A split decision in which the Court of Appeals said that, although the record included evidence to support the trial court's decision to award custody of the child to the father, the Court was left with a distinct and firm impression that the award to the father instead of the mother was clear error. (Honeycutt, P.; No. CA06-1002; 6-13-07; Robbins)

Teresa Allen v. Chad P. Allen: **[entry of judgment; marital property; retirement benefits]** Marital property is to be divided as of the time of divorce. A judgment or decree is "entered" when it is stamped or marked by the clerk, and that provides a definite point at which a judgment becomes effective. Ark. R. Civ. P. 58 and Administrative Order No. 2. That point in time cannot be subverted by a recital in a decree as to the date of the divorce. The retirement benefits which accrued during the marriage would be valued as of the date of the actual divorce, not the date of the divorce hearing. (Whiteaker, P.; No. CA06-823; 6-20-07; Heffley)

Victor Chiolak v. Patricia Chiolak: **[order of protection; visitation; res judicata]** The trial court did not err in deciding visitation in a protective order case even though the parties had just been divorced in another division of the same circuit. In granting the order of protection, which included an order that visitation would cease, the trial court made it clear that the protective order was subject to modification by the division that had granted the divorce. Visitation was stopped only until the other division could conduct a hearing and rule on visitation in light of the child's allegations of abuse against his father. The Court also found that res judicata did not bar issues raised by the order of protection. Custody and visitation orders are always subject to modification for changed circumstances and the best interest of the child. (Reynolds, D.; No. CA06-1217; 6-20-07; Glover)

Cynthia Hardy v. Reginald Wilbourne: **[paternity; child support]** A petition for child support may not be initiated after the death of a child. The Supreme Court said that the plain language of Ark. Code Ann. 9-14-105(b) (1) requires that the parent petitioning for an order of child support have physical custody of the child. Because the child here was deceased at the time the mother filed her petition for child support, the mother was without physical custody and was prohibited from filing a petition for child support. Even though subsection "e" provides that a child support action may be brought at any time up to and including five years from the date the child reaches age 18, the language of the statute "clearly presupposes that the child is still living, as the age of the child is the determining factor." In addition, Ark. Code Ann. 9-14-237(a)(1)(B)(iii), provides specifically that a duty to pay child support terminates at the death of a minor child. Therefore, the appellee's obligation to pay child support for the deceased child terminated by operation of law at death of the child. (Landers, M.; No. SC05-1335; 6-21-07; Danielson)

Ricky D. Ivy, Jr. v. Office of Child Support Enforcement: **[default judgment; service of process]** Because the appellant was not served with valid service of process before a default judgment of paternity and child support was entered against him, the judgment was void *ab initio*. (Kinney, B.; No. CA06-1165; 6-27-07; Baker)

Cynthia Brown Thomas v. James W. Avant: **[UCCJEA]** UCCJEA case in which the Supreme Court affirmed the trial court's finding that Arkansas retained exclusive jurisdiction of the custody case under the UCCJEA because, even though the mother and child lived in Oklahoma, the father of the child remained in Arkansas. The Court also affirmed the finding that venue was proper in Clark County, Arkansas. (Thomas, J.; No. SC06-983; 6-28-07; Corbin)

PROBATE

Fred R. Calvert, Jr. V. Estate of Fred R. Calvert, Sr.: **[attorney fees]** The Court of Appeals affirmed the award of attorney's fees based upon Texas law, specifically the Texas Trust Code. The trust agreement in the case provided that the Texas Trust Act governed administration of the trust except if the Act conflicted with the trust agreement. The trial court had awarded attorney's fees based upon Arkansas law, so the result was affirmed but for a different reason. (Lindsay, M.; No. CA0-1036; 6-20-07; Vaught)

Virginia Cloud, Executrix v. Amber Brandt, Executrix, et al.: **[tenancy by the entirety]** When a husband and wife acquire property in both of their names, a presumption arises that a tenancy by the entirety in the property results. This applies to both real and personal property. In cases involving decedents' estates, one spouse can destroy a tenancy by the entirety by withdrawing jointly-held funds without the other spouse's consent. The surviving spouse is entitled to the remaining balance in the joint account. Cases involving the distribution of marital property upon divorce, such as *Lofton v. Lofton*, 23 Ark. App. 203, 745 S.W.2d 635 (1988), have held otherwise. In that case, the Court said that the Court of Appeals intimated that the consent of one spouse is required for the destruction of a tenancy in joint funds, a proposition upon which the Court of Appeals relied for the purpose of determining the husband's intent. While the intent of a spouse in withdrawing joint funds, and the other's consent to withdrawal, might be significant in determining whether a spouse intended for the funds to remain marital property, evidence of a spouse's consent is not a requirement for purposes of distribution of property under probate law. Knowing the intent of a spouse can assist a court in determining what was marital property and how that property should be equitably distributed in a divorce action. However, the law regarding marital property does not apply in situations other than divorce, including the settlement of estates. In this case, the decedent husband was not precluded from unilaterally destroying the tenancy by the entirety in the joint checking account without his wife's consent. As the surviving tenant by the entirety, she was entitled, as a matter of law, only to the balance of funds in the joint account at the time of her husband's death. (Whiteaker, P.; No. SC06-1102; 6-21-07; Imber)

JUVENILE

[D-N Appeals] "Effective July 1, 2007, the Arkansas Public Defender Commission shall serve as appellate counsel for parties found by the Circuit Court to be indigent for purposes of appeal in dependency-neglect proceedings. Notwithstanding the transfer of these appeals to the Arkansas Public Defender Commission, it will continue to be the responsibility of trial counsel to file all notices of appeals in compliance with Arkansas Supreme Court Rule 6-9-(b). It shall also be the responsibility of trial counsel to serve on the Arkansas Public Defender Commission within twenty-four (24) hours of filing the notice of appeal with the Circuit Clerk a file-marked copy of the notice of appeal and the order or orders that are being appealed. Service on the Arkansas Public Defender Commission may be effectuated by electronic submission. Upon receipt of the notice of appeal and orders being appealed, the Arkansas Public Defender Commission shall send a confirmation of receipt to trial counsel. This confirmation will operate to relieve trial counsel of representation of the client for the limited purpose of appeal, and no motion to be relieved as counsel need be filed with the appellate court." (Per Curiam; 6- 27- 2007)

SUPREME COURT

Uttecht v. Brown: **[juror exclusion/ death penalty]** A Washington jury sentenced respondent Brown to death, and the state appellate courts affirmed. Subsequently, the Federal District Court denied Brown's habeas petition, but the Ninth Circuit reversed, finding that under *Witherspoon v. Illinois*, 391 U. S. 510, and its progeny, the state trial court had violated Brown's Sixth and Fourteenth Amendment rights by excusing a juror for cause on the ground that he could not be impartial in deciding whether to impose a death sentence.

Held:

The Ninth Circuit erred in holding that both the state trial court's excusal of the juror and the State Supreme Court's affirmance were contrary to, or an unreasonable application of, clearly established federal law. The State Supreme Court explicitly found that the juror was substantially impaired. On this record, the trial court acted well within its discretion in granting the State's motion to excuse the juror.

In the case, 11 days of voir dire were devoted to determining whether potential jurors were death qualified. During that phase, 11 of the jurors the defense challenged for cause were excused. The defense objected to 7 of the 12 jurors the State challenged for cause, and only 2 of those 7 were excused. Before deciding a contested challenge, the court allowed each side to explain its position and recall a potential juror. It also gave careful and measured explanations for its decisions. Before individual oral examination, the court distributed a questionnaire asking jurors to explain their attitudes toward the death penalty and explained that Brown was only eligible for death or life in prison without possibility of release or parole. It repeated the sentencing options before the juror was questioned.

The transcript reveals that, despite the preceding instructions and information, the juror had both serious misunderstandings about his responsibility as a juror and an attitude toward capital punishment that could have prevented him from returning a death sentence under the facts of this case. He was told at least four times that Brown could not be released from prison and stated six times that he could follow the law. But he also gave more equivocal statements that he would consider the death penalty only if there was no possibility that Brown would be released to reoffend. When the State challenged the juror on the grounds that he was confused about the conditions under which death could be imposed and seemed to believe it only appropriate when there was a risk of release and recidivism, the defense volunteered that it had no objection. (No. 06-413; June 4, 2007)

Brendlin v. California: **[traffic stop]** After officers stopped a car to check its registration without reason to believe it was being operated unlawfully, one of them recognized petitioner Brendlin, a passenger in the car. Upon verifying that Brendlin was a parole violator, the officers formally arrested him and searched him, the driver, and the car, finding, among other things, methamphetamine paraphernalia. Charged with possession and manufacture of that substance, Brendlin moved to suppress the evidence obtained in searching his person and the car, arguing that the officers lacked probable cause or reasonable suspicion to make the traffic stop, which was an unconstitutional seizure of his person. The trial court denied the motion, but the California Court of Appeal reversed, holding that Brendlin was seized by the traffic stop, which was unlawful. Reversing, the State Supreme Court held that suppression was unwarranted because a passenger is not seized as a constitutional matter absent additional circumstances that would indicate to a reasonable person that he was the subject of the officer's investigation or show of authority.

Held: When police make a traffic stop, a passenger in the car, like the driver, is seized for Fourth Amendment purposes and so may challenge the stop's constitutionality. Brendlin was seized because no reasonable person in his position when the car was stopped would have believed himself free to 'terminate the encounter' between the police and himself. (No. 06-8120; June 18, 2007)