

BOITEZ v. THE SUPERIOR COURT OF YOLO COUNTY  
Case No. C098102

Petitioner was driving his mother's car with a passenger in the front seat when an officer pulled him over for failing to come to a complete stop at an intersection. The officer asked for petitioner's license, registration, and proof of insurance, which petitioner denied having. The passenger also denied having a license when asked. The officer then asked if either of them was on probation or parole, which both also denied, though petitioner admitted he may have been on formal probation recently.

The officer directed petitioner to turn off the engine, and directed petitioner and his passenger to wait. He transmitted their identifying information to his office to determine whether either had any outstanding warrants or were on parole or probation. While the officer and another officer, who had subsequently arrived, waited for a response, the officers discussed their suspicions that petitioner and his passenger had drugs and were gang members, and described them as "bad guys." The officers also discussed a plan to search the vehicle, based on obtaining consent from petitioner.

Approximately 15 minutes into the stop, the officers approached the car and asked petitioner to step out, which he did. While petitioner sat on the hood of the car as directed, the officer questioned petitioner and noted petitioner had a suspended license. As they spoke, petitioner's sister approached and confirmed she had a license. The officer told petitioner he could tow the car but would not if petitioner would let him search the car. When petitioner declined, the officer said he was giving him a deal by issuing a ticket only for driving with a suspended license but not for other infractions. When the officer reiterated he could tow the car and that it would take a few days to get it back, petitioner asked if his sister could drive it. The officer then asked if petitioner was fine with a search if he gave petitioner a break by letting his sister drive the car rather than tow it. Petitioner then relented. During the search of the car, the officers found a loaded gun under the passenger seat and a loaded gun on the passenger.

Petitioner moved to suppress the evidence obtained in the search of the vehicle, arguing he did not voluntarily consent to the search. At the hearing on the motion to suppress, the officer confirmed he did not believe petitioner was on searchable probation and he did believe it was within his discretion whether to tow a vehicle when the driver has a suspended license. The trial court denied the motion to suppress, finding petitioner consented to the search based on accepting the officer's offer.

Petitioner now asks this court to issue a writ of mandate directing the trial court to grant his motion to suppress, arguing the trial court erred because his consent was not voluntarily given in light of the officer's misrepresentation that he had authority to tow the car.