



United States Supreme Court Upholds Frisk of Passenger in Lawfully Stopped Auto



Arizona v Johnson

Slip Opinion No. 07-1122; 555 U.S. ____ (2009)

By Brian S. Batterton, J.D.

Written For and Distributed by Public Agency Training Council. For duplication & redistribution of this article, please contact the Public Agency Training Council by phone at 1.800.365.0119.

Article Source: http://www.patc.com/weeklyarticles/passenger_frisk_az-v-johnson.shtml

Printable Version: http://www.patc.com/weeklyarticles/print/passenger_frisk_az-v-johnson.pdf

Stay up to date on these and other legal decisions by reading the weekly article updates available at [patc.com](http://www.patc.com)

On January 26, 2009, the United States Supreme Court unanimously decided, in *Arizona v. Johnson*¹, that an officer, who has lawfully stopped an automobile, may conduct a frisk of a passenger for weapons if the officer has a reason to believe the passenger is armed and dangerous. The facts taken directly from the case are as follows:

On April 19, 2002, Officer Maria Trevizo and Detectives Machado and Gittings, all members of Arizona's gang task force, were on patrol in Tucson near a neighborhood associated with the Crips gang. At approximately 9 p.m., the officers pulled over an automobile after a license plate check revealed that the vehicle's registration had been suspended for an insurance-related violation. Under Arizona law, the violation for which the vehicle was stopped constituted a civil infraction warranting a citation. At the time of the stop, the vehicle had three occupants -- the driver, a front-seat passenger, and a passenger in the back seat, Lemon Montrea Johnson, the respondent here. In making the stop, the officers had no reason to suspect anyone in the vehicle of criminal activity.

The three officers left their patrol car and approached the stopped vehicle. Machado instructed all of the occupants to keep their hands visible. He asked whether there were any weapons in the vehicle; all responded no. Machado then directed the driver to get out of the car. Gittings dealt with the front-seat passenger, who stayed in the vehicle throughout the stop. While Machado was getting the driver's license and information about the vehicle's registration and insurance, Trevizo attended to Johnson.

Trevizo noticed that, as the police approached, Johnson looked back and kept his eyes on the officers. When she drew near, she observed that Johnson was wearing clothing, including a blue bandana that she considered consistent with Crips membership. She also noticed a scanner in Johnson's jacket pocket, which "struck [her] as highly unusual and cause [for] concern," because

©2009 Article published in the free PATC E-Newsletter: 800.365.0119

Link to Article online: http://www.patc.com/weeklyarticles/passenger_frisk_az-v-johnson.shtml

<http://www.patc.com> | <http://www.llrmi.com> | <http://www.fsti.com> | <http://www.school-training.com> | <http://www.patctech.com/>

"most people" would not carry around a scanner that way "unless they're going to be involved in some kind of criminal activity or [are] going to try to evade the police by listening to the scanner." In response to Trevizo's questions, Johnson provided his name and date of birth but said he had no identification with him. He volunteered that he was from Eloy, Arizona, a place Trevizo knew was home to a Crips gang. Johnson further told Trevizo that he had served time in prison for burglary and had been out for about a year.

Trevizo wanted to question Johnson away from the front-seat passenger to gain "intelligence about the gang [Johnson] might be in." For that reason, she asked him to get out of the car. Johnson complied. Based on Trevizo's observations and Johnson's answers to her questions while he was still seated in the car, Trevizo suspected that "he might have a weapon on him." When he exited the vehicle, she therefore "patted him down for officer safety." During the patdown, Trevizo felt the butt of a gun near Johnson's waist. At that point Johnson began to struggle, and Trevizo placed him in handcuffs.

Johnson was charged in state court with *inter alia*, possession of a weapon by a prohibited possessor. He moved to suppress the evidence as the fruit of an unlawful search. The trial court denied the motion, concluding that the stop was lawful and that Trevizo had cause to suspect Johnson was armed and dangerous. A jury convicted Johnson of the gun-possession charge. [Internal citations omitted]

Ultimately the Arizona Court of Appeals reversed the conviction and held that the encounter with Johnson evolved into a consensual encounter, and, in a consensual encounter, the officers did not have the legal right to frisk Johnson, even if the officer had reason to believe Johnson was armed and dangerous.ⁱⁱ

The United States Supreme Court agreed to hear the case in order to resolve the following issue:

Can an officer who has lawfully stopped a vehicle for a traffic violation frisk a passenger for weapons if the officer does not have any reason to suspect the passenger of involvement in criminal activity but does reasonably believe the passenger may be armed and dangerous?

In its analysis, the Supreme Court first noted that, in [Terry v. Ohio](#)ⁱⁱⁱ, they outlined two requirements for a "stop and frisk" to be lawful. The court stated the following:

First, the investigatory stop must be lawful. That requirement is met in an on-the-street encounter, *Terry* determined, when the police officer reasonably suspects that the person apprehended is committing or has committed a criminal offense. Second, to proceed from a stop to a frisk, the police officer must reasonably suspect that the person stopped is armed and dangerous.

The Supreme Court then examined three of their later cases that cover the application of *Terry* to traffic stop encounters. First, in [Pennsylvania v. Mims](#), the court held that "once a motor vehicle has been lawfully detained for a traffic violation, the police officers may order the driver to get out of the vehicle without violating the Fourth Amendment's proscription of unreasonable searches and seizures."^{iv} The court further opined that, once an officer has removed the driver from the vehicle, the driver may be frisked for weapons if the officer reasonably concludes he might be armed and dangerous.^v

The next case examined by the Supreme Court was [Maryland v. Wilson](#) where they previously held that "an officer making a traffic stop may order passengers to get out of the car pending completion of the stop."^{vi} The court reasoned that a passenger is every bit as likely to use violence to prevent the detection of criminal activity as the driver, and the additional intrusion on the passenger, who is already stopped by virtue of the traffic stop, is minimal.

Lastly, the Supreme Court examined [Brendlin v. California](#) in which they held that a passenger is seized, as is the driver, during a traffic stop the moment the car comes to a stop.^{vii}

The Supreme Court then sought to determine whether there was merit to the Arizona Court of Appeals holding that the encounter with Johnson, in the case before the court, was actually a consensual encounter. The Supreme Court stated the following:

In sum, as stated in *Brendlin*, a traffic stop of a car communicates to a reasonable passenger that he or she is not free to terminate the encounter with the police and move about at will. Nothing occurred in this case that would have conveyed to Johnson that, prior to the frisk, the traffic stop had ended or that he was otherwise free "to depart without police permission." Officer Trevizo surely was not constitutionally required to give Johnson an opportunity to depart the scene after he exited the vehicle without first ensuring that, in so doing, she was not permitting a dangerous person to get behind her.^{viii}

The court then determined that Johnson was not free to go during the traffic stop when Officer Trevizo asked him questions. As such, this was not a consensual encounter. Further, the court stated that, although the officer asked Johnson some questions unrelated to the purpose of the traffic stop,

an officer's inquiries into matters unrelated to the justification for the traffic stop...do not convert the encounter into something other than a lawful seizure, so long as those inquiries do not measurably extend the duration of the stop.^{ix}

In conclusion, the Supreme Court found that the frisk of Johnson was lawful, and they established the following rule:

Accordingly, we hold that, in a traffic-stop setting, the first *Terry* condition -- a lawful investigatory stop -- is met whenever it is lawful for police to detain an automobile and its occupants pending inquiry into a vehicular violation. The police need not have, in addition, cause to believe any occupant of the vehicle is involved in criminal activity. To justify a patdown of the driver or a passenger during a traffic stop, however, just as in the case of a pedestrian reasonably suspected of criminal activity, the police must harbor reasonable suspicion that the person subjected to the frisk is armed and dangerous.

In summary, as previously stated by the court, there are two requirements for an investigatory "stop" and "frisk" for weapons to be lawful under *Terry*.

First, the stop must be based on reasonable suspicion of criminal activity or a traffic violation, as in *Johnson*. Second, to proceed to a frisk, the officer must reasonably suspect that the person stopped is armed and dangerous. Here, the Supreme Court held that the traffic stop itself satisfies the first requirement under *Terry*, even for passengers during stops purely related to traffic offenses. The second

requirement is satisfied when the officer has reasonable suspicion that a passenger is armed and dangerous.

In this case, the Arizona Court of Appeals had already decided, based on the specific facts articulated by the officers involved in this case, that there was reasonable suspicion to believe Johnson was armed and dangerous. Therefore, the frisk was considered constitutionally reasonable, and the case was reversed and remanded back to the Arizona court for disposition consistent with the Supreme Court's opinion.

The Bottom Line:

1. A passenger in a car that is lawfully stopped is lawfully seized under the 4th Amendment
2. "An officer's inquiries into matters unrelated to the justification for the traffic stop...do not convert the encounter into something other than a lawful seizure, so long as those inquiries do not measurably extend the duration of the stop"
3. Where an officer has reasonable suspicion to believe that a person in a lawfully stopped vehicle is armed and dangerous, the officer may conduct a pat-down of the subject without any further justification.

Brian S. Batterton, J.D., [Public Agency Training Council](#), [Legal & Liability Risk Management Institute](#) 1/28/2009

CITATIONS:

ⁱ Slip Opinion No. 07-1122; 555 U.S. ____ (2009)

ⁱⁱ [State v. Johnson](#), 217 Ariz. 58, 170 P.3d 667, 2007 Ariz. App. LEXIS 174 (Ariz. Ct. App., 2007)

ⁱⁱⁱ 392 U.S. 1 (1968)

^{iv} 434 U.S. 106, 111 (1977)

^v *Id.* at 112

^{vi} 519 U.S. 408, 415 (1997)

^{vii} 551 U.S. 249 (2007)

^{viii} *Id.* at 257

^{ix} See [Muehler v. Mena](#), 544 U.S. 93, 100-101 (2005)