



Terry Frisks and the Totality of the Circumstances



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Many officers are of the belief that if they have the legal right to detain a suspect, they can automatically frisk that suspect "for officer safety." However, in 1968, the United States Supreme Court held that an officer may conduct a limited search (frisk) of a suspect for weapons when the officer reasonably believes that the suspect, who is detained pursuant to a lawful investigatory detention, is armed and dangerous.ⁱ Specifically, the court, in *Terry* held

Where a police officer observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot and that the persons with whom he is dealing may be armed and presently dangerous, ...he is entitled for the protection of himself and others in the area to conduct a carefully limited search of the outer clothing of such persons in an attempt to discover weapons which might be used to assault him.ⁱⁱ

Thus, there are two requirements in order to frisk a suspect. First, the suspect must be lawfully detained during an investigative detention. This means that the detention must be based upon reasonable suspicion that criminal activity is afoot. Reasonable suspicion is simply specific, articulable facts combined with the rational inferences from these facts, and taken in light of an officer's training and experience, that leads an officer to believe criminal activity is occurring or has just occurred.ⁱⁱⁱ

Second, the officer must have a reasonable belief that the suspect is armed and dangerous. This reasonable belief can come from a variety of factors. For example, the type of crime that an officer is investigating may be inherently dangerous, such as the possible armed robbery in *Terry*. Therefore, it would follow that, if an officer had reasonable suspicion that a particular suspect is involved in a crime that involved a weapon (i.e.: armed robbery, murder, assault with a deadly weapon, etc...), the officer would be entitled to frisk that suspect. Additionally, many courts have held that weapons are tools of the drug trade; therefore, if an officer has reasonable

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suspicion that a suspect is dealing drugs, the officer likewise can reasonably infer that the suspect may be armed and dangerous.^{iv} Additionally, officers, in order to lawfully conduct a frisk, may rely on information from citizens, the type of area the suspect is in (i.e.: high crime, known for weapons), bulges in clothing, and behavioral indicators that a suspect may be armed. Everything should be considered and documented because the determination of reasonable suspicion is very fact specific and dependant upon the totality of the circumstances. Therefore, officers should document every fact that he or she is aware of, even seemingly innocent facts at the time, in order to provide a full picture of the totality of the circumstances that the officer relied upon in order to justify a frisk.

Now, assuming that an officer has a suspect lawfully detained, and also has a reasonable belief that a suspect is armed and dangerous, the officer may conduct “a limited search of the outer clothing of [the suspect] in an attempt to discover weapons...”^v This “limited search” is characterized by some courts as a two part process: (1) the officer is entitled to pat down the exterior of the clothing of a suspect and (2) if the officer feels an object could be a weapon he may intrude into the clothing and seize the object.^{vi}

On February 14, 2008, the Third Circuit Court of Appeals decided a case that illustrates the totality of the circumstance analysis that the courts will use to analyze whether a frisk was lawful. The *United States v. Headen* began when an ATF Agent with 15 years of experience and a Philadelphia Police Detective with 10 years of experience were working together in a violent crime unit in the southwest and west area of Philadelphia.^{vii} They received a tip from an informant who had provided accurate information in the past, that Allen Headen and Dorian Thompson were planning a retaliatory shooting of a rival gang member. The informant said that Headen and Thompson were in a blue mini-van and were armed. A few hours later, the informant called back and directed the agents to a particular location where the van was located.

The agents found the van and it was unoccupied. They noted the registration was expired and the registered owner was named Rodney Smith. The agents called the informant, and he confirmed that Headen and Thompson were acquainted with Smith. He also told the agents that they should wait and the men would be returning to the van.

The agents contacted additional units and waited. When Headen and Thompson returned, Thompson got into the drivers seat and Headen the passenger seat. As Thompson drove off, the agents attempted to stop the suspects based on the information provided and because of the registration violation, and a broken tail light. Thompson tried to flee, but the agents were able to force him to stop. Thompson was removed from the van and frisked; he was not carrying a gun, but he was wearing body armor. Headen door was opened and an agent frisked his waistband area. He felt a hard, L-shaped object in his waistband. Based on the feel of the object and the informant’s information, the object, which turned out to be a handgun, was seized. Headen was removed from the car and checked Headen’s pockets, locating another loaded handgun.

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Headen argued that the stop and frisk of his person was not based on valid reasonable, articulable suspicion and the frisk was unlawful. First, it should be noted that the agents had an objective reason, particularly the expired registration and equipment violation to stop the car. Therefore, even if the stop was pretext for the investigation of another crime, the stop would still be objectively reasonable.^{viii}

However, even in light of the above traffic law violations, the Third Circuit Court of Appeals held that the agents, based on the information provided by the informant, and their personal observations, had reasonable suspicion to both stop and frisk Headen and Thompson.

The court reasoned that the agents were part of the area Violent Crime Impact team and both had extensive and special knowledge of the high crime nature of that area. They also had knowledge of Headen and Thompson. The court also considered that the informant had provided accurate information in the past and information that he provided in this case had been corroborated by the agents observations. Particularly, Headen and Thompson did return to the blue mini-van that the informant advised they would be in. The informant also corroborated that the van was registered to Rodney Smith, and that Headen and Thompson were acquaintances of Smith. Lastly, Thompson, the van's driver, took evasive actions when approached by the agents. The court reasoned that these facts all justified the stop of Headen and Thompson. Further, these facts in addition to the officer's knowledge that this is an area known for guns and violent crime, and the additional information from the informant that Headen was armed, in light of all of the other factors and corroboration of the informant, was sufficient to justify a frisk of Headen and Thompson.

In conclusion, the determination of whether reasonable suspicion exists to justify and stop and a frisk of a suspect is not rigid concept. According to the U.S. Supreme Court, reasonable suspicion is based upon "the totality of the circumstances – the whole picture."^{ix} Therefore, reasonable suspicion is based on a variety of factors such as specialized knowledge of the officers, investigative inferences, personal observations of suspicious behavior, and information from other sources.^x In light of the variety of factors the courts will consider in a determination of reasonable suspicion, officer should be thorough and detailed in documenting every detail of the incident in their report.

ⁱ *Terry v. Ohio*, 392 U.S. 1, 27 (1968)

ⁱⁱ *Id.* at 30

ⁱⁱⁱ *Id.* at 21

^{iv} *United States v. Trullo*, 809 F.2d 108 (1st Cir.), cert. denied, 482 U.S. 916 (1987); *Hayes v. State*, 202 Ga. App. 204 (1993)

^v *Terry*, 392 U.S. at 30

^{vi} *Thomas v. State*, 231 Ga. App. 173 (1998)

^{vii} No. 06-3965, 2008 U.S. App. LEXIS 3252 (3rd Cir. 2008)(unpublished)

^{viii} *Whren v. United States*, 517 U.S. 806 (1996)

^{ix} *United States v. Sokolow*, 490 U.S. 1, 8 (1989)

^x *Headen*, No. 06-3965 at 6

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