

## ***TERRY v. OHIO***

### **The “Stop and Frisk”**

#### **Facts:**

Officer McFadden was a 39-year veteran police officer. One day while in plain clothes, he was patrolling a particular street corner. He had patrolled this corner for over 30 years, and learned the common looks and habits of those who generally were caught shoplifting and pickpocketing. McFadden observed two young men who kept slowly walking past a store, looking in the window. McFadden observed the men continue to walk past the store about a dozen times over ten minutes. At that point, a third man approached them, talked briefly with them, and then left. McFadden suspected the men were “casing” the store before robbing it, so he approached the men and asked them their names. One of the men, Terry, mumbled something to McFadden. McFadden then grabbed Terry and spun him around. Fearing that Terry might have a gun, McFadden patted down the outside of Terry’s clothing in search of a gun. McFadden felt a gun in the pocket of Terry’s jacket, and later arrested Terry for illegally carrying a concealed weapon.

#### **You be the Judge:**

1. Should officer McFadden have waited longer before he approached the men? In other words, did he need more evidence before he could walk up to them and ask them what they were doing?
2. Was it justifiable for Officer McFadden to pat down Terry? Why did he pat down Terry? Is that an unreasonable search and seizure in violation of the Fourth Amendment?

#### **Ruling:**

Stopping Terry was a “seizure” under the Fourth Amendment, but it was appropriate for McFadden to investigate the situation and to approach the men. “It would have been poor police work indeed for an officer of 30 years’ experience in the detection of thievery from stores in this same neighborhood to have failed to investigate this behavior.” It was also reasonable for McFadden to think that Terry was armed because of the nature of the crime that he was preparing to commit. Therefore, when McFadden stopped him to investigate the situation, McFadden was justified in frisking him for weapons. This frisk is limited to a pat down of the outer clothing, and police may not reach into the clothing unless they feel a weapon. “[I]t would appear to be clearly unreasonable to deny the officer the power to take necessary measures to determine whether the person is in fact carrying a weapon and to neutralize the threat of physical harm.” However, “the sole justification of the search in the present situation is the protection of the police officer and others nearby, and it must therefore be combined in scope to an intrusion reasonably designed to discover guns, knives, clubs, or other hidden instruments for the assault of the police officer.”

## **Related Cases:**

### **How long can police detain someone they suspect of criminal activity?**

Once the police officer has confirmed or dispelled his suspicion, he must let the suspect go on his way. Also, after the procedure for the stop is complete, police can't keep asking the suspect probing questions unrelated to the purpose of the stop. For example, if the police pull someone over for speeding, the police may ask the driver about drugs while the driver is signing the speeding ticket. But once the driver has the ticket and the officer has returned the driver's license and registration, the officer can't continue to ask the driver questions about drugs unless the officer has discovered some new evidence of drugs during the stop.

- *United States v. Walker* (10<sup>th</sup> Cir. 1991)

### **If police receive an anonymous tip that a person has committed or is about to commit a crime, can police stop that person to investigate?**

Generally, an anonymous tip alone will not provide the reasonable suspicion necessary for a *Terry* stop. However, if there is more than just the tip, then the tip may go into the mix of information causing the police officer's suspicion. A tip is most useful when there is corroborating evidence. In other words, if the information contained in the tip is predictive of the suspect's future actions, and the suspect actually does what the tip said he would, then that can be sufficient suspicion to stop the suspect for questioning.

-*Florida v. J.L.* (U.S. 2000)

### **If police have enough suspicion to stop you under *Terry*, can they require you to go with them to the police station for questioning rather than right there where the officer stops you?**

No. A *Terry* stop is limited and temporary. If the police officer takes the person to the police station, that amounts to an arrest, which requires probable cause--which is a higher level of suspicion.

-*Dunaway v. New York* (U.S. 1979)