

## How Far Can a Terry Stop Reach?

### Description

Several months ago, a case came out of the 1st Circuit involving the arrest and search of Marquis Aiken at a hotel room in Maine. An issue arose from that case questioning whether Aiken, a non-registered guest in the motel room, was entitled to the same reasonable expectation of privacy as the registered guest. The 1st Circuit determined that, for a number of reasons, that protection did not transfer to Aiken.

With that in mind, another case stemming from the 1st Circuit involving a motel and a drug dealer nicknamed “Champagne” can help shed some light on *Terry* stops and their limitations. Today this 1st Circuit case, *Rasberry v. US*, lends itself to some important points about a consent search and a number of questions related to *Terry* Stops.

### FACTS

Members of a regional task force were investigating a drug dealer in the Scarborough, Maine area known as “Champagne.” The officers were able to identify “Champagne” as Todd Rasberry and were also able to identify several women who were working for him. Rasberry had a record of gun and drug offenses and had recently been at a house where guns were recovered.

The officers followed one of the women during a suspected drug delivery and once confronted, the woman turned over heroin and told investigators where they could find the Defendant. The woman claimed she had rented a motel room in Scarborough and that Rasberry was there holding additional heroin and cocaine. The woman then gave the investigators a room key and consented to a search of the room.

After the key failed to open the door, the officers knocked on the motel room door and Rasberry let them in. The officers explained they were there to search the room and that Rasberry was not under arrest but that he would be handcuffed for their protection during the search. During a twenty minute search, the officers uncovered needles, several scales, and baggies, indicating a drug distribution operation. Rasberry then asked for the handcuffs to be removed and officers advised him they would have to complete a pat down first. During the frisk, an officer discovered a softball-sized object in Rasberry’s groin area. The ball turned out to be a mix of small baggies containing heroin and cocaine.

Rasberry was subsequently arrested and filed a motion to suppress the evidence. When the motion was denied he accepted a conditional plea with a ten-year sentence and this appeal followed.

### Court Findings

Rasberry appealed a number of issues:

1. He claimed that his detention in the hotel room exceeded the scope of a *Terry* Stop
2. The pat down was conducted without reasonable suspicion
3. The seizure of the drugs exceeded the scope of the plain-feel doctrine

4. The search of his underwear was so invasive that it violated his 4th Amendment protections to be free from unreasonable searches.

One of our most basic investigative activities is the *Terry* stop. The ability for an officer to stop someone and “freeze the status quo” while they investigate suspected criminal conduct only requires that they have “Reasonable Suspicion”. But the line between a *Terry* stop and an arrest can be blurred based on an officer’s actions during the stop. In this case, Rasberry agreed the officers had “Reasonable Suspicion” for the initial stop. However, he claimed that handcuffing him and the fact that officers had guns out during the initial entry turned the *Terry* stop into an arrest.

While the court agreed that “there are no scientifically precise benchmarks” for turning a *Terry* stop into an arrest, under the totality of the circumstances, in this case, the safety measures taken by the officers were reasonable because:

1. Rasberry had a history of drugs and gun possession
2. Concerns for officer safety may be heightened in the confines of a hotel room
3. The duration of the stop was reasonable since the officers “diligently” pursued the reasons for the investigation.

With regard to Rasberry’s second issue, the pat-down question, Rasberry claimed that the officers conducted a limited frisk of his lower back area when he was first handcuffed, thus negating the need to frisk him before removing the handcuffs. The court disagreed, finding that the limited frisk prior to handcuffing did not dispel the suspicion that Rasberry may be armed. It was, therefore, appropriate for the officers to suspect that Rasberry may be carrying a firearm elsewhere on his person.

The court also approved the drugs seized from the Defendant’s shorts but for different reasons than initially posed by the prosecutor; here, the court determined that while it was plausible that the incriminating nature of the object was immediately apparent, officers had ample probable cause at that point to seize the drugs and arrest Rasberry. Factors supporting probable cause included:

1. The information learned during the investigation to date and the information provided by the female accomplice
2. The drug paraphernalia uncovered during the search of the hotel room
3. Once no drugs were found in the motel room, paired with the common knowledge that suspects hide drugs in their underwear, it was reasonable to believe the object in Rasberry’s shorts was drugs
4. Rasberry’s response that the object was part of his anatomy was an “obvious lie.”

A number of cases have been filed where courts have found that officers’ actions during the search were so invasive, humiliating, and degrading that the search was found to be unconstitutional. Such was not the case here. Addressing the Defendant’s final issue, the court found that the search was conducted by officers of the same gender, the search was conducted in the privacy of the motel room, and the officers did not require Rasberry to remove his clothes.

All of these findings led the 1st Circuit to affirm the trial court’s ruling, and Mr. Rasberry will serve out his term.

## TAKEAWAYS

There are a number of factors that result in a win for the officers in this case. First and foremost, the officers properly documented their actions throughout the investigation, giving the court ample information to support their actions. Throughout their encounter with Mr. Rasberry, the officers acted reasonably and professionally. They explained that he was not under arrest and the handcuffs would be removed at the end of the search. Furthermore, the officer's actions in retrieving the drugs were professional and respectful.

While there are no "scientifically precise benchmarks" for turning a *Terry* stop into an arrest, as the 1st Circuit court stated, a court is more likely to rule in an officer's favor if the totality of circumstances shows good police work. That means following procedure and acting appropriately throughout a search, and of course documenting your entire encounter thoroughly. Because the officers did this the court was able to clearly see the line between a *Terry* stop and an arrest and rule in the officers' favor.

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