# Recent Trends in Terry Stops and Pat-Downs

## Description

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Terry stops (also known as investigatory stops) has been a useful tool for law enforcement since 1968, when the United States Supreme Court decided the case of *Terry v. Ohio*. [1] When used properly, Terry stops can discourage criminal activity, identify suspects, and add intelligence information to the files of known criminals.

The general principles established in *Terry v. Ohio* have not changed. Terry stops constitute a seizure under the Fourth Amendment of the United States Constitution because they are a temporary restriction of a person's liberty by means of show of authority or use of physical force. While considered a seizure, an investigatory stop does not need to be supported by probable cause; instead, it must only be justified by reasonable and articulable suspicion that the person stopped has committed a crime or is about to do so.[2] A reasonable, articulable suspicion is less than probable cause; it requires only a minimal level of objective justification.[3] The stop must also be reasonably related in scope to the circumstances which justified the interference in the first place. Reasonable suspicion exists when an officer has a "particularized and objective basis" for suspecting a person of criminal activity, given the totality of the circumstances. Reasonable suspicion need not involve the observation of illegal conduct, but does require more than just a hunch.

Sometimes during a Terry stop, a person's conduct, gestures, or movements could lead an officer to believe that the person is armed and could be dangerous. On those situations the courts have allowed officers to conduct pat-downs (also known as "frisks"), which are a superficial, outer clothing search of a person for weapons. Pat-downs does not justify a full search like reaching inside the person's pockets or purse unless a weapon was detected during the pat-down. Also, a common mistake of officers is believing that every Terry stop justifies a pat-down, when in reality officers need separate and reasonable facts to conduct it.

Courts look at Terry stops and pat-downs very closely and on a case by case basis. In determining whether Terry stops and frisks are reasonable, courts look at the totality of circumstances. Courts also evaluate the training and experience of law enforcement when they conducted the intervention.[4] Reasonable suspicion is not always clear and the doctrine have a lot of gray areas. Valid Terry stops can become unreasonable and police officers can conduct unreasonable Terry stops thinking they were valid. Here, we looked at recent cases from all over the country from 2014 to present to provide some examples.

*Informants, Terry Stops, and frisks*

In *US v. Sanchez[5]*, an officer obtained information from a confidential informant (CI) that there was a person with a firearm at a specific location. The officer knew the CI and the CI had provided valid information that have led to arrests and convictions in the past. When the officer arrived to the scene he recognized the defendant as someone he had arrested before and knew that he was not supposed to

carry a firearm. While conducting the Terry stop, further information led him to believe, based on his own training and experience that the defendant was carrying a firearm. The officer conducted a pat-down and found a firearm on him. In deciding that the Terry Stop and the pat-down were reasonable, the Court of Appeals for the First Circuit stated that an informant's past reliability is a significant factor permitting reliance on information that would not otherwise be sufficiently corroborated. Unlike an anonymous informant's tip, a tip from a known informant whose reputation can be assessed and who can be held responsible if his/her allegations turn out to be fabricated is much more trustworthy. When an informant observes a crime, that entitles the tip to greater weight than might otherwise be the case.

Following a similar reasoning but providing additional factors, the Court of Appeals for the Eleventh Circuit stated in *US v. Brown*[6] that when examining whether an informant's tip was reliable enough to give rise to an officer's reasonable suspicion, the totality of the circumstances includes the reliability of the informant and of the tip. The lower the reliability of the informant, the higher the reliability of the tip must be, and vice versa. When an informant is known to an officer personally, the officer may act justifiably in responding to his informant's tip. Face-to-face anonymous tips demand less scrutiny because the officers receiving the information have an opportunity to observe the demeanor and perceived credibility of the informant. That said, the court considers an officer's ability to locate an informant at a later date to be an indicator of reliability. Officials may, without rigorous scrutiny, trust tips from an "unquestionably honest citizen" who has previously provided tips that would subject him or her to criminal liability if false.

*Consensual encounters vs. Terry stops*

In US v. Veloz Lopez[7], the Court of Appeals from the Second Circuit distinguished consensual encounters from Terry Stops. A person has been stopped by a police officer if, in view of all of the circumstances surrounding the incident, a reasonable person in the same situation would have believed that he or she was not free to leave. It is well established that a police officer who merely asks a person questions in a public place has not thereby conducted a stop, since such questioning is clearly the sort of consensual encounter that implicates no Fourth Amendment interest. However, police questions may constitute a stop if the surrounding circumstances convey a message that compliance with the officers' requests is required. Factors that might indicate a stop include the threatening presence of several officers, the display of a weapon by an officer, some physical touching of the person of the citizen, or the use of language or tone of voice indicating that compliance with the officer's request might be compelled. Individual facts susceptible of innocent explanation may combine to form a particularized and objective basis for reasonable suspicion for a stop.

The Court of Appeals for the District of Columbia also distinguished consensual encounters from Terry stop in *US v. Gross*[8] recently. In that case, the Court concluded that a seizure does not occur simply because a police officer approaches an individual and asks a few questions. Even when officers have no basis for suspecting a particular individual, they may generally ask questions of that individual as long as the police do not convey a message that compliance with their requests is required. While most citizens will respond to a police request, the fact that people do so, and do so without being told they are free not to respond, hardly eliminates the consensual nature of the response. The presence of multiple officers wearing police gear, including guns and handcuffs, does not automatically mean that a stop has occurred.

*Show of authority*

In US v. Lowe[9], the Court of Appeals for the Third Circuit ruled that the encounter with the defendant was a Terry Stop because the officers' show of authority told the defendant that he was not free to go. In that case three marked police cars nearly simultaneously arrived at the residence at 4 o'clock in the morning, and four uniformed police officers immediately got out of their patrol cars and approached defendant, commanding him to show his hands. They conducted a pat-down, found a weapon and arrested him.

The Court in this case concluded that the officers had no reasonable suspicion for the Terry stop. The Court described show of authority, stating that whether an individual has submitted to a show of authority depends on both the nature of the show of authority as well as the suspect's conduct at the moment the officer asserted his or her authority. When a suspect flees after a show of authority, the moment of submission is often quite clear: It is when the fleeing suspect stops, whether voluntarily or as a result of the application of physical force. But different factors must be considered when an individual is already stationary, or when an individual's submission to a show of governmental authority takes the form of passive acquiescence. When a stationary suspect reacts to a show of authority by not fleeing, making no threatening movement or gesture, and remaining stationary, he has submitted under the Fourth Amendment and a seizure has been effectuated.

In *US v. Martin*[10] the Court of Appeals for the Fourth Circuit decided that the encounter and eventual pat-down of the defendant did not violate defendant's 4th Amendment rights. Officers were investigating a complaint that prescription drugs were being used or sold in a motel room and an officer questioned defendant in the parking lot. The type and degree of questions posed did not rise above a level of routine questioning. The officers were not in uniform and did not display their weapons, and did not touch defendant except for patting him down after requesting and receiving consent. Also, the officers did not block defendant's departure or restrain his movement, or raise their voice or threaten the defendant. In reaching its decision, the court used the following factors to determine if officers are using their authority: (i) the number of police officers present at the scene; (ii) whether the police officers were in uniform; (iii) whether the police officers displayed their weapons; (iv) whether they touched the defendant or made any attempt to physically block his departure or restrain his movement; (v) the use of language or tone of voice indicating that compliance with the officer's request might be compelled; (vi) whether the officers informed the defendant that they suspected him of illegal activity rather than treating the encounter as routine in nature; and (vii) whether, if the officer requested from the defendant some form of official identification, the officer promptly returned it.

*Reasonable suspicion*

In *US v. Spears*[11], the Court of Appeals for the Fifth Circuit provide important factors to identify if reasonable suspicion exists to conduct a Terry stop or to extend it:

1. Evasive behavior is a pertinent factor in determining reasonable suspicion, but because such behavior is not necessarily indicative of wrongdoing, the context is key.
2. Visiting a house linked to drug activity is similar to being in a high-crime area. While a person's presence in an area known to be high in crime is a relevant contextual consideration in the reasonable suspicion analysis, such presence, standing alone, is not enough to support a reasonable suspicion that anybody found there is involved with drugs.
3. An out-of-state driver's license and license plates may not suffice to create reasonable suspicion of criminal activity. On one hand, courts have found a reasonable suspicion of drug crime where,

a tractor-trailer with out-of-state license plates exited a main road to an area without a gas station or truck stop. On the other hand, courts have found a vehicle with out-of-state license plates, even on a highway known to be used for drug trafficking or even when exiting a highway at an unlikely place for cross-country travelers, does not give rise to a reasonable suspicion of drug crime because if it did, officers could pull over scores of drivers every day and because too many people fit this description for it to justify a reasonable suspicion of criminal activity.

4. An officer's subsequent actions are not reasonably related in scope to the circumstances that caused him/her to stop the vehicle if he/she detains its occupants beyond the time needed to investigate the circumstances that caused the stop, unless he develops reasonable suspicion of additional criminal activity in the meantime. Specifically, a stop justified by only a traffic violation becomes unlawful if it is prolonged beyond the time reasonably required to complete the mission of issuing a ticket for the violation and attending to related safety concerns, absent reasonable suspicion of additional criminal activity. If the officer develops reasonable suspicion of additional criminal activity, he/she may further detain the occupants of the vehicle for a reasonable time while appropriately attempting to dispel this reasonable suspicion.
5. The time reasonably required to complete the mission of issuing a traffic ticket can include the time it takes to inspect the driver's license, automobile registration, and proof of automobile insurance; run computer checks; determine whether there are outstanding warrants against the driver; and ask the purpose and itinerary of the trip. A dog sniff is not part of the mission of issuing a traffic ticket. Therefore, absent reasonable suspicion of additional criminal activity, waiting for or conducting a dog sniff cannot prolong a stop justified by only a traffic violation beyond the amount of time reasonably required to complete the mission of issuing a traffic ticket and attending to related safety concerns.

On February 2016, the Court of Appeals for the Eight Circuit decided *US v. Quinn*[12], in which the court discussed additional factors to evaluate reasonable suspicion. An officer may have reasonable suspicion to conduct a Terry stop based on a combination of factors even where no single factor, considered alone, would justify a stop. Factors that may reasonably lead an experienced officer to investigate include time of day or night, location of the suspect parties, and the parties' behavior when they become aware of the officer's presence. In addition, a person's temporal and geographic proximity to a crime scene, combined with a matching description of the suspect, can support a finding of reasonable suspicion. Generic suspect descriptions and crime-scene proximity can warrant reasonable suspicion where there are few or no other potential suspects in the area who match the description.

*Pat-downs*

In the case of *Thomas v. Dillard*[13], the Court of Appeals for the Ninth Circuit discussed what is required to conduct a legal pat-down. Under the Fourth Amendment to the United States Constitution, frisking a person for weapons requires reasonable suspicion that a suspect is armed and presently dangerous to the officer or to others. To establish reasonable suspicion a suspect is armed and dangerous, the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion. A frisk of a person for weapons requires reasonable suspicion that a suspect is armed and presently dangerous to the officer or to others. A lawful frisk does not always flow from a justified stop. Rather, each element, the stop and the frisk, must be analyzed separately; the reasonableness of each must be independently determined. A mere "inchoate and unparticularized suspicion or hunch" that a person is armed and dangerous does not establish reasonable suspicion, and circumstances suggesting only that a suspect would be

dangerous if armed are insufficient. There must be adequate reason to believe the suspect is armed. [14]

A frisk is not the foregone conclusion of a lawful stop, and officers are required to have reasonable, articulable suspicion that an individual is armed and dangerous before performing a pat-down for weapons. The standard does not, however, require an officer be absolutely certain an individual is armed. Police officers can take reasonable and necessary measures to protect their personal safety and to maintain the status quo during the course of a stop. Such measures can include using handcuffs, drawing a weapon, or placing the suspect on the ground for the officers' protection. In each case, the court asks whether the "quantum of force" applied was reasonable.

**Concluding Remarks**

Federal Courts of Appeals from across the country are aligned in their expectations from police officers when conducting Terry stops and pat-downs. Of all these cases, the most important information that every police officer should consider is:

1. Training, training, training!

Police departments need to refresh Terry stops and pat-down concepts periodically. A short but useful training can be discussing court cases on the matter. Training is part of the "experience" of police officers that the courts take into consideration when they are evaluating their Terry stops.

2. Not all encounters with citizens are Terry Stops.

However, police officers need to be mindful of their actions and their questions. If it is supposed to be a consensual encounter the officer cannot use their authority to impede the person's ability to leave.

3. Not all Terry Stops justify a Pat-down search.

Officers need to be able to articulate and provide separate sets of facts to justify the Terry stop and the pat-down search.

4. Always do your best to corroborate informants' tips either by observation or by other sources before conducting Terry stops.

1. *Terry v. Ohio,* 392 U.S. 1 (1968). ?
2. *US v. Hughart*, 2016 U.S. App. LEXIS 6868 (10th Cir. 2016). ?
3. See *US v. Hill*, 2016 U.S. App. LEXIS 5073 (7th Cir. 2016). ?
4. See *US v. Bridges*, 626 Fed. Appx. 620 (6th Cir. 2015). In this case the Court of Appeals for the Sixth Circuit stated that the experience of the law enforcement officer must be taken into account in the reasonable suspicion analysis. In the Fourth Amendment context, officers may draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them that might well elude an untrained person. ?
5. 2016 U.S. App. LEXIS 5392 (1st Cir. 2016) ?
6. 2016 U.S. App. LEXIS 360 (11th Cir. 2016). ?
7. 595 Fed. Appx. 81 (2nd Cir. 2015). ?
8. 784 F.3d 784, (DC Cir. 2015). ?
9. 791 F. 3d 424 (3rd Cir. 2014). ?

10. 598 Fed. Appx. 156 (4th Cir. 2015). ?
11. 2016 U.S. App. LEXIS 1032 (5th Cir. 2016). ?
12. 812 F.3d 694 (8th Cir. 2016). ?
13. 2016 U.S. App. LEXIS 6210 (9th Cir. 2016). ?
14. The Court of Appeals for the Tenth Circuit followed a similar reasoning in US v. Hughart, 2016 U.S. App. LEXIS 6868 (10th Cir. 2016), stating that a frisk is not the foregone conclusion of a lawful stop, and officers are required to have reasonable, articulable suspicion that an individual is armed and dangerous before performing a pat-down for weapons. The standard does not, however, require an officer be absolutely certain an individual is armed. ?

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