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Special Need Exception to Reasonable Suspicion

By **DLG Learning Center**

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DAIGLE LAW GROUP

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In past articles involving Terry Stops we have discussed the need for “Reasonable Suspicion” and the requirement that the officers have a “particularized suspicion” with respect to the defendant. So how, then, are we able to address a situation where officers hear and receive complaints of shots fired in an area and respond to find several people walking away. Officers may not have a “particularized suspicion” with respect to any single member of the group so would it be reasonable under the 4th Amendment for officers to stop the whole group? Let’s take a look at the facts in *United States vs. Curry*^[1] and see what the 4th Circuit had to say.

FACTS

Four officers from the Richmond, VA Police Department’s “Focus Mission Team” were patrolling the Creighton Court neighborhood. The Unit had been assigned there because of a number of recent shootings that resulted in two homicides. Around 9:00 PM an officer heard approximately six gunshots come from a nearby area. The officers activated their Body Worn Cameras and turned towards the area – arriving less than 40 seconds after the shots were heard. At the same time, dispatch received at least two 911 calls reporting that random shots had been fired in the area.

As the officers walked behind the buildings, they observed the defendant – Billy Curry – and several additional men walking away from the area. Curry appeared to be favoring his right side. The officers surrounded the group and approached each individual directing them to raise their shirt so the officers could check for weapons. All of the men complied except for Curry. Curry refused to raise his shirt and began struggling with the officers. After he was subdued, officers found a silver revolver on the ground.

Curry was indicted in federal court and filed a motion to suppress the handgun, claiming that the officers lacked reasonable suspicion to stop him. The district court agreed determining that even though officers faced exigent circumstances, the officers lacked a “particularized suspicion” that Curry was involved in criminal activity or armed and suppressed the gun evidence. The US Attorney appealed.

Fourth Circuit Findings

The 4th Circuit agreed with the district court that, typically, officers conducting a stop must have reasonable suspicion that the person being stopped has committed or is about to commit a crime. However, the court contended that the touchstone of a 4th Amendment protected stop is

“reasonableness” and, as such, individualized suspicion is not “an indispensable component of reasonableness”.

The court determined that under “limited circumstances” an overriding governmental interest can support a search or seizure without reasonable suspicion. In these narrowly tailored cases the government must be able to prove that the need goes beyond “normal crime control” and addresses an imminent emergency need. The 4th Circuit cautioned that “whether a situation justifies a warrantless or suspicion less seizure is highly fact specific”.

Turning to the facts at hand, the court first pointed out that police were not investigating a shooting or homicide that had occurred days earlier. Rather, officers were responding, within seconds, to shots fired in a densely populated neighborhood. Under these circumstances, officers were faced with the possibility that an active shooter may begin shooting at the officers or other citizens. Furthermore, the “immediate purpose” of the stop and direction by the officers for the suspects to raise their shirts was directly related to the need to protect the officers and citizens from an immediate threat. The officers’ actions and limited seizure of the suspects “puts this case squarely within the special- needs doctrine”. Employing the “reasonableness” balancing test, the court concluded that:

- The public concerns were grave;
- The limited intrusion addressed the public concern; and
- The seizure was limited in time and scope.

The court reversed the district court decision, finding that the stop met reasonableness requirements under the 4th Amendment and sent the case back to the district court to determine whether the facts surrounding the stop supported the ensuing frisk.

WRAP UP

Before everyone goes off making stops unsupported by reasonable suspicion, lets take a look at what the court is saying here.

First, the 4th Circuit court clearly points out that in “normal crime fighting operations” officers are required to have reasonable suspicion before conducting a stop. Suspicion-less stops are relegated to a very limited group of cases where there is a grave public concern that involves the immediate safety of the public or officers. The court cited a potential terrorist incident or active shooter as two such examples of the types of incidents the court contemplated. Interestingly, the video footage from the Body Worn Cameras helped the officers meet these limited requirements in this case.

1. *United States v Curry*, 937 F.3d 363 (4th Cir 2019) [↑](#)

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