



LEGAL UPDATE · RESOURCES

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By **Daigle Law Group**

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DAIGLE LAW GROUP

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In this week's case, the Seventh Circuit explores the scope and limitations implicit within the reasonable suspicion requirement, as applied in the context of an officer-suspect pat down during the execution of a traffic stop. The general standard governing a suspect pat-down during a traffic stop requires that, "To justify a pat-down of a driver or a passenger during a traffic stop, the police must harbor reasonable suspicion that the person subjected to the frisk is armed and dangerous." When a traffic stop encounter involves multiple pat-downs, the subsequent frisks are not necessarily unreasonable. Determining the reasonableness of the ensuing frisks depends on whether the officer has reasonable suspicion to believe that the person, at the moment the officer frisked him, was a threat to the safety of the officer. Consequently, the conduct and circumstances that develop during the time between each frisk is a critical component to consider in assessing reasonableness. In the wake of the initial pat down, if an individual's behavior appears to become increasingly suspicious, or their actions seem unusually irrational, the officer is justified to take action based on such suspicion. In today's case, Officer Holden conducted three frisks throughout the duration of a traffic stop.

FACTS

On June 18, 2018, at approximately 9:00 p.m., two Chicago police officers, Steven Holden and Dimar Vasquez, initiated a traffic stop of an individual after witnessing him run a red light. Officer Vasquez initiated conversation with the driver, while Officer Holden approached the front-passenger side of the vehicle and encountered Leamon Smith. As Smith handed over his driver's license, Officer Holden commented that Smith was "shaking like a leaf." Officer Holden asked Smith to step outside and directed him to the back of the car. Smith complied but immediately rested the front of his pelvis against the car, even though he had not been asked to do so. Officer Holden asked Smith to take a half-step away from the car and performed the first of three pat-downs.

The first pat-down focused on "hot spots," including Smith's waistband, front pockets, and lower leg, but not his groin area. Although Officer Holden did not find anything, he placed Smith in handcuffs and told him that he was simply being detained. Still suspecting that Smith might be hiding something in his pants, Officer Holden told Smith if he had something, "we can work with it." Smith replied that he had, "really nothing."

Next, Officer Holden asked Smith to walk from the back of Naylor's car to the front of the police car while he entered their names in a law-enforcement database. Officer Holden later testified that Smith

“had that side-to-side walk, as if he was holding something in his crotch area and he was trying to walk around it or hold it in place.” Smith then rested his pelvis against the front of the police car. After running the name check, Officer Holden asked Smith to walk from the police car back to Naylor’s car, where Smith again rested his pelvis on the car without prompting. Officer Holden offered to uncuff one of Smith’s hands so that Smith could retrieve whatever he was hiding, but Smith declined. Meanwhile, Officer Vasquez was conducting a consent search of Naylor’s car.

Approximately six and a half minutes after the first pat-down, Officer Holden performed the second pat-down by jiggling Smith’s pant legs, and when nothing fell out Officer Holden asked Smith to walk back to the police car one more time. Officer Holden observed that Smith was walking with an exaggerated limp and asked if he was injured. In response, Smith stated that he had been involved in a car accident that caused an injury to his right leg. Officer Holden later testified that Smith’s more-prominent limp was caused by an item that had dropped from his crotch. In the sixty seconds following this pat-down, Officer Holden conducted the third, and final, pat-down, which was focused on Smith’s groin area. As the officer conducted the pat-down, his hand braised a hard metal object which he determined to be a loaded handgun, tucked inside Smith’s underwear.

The government brought charges against Smith for being a felon in possession of a firearm. In response, Smith filed a motion to suppress the evidence of the firearm, contending that Officer Holden violated his Fourth Amendment rights by executing multiple pat-downs, in absence of having a sufficiently reasonable suspicion to believe that he was armed and dangerous. The district court denied the motion and, upon conviction, Smith appealed. On appeal, Smith conceded that the traffic stop itself was lawful and that Officer Holden had reasonable suspicion to conduct the initial pat-down. However, Smith argued that the second and third pat-downs were unsupported and based solely on the officer’s intuition, therefore, lacking reasonable suspicion.

SEVENTH CIRCUIT COURT OPINION

Analysis: Second pat-down

The Seventh Circuit Court of Appeals found that the second pat down was in fact, reasonable. The court reached this finding by considering the relevant facts surrounding the encounter. The court recognized that Officer Holden had seen Smith walk between the cars on two different occasions, and as he did so, he repeatedly rested his pelvis against the cars as if to prop something up, and continued to appear abnormally nervous throughout the duration of the pat-down. The court concluded, finding that an officer in similar circumstances could reasonably infer that a suspect engaged in such peculiar behavior would be likely hiding a weapon in his pants. In assessing the details of the second pat-down,

the court found that it was (1) tailored to the situation, and, (2) minimally invasive, as Officer Holden's body-cam video shows that he simply shook Smith's pant legs to see if something would fall out.

The court rejected Smith's contention that Officer Holden could not have believed he was hiding a weapon because before the second pat-down, Officer Holden offered to uncuff one of Smith's hands so he could retrieve whatever was in his pants. In Smith's view, no reasonable officer would uncuff a person who the officer believed was armed and dangerous. First, to be justified in performing the second pat-down the standard is whether a reasonable officer would fear for his safety at that very moment in time. Here, in conducting the second pat-down, Officer Holden did not need to be certain that Smith was hiding a weapon, as opposed to a search for drugs or other contraband. Rather, the focus is on "whether a reasonable officer would fear for his safety at that moment in time." Second, even if Officer Holden suspected that Smith was merely hiding drugs, an officer's subjective beliefs are irrelevant to the reasonable suspicion inquiry; courts ask whether, in light of the facts available to the officer at the time, a reasonable officer would have believed that the person was armed and dangerous.

Analysis: Third pat-down

The court held that the third pat-down, which occurred after Officer Holden asked Smith to walk from Naylor's car to the police car, was reasonable. The court concluded that Smith's exaggerated limp elevated the basis which supported Officer Holden's suspicions, and that Officer Holden was not required to accept Smith's car accident story.

TAKEAWAYS

This case reiterates how important it is for law enforcement officers to use their own intuition and logical thinking skills, while maintaining the policy standards and duties that are required of them. Here, Officer Holden's intuition and assessment of relevant circumstances led to this speculation, yet the officer was able to verify his suspicions. Officer Holden refrained from asserting use of force, nor did the officer become aggressive with Smith; he simply made him repeatedly walk back and forth, suspecting that an object would eventually fall. Admission of the body-cam footage in court acted as a benefit to Officer Holden, further supporting a finding of reasonableness as to the pat-downs that occurred.

United States v. Smith, 32 F.4th 638 (7th Cir. 2022)