



FOURTH AMENDMENT · RESOURCES

Weapons, Warrants, and the Fourth: Wilson Clarifies Terry Stop Limits

By **Daigle Law Group**

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Weapons, Warrants, and the Fourth: Wilson Clarifies Terry Stop Limits

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The United States Court of Appeals for the Fifth Circuit recently decided *United States v. Wilson*, a case highlighting that law enforcement cannot stop citizens solely for carrying a firearm unless justified by reasonable suspicion based on the totality of the circumstances, such as connections to criminal activity.

Summary of Facts

This incident stems from an investigation regarding the whereabouts of Malik Fernandez, a wanted federal fugitive involved in drug trafficking and a shootout. Investigating agents were informed that Fernandez was friends with Damion Wilson and that they were likely to be together. Federal agents tracked Wilson to an apartment in Louisiana, where residents informed them that they had seen both Wilson and Fernandez there.

On March 16, 2022, federal agents stopped Damion Wilson at the apartment complex. Deputy United States Marshal Michael Atkins noticed a bulge in Wilson's pants consistent with a concealed firearm. Due to Wilson's ties with Fernandez, Deputy Atkins decided to initiate a *Terry* stop. Upon confrontation, Wilson admitted he was armed and lacked a concealed weapons permit. Local police arrested Wilson for the firearm violation. In a search incident to arrest, they discovered marijuana in his backpack. Subsequently, the local police obtained a search warrant for Wilson's apartment. The search uncovered additional marijuana, drug paraphernalia, and approximately \$1,700 in cash.

Wilson faced four relevant charges: possession of marijuana with intent to distribute, possession of a firearm in furtherance of drug trafficking, maintaining a drug-involved premises, and making a false statement to a federal agent.

Proceedings Below

In the district court, Wilson moved to suppress all evidence from the *Terry* stop and subsequent arrest, arguing that the agents lacked reasonable suspicion. The district court disagreed, concluding that the stop was justified by Deputy Atkins' observation of the bulge consistent with a concealed firearm. The court also held that the search of his backpack was permissible since it would have inevitably occurred during a standard inventory search. Ultimately, Wilson was convicted and appealed to the Fifth Circuit.

United States Court of Appeals for the Fifth Circuit

The Fifth Circuit affirmed Wilson's conviction and sentence, concluding that there was reasonable suspicion for the search based on both Wilson's visible possession of a concealed firearm and his connection to felonious activity. Consequently, the court upheld the legality of the apartment and backpack searches.

However, while the district court found that reasonable suspicion existed solely based on Deputy Atkins noticing a bulge that appeared to be a concealed weapon, the Fifth Circuit disagreed with this specific rationale.

The court drew on the history of the Fourth Amendment, emphasizing that "officers cannot seize or search without individualized suspicion that a particular person committed a particular crime." The court cited the Supreme Court case *Terry v. Ohio* to reiterate that *Terry* allows police officers to stop and briefly detain a person based on reasonable suspicion of involvement in criminal activity, even absent probable cause for arrest. This makes a "stop and frisk" for weapons constitutional if the officer reasonably believes the person is armed and dangerous. This reasonable suspicion must be grounded in specific and articulable facts, not just a hunch. The Fifth Circuit noted that the *Terry* doctrine contains no exception for firearms, citing the Seventh Circuit's holding in *United States v. Watson*.

Presumption of Illegality

Moreover, the Fifth Circuit found the district court's *per se* presumption of illegality to be inconsistent with general Fourth Amendment principles. The court cited multiple United States Supreme Court cases allowing for suspicion-less searches or seizures, including random drug testing in schools and roadblocks to combat illegal immigration and drunk driving. In each instance, the Supreme Court held that these programs advanced the need for public safety in places with lower privacy expectations. However, the Supreme Court has stressed that these programs cannot be used to combat crime generally.

The court found the presumption of illegality in this case problematic, as it could spread and have consequences in other areas. The court used driving without a license as an analogy: although driving without a license is illegal in every state, a presumption of illegality would be unreasonable under the Fourth Amendment without reasonable suspicion that a specific car is unregistered or the driver is unlicensed. Thus, the Fifth Circuit found that the district court's holding would render the entire class of people carrying guns in public automatically subject to being stopped and searched, absent any other particularized suspicion.

Totality of the Circumstances

Since firearms are constitutionally protected, the court found that Fourth Amendment protections extend to people against unwarranted governmental intrusion. Further, the Second and Fourteenth Amendments provide individuals with the right to bear arms for self-defense purposes outside of the home. Therefore, the court concluded that having a reasonable suspicion that a person was armed in public—even in a state where carrying a concealed gun without a license is illegal—was not sufficient to justify a *Terry* stop on its own.

However, the court ultimately concluded that the officers did have reasonable suspicion to stop Wilson based on the totality of the circumstances. As a reminder, the totality of the circumstances “allows officers to 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.”

In this case, the agents had reasonable suspicion to stop Wilson based on more than just the visible presence of a firearm:

- They possessed credible information connecting Wilson to Malik Fernandez, a known federal fugitive involved in drug trafficking and violent crime.
- Witness reports placed Wilson frequently in association with Fernandez.
- Wilson himself had a recent criminal history involving firearms and drug trafficking that the officers were aware of when approaching him.

Thus, the court found that these facts created a substantial factual basis for reasonable suspicion *prior* to Deputy Atkins seeing the bulge in Wilson’s waistband. These facts then elevated Deputy Atkins’ mere observation into reasonable suspicion that Wilson was armed and dangerous. Therefore, the Fifth Circuit affirmed the district court’s denial of Wilson’s motion to suppress.

Key Takeaways

Wilson emphasizes that officers can justify a *Terry* stop based on the totality of circumstances suggesting criminal activity. However, police cannot do so based solely on the fact that a person is carrying a firearm. There must be other supporting factors that contribute to reasonable suspicion, such as criminal associations or prior conduct. Therefore, it is crucial that officers ensure their justifications for a *Terry* stop are based on articulable circumstances beyond mere visible threats and adhere to the scope and limitations clarified by case law to avoid constitutional violations.

Case: *United States v. Wilson*, No. 23-30777 (5th Cir. 2025)

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