SUPREME COURT OF THE UNITED STATES

**392 U.S. 1**

**Terry v. Ohio**

**CERTIORARI TO THE SUPREME COURT OF OHIO**

No. 67 Argued: December 12, 1967 --- Decided: June 10, 1968

A Cleveland detective (McFadden), on a downtown beat, which he had been patrolling for many years, observed two strangers (petitioner and another man, Chilton) on a street corner. He saw them proceed alternately back and forth along an identical route, pausing to stare in the same store window, which they did for a total of about 24 times. Each completion of the route was followed by a conference between the two on a corner, at one of which they were joined by a third man (Katz) who left swiftly. Suspecting the two men of "casing a job, a stick-up," the officer followed them and saw them rejoin the third man a couple of blocks away in front of a store. The officer approached the three, identified himself as a policeman, and asked their names. The men "mumbled something," whereupon McFadden spun petitioner around, patted down his outside clothing, and found in his overcoat pocket, but was unable to remove, a pistol. The officer ordered the three into the store. He removed petitioner's overcoat, took out a revolver, and ordered the three to face the wall with their hands raised. He patted down the outer clothing of Chilton and Katz and seized a revolver from Chilton's outside overcoat pocket. He did not put his hands under the outer garments of Katz (since he discovered nothing in his pat-down which might have been a weapon), or under petitioner's or Chilton's outer garments until he felt the guns. The three were taken to the police station. Petitioner and Chilton were charged with carrying [p2] concealed weapons. The defense moved to suppress the weapons. Though the trial court rejected the prosecution theory that the guns had been seized during a search incident to a lawful arrest, the court denied the motion to suppress and admitted the weapons into evidence on the ground that the officer had cause to believe that petitioner and Chilton were acting suspiciously, that their interrogation was warranted, and that the officer, for his own protection, had the right to pat down their outer clothing having reasonable cause to believe that they might be armed. The court distinguished between an investigatory "stop" and an arrest, and between a "frisk" of the outer clothing for weapons and a full-blown search for evidence of crime. Petitioner and Chilton were found guilty, an intermediate appellate court affirmed, and the State Supreme Court dismissed the appeal on the ground that "no substantial constitutional question" was involved.

*Held:*

1. The [Fourth Amendment](http://www.law.cornell.edu/supct-cgi/get-const?amendmentiv) right against unreasonable searches and seizures, made applicable to the States by the [Fourteenth Amendment](http://www.law.cornell.edu/supct-cgi/get-const?amendmentxiv), "protects people, not places," and therefore applies as much to the citizen on the streets as well as at home or elsewhere. Pp. 8-9.

2. The issue in this case is not the abstract propriety of the police conduct, but the admissibility against petitioner of the evidence uncovered by the search and seizure. P. 12.

3. The exclusionary rule cannot properly be invoked to exclude the products of legitimate and restrained police investigative techniques, and this Court's approval of such techniques should not discourage remedies other than the exclusionary rule to curtail police abuses for which that is not an effective sanction. Pp. 13-15.

4. The [Fourth Amendment](http://www.law.cornell.edu/supct-cgi/get-const?amendmentiv) applies to "stop and frisk" procedures such as those followed here. Pp. 16-20.

(a) Whenever a police officer accosts an individual and restrains his freedom to walk away, he has "seized" that person within the meaning of the [Fourth Amendment](http://www.law.cornell.edu/supct-cgi/get-const?amendmentiv). P. 16.

(b) A careful exploration of the outer surfaces of a person's clothing in an attempt to find weapons is a "search" under that Amendment. P. 16.

5. Where a reasonably prudent officer is warranted in the circumstances of a given case in believing that his safety or that of others is endangered, he may make a reasonable search for weapons of the person believed by him to be armed and dangerous [p3] regardless of whether he has probable cause to arrest that individual for crime or the absolute certainty that the individual is armed. Pp. 20-27.

(a) Though the police must, whenever practicable, secure a warrant to make a search and seizure, that procedure cannot be followed where swift action based upon on-the-spot observations of the officer on the beat is required. P. 20.

(b) The reasonableness of any particular search and seizure must be assessed in light of the particular circumstances against the standard of whether a man of reasonable caution is warranted in believing that the action taken was appropriate. Pp. 21-22.

(c) The officer here was performing a legitimate function of investigating suspicious conduct when he decided to approach petitioner and his companions. P. 22.

(d) An officer justified in believing that an individual whose suspicious behavior he is investigating at close range is armed may, to neutralize the threat of physical harm, take necessary measures to determine whether that person is carrying a weapon. P. 24.

(e) A search for weapons in the absence of probable cause to arrest must be strictly circumscribed by the exigencies of the situation. Pp. 25-26.

(f) An officer may make an intrusion short of arrest where he has reasonable apprehension of danger before being possessed of information justifying arrest. Pp. 26-27.

6. The officer's protective seizure of petitioner and his companions and the limited search which he made were reasonable, both at their inception and as conducted. Pp. 27-30.

(a) The actions of petitioner and his companions were consistent with the officer's hypothesis that they were contemplating a daylight robbery and were armed. P. 28.

(b) The officer's search was confined to what was minimally necessary to determine whether the men were armed, and the intrusion, which was made for the sole purpose of protecting himself and others nearby, was confined to ascertaining the presence of weapons. Pp. 29-30.

7. The revolver seized from petitioner was properly admitted into evidence against him, since the search which led to its seizure was reasonable under the [Fourth Amendment](http://www.law.cornell.edu/supct-cgi/get-const?amendmentiv). Pp. 30-31.

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**Citation.** [392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968)](http://www.bloomberglaw.com/document/X5C77B?jcsearch=392%2520U.S.%25201#jcite%22&ORIGINATION_CODE=00344)

**Brief Fact Summary.** The Petitioner, John W. Terry (the “Petitioner”), was stopped and searched by an officer after the officer observed the Petitioner seemingly casing a store for a potential robbery. The officer approached the Petitioner for questioning and decided to search him first.  **Synopsis of Rule of Law.** An officer may perform a search for weapons without a warrant, even without probable cause, when the officer reasonably believes that the person may be armed and dangerous.

**Facts.** The officer noticed the Petitioner talking with another individual on a street corner while repeatedly walking up and down the same street. The men would periodically peer into a store window and then talk some more. The men also spoke to a third man whom they eventually followed up the street. The officer believed that the Petitioner and the other men were “casing” a store for a potential robbery. The officer decided to approach the men for questioning, and given the nature of the behavior the officer decided to perform a quick search of the men before questioning. A quick frisking of the Petitioner produced a concealed weapon and the Petitioner was charged with carrying a concealed weapon.  **Issue.** Whether a search for weapons without probable cause for arrest is an unreasonable search under the Fourth Amendment to the United States Constitution (”Constitution”)?

**Held.** The Supreme Court of the United States (”Supreme Court”) held that it is a reasonable search when an officer performs a quick seizure and a limited search for weapons on a person that the officer reasonably believes could be armed. A typical beat officer would be unduly burdened by being prohibited from searching individuals that the officer suspects to be armed.  
  
**Dissent**. Justice William Douglas (”J. Douglas”) dissented, reasoning that the majority’s holding would grant powers to officers to authorize a search and seizure that even a magistrate would not possess.  
Concurrence.  
Justice John Harlan (”J. Harlan”) agreed with the majority, but he emphasized an additional necessity of the reasonableness of the stop to investigate the crime.

Justice Byron White (”J. White”) agreed with the majority, but he emphasized that the particular facts of the case, that there was suspicion of a violent act, merit the forcible stop and frisk.

**Discussion.** The facts of the case are important to understand the Supreme Court’s willingness to allow the search. The suspicious activity was a violent crime, armed robbery, and if the officer’s suspicions were correct then he would be in a dangerous position to approach the men for questioning without searching them. The officer also did not detain the men for a long period of time to constitute an arrest without probable cause.

**A look into the case of Terry vs Ohio and how it created the stop and frisk rule for searches and seizures.**

The case of Terry v Ohio was brought to the Supreme Court of the United States to look into the issue of police officers invading the personal space of citizens, while not having probable cause. It had been (and still) quite common for police officers to stop suspicious people on the street based on hunches. Police feel that random interrogations can deter street crime. More commonly known as the "stop and frisk", this procedure was formally created in the following case.

In October of 1963, a police officer observed two suspicious men, one of them Terry, standing on a street corner. He had never seen the men in the area before, and his police instincts drew them to his eye. In his opinion, they were not in the right place at the right time. Due to this suspicion, the officer took up surveillance from approximately 400 feet away. He observed one of the men leave the corner, and walk past several stores. The man looked into the store windows, and continued walking. After a minute, he turned back around, and looked in the same windows again as he went back to the corner where his friend was waiting. The two then spoke for a brief period of time. Then, the man who had previously stayed on the corner then proceeded to perform the same steps as his friend had done previously. After looking into the same stores and coming back, the first man performed the same act again. The two men switched back and forth six times, always looking into the same stores. While the two men were conferring after their trips, a third man approached the first two, and engaged them in conversation. The third man then walked away, allowing the first two to continue their pacing past the stores. After another 10 minutes of this, the first two men left the corner together; following the direction the third man took when he left.

By now, the police officer was extremely suspicious. From his 35 years of experience, he believed that the men were "casing a job", or evaluating targets to be robbed. He considered it his duty to investigate further. He also feared that the men may have been armed, as in his opinion they were about to commit robbery. The officer then followed the two until they met back up with the third man in front of one particular store. The officer took this opportunity to approach all three men, and identify himself as a police officer. He asked the three men their names, they mumbled incoherently. The officer then grabbed the man in the middle, whom happened to be Terry, and patted down the outside of his clothing. In the left breast pocket, he felt a hand gun, but was unable to remove it. The officer then ordered the three men into the store, where he then removed Terry's jacket, and retrieved a .38-caliber pistol. At that point, the officer then patted down the third man, and he found another pistol. No weapons were found on the remaining man during his pat down. The officer never felt beneath the outer clothing of the men until he had located guns on the outside clothing. Once the officer found the weapons on the two suspects, this gave him probable cause to fully search those individuals for any other contraband. He then called for backup, and took all three men into custody, and Terry, along with the other man whom had a weapon, were to be charged with carrying concealed weapons.

Terry was convicted of carrying a concealed weapon, and was sentenced to one to three years. The gun and ammunition confiscated by the police offer was used as evidence in the trial. The defense had filed a pre-trial motion to have the evidence suppressed. Any evidence found as the result of an illegal search, in this case the gun, would not be admissible. However, first the search needed to be deemed illegal. The motion was denied, as the judge felt that on the basis of the officer's experience, he had cause to conduct an interrogation, therefore not violating Terry's fourth amendment rights. Upon the outcome of the trial, the defense appealed to the Supreme Court.

The main question the Supreme Court had was whether Terry's right to personal security was violated by an unreasonable search and seizure. First, the Court decided that any time an officer restrains a person's ability to walk away, he is seized. The Court also said that a patting of outer clothing is indeed a search. Therefore, the judgment here is as to whether or not the actions were considered reasonable. They went on to state that when practical, police must have probable cause, and a warrant to perform a search. However, during on-the-spot observations during a beat, it is not practical for an officer to obtain a warrant. Yet, good faith alone cannot be enough to determine a situation unpractical, and to override these regulations. The Court believed that the actions the officer witnessed were enough to allow the officer to reasonably suspect the men could have been armed. The search was carefully restricted to the outer clothing where a weapon may have been located. On the one man where no weapon was found, the officer discontinued his search. Therefore, the Supreme Court affirmed the conviction to Terry.

The outcome of this case causes repercussions that are not obvious to some. A police officer now has the right to detain and search any individual, without a warrant, or even probable cause, as long as he or she can justify a suspicion that the individual may be armed. Also, anything the officer feels during that pat down may then be used as probable cause, allowing the officer to complete a full search. Since Terry v Ohio, other cases have come before the Supreme Court that have extended the power of the "stop and frisk", extending that power to "frisk" cars, for example. Whenever the judiciary "creates" law, it can and will cause controversy, and this is no exception.