

CONSTITUTION 101

Module 11: The Fourth Amendment: Privacy in a Digital Age, Policing in America, and Protections from Unreasonable Searches and Seizures
11.5 Primary Source

TERRY V. OHIO (1968)

View the case on the National Constitution Center's website [here](#).

SUMMARY

Police officers stopped three men on the street whom they suspected were planning a burglary. The officers did not have a warrant for the search; they merely suspected the three men after observing them lingering and possibly “casing” a location. This level of suspicion would probably have also been insufficient to obtain a warrant. Upon stopping the men, the police also conducted a search of their bodies—a “frisk”—to ensure that there were no weapons on their persons. The officers discovered concealed weapons on two of them. After being sentenced to three years in prison, the petitioner (Terry)—one of the three men—appealed his case, arguing that his search was a violation of his Fourth Amendment rights. *Terry v. Ohio* involves a police tactic that remains controversial to this day: the stop and frisk. In this case, the Court concluded that the Fourth Amendment did not prohibit police from stopping a person they have reasonable suspicion to believe had committed a crime, and frisking that person if they reasonably believe that person to be armed.

[Read the Full Opinion](#)

Excerpt: Majority Opinion, Chief Justice Warren

The Fourth Amendment applies here; the constitutional question is whether the search or seizure was unreasonable. Unquestionably petitioner was entitled to the protection of the Fourth Amendment as he walked down the street in Cleveland. The question is whether in all the circumstances of this on-the-street encounter, his right to personal security was violated by an unreasonable search and seizure. . . . Reflective of the tensions involved are the practical and constitutional arguments pressed with great vigor on both sides of the public debate over the power of the police to ‘stop and frisk’—as it is sometimes euphemistically termed—suspicious persons.

The Court must strike the right balance between giving police officers some flexibility, while also guarding against the dangers of police abuses and heightened police-community tensions. On the one hand, it is frequently argued that in dealing with the rapidly unfolding and often dangerous situations on city streets the police are in need of an escalating set of flexible responses, graduated in relation to the amount of information they possess. . . . On the other side the argument is made that the authority of the police must be

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strictly circumscribed Acquiescence by the courts in the compulsion inherent in the field interrogation practices at issue here, it is urged, . . . can only serve to exacerbate police-community tensions in the crowded centers of our Nation's cities.

Judges must approach these complex situations with humility. In this context we approach the issues in this case mindful of the limitations of the judicial function in controlling the myriad daily situations in which policemen and citizens confront each other on the street. . . . No judicial opinion can comprehend the protean variety of the street encounter, and we can only judge the facts of the case before us. . . .

This situation doesn't trigger the Fourth Amendment's warrant requirement; instead, we must ask whether the officer's conduct was unreasonable. If this case involved police conduct subject to the Warrant Clause of the Fourth Amendment, we would have to ascertain whether 'probable cause' existed to justify the search and seizure which took place. However, that is not the case. . . . [W]e deal here with an entire rubric of police conduct—necessarily swift action predicated upon the on-the-spot observations of the officer on the beat—which historically has not been, and as a practical matter could not be, subjected to the warrant procedure. Instead, the conduct involved in this case must be tested by the Fourth Amendment's general proscription against unreasonable searches and seizures. . . .

One key interest involved is crime prevention/detection. One general interest is of course that of effective crime prevention and detection; it is this interest which underlies the recognition that a police officer may in appropriate circumstances and in an appropriate manner approach a person for purposes of investigating possibly criminal behavior even though there is no probable cause to make an arrest. . . .

Another key interest is the safety of the police officer. When an officer is justified in believing that the individual whose suspicious behavior he is investigating at close range is armed and presently dangerous to the officer or to others, it would appear to be clearly unreasonable to deny the officer the power to take necessary measures to determine whether the person is in fact carrying a weapon and to neutralize the threat of physical harm. . . .

The Court lays out the scope of a permissible search in this context, focused on the safety of the police officer and others in the area. Our evaluation of the proper balance that has to be struck in this type of case leads us to conclude that there must be a narrowly drawn authority to permit a reasonable search for weapons for the protection of the police officer, where he has reason to believe that he is dealing with an armed and dangerous individual, regardless of whether he has probable cause to arrest the individual for a crime. The officer need not be absolutely certain that the individual is armed; the issue is whether a reasonably

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prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger.

Excerpt: Concurrence, Justice Harlan

We must limit stop-and-frisk searches to reasonable efforts to investigate a suspected crime. Any person, including a policeman, is at liberty to avoid a person he considers dangerous. If and when a policeman has a right instead to disarm such a person for his own protection, he must first have a right not to avoid him but to be in his presence. That right must be more than the liberty (again, possessed by every citizen) to address questions to other persons, for ordinarily the person addressed has an equal right to ignore his interrogator and walk away; he certainly need not submit to a frisk for the questioner's protection. I would make it perfectly clear that the right to frisk in this case depends upon the reasonableness of a forcible stop to investigate a suspected crime.

These can be dangerous situations for police officers; the limited frisk must be immediate and rapid if the officer suspects a crime of violence, as in this case. Where such a stop is reasonable, however, the right to frisk must be immediate and automatic if the reason for the stop is, as here, an articulable suspicion of a crime of violence. Just as a full search incident to a lawful arrest requires no additional justification, a limited frisk incident to a lawful stop must often be rapid and routine. There is no reason why an officer, rightfully but forcibly confronting a person suspected of a serious crime, should have to ask one question and take the risk that the answer might be a bullet. . . .

Excerpt: Dissent, Justice Douglas

It's not clear how the stop-and-frisk in this case is consistent with the Fourth Amendment. [I]t is a mystery how [this] 'search' and that 'seizure' can be constitutional by Fourth Amendment standards, unless there was 'probable cause' to believe that (1) a crime had been committed or (2) a crime was in the process of being committed or (3) a crime was about to be committed. . . .

The Court's approach gives police officers too much power; the majority is rewriting the Fourth Amendment; only the American people have that power to do that through the Article V amendment process. To give the police greater power than a magistrate is to take a long step down the totalitarian path. Perhaps such a step is desirable to cope with modern forms of lawlessness. But if it is taken, it should be the deliberate choice of the people through a constitutional amendment. Until the Fourth Amendment, which is closely allied with the Fifth, is rewritten, the person and the effects of the individual are beyond the reach of all government

CONSTITUTION 101

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agencies until there are reasonable grounds to believe (probable cause) that a criminal venture has been launched or is about to be launched. . . .

***Bold sentences give the big idea of the excerpt and are not a part of the primary source.**