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Case Brief: Terry v. Ohio, 392 U.S.1 (1968)

At 2:30 in the afternoon on October 31, 1963, Martin McFadden, a detective with the Cleveland Police Department, observed two men standing on a street corner at 1276 Euclid Avenue in downtown Cleveland. Officer McFadden, who was dressed in plain clothes at the time, thought the men "appeared suspicious". (Officer McFadden had been with the Cleveland Police Department for 39 years, had been a detective for 35 years, and had spent 30 years patrolling that area of the city for shoplifters and pickpockets.) As he watched, the two men alternated walking back and forth along the same route, each time stopping to look in a store window, and then conferring when they returned to the street corner. This went on, each man walking the route five or six times (or approximately a dozen trips total), for about 10 to 12 minutes. During this time, the two men were joined by a third man, who spoke with them briefly and then left the scene. After 10 to 12 minutes, according to Officer McFadden, the two men then walked off, following the same path as the third man had earlier.

Officer McFadden followed the two men, and saw them meet up with the third man they had spoken to earlier. At this point, Officer McFadden became even more suspicious. He suspected the three men of "casing" the store for a robbery, and decided to investigate further. He approached all three men and asked them for their names. The men "mumbled something", according to Officer McFadden. At this point, he grabbed one of the original two men, later identified as John W. Terry, and performed a quick pat-down search of Terry. During this search, Officer McFadden identified a firearm concealed under Terry's clothes. Officer McFadden ordered all three men into a nearby store, where he disarmed Terry and performed pat-down searches on the second of the original two men (later identified as Richard Chilton) and the third man who had met up with them (later identified as Carl Katz). Officer McFadden also discovered a concealed weapon under Chilton's clothes, and disarmed him; no weapons were discovered on the person of Katz. Officer McFadden later testified that he only placed his hands under Terry and Chilton's outer clothing after identifying weapons, and that he did not search inside Katz's outer clothing when he did not detect a weapon on Katz's person. Officer McFadden arrested all three men and took them to the police station; subsequently, Terry and Chilton were charged with carrying concealed weapons.

Terry and Chilton's defense attorneys attempted to have the seized weapons excluded as evidence against the defendants, arguing that Officer McFadden's search after stopping them was a violation of the Fourth Amendment. The prosecution claimed that the weapons had been seized as part of a legitimate search incident to a lawful arrest of the defendants. The trial court rejected the prosecution's argument, stating that it was "…stretching the facts beyond reasonable comprehension" to hold that Officer McFadden had probable cause for an arrest. However, the trial court did allow the admission of the weapons as evidence, stating that Officer McFadden had grounds to believe the defendants were behaving suspiciously, that he had legitimate cause to interrogate them, and that he was entitled to do a pat-down search of their outer clothing for weapons for his own protection. Terry and Chilton waived jury trials and pled "not guilty" after this ruling. They were convicted, and appealed to the Court of Appeals for the Eighth Judicial District of Ohio. The state appellate court upheld their conviction. The two men then appealed to the Supreme Court of the State of Ohio, which dismissed their appeal on the grounds that "no

substantial constitutional question" was involved. At this point, the two men appealed to the United States Supreme Court, which agreed to hear the case. Chilton died before the Supreme Court heard the case, so the Court only reviewed Terry's conviction.

The key issue in this case was similar to the key issue in *Mapp v. Ohio*; was Officer McFadden's search and seizure of Terry unreasonable, and should the exclusionary rule (which the Court had already held applied to the states in *Mapp v. Ohio*) be applied to the evidence in Terry's case? As part of their consideration of these questions, the Court had to decide if "stop and frisk" searches were reasonable; police officers felt that these searches gave them some level of flexibility in dealing with crime, while civil rights organizations argued that these kind of searches gave police too much power over citizens without requiring justification of their actions. The Court also had to consider the questions of what exactly defined a "seizure" and a "search" under the Fourth Amendment. Did a "stop and frisk" qualify as a "seizure"? Did a police officer running his hands over someone's clothes qualify as a "search"?

The Supreme Court, in an 8-1 decision, upheld the conviction of Terry. Chief Justice Warren wrote the majority opinion, in which he was joined by Justices Black, Brennan, Stewart, Fortas, and Marshall. Justices Harlan and White each wrote separate concurring opinions. Justice Douglas was the only justice who disagreed with the majority, and wrote a dissenting opinion.

Justice Warren's decision is divided into five major sections (excluding his summary of the facts in the case). In the first section of the opinion, Justice Warren summarizes the state of Fourth Amendment jurisprudence, pointing out that the Fourth Amendment "belongs as much to the citizen on the streets of our cities as to the homeowner closeted in his study to dispose of his secret affairs", and that "the Fourth Amendment protects people, not places". However, Justice Warren goes on to quote *Elkins v. United States*, "what the Constitution forbids is not all searches and seizures, but unreasonable searches and seizures". Justice Warren further goes on to consider the debate over the legitimacy of "stop and frisk" searches, pointing out the question before the court was not "the abstract propriety of the police conduct, but the admissibility against petitioner of the evidence uncovered by the search and seizure". Justice Warren notes that the exclusionary rule is a necessary deterrent against police misconduct, but it "has its limitations, however, as a tool of judicial control. It cannot properly be invoked to exclude the products of legitimate police investigative techniques on the ground that much conduct which is closely similar involves unwarranted intrusions upon constitutional protections." Nor is the exclusionary rule useful when the police are concerned with something other than obtaining a conviction. Finally, Justice Warren narrows down the question before the court: "whether it is always unreasonable for a policeman to seize a person and subject him to a limited search for weapons unless there is probable cause for an arrest".

In the second section of the opinion, Justice Warren considers the question of when Officer McFadden's encounter with Terry became a "seizure" and when his actions became a "search". The majority rejected the idea put forward by the police that a "stop and frisk" did not rise to the level of a "search and seizure". Justice Warren stated

> It must be recognized that whenever a police officer accosts an individual and restrains his freedom to walk away, he has "seized" that person. And it is nothing less than sheer torture of the English language to suggest that a careful exploration of the outer surfaces of a person's clothing all over his or her body in an attempt to find weapons is not a "search." Moreover, it is simply fantastic to urge that such a procedure performed in public by a policeman while

> the citizen stands helpless, perhaps facing a wall with his hands raised, is a "petty indignity." It is a serious intrusion upon the sanctity of the person, which may inflict great indignity and arouse strong resentment, and it is not to be undertaken lightly.

In the third section of the majority opinion, the Court distinguished between normal searches and seizures incident to the investigation of a crime, and the conduct of "the officer on the beat". The Court held that, in order for actions such as McFadden's to be legally justified, the officer "must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant" a search and seizure. Specifically, the Court stated, "Would the facts available to the officer at the moment of the seizure or the search 'warrant a man of reasonable caution in the belief' that the action taken was appropriate?" If so, the seizure and/or search would be justified. In this case, the Court held that the actions of Terry, Katz, and Chilton, combined with Officer McFadden's 30 years of experience observing thieves all constituted reasonable grounds for stopping the three men. Further, the Court held that police officers had a legitimate interest in protecting themselves and others from assault, and that this legitimate interest justified a search for weapons. The Court drew a distinction between a mere protective search for weapons, and an arrest. As the Court put it, "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 Court's standard for justifying these searches was: would a reasonably prudent man, in the same circumstances, believe that he or other people were in danger?

Having considered these questions, in the fourth section, the Court considered specifically Officer McFadden's conduct. The Court held that Officer McFadden had a reasonable belief that the suspects were armed, that Terry and Chilton's actions were consistent with Officer McFadden's supposition that they were planning a robbery, and nothing in Terry or Chilton's conduct from the time Officer McFadden first observed them until the time he approached them nullified that supposition. The Court further held that, while there may be limits on the scope of a police officer's search for weapons, those limits had yet to be articulated by the courts based on individual cases. However, the Court felt that nothing in McFadden's conduct indicated that he had exceeded any reasonable limits; he patted down all three men, but did not go beyond the outer clothing of Terry and Chilton until he felt what he believed to be weapons (and never went beyond the outer clothing of the unarmed Katz), and did not conduct a "general exploratory search".

In the final section of the majority opinion, the Court summarized by stating that the evidence (Terry's revolver) was properly admitted, that Officer McFadden had reasonable grounds to believe that Terry was armed and dangerous, justifying the search, and

> …where a police officer observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot and that the persons with whom he is dealing may be armed and presently dangerous, where in the course of investigating this behavior he identifies himself as a policeman and makes reasonable inquiries, and where nothing in the initial stages of the encounter serves to dispel his reasonable fear for his own or others' safety, he is entitled for the protection of himself and others in the area to conduct a carefully limited search of the outer

> clothing of such persons in an attempt to discover weapons which might be used to assault him.

Justice Harlan, in his concurring opinion, asserted that if a frisk is justified for an officer's protection, the officer first has to have constitutional grounds to make a forcible stop of the individual in question. This was not specifically articulated in the majority opinion. Justice Harlan further asserted that, if the reason for the stop is that the officer suspects the individual of planning or committing a violent crime, the office has the right to an immediate and automatic frisk of the subject for weapons. To quote Justice Harlan, "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."

Justice White, in his concurring opinion, asserted that a policeman may ask questions of anyone on the streets, and, without special circumstances, that person may refuse to answer questions and proceed on their way. In the proper circumstances, Justice White believed, the police could stop, briefly detain, and question someone. Justice White felt those circumstances existed in this case. He further felt that it was the temporary detention of a subject that actually justified a frisk for weapons.

Justice Douglas was the only dissenter from the majority. In his dissenting opinion, he agreed with the opinion of the majority that the Terry, Chilton, and Katz were "seized" and "searched"; his dissent argues that any "seizure" and "search" was simply unconstitutional by Fourth Amendment standards, unless a crime was being committed, about to be committed, or there was "probable cause" to suspect that a crime had been committed. Justice Douglas argues that there was no "probable cause" to suspect Terry and Chilton of carrying concealed weapons, or any crime except possibly loitering. He believed that the Court should hold officers to the higher "probable cause" standard, rather than allowing stops and frisks based on "reasonable suspicion" as the majority opinion would have it, stating "We hold today that the police have greater authority to make a 'seizure' and conduct a 'search' than a judge has to authorize such action. We have said precisely the opposite over and over again." To quote Justice Douglas further, "The infringement on personal liberty of any 'seizure' of a person can only be 'reasonable' under the Fourth Amendment if we require the police to possess 'probable cause' before they seize him."

The fact that the Supreme Court decided 8-1 to uphold Terry's conviction does not automatically make it a correct decision, at least in my opinion. However, I do believe the majority opinion is correct. I agree with Justice Warren that there is a difference between the "exigent circumstances" facing a police officer on the beat, and the reflective deliberation required for an investigation of a crime and the issuance of search warrants. I further agree with Justice Warren and the majority that the prevention of crime justifies the stopping and interrogation of a subject who has been observed engaging in actions that would seem to a reasonable person to be suspicious. Additionally, I agree with the majority that a decent concern for the safety of police officers does justify a limited search for weapons in those circumstances. I respect the concerns of Justice Douglas, including his implied concern that this decision opens a new avenue for abuse by police. However, I agree with Justice Warren; these abuses can be controlled by the people through their elected representatives, applying the exclusionary rule in these cases would do nothing to prevent abuse, and prohibiting a limited search specifically for weapons is an unreasonable sacrifice of officer safety.