

Stop, Frisk and Related Issues

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To Be Discussed

- When can police stop a vehicle?
- When can police stop a pedestrian?
- The difference between mere inquiries and investigative detentions.
- When can police conduct a frisk?
- Obligations of citizens to comply even when a stop is unconstitutional.
- Consequences for citizen refusal to comply.



The Fourth Amendment



The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Motor Vehicle Stops



- Under most circumstances, police need at least the following to stop a vehicle:
 - Reasonable articulable suspicion of criminal activity.
 - Reasonable articulable suspicion of a motor vehicle violation.

Delaware v. Prouse (1979)

Motor Vehicle Stops

- Police may also stop a vehicle under limited circumstances under their community caretaking function.
- This is unrelated to the detection or investigation of offenses, but is instead to render assistance

Cady v. Dombrowski (1973)



Motor Vehicle Stops



- Sometimes police may stop a vehicle for motives unrelated to the expressed reason for the stop.
- This is permissible as long as the expressed reason for the stop is constitutional, and the underlying reason for the stop is not prohibited.
- Bias policing and racial profiling are prohibited underlying reasons.

Whren v. US (1996), State v. Barrow (2009)

Pedestrian Encounters

Encounters between police and pedestrians may include one or more of the following situations. Each has its own constitutional rules:

- Mere Inquiries/conversations
- Stops/Investigative Detentions
- Stops and Frisks
- Arrests



Pedestrian Encounters



- Law enforcement officers do not violate the Fourth Amendment by merely approaching an individual on the street, or in another public place, and asking questions of a person willing to listen.
- But a person need not answer questions, and may decline to listen and go on their way (unless ordered to remain).
- Refusal to listen or answer does not, without more, give police grounds for detention.

Florida v. Royer (1983)

Arrest



- In general, police need at least probable cause before they may arrest or search,
- Probable cause is more than raw suspicion, but less than proof needed to convict.

Stop and Frisks



- There is a limited exception to the probable cause requirement for arrest and search:
- The *Terry v. Ohio* (1968) stop and frisk
 - Stop - police may briefly detain persons if they have reasonable suspicion they committed an offense
 - Frisk - police may pat down a person if they have reasonable suspicion someone is both armed and dangerous

Stops



- If police have reasonable articulable suspicion that someone committed an offense, they may briefly detain a person until they can confirm or dispel their suspicions.
- Reasonable suspicion is a lower level of proof than the probable cause requirement for arrest.

Terry v. Ohio (1968)

Frisks



- If police have reasonable articulable suspicion that a person is both armed and dangerous they may conduct a limited pat down of the person for the presence of weapons.
- Reasonable suspicion is a lower level of proof than the probable cause requirement for a full search.

Terry v. Ohio (1968)

Stop and Frisk



- Authority of the police to stop does not always include the authority to frisk.
- Police may only have reasonable suspicion that a person committed an offense, but not that they are armed and dangerous. A frisk would then be improper.

Terry v. Ohio (1968)

Search & Seizure Rules



- What happens if police break the rules?
 - The court excludes all illegally obtained evidence - it suppresses the evidence.
 - This is called the exclusionary rule.
 - Fruit of the poisonous tree- illegally obtained evidence, and evidence derived from that evidence, cannot be used against a defendant in court.

Search & Seizure Rules



- Illegally obtained evidence does not automatically imply police wrongdoing.
- Sometimes police, prosecutors, and even judges, can be mistaken as to the existence of probable cause.
- Sometimes the police act in good faith and reasonably, but mistakenly, believe they have the necessary level of proof.

Citizen Duty to Comply



- Citizens have a right to terminate a voluntary encounter with police.
- Citizens must, however, obey an order of a police officer to stop, remain, or submit to a frisk, even when the citizen believes the officer does not have justification.
- Citizens must submit to an arrest even when the citizen does not believe the officer has justification.

Citizen Duty to Comply



- Citizens who are stopped or arrested without justification may challenge the stop, frisk or arrest in court, but not on the street.
- When a citizen complies, any evidence seized as a result of an unjustified stop or arrest will be suppressed and cannot be used in court.

Citizen Duty to Comply



- If the person stopped or arrested flees or resists, this breaks the chain of events.
- Even when the officer was not justified to stop or arrest the citizen, if the person flees or resists, evidence may then be used against them (unless the initial stop was biased or otherwise in bad faith).
- The person may also be charged with Obstruction and/or Resisting arrest.

State v. Crawley (2006), State v. Williams (2009)

Thank you!

