

Terry v ohio stop question frisk



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Stop, Question and Frisk The Fourth Amendment protection against unreasonable search and seizure is also applicable to stops and frisks (Terry v Ohio 1968). This is because each time a police officer stops an individual and essentially limits that individual's freedom to go about his/her business, the stop is effectively a seizure. Likewise when a police officer frisks an individual by searching that individual's outer garments, the police officer is conducting a search (Terry v Ohio 1968). Stops and frisks are all parts of the police investigatory and crime prevention duties. In conducting a stop and frisk, police officers are acting on a reasonable suspicion that either the officers or others are in danger of being harmed. In such circumstances, police officers may conduct a reasonable search of the individual for weapons. This investigatory power exists independent of whether or not there is probable cause for affecting an arrest or whether or not the officers in question are entirely sure that the person is actually armed and dangerous (Terry v Ohio 1968).

The US Supreme Court defined the circumstances in which a stop, question and frisk would not exceed the boundaries of the Fourth Amendment. First, while warrants for search and seizure are the preferred way, there are times where police officers must act quickly and in such a case a stop and frisk may be appropriate. Secondly, the search and seizure must be reasonable in the circumstances and reasonableness is judged from the perspective of the reasonable "man of caution" (Terry v Ohio 1968). Thirdly, a stop and frisk is appropriate when the police officer in question is investigating a reasonably suspicious behavior. Fourthly, in such circumstances, if the police officer perceives that the individual acting suspiciously is armed, the officer may conduct a reasonable search to determine whether or not this is the case.

Fifthly, where an officer is justified in searching/frisking the individual for weapons, where there is no probable cause for arrest, the frisk must correspond with the circumstances of the case. Finally, in all circumstances where an officer reasonably fears that there is danger such an officer may “ make an intrusion short of arrest” (Terry v Ohio 1968).

According to Stolarik (2013), the practice of stopping, questioning and frisking by New York City Police has gotten out of control and there has been significant controversy over whether or not these practices are consistent with the protection against unreasonable search and seizure under the Fourth Amendment. Stolarik (2013) reports that individuals are routinely stopped, questioned and frisked on a hunch rather than on reasonable suspicion. Based on the ruling in Terry v Ohio (1968) in order to stop and frisk an individual there must be suspicious behavior of the kind that makes an officer reasonably fearful that either the officer or others are in danger of harm. Therefore stopping and frisking on a hunch would not give rise to the constitutional standard established by the US Supreme Court.

Stolarik (2013) also reports that in January 2013, a federal judge ruled that practices in which police officers stopped people whom they suspected were trespassing “ outside private buildings in the Bronx” was ultra vires the Constitution. The federal judge ruled that although the officers were acting on a Trespass Affidavit Program (TAP) applicable to the Bronx in which police were asked to patrol private buildings and to arrest any trespassers, police were stopping individuals where there were no reasonable grounds to suspect that they were trespassing (Stolarik, 2013). It was alleged that police officers were stopping hundreds of thousands of individuals on the basis of race rather than on the grounds of suspicion. In many cases these

individuals were not acting suspiciously and were merely observed entering and exiting private buildings (Stolarik, 2013). This is seemingly the kind of abuse of police and government power that the Fourth Amendment seeks to prevent.

Contrary to the ruling in Terry v Ohio (1968) there have been reports that individuals stopped and frisked have been subjected to some degree of excessive force on the part of police officers. According to Stolarik (2013) in the Bronx, any individual showing any form of resistance however slight, may be “slammed against walls, forced to the ground,” and although rarely, can have an officer’s gun “pointed at their heads”. This practice is inconsistent with the ruling by the US Supreme Court in which it was held that the search tactics must correspond with the circumstances of the case (Terry v Ohio 1968). It can hardly be claimed that slamming an individual against a wall who has merely been seen entering and exiting a building are corresponding actions and reactions. Fortunately, in recent months the practice of stopping, questioning and frisking on the part of New York City police has significantly stopped as a result of the public criticism and controversies arising out of the practice (Stolarik, 2013).

Bibliography

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