



# Roll Call Reporter

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LEGAL UPDATE FOR MARYLAND LAW ENFORCEMENT OFFICERS

## Waistband Adjustments and Frisks for Weapons

**Question:** Are a suspect's furtive hand movements at or near his waistband alone sufficient to establish reasonable articulable suspicion to conduct a *Terry* frisk?

**Answer:** No. However, a suspect's furtive hand movements at or near his waistband, in combination with other factors, can establish the reasonable articulable suspicion necessary to believe the suspect is armed and dangerous.

**Case:** *Tamere Thornton v. State of Maryland*  
Court of Special Appeals of Maryland  
Decided July 25, 2018

## The Traffic Stop, the Attempted Pat Down, and the Suspect's Flight

Around 2:00 p.m. on January 11, 2016, Baltimore City Police Officers Kenneth Scott and Jeremy Zimmerman, assigned to an "Operations Drug Unit," were travelling in an unmarked police vehicle on Midwood Avenue, a two-way roadway. The officers were driving through the Woodbourne-McCabe neighborhood in northern Baltimore, an area known for high drug-trafficking. The officers observed a Cadillac sedan improperly parked on the wrong side of Midwood Avenue. The sedan's lights were off, and the engine was not running. A man,

later identified as Tamere Thornton, was sitting in the driver's seat. Officer Zimmerman made a U-turn and stopped the unmarked police vehicle directly behind the sedan. The officers activated the emergency lights of the police vehicle, but did not activate its siren.

Officer Zimmerman walked to the driver's side of the sedan as the two officers approached. He saw Thornton reach towards, and seemingly make, an adjustment to his waistband. Once at the car, Officer Zimmerman asked Thornton a few questions, but didn't tell him why they had pulled behind him. Thornton then made several more hand movements near, and adjustments of, his waistband. These hand movements led the officers to suspect that he might be armed and dangerous. The officers told Thornton to step out of the car and place his hands on his head. Thornton complied. Officer Zimmerman then started to pat down Thornton's clothing, beginning with the front waistband area. Thornton then fled, brushing against Officer Zimmerman as he began to run. Thornton didn't get far as he slipped and fell to the ground. Officer Zimmerman jumped on top of him. Thornton was face-down with his hands under his chest. The officers grabbed Thornton's hands and handcuffed him. When the officers rolled Thornton over, they observed a handgun on the ground under him. Thornton was placed under arrest.

## The Charges, Motion to Suppress, and Conviction

Thornton was charged with offenses related to the possession of a handgun. He moved to suppress the evidence. Thornton argued that the officers lacked reasonable articulable suspicion (RAS) to believe that he was armed and dangerous as their sole justification was Thornton's hand movements near his waistband. Despite finding that the officers' testimony on RAS was unclear, and, at points, conflicting, the circuit court denied Thornton's motion to suppress. The court concluded that, even if the officers lacked RAS to conduct a pat down for weapons, Thornton's flight changed everything. His flight attenuated (lessened) the assumed lack of RAS for the pat down and gave the officers an independent legal basis to arrest Thornton and subsequently recover the handgun. Thornton was found guilty of possession of a regulated firearm after a previous conviction for a crime of violence. He appealed.

## The Outcome on Appeal

The Court of Special Appeals of Maryland upheld Thornton's conviction, but did so without finding that there was RAS for the pat down. The court instead first confirmed that Thornton was not challenging the RAS for the traffic stop; he was only challenging the RAS for the frisk. Then, just as the circuit court had done, the appeals court (again based on the unclear and somewhat conflicting testimony of the officers at the suppression hearing), assumed that the officers lacked RAS to frisk Thornton for weapons.

Despite this assumption, the appellate court agreed with the circuit court that Thornton's flight at the very outset of the frisk was an "intervening circumstance" that attenuated (offset) the supposed unlawfulness of the frisk. In other words, the suspect's flight broke the connection between any illegality of the frisk and the discovery of the handgun. In this regard, the court reasoned that Thornton was not only fleeing to avoid the frisk, but

also to end his detention for the traffic violation. Under Maryland's vehicle laws, specifically § 21-904(b)(2) of the Transportation Article of the Maryland Code, fleeing on foot during a traffic stop can be a crime itself. So, at a minimum, the officers had probable cause to believe that Thornton was committing the offense of fleeing and eluding, thereby giving them a basis to make a warrantless arrest. Such arrest would have allowed the officers to search Thornton incident to arrest, but that became unnecessary when the gun was found on the ground under him. Another basis for Thornton's arrest arose when he pushed past Officer Zimmerman as he began to flee. Under Maryland law, a person ordinarily has no right to use force against an officer to resist a frisk, even if the frisk is unlawful. These "new" crimes, battery and fleeing and eluding, both provided a basis to arrest and search Thornton incident to arrest, despite any uncertainty as to the legal justification for the frisk. Here, since the officers did not act in flagrant violation of the law when they began the frisk, and discovered the gun just seconds after Thornton fled, the court upheld Thornton's conviction.

**Note:** Both the trial and appeals courts' difficulty with the justification for the frisk was the result of the unclear and conflicting testimony of the officers at the suppression hearing, especially concerning Thornton's furtive hand movements in the area of his waistband. In this regard, when it comes to frisks based on furtive hand movements, there is no bright-line rule given the individualized nature of cases involving waistband adjustments. Courts instead will look at the totality of the circumstances to determine the existence of RAS. The cases generally hold that a police officer's observation of a suspect making a "security check" of, or adjustment in the vicinity of his waistband alone, *does not* give rise to the RAS needed to justify a *Terry* stop. The officer must be able to articulate other specific facts in addition to the waistband adjustment to establish RAS. Such facts might include observation of a distinctive bulge consistent with the presence of a gun, the suspect's repeatedly



looking back towards officers who are approaching, the suspect's extreme nervousness, the suspect's known criminal history of weapons possession, the suspect dipping his shoulder down as officers approach as if to conceal something, and/or the suspect's moving a hand behind his back as if to hide something from the officers' view. Each situation is different, so it is important for officers to *clearly* articulate *all* facts upon which RAS is based.

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