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AN OFFICER WHO HAS MADE A LAWFUL TRAFFIC STOP MAY PATDOWN THE DRIVER OR PASSENGERS IF THE OFFICER HAS REASONABLE SUSPICION THAT THE OCCUPANT IS ARMED AND DANGEROUS

QUESTION: May an officer who has made a lawful traffic stop patdown the driver or passengers for weapons?

ANSWER: If the officer has reasonable suspicion that the driver or passenger is armed and dangerous, he or she can patdown the person for weapons.

CASE: *Arizona v. Johnson*, United States Supreme Court
Decided January 26, 2009

In *Arizona v. Johnson*, decided just days ago, the Supreme Court considered a police officer's authority to "stop and frisk" (patdown) a passenger in a motor vehicle stopped for a traffic violation. In *Brendlin v. California*, a case decided in 2007, the Supreme Court held that, for the duration of a traffic stop, a police officer effectively "seizes" everyone in the vehicle. In light of this decision, and others preceding it, the Supreme Court in the *Johnson* case held that if reasonable suspicion or probable cause exists to make a traffic stop, an officer may frisk the driver or passenger during the traffic stop *if the officer has a reasonable articulable suspicion that the person subjected to the frisk is armed and dangerous*. The officer does not need reasonable suspicion to believe that the occupant is involved in criminal activity; the officer needs only reasonable suspicion that the occupant is armed and dangerous.

The facts in *Johnson* established that on April 19, 2002, Officer Maria Trevizo and Detectives Machado and Gittings, all members of Arizona's gang task force, were on patrol near a neighborhood associated with the Crips gang. At 9:00 p.m., the officers pulled over an automobile after a license plate check revealed that the vehicle's registration had been suspended for an insurance-related violation. Under Arizona law, the violation for which the vehicle was stopped constituted a civil infraction warranting a citation. At the time of the stop, the vehicle was occupied by its driver, a front seat passenger and a back seat passenger. The back seat passenger was Lemon Johnson. The officers had no reasons to suspect that any of the three individuals were engaged in criminal activity. As the officers approached the vehicle, Detective Machado instructed the occupants to keep their hands visible. When he asked if there were any weapons in the car, all of the occupants said no. He then directed the driver to get out. Detective Gittings remained near the front seat passenger.

While Detective Machado was getting the driver's information, Officer Trevizo focused on the passenger in the back. She noticed that Johnson looked back and kept his eyes on the officers as they approached. Officer Trevizo observed that Johnson was wearing clothing, including a blue bandana that was consistent with Crips membership. She also noticed a scanner in Johnson's jacket pocket. This struck her as unusual as scanners may be possessed by persons engaged in criminal activity who want to evade police. When asked, Johnson gave the officer his name and date of birth, but said that he didn't have identification. He also said that he was from Eloy, which Officer Trevizo knew to be home to the Crips in Arizona, and that he had served time for burglary. Based on this information, Officer Trevizo decided to question Johnson away from the front seat passenger to gain intelligence about the gang he might be in. She also suspected that he was armed. The officer asked Johnson to exit the car and he complied. When Johnson got out, Officer Trevizo patted him down for "officer safety". During the patdown, she felt the butt of a gun near Johnson's waist. Johnson then began to struggle and was handcuffed. He was charged with unlawful possession of a weapon.

Johnson moved to suppress the evidence as the fruit of an unlawful search. The trial court denied his motion and Johnson was convicted. The state appeals court reversed the conviction and the state supreme court denied review. At that point, the United States Supreme Court agreed to hear the case.

The Supreme Court upheld the conviction. In doing so, the Court reaffirmed that routine traffic stops are similar to street encounters based upon reasonable suspicion and that both street encounters and traffic stops are inherently dangerous. In light of its past decisions analogizing traffic stops to street encounters, the Court concluded that officers conducting routine traffic stops may perform patdowns of drivers and passengers upon reasonable suspicion that they may be armed and dangerous. Since Officer Trevizo had articulated a reasonable basis for her suspicion, Johnson's conviction was upheld.

NOTE: It is important to emphasize that the Supreme Court has never held that an officer's subjective concern for his or her safety, standing alone, justifies a patdown for weapons. To the contrary, the limited right to conduct a patdown arises only when the officer has *a reasonable suspicion based on objective facts* that the person detained is armed and dangerous. In other words, an officer cannot justify a patdown on grounds of "officer safety" unless he or she can articulate *all* of the circumstances that gave rise to the suspicion that the person was armed and dangerous.

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