



**LGIT'S *ROLL CALL REPORTER*  
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**A suspect's repeated adjustments of his waistband in a high-crime area, without more, is insufficient to establish the reasonable suspicion necessary to make a *Terry* stop.**

**QUESTION: Are a suspect's repeated adjustments of his waistband in an area known for violent crime and gang activity sufficient to establish reasonable suspicion to make a *Terry* stop?**

**ANSWER: No. In the absence of specific articulated facts by the officer as to why he believed the suspect had a weapon in his waistband, the State will be unable to prove that the officer had reasonable suspicion to make the stop. Conclusory statements by an officer as to why he thought the suspect possessed a firearm are insufficient.**

**CASE: *In Re: Jeremy P.*, Court of Special Appeals of Maryland  
Decided January 19, 2011**

In this case, the Court of Special Appeals decided Maryland's first appellate case involving a *Terry* stop based solely on a suspect's adjustments of his waistband. The facts in the case established that on June 6, 2009, Detective William Lee of the Prince George's County Police Department, a veteran officer assigned to the Gang Unit, was on plainclothes patrol in an unmarked vehicle. He was patrolling the 6100 block of 58<sup>th</sup> Avenue in Riverdale, an area known for recent gang taggings and armed robberies. Detective Lee had recently made gang-related arrests in that block and area, including arrests for assaults and robberies. At approximately 1:00 a.m., Detective Lee spotted Jeremy P., who was then seventeen years old, and a companion as they walked through a McDonald's parking. Detective Lee parked his car on 58<sup>th</sup> Avenue and watched them from across the street. Detective Lee observed Jeremy P. repeatedly moving his hands in the area of his waistband, as if he were adjusting his clothing. To Detective Lee, Jeremy P.'s actions were indicative of someone who was carrying a concealed weapon. Detective Lee backed off as Jeremy P. walked down 50<sup>th</sup> Avenue. The detective called his partner, Detective Sorano, and asked him to respond. He then approached Jeremy P. and his companion, who were still walking on 50<sup>th</sup> Avenue. Detective Lee identified himself and told the suspects to have a seat on the ground. Detective Lee knew Jeremy P. and had patted him down on several occasions, never recovering a weapon. In fact, Jeremy P. had never been arrested for weapon possession. Detective Lee told Jeremy P. to stand and move towards the police car. Detective Lee did so because he intended to

conduct a “pat-down” for weapons, “just in case there was a gun on [Jeremy P.]” As Jeremy P. stood up, Detective Lee saw that he had been sitting on a handgun. Deputy Lee surmised that the gun had fallen from Jeremy P.’s waistband as he sat down. Detective Lee handcuffed Jeremy P. and continued the pat-down. He found bullets in one of Jeremy P.’s pants pockets.

Jeremy P. was transported to the station where he waived his right to counsel and gave a statement about where he had gotten the gun. The weapon was an 8 caliber revolver. Its serial number was covered by tape on the grip. Test-firing established that the gun was operable. The ammunition consisted of three ball rounds. Jeremy P. was charged with carrying a handgun, possession of a regulated firearm and ammunition under the age of twenty-one, and obliterating the identification number of a firearm. Prior to his trial in juvenile court, Jeremy P. moved to suppress the physical evidence and his statement. He contended that the evidence was obtained as a result of an unconstitutional *Terry* stop. His attorney argued that Jeremy P.’s adjustments of his waistband in a “high-crime area” were insufficient to establish the reasonable suspicion necessary to make a *Terry* stop. The attorney said that “if we’re going to permit the stop that happened here, … it basically is saying that you can’t walk down the street and pull up your pants.” The juvenile court denied the motion to suppress, finding that Detective Lee did have reasonable suspicion to make both the *Terry* stop and the frisk. Jeremy P. was found “involved” in the crimes and was placed on an indefinite period of supervised probation. Jeremy P. appealed.

The Court of Special Appeals reversed the juvenile court and ordered the evidence suppressed. The court first observed that no prior Maryland case authorized a *Terry* stop based solely on the types of waistband adjustments observed by Detective Lee. The court then turned to cases from other states, all of which held that a police officer’s observation of a suspect merely adjusting his waistband does not give rise to reasonable suspicion to make a *Terry* stop. The court explained that in order to establish the reasonable suspicion necessary to conduct a brief investigative detention under *Terry*, there must be other suspicious behavior indicating the possibility of criminal activity. In other words, there must be facts in addition to the waistband adjustment that suggest that the suspect is concealing a weapon, such as a distinctive bulge consistent in appearance with a gun. The court emphasized that the key to linking any potentially suspicious factor-whether it be a bulge or a waistband adjustment-to the possibility of criminal activity by the suspect lies in the hands of the officer making the stop. In Jeremy P.’s case, the court concluded that Detective Lee had failed to establish this link. His account of the stop failed to include specific facts, as opposed to mere conclusions, that Jeremy P. might be concealing a gun. He provided no descriptive details about the specific movements he observed and failed to articulate why he considered Jeremy P.’s movements to be indicative of a concealed weapon. In the absence of a specific articulated basis for the stop, the court concluded that the evidence should have been suppressed.

**NOTE:** Just as a suspect’s adjusting his waistband, without more, doesn’t establish reasonable suspicion, neither does an officer’s observance, without more, of a bulge in the suspect’s clothing. Both could have innocent explanations. However, if both are

observed, and the officer articulates *all* of the facts that led him to believe that a weapon was being concealed, then reasonable suspicion should be found. It cannot be over-emphasized that it is up to the officer to fully articulate the facts upon which the court can rely. In this regard, in-court demonstrations of the suspect's movements, combined with detailed descriptions of the movements and what they meant to the officer, can greatly assist the court. In all *Terry* stop cases, including all "waistband" and/or "bulge" cases, officers must avoid any impulse to act on sheer speculation, mere guesses, or assumptions. Testimony that begins with "I thought" or "I guessed" or "I assumed" will draw skepticism. Instead, officers must articulate facts, not conclusions. Examples of fact-based testimony include: "the bulge had the outline of a gun," or "the suspect made a distinctive gripping motion in his waistband," or "the suspect was definitely holding or gripping something concealed in his waistband." It is also helpful in these cases for the officer to articulate his or her experience in arresting armed individuals, as well as his or her observations of fellow officers adjusting their concealed weapons. Finally, in all *Terry* stop cases, it is helpful to describe the crime level in the area in which the stop is made. In sum, the officer must give all of the reasons why his or her observations were consistent with the possession of a concealed firearm and inconsistent with any speculative, innocent alternatives offered by the defendant.

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