



LGIT'S ROLL CALL REPORTER
MAY 2010

The use of force during a *Terry* stop does not automatically convert the investigative stop into an arrest.

QUESTION: Does the use of force during a *Terry* stop automatically convert the stop into an arrest?

ANSWER: No. An officer can use reasonable force during a *Terry* stop (including the use of handcuffs) to protect himself, other officers and/or bystanders or to prevent the suspect from fleeing where the suspect has shown a willingness to flee.

**CASE: *Darryl K. Harrod v. State of Maryland*, Court of Special Appeals
Decided April 30, 2010**

In this case, the Court of Special Appeals revisited some familiar principles concerning *Terry* stops and *Terry* frisks for weapons. The facts established that on January 27, 2007, Montgomery County officers Sergeant Detective Paul Liquorrie and Patrol Officer Omar Tortolero, working off-duty as private security for a mall movie theater, were approached by a Felice Arias, a theater patron, who told them that a man in the concession line who appeared to be intoxicated had threatened him with a knife. Arias pointed out a man, later identified as Darryl K. Harrod, as the person who had threatened him. The officers approached Harrod and asked him to walk to a large pillar approximately ten (10) steps from the concession line. Sergeant Liquorrie escorted Harrod by placing his hand on Harrod's arm. Both officers noticed that Harrod's eyes were bloodshot and that his breath and body smelled of alcohol. Sergeant Liquorrie ordered Harrod to place his hands on the pillar and stand in a frisk position. Sergeant Liquorrie then patted Harrod down while Officer Tortolero stood in a back-up role, making sure that Harrod's hands did not reach for a weapon. Harrod was wearing heavy sweat pants that made it difficult to feel through the exterior. When Sergeant Liquorrie patted the outside of Harrod's left front pants pocket, he felt an object at the bottom that he believed could have been a folded knife. When he put his hand in Harrod's pocket to retrieve the object, he discovered that on top of the suspected knife was a large baggie holding several smaller baggies which contained suspected crack cocaine. The suspected folded knife was actually a large Bic style lighter. After the lighter and baggie were seized, the officers placed Harrod under arrest.

Harrod was convicted in the Circuit Court for Montgomery County of possession with intent to distribute a controlled dangerous substance. Prior to his trial, Harrod moved to suppress the narcotics discovered in his possession. His motion was denied. After he was convicted, Harrod appealed.

Harrod argued on appeal that the officers' actions in removing him from the concession line and placing him against the pillar amounted to an illegal arrest. He also argued that the officers lacked reasonable suspicion to frisk him and that, even if they had reasonable suspicion, the frisk exceeded the scope allowed by the Fourth Amendment. The Court of Special Appeals rejected Harrod's arguments and affirmed his conviction. The Court concluded that, based upon the totality of the circumstances, including the information from Arias and their own observations, the officers had reasonable, articulable suspicion to perform a *Terry* stop and that the amount of force applied by the officers in making the stop (moving Harrod from the concession line and placing him against the pillar) was constitutionally justified. Finally, the Court held that the scope of the frisk did not violate the Fourth Amendment. While a frisk is normally limited to a pat-down of the outer clothing, the frisk may extend beyond that point if circumstances warrant more intrusive measures. If the officer performs a more intrusive frisk, he or she must be able to explain why it was necessary or demonstrate that a pat-down would not have revealed the presence or absence of a weapon.

NOTE: This case highlights important principles concerning the use of force during *Terry* stops and the permissible scope of *Terry* frisks for weapons. As to the use of force, it *must* be limited to the following circumstances: (1) the officer uses force to protect himself, other officers, or bystanders, or (2) the officer applies force, such as the use of handcuffs, to prevent the suspect's flight in circumstances where the suspect has demonstrated a willingness to flee. Otherwise, the use of force will elevate the *Terry* stop to an arrest, and, in the absence of probable cause, the arrest will violate the Fourth Amendment. As to the scope of a *Terry* frisk for weapons, take note of the following: (1) If, during a frisk (pat-down), an officer detects only a soft object, a more intrusive frisk or search is *not allowed*; (2) Where the frisk discloses a hard object, but the officer cannot tell whether the object is a weapon, a more intrusive frisk or search again is *not allowed*; (3) Simply because an officer has reasonable suspicion that a suspect is armed does not enable the officer to avoid the frisk and reach into the suspect's clothing and remove objects; and (4) A more intrusive frisk is allowed *only* where an officer detects a hard object during the frisk which the officer reasonably believes to be a weapon. Also, if as a matter of policy or practice you are avoiding the limits of *Terry* frisks for weapons by, for example, asking detained subjects if they are armed or are carrying objects about which officers should be concerned, please make your departmental policy or personal practice known to your State's Attorney.

By John F. Breads, Jr., Director of Legal Services, Local Government Insurance Trust

This publication is designed to provide general information on the topic presented. It is distributed with the understanding that the publisher is not engaged in rendering legal or professional services. Although this publication is prepared by professionals, it should not

be used as a substitute for professional services. If legal or other professional advice is required, the services of a professional should be sought.