



## **LGIT'S ROLL CALL REPORTER**

### **September 2009**

#### **Having Reasonable Suspicion to Make a *Terry* Stop Does Not Automatically Mean That an Officer Has Reasonable Suspicion to Conduct a *Terry* Frisk**

**QUESTION:** If an officer has reasonable suspicion to make a *Terry* investigative stop, does the officer automatically have the right to conduct a *Terry* frisk for weapons?

**ANSWER:** No. To justify the frisk for weapons, the officer must have reasonable suspicion based upon objective facts known to the officer that the suspect is presently armed and dangerous.

**CASE:** *In Re: Lorenzo C.*, Court of Special Appeals of Maryland, Decided August 27, 2009

In this case, the Court of Special Appeals was required to again apply the long established legal principles governing *Terry* investigative stops and *Terry* frisks for weapons. The facts established that at approximately 1:00 a.m. on December 16, 2006, Officer Argens Contrares of the District of Columbia Police Department was in the 5700 block of Eastern Avenue in the District. Eastern Avenue is the border between the District and Prince George's County. He was responding to a call for a robbery committed minutes before by several suspects wearing dark clothing, one of whom was on a bike, in the 6100 block of Eastern Avenue. Officer Contrares and his partner were canvassing the area in response to a police radio broadcast. Officer Contrares observed four subjects, one of whom was on a bike and wearing dark clothing, at the corner of the 5700 block. The subjects crossed the avenue into Prince George's County and the officers followed in their car. Officer Contrares exited the patrol car and approached. All of the subjects stopped with the exception of the one on the bike. Officer Contrares stayed with the other subjects while his partner tried to catch up to the one on the bike. Lorenzo C., a juvenile, was one of the subjects with Officer Contrares. Lorenzo C. had his hands in his pockets and Officer Contrares asked him, for officer safety, to take them out. Lorenzo C. did not remove his hands and the officer made a second request. Again, Lorenzo C. did not remove his hands. Officer Contrares observed that Lorenzo C. appeared very nervous and hesitant, and began to walk away while continuing to look back at the officer. He also seemed to be making "furtive" movements with his hands in his pockets. As a result of these observations, Officer Contrares placed Lorenzo C. against the police car, forcibly removed his hands from his pockets and conducted a frisk. He found a revolver inside Lorenzo C.'s right jacket pocket. Officers from Prince George's County responded and recovered the gun.

Lorenzo C. was charged as a juvenile with wearing and/or carrying a handgun and related charges. Prior to his adjudicatory hearing, he moved to suppress. The motion was denied and Lorenzo C. was found involved in the crime of possession of a handgun. After his disposition hearing, he appealed.

On appeal, the Court of Special Appeals upheld the denial of the motion to suppress. In doing so, the court applied the “time-tested” factors to determine whether Officer Contrares had “reasonable suspicion” to conduct a *Terry* stop and a subsequent frisk or pat-down for weapons. In short form, these factors relate to: (1) the description of the suspect known to the officer; (2) the size of the area where the suspect might be found (as indicated by the time elapsed from the report of the crime); (3) the number of persons in the area where the subject might be found; (4) the probable direction of the suspect’s flight; (5) the officer’s observations of the suspect; and (6) the officer’s knowledge or suspicion that the suspect has been involved in criminal acts similar to the one being investigated. Applying these factors, the court easily concluded that Officer Contrares had ample reasonable suspicion to make the *Terry* stop. The court said that “[t]he probabilities of coming upon a gathering, one of whom was riding a bicycle and wearing dark clothing as described in the police broadcast, a mere four blocks away from where the officers were located at one o’clock in the morning [were minimal.]”

Further, the court found that, based upon his observations, Officer Contrares had ample reasonable suspicion to believe that Lorenzo C. may have been armed and dangerous. These observations included the robbery investigation, the suspect’s nervousness, the suspect’s concealing his hands in his pockets, the suspect’s refusal to remove his hands from his pockets, the suspect’s furtive movements of his hands, the suspect’s walking away while continuing to look back at the officer, and the number of subjects (three in Officer Contrares’ immediate presence) compared to the one officer with them. This reasonable suspicion justified the frisk or pat-down of Lorenzo C. for weapons.

**NOTE:** This case serves as a reminder that courts, as they must, view the grounds justifying a *Terry* investigative stop as distinct from the grounds justifying a *Terry* frisk for weapons. Just because an officer has reasonable suspicion to effect the stop does not automatically mean he or she has reasonable suspicion to justify the frisk. It is only when the officer has a reasonable suspicion that the person stopped may be presently armed and dangerous that the suspect may be frisked. And, as always, it is incumbent in our criminal justice system for officers to articulate the basis for their reasonable suspicion or probable cause when testifying at suppression hearings or criminal trials.

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