C

Baldwin's Kentucky Revised Statutes Annotated Currentness
Rules of Criminal Procedure (Refs & Annos)
IX Trial (Refs & Annos)
C. Proceedings
→→ RCr 9.78 Confessions, searches, and witness identification; suppression of evidence

If at any time before trial a defendant moves to suppress, or during trial makes timely objection to the admission of evidence consisting of (a) a confession or other incriminating statements alleged to have been made by the defendant to police authorities, (b) the fruits of a search, or (c) witness identification, the trial court shall conduct an evidentiary hearing outside the presence of the jury and at the conclusion thereof shall enter into the record findings resolving the essential issues of fact raised by the motion or objection and necessary to support the ruling. If supported by substantial evidence the factual findings of the trial court shall be conclusive.

CREDIT(S)

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Supreme Court of the United States
John W. TERRY, Petitioner,
v.
STATE OF OHIO.

No. 67.
Argued Dec. 12, 1967.
Decided June 10, 1968.

Prosecution for carrying concealed weapon. The Court of Common Pleas of Cuyahoga County, Ohio, overruled pretrial motion to suppress and rendered judgment, and defendant appealed. The Court of Appeals for the Eighth Judicial District, 5 Ohio App.2d 122, 214 N.E.2d 114, affirmed, the Ohio Supreme Court dismissed an appeal on ground that no substantial constitutional question was involved, and certiorari was granted. The Supreme Court, Mr. Chief Justice Warren, held that police officer who observed conduct by defendant and another consistent with hypothesis that they were contemplating daylight robbery, and who approached, identified himself as officer, and asked their names, acted reasonably, when nothing appeared to dispel his reasonable belief of their intent, in seizing defendant in order to search him for weapons, and did not exceed reasonable scope of search in patting down outer clothing of defendants without placing his hands in their pockets or under outer surface of garments until he had felt weapons, and then merely reached for and removed guns.

Affirmed.

Mr. Justice Douglas dissented.

****1871 *4** Louis Stokes, Cleveland, Ohio, for petitioner.

Reuben M. Payne, Cleveland, Ohio, for respondent.

Mr. Chief Justice WARREN delivered the opinion of the Court.

This case presents serious questions concerning the role of the Fourth Amendment in the confrontation on the street between the citizen and the policeman investigating suspicious circumstances.

Petitioner Terry was convicted of carrying a concealed weapon and sentenced to the statutorily prescribed term of one to three years in the penitentiary. [FN1] Following ***5** the denial of a pretrial motion to suppress, the prosecution introduced in evidence two revolvers and a number of bullets seized from Terry and a codefendant, Richard Chilton, [FN2] by Cleveland Police Detective Martin McFadden. At the hearing on the motion to suppress this evidence, Officer McFadden testified that while he was patrolling in plain clothes in downtown Cleveland at approximately 2:30 in the afternoon of October 31, 1963, his attention was attracted by two men, Chilton and Terry, standing on the corner of Huron Road and Euclid Avenue. He had never seen the two men before, and he was unable to say precisely what first drew his eye to them. However, he testified that he had been a policeman for 39 years and a detective for 35 and that he had been assigned to patrol this vicinity of downtown Cleveland for shoplifters and pickpockets for 30 years. He explained that he had developed routine habits of observation over the years and that he would 'stand and watch people or walk and watch people at many intervals of the day.' He added: 'Now, in this case when I looked over they didn't look right to me at the time.'

FN1. Ohio Rev.Code s 2923.01 (1953) provides in part that '(n)o person shall carry a pistol, bowie knife, dirk, or other dangerous weapon concealed on or about his person.' An exception is made for properly authorized law enforcement officers.

FN2. Terry and Chilton were arrested, indicted, tried and convicted together. They were represented by the same attorney, and they made a joint motion to suppress the guns. After the motion was denied, evidence was taken in the case against Chilton. This evidence consisted of the testimony of the arresting officer and of Chilton. It was then

stipulated that this testimony would be applied to the case against Terry, and no further evidence was introduced in that case. The trial judge considered the two cases together, rendered the decisions at the same time and sentenced the two men at the same time. They prosecuted their state court appeals together through the same attorney, and they petitioned this Court for certiorari together. Following the grant of the writ upon this joint petition, Chilton died. Thus, only Terry's conviction is here for review.

His interest aroused, Officer McFadden took up a post of observation in the **1872 entrance to a store 300 to 400 feet *6 away from the two men. 'I get more purpose to watch them when I seen their movements,' he testified. He saw one of the men leave the other one and walk southwest on Huron Road, past some stores. The man paused for a moment and looked in a store window, then walked on a short distance, turned around and walked back toward the corner, pausing once again to look in the same store window. He rejoined his companion at the corner, and the two conferred briefly. Then the second man went through the same series of motions, strolling down Huron Road, looking in the same window, walking on a short distance, turning back, peering in the store window again, and returning to confer with the first man at the corner. The two men repeated this ritual alternately between five and six times apiece—in all, roughly a dozen trips. At one point, while the two were standing together on the corner, a third man approached them and engaged them briefly in conversation. This man then left the two others and walked west on Euclid Avenue. Chilton and Terry resumed their measured pacing, peering and conferring. After this had gone on for 10 to 12 minutes, the two men walked off together, heading west on Euclid Avenue, following the path taken earlier by the third man.

By this time Officer McFadden had become thoroughly suspicious. He testified that after observing their elaborately casual and oft-repeated reconnaissance of the store window on Huron Road, he suspected the two men of 'casing a job, a stick-up,' and that he considered it his duty as a police officer to investigate further. He added that he feared 'they may have a gun.' Thus, Officer McFadden followed Chilton and Terry and saw them stop in front of Zucker's store to talk to the same man who had conferred with them earlier on the street corner. Deciding that the situation was ripe for direct action, Officer McFadden approached the three men, identified*7 himself as a police officer and asked for their names. At this point his knowledge was confined to what he had observed. He was not acquainted with any of the three men by name or by sight, and he had received no information concerning them from any other source. When the men 'mumbled something' in response to his inquiries, Officer McFadden grabbed petitioner Terry, spun him around so that they were facing the other two, with Terry between McFadden and the others, and patted down the outside of his clothing. In the left breast pocket of Terry's overcoat Officer McFadden felt a pistol. He reached inside the overcoat pocket, but was unable to remove the gun. At this point, keeping Terry between himself and the others, the officer ordered all three men to enter Zucker's store. As they went in, he removed Terry's overcoat completely, removed a .38-caliber revolver from the pocket and ordered all three men to face the wall with their hands raised. Officer McFadden proceeded to pat down the outer clothing of Chilton and the third man, Katz. He discovered another revolver in the outer pocket of Chilton's overcoat, but no weapons were found on Katz. The officer testified that he only patted the men down to see whether they had weapons, and that he did not put his hands beneath the outer garments of either Terry or Chilton until he felt their guns. So far as appears from the record, he never placed his hands beneath Katz' outer garments. Officer McFadden seized Chilton's gun, asked the proprietor of the store to call a police wagon, and took all three men to the station, where Chilton and Terry were formally charged with carrying concealed weapons.

On the motion to suppress the guns the prosecution took the position that they had been seized following a search incident to a lawful arrest. The trial court rejected this theory, stating that it 'would be stretching the facts beyond reasonable comprehension' to find that Officer *8 McFadden had had probable **1873 cause to arrest the men before he patted them down for weapons. However, the court denied the defendants' motion on the ground that Officer McFadden, on the basis of his experience, 'had reasonable cause to believe * * * that the defendants were conducting themselves suspiciously, and some interrogation should be made of their action.' Purely for his own protection, the court held, the officer had

the right to pat down the outer clothing of these men, who he had reasonable cause to believe might be armed. The court distinguished between an investigatory 'stop' and an arrest, and between a 'frisk' of the outer clothing for weapons and a full-blown search for evidence of crime. The frisk, it held, was essential to the proper performance of the officer's investigatory duties, for without it 'the answer to the police officer may be a bullet, and a loaded pistol discovered during the frisk is admissible.'

[1] After the court denied their motion to suppress, Chilton and Terry waived jury trial and pleaded not guilty. The court adjudged them guilty, and the Court of Appeals for the Eighth Judicial District, Cuyahoga County, affirmed. State v. Terry, 5 Ohio App.2d 122, 214 N.E.2d 114 (1966). The Supreme Court of Ohio dismissed their appeal on the ground that no 'substantial constitutional question' was involved. We granted certiorari, 387 U.S. 929, 87 S.Ct. 2050, 18 L.Ed.2d 989 (1967), to determine whether the admission of the revolvers in evidence violated petitioner's rights under the Fourth Amendment, made applicable to the States by the Fourteenth. Mapp v. Ohio, 367 U.S. 643, 81 S.Ct. 1684, 6 L.Ed.2d 1081 (1961). We affirm the conviction.

I.

[2][3][4][5] The Fourth Amendment provides that 'the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated * * *.' This inestimable right of ***9** personal security belongs as much to the citizen on the streets of our cities as to the homeowner closeted in his study to dispose of his secret affairs. For, as this Court has always recognized,

'No right is held more sacred, or is more carefully guarded, by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law.' Union Pac. R. Co. v. Botsford, 141 U.S. 250, 251, 11 S.Ct. 1000, 1001, 35 L.Ed. 734 (1891).

We have recently held that 'the Fourth Amendment protects people, not places,' Katz v. United States, 389 U.S. 347, 351, 88 S.Ct. 507, 511, 19 L.Ed.2d 576 (1967), and wherever an individual may harbor a reasonable 'expectation of privacy,' id., at 361, 88 S.Ct. at 507, (Mr. Justice Harlan, concurring), he is entitled to be free from unreasonable governmental intrusion. Of course, the specific content and incidents of this right must be shaped by the context in which it is asserted. For 'what the Constitution forbids is not all searches and seizures, but unreasonable searches and seizures.' Elkins v. United States, 364 U.S. 206, 222, 80 S.Ct. 1437, 1446, 4 L.Ed.2d 1669 (1960). Unquestionably petitioner was entitled to the protection of the Fourth Amendment as he walked down the street in Cleveland. Beck v. State of Ohio, 379 U.S. 89, 85 S.Ct. 223, 13 L.Ed.2d 142 (1964); Rios v. United States, 364 U.S. 253, 80 S.Ct. 1431, 4 L.Ed.2d 1688 (1960); Henry v. United States, 361 U.S. 98, 80 S.Ct. 168, 4 L.Ed.2d 134 (1959); United States v. Di Re, 332 U.S. 581, 68 S.Ct. 222, 92 L.Ed. 210 (1948); Carroll v. United States, 267 U.S. 132, 45 S.Ct. 280, 69 L.Ed. 543 (1925). The question is whether in all the circumstances of this on-the-street encounter, his right to personal security was violated by an unreasonable search and seizure.

****1874** We would be less than candid if we did not acknowledge that this question thrusts to the fore difficult and troublesome issues regarding a sensitive area of police activity—issues which have never before been squarely ***10** presented to this Court. Reflective of the tensions involved are the practical and constitutional arguments pressed with great vigor on both sides of the public debate over the power of the police to 'stop and frisk' —as it is sometimes euphemistically termed—suspicious persons.

On the one hand, it is frequently argued that in dealing with the rapidly unfolding and often dangerous situations on city streets the police are in need of an escalating set of flexible responses, graduated in relation to the amount of information they possess. For this purpose it is urged that distinctions should be made between a 'stop' and an 'arrest' (or a 'seizure' of a person), and between a 'frisk' and a 'search.'[n3] Thus, it is argued, the police should be allowed to 'stop' a person and detain him briefly for questioning upon suspicion that he may be connected with criminal activity. Upon suspicion that the person may be armed, the police should have the power to 'frisk' him for weapons. If the 'stop' and the 'frisk' give rise to probable cause to believe that the suspect has committed a crime, then the police should be empowered to make a formal 'arrest,' and a full incident 'search' of the person. This scheme is justified in part

upon the notion that a 'stop' and a 'frisk' amount to a mere 'minor inconvenience and petty indignity,'[FN4] which can properly be imposed upon the *11 citizen in the interest of effective law enforcement on the basis of a police officer's suspicion. [FN5]

FN3. Both the trial court and the Ohio Court of Appeals in this case relied upon such a distinction. State v. Terry, 5 Ohio App.2d 122, 125—130, 214 N.E.2d 114, 117—120 (1966). See also, e.g., People v. Rivera, 14 N.Y.2d 441, 252 N.Y.S.2d 458, 201 N.E.2d 32 (1964), cert. denied, 379 U.S. 978, 85 S.Ct. 679, 13 L.Ed.2d 568 (1965); Aspen, Arrest and Arrest Alternatives: Recent Trends, 1966 U.Ill..I.F. 241, 249—254; Warner, The Uniform Arrest Act, 28 Va.L.Rev. 315 (1942); Note, Stop and Frisk in California, 18 Hastings L.J. 623, 629—632 (1967).

FN4. People v. Rivera, supra, n. 3, at 447, 252 N.Y.S.2d, at 464, 201 N.E.2d, at 36.

FN5. The theory is well laid out in the Rivera opinion:

'(T)he evidence needed to make the inquiry is not of the same degree of conclusiveness as that required for an arrest. The stopping of the individual to inquire is not an arrest and the ground upon which the police may make the inquiry may be less incriminating than the ground for an arrest for a crime known to have been committed. * * *

'And as the right to stop and inquire is to be justified for a cause less conclusive then that which would sustain an arrest, so the right to frisk may be justified as an incident to inquiry upon grounds of elemental safety and precaution which might not initially sustain a search. Ultimately the validity of the frisk narrows down to whether there is or is not a right by the police to touch the person questioned. The sense of exterior touch here involved is not very far different from the sense of sight or hearing—senses upon which police customarily act.' People v. Rivera, 14 N.Y.2d 441, 445, 447, 252 N.Y.S.2d 458, 461, 463, 201 N.E.2d 32, 34, 35 (1964), cert. denied, 379 U.S. 978, 85 S.Ct. 679, 13 L.Ed.2d 568 (1965).

On the other side the argument is made that the authority of the police must be strictly circumscribed by the law of arrest and search as it has developed to date in the traditional jurisprudence of the Fourth Amendment.[FN6] It is contended with some force that there is not—and cannot be—a variety of police activity which does not depend solely upon the voluntary cooperation of the citizen and yet which stops short of an arrest based upon probable cause to make such an arrest. The heart of the Fourth Amendment, the argument **1875 runs, is a severe requirement of specific justification for any intrusion upon protected personal security, coupled with a highly developed system of judicial controls to enforce upon the agents of the State the commands of the Constitution. Acquiescence by the courts in the compulsion inherent *12 in the field interrogation practices at issue here, it is urged, would constitute an abdication of judicial control over, and indeed an encouragement of, substantial interference with liberty and personal security by police officers whose judgment is necessarily colored by their primary involvement in 'the often competitive enterprise of ferreting out crime.' Johnson v. United States, 333 U.S. 10, 14, 68 S.Ct. 367, 369, 92 L.Ed. 436 (1948). This, it is argued, can only serve to exacerbate police-community tensions in the crowded centers of our Nation's cities.[FN7]

FN6. See, e.g., Foote, The Fourth Amendment: Obstacle or Necessity in the Law of Arrest?, 51 J.Crim.L.C. & P.S. 402 (1960).

FN7. See n. 11, infra.

[6][7] In this context we approach the issues in this case mindful of the limitations of the judicial function in controlling the myriad daily situations in which policemen and citizens confront each other on the street. The State has characterized the issue here as 'the right of a police officer * * * to make an on-the-street stop, interrogate and pat down for weapons (known in street vernacular as 'stop and frisk').'[FN8] But this is only partly accurate. For the issue is not the abstract propriety of the police conduct, but the admissibility against petitioner of the evidence uncovered by the search and seizure. Ever since its inception, the rule excluding evidence seized in violation of the Fourth Amendment has been recognized

as a principal mode of discouraging lawless police conduct. See Weeks v. United States, 232 U.S. 383, 391—393, 34 S.Ct. 341, 344, 58 L.Ed. 652 (1914). Thus its major thrust is a deterrent one, see Linkletter v. Walker, 381 U.S. 618, 629—635, 85 S.Ct. 1731, 1741, 14 L.Ed.2d 601 (1965), and experience has taught that it is the only effective deterrent to police misconduct in the criminal context, and that without it the constitutional guarantee against unreasonable searches and seizures would be a mere 'form of words.' Mapp v. Ohio, 367 U.S. 643, 655, 81 S.Ct. 1684, 1692, 6 L.Ed.2d 1081 (1961). The rule also serves another vital function—'the imperative of judicial integrity.' ***13**Elkins v. United States, 364 U.S. 206, 222, 80 S.Ct. 1437, 1447, 4 L.Ed.2d 1669 (1960). Courts which sit under our Constitution cannot and will not be made party to lawless invasions of the constitutional rights of citizens by permitting unhindered governmental use of the fruits of such invasions. Thus in our system evidentiary rulings provide the context in which the judicial process of inclusion and exclusion approves some conduct as comporting with constitutional guarantees and disapproves other actions by state agents. A ruling admitting evidence in a criminal trial, we recognize, has the necessary effect of legitimizing the conduct which produced the evidence, while an application of the exclusionary rule withholds the constitutional imprimatur.

FN8. Brief for Respondent 2.

[8] The exclusionary rule has its limitations, however, as a tool of judicial control. It cannot properly be invoked to exclude the products of legitimate police investigative techniques on the ground that much conduct which is closely similar involves unwarranted intrusions upon constitutional protections. Moreover, in some contexts the rule is ineffective as a deterrent. Street encounters between citizens and police officers are incredibly rich in diversity. They range from wholly friendly exchanges of pleasantries or mutually useful information to hostile confrontations of armed men involving arrests, or injuries, or loss of life. Moreover, hostile confrontations are not all of a piece. Some of them begin in a friendly enough manner, only to take a ****1876** different turn upon the injection of some unexpected element into the conversation. Encounters are initiated by the police for a wide variety of purposes, some of which are wholly unrelated to a desire to prosecute for crime.[FN9] Doubtless some ***14** police 'field interrogation' conduct violates the Fourth Amendment. But a stern refusal by this Court to condone such activity does not necessarily render it responsive to the exclusionary rule. Regardless of how effective the rule may be where obtaining convictions is an important objective of the police,[FN10] it is powerless to deter invasions of constitutionally guaranteed rights where the police either have no interest in prosecuting or are willing to forgo successful prosecution in the interest of serving some other goal.

FN9. See L. Tiffany, D. McIntyre & D. Rotenberg, Detection of Crime: Stopping and Questioning, Search and Seizure, Encouragement and Entrapment 18—56 (1967). This sort of police conduct may, for example, be designed simply to help an intoxicated person find his way home, with no intention of arresting him unless he becomes obstreperous. Or the police may be seeking to mediate a domestic quarrel which threatens to erupt into violence. They may accost a woman in an area known for prostitution as part of a harassment campaign designed to drive prostitutes away without the considerable difficulty involved in prosecuting them. Or they may be conducting a dragnet search of all teenagers in a particular section of the city for weapons because they have heard rumors of an impending gang fight.

FN10. See Tiffany, McIntyre & Rotenberg, supra, n. 9, at 100—101; Comment, 47 Nw.U.L.Rev. 493, 497—499 (1952).

[9] Proper adjudication of cases in which the exclusionary rule is invoked demands a constant awareness of these limitations. The wholesale harassment by certain elements of the police community, of which minority groups, particularly Negroes, frequently complain,[FN11] will not be ***15** stopped by the exclusion of any evidence from any criminal trial. Yet a rigid and unthinking application of the exclusionary rule, in futile protest against practices which it can never be used effectively to control, may exact a high toll in human injury and frustration of efforts to prevent crime. No judicial opinion can comprehend the protean variety of the street encounter, and we can only judge the facts of the case before us. Nothing we say today is to be taken as indicating approval of police conduct outside the legitimate in-

vestigative sphere. Under our decision, courts still retain their traditional responsibility to guard against police conduct which is over-bearing or harassing, or which trenches upon personal security without the objective evidentiary justification which the Constitution requires. When such conduct is identified, it must be condemned by the judiciary and its fruits must be excluded from evidence in criminal trials. And, of course, our approval of legitimate and restrained investigative conduct undertaken****1877** on the basis of ample factual justification should in no way discourage the employment of other remedies than the exclusionary rule to curtail abuses for which that sanction may prove inappropriate.

> FN11. The President's Commission on Law Enforcement and Administration of Justice found that '(i)n many communities, field interrogations are a major source of friction between the police and minority groups.' President's Commission on Law Enforcement and Administration of Justice, Task Force Report: The Police 183 (1967). It was reported that the friction caused by '(m)isuse of field interrogations' increases 'as more police departments adopt 'aggressive patrol' in which officers are encouraged routinely to stop and question persons on the street who are unknown to them, who are suspicious, or whose purpose for being abroad is not readily evident.' Id., at 184. While the frequency with which 'frisking' forms a part of field interrogation practice varies tremendously with the locale, the objective of the interrogation, and the particular officer, see Tiffany, McIntyre & Rotenberg, supra, n. 9, at 47—48, it cannot help but be a severely exacerbating factor in police-community tensions. This is particularly true in situations where the 'stop and frisk' of youths or minority group members is 'motivated by the officers' perceived need to maintain the power image of the beat officer, an aim sometimes accomplished by humiliating anyone who attempts to undermine police control of the streets.' Ibid.

Having thus roughly sketched the perimeters of the constitutional debate over the limits on police investigative conduct in general and the background against which this case presents itself, we turn our attention to the quite narrow question posed by the facts before us: whether it is always unreasonable for a policeman to seize a person and subject him to a limited search for weapons unless there is probable cause for an arrest. ***16** Given the narrowness of this question, we have no occasion to canvass in detail the constitutional limitations upon the scope of a policeman's power when he confronts a citizen without probable cause to arrest him.

II.

[10][11][12] Our first task is to establish at what point in this encounter the Fourth Amendment becomes relevant. That is, we must decide whether and when Officer McFadden 'seized' Terry and whether and when he conducted a 'search.' There is some suggestion in the use of such terms as 'stop' and 'frisk' that such police conduct is outside the purview of the Fourth Amendment because neither action rises to the level of a 'search' or 'seizure' within the meaning of the Constitution.[FN12] We emphatically reject this notion. It is quite plain that the Fourth Amendment governs 'seizures' of the person which do not eventuate in a trip to the station house and prosecution for crime—'arrests' in traditional terminology. It must be recognized that whenever a police officer accosts an individual and restrains his freedom to walk away, he has 'seized' that person. And it is nothing less than sheer torture of the English language to suggest that a careful exploration of the outer surfaces of a person's clothing all over his or her body in an attempt to find weapons is not a 'search,' Moreover, it is simply fantastic to urge that such a procedure ***17** performed in public by a policeman while the citizen stands helpless, perhaps facing a wall with his hands raised, is a 'petty indignity.'[FN13] It is a serious intrusion upon the sanctity of the person, which may inflict great indignity and arouse strong resentment, and it is not to be undertaken lightly.[FN14]

> FN12. In this case, for example, the Ohio Court of Appeals stated that 'we must be careful to distinguish that the 'frisk' authorized herein includes only a 'frisk' for a dangerous weapon. It by no means authorizes a search for contraband, evidentiary material, or anything else in the absence of reasonable grounds to arrest. Such a search is controlled by the requirements of the Fourth Amendment, and probable cause is essential.' State v. Terry, 5 Ohio App.2d 122, 130, 214

N.E.2d 114, 120 (1966). See also, e.g., Ellis v. United States, 105 U.S.App.D.C. 86, 88, 264 F.2d 372, 374 (1959); Comment, 65 Col.L.Rev. 848, 860 and n. 81 (1965).

FN13. Consider the following apt description:

'(T)he officer must feel with sensitive fingers every portion of the prisoner's body. A through search must be made of the prisoner's arms and armpits, waistline and back, the groin and area about the testicles, and entire surface of the legs down to the feet.' Priar & Martin, Searching and Disarming Criminals, 45 J.Crim.L.C. & P.S. 481 (1954).

FN14. See n. 11, supra, and accompanying text.

We have noted that the abusive practices which play a major, though by no means exclusive, role in creating this friction are not susceptible of control by means of the exclusionary rule, and cannot properly dictate our decision with respect to the powers of the police in genuine investigative and preventive situations. However, the degree of community resentment aroused by particular practices is clearly revelant to an assessment of the quality of the intrusion upon reasonable expectations of personal security caused by those practices.

[13][14] The danger in the logic which proceeds upon distinctions between ****1878** a 'stop' and an 'arrest,' or 'seizure' of the person, and between a 'frisk' and a 'search' is twofold. It seeks to isolate from constitutional scrutiny the initial stages of the contact between the policeman and the citizen. And by suggesting a rigid all-or-nothing model of justification and regulation under the Amendment, it obscures the utility of limitations upon the scope, as well as the initiation, of police action as a means of constitutional regulation. FN15 This Court has held in ***18** the past that a search which is reasonable at its inception may violate the Fourth Amendment by virtue of its intolerable intensity and scope. Kremen v. United States, 353 U.S. 346, 77 S.Ct. 828, 1 L.Ed.2d 876 (1957); ***19**Go-Bart Importing Co. v. United States, 282 U.S. 344, 356—358, 51 S.Ct. 153, 158, 75 L.Ed. 374 (1931); see United States v. Di Re, 332 U.S. 581, 586—587, 68 S.Ct. 222, 225, 92 L.Ed. 210 (1948). The scope of the search must be 'strictly tied to and justified by' the circumstances which rendered its initiation permissible. Warden v. Hayden, 387 U.S. 294, 310, 87 S.Ct. 1642, 1652 (1967) (Mr. Justice Fortas, concurring); see e.g., Preston v. United States, 376 U.S. 364, 367—368, 84 S.Ct. 881, 884, 11 L.Ed.2d 777 (1964); Agnello v. United States, 269 U.S. 20, 30—31, 46 S.Ct. 4, 6, 70 L.Ed. 145 (1925).

FN15. These dangers are illustrated in part by the course of adjudication in the Court of Appeals of New York. Although its first decision in this area, People v. Rivera, 14 N.Y.2d 441, 252 N.Y.S.2d 458, 201 N.E.2d 32 (1964), cert. denied, 379 U.S. 978, 85 S.Ct. 679, 13 L.Ed.2d 568 (1965), rested squarely on the notion that a 'frisk' was not a 'search,' see nn. 3—5, supra, it was compelled to recognize in People v. Taggart, 20 N.Y.2d 335, 342, 283 N.Y.S.2d 1, 8, 229 N.E.2d 581, 586, (1967), that what it had actually authorized in Rivera, and subsequent decisions, see, e.g., People v. Pugach, 15 N.Y.2d 65, 255 N.Y.S.2d 833, 204 N.E.2d 176 (1964), cert. denied, 380 U.S. 936, 85 S.Ct. 946, 13 L.Ed.2d 823 (1965), was a 'search' upon less than probable cause. However, in acknowledging that no valid distinction could be maintained on the basis of its cases, the Court of Appeals continued to distinguish between the two in theory. It still defined 'search' as it had in Rivera—as an essentially unlimited examination of the person for any and all seizable items—and merely noted that the cases had upheld police intrusions which went far beyond the original limited conception of a 'frisk.' Thus, principally because it failed to consider limitations upon the scope of searches in individual cases as a potential mode of regulation, the Court of Appeals in three short years arrived at the position that the Constitution must, in the name of necessity, be held to permit unrestrained rummaging about a person and his effects upon mere suspicion. It did apparently limit its holding to 'cases involving serious personal injury or grave irreparable property damage,' thus excluding those involving 'the enforcement of

> sumptuary laws, such as gambling, and laws of limited public consequence, such as narcotics violations, prostitution, larcenies of the ordinary kind, and the like.' People v. Taggart, supra, at 340, 283 N.Y.S.2d at 6, 229 N.E.2d at 584.
>
> In our view the sounder course is to recognize that the Fourth Amendment governs all intrusions by agents of the public upon personal security, and to make the scope of the particular intrusion, in light of all the exigencies of the case, a central element in the analysis of reasonableness. Cf. Brinegar v. United States, 338 U.S. 160, 183, 69 S.Ct. 1302, 1314, 93 L.Ed. 1879 (1949) (Mr. Justice Jackson, dissenting). Compare Camara v. Municipal Court, 387 U.S. 523, 537, 87 S.Ct. 1727, 1735, 18 L.Ed.2d 930 (1967). This seems preferable to an approach which attributes too much significance to an overly technical definition of 'search,' and which turns in part upon a judge-made hierarchy of legislative enactments in the criminal sphere. Focusing the inquiry squarely on the dangers and demands of the particular situation also seems more likely to produce rules which are intelligible to the police and the public alike than requiring the officer in the heat of an unfolding encounter on the street to make a judgment as to which laws are 'of limited public consequence.'

The distinctions of classical 'stop-and-frisk' theory thus serve to divert attention from the central inquiry under the Fourth Amendment—the reasonableness in all the circumstances of the particular**1879 governmental invasion of a citizen's personal security. 'Search' and 'seizure' are not talismans. We therefore reject the notions that the Fourth Amendment does not come into play at all as a limitation upon police conduct if the officers stop short of something called a 'technical arrest' or a 'full-blown search.'

[15][16] In this case there can be no question, then, that Officer McFadden 'seized' petitioner and subjected him to a 'search' when he took hold of him and patted down the outer surfaces of his clothing. We must decide whether at that point it was reasonable for Officer McFadden to have interfered with petitioner's personal security as he did.[FN16] And in determining whether the seizure and search were 'unreasonable' our inquiry *20 is a dual one—whether the officer's action was justified at its inception, and whether it was reasonably related in scope to the circumstances which justified the interference in the first place.

> FN16. We thus decide nothing today concerning the constitutional propriety of an investigative 'seizure' upon less than probable cause for purposes of 'detention' and/or interrogation. Obviously, not all personal intercourse between policemen and citizens involves 'seizures' of persons. Only when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen may we conclude that a 'seizure' has occurred. We cannot tell with any certainty upon this record whether any such 'seizure' took place here prior to Officer McFadden's initiation of physical contact for purposes of searching Terry for weapons, and we thus may assume that up to that point no intrusion upon constitutionally protected rights had occurred.

III.

[17][18][19] If this case involved police conduct subject to the Warrant Clause of the Fourth Amendment, we would have to ascertain whether 'probable cause' existed to justify the search and seizure which took place. However, that is not the case. We do not retreat from our holdings that the police must, whenever practicable, obtain advance judicial approval of searches and seizures through the warrant procedure, see e.g., Katz v. United States, 389 U.S. 347, 88 S.Ct. 507, 19 L.Ed.2d 576 (1967); Beck v. State of Ohio, 379 U.S. 89, 96, 85 S.Ct. 223, 228, 13 L.Ed.2d 142 (1964); Chapman v. United States, 365 U.S. 610, 81 S.Ct. 776, 5 L.Ed.2d 828 (1961), or that in most instances failure to comply with the warrant requirement can only be excused by exigent circumstances, see, e.g., Warden v. Hayden, 387 U.S. 294, 87 S.Ct. 1642, 18 L.Ed.2d 782 (1967) (hot pursuit); cf. Preston v. United States, 376 U.S. 364, 367—368, 84 S.Ct. 881, 884, 11 L.Ed.2d 777 (1964). But we deal here with an entire rubric of police conduct—necessarily swift action predicated upon the on-the-spot observations of the officer on the beat—which historically has not been, and as a practical matter

could not be, subjected to the warrant procedure. Instead, the conduct involved in this case must be tested by the Fourth Amendment's general proscription against unreasonable searches and seizures.[FN17]

FN17. See generally Leagre, The Fourth Amendment and the Law of Arrest, 54 J. Crim.L.C. & P.S. 393, 396—403 (1963).

Nonetheless, the notions which underlie both the warrant procedure and the requirement of probable cause remain fully relevant in this context. In order to assess the reasonableness of Officer McFadden's conduct as a general proposition, it is necessary 'first to focus upon ***21** the governmental interest which allegedly justifies official intrusion upon the constitutionally protected interests of the private citizen,' for there is 'no ready test for determining reasonableness other than by balancing the need to search (or seize) against the invasion which the search (or seizure) entails.' ****1880**Camara v. Municipal Court, 387 U.S. 523, 534—535, 536—537, 87 S.Ct. 1727, 1735, 18 L.Ed.2d 930 (1967). And in justifying the particular intrusion the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.[FN18] The scheme of the Fourth Amendment becomes meaningful only when it is assured that at some point the conduct of those charged with enforcing the laws can be subjected to the more detached, neutral scrutiny of a judge who must evaluate the reasonableness of a particular search or seizure in light of the particular circumstances.[FN19] And in making that assessment it is imperative that the facts be judged against an objective standard: would the facts ***22** available to the officer at the moment of the seizure or the search 'warrant a man of reasonable caution in the belief' that the action taken was appropriate? Cf. Carroll v. United States, 267 U.S. 132, 45 S.Ct. 280, 69 L.Ed. 543 (1925); Beck v. State of Ohio, 379 U.S. 89, 96—97, 85 S.Ct. 223, 229, 13 L.Ed.2d 142 (1964).[FN20] Anything less would invite intrusions upon constitutionally guaranteed rights based on nothing more substantial than inarticulate hunches, a result this Court has consistently refused to sanction. See, e.g., Beck v. Ohio, supra; Rios v. United States, 364 U.S. 253, 80 S.Ct. 1431, 4 L.Ed.2d 1688 (1960); Henry v. United States, 361 U.S. 98, 80 S.Ct. 168, 4 L.Ed.2d 134 (1959). And simple "good faith on the part of the arresting officer is not enough.' * * * If subjective good faith alone were the test, the protections of the Fourth Amendment would evaporate, and the people would be 'secure in their persons, houses, papers and effects,' only in the discretion of the police.' Beck v. Ohio, supra, at 97, 85 S.Ct. at 229.

FN18. This demand for specificity in the information upon which police action is predicated is the central teaching of this Court's Fourth Amendment jurisprudence. See Beck v. State of Ohio, 379 U.S. 89, 96—97, 85 S.Ct. 223, 229, 13 L.Ed.2d 142 (1964); Ker v. State of California, 374 U.S. 23, 34—37, 83 S.Ct. 1623, 1632, 10 L.Ed.2d 726 (1963); Wong Sun v. United States, 371 U.S. 471, 479—484, 83 S.Ct. 407, 416, 9 L.Ed.2d 441 (1963); Rios v. United States, 364 U.S. 253, 261—262, 80 S.Ct. 1431, 1437, 4 L.Ed.2d 1688 (1960); Henry v. United States, 361 U.S. 98, 100—102, 80 S.Ct. 168, 171, 4 L.Ed.2d 134 (1959); Draper v. United States, 358 U.S. 307, 312—314, 79 S.Ct. 329, 333, 3 L.Ed.2d 327 (1959); Brinegar v. United States, 338 U.S. 160, 175—178, 69 S.Ct. 1302, 1312, 93 L.Ed. 1879 (1949); Johnson v. United States, 333 U.S. 10, 15—17, 68 S.Ct. 367, 371, 92 L.Ed. 436 (1948); United States v. Di Re, 332 U.S. 581, 593—595, 68 S.Ct. 222, 229, 92 L.Ed. 210 (1948); Husty v. United States, 282 U.S. 694, 700—701, 51 S.Ct. 240, 242, 75 L.Ed. 629 (1931); Dunbra v. United States, 268 U.S. 435, 441, 45 S.Ct. 546, 549, 69 L.Ed. 1032 (1925); Carroll v. United States, 267 U.S. 132, 159—162, 45 S.Ct. 280, 288, 69 L.Ed. 543 (1925); Stacey v. Emery, 97 U.S. 642, 645, 24 L.Ed. 1035 (1878).

FN19. See, e.g., Katz v. United States, 389 U.S. 347, 354—357, 88 S.Ct. 507, 514, 19 L.Ed.2d 576 (1967); Berger v. State of New York, 388 U.S. 41, 54—60, 87 S.Ct. 1873, 1884, 18 L.Ed.2d 1040 (1967); Johnson v. United States, 333 U.S. 10, 13—15, 68 S.Ct. 367, 369, 92 L.Ed. 436 (1948); **cf.** Wong Sun v. United States, 371 U.S. 471, 479—480, 83 S.Ct. 407, 413, 9 L.Ed.2d 441 (1963). See also Aguilar v. State of Texas, 378 U.S. 108, 110—115, 84 S.Ct. 1509, 1514, 12 L.Ed.2d 723 (1964).

FN20. See also cases cited in n. 18, supra.

[20][21] Applying these principles to this case, we consider first the nature and extent of the governmental interests involved. One general interest is of course that of effective crime prevention and detection; it is this interest which underlies the recognition that a police officer may in appropriate circumstances and in an appropriate manner approach a person for purposes of investigating possibly criminal behavior even though there is no probable cause to make an arrest. It was this legitimate investigative function Officer McFadden was discharging when he decided to approach petitioner and his companions. He had observed Terry, Chilton, and Katz go Through a series of acts, each of them perhaps innocent**1881 in itself, but which taken together warranted further investigation. There is nothing unusual in two men standing together on a street corner, perhaps waiting for someone. Nor is there anything suspicious about people *23 in such circumstances strolling up and down the street, singly or in pairs. Store windows, moreover, are made to be looked in. But the story is quite different where, as here, two men hover about a street corner for an extended period of time, at the end of which it becomes apparent that they are not waiting for anyone or anything; where these men pace alternately along an identical route, pausing to stare in the same store window roughly 24 times; where each completion of this route is followed immediately by a conference between the two men on the corner; where they are joined in one of these conferences by a third man who leaves swiftly; and where the two men finally follow the third and rejoin him a couple of blocks away. It would have been poor police work indeed for an officer of 30 years' experience in the detection of thievery from stores in this same neighborhood to have failed to investigate this behavior further.

The crux of this case, however, is not the propriety of Officer McFadden's taking steps to investigate petitioner's suspicious behavior, but rather, whether there was justification for McFadden's invasion of Terry's personal security by searching him for weapons in the course of that investigation. We are now concerned with more than the governmental interest in investigating crime; in addition, there is the more immediate interest of the police officer in taking steps to assure himself that the person with whom he is dealing is not armed with a weapon that could unexpectedly and fatally be used against him. Certainly it would be unreasonable to require that police officers take unnecessary risks in the performance of their duties. American criminals have a long tradition of armed violence, and every year in this country many law enforcement officers are killed in the line of duty, and thousands more are wounded. *24 Virtually all of these deaths and a substantial portion of the injuries are inflicted with guns and knives.FN21

FN21. Fifty-seven law enforcement officers were killed in the line of duty in this country in 1966, bringing the total to 335 for the seven-year period beginning with 1960. Also in 1966, there were 23,851 assaults on police officers, 9,113 of which resulted in injuries to the policeman. Fifty-five of the 57 officers killed in 1966 died from gunshot wounds, 41 of them inflicted by handguns easily secreted about the person. The remaining two murders were perpetrated by knives. See Federal Bureau of Investigation, Uniform Crime Reports for the United States—1966, at 45—48, 152 and Table 51.

The easy availability of firearms to potential criminals in this country is well known and has provoked much debate. See, e.g., President's Commission on Law Enforcement and Administration of Justice, The Challenge of Crime in a Free Society 239-243 (1967). Whatever the merits of gun-control proposals, this fact is relevant to an assessment of the need for some form of self-protective search power.

In view of these facts, we cannot blind ourselves to the need for law enforcement officers to protect themselves and other prospective victims of violence in situations where they may lack probable cause for an arrest. When an officer is justified in believing that the individual whose suspicious behavior he is investigating at close range is armed and presently dangerous to the officer or to others, it would appear to be clearly unreasonable to deny the officer the power to take necessary measures to determine whether the person is in fact carrying a weapon and to neutralize the threat of physical harm.

We must still consider, however, the nature and quality of the intrusion on individual rights which

must be accepted if police officers are to be conceded the right to search for weapons in situations where probable cause to arrest for crime is lacking. Even a limited search of the **1882 outer clothing for weapons constitutes a severe, *25 though brief, intrusion upon cherished personal security, and it must surely be an annoying, frightening, and perhaps humiliating experience. Petitioner contends that such an intrusion is permissible only incident to a lawful arrest, either for a crime involving the possession of weapons or for a crime the commission of which led the officer to investigate in the first place. However, this argument must be closely examined.

Petitioner does not argue that a police officer should refrain from making any investigation of suspicious circumstances until such time as he has probable cause to make an arrest; nor does he deny that police officers in properly discharging their investigative function may find themselves confronting persons who might well be armed and dangerous. Moreover, he does not say that an officer is always unjustified in searching a suspect to discover weapons. Rather, he says it is unreasonable for the policeman to take that step until such time as the situation evolves to a point where there is probable cause to make an arrest. When that point has been reached, petitioner would concede the officer's right to conduct a search of the suspect for weapons, fruits or instrumentalities of the crime, or 'mere' evidence, incident to the arrest.

[22][23] There are two weaknesses in this line of reasoning however. First, it fails to take account of traditional limitations upon the scope of searches, and thus recognizes no distinction in purpose, character, and extent between a search incident to an arrest and a limited search for weapons. The former, although justified in part by the acknowledged necessity to protect the arresting officer from assault with a concealed weapon, Preston v. United States, 376 U.S. 364, 367, 84 S.Ct. 881, 883, 11 L.Ed.2d 777 (1964), is also justified on other grounds, ibid., and can therefore involve a relatively extensive exploration of the person. A search for weapons in the absence of probable cause to *26 arrest, however, must, like any other search, be strictly circumscribed by the exigencies which justify its initiation. Warden v. Hayden, 387 U.S. 294, 310, 87 S.Ct. 1642, 1652, 18 L.Ed.2d 782 (1967) (Mr. Justice Fortas, concurring). Thus it must be limited to that which is necessary for the discovery of weapons which might be used to harm the officer or others nearby, and may realistically be characterized as something less than a 'full' search, even though it remains a serious intrusion.

[24][25] A second, and related, objection to petitioner's argument is that it assumes that the law of arrest has already worked out the balance between the particular interests involved here—the neutralization of danger to the policeman in the investigative circumstance and the sanctity of the individual. But this is not so. An arrest is a wholly different kind of intrusion upon individual freedom from a limited search for weapons, and the interests each is designed to serve are likewise quite different. An arrest is the initial stage of a criminal prosecution. It is intended to vindicate society's interest in having its laws obeyed, and it is inevitably accompanied by future interference with the individual's freedom of movement, whether or not trial or conviction ultimately follows.[FN22] The protective search for weapons, on the other hand, constitutes a brief, though far from inconsiderable, intrusion upon the sanctity of the person. It does not follow that because an officer may lawfully arrest a person only when he is apprised of facts sufficient to warrant a belief that the person has committed or is committing a crime, the officer is equally unjustified, absent that kind of evidence, in making any intrusions short of an arrest. Moreover, a perfectly reasonable apprehension of danger may arise long before the officer is possessed of **1883 adequate information to justify taking a person into custody for *27 the purpose of prosecuting him for a crime. Petitioner's reliance on cases which have worked out standards of reasonableness with regard to 'seizures' constituting arrests and searches incident thereto is thus misplaced. It assumes that the interests sought to be vindicated and the invasions of personal security may be equated in the two cases, and thereby ignores a vital aspect of the analysis of the reasonableness of particular types of conduct under the Fourth Amendment. See Camara v. Municipal Court, supra.

FN22. See generally W. LaFave, Arrest—The Decision to Take a Suspect into Custody 1—13 (1965).

[26] Our evaluation of the proper balance that has to be struck in this type of case leads us to conclude that there must be a narrowly drawn authority

to permit a reasonable search for weapons for the protection of the police officer, where he has reason to believe that he is dealing with an armed and dangerous individual, regardless of whether he has probable cause to arrest the individual for a crime. The officer need not be absolutely certain that the individual is armed; the issue is whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger. Cf. Beck v. State of Ohio, 379 U.S. 89, 91, 85 S.Ct. 223, 226, 13 L.Ed.2d 142 (1964); Brinegar v. United States, 338 U.S. 160, 174—176, 69 S.Ct. 1302, 1311, 93 L.Ed. 1879 (1949); Stacey v. Emery, 97 U.S. 642, 645, 24 L.Ed. 1035 (1878).[FN23] And in determining whether the officer acted reasonably in such circumstances, due weight must be given, not to his inchoate and unparticularized suspicion or 'hunch,' but to the specific reasonable inferences which he is entitled to draw from the facts in light of his experience. Cf. Brinegar v. United States, supra.

FN23. See also cases cited in n. 18, supra.

IV.

[27] We must now examine the conduct of Officer McFadden in this case to determine whether his search and seizure of petitioner were reasonable, both at their inception***28** and as conducted. He had observed Terry, together with Chilton and another man, acting in a manner he took to be preface to a 'stick-up.' We think on the facts and circumstances Officer McFadden detailed before the trial judge a reasonably prudent man would have been warranted in believing petitioner was armed and thus presented a threat to the officer's safety while he was investigating his suspicious behavior. The actions of Terry and Chilton were consistent with McFadden's hypothesis that these men were contemplating a daylight robbery—which, it is reasonable to assume, would be likely to involve the use of weapons—and nothing in their conduct from the time he first noticed them until the time he confronted them and identified himself as a police officer gave him sufficient reason to negate that hypothesis. Although the trio had departed the original scene, there was nothing to indicate abandonment of an intent to commit a robbery at some point. Thus, when Officer McFadden approached the three men gathered before the display window at Zucker's store he had observed enough to make it quite reasonable to fear that they were armed; and nothing in their response to his hailing them, identifying himself as a police officer, and asking their names served to dispel that reasonable belief. We cannot say his decision at that point to seize Terry and pat his clothing for weapons was the product of a volatile or inventive imagination, or was undertaken simply as an act of harassment; the record evidences the tempered act of a policeman who in the course of an investigation had to make a quick decision as to how to protect himself and others from possible danger, and took limited steps to do so.

[28][29][30] The manner in which the seizure and search were conducted is, of course, as vital a part of the inquiry as whether they were warranted at all. The Fourth Amendment proceeds as much by limitations upon the ***29** scope of governmental****1884** action as by imposing preconditions upon its initiation. Compare Katz v. United States, 389 U.S. 347, 354—356, 88 S.Ct. 507, 514, 19 L.Ed.2d 576 (1967). The entire deterrent purpose of the rule excluding evidence seized in violation of the Fourth Amendment rests on the assumption that 'limitations upon the fruit to be gathered tend to limit the quest itself.' United States v. Poller, 43 F.2d 911, 914, 74 A.L.R. 1382 (C.A.2d Cir. 1930); see, e.g., Linkletter v. Walker, 381 U.S. 618, 629—635, 85 S.Ct. 1731, 1741, 14 L.Ed.2d 601 (1965); Mapp v. Ohio, 367 U.S. 643, 81 S.Ct. 1684, 6 L.Ed.2d 1081 (1961); Elkins v. United States, 364 U.S. 206, 216—221, 80 S.Ct. 1437, 1446, 4 L.Ed.2d 1669 (1960). Thus, evidence may not be introduced if it was discovered by means of a seizure and search which were not reasonably related in scope to the justification for their initiation Warden v. Hayden, 387 U.S. 294, 310, 87 S.Ct. 1642, 1652, 18 L.Ed.2d 782 (1967) (Mr. Justice Fortas, concurring).

[31] We need not develop at length in this case, however, the limitations which the Fourth Amendment places upon a protective seizure and search for weapons. These limitations will have to be developed in the concrete factual circumstances of individual cases. See Sibron v. New York, 392 U.S. 40, 88 S.Ct. 1889, 1912, 20 L.Ed.2d 917 decided today. Suffice it to note that such a search, unlike a search without a warrant incident to a lawful arrest, is not justified by any need to prevent the disappearance or destruction of evidence of crime. See Preston v. United States, 376 U.S. 364, 367, 84 S.Ct. 1642, 1652, 18 L.Ed.2d 782 (1964). The sole justification of the search in the present situation is the protection of the police officer

and others nearby, and it must therefore be confined in scope to an intrusion reasonably designed to discover guns, knives, clubs, or other hidden instruments for the assault of the police officer.

[32] The scope of the search in this case presents no serious problem in light of these standards. Officer McFadden patted down the outer clothing of petitioner and his two companions. He did not place his hands in their pockets or under the outer surface of their garments until he had ***30** felt weapons, and then he merely reached for and removed the guns. He never did invade Katz' person beyond the outer surfaces of his clothes, since he discovered nothing in his patdown which might have been a weapon. Officer McFadden confined his search strictly to what was minimally necessary to learn whether the men were armed and to disarm them once he discovered the weapons. He did not conduct a general exploratory search for whatever evidence of criminal activity he might find.

V.

[33][34] We conclude that the revolver seized from Terry was properly admitted in evidence against him. At the time he seized petitioner and searched him for weapons, Officer McFadden had reasonable grounds to believe that petitioner was armed and dangerous, and it was necessary for the protection of himself and others to take swift measures to discover the true facts and neutralize the threat of harm if it materialized. The policeman carefully restricted his search to what was appropriate to the discovery of the particular items which he sought. Each case of this sort will, of course, have to be decided on its own facts. We merely hold today that where a police officer observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot and that the persons with whom he is dealing may be armed and presently dangerous, where in the course of investigating this behavior he identifies himself as a policeman and makes reasonable inquiries, and where nothing in the initial stages of the encounter serves to dispel his reasonable fear for his own or others' safety, he is entitled for the protection of himself and ****1885** others in the area to conduct a carefully limited search of the outer clothing of such persons in an attempt to discover weapons which might be used to assault him. ***31** Such a search is a reasonable search under the Fourth Amendment, and any weapons seized may properly be introduced in evidence against the person from whom they were taken.

Affirmed.

⊳

Supreme Court of the United States
FLORIDA, Petitioner,
v.
J.L.

No. 98–1993.
Argued Feb. 29, 2000.
Decided March 28, 2000.

Juvenile being tried on weapons charge moved to suppress evidence. The Circuit Court of Dade County, Steve Levine, J., granted motion, and state appealed. The District Court of Appeal, 689 So.2d 1116,reversed. Juvenile petitioned for review, and the Florida Supreme Court, 727 So.2d 204, reversed the court of appeal. After granting state's petition for certiorari, the Supreme Court, Justice Ginsburg, held that anonymous tip lacked sufficient indicia of reliability to establish reasonable suspicion for *Terry* investigatory stop.

Decision of Florida Supreme Court affirmed.

Justice Kennedy filed concurring opinion in which Chief Justice Rehnquist joined.

GINSBURG, J., delivered the opinion for a unanimous Court. KENNEDY, J., filed a concurring opinion, in which REHNQUIST, C.J., joined, *post,* p. 1380.

Michael J. Neimand, Miami, FL, for petitioner.

Irving L. Gornstein, Washington, DC, for the United States as amicus curiae, by special leave of the Court.

Harvey J. Sepler, Miami, FL, for respondent.

For U.S. Supreme Court briefs, see:1999 WL 1259993 (Pet.Brief)2000 WL 140926 (Resp.Brief)2000 WL 207021 (Reply.Brief)

***268** Justice GINSBURG delivered the opinion of the Court.

The question presented in this case is whether an anonymous tip that a person is carrying a gun is, without more, sufficient to justify a police officer's stop and frisk of that person. We hold that it is not.

I

On October 13, 1995, an anonymous caller reported to the Miami–Dade Police that a young black male standing at a particular bus stop and wearing a plaid shirt was carrying a gun. App. to Pet. for Cert. A–40 to A–41. So far as the record reveals, there is no audio recording of the tip, and nothing is known about the informant. Sometime after the police received the tip—the record does not say how long—two officers were instructed to respond. They arrived at the bus stop about six minutes later and saw three black males "just hanging out [there]." *Id.,* at A–42. One of the three, respondent J.L., was wearing a plaid shirt. *Id.,* at A–41. Apart from the tip, the officers had no reason to suspect any of the three of illegal conduct. The officers did not see a firearm, and J.L. made no threatening or otherwise unusual movements. *Id.,* at A–42 to A–44. One of the officers approached J.L., told him to put his hands up on the bus stop, frisked him, and seized a gun from J.L.'s pocket. The second officer frisked the other two individuals, against whom no allegations had been made, and found nothing.

269** J.L., who was at the time of the frisk "10 days shy of his 16th birth [day]," Tr. of Oral Arg. 6, was charged under state law with carrying a concealed firearm without a license and possessing a firearm while under the age of 18. He moved to suppress the gun as the fruit of an unlawful search, and the trial court granted his motion. The intermediate appellate court reversed, but the Supreme Court of Florida*1378** quashed that decision and held the search invalid under the Fourth Amendment. 727 So.2d 204 (1998).

Anonymous tips, the Florida Supreme Court stated, are generally less reliable than tips from known informants and can form the basis for reasonable suspicion only if accompanied by specific indicia of reliability, for example, the correct forecast of a subject's " 'not easily predicted' " movements. *Id.,* at 207 (quoting *Alabama v. White,* 496 U.S. 325, 332,

110 S.Ct. 2412, 110 L.Ed.2d 301 (1990)). The tip leading to the frisk of J.L., the court observed, provided no such predictions, nor did it contain any other qualifying indicia of reliability. 727 So.2d, at 207–208. Two justices dissented. The safety of the police and the public, they maintained, justifies a "firearm exception" to the general rule barring investigatory stops and frisks on the basis of bare-boned anonymous tips. *Id.*, at 214–215.

Seeking review in this Court, the State of Florida noted that the decision of the State's Supreme Court conflicts with decisions of other courts declaring similar searches compatible with the Fourth Amendment. See, *e.g.*, *United States v. DeBerry*, 76 F.3d 884, 886–887 (C.A.7 1996); *United States v. Clipper*, 973 F.2d 944, 951 (C.A.D.C.1992). We granted certiorari, 528 U.S. 963, 120 S.Ct. 395, 145 L.Ed.2d 308 (1999), and now affirm the judgment of the Florida Supreme Court.

II

Our "stop and frisk" decisions begin with *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968). This Court held in *Terry*:

> "[W]here a police officer observes unusual conduct which leads him reasonably to conclude in light of his ***270** experience that criminal activity may be afoot and that the persons with whom he is dealing may be armed and presently dangerous, where in the course of investigating this behavior he identifies himself as a policeman and makes reasonable inquiries, and where nothing in the initial stages of the encounter serves to dispel his reasonable fear for his own or others' safety, he is entitled for the protection of himself and others in the area to conduct a carefully limited search of the outer clothing of such persons in an attempt to discover weapons which might be used to assault him." *Id.*, at 30, 88 S.Ct. 1868.

[1] In the instant case, the officers' suspicion that J.L. was carrying a weapon arose not from any observations of their own but solely from a call made from an unknown location by an unknown caller. Unlike a tip from a known informant whose reputation can be assessed and who can be held responsible if her allegations turn out to be fabricated, see *Adams v. Williams*, 407 U.S. 143, 146–147, 92 S.Ct. 1921, 32 L.Ed.2d 612 (1972), "an anonymous tip alone seldom demonstrates the informant's basis of knowledge or veracity," *Alabama v. White*, 496 U.S., at 329, 110 S.Ct. 2412. As we have recognized, however, there are situations in which an anonymous tip, suitably corroborated, exhibits "sufficient indicia of reliability to provide reasonable suspicion to make the investigatory stop." *Id.*, at 327, 110 S.Ct. 2412. The question we here confront is whether the tip pointing to J.L. had those indicia of reliability.

In *White*, the police received an anonymous tip asserting that a woman was carrying cocaine and predicting that she would leave an apartment building at a specified time, get into a car matching a particular description, and drive to a named motel. *Ibid.* Standing alone, the tip would not have justified a *Terry* stop. 496 U.S., at 329, 110 S.Ct. 2412. Only after police observation showed that the informant had accurately predicted the woman's movements, we explained, did it become reasonable to think the tipster had inside knowledge about the suspect and therefore to credit his assertion about the cocaine. ***271** *Id.*, at 332, 110 S.Ct. 2412. ****1379** Although the Court held that the suspicion in *White* became reasonable after police surveillance, we regarded the case as borderline. Knowledge about a person's future movements indicates some familiarity with that person's affairs, but having such knowledge does not necessarily imply that the informant knows, in particular, whether that person is carrying hidden contraband. We accordingly classified *White* as a "close case." *Ibid.*

[2] The tip in the instant case lacked the moderate indicia of reliability present in *White* and essential to the Court's decision in that case. The anonymous call concerning J.L. provided no predictive information and therefore left the police without means to test the informant's knowledge or credibility. That the allegation about the gun turned out to be correct does not suggest that the officers, prior to the frisks, had a reasonable basis for suspecting J.L. of engaging in unlawful conduct: The reasonableness of official suspicion must be measured by what the officers knew before they conducted their search. All the police had to go on in this case was the bare report of an unknown, unaccountable informant who neither explained how he knew about the gun nor supplied any basis for believing he had inside information about J.L. If *White* was a close case on the reliability of anonymous tips, this one surely falls on the other side

of the line.

Florida contends that the tip was reliable because its description of the suspect's visible attributes proved accurate: There really was a young black male wearing a plaid shirt at the bus stop. Brief for Petitioner 20–21. The United States as *amicus curiae* makes a similar argument, proposing that a stop and frisk should be permitted "when (1) an anonymous tip provides a description of a particular person at a particular location illegally carrying a concealed firearm, (2) police promptly verify the pertinent details of the tip except the existence of the firearm, and (3) there are no factors that cast doubt on the reliability of the tip...." Brief ***272** for United States 16. These contentions misapprehend the reliability needed for a tip to justify a *Terry* stop.

[3] An accurate description of a subject's readily observable location and appearance is of course reliable in this limited sense: It will help the police correctly identify the person whom the tipster means to accuse. Such a tip, however, does not show that the tipster has knowledge of concealed criminal activity. The reasonable suspicion here at issue requires that a tip be reliable in its assertion of illegality, not just in its tendency to identify a determinate person. Cf. 4 W. LaFave, Search and Seizure § 9.4(h), p. 213 (3d ed.1996) (distinguishing reliability as to identification, which is often important in other criminal law contexts, from reliability as to the likelihood of criminal activity, which is central in anonymous-tip cases).

A second major argument advanced by Florida and the United States as *amicus* is, in essence, that the standard *Terry* analysis should be modified to license a "firearm exception." Under such an exception, a tip alleging an illegal gun would justify a stop and frisk even if the accusation would fail standard pre-search reliability testing. We decline to adopt this position.

[4] Firearms are dangerous, and extraordinary dangers sometimes justify unusual precautions. Our decisions recognize the serious threat that armed criminals pose to public safety; *Terry* 's rule, which permits protective police searches on the basis of reasonable suspicion rather than demanding that officers meet the higher standard of probable cause, responds to this very concern. See 392 U.S., at 30, 88 S.Ct. 1868. But an automatic firearm exception to our established reliability analysis would rove too far. Such an exception would enable any person seeking to harass another to set in motion an intrusive, embarrassing ****1380** police search of the targeted person simply by placing an anonymous call falsely reporting the target's unlawful carriage of a gun. Nor could one securely confine such an exception to allegations involving firearms. ***273** Several Courts of Appeals have held it *per se* foreseeable for people carrying significant amounts of illegal drugs to be carrying guns as well. See, *e.g.*, *United States v. Sakyi*, 160 F.3d 164, 169 (C.A.4 1998); *United States v. Dean*, 59 F.3d 1479, 1490, n. 20 (C.A.5 1995); *United States v. Odom*, 13 F.3d 949, 959 (C.A.6 1994); *United States v. Martinez*, 958 F.2d 217, 219 (C.A.8 1992). If police officers may properly conduct *Terry* frisks on the basis of bare-boned tips about guns, it would be reasonable to maintain under the above-cited decisions that the police should similarly have discretion to frisk based on bare-boned tips about narcotics. As we clarified when we made indicia of reliability critical in *Adams* and *White*, the Fourth Amendment is not so easily satisfied. Cf. *Richards v. Wisconsin*, 520 U.S. 385, 393–394, 117 S.Ct. 1416, 137 L.Ed.2d 615 (1997) (rejecting a *per se* exception to the "knock and announce" rule for narcotics cases partly because "the reasons for creating an exception in one category [of Fourth Amendment cases] can, relatively easily, be applied to others," thus allowing the exception to swallow the rule).[FN*]

FN* At oral argument, petitioner also advanced the position that J.L.'s youth made the stop and frisk valid, because it is a crime in Florida for persons under the age of 21 to carry concealed firearms. See Fla. Stat. § 790.01 (1997) (carrying a concealed weapon without a license is a misdemeanor), § 790.06(2)(b) (only persons aged 21 or older may be licensed to carry concealed weapons). This contention misses the mark. Even assuming that the arresting officers could be sure that J.L. was under 21, they would have had reasonable suspicion that J.L. was engaged in criminal activity only if they could be confident that he was carrying a gun in the first place. The mere fact that a tip, if true, would describe illegal activity does not mean that the police may make a *Terry* stop without meeting the reliability requirement, and the fact that J.L. was under 21 in no way

made the gun tip more reliable than if he had been an adult.

The facts of this case do not require us to speculate about the circumstances under which the danger alleged in an anonymous tip might be so great as to justify a search even without a showing of reliability. We do not say, for example, that a report of a person carrying a bomb need bear the ***274** indicia of reliability we demand for a report of a person carrying a firearm before the police can constitutionally conduct a frisk. Nor do we hold that public safety officials in quarters where the reasonable expectation of Fourth Amendment privacy is diminished, such as airports, see *Florida v. Rodriguez*, 469 U.S. 1, 105 S.Ct. 308, 83 L.Ed.2d 165 (1984) (*per curiam*), and schools, see *New Jersey v. T.L.O.*, 469 U.S. 325, 105 S.Ct. 733, 83 L.Ed.2d 720 (1985), cannot conduct protective searches on the basis of information insufficient to justify searches elsewhere.

Finally, the requirement that an anonymous tip bear standard indicia of reliability in order to justify a stop in no way diminishes a police officer's prerogative, in accord with *Terry*, to conduct a protective search of a person who has already been legitimately stopped. We speak in today's decision only of cases in which the officer's authority to make the initial stop is at issue. In that context, we hold that an anonymous tip lacking indicia of reliability of the kind contemplated in *Adams* and *White* does not justify a stop and frisk whenever and however it alleges the illegal possession of a firearm.

The judgment of the Florida Supreme Court is affirmed.

It is so ordered.

Supreme Court of the United States
ILLINOIS, Petitioner,
v.
William aka Sam WARDLOW.

No. 98–1036.
Argued Nov. 2, 1999.
Decided Jan. 12, 2000.

Defendant was convicted in the Circuit Court, Cook County, Fred G. Suria, Jr., J., of unlawful use of weapon by felon. Defendant appealed. The Illinois Appellate Court, 287 Ill.App.3d 367, 222 Ill.Dec. 658, 678 N.E.2d 65, reversed. State appealed. The Illinois Supreme Court, 183 Ill.2d 306, 233 Ill.Dec. 634, 701 N.E.2d 484, affirmed. Certiorari was granted. The Supreme Court, Chief Justice Rehnquist, held that stop was supported by reasonable suspicion.

Reversed and remanded.

Justice Stevens concurred in part and dissented in part and filed opinion in which Justices Souter, Ginsburg and Breyer joined.

REHNQUIST, C.J., delivered the opinion of the Court, in which O'CONNOR, SCALIA, KENNEDY, and THOMAS, JJ., joined. STEVENS, J., filed an an opinion concurring in part and dissenting in part, in which SOUTER, GINSBURG, and BREYER, JJ., joined, *post*, p. 677.

Richard A. Devine, for petitioner.

Malcolm L. Stewart, Washington, DC, for the United States as amicus curiae by special leave of Court.

James B. Koch, Chicago, IL, for the respondent.

Chief Justice REHNQUIST delivered the opinion of the Court.

Respondent Wardlow fled upon seeing police officers patrolling an area known for heavy narcotics trafficking. Two of the officers caught up with him, stopped him and conducted a protective patdown search for weapons. Discovering a .38–caliber handgun, the officers arrested Wardlow. We hold that the officers' stop did not violate the Fourth Amendment to the United States Constitution.

On September 9, 1995, Officers Nolan and Harvey were working as uniformed officers in the special operations section of the Chicago Police Department. The officers were driving the last car of a four car caravan converging on an area known for heavy narcotics trafficking in order to investigate drug transactions. The officers were traveling together because they expected to find a crowd of people in the area, including lookouts and customers.

As the caravan passed 4035 West Van Buren, Officer Nolan observed respondent ****675** Wardlow standing next to the building ***122** holding an opaque bag. Respondent looked in the direction of the officers and fled. Nolan and Harvey turned their car southbound, watched him as he ran through the gangway and an alley, and eventually cornered him on the street. Nolan then exited his car and stopped respondent. He immediately conducted a protective patdown search for weapons because in his experience it was common for there to be weapons in the near vicinity of narcotics transactions. During the frisk, Officer Nolan squeezed the bag respondent was carrying and felt a heavy, hard object similar to the shape of a gun. The officer then opened the bag and discovered a .38–caliber handgun with five live rounds of ammunition. The officers arrested Wardlow.

The Illinois trial court denied respondent's motion to suppress, finding the gun was recovered during a lawful stop and frisk. App. 14. Following a stipulated bench trial, Wardlow was convicted of unlawful use of a weapon by a felon. The Illinois Appellate Court reversed Wardlow's conviction, concluding that the gun should have been suppressed because Officer Nolan did not have reasonable suspicion sufficient to justify an investigative stop pursuant to *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968). 287 Ill.App.3d 367, 222 Ill.Dec. 658, 678 N.E.2d 65 (1997).

The Illinois Supreme Court agreed. 183 Ill.2d 306, 233 Ill.Dec. 634, 701 N.E.2d 484 (1998). While rejecting the Appellate Court's conclusion that Wardlow was not in a high crime area, the Illinois Supreme Court determined that sudden flight in such an area does not create a reasonable suspicion justifying a *Terry* stop. 183 Ill.2d, at 310, 233 Ill.Dec. 634, 701 N.E.2d, at 486. Relying on *Florida v. Royer*, 460 U.S. 491, 103 S.Ct. 1319, 75 L.Ed.2d 229 (1983), the court explained that although police have the right to approach individuals and ask questions, the individual has no obligation to respond. The person may decline to answer and simply go on his or her way, and the refusal to respond, alone, does not provide a legitimate basis for an investigative stop. 183 Ill.2d, at 311–312, 233 Ill.Dec. 634, 701 N.E.2d, at 486–487. ***123** The court then determined that flight may simply be an exercise of this right to "go on one's way," and, thus, could not constitute reasonable suspicion justifying a *Terry* stop. 183 Ill.2d, at 312, 233 Ill.Dec. 634, 701 N.E.2d, at 487.

The Illinois Supreme Court also rejected the argument that flight combined with the fact that it occurred in a high crime area supported a finding of reasonable suspicion because the "high crime area" factor was not sufficient standing alone to justify a *Terry* stop. Finding no independently suspicious circumstances to support an investigatory detention, the court held that the stop and subsequent arrest violated the Fourth Amendment. We granted certiorari, 526 U.S. 1097, 119 S.Ct. 1573, 143 L.Ed.2d 669 (1999), and now reverse.[FN1]

FN1. The state courts have differed on whether unprovoked flight is sufficient grounds to constitute reasonable suspicion. See, *e.g.*, *State v. Anderson*, 155 Wis.2d 77, 454 N.W.2d 763 (1990) (flight alone is sufficient); *Platt v. State*, 589 N.E.2d 222 (Ind.1992) (same); *Harris v. State*, 205 Ga.App. 813, 423 S.E.2d 723 (1992) (flight in high crime area sufficient); *State v. Hicks*, 241 Neb. 357, 488 N.W.2d 359 (1992) (flight is not enough); *State v. Tucker*, 136 N.J. 158, 642 A.2d 401 (1994) (same); *People v. Shabaz*, 424 Mich. 42, 378 N.W.2d 451 (1985) (same); *People v. Wilson*, 784 P.2d 325 (Colo.1989) (same).

This case, involving a brief encounter between a citizen and a police officer on a public street, is governed by the analysis we first applied in *Terry*. In *Terry*, we held that an officer may, consistent with the Fourth Amendment, conduct a brief, investigatory stop when the officer has a reasonable, articulable suspicion that criminal activity is afoot. 392 U.S., at 30, 88 S.Ct. 1868. While "reasonable suspicion" is a less demanding standard than probable cause and requires a showing considerably less than preponderance of the evidence,****676** the Fourth Amendment requires at least a minimal level of objective justification for making the stop. *United States v. Sokolow*, 490 U.S. 1, 7, 109 S.Ct. 1581, 104 L.Ed.2d 1 (1989). The officer must be able ***124** to articulate more than an "inchoate and unparticularized suspicion or 'hunch' " of criminal activity. *Terry, supra*, at 27, 88 S.Ct. 1868.[FN2]

FN2. We granted certiorari solely on the question whether the initial stop was supported by reasonable suspicion. Therefore, we express no opinion as to the lawfulness of the frisk independently of the stop.

[1][2] Nolan and Harvey were among eight officers in a four-car caravan that was converging on an area known for heavy narcotics trafficking, and the officers anticipated encountering a large number of people in the area, including drug customers and individuals serving as lookouts. App. 8. It was in this context that Officer Nolan decided to investigate Wardlow after observing him flee. An individual's presence in an area of expected criminal activity, standing alone, is not enough to support a reasonable, particularized suspicion that the person is committing a crime. *Brown v. Texas*, 443 U.S. 47, 99 S.Ct. 2637, 61 L.Ed.2d 357 (1979). But officers are not required to ignore the relevant characteristics of a location in determining whether the circumstances are sufficiently suspicious to warrant further investigation. Accordingly, we have previously noted the fact that the stop occurred in a "high crime area" among the relevant contextual considerations in a *Terry* analysis. *Adams v. Williams*, 407 U.S. 143, 144, 147–148, 92 S.Ct. 1921, 32 L.Ed.2d 612 (1972).

[3] In this case, moreover, it was not merely respondent's presence in an area of heavy narcotics trafficking that aroused the officers' suspicion, but his unprovoked flight upon noticing the police. Our cases

have also recognized that nervous, evasive behavior is a pertinent factor in determining reasonable suspicion. *United States v. Brignoni—Ponce*, 422 U.S. 873, 885, 95 S.Ct. 2574, 45 L.Ed.2d 607 (1975); *Florida v. Rodriguez*, 469 U.S. 1, 6, 105 S.Ct. 308, 83 L.Ed.2d 165 (1984) ***(per curiam)***; *United States v. Sokolow, supra*, at 8–9, 109 S.Ct. 1581. Headlong flight—wherever it occurs—is the consummate act of evasion: It is not necessarily indicative of wrongdoing, but it is certainly suggestive of such. In reviewing the propriety of an officer's conduct, courts do not have available empirical studies dealing with inferences drawn from suspicious ***125** behavior, and we cannot reasonably demand scientific certainty from judges or law enforcement officers where none exists. Thus, the determination of reasonable suspicion must be based on commonsense judgments and inferences about human behavior. See *United States v. Cortez*, 449 U.S. 411, 418, 101 S.Ct. 690, 66 L.Ed.2d 621 (1981). We conclude Officer Nolan was justified in suspecting that Wardlow was involved in criminal activity, and, therefore, in investigating further.

Such a holding is entirely consistent with our decision in *Florida v. Royer*, 460 U.S. 491, 103 S.Ct. 1319, 75 L.Ed.2d 229 (1983), where we held that when an officer, without reasonable suspicion or probable cause, approaches an individual, the individual has a right to ignore the police and go about his business. *Id.*, at 498, 103 S.Ct. 1319. And any "refusal to cooperate, without more, does not furnish the minimal level of objective justification needed for a detention or seizure." *Florida v. Bostick*, 501 U.S. 429, 437, 111 S.Ct. 2382, 115 L.Ed.2d 389 (1991). But unprovoked flight is simply not a mere refusal to cooperate. Flight, by its very nature, is not "going about one's business"; in fact, it is just the opposite. Allowing officers confronted with such flight to stop the fugitive and investigate further is quite consistent with the individual's right to go about his business or to stay put and remain silent in the face of police questioning.

****677** Respondent and *amici* also argue that there are innocent reasons for flight from police and that, therefore, flight is not necessarily indicative of ongoing criminal activity. This fact is undoubtedly true, but does not establish a violation of the Fourth Amendment. Even in *Terry*, the conduct justifying the stop was ambiguous and susceptible of an innocent explanation. The officer observed two individuals pacing back and forth in front of a store, peering into the window and periodically conferring. 392 U.S., at 5–6, 88 S.Ct. 1868. All of this conduct was by itself lawful, but it also suggested that the individuals were casing the store for a planned robbery. *Terry* recognized that the officers could detain the individuals to resolve the ambiguity. *Id.*, at 30, 88 S.Ct. 1868.

***126** In allowing such detentions, *Terry* accepts the risk that officers may stop innocent people. Indeed, the Fourth Amendment accepts that risk in connection with more drastic police action; persons arrested and detained on probable cause to believe they have committed a crime may turn out to be innocent. The *Terry* stop is a far more minimal intrusion, simply allowing the officer to briefly investigate further. If the officer does not learn facts rising to the level of probable cause, the individual must be allowed to go on his way. But in this case the officers found respondent in possession of a handgun, and arrested him for violation of an Illinois firearms statute. No question of the propriety of the arrest itself is before us.

The judgment of the Supreme Court of Illinois is reversed, and the cause is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

Supreme Court of the United States
MINNESOTA, Petitioner,
v.
Timothy DICKERSON.

No. 91–2019.
Argued March 3, 1993.
Decided June 7, 1993.

Defendant's motion to suppress seizure of crack cocaine from defendant's person was denied by the District Court, Hennepin County, and defendant appealed. The Minnesota Court of Appeals, 469 N.W.2d 462, reversed. The State appealed. The Minnesota Supreme Court, 481 N.W.2d 840, affirmed. The State's petition for certiorari was granted. The Supreme Court, Justice White, held that: (1) police may seize nonthreatening contraband detected through the sense of touch during protective patdown search so long as the search stays within the bounds marked by *Terry*, and (2) search of defendant's jacket exceeded lawful bounds marked by *Terry* when officer determined that the lump was contraband only after squeezing, sliding and otherwise manipulating the contents of the defendant's pocket, which officer already knew contained no weapon.

Affirmed.

Justice Scalia filed a concurring opinion.

The Chief Justice filed an opinion concurring in part and dissenting in part, in which Justice Blackmun and Justice Thomas joined.

Michael O. Freeman, Hennepin Co. Atty., Beverly J. Wolfe, Asst. Co. Atty., Minneapolis, MN, for petitioner.

Richard H. Seamon, Washington, DC, for the U.S., as amicus curiae by special leave of Court.

Peter W. Gorman, Minneapolis, MN, for respondent.

Justice WHITE delivered the opinion of the Court.

In this case, we consider whether the Fourth Amendment permits the seizure of contraband detected through a police officer's sense of touch during a protective patdown search.

I

On the evening of November 9, 1989, two Minneapolis police officers were patrolling an area on the city's north side in a marked squad car. At about 8:15 p.m., one of the officers observed respondent leaving a 12–unit apartment building on Morgan Avenue North. The officer, having previously responded to complaints of drug sales in the building's hallways and having executed several search warrants on the premises, considered the building to be a notorious "crack house." According to testimony credited by the trial court, respondent began walking toward the police but, upon spotting***369** the squad car and making eye contact with one of the officers, abruptly halted and began walking in the opposite direction. His suspicion aroused, this officer watched as respondent turned and entered an alley on the other side of the apartment building. Based upon respondent's seemingly evasive actions and the fact that he had just left a building known for cocaine traffic, the officers decided to stop respondent and investigate further.

The officers pulled their squad car into the alley and ordered respondent to stop and submit to a patdown search. The search revealed no weapons, but the officer conducting the search did take an interest in a small lump in respondent's nylon jacket. The officer later testified:

> "[A]s I pat-searched the front of his body, I felt a lump, a small lump, in the front pocket. I examined it with my fingers and it slid and it felt to be a lump of crack cocaine in cellophane." Tr. 9 (Feb. 20, 1990).

The officer then reached into respondent's pocket and retrieved a small plastic bag containing one fifth of one gram of crack cocaine.****2134** Respondent

was arrested and charged in Hennepin County District Court with possession of a controlled substance.

Before trial, respondent moved to suppress the cocaine. The trial court first concluded that the officers were justified under *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968), in stopping respondent to investigate whether he might be engaged in criminal activity. The court further found that the officers were justified in frisking respondent to ensure that he was not carrying a weapon. Finally, analogizing to the "plain-view" doctrine, under which officers may make a warrantless seizure of contraband found in plain view during a lawful search for other items, the trial court ruled that the officers' seizure of the cocaine did not violate the Fourth Amendment:

> "To this Court there is no distinction as to which sensory perception the officer uses to conclude that the material***370** is contraband. An experienced officer may rely upon his sense of smell in DWI stops or in recognizing the smell of burning marijuana in an automobile. The sound of a shotgun being racked would clearly support certain reactions by an officer. The sense of touch, grounded in experience and training, is as reliable as perceptions drawn from other senses. 'Plain feel,' therefore, is no different than plain view and will equally support the seizure here." App. to Pet. for Cert. C–5.

His suppression motion having failed, respondent proceeded to trial and was found guilty.

On appeal, the Minnesota Court of Appeals reversed. The court agreed with the trial court that the investigative stop and protective patdown search of respondent were lawful under *Terry* because the officers had a reasonable belief based on specific and articulable facts that respondent was engaged in criminal behavior and that he might be armed and dangerous. The court concluded, however, that the officers had overstepped the bounds allowed by *Terry* in seizing the cocaine. In doing so, the Court of Appeals "decline [d] to adopt the plain feel exception" to the warrant requirement. 469 N.W.2d 462, 466 (1991).

The Minnesota Supreme Court affirmed. Like the Court of Appeals, the State Supreme Court held that both the stop and the frisk of respondent were valid under *Terry*, but found the seizure of the cocaine to be unconstitutional. The court expressly refused "to extend the plain view doctrine to the sense of touch" on the grounds that "the sense of touch is inherently less immediate and less reliable than the sense of sight" and that "the sense of touch is far more intrusive into the personal privacy that is at the core of the [F]ourth [A]mendment." 481 N.W.2d 840, 845 (1992). The court thus appeared to adopt a categorical rule barring the seizure of any contraband detected by an officer through the sense of touch during a patdown search for weapons. The court further noted that "[e]ven if we recognized a 'plain feel' exception,***371** the search in this case would not qualify" because "[t]he pat search of the defendant went far beyond what is permissible under *Terry*." *Id.*, at 843, 844, n. 1. As the State Supreme Court read the record, the officer conducting the search ascertained that the lump in respondent's jacket was contraband only after probing and investigating what he certainly knew was not a weapon. See *id.*, at 844.

[1] We granted certiorari, 506 U.S. 814, 113 S.Ct. 53, 121 L.Ed.2d 22 (1992), to resolve a conflict among the state and federal courts over whether contraband detected through the sense of touch during a patdown search may be admitted into evidence.[FN1] We ****2135** now affirm.[FN2]

> FN1. Most state and federal courts have recognized a so-called "plain-feel" or "plain-touch" corollary to the plain-view doctrine. See *United States v. Coleman*, 969 F.2d 126, 132 (CA5 1992); *United States v. Salazar*, 945 F.2d 47, 51 (CA2 1991), cert. denied, 504 U.S. 923, 112 S.Ct. 1975, 118 L.Ed.2d 574 (1992); *United States v. Buchannon*, 878 F.2d 1065, 1067 (CA8 1989); *United States v. Williams*, 262 U.S.App.D.C. 112, 119–124, 822 F.2d 1174, 1181–1186 (1987); *United States v. Norman*, 701 F.2d 295, 297 (CA4), cert. denied, 464 U.S. 820, 104 S.Ct. 82, 78 L.Ed.2d 92 (1983); *People v. Chavers*, 33 Cal.3d 462, 471–473, 658 P.2d 96, 102–104 (1983); *Dickerson v. State*, No. 228, 1993 WL 22025, *2, 1993 Del.LEXIS 12, *3–*4 (Jan. 26, 1993); *State v. Guy*, 172 Wis.2d 86, 101–102, 492 N.W.2d 311, 317–318 (1992). Some state courts, however, like the Minnesota court in this case, have rejected such a corollary. See *People v. Diaz*, 81 N.Y.2d 106, 595 N.Y.S.2d 940, 612 N.E.2d

298 (1993); *State v. Collins*, 139 Ariz. 434, 435–438, 679 P.2d 80, 81–84 (Ct.App.1983); *People v. McCarty*, 11 Ill.App.3d 421, 422, 296 N.E.2d 862, 863 (1973); *State v. Rhodes*, 788 P.2d 1380, 1381 (Okla.Crim.App.1990); *State v. Broadnax*, 98 Wash.2d 289, 296–301, 654 P.2d 96, 101–103 (1982); **cf.** *Commonwealth v. Marconi*, 408 Pa.Super. 601, 611–615, and n. 17, 597 A.2d 616, 621–623, and n. 17 (1991), appeal denied, 531 Pa. 638, 611 A.2d 711 (1992).

FN2. Before reaching the merits of the Fourth Amendment issue, we must address respondent's contention that the case is moot. After respondent was found guilty of the drug possession charge, the trial court sentenced respondent under a diversionary sentencing statute to a 2–year period of probation. As allowed by the diversionary scheme, no judgment of conviction was entered and, upon respondent's successful completion of probation, the original charges were dismissed. See Minn.Stat. § 152.18 (1992). Respondent argues that the case has been rendered moot by the dismissal of the original criminal charges. We often have observed, however, that "the possibility of a criminal defendant's suffering 'collateral legal consequences' from a sentence already served" precludes a finding of mootness. *Pennsylvania v. Mimms*, 434 U.S. 106, 108, n. 3, 98 S.Ct. 330, 332, n. 3, 54 L.Ed.2d 331 (1977) (*per curiam*); see also *Evitts v. Lucey*, 469 U.S. 387, 391, n. 4, 105 S.Ct. 830, 833, n. 4, 83 L.Ed.2d 821 (1985); *Sibron v. New York*, 392 U.S. 40, 53–58, 88 S.Ct. 1889, 1897–1900, 20 L.Ed.2d 917 (1968). In this case, Minnesota law provides that the proceeding which culminated in finding respondent guilty "shall not be deemed a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime or for any other purpose." Minn.Stat. § 152.18 (1992). The statute also provides, however, that a nonpublic record of the charges dismissed pursuant to the statute "shall be retained by the department of public safety for the purpose of use by the courts in determining the merits of subsequent proceedings" against the respondent. *Ibid.* Construing this provision, the Minnesota Supreme Court has held that "[t]he statute contemplates use of the record should [a] defendant have 'future difficulties with the law.' " *State v. Goodrich*, 256 N.W.2d 506, 512 (1977). Moreover, the Court of Appeals for the Eighth Circuit has held that a diversionary disposition under § 152.18 may be included in calculating a defendant's criminal history category in the event of a subsequent federal conviction. *United States v. Frank*, 932 F.2d 700, 701 (1991). Thus, we must conclude that reinstatement of the record of the charges against respondent would carry collateral legal consequences and that, therefore, a live controversy remains.

***372 II**

A

The Fourth Amendment, made applicable to the States by way of the Fourteenth Amendment, *Mapp v. Ohio*, 367 U.S. 643, 81 S.Ct. 1684, 6 L.Ed.2d 1081 (1961), guarantees "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." Time and again, this Court has observed that searches and seizures " 'conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment—subject only to a few specifically established and well delineated exceptions.' " *Thompson v. Louisiana*, 469 U.S. 17, 19–20, 105 S.Ct. 409, 410, 83 L.Ed.2d 246 (1984) (*per curiam*) (quoting *Katz v. United States*, 389 U.S. 347, 357, 88 S.Ct. 507, 514, 19 L.Ed.2d 576 (1967) (footnotes omitted)); *Mincey v. Arizona*, 437 U.S. 385, 390, 98 S.Ct. 2408, 2412, 57 L.Ed.2d 290 (1978); see also *United States v. Place*, 462 U.S. 696, 701, 103 S.Ct. 2637, 2641, 77 L.Ed.2d 110 (1983). One such exception was ***373** recognized in *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968), which held that "where a police officer observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot...," the officer may briefly stop the suspicious person and make "reasonable inquiries" aimed at confirming or dispelling his suspicions. *Id.*, 392 U.S., at 30, 88 S.Ct., at 1884; see also *Adams v. Williams*, 407 U.S. 143, 145–146, 92 S.Ct. 1921, 1922–1923, 32 L.Ed.2d 612 (1972).

****2136** [2][3] *Terry* further held that "[w]hen an officer is justified in believing that the individual whose suspicious behavior he is investigating at close range is armed and presently dangerous to the officer or to others," the officer may conduct a patdown search "to determine whether the person is in fact carrying a weapon." 392 U.S., at 24, 88 S.Ct., at 1881. "The purpose of this limited search is not to discover evidence of crime, but to allow the officer to pursue his investigation without fear of violence...." *Adams, supra,* at 146, 92 S.Ct., at 1923. Rather, a protective search—permitted without a warrant and on the basis of reasonable suspicion less than probable cause—must be strictly "limited to that which is necessary for the discovery of weapons which might be used to harm the officer or others nearby." *Terry, supra,* at 26, 88 S.Ct., at 1882; see also *Michigan v. Long,* 463 U.S. 1032, 1049, and 1052, n. 16, 103 S.Ct. 3469, 3480–3481, and 3482, n. 16, 77 L.Ed.2d 1201 (1983); *Ybarra v. Illinois,* 444 U.S. 85, 93–94, 100 S.Ct. 338, 343–344, 62 L.Ed.2d 238 (1979). If the protective search goes beyond what is necessary to determine if the suspect is armed, it is no longer valid under *Terry* and its fruits will be suppressed. *Sibron v. New York,* 392 U.S. 40, 65–66, 88 S.Ct. 1889, 1904, 20 L.Ed.2d 917 (1968).

[4] These principles were settled 25 years ago when, on the same day, the Court announced its decisions in *Terry* and *Sibron.* The question presented today is whether police officers may seize nonthreatening contraband detected during a protective patdown search of the sort permitted by *Terry.* We think the answer is clearly that they may, so long as the officers' search stays within the bounds marked by *Terry.*

***374 B**

We have already held that police officers, at least under certain circumstances, may seize contraband detected during the lawful execution of a *Terry* search. In *Michigan v. Long, supra,* for example, police approached a man who had driven his car into a ditch and who appeared to be under the influence of some intoxicant. As the man moved to reenter the car from the roadside, police spotted a knife on the floorboard. The officers stopped the man, subjected him to a patdown search, and then inspected the interior of the vehicle for other weapons. During the search of the passenger compartment, the police discovered an open pouch containing marijuana and seized it. This Court upheld the validity of the search and seizure under *Terry.* The Court held first that, in the context of a roadside encounter, where police have reasonable suspicion based on specific and articulable facts to believe that a driver may be armed and dangerous, they may conduct a protective search for weapons not only of the driver's person but also of the passenger compartment of the automobile. 463 U.S., at 1049, 103 S.Ct., at 3480–3481. Of course, the protective search of the vehicle, being justified solely by the danger that weapons stored there could be used against the officers or bystanders, must be "limited to those areas in which a weapon may be placed or hidden." *Ibid.* The Court then held: "If, while conducting a legitimate *Terry* search of the interior of the automobile, the officer should, as here, discover contraband other than weapons, he clearly cannot be required to ignore the contraband, and the Fourth Amendment does not require its suppression in such circumstances." *Id.,* at 1050, 103 S.Ct., at 3481; accord, *Sibron,* 392 U.S., at 69–70, 88 S.Ct., at 1905–1906 (WHITE, J., concurring); *id.,* at 79, 88 S.Ct., at 1910 (Harlan, J., concurring in result).

[5] The Court in *Long* justified this latter holding by reference to our cases under the "plain-view" doctrine. See *Long, supra,* at 1050, 103 S.Ct., at 3481; see also *United States v. Hensley,* 469 U.S. 221, 235, 105 S.Ct. 675, 683–684, 83 L.Ed.2d 604 (1985) (upholding plain-view seizure in context ***375** of *Terry* stop). Under that doctrine, if police are lawfully in a position from which they view an object, if its incriminating character ****2137** is immediately apparent, and if the officers have a lawful right of access to the object, they may seize it without a warrant. See *Horton v. California,* 496 U.S. 128, 136–137, 110 S.Ct. 2301, 2307–2308, 110 L.Ed.2d 112 (1990); *Texas v. Brown,* 460 U.S. 730, 739, 103 S.Ct. 1535, 1541–1542, 75 L.Ed.2d 502 (1983) (plurality opinion). If, however, the police lack probable cause to believe that an object in plain view is contraband without conducting some further search of the object—*i.e.,* if "its incriminating character [is not] 'immediately apparent,' " *Horton, supra,* 496 U.S., at 136, 110 S.Ct., at 2308—the plain-view doctrine cannot justify its seizure. *Arizona v. Hicks,* 480 U.S. 321, 107 S.Ct. 1149, 94 L.Ed.2d 347 (1987).

[6][7][8][9] We think that this doctrine has an obvious application by analogy to cases in which an officer discovers contraband through the sense of

touch during an otherwise lawful search. The rationale of the plain-view doctrine is that if contraband is left in open view and is observed by a police officer from a lawful vantage point, there has been no invasion of a legitimate expectation of privacy and thus no "search" within the meaning of the Fourth Amendment—or at least no search independent of the initial intrusion that gave the officers their vantage point. See *Illinois v. Andreas*, 463 U.S. 765, 771, 103 S.Ct. 3319, 3324, 77 L.Ed.2d 1003 (1983); *Texas v. Brown*, *supra*, at 740, 103 S.Ct., at 1542. The warrantless seizure of contraband that presents itself in this manner is deemed justified by the realization that resort to a neutral magistrate under such circumstances would often be impracticable and would do little to promote the objectives of the Fourth Amendment. See *Hicks*, *supra*, at 326–327, 107 S.Ct., at 1153; *Coolidge v. New Hampshire*, 403 U.S. 443, 467–468, 469–470, 91 S.Ct. 2022, 2028–2029, 2040, 29 L.Ed.2d 564 (1971) (opinion of Stewart, J.). The same can be said of tactile discoveries of contraband. If a police officer lawfully pats down a suspect's outer clothing and feels an object whose contour or mass makes its identity immediately apparent, there has been no invasion of the suspect's privacy beyond that already authorized by the officer's search for weapons; if the object is contraband, its warrantless seizure ***376** would be justified by the same practical considerations that inhere in the plain-view context.[FN3]

> FN3. "[T]he police officer in each [case would have] had a prior justification for an intrusion in the course of which he came inadvertently across a piece of evidence incriminating the accused. The doctrine serves to supplement the prior justification ... and permits the warrantless seizure." *Coolidge v. New Hampshire*, 403 U.S. 443, 466, 91 S.Ct. 2022, 2038, 29 L.Ed.2d 564 (1971) (opinion of Stewart, J.).

[10][11] The Minnesota Supreme Court rejected an analogy to the plain-view doctrine on two grounds: first, its belief that "the sense of touch is inherently less immediate and less reliable than the sense of sight," and second, that "the sense of touch is far more intrusive into the personal privacy that is at the core of the [F]ourth [A]mendment." 481 N.W.2d, at 845. We have a somewhat different view. First, *Terry* itself demonstrates that the sense of touch is capable of revealing the nature of an object with sufficient reliability to support a seizure. The very premise of *Terry*, after all, is that officers will be able to detect the presence of weapons through the sense of touch and *Terry* upheld precisely such a seizure. Even if it were true that the sense of touch is generally less reliable than the sense of sight, that only suggests that officers will less often be able to justify seizures of unseen contraband. Regardless of whether the officer detects the contraband by sight or by touch, however, the Fourth Amendment's requirement that the officer have probable cause to believe that the item is contraband before seizing it ensures against excessively speculative seizures. [FN4] The ***377** court's second concern—that touch is more intrusive into privacy than is ****2138** sight—is inapposite in light of the fact that the intrusion the court fears has already been authorized by the lawful search for weapons. The seizure of an item whose identity is already known occasions no further invasion of privacy. See *Soldal v. Cook County*, 506 U.S. 56, 66, 113 S.Ct. 538, ——, 121 L.Ed.2d 450 (1992); *Horton*, *supra*, at 141, 110 S.Ct., at 2310; *United States v. Jacobsen*, 466 U.S. 109, 120, 104 S.Ct. 1652, 1660, 80 L.Ed.2d 85 (1984). Accordingly, the suspect's privacy interests are not advanced by a categorical rule barring the seizure of contraband plainly detected through the sense of touch.

> FN4. We also note that this Court's opinion in *Ybarra v. Illinois*, 444 U.S. 85, 100 S.Ct. 338, 62 L.Ed.2d 238 (1979), appeared to contemplate the possibility that police officers could obtain probable cause justifying a seizure of contraband through the sense of touch. In that case, police officers had entered a tavern and subjected its patrons to patdown searches. While patting down the petitioner Ybarra, an "officer felt what he described as 'a cigarette pack with objects in it,' " seized it, and discovered heroin inside. *Id.*, at 88–89, 100 S.Ct., at 340–342. The State argued that the seizure was constitutional on the grounds that the officer obtained probable cause to believe that Ybarra was carrying contraband during the course of a lawful *Terry* frisk. *Ybarra*, *supra*, at 92, 100 S.Ct., at 342–343. This Court rejected that argument on the grounds that "[t]he initial frisk of Ybarra was simply not supported by a reasonable belief that he was armed and presently dangerous," as required by *Terry*.

444 U.S., at 92–93, 100 S.Ct., at 343. The Court added: "[s]ince we conclude that the initial patdown of Ybarra was not justified under the Fourth and Fourteenth Amendments, we need not decide whether or not the presence on Ybarra's person of 'a cigarette pack with objects in it' yielded probable cause to believe that Ybarra was carrying any illegal substance." *Id.*, at 93, n. 5, 100 S.Ct., at 343, n. 5. The Court's analysis does not suggest, and indeed seems inconsistent with, the existence of a categorical bar against seizures of contraband detected manually during a *Terry* patdown search.

III

[12] It remains to apply these principles to the facts of this case. Respondent has not challenged the finding made by the trial court and affirmed by both the Court of Appeals and the State Supreme Court that the police were justified under *Terry* in stopping him and frisking him for weapons. Thus, the dispositive question before this Court is whether the officer who conducted the search was acting within the lawful bounds marked by *Terry* at the time he gained probable cause to believe that the lump in respondent's jacket was contraband. The State District Court did not make precise findings on this point, instead finding simply that the officer, after feeling "a small, hard object wrapped in plastic" in respondent's pocket, "formed the opinion that the object ... was crack ... cocaine." App. to Pet. for Cert. C–2. The ***378** District Court also noted that the officer made "no claim that he suspected this object to be a weapon," *id.*, at C–5, a finding affirmed on appeal, see 469 N.W.2d, at 464 (the officer "never thought the lump was a weapon"). The Minnesota Supreme Court, after "a close examination of the record," held that the officer's own testimony "belies any notion that he 'immediately' " recognized the lump as crack cocaine. See 481 N.W.2d, at 844. Rather, the court concluded, the officer determined that the lump was contraband only after "squeezing, sliding and otherwise manipulating the contents of the defendant's pocket"—a pocket which the officer already knew contained no weapon. *Ibid.*

[13] Under the State Supreme Court's interpretation of the record before it, it is clear that the court was correct in holding that the police officer in this case overstepped the bounds of the "strictly circumscribed" search for weapons allowed under *Terry*. See *Terry*, 392 U.S., at 26, 88 S.Ct., at 1882. Where, as here, "an officer who is executing a valid search for one item seizes a different item," this Court rightly "has been sensitive to the danger ... that officers will enlarge a specific authorization, furnished by a warrant or an exigency, into the equivalent of a general warrant to rummage and seize at will." *Texas v. Brown*, 460 U.S., at 748, 103 S.Ct., at 1546–1547 (STEVENS, J., concurring in judgment). Here, the officer's continued exploration of respondent's pocket after having concluded that it contained no ****2139** weapon was unrelated to "[t]he sole justification of the search [under *Terry*:] ... the protection of the police officer and others nearby." 392 U.S., at 29, 88 S.Ct., at 1884. It therefore amounted to the sort of evidentiary search that *Terry* expressly refused to authorize, see *id.*, at 26, 88 S.Ct., at 1882, and that we have condemned in subsequent cases. See *Michigan v. Long*, 463 U.S., at 1049, n. 14, 103 S.Ct., at 3480–3481; *Sibron*, 392 U.S., at 65–66, 88 S.Ct., at 1904.

[14] Once again, the analogy to the plain-view doctrine is apt. In *Arizona v. Hicks*, 480 U.S. 321, 107 S.Ct. 1149, 94 L.Ed.2d 347 (1987), this Court held invalid the seizure of stolen stereo equipment found by police while executing a valid search for other evidence. Although ***379** the police were lawfully on the premises, they obtained probable cause to believe that the stereo equipment was contraband only after moving the equipment to permit officers to read its serial numbers. The subsequent seizure of the equipment could not be justified by the plain-view doctrine, this Court explained, because the incriminating character of the stereo equipment was not immediately apparent; rather, probable cause to believe that the equipment was stolen arose only as a result of a further search—the moving of the equipment—that was not authorized by a search warrant or by any exception to the warrant requirement. The facts of this case are very similar. Although the officer was lawfully in a position to feel the lump in respondent's pocket, because *Terry* entitled him to place his hands upon respondent's jacket, the court below determined that the incriminating character of the object was not immediately apparent to him. Rather, the officer determined that the item was contraband only after conducting a further search, one not authorized by *Terry* or by any other exception to the warrant requirement. Because this further search of respondent's pocket was constitutionally invalid, the seizure of the cocaine that followed is likewise unconstitu-

tional. *Horton*, 496 U.S., at 140, 110 S.Ct., at 2309–2310.

IV

For these reasons, the judgment of the Minnesota Supreme Court is

Affirmed.

Supreme Court of the United States
John W. TERRY, Petitioner,
v.
STATE OF OHIO.

No. 67.
Argued Dec. 12, 1967.
Decided June 10, 1968.

Prosecution for carrying concealed weapon. The Court of Common Pleas of Cuyahoga County, Ohio, overruled pretrial motion to suppress and rendered judgment, and defendant appealed. The Court of Appeals for the Eighth Judicial District, 5 Ohio App.2d 122, 214 N.E.2d 114, affirmed, the Ohio Supreme Court dismissed an appeal on ground that no substantial constitutional question was involved, and certiorari was granted. The Supreme Court, Mr. Chief Justice Warren, held that police officer who observed conduct by defendant and another consistent with hypothesis that they were contemplating daylight robbery, and who approached, identified himself as officer, and asked their names, acted reasonably, when nothing appeared to dispel his reasonable belief of their intent, in seizing defendant in order to search him for weapons, and did not exceed reasonable scope of search in patting down outer clothing of defendants without placing his hands in their pockets or under outer surface of garments until he had felt weapons, and then merely reached for and removed guns.

Affirmed.

Mr. Justice Douglas dissented.

****1871 *4** Louis Stokes, Cleveland, Ohio, for petitioner.

Reuben M. Payne, Cleveland, Ohio, for respondent.

Mr. Chief Justice WARREN delivered the opinion of the Court.

This case presents serious questions concerning the role of the Fourth Amendment in the confrontation on the street between the citizen and the policeman investigating suspicious circumstances.

Petitioner Terry was convicted of carrying a concealed weapon and sentenced to the statutorily prescribed term of one to three years in the penitentiary. [FN1] Following ***5** the denial of a pretrial motion to suppress, the prosecution introduced in evidence two revolvers and a number of bullets seized from Terry and a codefendant, Richard Chilton, [FN2] by Cleveland Police Detective Martin McFadden. At the hearing on the motion to suppress this evidence, Officer McFadden testified that while he was patrolling in plain clothes in downtown Cleveland at approximately 2:30 in the afternoon of October 31, 1963, his attention was attracted by two men, Chilton and Terry, standing on the corner of Huron Road and Euclid Avenue. He had never seen the two men before, and he was unable to say precisely what first drew his eye to them. However, he testified that he had been a policeman for 39 years and a detective for 35 and that he had been assigned to patrol this vicinity of downtown Cleveland for shoplifters and pickpockets for 30 years. He explained that he had developed routine habits of observation over the years and that he would 'stand and watch people or walk and watch people at many intervals of the day.' He added: 'Now, in this case when I looked over they didn't look right to me at the time.'

FN1. Ohio Rev.Code s 2923.01 (1953) provides in part that '(n)o person shall carry a pistol, bowie knife, dirk, or other dangerous weapon concealed on or about his person.' An exception is made for properly authorized law enforcement officers.

FN2. Terry and Chilton were arrested, indicted, tried and convicted together. They were represented by the same attorney, and they made a joint motion to suppress the guns. After the motion was denied, evidence was taken in the case against Chilton. This evidence consisted of the testimony of the arresting officer and of Chilton. It was then

stipulated that this testimony would be applied to the case against Terry, and no further evidence was introduced in that case. The trial judge considered the two cases together, rendered the decisions at the same time and sentenced the two men at the same time. They prosecuted their state court appeals together through the same attorney, and they petitioned this Court for certiorari together. Following the grant of the writ upon this joint petition, Chilton died. Thus, only Terry's conviction is here for review.

His interest aroused, Officer McFadden took up a post of observation in the ****1872** entrance to a store 300 to 400 feet ***6** away from the two men. 'I get more purpose to watch them when I seen their movements,' he testified. He saw one of the men leave the other one and walk southwest on Huron Road, past some stores. The man paused for a moment and looked in a store window, then walked on a short distance, turned around and walked back toward the corner, pausing once again to look in the same store window. He rejoined his companion at the corner, and the two conferred briefly. Then the second man went through the same series of motions, strolling down Huron Road, looking in the same window, walking on a short distance, turning back, peering in the store window again, and returning to confer with the first man at the corner. The two men repeated this ritual alternately between five and six times apiece—in all, roughly a dozen trips. At one point, while the two were standing together on the corner, a third man approached them and engaged them briefly in conversation. This man then left the two others and walked west on Euclid Avenue. Chilton and Terry resumed their measured pacing, peering and conferring. After this had gone on for 10 to 12 minutes, the two men walked off together, heading west on Euclid Avenue, following the path taken earlier by the third man.

By this time Officer McFadden had become thoroughly suspicious. He testified that after observing their elaborately casual and oft-repeated reconnaissance of the store window on Huron Road, he suspected the two men of 'casing a job, a stick-up,' and that he considered it his duty as a police officer to investigate further. He added that he feared 'they may have a gun.' Thus, Officer McFadden followed Chilton and Terry and saw them stop in front of Zucker's store to talk to the same man who had conferred with them earlier on the street corner. Deciding that the situation was ripe for direct action, Officer McFadden approached the three men, identified***7** himself as a police officer and asked for their names. At this point his knowledge was confined to what he had observed. He was not acquainted with any of the three men by name or by sight, and he had received no information concerning them from any other source. When the men 'mumbled something' in response to his inquiries, Officer McFadden grabbed petitioner Terry, spun him around so that they were facing the other two, with Terry between McFadden and the others, and patted down the outside of his clothing. In the left breast pocket of Terry's overcoat Officer McFadden felt a pistol. He reached inside the overcoat pocket, but was unable to remove the gun. At this point, keeping Terry between himself and the others, the officer ordered all three men to enter Zucker's store. As they went in, he removed Terry's overcoat completely, removed a .38-caliber revolver from the pocket and ordered all three men to face the wall with their hands raised. Officer McFadden proceeded to pat down the outer clothing of Chilton and the third man, Katz. He discovered another revolver in the outer pocket of Chilton's overcoat, but no weapons were found on Katz. The officer testified that he only patted the men down to see whether they had weapons, and that he did not put his hands beneath the outer garments of either Terry or Chilton until he felt their guns. So far as appears from the record, he never placed his hands beneath Katz' outer garments. Officer McFadden seized Chilton's gun, asked the proprietor of the store to call a police wagon, and took all three men to the station, where Chilton and Terry were formally charged with carrying concealed weapons.

On the motion to suppress the guns the prosecution took the position that they had been seized following a search incident to a lawful arrest. The trial court rejected this theory, stating that it 'would be stretching the facts beyond reasonable comprehension' to find that Officer ***8** McFadden had had probable ****1873** cause to arrest the men before he patted them down for weapons. However, the court denied the defendants' motion on the ground that Officer McFadden, on the basis of his experience, 'had reasonable cause to believe * * * that the defendants were conducting themselves suspiciously, and some interrogation should be made of their action.' Purely for his own protection, the court held, the officer had

the right to pat down the outer clothing of these men, who he had reasonable cause to believe might be armed. The court distinguished between an investigatory 'stop' and an arrest, and between a 'frisk' of the outer clothing for weapons and a full-blown search for evidence of crime. The frisk, it held, was essential to the proper performance of the officer's investigatory duties, for without it 'the answer to the police officer may be a bullet, and a loaded pistol discovered during the frisk is admissible.'

[1] After the court denied their motion to suppress, Chilton and Terry waived jury trial and pleaded not guilty. The court adjudged them guilty, and the Court of Appeals for the Eighth Judicial District, Cuyahoga County, affirmed. State v. Terry, 5 Ohio App.2d 122, 214 N.E.2d 114 (1966). The Supreme Court of Ohio dismissed their appeal on the ground that no 'substantial constitutional question' was involved. We granted certiorari, 387 U.S. 929, 87 S.Ct. 2050, 18 L.Ed.2d 989 (1967), to determine whether the admission of the revolvers in evidence violated petitioner's rights under the Fourth Amendment, made applicable to the States by the Fourteenth. Mapp v. Ohio, 367 U.S. 643, 81 S.Ct. 1684, 6 L.Ed.2d 1081 (1961). We affirm the conviction.

I.

[2][3][4][5] The Fourth Amendment provides that 'the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated * * *.' This inestimable right of ***9** personal security belongs as much to the citizen on the streets of our cities as to the homeowner closeted in his study to dispose of his secret affairs. For, as this Court has always recognized,

'No right is held more sacred, or is more carefully guarded, by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law.' Union Pac. R. Co. v. Botsford, 141 U.S. 250, 251, 11 S.Ct. 1000, 1001, 35 L.Ed. 734 (1891).

We have recently held that 'the Fourth Amendment protects people, not places,' Katz v. United States, 389 U.S. 347, 351, 88 S.Ct. 507, 511, 19 L.Ed.2d 576 (1967), and wherever an individual may harbor a reasonable 'expectation of privacy,' id., at 361, 88 S.Ct. at 507, (Mr. Justice Harlan, concurring), he is entitled to be free from unreasonable governmental intrusion. Of course, the specific content and incidents of this right must be shaped by the context in which it is asserted. For 'what the Constitution forbids is not all searches and seizures, but unreasonable searches and seizures.' Elkins v. United States, 364 U.S. 206, 222, 80 S.Ct. 1437, 1446, 4 L.Ed.2d 1669 (1960). Unquestionably petitioner was entitled to the protection of the Fourth Amendment as he walked down the street in Cleveland. Beck v. State of Ohio, 379 U.S. 89, 85 S.Ct. 223, 13 L.Ed.2d 142 (1964); Rios v. United States, 364 U.S. 253, 80 S.Ct. 1431, 4 L.Ed.2d 1688 (1960); Henry v. United States, 361 U.S. 98, 80 S.Ct. 168, 4 L.Ed.2d 134 (1959); United States v. Di Re, 332 U.S. 581, 68 S.Ct. 222, 92 L.Ed. 210 (1948); Carroll v. United States, 267 U.S. 132, 45 S.Ct. 280, 69 L.Ed. 543 (1925). The question is whether in all the circumstances of this on-the-street encounter, his right to personal security was violated by an unreasonable search and seizure.

****1874** We would be less than candid if we did not acknowledge that this question thrusts to the fore difficult and troublesome issues regarding a sensitive area of police activity—issues which have never before been squarely ***10** presented to this Court. Reflective of the tensions involved are the practical and constitutional arguments pressed with great vigor on both sides of the public debate over the power of the police to 'stop and frisk' —as it is sometimes euphemistically termed—suspicious persons.

On the one hand, it is frequently argued that in dealing with the rapidly unfolding and often dangerous situations on city streets the police are in need of an escalating set of flexible responses, graduated in relation to the amount of information they possess. For this purpose it is urged that distinctions should be made between a 'stop' and an 'arrest' (or a 'seizure' of a person), and between a 'frisk' and a 'search.'[FN3] Thus, it is argued, the police should be allowed to 'stop' a person and detain him briefly for questioning upon suspicion that he may be connected with criminal activity. Upon suspicion that the person may be armed, the police should have the power to 'frisk' him for weapons. If the 'stop' and the 'frisk' give rise to probable cause to believe that the suspect has committed a crime, then the police should be empowered to make a formal 'arrest,' and a full incident 'search' of the person. This scheme is justified in part

upon the notion that a 'stop' and a 'frisk' amount to a mere 'minor inconvenience and petty indignity,'[FN4] which can properly be imposed upon the ***11** citizen in the interest of effective law enforcement on the basis of a police officer's suspicion.[FN5]

FN3. Both the trial court and the Ohio Court of Appeals in this case relied upon such a distinction. State v. Terry, 5 Ohio App.2d 122, 125—130, 214 N.E.2d 114, 117—120 (1966). See also, e.g., People v. Rivera, 14 N.Y.2d 441, 252 N.Y.S.2d 458, 201 N.E.2d 32 (1964), cert. denied, 379 U.S. 978, 85 S.Ct. 679, 13 L.Ed.2d 568 (1965); Aspen, Arrest and Arrest Alternatives: Recent Trends, 1966 U.Ill..l.F. 241, 249—254; Warner, The Uniform Arrest Act, 28 Va.L.Rev. 315 (1942); Note, Stop and Frisk in California, 18 Hastings L.J. 623, 629—632 (1967).

FN4. People v. Rivera, supra, n. 3, at 447, 252 N.Y.S.2d, at 464, 201 N.E.2d, at 36.

FN5. The theory is well laid out in the Rivera opinion:

'(T)he evidence needed to make the inquiry is not of the same degree of conclusiveness as that required for an arrest. The stopping of the individual to inquire is not an arrest and the ground upon which the police may make the inquiry may be less incriminating than the ground for an arrest for a crime known to have been committed. * * *

'And as the right to stop and inquire is to be justified for a cause less conclusive then that which would sustain an arrest, so the right to frisk may be justified as an incident to inquiry upon grounds of elemental safety and precaution which might not initially sustain a search. Ultimately the validity of the frisk narrows down to whether there is or is not a right by the police to touch the person questioned. The sense of exterior touch here involved is not very far different from the sense of sight or hearing—senses upon which police customarily act.' People v. Rivera, 14 N.Y.2d 441, 445, 447, 252 N.Y.S.2d 458, 461, 463, 201 N.E.2d 32, 34, 35 (1964), cert. denied, 379 U.S. 978, 85 S.Ct. 679, 13 L.Ed.2d 568 (1965).

On the other side the argument is made that the authority of the police must be strictly circumscribed by the law of arrest and search as it has developed to date in the traditional jurisprudence of the Fourth Amendment.[FN6] It is contended with some force that there is not—and cannot be—a variety of police activity which does not depend solely upon the voluntary cooperation of the citizen and yet which stops short of an arrest based upon probable cause to make such an arrest. The heart of the Fourth Amendment, the argument ****1875** runs, is a severe requirement of specific justification for any intrusion upon protected personal security, coupled with a highly developed system of judicial controls to enforce upon the agents of the State the commands of the Constitution. Acquiescence by the courts in the compulsion inherent ***12** in the field interrogation practices at issue here, it is urged, would constitute an abdication of judicial control over, and indeed an encouragement of, substantial interference with liberty and personal security by police officers whose judgment is necessarily colored by their primary involvement in 'the often competitive enterprise of ferreting out crime.' Johnson v. United States, 333 U.S. 10, 14, 68 S.Ct. 367, 369, 92 L.Ed. 436 (1948). This, it is argued, can only serve to exacerbate police-community tensions in the crowded centers of our Nation's cities.[FN7]

FN6. See, e.g., Foote, The Fourth Amendment: Obstacle or Necessity in the Law of Arrest?, 51 J.Crim.L.C. & P.S. 402 (1960).

FN7. See n. 11, infra.

[6][7] In this context we approach the issues in this case mindful of the limitations of the judicial function in controlling the myriad daily situations in which policemen and citizens confront each other on the street. The State has characterized the issue here as 'the right of a police officer * * * to make an on-the-street stop, interrogate and pat down for weapons (known in street vernacular as 'stop and frisk').'[FN8] But this is only partly accurate. For the issue is not the abstract propriety of the police conduct, but the admissibility against petitioner of the evidence uncovered by the search and seizure. Ever since its inception, the rule excluding evidence seized in violation of the Fourth Amendment has been recognized

as a principal mode of discouraging lawless police conduct. See Weeks v. United States, 232 U.S. 383, 391—393, 34 S.Ct. 341, 344, 58 L.Ed. 652 (1914). Thus its major thrust is a deterrent one, see Linkletter v. Walker, 381 U.S. 618, 629—635, 85 S.Ct. 1731, 1741, 14 L.Ed.2d 601 (1965), and experience has taught that it is the only effective deterrent to police misconduct in the criminal context, and that without it the constitutional guarantee against unreasonable searches and seizures would be a mere 'form of words.' Mapp v. Ohio, 367 U.S. 643, 655, 81 S.Ct. 1684, 1692, 6 L.Ed.2d 1081 (1961). The rule also serves another vital function—'the imperative of judicial integrity.' ***13**Elkins v. United States, 364 U.S. 206, 222, 80 S.Ct. 1437, 1447, 4 L.Ed.2d 1669 (1960). Courts which sit under our Constitution cannot and will not be made party to lawless invasions of the constitutional rights of citizens by permitting unhindered governmental use of the fruits of such invasions. Thus in our system evidentiary rulings provide the context in which the judicial process of inclusion and exclusion approves some conduct as comporting with constitutional guarantees and disapproves other actions by state agents. A ruling admitting evidence in a criminal trial, we recognize, has the necessary effect of legitimizing the conduct which produced the evidence, while an application of the exclusionary rule withholds the constitutional imprimatur.

FN8. Brief for Respondent 2.

[8] The exclusionary rule has its limitations, however, as a tool of judicial control. It cannot properly be invoked to exclude the products of legitimate police investigative techniques on the ground that much conduct which is closely similar involves unwarranted intrusions upon constitutional protections. Moreover, in some contexts the rule is ineffective as a deterrent. Street encounters between citizens and police officers are incredibly rich in diversity. They range from wholly friendly exchanges of pleasantries or mutually useful information to hostile confrontations of armed men involving arrests, or injuries, or loss of life. Moreover, hostile confrontations are not all of a piece. Some of them begin in a friendly enough manner, only to take a ****1876** different turn upon the injection of some unexpected element into the conversation. Encounters are initiated by the police for a wide variety of purposes, some of which are wholly unrelated to a desire to prosecute for crime.[FN9] Doubtless some ***14** police 'field interrogation' conduct violates the Fourth Amendment. But a stern refusal by this Court to condone such activity does not necessarily render it responsive to the exclusionary rule. Regardless of how effective the rule may be where obtaining convictions is an important objective of the police,[FN10] it is powerless to deter invasions of constitutionally guaranteed rights where the police either have no interest in prosecuting or are willing to forgo successful prosecution in the interest of serving some other goal.

FN9. See L. Tiffany, D. McIntyre & D. Rotenberg, Detection of Crime: Stopping and Questioning, Search and Seizure, Encouragement and Entrapment 18—56 (1967). This sort of police conduct may, for example, be designed simply to help an intoxicated person find his way home, with no intention of arresting him unless he becomes obstreperous. Or the police may be seeking to mediate a domestic quarrel which threatens to erupt into violence. They may accost a woman in an area known for prostitution as part of a harassment campaign designed to drive prostitutes away without the considerable difficulty involved in prosecuting them. Or they may be conducting a dragnet search of all teenagers in a particular section of the city for weapons because they have heard rumors of an impending gang fight.

FN10. See Tiffany, McIntyre & Rotenberg, supra, n. 9, at 100—101; Comment, 47 Nw.U.L.Rev. 493, 497—499 (1952).

[9] Proper adjudication of cases in which the exclusionary rule is invoked demands a constant awareness of these limitations. The wholesale harassment by certain elements of the police community, of which minority groups, particularly Negroes, frequently complain,[FN11] will not be ***15** stopped by the exclusion of any evidence from any criminal trial. Yet a rigid and unthinking application of the exclusionary rule, in futile protest against practices which it can never be used effectively to control, may exact a high toll in human injury and frustration of efforts to prevent crime. No judicial opinion can comprehend the protean variety of the street encounter, and we can only judge the facts of the case before us. Nothing we say today is to be taken as indicating approval of police conduct outside the legitimate in-

vestigative sphere. Under our decision, courts still retain their traditional responsibility to guard against police conduct which is over-bearing or harassing, or which trenches upon personal security without the objective evidentiary justification which the Constitution requires. When such conduct is identified, it must be condemned by the judiciary and its fruits must be excluded from evidence in criminal trials. And, of course, our approval of legitimate and restrained investigative conduct undertaken**1877 on the basis of ample factual justification should in no way discourage the employment of other remedies than the exclusionary rule to curtail abuses for which that sanction may prove inappropriate.

> FN11. The President's Commission on Law Enforcement and Administration of Justice found that '(i)n many communities, field interrogations are a major source of friction between the police and minority groups.' President's Commission on Law Enforcement and Administration of Justice, Task Force Report: The Police 183 (1967). It was reported that the friction caused by '(m)isuse of field interrogations' increases 'as more police departments adopt 'aggressive patrol' in which officers are encouraged routinely to stop and question persons on the street who are unknown to them, who are suspicious, or whose purpose for being abroad is not readily evident.' Id., at 184. While the frequency with which 'frisking' forms a part of field interrogation practice varies tremendously with the locale, the objective of the interrogation, and the particular officer, see Tiffany, McIntyre & Rotenberg, supra, n. 9, at 47—48, it cannot help but be a severely exacerbating factor in police-community tensions. This is particularly true in situations where the 'stop and frisk' of youths or minority group members is 'motivated by the officers' perceived need to maintain the power image of the beat officer, an aim sometimes accomplished by humiliating anyone who attempts to undermine police control of the streets.' Ibid.

Having thus roughly sketched the perimeters of the constitutional debate over the limits on police investigative conduct in general and the background against which this case presents itself, we turn our attention to the quite narrow question posed by the facts before us: whether it is always unreasonable for a policeman to seize a person and subject him to a limited search for weapons unless there is probable cause for an arrest. *16 Given the narrowness of this question, we have no occasion to canvass in detail the constitutional limitations upon the scope of a policeman's power when he confronts a citizen without probable cause to arrest him.

II.

[10][11][12] Our first task is to establish at what point in this encounter the Fourth Amendment becomes relevant. That is, we must decide whether and when Officer McFadden 'seized' Terry and whether and when he conducted a 'search.' There is some suggestion in the use of such terms as 'stop' and 'frisk' that such police conduct is outside the purview of the Fourth Amendment because neither action rises to the level of a 'search' or 'seizure' within the meaning of the Constitution.[FN12] We emphatically reject this notion. It is quite plain that the Fourth Amendment governs 'seizures' of the person which do not eventuate in a trip to the station house and prosecution for crime—'arrests' in traditional terminology. It must be recognized that whenever a police officer accosts an individual and restrains his freedom to walk away, he has 'seized' that person. And it is nothing less than sheer torture of the English language to suggest that a careful exploration of the outer surfaces of a person's clothing all over his or her body in an attempt to find weapons is not a 'search,' Moreover, it is simply fantastic to urge that such a procedure *17 performed in public by a policeman while the citizen stands helpless, perhaps facing a wall with his hands raised, is a 'petty indignity.'[FN13] It is a serious intrusion upon the sanctity of the person, which may inflict great indignity and arouse strong resentment, and it is not to be undertaken lightly.[FN14]

> FN12. In this case, for example, the Ohio Court of Appeals stated that 'we must be careful to distinguish that the 'frisk' authorized herein includes only a 'frisk' for a dangerous weapon. It by no means authorizes a search for contraband, evidentiary material, or anything else in the absence of reasonable grounds to arrest. Such a search is controlled by the requirements of the Fourth Amendment, and probable cause is essential.' State v. Terry, 5 Ohio App.2d 122, 130, 214

N.E.2d 114, 120 (1966). See also, e.g., Ellis v. United States, 105 U.S.App.D.C. 86, 88, 264 F.2d 372, 374 (1959); Comment, 65 Col.L.Rev. 848, 860 and n. 81 (1965).

FN13. Consider the following apt description:

'(T)he officer must feel with sensitive fingers every portion of the prisoner's body. A through search must be made of the prisoner's arms and armpits, waistline and back, the groin and area about the testicles, and entire surface of the legs down to the feet.' Priar & Martin, Searching and Disarming Criminals, 45 J.Crim.L.C. & P.S. 481 (1954).

FN14. See n. 11, supra, and accompanying text.

We have noted that the abusive practices which play a major, though by no means exclusive, role in creating this friction are not susceptible of control by means of the exclusionary rule, and cannot properly dictate our decision with respect to the powers of the police in genuine investigative and preventive situations. However, the degree of community resentment aroused by particular practices is clearly revelant to an assessment of the quality of the intrusion upon reasonable expectations of personal security caused by those practices.

[13][14] The danger in the logic which proceeds upon distinctions between ****1878** a 'stop' and an 'arrest,' or 'seizure' of the person, and between a 'frisk' and a 'search' is twofold. It seeks to isolate from constitutional scrutiny the initial stages of the contact between the policeman and the citizen. And by suggesting a rigid all-or-nothing model of justification and regulation under the Amendment, it obscures the utility of limitations upon the scope, as well as the initiation, of police action as a means of constitutional regulation. FN15 This Court has held in ***18** the past that a search which is reasonable at its inception may violate the Fourth Amendment by virtue of its intolerable intensity and scope. Kremen v. United States, 353 U.S. 346, 77 S.Ct. 828, 1 L.Ed.2d 876 (1957); ***19**Go-Bart Importing Co. v. United States, 282 U.S. 344, 356—358, 51 S.Ct. 153, 158, 75 L.Ed. 374 (1931); see United States v. Di Re, 332 U.S. 581, 586—587, 68 S.Ct. 222, 225, 92 L.Ed. 210 (1948). The scope of the search must be 'strictly tied to and justified by' the circumstances which rendered its initiation permissible. Warden v. Hayden, 387 U.S. 294, 310, 87 S.Ct. 1642, 1652 (1967) (Mr. Justice Fortas, concurring); see e.g., Preston v. United States, 376 U.S. 364, 367—368, 84 S.Ct. 881, 884, 11 L.Ed.2d 777 (1964); Agnello v. United States, 269 U.S. 20, 30—31, 46 S.Ct. 4, 6, 70 L.Ed. 145 (1925).

FN15. These dangers are illustrated in part by the course of adjudication in the Court of Appeals of New York. Although its first decision in this area, People v. Rivera, 14 N.Y.2d 441, 252 N.Y.S.2d 458, 201 N.E.2d 32 (1964), cert. denied, 379 U.S. 978, 85 S.Ct. 679, 13 L.Ed.2d 568 (1965), rested squarely on the notion that a 'frisk' was not a 'search,' see nn. 3—5, supra, it was compelled to recognize in People v. Taggart, 20 N.Y.2d 335, 342, 283 N.Y.S.2d 1, 8, 229 N.E.2d 581, 586, (1967), that what it had actually authorized in Rivera, and subsequent decisions, see, e.g., People v. Pugach, 15 N.Y.2d 65, 255 N.Y.S.2d 833, 204 N.E.2d 176 (1964), cert. denied, 380 U.S. 936, 85 S.Ct. 946, 13 L.Ed.2d 823 (1965), was a 'search' upon less than probable cause. However, in acknowledging that no valid distinction could be maintained on the basis of its cases, the Court of Appeals continued to distinguish between the two in theory. It still defined 'search' as it had in Rivera—as an essentially unlimited examination of the person for any and all seizable items—and merely noted that the cases had upheld police intrusions which went far beyond the original limited conception of a 'frisk.' Thus, principally because it failed to consider limitations upon the scope of searches in individual cases as a potential mode of regulation, the Court of Appeals in three short years arrived at the position that the Constitution must, in the name of necessity, be held to permit unrestrained rummaging about a person and his effects upon mere suspicion. It did apparently limit its holding to 'cases involving serious personal injury or grave irreparable property damage,' thus excluding those involving 'the enforcement of

> sumptuary laws, such as gambling, and laws of limited public consequence, such as narcotics violations, prostitution, larcenies of the ordinary kind, and the like.' People v. Taggart, supra, at 340, 283 N.Y.S.2d at 6, 229 N.E.2d at 584.
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> In our view the sounder course is to recognize that the Fourth Amendment governs all intrusions by agents of the public upon personal security, and to make the scope of the particular intrusion, in light of all the exigencies of the case, a central element in the analysis of reasonableness. Cf. Brinegar v. United States, 338 U.S. 160, 183, 69 S.Ct. 1302, 1314, 93 L.Ed. 1879 (1949) (Mr. Justice Jackson, dissenting). Compare Camara v. Municipal Court, 387 U.S. 523, 537, 87 S.Ct. 1727, 1735, 18 L.Ed.2d 930 (1967). This seems preferable to an approach which attributes too much significance to an overly technical definition of 'search,' and which turns in part upon a judge-made hierarchy of legislative enactments in the criminal sphere. Focusing the inquiry squarely on the dangers and demands of the particular situation also seems more likely to produce rules which are intelligible to the police and the public alike than requiring the officer in the heat of an unfolding encounter on the street to make a judgment as to which laws are 'of limited public consequence.'

The distinctions of classical 'stop-and-frisk' theory thus serve to divert attention from the central inquiry under the Fourth Amendment—the reasonableness in all the circumstances of the particular**1879 governmental invasion of a citizen's personal security. 'Search' and 'seizure' are not talismans. We therefore reject the notions that the Fourth Amendment does not come into play at all as a limitation upon police conduct if the officers stop short of something called a 'technical arrest' or a 'full-blown search.'

[15][16] In this case there can be no question, then, that Officer McFadden 'seized' petitioner and subjected him to a 'search' when he took hold of him and patted down the outer surfaces of his clothing. We must decide whether at that point it was reasonable for Officer McFadden to have interfered with petitioner's personal security as he did.[FN16] And in determining whether the seizure and search were 'unreasonable' our inquiry ***20** is a dual one—whether the officer's action was justified at its inception, and whether it was reasonably related in scope to the circumstances which justified the interference in the first place.

> FN16. We thus decide nothing today concerning the constitutional propriety of an investigative 'seizure' upon less than probable cause for purposes of 'detention' and/or interrogation. Obviously, not all personal intercourse between policemen and citizens involves 'seizures' of persons. Only when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen may we conclude that a 'seizure' has occurred. We cannot tell with any certainty upon this record whether any such 'seizure' took place here prior to Officer McFadden's initiation of physical contact for purposes of searching Terry for weapons, and we thus may assume that up to that point no intrusion upon constitutionally protected rights had occurred.

III.

[17][18][19] If this case involved police conduct subject to the Warrant Clause of the Fourth Amendment, we would have to ascertain whether 'probable cause' existed to justify the search and seizure which took place. However, that is not the case. We do not retreat from our holdings that the police must, whenever practicable, obtain advance judicial approval of searches and seizures through the warrant procedure, see e.g., Katz v. United States, 389 U.S. 347, 88 S.Ct. 507, 19 L.Ed.2d 576 (1967); Beck v. State of Ohio, 379 U.S. 89, 96, 85 S.Ct. 223, 228, 13 L.Ed.2d 142 (1964); Chapman v. United States, 365 U.S. 610, 81 S.Ct. 776, 5 L.Ed.2d 828 (1961), or that in most instances failure to comply with the warrant requirement can only be excused by exigent circumstances, see, e.g., Warden v. Hayden, 387 U.S. 294, 87 S.Ct. 1642, 18 L.Ed.2d 782 (1967) (hot pursuit); cf. Preston v. United States, 376 U.S. 364, 367—368, 84 S.Ct. 881, 884, 11 L.Ed.2d 777 (1964). But we deal here with an entire rubric of police conduct—necessarily swift action predicated upon the on-the-spot observations of the officer on the beat—which historically has not been, and as a practical matter

could not be, subjected to the warrant procedure. Instead, the conduct involved in this case must be tested by the Fourth Amendment's general proscription against unreasonable searches and seizures.[FN17]

FN17. See generally Leagre, The Fourth Amendment and the Law of Arrest, 54 J. Crim.L.C. & P.S. 393, 396—403 (1963).

Nonetheless, the notions which underlie both the warrant procedure and the requirement of probable cause remain fully relevant in this context. In order to assess the reasonableness of Officer McFadden's conduct as a general proposition, it is necessary 'first to focus upon ***21** the governmental interest which allegedly justifies official intrusion upon the constitutionally protected interests of the private citizen,' for there is 'no ready test for determining reasonableness other than by balancing the need to search (or seize) against the invasion which the search (or seizure) entails.' ****1880**Camara v. Municipal Court, 387 U.S. 523, 534—535, 536—537, 87 S.Ct. 1727, 1735, 18 L.Ed.2d 930 (1967). And in justifying the particular intrusion the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.[FN18] The scheme of the Fourth Amendment becomes meaningful only when it is assured that at some point the conduct of those charged with enforcing the laws can be subjected to the more detached, neutral scrutiny of a judge who must evaluate the reasonableness of a particular search or seizure in light of the particular circumstances.[FN19] And in making that assessment it is imperative that the facts be judged against an objective standard: would the facts ***22** available to the officer at the moment of the seizure or the search 'warrant a man of reasonable caution in the belief' that the action taken was appropriate? Cf. Carroll v. United States, 267 U.S. 132, 45 S.Ct. 280, 69 L.Ed. 543 (1925); Beck v. State of Ohio, 379 U.S. 89, 96—97, 85 S.Ct. 223, 229, 13 L.Ed.2d 142 (1964).[FN20] Anything less would invite intrusions upon constitutionally guaranteed rights based on nothing more substantial than inarticulate hunches, a result this Court has consistently refused to sanction. See, e.g., Beck v. Ohio, supra; Rios v. United States, 364 U.S. 253, 80 S.Ct. 1431, 4 L.Ed.2d 1688 (1960); Henry v. United States, 361 U.S. 98, 80 S.Ct. 168, 4 L.Ed.2d 134 (1959). And simple "good faith on the part of the arresting officer is not enough.' * * * If subjective good faith alone were the test, the protections of the Fourth Amendment would evaporate, and the people would be 'secure in their persons, houses, papers and effects,' only in the discretion of the police.' Beck v. Ohio, supra, at 97, 85 S.Ct. at 229.

FN18. This demand for specificity in the information upon which police action is predicated is the central teaching of this Court's Fourth Amendment jurisprudence. See Beck v. State of Ohio, 379 U.S. 89, 96—97, 85 S.Ct. 223, 229, 13 L.Ed.2d 142 (1964); Ker v. State of California, 374 U.S. 23, 34—37, 83 S.Ct. 1623, 1632, 10 L.Ed.2d 726 (1963); Wong Sun v. United States, 371 U.S. 471, 479—484, 83 S.Ct. 407, 416, 9 L.Ed.2d 441 (1963); Rios v. United States, 364 U.S. 253, 261—262, 80 S.Ct. 1431, 1437, 4 L.Ed.2d 1688 (1960); Henry v. United States, 361 U.S. 98, 100—102, 80 S.Ct. 168, 171, 4 L.Ed.2d 134 (1959); Draper v. United States, 358 U.S. 307, 312—314, 79 S.Ct. 329, 333, 3 L.Ed.2d 327 (1959); Brinegar v. United States, 338 U.S. 160, 175—178, 69 S.Ct. 1302, 1312, 93 L.Ed. 1879 (1949); Johnson v. United States, 333 U.S. 10, 15—17, 68 S.Ct. 367, 371, 92 L.Ed. 436 (1948); United States v. Di Re, 332 U.S. 581, 593—595, 68 S.Ct. 222, 229, 92 L.Ed. 210 (1948); Husty v. United States, 282 U.S. 694, 700—701, 51 S.Ct. 240, 242, 75 L.Ed. 629 (1931); Dunbra v. United States, 268 U.S. 435, 441, 45 S.Ct. 546, 549, 69 L.Ed. 1032 (1925); Carroll v. United States, 267 U.S. 132, 159—162, 45 S.Ct. 280, 288, 69 L.Ed. 543 (1925); Stacey v. Emery, 97 U.S. 642, 645, 24 L.Ed. 1035 (1878).

FN19. See, e.g., Katz v. United States, 389 U.S. 347, 354—357, 88 S.Ct. 507, 514, 19 L.Ed.2d 576 (1967); Berger v. State of New York, 388 U.S. 41, 54—60, 87 S.Ct. 1873, 1884, 18 L.Ed.2d 1040 (1967); Johnson v. United States, 333 U.S. 10, 13—15, 68 S.Ct. 367, 369, 92 L.Ed. 436 (1948); **cf.** Wong Sun v. United States, 371 U.S. 471, 479—480, 83 S.Ct. 407, 413, 9 L.Ed.2d 441 (1963). See also Aguilar v. State of Texas, 378 U.S. 108, 110—115, 84 S.Ct. 1509, 1514, 12 L.Ed.2d 723 (1964).

FN20. See also cases cited in n. 18, supra.

[20][21] Applying these principles to this case, we consider first the nature and extent of the governmental interests involved. One general interest is of course that of effective crime prevention and detection; it is this interest which underlies the recognition that a police officer may in appropriate circumstances and in an appropriate manner approach a person for purposes of investigating possibly criminal behavior even though there is no probable cause to make an arrest. It was this legitimate investigative function Officer McFadden was discharging when he decided to approach petitioner and his companions. He had observed Terry, Chilton, and Katz go Through a series of acts, each of them perhaps innocent**1881 in itself, but which taken together warranted further investigation. There is nothing unusual in two men standing together on a street corner, perhaps waiting for someone. Nor is there anything suspicious about people *23 in such circumstances strolling up and down the street, singly or in pairs. Store windows, moreover, are made to be looked in. But the story is quite different where, as here, two men hover about a street corner for an extended period of time, at the end of which it becomes apparent that they are not waiting for anyone or anything; where these men pace alternately along an identical route, pausing to stare in the same store window roughly 24 times; where each completion of this route is followed immediately by a conference between the two men on the corner; where they are joined in one of these conferences by a third man who leaves swiftly; and where the two men finally follow the third and rejoin him a couple of blocks away. It would have been poor police work indeed for an officer of 30 years' experience in the detection of thievery from stores in this same neighborhood to have failed to investigate this behavior further.

The crux of this case, however, is not the propriety of Officer McFadden's taking steps to investigate petitioner's suspicious behavior, but rather, whether there was justification for McFadden's invasion of Terry's personal security by searching him for weapons in the course of that investigation. We are now concerned with more than the governmental interest in investigating crime; in addition, there is the more immediate interest of the police officer in taking steps to assure himself that the person with whom he is dealing is not armed with a weapon that could unexpectedly and fatally be used against him. Certainly it would be unreasonable to require that police officers take unnecessary risks in the performance of their duties. American criminals have a long tradition of armed violence, and every year in this country many law enforcement officers are killed in the line of duty, and thousands more are wounded. *24 Virtually all of these deaths and a substantial portion of the injuries are inflicted with guns and knives.FN21

FN21. Fifty-seven law enforcement officers were killed in the line of duty in this country in 1966, bringing the total to 335 for the seven-year period beginning with 1960. Also in 1966, there were 23,851 assaults on police officers, 9,113 of which resulted in injuries to the policeman. Fifty-five of the 57 officers killed in 1966 died from gunshot wounds, 41 of them inflicted by handguns easily secreted about the person. The remaining two murders were perpetrated by knives. See Federal Bureau of Investigation, Uniform Crime Reports for the United States—1966, at 45—48, 152 and Table 51.

The easy availability of firearms to potential criminals in this country is well known and has provoked much debate. See, e.g., President's Commission on Law Enforcement and Administration of Justice, The Challenge of Crime in a Free Society 239-243 (1967). Whatever the merits of gun-control proposals, this fact is relevant to an assessment of the need for some form of self-protective search power.

In view of these facts, we cannot blind ourselves to the need for law enforcement officers to protect themselves and other prospective victims of violence in situations where they may lack probable cause for an arrest. When an officer is justified in believing that the individual whose suspicious behavior he is investigating at close range is armed and presently dangerous to the officer or to others, it would appear to be clearly unreasonable to deny the officer the power to take necessary measures to determine whether the person is in fact carrying a weapon and to neutralize the threat of physical harm.

We must still consider, however, the nature and quality of the intrusion on individual rights which

must be accepted if police officers are to be conceded the right to search for weapons in situations where probable cause to arrest for crime is lacking. Even a limited search of the **1882 outer clothing for weapons constitutes a severe, *25 though brief, intrusion upon cherished personal security, and it must surely be an annoying, frightening, and perhaps humiliating experience. Petitioner contends that such an intrusion is permissible only incident to a lawful arrest, either for a crime involving the possession of weapons or for a crime the commission of which led the officer to investigate in the first place. However, this argument must be closely examined.

Petitioner does not argue that a police officer should refrain from making any investigation of suspicious circumstances until such time as he has probable cause to make an arrest; nor does he deny that police officers in properly discharging their investigative function may find themselves confronting persons who might well be armed and dangerous. Moreover, he does not say that an officer is always unjustified in searching a suspect to discover weapons. Rather, he says it is unreasonable for the policeman to take that step until such time as the situation evolves to a point where there is probable cause to make an arrest. When that point has been reached, petitioner would concede the officer's right to conduct a search of the suspect for weapons, fruits or instrumentalities of the crime, or 'mere' evidence, incident to the arrest.

[22][23] There are two weaknesses in this line of reasoning however. First, it fails to take account of traditional limitations upon the scope of searches, and thus recognizes no distinction in purpose, character, and extent between a search incident to an arrest and a limited search for weapons. The former, although justified in part by the acknowledged necessity to protect the arresting officer from assault with a concealed weapon, Preston v. United States, 376 U.S. 364, 367, 84 S.Ct. 881, 883, 11 L.Ed.2d 777 (1964), is also justified on other grounds, ibid., and can therefore involve a relatively extensive exploration of the person. A search for weapons in the absence of probable cause to *26 arrest, however, must, like any other search, be strictly circumscribed by the exigencies which justify its initiation. Warden v. Hayden, 387 U.S. 294, 310, 87 S.Ct. 1642, 1652, 18 L.Ed.2d 782 (1967) (Mr. Justice Fortas, concurring). Thus it must be limited to that which is necessary for the discovery of weapons which might be used to harm the officer or others nearby, and may realistically be characterized as something less than a 'full' search, even though it remains a serious intrusion.

[24][25] A second, and related, objection to petitioner's argument is that it assumes that the law of arrest has already worked out the balance between the particular interests involved here—the neutralization of danger to the policeman in the investigative circumstance and the sanctity of the individual. But this is not so. An arrest is a wholly different kind of intrusion upon individual freedom from a limited search for weapons, and the interests each is designed to serve are likewise quite different. An arrest is the initial stage of a criminal prosecution. It is intended to vindicate society's interest in having its laws obeyed, and it is inevitably accompanied by future interference with the individual's freedom of movement, whether or not trial or conviction ultimately follows.[FN22] The protective search for weapons, on the other hand, constitutes a brief, though far from inconsiderable, intrusion upon the sanctity of the person. It does not follow that because an officer may lawfully arrest a person only when he is apprised of facts sufficient to warrant a belief that the person has committed or is committing a crime, the officer is equally unjustified, absent that kind of evidence, in making any intrusions short of an arrest. Moreover, a perfectly reasonable apprehension of danger may arise long before the officer is possessed of **1883 adequate information to justify taking a person into custody for *27 the purpose of prosecuting him for a crime. Petitioner's reliance on cases which have worked out standards of reasonableness with regard to 'seizures' constituting arrests and searches incident thereto is thus misplaced. It assumes that the interests sought to be vindicated and the invasions of personal security may be equated in the two cases, and thereby ignores a vital aspect of the analysis of the reasonableness of particular types of conduct under the Fourth Amendment. See Camara v. Municipal Court, supra.

FN22. See generally W. LaFave, Arrest—The Decision to Take a Suspect into Custody 1—13 (1965).

[26] Our evaluation of the proper balance that has to be struck in this type of case leads us to conclude that there must be a narrowly drawn authority

to permit a reasonable search for weapons for the protection of the police officer, where he has reason to believe that he is dealing with an armed and dangerous individual, regardless of whether he has probable cause to arrest the individual for a crime. The officer need not be absolutely certain that the individual is armed; the issue is whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger. Cf. Beck v. State of Ohio, 379 U.S. 89, 91, 85 S.Ct. 223, 226, 13 L.Ed.2d 142 (1964); Brinegar v. United States, 338 U.S. 160, 174—176, 69 S.Ct. 1302, 1311, 93 L.Ed. 1879 (1949); Stacey v. Emery, 97 U.S. 642, 645, 24 L.Ed. 1035 (1878).[FN23] And in determining whether the officer acted reasonably in such circumstances, due weight must be given, not to his inchoate and unparticularized suspicion or 'hunch,' but to the specific reasonable inferences which he is entitled to draw from the facts in light of his experience. Cf. Brinegar v. United States, supra.

FN23. See also cases cited in n. 18, supra.

IV.

[27] We must now examine the conduct of Officer McFadden in this case to determine whether his search and seizure of petitioner were reasonable, both at their inception***28** and as conducted. He had observed Terry, together with Chilton and another man, acting in a manner he took to be preface to a 'stick-up.' We think on the facts and circumstances Officer McFadden detailed before the trial judge a reasonably prudent man would have been warranted in believing petitioner was armed and thus presented a threat to the officer's safety while he was investigating his suspicious behavior. The actions of Terry and Chilton were consistent with McFadden's hypothesis that these men were contemplating a daylight robbery—which, it is reasonable to assume, would be likely to involve the use of weapons—and nothing in their conduct from the time he first noticed them until the time he confronted them and identified himself as a police officer gave him sufficient reason to negate that hypothesis. Although the trio had departed the original scene, there was nothing to indicate abandonment of an intent to commit a robbery at some point. Thus, when Officer McFadden approached the three men gathered before the display window at Zucker's store he had observed enough to make it quite reasonable to fear that they were armed; and nothing in their response to his hailing them, identifying himself as a police officer, and asking their names served to dispel that reasonable belief. We cannot say his decision at that point to seize Terry and pat his clothing for weapons was the product of a volatile or inventive imagination, or was undertaken simply as an act of harassment; the record evidences the tempered act of a policeman who in the course of an investigation had to make a quick decision as to how to protect himself and others from possible danger, and took limited steps to do so.

[28][29][30] The manner in which the seizure and search were conducted is, of course, as vital a part of the inquiry as whether they were warranted at all. The Fourth Amendment proceeds as much by limitations upon the ***29** scope of governmental****1884** action as by imposing preconditions upon its initiation. Compare Katz v. United States, 389 U.S. 347, 354—356, 88 S.Ct. 507, 514, 19 L.Ed.2d 576 (1967). The entire deterrent purpose of the rule excluding evidence seized in violation of the Fourth Amendment rests on the assumption that 'limitations upon the fruit to be gathered tend to limit the quest itself.' United States v. Poller, 43 F.2d 911, 914, 74 A.L.R. 1382 (C.A.2d Cir. 1930); see, e.g., Linkletter v. Walker, 381 U.S. 618, 629—635, 85 S.Ct. 1731, 1741, 14 L.Ed.2d 601 (1965); Mapp v. Ohio, 367 U.S. 643, 81 S.Ct. 1684, 6 L.Ed.2d 1081 (1961); Elkins v. United States, 364 U.S. 206, 216—221, 80 S.Ct. 1437, 1446, 4 L.Ed.2d 1669 (1960). Thus, evidence may not be introduced if it was discovered by means of a seizure and search which were not reasonably related in scope to the justification for their initiation Warden v. Hayden, 387 U.S. 294, 310, 87 S.Ct. 1642, 1652, 18 L.Ed.2d 782 (1967) (Mr. Justice Fortas, concurring).

[31] We need not develop at length in this case, however, the limitations which the Fourth Amendment places upon a protective seizure and search for weapons. These limitations will have to be developed in the concrete factual circumstances of individual cases. See Sibron v. New York, 392 U.S. 40, 88 S.Ct. 1889, 1912, 20 L.Ed.2d 917 decided today. Suffice it to note that such a search, unlike a search without a warrant incident to a lawful arrest, is not justified by any need to prevent the disappearance or destruction of evidence of crime. See Preston v. United States, 376 U.S. 364, 367, 84 S.Ct. 1642, 1652, 18 L.Ed.2d 782 (1964). The sole justification of the search in the present situation is the protection of the police officer

and others nearby, and it must therefore be confined in scope to an intrusion reasonably designed to discover guns, knives, clubs, or other hidden instruments for the assault of the police officer.

[32] The scope of the search in this case presents no serious problem in light of these standards. Officer McFadden patted down the outer clothing of petitioner and his two companions. He did not place his hands in their pockets or under the outer surface of their garments until he had ***30** felt weapons, and then he merely reached for and removed the guns. He never did invade Katz' person beyond the outer surfaces of his clothes, since he discovered nothing in his patdown which might have been a weapon. Officer McFadden confined his search strictly to what was minimally necessary to learn whether the men were armed and to disarm them once he discovered the weapons. He did not conduct a general exploratory search for whatever evidence of criminal activity he might find.

V.

[33][34] We conclude that the revolver seized from Terry was properly admitted in evidence against him. At the time he seized petitioner and searched him for weapons, Officer McFadden had reasonable grounds to believe that petitioner was armed and dangerous, and it was necessary for the protection of himself and others to take swift measures to discover the true facts and neutralize the threat of harm if it materialized. The policeman carefully restricted his search to what was appropriate to the discovery of the particular items which he sought. Each case of this sort will, of course, have to be decided on its own facts. We merely hold today that where a police officer observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot and that the persons with whom he is dealing may be armed and presently dangerous, where in the course of investigating this behavior he identifies himself as a policeman and makes reasonable inquiries, and where nothing in the initial stages of the encounter serves to dispel his reasonable fear for his own or others' safety, he is entitled for the protection of himself and ****1885** others in the area to conduct a carefully limited search of the outer clothing of such persons in an attempt to discover weapons which might be used to assault him. ***31** Such a search is a reasonable search under the Fourth Amendment, and any weapons seized may properly be introduced in evidence against the person from whom they were taken.

Affirmed.

967 S.W.2d 6
(Cite as: 967 S.W.2d 6)

Supreme Court of Kentucky.
Cynthia Lane ADCOCK, Appellant,
v.
COMMONWEALTH of Kentucky, Appellee.

No. 97–SC–000133–DG.
April 16, 1998.

Defendant was convicted in the Circuit Court, Jefferson County, William E. McAnulty, Jr., J., of trafficking in a controlled substance and for illegal possession of drug paraphernalia. Defendant appealed. The Court of Appeals affirmed. Discretionary review was granted. The Supreme Court, Graves, J., held that use of police ruse to gain entry into residence for purpose of executing valid search warrant, accomplished without use of force, is constitutional and reasonable under Fourth Amendment.

Affirmed.

Stumbo, J., dissented in a separate opinion in which Stephen, C.J., joined.

G. Murray Turner, Paul A. Casi, II, Mulhall, Turner, Hoffman & Coombs, P.L.L.C., Louisville, for Appellant.

A.B. Chandler III, Attorney General, Ian G. Sonego, Assistant Attorney General, Frankfort, for Appellee.

OPINION

GRAVES, Justice.

Appellant, Cynthia Adcock, was convicted in the Jefferson Circuit Court for trafficking in a controlled substance and for illegal possession of drug paraphernalia. She was sentenced to five years imprisonment. In this discretionary review, we are presented with the constitutional implications of police officers using a ruse to gain entry into Appellant's residence for the purpose of executing a search warrant. After reviewing the record and hearing oral argument, we conclude that there was no violation of Appellant's constitutional right to be free from unreasonable searches and seizures. U.S. Const. amend. IV and Ky. Const., § 10.

On July 6, 1993, a judge issued a search warrant for Appellant's residence, vehicle and person to search for controlled substances (including Dilaudid), drug paraphernalia, and records or money from the sale of such substances. The affidavit in support of the search warrant was based upon information obtained from a confidential informant. The warrant stated that Appellant possessed a quantity of Dilaudid pills and that she was known to package the drugs in balloons for the purpose of sale. Based upon the informant's information and the officers' past experience in dealing with arrests involving Dilaudid, the officers took precautionary measures to prevent Appellant's disposing of the drugs by swallowing the balloons, as was a common practice for concealing drugs of this type. Specifically, the officers used a ruse in executing the search warrant to gain entry into Appellant's residence.

On the evening of July 6, 1993, five Jefferson County Metro Narcotics Officers went to Appellant's residence. An officer, disguised as a pizza delivery person, knocked on the door. Appellant opened the locked door and informed the disguised officer that she had not ordered a pizza. The officer asked Appellant if she wanted the pizza and she refused. The disguised officer then identified himself as police and entered through the opened door. Upon entering the residence, the officer sat Appellant on a couch next to the door. A second uniformed officer introduced himself and read the search warrant to Appellant. The search of Appellant's residence produced nineteen Dilaudid tablets and drug paraphernalia.

Appellant moved to suppress the evidence seized pursuant to the search warrant on the grounds that the officers violated the "knock and announce" rule in gaining entry to her residence. At the suppression hearing, the officer who posed as the pizza delivery person testified that once Appellant refused him entry, he announced "police" and immediately entered the residence. The second officer testified that he announced "police, search warrant" before entering the premises. The second officer further testified that

after entering the residence, he secured Appellant, showed her the search warrant describing the items to be seized, and explained that she would receive a copy of the warrant. The officers again explained to the trial court that ***8** they employed a ruse because individuals suspected of trafficking Dilaudid frequently attempt to dispose of the pills by swallowing them in an effort to avoid seizure by police.

Appellant's description of the incident differed. She testified that as soon as she refused entry to the "pizza man", he grabbed her and threw her onto the couch. Appellant testified that she did not hear anyone yell "police" prior to the officers entering her residence. Further, she contended that it was almost two hours later when she was shown the search warrant.

The trial court denied the motion to suppress the evidence seized from Appellant's residence. The trial court stated in its memorandum opinion, "In a situation where the police have used a ruse to enter, the rationale for the [knock and announce] rule is not available since the occupant has voluntarily opened the door, and consequently, entry by 'ruse' is permissible. *See e.g., United States v. Salter,* 815 F.2d 1150 (7th Cir.)." In response to Appellant's motion for additional findings, the trial court issued a second memorandum opinion, specifically finding that (1) by virtue of the ruse, Appellant opened the door; (2) once she opened the door, Appellant refused entry; (3) the officers announced "police" after the door was opened, and subsequently entered; and (4) although the officers did not wait a long time before entering, the time was sufficient to fall within the parameters of the "knock and announce rule."

Thereafter, Appellant entered a conditional guilty plea to trafficking in a controlled substance in the first degree and to illegal possession of drug paraphernalia. On appeal, the Court of Appeals affirmed her conviction, holding,

> [W]hen police officers execute a search warrant on a personal residence by conducting a successful ruse that results in the occupant voluntarily opening the door which is followed by the officers announcing their identity and purpose prior to entering the home, these actions are reasonable within the requirements of the Fourth Amendment.

This Court granted discretionary review. Additional facts will be set forth as necessary in the course of the opinion.

As noted by the Court of Appeals, RCr 9.78 provides the procedure for conducting hearings on suppression motions, as well as the standard for appellate review of the trial court's determination. "If supported by substantial evidence the factual findings of the trial court shall be conclusive." RCr 9.78. When the findings of fact are supported by substantial evidence, as we conclude they are herein, the question necessarily becomes, "whether the rule of law as applied to the established facts is or is not violated." *Ornelas v. United States,* 517 U.S. 690, 697, 116 S.Ct. 1657, 1662, 134 L.Ed.2d 911 (1996) (citing *Pullman–Standard v. Swint,* 456 U.S. 273, 289, n. 19, 102 S.Ct. 1781, 1791, n. 19, 72 L.Ed.2d 66 (1982).

[1] Both the Fourth Amendment to the United States Constitution and Section 10 of the Kentucky Constitution protect the right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures. In *Wilson v. Arkansas,* 514 U.S. 927, 115 S.Ct. 1914, 131 L.Ed.2d 976 (1995), the United States Supreme Court held that the Fourth Amendment incorporates the common law requirement that police officers entering a dwelling must knock on the door and announce their identity and purpose before attempting forcible entry. *Id.* at 933, 115 S.Ct. at 1918. The knock and announce rule has three purposes: (1) to protect law enforcement officers and household occupants from potential violence; (2) to prevent the unnecessary destruction of private property; and (3) to protect people from unnecessary intrusion into their private activities. *Id.*

However, "[t]hat is not to say, of course, that every entry must be preceded by an announcement. The Fourth Amendment's flexible requirement of reasonableness should not be read to mandate a rigid rule of announcement that ignores countervailing law enforcement interests." *Id.* at 934, 115 S.Ct. at 1918. The *Wilson* court left "to the lower courts the task of determining the circumstances under which an unannounced ***9** entry is reasonable under the Fourth Amendment." *Id.* at 936, 115 S.Ct. at 1919.

The Court has recognized that the knock and announce requirements could yield when exigent cir-

cumstances are present. "In order to justify a no-knock entry, the police must have a reasonable suspicion that knocking and announcing their presence, under the particular circumstances, would be dangerous or futile, or that it would inhibit the effective investigation of the crime by, for example, allowing the destruction of evidence." *Richards v. Wisconsin*, 520 U.S. 385, ——— – ———, 117 S.Ct. 1416, 1421–1422, 137 L.Ed.2d 615 (1997). The Court in *Richards* did note, however, that there is no blanket exception to the knock and announce rule in felony drug investigations, but rather "it is the duty of a court confronted with the question to determine whether the facts and circumstances of the particular entry justified dispensing with the knock and announce requirement." *Id.*

Appellant argues that a ruse, like a no-knock entry, may be employed only in the presence of exigent circumstances. Appellant concludes that since none existed in this case, police were bound by the knock and announce requirements. Thus, the issues before this Court are whether a ruse may be used in the absence of exigent circumstances, and whether the ruse employed by the police in this case, and the announcement and entry that followed, was unreasonable under the Fourth Amendment because it frustrated the purposes of the knock and announce rule. Inasmuch as this jurisdiction has not addressed the knock and announce rule, we look to the federal court and other jurisdictions for guidance.

[2] A ruse is constitutionally distinguishable from a no-knock entry. *State v. Moss*, 172 Wis.2d 110, 492 N.W.2d 627 (1992), *cert. denied*, 507 U.S. 977, 113 S.Ct. 1428, 122 L.Ed.2d 796 (1993), *overruled on other grounds* by *State v. Stevens*, 181 Wis.2d 410, 511 N.W.2d 591 (1994). In *Moss*, officers employed a pizza delivery ruse virtually identical to this case. When the defendant opened the door, officers announced "police, search warrant." As the defendant attempted to close the door, one officer placed his foot in the doorway to prevent the door from closing, and pushed his way in. In upholding the use of ruse to gain entry, the Wisconsin Supreme Court found that the police action did not constitute a no-knock entry because the officer did, in fact, announce his presence and purpose before entering the defendant's residence. *Id.* 492 N.W.2d at 630. Furthermore, the court held that the use of the ruse to entice the defendant to open the door in the execution of a search warrant did not violate the Fourth Amendment or the knock and announce rule because "the reasons behind the rule were satisfied—there was no real likelihood of violence, no unwarranted intrusion on privacy, and no damage to the [defendant's residence]." *Id.* at 631; ***see also*** *Wilson, supra*, and *Commonwealth v. Goggin*, 412 Mass. 200, 587 N.E.2d 785 (1992).

In fact, notwithstanding the presence of exigent circumstances, federal and state courts in interpreting either knock and announce statutes or the common law knock and announce rule are in general agreement that there is no constitutional impediment to the use of subterfuge. Entry obtained through the use of deception, accomplished without force, is not a "breaking" requiring officers to first announce their authority and purpose. *United States v. Salter*, 815 F.2d 1150 (7th Cir.1987); *United States v. Contreras-Ceballos*, 999 F.2d 432 (9th Cir.1993); *Hawaii v. Dixon*, 83 Hawai'i 13, 924 P.2d 181 (1996); *State v. Myers*, 102 Wash.2d 548, 689 P.2d 38 (1984); *Commonwealth v. DeCaro*, 298 Pa.Super. 32, 444 A.2d 160 (1982); *State v. Iverson*, 272 N.W.2d 1 (Iowa 1978).

The trial court in this case relied on *Salter, supra*, in which an officer, posing as a hotel clerk, telephoned appellant's hotel room and requested her to come to the front desk. When appellant opened the door, officers positioned outside of her hotel room prevented her from closing the door and immediately entered the room. The Seventh Circuit engaged in a statutory analysis and held that there was no "breaking" and thus 18 U.S.C. § 3109 [FN1] was not implicated by entry through ***10** an open door. Since the occupant voluntarily opened the door, entry by 'ruse' was permissible. ***See also*** *Contreras-Ceballos, supra* (an officer's use of force to keep open a door that was voluntarily opened in response to the officer's ruse was not a "breaking" so as to implicate § 3109.)

> FN1. Section 3109 provides, in pertinent part, that "[t]he officer may break open any outer or inner door or window of a house, or any part of a house, or anything therein, to execute a search warrant, if, after notice of his authority and purpose, he is refused admittance or when necessary to liberate himself or a person aiding him in the execution of the warrant." ***Compare*** KRS 70.077 and

KRS 70.078.

We find the recent case of *Hawaii v. Dixon, supra,* to be factually similar to the case at hand and quite instructive. In *Dixon,* officers employed a ruse to gain entry into a defendant's hotel room. Three officers placed themselves on the sides of the defendant's hotel room door while a hotel security guard approached and knocked on the door. The security guard informed the occupants that he was there to check the air-conditioning. When the hotel door opened, the officers "entered the room simultaneously, announcing 'in an assertive tone of voice' that they were the police and ordering [the defendant] to get down." 924 P.2d at 183. A search of the room produced drugs and paraphernalia.

The Hawaii Supreme Court held that the use of a ruse violated neither statutory law nor the Fourth Amendment because the purposes of the knock and announce rule were not frustrated. *Id.* at 182. The court first engaged in a discussion of statutory law from various jurisdictions and concluded that entry gained through the use of deception is permissible so long as force is not involved. *Id.* at 188. In other words, an entry accomplished without force is not a "breaking" within the meaning of the majority of state statutes, as well as 18 U.S.C. § 3109, and therefore does not implicate the knock and announce rule. "[T]he employment of a ruse to obtain the full opening of the [defendant's] door was not a "breaking." And since the door was then wide open, the subsequent entry ... did not involve a 'breaking' of the door." *Id.* at 187. (quoting *Dickey v. United States,* 332 F.2d 773 (9th Cir.1964)).

After analyzing the *Wilson v. Arkansas, supra,* standard and a number of opinions from other jurisdictions, the *Dixon* court further held that the use of a ruse to gain entry did not violate the defendant's constitutional protections under the Fourth Amendment. *Id.* 924 P.2d at 189. The Court adopted the reasoning set forth by the Washington Supreme Court in *State v. Myers,* 102 Wash.2d 548, 689 P.2d 38, 42 (1984):

> The guiding factor in determining whether a ruse entry, to execute a search warrant, constitutes a "breaking" under the Fourth Amendment should be whether the tactic frustrates the purposes of the "knock and announce" rule. Those purposes are: (1) reduction of potential violence to both occupants and police resulting from an unannounced entry, (2) prevention of unnecessary property damage; and (3) protection of an occupant's right to privacy.
>
> It appears obvious that a ruse entry, especially when the deception is not realized until after the entry has been accomplished, actually promotes both the purpose of preventing violent confrontation between the officer and the surprised occupant and that of preventing unnecessary property damage. (citations omitted)

Accordingly, the *Dixon* court concluded that "[w]here the purposes of the knock and announce rule are not frustrated, and may, indeed, be furthered by the use of a ruse to obtain entry to execute a valid warrant, the tactic is not constitutionally unreasonable and, therefore, not violative of fourth amendment protections." *Dixon, supra* at 191.

Appellant further argues that even if this Court concludes that police may utilize a ruse to gain entry absent exigent circumstances, if such is unsuccessful, the police must still follow the knock and announce rule. "If the ruse employed is unsuccessful and the officers did not gain peaceful entry, then the 'knock and wait' rule comes into play." *State v. Ellis,* 21 Wash.App. 123, 584 P.2d 428, 430 (1978).

[3] The flaw in Appellant's argument is that she believes because the disguised officer***11** did not gain actual entry into her residence under the guise of a pizza delivery person, that the police did not gain peaceful entry and thus the ruse failed. As such, the officers were required to follow the requirements of the knock and announce rule. We disagree. The ruse was successful because it enticed Appellant to voluntarily open the door in the first place. At that point, the necessity for the ruse evaporated. Officers gained peaceful entry through the open door without having to use any force. As previously stated, such does not constitute a breaking or forceful entry. Although officers may have preferred to have gained access under the pretense of the delivery ruse rather than having to announce their identity, the ruse still accomplished its intended purpose, namely, to prevent Appellant from disposing of the drugs prior to the officers gaining entry into her residence.

[4] Even if the ruse in this case was unsuccess-

ful, the trial court found that there were sufficient facts to conclude that the officers complied with the requirements of the knock and announce rule. The trial court specifically made the finding that the officers announced their presence prior to entering Appellant's residence. Moreover, we reject Appellant's proposition that the officers were required to wait until she specifically denied them access. Waiting would have served none of the purposes of the rule.

> Because an occupant, in the face of a valid search warrant, has no right to refuse admission to police, no interest served by the knock and announce rule would be furthered by requiring police officers to stand at an open doorway for a few seconds in order to determine whether the occupant means to admit them.

State v. Richards, 87 Wash.App. 285, 941 P.2d 710, 713 (1997); ***see also*** *United States v. Kemp*, 12 F.3d 1140 (D.C.Cir.1994).

[5] Contrary to Appellant's assertion, we find nothing in the language of *Wilson v. Arkansas, supra,* to be inconsistent with the *Dixon* court's analysis or our application thereof. The United States Supreme Court, while reiterating the knock and announce rule in the context of the Fourth Amendment, clearly has not foreclosed the use of police deception to gain entry into a residence for the purpose of executing a valid search warrant. Indeed, we agree with the decisions cited herein, that such a tactic, so long as it is accomplished without the use of force, promotes the underlying purposes of the knock and announce rule and is constitutional and reasonable under the Fourth Amendment.

Accordingly, we hereby affirm the decision of the Court of Appeals upholding the trial court's order denying Appellant's suppression motion.

COOPER, GRAVES, JOHNSTONE, LAMBERT and WINTERSHEIMER, JJ., concur.
STUMBO, J., dissents in a separate opinion in which STEPHEN, C.J., joins.

STUMBO, Justice, dissents.

Respectfully, I must dissent. This opinion will send the message that officers seeking to execute a search warrant no longer must evaluate the circumstances surrounding execution for exigent circumstances. Simply pretend to be the pizza man or the Avon lady, it says. Once the door is opened to the ruse, announce your true identity and all is well. Never mind that in the future, the nervous homeowner, who may well have some nefarious activity ongoing, may decide that any erroneously directed delivery person is a disguised law enforcement officer and react with tragic results.

The United States Supreme Court has defined the circumstances requiring a knock-and-announce entry into a private residence. Exigent circumstances have likewise been the subject of much legal writing. This case falls within none of the exceptions set forth in those opinions and simply serves to demonstrate that the Court's reverence for the sanctity of the individual's home is no longer of paramount importance in the Commonwealth. I cannot agree with the majority and dread the day when fruits of this opinion arrive for this Court's review.

STEPHENS, C.J., joins.

Ky.,1998.
Adcock v. Com.
967 S.W.2d 6

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68 S.W.3d 347
(Cite as: 68 S.W.3d 347)

Supreme Court of Kentucky.
COMMONWEALTH OF KENTUCKY, Appellant,
v.
LEON BANKS, Appellee.

No. 2000-SC-0629-DG.
Oct. 25, 2001.

Defendant entered conditional guilty plea to first-degree possession of controlled substance and possession of drug paraphernalia, and he appealed. The Court of Appeals vacated sentence and remanded case. Defendant entered in the Fayette Circuit Court another conditional guilty plea to possession of controlled substance in the first-degree and possession of drug paraphernalia, and he appealed. The Court of Appeals reversed, and the Commonwealth appealed. The Supreme Court, Graves, J., held that officer was justified in stopping and frisking defendant.

Reversed.

***348** A.B. Chandler III, Attorney General, Todd D. Ferguson, Assistant Attorney General, Office of Attorney General, Criminal Appellate Division, Frankfort, Counsel for Appellant.

V. Gene Lewter, Fayette County Legal Aid Inc., M. Shea Chaney, Lexington, Counsel for Appellee.

GRAVES, Justice.

At approximately 9:00 p.m. on Monday evening of September 9, 1996, two Lexington-Fayette Urban County Police Officers, James Bloomfield and Melissa Sedlaczek, were in the high crime area of Sixth Street and Elm Tree Lane in Lexington. While on foot patrol, they observed Appellee, Leon Banks, walking towards them through the front yard of an apartment building located at 563 Elm Tree Lane. A "No Trespassing" sign was posted in the yard. Because they were experienced in patrolling the area, the officers were familiar with many of the apartment complex residents; however, they did not recognize Appellee. Upon seeing the police officers, Appellee stopped, quickly put his hands in his pocket, turned, and then began to walk in a direction away from the officers. After taking a few steps, he stopped again. Both officers testified that Appellee appeared startled.

***349** As the officers approached Appellee, Officer Bloomfield noticed a bulge in Appellee's pocket. Officer Bloomfield then asked Appellee to remove his hands from his pockets. Appellee obeyed but a bulge remained in Appellee's pocket. Suspecting that the "bulge" may be a weapon, Officer Bloomfield conducted a pat-down search. During the frisk, Officer Bloomfield concluded that the object in Appellee's pocket was probably drug paraphernalia rather than a weapon. Officer Bloomfield asked if the object was a crack pipe. Appellee said that he did not know. Officer Bloomfield then asked for permission to remove the object from Appellee's pocket. Appellee consented to removal of the object and Officer Bloomfield removed a crack pipe from Appellee's pocket. Appellee was then arrested. The officers searched Appellee incident to arrest, and discovered rolling papers in Appellee's wallet, another crack pipe, and two rocks of crack cocaine.

After his motion to suppress the evidence in the Fayette Circuit Court was denied, Appellee entered a conditional guilty plea to first-degree possession of a controlled substance and possession of drug paraphernalia. He received a one year sentence. On appeal, the Court of Appeals vacated the sentence and remanded the case to the Fayette Circuit Court for factual findings pursuant to RCr 9.78. The Fayette Circuit Court thereafter entered an Opinion and Order denying Appellee's motion to suppress. Appellee entered another conditional guilty plea to possession of a controlled substance in the first degree and possession of drug paraphernalia, and again received a one year sentence.

On the second appeal, the Court of Appeals reversed the sentence and held that the police officers did not have articulable suspicion to warrant a stop and frisk of Appellee according to *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968). This Court granted the Commonwealth's motion for discretionary review. After hearing oral arguments and

reviewing the record, we reverse the Court of Appeals.

[1] This case presents another application of the United States Supreme Court's decision in *Terry v. Ohio, supra.* In *Terry,* the Court ruled that even absent probable cause a police officer may stop and frisk a suspect for weapons if the officer can point to reasonable and articulable facts that indicate that criminal activity may be afoot, and the suspect may be armed and dangerous. *Id.* at 21, 88 S.Ct. at 1880. With regard to the factual findings of the trial court "clearly erroneous" is the standard of review for an appeal of an order denying suppression. However, the ultimate legal question of whether there was reasonable suspicion to stop or probable cause to search is reviewed de novo. *Ornelas v. United States,* 517 U.S. 690, 691, 116 S.Ct. 1657, 1659, 134 L.Ed.2d 911 (1996).

The facts in this case are not in dispute. The sole issue is whether the officers had articulable suspicion that criminal activity may have been afoot and that Appellee may have been armed and dangerous so as to justify the stop and frisk. Appellee argues that the frisk conducted by the officers was illegal because there was not sufficient articulable suspicion for the officers to believe that he was engaging in criminal activity. The Commonwealth cites *Simpson v. Commonwealth,* Ky.App., 834 S.W.2d 686 (1992), to support the argument that Appellee's activity was sufficient for the officers to stop and frisk him.

I. THE STOP AND FRISK

[2][3][4][5] The first issue to be addressed is a determination of when the seizure, or the stop, of Appellee occurred. A seizure ***350** requires an articulable suspicion that criminal activity is afoot. The seizure of Appellee did not occur when the officers approached him. *Baker v. Commonwealth,* Ky., 5 S.W.3d 142, 145 (1999), ***citing*** *Florida v. Royer,* 460 U.S. 491, 497, 103 S.Ct. 1319, 1324, 75 L.Ed.2d 229 (1983). Police officers are free to approach anyone in public areas for any reason. Officers are entitled to the same freedom of movement that the rest of society enjoys. Likewise, the seizure of Appellee did not occur when Officer Bloomfield requested him to remove his hands from his pockets, since the request was merely a safety precaution. *Baker, supra,* at 145. If Appellee had not agreed to remove his hands from his pockets and the officer had ordered that Appellee remove his hands, there would have been a seizure. *Id.* Consequently, the seizure of Appellee did not occur until Officer Bloomfield frisked him.

[6] When Officer Bloomfield seized Appellee, he had reasonable suspicion to believe that Appellee may be engaging in criminal activity. Appellee was in a high crime area.[FN1] He was present on the property of an apartment complex where a "No Trespassing" sign was posted. The officers did not recognize Appellee as a resident of the complex with which they were familiar. The officers approached Appellee, and he appeared to be startled. Appellee then attempted to turn and evade the officers by walking in the opposite direction.[FN2] Then, after Appellee took a few steps away from the officers, he instantly stopped. These facts justified the officers' belief that Appellee may have been engaging in criminal activity. The fact that Appellee took his hands out of his pockets and a bulge still remained in one pocket, gave rise to a reasonable belief that he may have been armed and dangerous. Under the totality of the circumstances, Officer Bloomfield was justified in stopping and frisking Appellee.

> FN1. In *Illinois v. Wardlow,* 528 U.S. 119, 124, 120 S.Ct. 673, 676, 145 L.Ed.2d 570 (2000), the United States Supreme Court stated that an individual's presence in a high crime area may be considered as a factor in deciding whether an officer can conduct a *Terry* stop. However, the mere instance of being in a high crime area, without any more articulable facts is insufficient to justify such a stop.
>
> FN2. In *Wardlow,* the Supreme Court also stated that evasive behavior can be a factor in deciding whether a suspect may be engaging in criminal activity. *Id.,* at 124, 120 S.Ct. at 676.

This case resembles *Simpson, supra.* In *Simpson,* the Court of Appeals held that the officers did have reasonable and articulable suspicion to stop the defendant where the defendant was in a high crime area, was meandering back and forth, was looking at the officers when the officers drove by, and was trespassing and loitering. *Id.* at 688. The Court in *Simpson* further held that a person can be stopped and questioned even if the individual is only engaging in

minor criminal activity such as trespassing and loitering. *Id.* at 688.

[7][8] The Court of Appeals distinguished this case from *Simpson* by noting that the officers did not know for sure whether Appellee was trespassing. Although there was a "No Trespassing" sign in the yard of the complex, the Court reasoned that the officers could not have known that Appellee was not a resident. However, the test for a *Terry* stop and frisk *is not* whether an officer can conclude that an individual is engaging in criminal activity, but rather whether the officer can articulate reasonable facts to suspect that criminal activity *may* be afoot and that the suspect *may* be armed and ***351** dangerous. *Terry, supra,* 392 U.S. at 30, 88 S.Ct. at 1884–1885 (emphasis added). The totality of the circumstances must be evaluated to determine the probability of criminal conduct, rather than the certainty. *United States v. Cortez,* 449 U.S. 411, 417–418, 101 S.Ct. 690, 695, 66 L.Ed.2d 621 (1981). As the Supreme Court held in *United States v. Sokolow,* 490 U.S. 1, 7, 109 S.Ct. 1581, 1585, 104 L.Ed.2d 1 (1989), the level of articulable suspicion necessary to justify a stop is considerably less than proof of wrongdoing by preponderance of the evidence.

Since the yard of the apartment complex had a "No Trespassing" sign and the officers did not have any reason to believe that Appellee was a resident, reasonable facts existed for the police to conclude that he may be trespassing. The additional facts that Appellee was in a "high crime" area, appeared startled when he saw the officers, attempted to move away from them, and then stopped abruptly, created additional articulable facts for the officers to reasonably suspect that Appellee may be engaging in criminal activity. The fact that Appellee had a bulge in his pocket, even after he removed his hands, further justified the officers' concern that he might be armed and dangerous. Therefore, the officer did not violate Appellee's rights when he stopped and frisked him.

THE REMOVAL OF THE CRACK PIPE

[9][10] The second issue is whether Officer Bloomfield received permission to remove the crack pipe from Appellee's pocket after he realized that the object was not a weapon. Frisking a suspect during a *Terry* stop is strictly limited to that which is necessary for the discovery of weapons which might be used to harm the officer or others nearby. *Commonwealth v. Crowder,* Ky., 884 S.W.2d 649 (1994), ***citing*** *Terry, supra;* ***see also*** *Michigan v. Long,* 463 U.S. 1032, 1049, and 1052, n. 16, 103 S.Ct. 3469, 3480–3481, and 3482, n. 16, 77 L.Ed.2d 1201 (1983); *Ybarra v. Illinois,* 444 U.S. 85, 93–94, 100 S.Ct. 338, 343–344, 62 L.Ed.2d 238 (1979). However, the plain feel exception to this rule allows for the discovery of non-threatening contraband if the contraband is immediately apparent from the sense of touch while the suspect is lawfully frisked. *Crowder, supra,* at 651, ***citing*** *Minnesota v. Dickerson,* 508 U.S. 366, 113 S.Ct. 2130, 124 L.Ed.2d 334 (1993). Thus, if non-threatening contraband is immediately apparent to the officer from the sense of touch while the officer is conducting a lawful pat-down search, the officer is not required to ignore the contraband and can lawfully seize it. *Crowder, supra,* at 651.

[11] In the case at hand, the crack pipe was immediately apparent to the officer while he was conducting a lawful pat-down of Appellee. Moreover, the Court of Appeals, the Commonwealth, and Appellee all concede that Appellee gave the officer permission to remove the crack pipe from Appellee's pocket. Therefore, the officer lawfully removed the crack pipe from Appellee. The other incriminating evidence against Appellee, which included another crack pipe, rolling papers, and two rocks of crack cocaine, was lawfully discovered during the search incident to his arrest. Thus, Appellee's rights were never violated.

For the above mentioned reasons, the decision of the Court of Appeals is reversed and the judgment of the Fayette Circuit Court is reinstated.

All concur.

Ky.,2001.
Com. v. Banks
68 S.W.3d 347

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884 S.W.2d 649
(Cite as: 884 S.W.2d 649)

C

Supreme Court of Kentucky.
COMMONWEALTH of Kentucky, Appellant,
v.
Arthur CROWDER, Appellee.

No. 93–SC–288–DG.
Sept. 29, 1994.

Defendant entered conditional plea of guilty to trafficking in cocaine, and the Jefferson Circuit Court sentenced him to one-year imprisonment. Defendant appealed. The Court of Appeals reversed. Commonwealth appealed. The Supreme Court, John M. Rosenberg, Special Justice, held that: (1) search of defendant's pocket, and resulting seizure of cocaine was unconstitutionally invalid, and (2) "plain feel" exception to warrant requirement does not violate State Constitution.

Court of Appeals affirmed.

Lambert, J., filed concurring opinion in which Reynolds, J., joined.

Wintersheimer, J., dissented in separate opinion in which Spain, J., joined.

JOHN M. ROSENBERG, Special Justice.

The issue in this case is whether the seizure of a "bindle" [FN1] of drugs incident to a *Terry* [FN2] patdown search violated the prohibition on "unreasonable searches and seizures" in the Fourth Amendment of the Constitution of the United States and § 10 of the Kentucky Constitution.

FN1. Bindle: slang: a small package, envelope, or paper containing a narcotic (as morphine, heroin, or cocaine; also: a small quantity of a narcotic: a narcotic dose).

Merriam–Webster Third New International Dictionary (1986).

FN2. *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968).

The facts are these. On May 4, 1991, twelve days prior to the incident involved in this proceeding, Appellee, Arthur Crowder, was arrested on a charge of trafficking in marijuana by Louisville police officer Brian Nunn, one of the arresting officers in this case. The place of the arrest on this earlier occasion, 22nd and Garland Streets in Louisville, had been described to Nunn as a "hot drug area." According to Nunn, on the earlier occasion Appellee was standing on the corner and made a transaction. When he saw the police, Crowder ran and dropped a plastic bag containing marijuana. Nunn arrested***650** him and the case was resolved in Jefferson District Court.

On May 13 or 14, while Nunn was in the area again, an unknown man told him that if Crowder were on the corner that Crowder would be selling drugs.

On May 16, Officer Nunn was in the area once more, this time patrolling in a vehicle with Officer David Sanford. Nunn again saw Crowder at the corner of 22nd and Garland. When Crowder saw the police officers, he turned his back on them and started to walk off. Nunn stopped the car and told Sanford to detain Crowder and pat him down. Nunn stopped to talk to two women on the corner, but he did not charge them with any offense.

Officer Sanford testified that he did as Nunn ordered. He said in patting Crowder down, he was looking for weapons as a safety precaution. He did not feel any weapons, but felt some keys in Crowder's pocket. Additionally, he felt something in Crowder's left front pocket. Sanford testified "it felt like it may have been a bindle of drugs," and he reached into the pocket to get it out. He said it felt "like a small gumball." In fact, the substance was wrapped in a corner of a cut-off plastic bag, and turned out to be .016 of an ounce of cocaine.

Crowder was indicted for illegal possession of a controlled substance, cocaine, in violation of KRS

218A.140 and 218A.990(7). Crowder moved to suppress on the ground that the search for drugs exceeded the permissible scope of a *Terry* search. The circuit court overruled the motion holding that in its view, under prior Kentucky decisions, contraband discovered "incidentally and inadvertently" during a lawful "pat-down" search could be seized without a warrant.[FN3]

> FN3. Crowder entered a conditional plea of guilty to trafficking in cocaine, and was sentenced to one year imprisonment.

The Court of Appeals, in a 2–to–1 decision, reversed holding that: "[S]ince the officer did not feel anything resembling a weapon, we believe that the officer exceeded the scope of permissible search under a *Terry* patdown when he reached into appellant's pocket to retrieve an object which he believed to be drugs and not a weapon." The Court of Appeals relied on its earlier decisions in *Johantgen v. Commonwealth*, Ky.App., 571 S.W.2d 110 (1978); and *Waugh v. Commonwealth*, Ky.App., 605 S.W.2d 43 (1980). The Court of Appeals distinguished its earlier decision in *Dunn v. Commonwealth*, Ky.App., 689 S.W.2d 23 (1984), on which the Commonwealth relied. The Court of Appeals noted that *Dunn* involved the plain view exception to the warrant requirement, which did not apply to Crowder's case since the evidence in question, being in Crowder's pocket, was clearly not in plain view. In dissent, Judge Emberton contended that a "plain touch" exception to the warrant requirement was as appropriate as a plain view exception.

Following the decision of the Court of Appeals in this case, the United States Supreme Court decided the case of *Minnesota v. Dickerson*, 508 U.S. 366, 113 S.Ct. 2130, 124 L.Ed.2d 334 (1993). That case is virtually indistinguishable from the present case [FN4], and we affirm the Court of Appeals based on the holding in *Dickerson*.

> FN4. In *Dickerson*, however, the Minnesota courts found that the requirements for a valid *Terry* patdown had been met. In the present case, defense counsel conceded the validity of the stop-and-frisk under *Terry* at the suppression hearing, so that the propriety of the patdown is not in issue on appeal. *Todd v. Commonwealth*, Ky., 716S.W.2d242 (1986). If it were, there might well be a serious question about its validity since the record is devoid of any evidence that Crowder was armed, or was dangerous, or that he posed a threat to the safety of the officers, based on his conduct on May 16, or during the earlier arrest on May 4. ***See*** *Sibron v. New York*, 392 U.S. 40, 88 S.Ct. 1889, 20 L.Ed.2d 917 (1968); *Waugh, supra; Johantgen, supra.*

In *Dickerson*, two Minneapolis police officers on patrol observed respondent leaving a building they considered to be a "crack house." They had previously executed search warrants on the premises and responded to complaints of drug sales in the building's hallways. When the suspect made eye contact with one of the police officers, he halted and walked in the opposite direction into an alleyway. Based on the suspect having left the building known as a "crack house" and his decision to walk away from ***651** them, the police officers followed respondent into the alley and ordered him to submit to a *Terry* search. The search revealed no weapons, but the officer conducting the patdown search noticed a small lump in the front pocket of the suspect's nylon jacket. He then reached into the suspect's pocket and retrieved a small plastic bag containing one-fifth of one gram of crack cocaine.

The United States Supreme Court held, as did the Supreme Court of Minnesota, that the further exploration of the suspect's pockets after determining that it contained no weapon "over-stepped the bounds of the 'strictly circumscribed' search for weapons allowed under *Terry*," and the Fourth Amendment's protection against unreasonable searches and seizures.[FN5] The Supreme Court reiterated the narrow limits on the permissibility of a *Terry* patdown search as an exception to the warrant requirement:

> FN5. The Commonwealth claims that the instant case is different from *Dickerson* because Officer Sanford "recognized" what he felt in Crowder's pocket as drugs (Appellant's brief, p. 3). The record belies this assertion, since Officer Sanford, at best, thought the object *might* have been drugs.

"[W]hen an officer is justified in believing that the individual whose suspicious behavior he is investi-

gating at close range is armed and presently dangerous to the officer or to others," the officer may conduct a patdown search "to determine whether the person is in fact carrying a weapon." 392 U.S., at 24, 88 S.Ct., at 1881. "The purpose of this limited search is not to discover evidence of crime, but to allow the officer to pursue his investigation without fear of violence...." *Adams* [*v. Williams*] *supra* [407 U.S. 143], at 146, 92 S.Ct. [1921], at 1923 [32 L.Ed.2d 612 (1972)]. Rather, a protective search—permitted without a warrant and on the basis of reasonable suspicion less than probable cause—must be strictly "limited to that which is necessary for the discovery of weapons which might be used to harm the officer or others nearby." *Terry, supra*, at 26, 88 S.Ct., at 1882; see also *Michigan v. Long*, 463 U.S. 1032, 1049, and 1052, n. 16, 103 S.Ct. 3469, 3480–3481, and 3482, n. 16, 77 L.Ed.2d 1201 (1983); *Ybarra v. Illinois*, 444 U.S. 85, 93–94, 100 S.Ct. 338, 343–344, 62 L.Ed.2d 238 (1979). If the protective search goes beyond what is necessary to determine if the suspect is armed, it is no longer valid under *Terry* and its fruits will be suppressed. *Sibron v. New York*, 392 U.S. 40, 65–66, 88 S.Ct. 1889, 1904, 20 L.Ed.2d 917 (1968).
Dickerson, 508 U.S. at ——, 113 S.Ct. at 2136.

The Supreme Court then went on to examine whether a "plain feel" rule might be applicable if the police discovers contraband "through the sense of touch during an otherwise lawful search." The Court concluded that a narrowly drawn exception to the warrant requirement is appropriate when: (1) the requirements of *Terry* are otherwise complied with; and (2) the non-threatening contraband is *immediately apparent* from the sense of touch. The Supreme Court based its decision by analogy to the plain view cases, noting that in either case, the Fourth Amendment's requirement that an "officer have probable cause to believe that the item is contraband before seizing it ensures against excessively speculative seizures." *Dickerson*, 508 U.S. at ——, 113 S.Ct. at 1237. The Supreme Court noted that the premise of *Terry* is that an officer will be able to detect the presence of a weapon through the sense of touch when the police "pats down a suspect's outer clothing and feels an object whose contour or mass makes its identity immediately apparent, there has been no invasion of the suspect's privacy beyond that already authorized by the officer's search for weapons; if the object is contraband, its warrantless seizure would be justified by the same practical considerations that inhere in the plain view context." *Dickerson*, at ——, 113 S.Ct. at 1237 (footnote omitted). Thus, if the non-threatening contraband is immediately apparent from the sense of touch, during an otherwise lawful patdown, an officer should not be required to ignore it. *See* e.g., *Michigan v. Long*, 463 U.S. 1032, 103 S.Ct. 3469, 77 L.Ed.2d 1201 (1983).

In applying these principles to the facts in *Dickerson*, the Supreme Court held, however,***652** that the seizure of the cocaine was unconstitutional because the officer had exceeded the bounds of *Terry* in conducting the patdown search. The Court reiterated that the sole justification for a *Terry* search is the safety and protection of the officer and others nearby. Once having concluded that the suspect's pocket contained no weapon, the officer had no basis for a continued exploration of the pocket. Although the officer was entitled to put his hand on the suspect's pocket to feel for weapons, the officer's own testimony demonstrated that he did not immediately recognize the substance in question as cocaine, and that he recognized it only after further exploration of the suspect's pocket. This further exploration was not authorized by *Terry* or any other exception to the warrant requirement, and the seizure of the cocaine was therefore unconstitutional.

[11] By applying the Supreme Court's analysis to this case, the same result follows. Even acknowledging the propriety of the *Terry* search in light of defense counsel's concession,[FN6] it is clear from the record that officer Sanford did not immediately recognize what he felt in Crowder's pocket as drugs. Sanford testified it "felt like it *may* have been a bindle of drugs" (emphasis added); and that "it felt like a small gumball." He then reached into the pocket to get it out. Since the nature of the non-threatening contraband was not immediately apparent to Officer Sanford when conducting the patdown, his further exploration of Crowder's pocket "was not authorized by *Terry* or any other exception to the warrant requirement." *Dickerson*, 508 U.S. at ——, 113 S.Ct., at 2139. Therefore the search was constitutionally invalid, as was the resulting seizure of the cocaine.

FN6. *See* n. 3, *supra*.

Finally, Crowder urges that this Court should reject the limited plain touch exception adopted in

Dickerson as being violative of § 10 of the Kentucky Constitution. To be sure, this Court has held that the Kentucky Constitution may, in certain circumstances, provide greater protection from the infringement of individual liberties than the federal constitution. *Commonwealth v. Wasson*, Ky., 842 S.W.2d 487 (1993).

In the case before us, however, the decisions of this Court in *Crayton v. Commonwealth*, Ky., 846 S.W.2d 684 (1992) and *Holbrook v. Knopf*, Ky., 847 S.W.2d 52 (1993), are apposite. In *Crayton*, this Court followed the United States Supreme Court's application of the good faith exception to the warrant requirement in *United States v. Leon*, 468 U.S. 897, 104 S.Ct. 3405, 82 L.Ed.2d 677 (1984), in holding that there was no violation under § 10 of the Kentucky Constitution. *Holbrook* followed *Crayton* in interpreting § 10 consonant with the Fourth Amendment. In so doing, this Court quoted from *Crayton*, as follows:

> "An examination of Section 10 of the Constitution of Kentucky and the Fourth Amendment to the Constitution of the United States reveals little textual difference. The language used is virtually the same and only the arrangement of the words is different. The absence of material difference between these constitutional provisions was recognized in *Benge v. Commonwealth*, Ky., 321 S.W.2d 247 (1959)."

Holbrook, 847 S.W.2d at 55.

[2] Accordingly, under the analyses in *Crayton* and *Holbrook*, the limited application of a plain feel exception to the warrant requirement in connection with a valid *Terry* search, as approved by the United States Supreme Court in *Dickerson* and as set out herein, does not violate § 10 of the Kentucky Constitution.

The decision of the Court of Appeals is affirmed.