



Roll Call Reporter

February 2017

LEGAL UPDATE FOR MARYLAND LAW ENFORCEMENT OFFICERS

No *Terry* Frisk Without a *Terry* Stop

Question: Can an officer conduct a *Terry* frisk for weapons without a valid investigative *Terry* stop?

Answer: No. A *Terry* frisk for weapons is not a “stand alone” concept. It must be preceded by a valid investigative *Terry* stop. Even then, the frisk for weapons must be justified by its own reasonable, articulable suspicion that the suspect is armed and dangerous.

Case: *Brandon Ames v. State of Maryland*
Court of Special Appeals of Maryland
Decided February 3, 2017

The Anonymous Tip and the Street Encounter:

On September 8, 2015, at 4:23 p.m., Delmar Police Officer Nicholas Aungst received an anonymous telephone call from someone who refused to give his or her name. The caller said that a black man wearing dark gray sweatpants and a Chicago Bulls hat was standing in front of the 700 building of the Chestnut Manor Apartments with a gun in the waistband on his pants. There was no description of the man’s height or weight, his hairstyle, his shirt, or his shoes.

Officer Aungst responded to the Chestnut Manor Apartments but did not see anyone matching the description. He continued with his regular patrol duties. At 4:45 p.m., Officer Aungst received a call from Dispatch providing the exact description he had earlier received directly from the anonymous caller, of a black man wearing sweatpants and a Chicago Bulls hat in front again with a gun in his waistband. This second call added nothing to the first, and there was no identification of the source of Dispatch’s information. Officer Aungst returned to the apartment complex and, this time, he saw a black man leaning up against the building in the entranceway of the 700 block of Chestnut Manor. The man’s hands were visible and empty. Officer Aungst got out of his car and approached the man. He did not throw anything nor attempt to flee as the officer approached.

Officer Aungst asked if the man had anything on him that he (the officer) should be worried about. The man appeared nervous and seemed to be shaking. The man denied having a weapon, but kept touching his left pocket. Officer Aungst interpreted this as an “involuntary response” indicating that the man had contraband in his pocket. The man made no threatening gestures of any kind.

The Frisk, the Drugs, and the Arrest

Officer Aungst then subjected the man to a *Terry* frisk by executing an open-handed pat-down of the

man's outer clothing. During the frisk, Officer Aungst felt nothing in the man's waistband, but did detect a "soft, large bulge" in the man's left front pants pocket. Officer Aungst asked the man, "What's this?" The man didn't answer, but continued shaking. Officer Aungst asked, "Is there anything in here that can hurt me?" The man said, "Yes, I do have needles." The officer reached into the man's pocket and removed a dark colored coin purse. Inside the coin purse, the officer found a plastic bag containing a hard rock-like substance that resembled crack cocaine. He also found other bags, some containing a white powdery substance, plus a spoon and two needles. The man, identified as Brandon Ames, was arrested and taken into custody.

The Charges, the Motion to Suppress, and Conviction

Ames was charged with possession of a fake controlled dangerous substance with intent to distribute, possession of heroin, and possession of drug paraphernalia. He moved to suppress the evidence, contending that the officer's search of his pocket and seizure of the contraband violated the Fourth Amendment. Calling the issue "close," the circuit court judge denied the motion to suppress, and a jury convicted Ames of the charges. He appealed.

The Decision by the Court of Special Appeals of Maryland

The Court of Special Appeals reversed the circuit court, holding that Officer Aungst had violated the Fourth Amendment. The court set the stage for its holding by observing that, in the 49 years since the decision in *Terry v. Ohio* was announced, police have become increasingly less than vigilant in observing the limitations imposed by the Supreme Court in *Terry*.

The court began by affirming the general unreliability of an anonymous informant. Unlike a tip from a known informant, an anonymous tip

alone seldom demonstrates the informant's basis of knowledge or veracity. But even an anonymous tip can be sufficiently corroborated by independent police verification of some of the information supplied, to justify reliance at least to the "reasonable suspicion" standard announced in *Terry*. That was not the case here, where everything the caller said was corroborated except possession of the gun. In other words, the tipster's description of location and general appearance of a person is not enough; what is needed is confirmable information about the person's criminal activity. The anonymous tip in this case was too limited to be of any value. Even the officer's observation of a man fitting the general description at the given location was of no consequence under the Fourth Amendment. Reasonable suspicion to make any *Terry* stop was lacking.

Next, the court pointed out what should have been understood by Officer Aungst and any other officer in his place: Without reasonable suspicion to effect a *Terry* stop, there was no legal basis to perform a *Terry* frisk. **The *Terry* stop is crime-related**, its purpose is to prevent or detect crime. There must be reasonable articulable suspicion for the stop. **The *Terry* frisk is officer safety-related**. It is not an investigative tool at all. Its express purpose is the safeguarding of the life and limb of the stopping officer. There must be reasonable articulable suspicion that the person stopped is armed and dangerous. **The *Terry* stop and the *Terry* frisk each require separate justification and there can be no valid *Terry* frisk without a preceding, valid *Terry* stop**. Stated another way, you can have a valid stop without a frisk for weapons, but you cannot frisk for weapons without a valid stop. Here, since there was no basis for the stop, there could be no basis for the frisk. For these reasons, the motion to suppress should have been granted, and Ames' convictions were reversed.

Note: It bears repeating that officers do not have the right to "frisk" someone simply because they believe the person is dangerous. Any valid frisk is



dependent upon a valid stop. Officers are not allowed to unnecessarily put themselves in danger through “a mere accosting” or “field interview” and then conduct a frisk for weapons. Again, a valid frisk is dependent upon a valid investigative stop, one based on reasonable suspicion of criminal activity. For example, if an officer sees a suspicious bulge which possibly could be a gun in the pocket of person who is not engaged in any suspicious conduct, the officer may not approach him and conduct a frisk. Why? Because there is no reasonable suspicion upon which to make a *Terry* stop. Finally, even if it had been justified, the frisk performed in this case was excessive. A frisk is limited to a pat-down of the outer clothing to detect the presence of easily identifiable weapons such as guns and knives. The frisk exceeded what is allowed under *Terry* because the large, soft bulge the officer detected was not identifiable as a weapon. As such, no further intrusion was allowed.

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

This publication is designed to provide general information on the topic presented. It is distributed with the understanding that the publisher is not engaged in rendering legal or professional services. Although this publication is prepared by professionals, it should not be used as a substitute for professional services. If legal or other professional advice is required, the services of a professional should be sought.

