



POLICE / PROSECUTOR UPDATE

Issue No. 207

February 2009

The United States Supreme Court last month decided a case dealing with the **frisk of a driver and/or passenger during a traffic stop**. The court's opinion contained a discussion of the development of the law in this area.

The case originated in Arizona. While patrolling a neighborhood associated with the Crips gang, officers serving on the gang task force stopped a vehicle for a traffic infraction. They had no reason to suspect the car's occupants of criminal activity. One officer attended to the defendant, the back-seat passenger, whose behavior and clothing caused the officer to question him. After learning that the defendant was from a town with a Crips gang and had been in prison, the officer asked him to get out of the car in order to question him further about his gang affiliation. Because the officer suspected that he was armed, she patted him down for safety. During the patdown, she felt the butt of a gun.

The defendant was charged with possession of a weapon by a prohibited possessor. The Arizona courts held that while the defendant was lawfully seized, inquiring into a matter unrelated to the traffic stop, prior to the frisk, the officer had no right to pat the defendant down even if she had reason to suspect he was armed and dangerous.

Terry v. Ohio established that, in an investigatory stop, the police must be positioned to act instantly if they have reasonable cause to suspect that the persons temporarily detained are armed and dangerous. Traffic stops are "especially fraught with danger to police officers." Three Supreme Court decisions discussed Terry's application in a traffic-stop setting.

First, once a vehicle is lawfully detained for a traffic violation, officers may lawfully order the driver to get out of the vehicle. Once outside, the

the driver may be patted down for weapons if the officer reasonably concludes that the driver might be armed and dangerous. Second, this rule applies to passengers as well as drivers. Third, a passenger and driver are seized "from the moment a car stopped by the police comes to a halt.

As mentioned earlier, the Arizona court recognized that the defendant was lawfully detained incident to the legitimate stop of the vehicle in which he was a passenger, but concluded that once the officer began questioning him on a matter unrelated to the traffic stop, patdown authority ceased to exist. The U.S. Supreme Court disagreed.

A lawful roadside stop begins when a vehicle is pulled over for investigation of a traffic violation. The temporary seizure of the driver and passengers ordinarily continues, and remains reasonable, for the duration of the stop. Normally, the stop ends when the police have no further need to control the scene and inform the driver and passengers they are free to leave. An officer's inquiries into matters unrelated to the traffic stop do not convert the encounter into something other than a lawful seizure, *so long as* the inquiries do not measurably extend the stop's duration.

A reasonable passenger would understand that during the time a car is lawfully stopped, he or she is not free to terminate the encounter. Nothing occurred in this case that would have conveyed to the defendant that, prior to the frisk, the traffic stop had ended or that he was free to leave.

To summarize, the court concluded that police officers who conduct routine traffic stops may perform a patdown of the driver and any passengers on reasonable suspicion that they may be armed and dangerous. Arizona v. Johnson, ___ S.Ct. ___ (2009).