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Stop and Frisk Revisited: Adams v. Williams, 407 U.S. 143 (1972)

a court order warranting the surveillance. If the witness in that situation were allowed full disclosure and a suppression hearing in the face of the evidence of legality, the result would be unreasonable delay of grand jury proceedings.[72] Thus, if the government establishes by warrant that the surveillance did not violate the procedures of Title III or the requirements of the fourth amendment, further proceedings only delay already overloaded judicial processes.

However, instead of admitting a surveillance which may or may not be legal, the government may flatly deny any surveillance of the witness. This was the situation in *Egan*, and Justice White and the dissent agree that in the face of the government denial the matter must end, and the witness must answer or be charged with contempt.[73]

In sum, *District Court* and *Gelbard* indicate that the Supreme Court interprets Title III as strictly limiting the use of electronic surveillance techniques. Failure to comply with the prior judicial review provisions of Title III results in illegal surveillance even in a domestic security situation. In fact, *District Court* indicates that if there is any area in which warrantless wiretaps will be upheld, that area is very narrow and is perhaps confined to the President's exercise of his power to protect the nation from foreign adversaries. *Gelbard* holds that at least where the trial court determines that the surveillance was illegal, the Court will expand *Alderman* outside the criminal area. A grand jury witness charged with civil contempt may invoke a §2515 defense that the testimony requested is derived from the illegal interception of his conversations.

[72] *Id.*

[73] *Id.* at 71. *See* Russo v. United States, 404 U.S. 1210 (1971). In *Russo*, Justice Douglas refused to stay a contempt sentence for refusal to answer questions before a grand jury. The petitioner claimed a §2515 defense to the charge, but the government indicated that there must be some credible evidence that the prosecution violated the law before ponderous judicial machinery is involved to delay grand jury proceedings.

"Stop and Frisk" Revisited:

Adams v. Williams, 407 U.S. 143 (1972)

In *Adams v. Williams*[1] the Supreme Court expanded the stop and frisk concept which it first enunciated four years ago in *Terry v. Ohio*.[2] In a 6 to 3 decision, the Court held that information furnished in person by an informant who was known to the officer, but whose record of reliability was poor, justified the police officer's subsequent approach and search of the suspect. This case lowers the standard of reliability necessary for information used to justify a stop and frisk, and extends the stop and frisk concept to purely possessory crimes.

At about 2:15 A.M., in a high crime area of Bridgeport, Connecticut, an officer was approached by an informant "known" to him.[3] The informant told him that a person (Williams), sitting alone in the front passenger seat of a nearby parked auto, was in possession of narcotics, and had a handgun in his waistband. The officer approached the car and told the occupant to open the door. When instead, Williams rolled down the window, the officer immediately reached inside the car and pulled a loaded revolver from the man's waistband. The gun was not visible to the officer outside the car, but he found it in precisely the place the informer had told him it would be.[4] Williams was immediately placed under arrest for illegal possession of a revolver.[5] A search of his person incident to that arrest produced a quantity of heroin. In the auto a machete and second revolver were

[1] 407 U.S. 143 (1972).

[2] Stop and frisk was first recognized and accepted in Terry v. Ohio, 392 U.S. 1 (1968). Until that case, police were permitted to make arrest or searches without warrants only when the facts within their knowledge satisfied the fourth amendment requirement of probable cause. *Id.* at 37. *Terry* allowed the "stop and frisk" of a suspect by a police officer who personally observed conduct which, in light of his experience, led him to believe that criminal activity could be imminent and that the persons involved might be armed and dangerous. The Court noted that whether such action is called "stop and frisk" or "search and seizure," it is within the purview of the fourth amendment and added that the inquiry under the fourth amendment is the "reasonableness in all the circumstances." *Id.* at 17–19. Whether or not the officer's conduct was reasonable is determined by comparing the need to search or seize with the invasion the search or seizure entails. *Id.* at 21.

[3] The officer was personally acquainted with the informant, who remained unnamed. The officer also knew the informant's poor history of reliability. *See* note 13 *infra*.

[4] 407 U.S. at 145.

[5] *Id.*

discovered,[6] and Williams was subsequently convicted of illegal possession of weapons and narcotics. In an en banc reconsideration of Williams' *habeas corpus* appeal, the Second Circuit Court of Appeals ruled that the officer had neither probable cause to arrest Williams, nor sufficient cause for reaching into his waistband.[7] The Supreme Court reversed.

Stop and frisk was first recognized in *Terry v. Ohio*.[8] The *Terry* Court in an 8–1 decision,[9] held that if an officer observes unusual conduct which reasonably leads him to suspect criminal activity, he may stop the individual for further investigation, even though there is no probable cause for a search or arrest. In addition, *Terry* held that if in the process of such an investigation the officer has reasonable grounds to fear for his or bystanders' immediate safety he may search the suspect solely for the protective purpose of discovering weapons.[10] Such a stop and frisk procedure, the Court held, would not violate the fourth amendment.[11]

The basic question which separated the majority and the dissenters in *Adams* was whether or not the officer had information which was reliable enough to proceed to investigate the suspect. His suspicion, whether justified or not, was based almost entirely upon the informant's information.[12] Thus, the dispute centered around whether an informant, whose previous information had not led to arrests,[13] could alone provide sufficient justification for the initial stop of the suspect.

Justice Rehnquist, writing for the Court, held that the information was sufficient to justify the stop. His reliance on the informant's credibility contrasts sharply with earlier Supreme Court cases regarding informants and the weight to be given their information in establishing probable cause for search or arrest.[14] The opinion recognized this contrast,[15] but refused to accept the earlier cases as controlling. *Adams* did not involve the establishment of probable cause, but rather the establishment of a "reasonable suspicion."[16] Thus, the Court did not feel bound by cases which described the degree of credibility required of an informant to establish probable cause. *Adams* is a clear and unprecedented statement that information given by an informer of questionable reliability may, under certain circumstances, justify a stop and frisk.

Justice Rehnquist's opinion indicates what those circumstances are. First, Rehnquist noted that the informant was known personally to the officer. However, *Terry's* requirement that the officer be able to produce articulate reasons to support his

[6] *Id.*

[7] Williams v. Adams, 441 F.2d 394 (2d Cir. 1971). The opinion of Judge Friendly, which Justice Brennan quoted with approval, is found in the earlier panel opinion which had upheld the conviction. *See* Williams v. Adams, 436 F.2d 30 (2d Cir. 1970).

[8] 392 U.S. 1 (1968). A veteran member of the police force observed Terry and his companions behaving suspiciously. He first saw Terry, then another man, make several short walks in front of a jewelry store. Each time each man paused and looked into the window. The officer, believing that a robbery was being planned, approached and asked them for their names. Receiving only a mumbled answer, he immediately "patted down" Terry's outer clothing and discovered a pistol. Terry was arrested and subsequently convicted of carrying a concealed weapon. 392 U.S. at 4–7.

[9] Justice Douglas was the only dissenter. *Id.* at 35. He argued that the majority had upheld a search which was not based on probable cause, thereby seriously threatening fourth amendment liberties. *See* note 11 *infra*. The majority in *Terry* expressly acknowledged that they were not concerned with probable cause, but rather only with the "reasonableness" of the officers actions. 392 U.S. at 20–22.

[10] *Id.* at 30.

[11] U.S. CONST. amend. IV:

> The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

[12] The incident took place in a high crime area at 2:15 A.M. These facts may have affected the officer's suspicions. 407 U.S. at 144.

[13] The informant had earlier reported homosexual activity at a local railroad station, but subsequent investigation had produced no "substantiating evidence." *Id.* at 156 (Marshall, J., dissenting).

[14] The issue of reliability of an informant has been considered in many Supreme Court decisions. Aguilar v. Texas, 278 U.S. 108, 114 (1964), held that an affidavit, based solely on the hearsay report of an unidentified informant, must set forth "some of the underlying circumstances from which the officer concluded that the informant was 'credible' or his information 'reliable.'" In Spinelli v. United States, 393 U.S. 410 (1969), the Court rejected an affidavit which did not sufficiently state the circumstances from which the officer drew his conclusions. In United States v. Harris, 403 U.S. 573 (1971), an affidavit was held to establish probable cause, even though it did not assert that the informant had been previously reliable, since the Court felt other information established the likelihood that his information was correct.

[15] 407 U.S. at 147.

[16] "Reasonable suspicion" has become the term commonly used to describe a situation in which an officer justifiably suspects criminal activity, but the suspicion is not based on enough information to constitute probable cause. *See* Terry v. Ohio, 392 U.S. 1, 37 (1968).

suspicion[17] is weakened by the Court's faith in an officer's intuitive evaluation of someone he knows. Since "articulate" reasons are the means by which a court may judge whether a stop and frisk was reasonable, *Adams* has made it more difficult for the court to distinguish a proper stop and frisk from an improper one.

Secondly, Rehnquist indicated the informant had provided information in the past. Rehnquist does not mention that the information had not been subsequently verified.[18] That should not only preclude reliance on the informant, but provide an additional reason for not relying on his information.

Thirdly, the Justice noted that the informant came forward personally and that he would, under Connecticut law, be subject to arrest if his information proved incorrect.[19] These two facts together seemingly justify more reliance on the informant than, for example, a telephone tip, or an informant who appears personally but has no reason to fear if his information is incorrect.

Finally, it was pointed out that the information was immediately verifiable. There would seem to be no reason, however, to assume that immediately verifiable information is more accurate than other information, unless the informant knows that he will be arrested if proven wrong. Therefore, this reason for the Court's reliance is actually a reiteration of the previous reason—an informant's fear of immediate arrest if he is in error.

The fear that stop and frisk could easily be abused generated concern in this case,[20] as it did prior to *Terry*.[21] The fear in *Adams* arises primarily because the case applies the stop and frisk concept to purely possessory crimes. The dissent fears that under *Adams* a search for contraband may become the reason for the stop, instead of incidental to it in order to protect the officer.[22] *Adams*, however, expressly reaffirms that the search must be protective in origin, and contingent upon the legitimacy of the stop.[23] Hence, the fear expressed by the dissent is primarily a fear that the courts will not be able to detect cases in which the officer used stop and frisk merely as an excuse to search for contraband. Courts on all levels, however, have successfully detected arrests made only to justify a search, and have held them invalid.[24] Presumably, if courts can detect such arrests, they can also detect the stop and frisk used only to justify a search. The officer who relies on stop and frisk to legitimize his actions must be able to "point to specific and articulable facts which, taken together with rational inferences from these facts, reasonably warrant the intrusion." [25]

Justice Marshall argues in his dissent that even if the stop and frisk were proper (which he does not concede), the Court has permitted an arrest without a showing of probable cause.[26] At the instant prior to the arrest the officer had verified part of the informant's information by actual discovery of the gun. However, at that time carrying a pistol was legal in Connecticut if the owner had a permit,[27] and the informer had not indicated that the gun was possessed illegally. Therefore there was no probable cause to arrest Williams for illegal gun possession.

Assuming, however, that the stop and frisk was legal, there is justification for holding that probable cause existed for arrest for possession of narcotics. Since the informer's information had been partially

[17] *Id.* at 21. Furthermore, mere good faith on the part of the officer has been held not to justify his actions; if it did the "protections of the Fourth Amendment would evaporate." Beck v. Ohio, 379 U.S. 89, 97 (1964).

[18] *See* note 13, *supra*.

[19] CONN. GEN. STAT. ANN. §53-168 (West 1958) provides that any person who knowingly makes a false report to the police alleging that a crime has been committed is guilty of a misdemeanor.

[20] 407 U.S. at 162.

[21] For an excellent expression of that fear, as well as arguments which defend stop and frisk against such fears, see the *amici curiae* briefs filed in *Terry*, reprinted in II CASES AND COMMENTS ON CRIMINAL JUSTICE 399 (3d ed. F. Inbau, J. Thompson & C. Sowle, 1968). *See also* Schwartz, *Stop-and-Frisk (A Case Study in Judicial Control of the Police)*, 58 J. CRIM. L.C. & P.S. 433 (1967).

[22] There are other reasons why the officer may be tempted to execute a search without justifiable cause: the officer may be tempted to search almost at random in an overzealous desire to confiscate weapons in high crime areas, the search may be used by the officer to maintain his authority over local juvenile gangs or other frequent trouble makers, or a bigoted officer may be tempted to use the search as a means to vent his hatred. *See* Schwartz, *supra* note 21, at 444.

[23] So long as the officer is entitled to make a forcible stop, and has reason to believe the suspect is armed and dangerous, he may conduct a search limited in scope to this protective purpose. 407 U.S. at 146.

[24] *See, e.g.*, United States v. One 1963 Cadillac Hardtop, 224 F. Supp. 210, 212 (E.D. Wis. 1963), stating that if the arrest is a sham or front for making a search, the arrest and ensuing search are illegal. *Cf.* United States v. Lassoff, 147 F. Supp. 944 (E.D. Ky. 1957), Williams v. State, 6 Md. App. 511, 252 A.2d 262 (1969), Williams v. United States, 418 F.2d 159 (9th Cir. 1969), *aff'd*, 401 U.S. 646 (1971).

[25] Terry v. Ohio, 392 U.S. at 21.

[26] 407 U.S. at 160-61.

[27] CONN. GEN. STAT. ANN. §29-35 & §29-38 (West 1958).