St. Mary's Law Journal

Volume 15 | Number 2 Article 8

6-1-1984

Terry Stop and Frisk of Vehicle Occupant Extends to Passenger Compartment during Lawful Stop.

Paula C. Tredeau

CASENOTES

CRIMINAL LAW—SEARCH AND SEIZURE—*Terry* Stop and Frisk of Vehicle Occupant Extends to Passenger Compartment During Lawful Stop.

Michigan v. Long,
— U.S. —, 103 S. Ct. 3469, 77 L. Ed. 2d 1201 (1983).

After observing David Long driving in excess of the speed limit and swerving off the road, two Barry County deputies stopped him and investigated.[1] Long got out of the car and failed to answer promptly the officers' questions; the officers thought he was "under the influence of something".[2] Long returned to the car when asked about the vehicle registration, but before he reached into the car, both deputies saw a hunting knife on the floor of the car.[3] One officer *"Terry-frisked"* Long; the other conducted a flashlight search of the passenger compartment and discovered a small leather pouch of marijuana under the armrest.[4] A full search of the passenger compartment revealed no other contraband; however, the officers impounded the car, and the subsequent search of the unlocked trunk revealed approximately seventy-five pounds of marijuana.[5] Long's motion

---

1. *See* Michigan v. Long, — U.S. —, —, 103 S. Ct. 3469, 3473, 77 L. Ed. 2d 1201, 1210-11 (1983).

2. *Id.* at —, 103 S. Ct. at 3473, 77 L. Ed. 2d at 1211. The officers had to ask Long for his license twice before he produced it, and it was only after their second request for his car registration that Long started back to the car to retrieve it. *See id.* at —, 103 S. Ct. at 3473, 77 L. Ed. 2d at 1211.

3. *See id.* at —, 103 S. Ct. at 3473, 77 L. Ed. 2d at 1211; *see also* MICH. COMP. LAWS § 750.227 (1970) (MICH. STAT. ANN. § 28.424 (Callaghan 1981)) (carrying concealed weapons without a license). "A person who shall carry a . . . dangerous weapon except hunting knives adapted and carried as such, concealed on or about his person, or whether concealed or otherwise in any vehicle operated or occupied by him . . . shall be guilty of a felony. . . ." *Id.*

4. *See* Michigan v. Long, — U.S. —, —, 103 S. Ct. 3469, 3473, 77 L. Ed. 2d 1201, 1211 (1983); *see also* Terry v. Ohio, 392 U.S. 1, 30 (1968) (describing patdown search of suspect's outer clothes to insure officer safety).

5. *See* Michigan v. Long, — U.S. —, —, 103 S. Ct. 3469, 3473, 77 L. Ed. 2d 1201, 1211

to suppress all of the marijuana was denied and he was subsequently convicted of possession of marijuana.[6] The conviction was affirmed by the Michigan Court of Appeals.[7] The Michigan Supreme Court reversed, stating that *Terry* did not justify the search of the passenger compartment.[8] The Supreme Court granted certiorari to determine whether a police officer may conduct a protective search of a vehicle during a lawful detention of the vehicle's occupant.[9] Held—*reversed and remanded.* A *Terry* "stop and frisk" of a vehicle occupant extends to the passenger compartment during a lawful stop.[10]

The fourth amendment guarantees the right to be secure against unreasonble searches and seizures and that no warrants can be issued unless there is probable cause.[11] The warrant requirement and the probable cause standard upon which warrants may be issued are the two safeguards of a citizen's fourth amendment rights.[12] Although the fourth amendment

---

(1983). After the officers arrested Long, they searched the passenger compartment of the vehicle, including the glove compartment. *See id.* at __, 103 S. Ct. at 3473, 77 L. Ed. 2d at 1211.

6. *See id.* at __, 103 S. Ct. at 3473, 77 L. Ed. 2d at 1211.

7. *See* People v. Long, 288 N.W.2d 629, 632 (Mich. App. 1979) (calling the search a "reasonable protective search under *Terry*"), *rev'd,* 320 N.W.2d 866 (Mich. 1982), *rev'd and remanded,* __ U.S. __, 103 S. Ct. 3469, 77 L. Ed. 2d 1201 (1983).

8. *See* People v. Long, 320 N.W.2d 866, 869-70 (Mich. 1982), *rev'd and remanded,* __ U.S. __, 103 S. Ct. 3469, 77 L. Ed. 2d 1201 (1983).

9. *See* Michigan v. Long, __ U.S. __, __, 103 S. Ct. 3469, 3474, 77 L. Ed. 2d 1201, 1212 (1983).

10. *See id.* at __, 103 S. Ct. at 3472, 77 L. Ed. 2d at 1209.

11. *See* U.S. CONST. amend. IV. The fourth amendment provides:

> The right of 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.

Id. Probable cause is defined as "facts and circumstances within [the officers'] knowledge and of which they had reasonably trustworthy information [are] sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed." Brinegar v. United States, 338 U.S. 160, 175-76 (1949). In addition to the probable cause requirement, a warrant must be particular to the person, place, or thing named. *See* Ybarra v. Illinois, 444 U.S. 85, 91 (1979); *see also* Henry v. United States, 361 U.S. 98, 100-01 (1959) (general warrant expressly rejected by fourth amendment).

12. *See* Katz v. United States, 389 U.S. 347, 359 (1967) (absent exceptions, search without warrant per se unreasonable). The probable cause standard guards against arbitrary intrusion by setting guidelines that justify the intrusion. *See, e.g.,* Ybarra v. Illinois, 444 U.S. 85, 95-96 (1979) (probable cause best compromise for accomodating opposing interests); Dunaway v. New York, 442 U.S. 200, 208 (1979) (probable cause representing "the accumulated wisdom of precedent and experience"); Henry v. United States, 361 U.S. 98, 102 (1959) (strict enforcement of probable cause standard since it protects both officer and citizens). The warrant requirement protects citizens from arbitrary police action by placing the judgment of a neutral and detached magistrate between the police and the citizen. *See,*

has been respected and valued,[13] courts have scrutinized the two safeguards and have developed exceptions to each.[14] The United States Supreme Court has recognized that not all governmental instrusions are equally invasive and has reasoned that the standard used to justify police intrusions should reflect this variance.[15]

---

e.g., Katz v. United States, 389 U.S. 347, 357 (1967) (search without warrant per se unreasonable), *cited with approval in* United States v. Ross, 456 U.S. 798, 825 (1982); Camara v. Municipal Court, 387 U.S. 523, 528-29 (1967) (except in certain intrusions, search of property unreasonable unless authorized by warrant); Jones v. United States, 357 U.S. 493, 499 (1958) (warrantless searches unreasonable absent certain exceptions). Additionally, the state has the burden of proving that a warrantless search was necessary. *See* United States v. Jeffers, 342 U.S. 48, 51 (1951) ("The burden is on those seeking the exemption to show the need for it."). For an extensive discussion of the role of probable cause and warrant requirement of the fourth amendment, see generally Bloom, *The Supreme Court And Its Purported Preference For Search Warrants,* 50 TENN. L. REV. 231, 236-39 (1983) (Supreme Court's application of warrant requirement for searches); Comment, *Dilution of the Probable Cause Mandate Of The Fourth Amendment--Michigan v. Summers,* 16 SUFFOLK U.L. REV. 805, 811 (1982) (discussing warrant and probable cause requirement and exceptions).

13. *See, e.g.,* Davis v. Mississippi, 394 U.S. 721, 726-27 (1969) (fourth amendment prevents "wholesale intrusions" on citizen's security); Brinegar v. United States, 338 U.S. 160, 180 (1949) (Jackson, J., dissenting) ("[fourth amendment rights] are not mere second class rights, but belong in the catalogue of indispensable freedoms."); United States v. Coates, 495 F.2d 160, 165 (D.C. Cir. 1974) (fourth amendment as guarding sanctity of person). For an overview of the fourth amendment, see 1 W. LAFAVE, SEARCH AND SEIZURE: A TREATISE ON THE FOURTH AMENDMENT § 1.1(a) (1978) (general review of fourth amendment); Woody & Rosen, *Fourth Amendment, Viewed and Reviewed,* 11 S. TEX. L.J. 315, 316 (1969) (historical analysis of fourth amendment).

14. *See* 1 W. LAFAVE, SEARCH AND SEIZURE: A TREATISE ON THE FOURTH AMENDMENT § 4.1(a) (1978) (discussion of warrantless searches). One group of exceptions requires probable cause, but no warrant. *See* Texas v. Brown, __ U.S. __, __, 103 S. Ct. 1535, 1543-44, 75 L. Ed. 2d 502, 515 (1983) (if officer lawfully in area and views suspicious object, it may be seized); South Dakota v. Opperman, 428 U.S. 364, 369 (1976) (inventory search of car permitted after impoundment); United States v. Robinson, 414 U.S. 218, 235 (1973) (search of person valid as incident to lawful arrest because privacy interest already abated); Chimel v. California, 395 U.S. 752, 762-63 (1969) (search of area within arrestee's immediate control justified by police safety and preservation of evidence); Warden v. Hayden, 387 U.S. 294, 298-99 (1967) (exigent circumstances of pursuing felon justify exception to warrant requirement); Schmerber v. California, 384 U.S. 757, 770-72 (1966) (potential for evidence being destroyed justified warrantless seizure of blood of drunk driver). A second group of exceptions does not require either a warrant or probable cause. *See* Schneckloth v. Bustamonte, 412 U.S. 218, 222 (1973) (consent must be voluntary); *cf.* United States v. Cortez, 449 U.S. 411, 422 (1981) (Stewart, J., concurring) (border stop permitted if officers could reasonably surmise criminal activity); United States v. Brignoni-Ponce, 422 U.S. 873, 881 (1975) (while patrolling border, temporary detention allowed on less than probable cause); Bumper v. North Carolina, 391 U.S. 543, 550 (1968) (acquiesence to authority not consent). Absent an exception to the warrant requirement, or an exception to both the warrant and probable cause requirements, warrantless governmental instrusions are per se unreasonable. *See* Katz v. United States, 389 U.S. 347, 357 (1967).

15. *See* Terry v. Ohio, 392 U.S. 1, 15 (1968) ("No judicial opinion can comprehend the

The United States Supreme Court announced the first variance to the long standing probable cause standard in *Terry v. Ohio.*[16] A reasonable suspicion standard was created in response to the need for a more lenient standard used during brief, investigatory confrontations between officers and citizens.[17] The Court held that an officer could temporarily detain a suspect if the intrusion could be justified by articulable facts and inferences arising from the facts.[18] During the stop, a frisk of the suspect's outer clothes was permissible if the officer reasonably concluded that the suspect might be armed and dangerous.[19] The Court used reasonableness

---

protean variety of the street encounter."). The Court balanced the need to search with the level of intrusion required by the search to determine whether the search was reasonable. *See id.* at 21.

16. 392 U.S. 1, 30 (1968). Officer McFadden observed three men walking by a store, looking into the store window, conferring at the corner and then leaving the area. *See id.* at 6. He suspected them of "casing a job" and later approached them to ask their names. *See id.* at 6-7. When they mumbled a response, McFadden patted down Terry's coat and felt and retrieved a pistol. *See id.* at 6-7. For extensive discussion of the *Terry* case, see, e.g., Tiffany, *Fourth Amendment and Police-Citizen Confrontations,* 60 J. CRIM. LAW, CRIMINOLOGY 442, 452-53 (1969) (*Terry* and its impact on interrogation, need for more adequate controls); Comment, *Stop and Frisk,* 63 N.W. U.L. REV. 837, 861 (1969) (stop and frisk as "pragmatic reconciliation" of police and society); Note, *Police May Conduct Limited Search for Weapons in Course of Field Investigation Without Probable Cause for Arrest,* 21 VAND. L. REV. 1109, 1115 (1968) (*Terry* as "expedient compromise" between law enforcement and citizen's interests).

17. *See* Terry v. Ohio, 392 U.S. 1, 30 (1968). For an extensive discussion on the reasonable suspicion standard, see generally MODEL RULES FOR LAW ENFORCEMENT, STOP AND FRISK Rule 202 (Project on Law Enforcement Policy and Rulemaking 1974) (listing factors to consider in determining reasonable suspicion); 1 W. RINGEL, SEARCHES AND SEIZURES, ARRESTS AND CONFESSIONS § 13.4 (1982) (elements that could constitute reasonable suspicion); Bell, *Factors Which Justify a Stop and Frisk,* 6 SEARCH & SEIZURE L. REP., June 1979, at 3 (elements include demeanor, furtive gestures, and attempts to flee).

18. *See* Terry v. Ohio, 392 U.S. 1, 21 (1968). The Court held that a *Terry-stop* is a seizure under the fourth amendment. *See id.* at 16-17.

19. *See* Terry v. Ohio, 392 U.S. 1, 30 (1968). Initially, the officer may detain the person and may conduct a brief, investigatory conversation at this point. *See id.* at 22. During this stop, the officer may exercise his authority to conduct a limited frisk of the suspect only if he reasonably believes the suspect to be armed and dangerous. *See id.* at 30. *Terry* is a two-step process and each step has its own requirement to justify the intrusion. *See* M. HERMANN, SEARCH & SEIZURE CHECKLIST 27, 28 (1979). Thus, *Terry* may be used to justify an initial detention based on reasonable suspicion. *See* United States v. McCann, 465 F.2d 147, 157-58 (5th Cir. 1972) (permitting limited detention to make investigatory inquiries), *cert. denied,* 412 U.S. 927 (1973). Additionally, *Terry* authorizes a weapon frisk of a person reasaonably believed to be armed and dangerous. *See* Sibron v. New York, 392 U.S. 40, 64 (1968) (search only allowed if suspect believed to be armed and dangerous). For a detailed discussion of the distinction between the stop and the frisk, see generally, 3 W. LAFAVE, SEARCH AND SEIZURE: A TREATISE ON THE FOURTH AMENDMENT §§ 9.3-.4 (1978) (setting out basis of stop and frisk); Dutile, *Freezing the Status Quo in Criminal Investigations: The*

as the controlling standard of the fourth amendment[20] and balanced the interest of police protection with the interest of the public to be free from governmental intrusion.[21] Numerous subsequent cases regarding police-citizen confrontations have echoed the *Terry* Court's reliance on the police protection rationale[22] and the limited protective search theory.[23]

While *Terry* addressed only a protective search of a suspect's outer clothes,[24] courts extended the *Terry-frisk* to include items closely associ-

---

Melting of Probable Cause and Warrant Requirements, 21 B.C.L. REV. 851, 858 (1980) ("dual intrusion being justified").

20. *See* Terry v. Ohio, 392 U.S. 1, 19 (1968). The Court explained that it was impractical to require a warrant during an investigatory stop; therefore, the standard to justify the intrusion would be relative to the reasonableness standard of the fourth amendment. *See id.* at 20; *see also* Camara v. Municipal Court, 387 U.S. 523, 539 (1967) (reasonableness as ultimate standard). *See generally* J. HIRSCHEL, FOURTH AMENDMENT RIGHTS 39 (1969) (empirical study of concept of reasonableness).

21. *See* Terry v. Ohio, 392 U.S. 1, 26 (1968). The balancing test was first used in Camara v. Municipal Court, 387 U.S. 523, 536-37 (1967) (balancing need to search against invasion which search engenders); *cf.* Michigan v. Summers, 452 U.S. 692, 706 (1981) (Stewart, J., dissenting) (*Terry* and border stops at international borders are "two isolated exceptions to the general rule that the fourth amendment itself has already performed the constitutional balance between police objectives and personal privacy"). *See generally* LaFave, *"Street Encounters" And The Constitution: Terry, Sibron, Peters, and Beyond,* 67 MICH. L. REV. 40, 57 (1969) (balancing test as "technique for establishing the quantum of evidence needed").

22. *See* Terry v. Ohio, 392 U.S. 1, 23 (1968) (important interest of police to secure safety). Courts have repeatedly voiced concern that police should not face undue danger while confronting suspects. *See, e.g.,* Pennsylvania v. Mimms, 434 U.S. 106, 109-10 (1977) (requesting occupants to get out of car reasonable because of danger officer faces from passing traffic or suspect in car); Adams v. Williams, 407 U.S. 143, 147-48 (1972) (police confrontation with suspect at night, high crime area and information that suspect armed justified *Terry-frisk);* United States v. Coates, 495 F.2d 160, 165 (D.C. Cir. 1974) (police must prepare for dangerous contingencies, but routine patdown searches invalid); *cf.* United States v. Green, 465 F.2d 620, 628 (D.C. Cir. 1972) (Wright, J., dissenting) (officer's interest in safety not to be "transformed into a hunting license abrogating fourth amendment rights. . . ."). *See generally* D. Mongiardo, *Protective Searches,* 3 SEARCH & SEIZURE L. REP., August 1976, at 1 (protective searches as part of exigency, plain view, and as separate exception).

23. *See* Terry v. Ohio, 392 U.S. 1, 19 (1968) ("scope of the search must be 'strictly tied to and justified by' the circumstances which rendered its initiation permissible"). Courts have used the statement as a guideline by which to judge the scope of warrantless searches based on both probable cause and reasonable suspicion. *See, e.g.,* United States v. Brignoni-Ponce, 422 U.S. 873, 881 (1975) (justifying brief detention based on reasonable suspicion of suspected illegal aliens at international border as long as detention reasonably related in scope to justification of initial intrusion); Adams v. Williams, 407 U.S. 143, 148 (1972) (reaching into suspect's waistband for weapon based on reasonable suspicion was "limited intrusion designed to insure [the officer's] safety"); Chimel v. California, 395 U.S. 752, 762-63 (1969) (search of area in suspect's immediate control upon arrest based on probable cause follows *Terry* analysis of search being limited to what is justified by initial intrusion).

24. *See* Terry v. Ohio, 392 U.S. 1, 30 (1968). The limits of a *Terry-frisk* of a person have been strictly construed to the patdown of the outer clothes. *See, e.g.,* Ybarra v. Illinois,

ated with the person, such as luggage, duffelbags, and purses.[25] A permissible *Terry-frisk* of these possessions ranged from a patdown of the item,[26] to reaching into an open bag,[27] and finally, to subjecting hand-carried luggage at an airport to a canine sniff.[28] In each instance the stop was justified by the reasonable suspicion standard[29] and the subsequent search was

---

444 U.S. 85, 93-94 (1979) ("narrow scope" of *Terry* not extended beyond search for weapons); Sibron v. New York, 392 U.S. 40, 65 (1968) (search "solely" patdown of outer clothing); United States v. Romero, 692 F.2d 699, 703 (10th Cir. 1982) (seizing bag of marijuana from suspect's pants pocket invalid); *cf.* Adams v. Williams, 407 U.S. 143, 147-48 (1972) (police allowed to reach into suspect's waistband because informant and circumstances gave reasonable fear for safety).

25. *See, e.g.,* United States v. Place, __ U.S. __, __, 103 S. Ct. 2637, 2644, 77 L. Ed. 2d 110, 120-21 (1983) (seizure of luggage reasonably suspected of containing drugs subject to canine sniff); United States v. Johnson, 637 F.2d 532, 534-35 (8th Cir. 1980) (search of suspect's duffelbag, not within reach, but behind door, valid for police protection); United States v. Walker, 576 F.2d 253, 255-56 (9th Cir. 1978) (patdown and subsequent opening of large purse after hard items were felt held reasonable), *cert. denied,* 439 U.S. 1081 (1979). *See generally* Comment, *Demise Of The Probable Cause Requirement In Seizures Of Inanimate Objects,* 51 U. CIN. L. REV. 405, 425 (1982) (reasonable suspicion as standard for seizing luggage insufficient).

26. *See* United States v. Walker, 576 F.2d 253, 255-56 (9th Cir. 1978), *cert. denied,* 439 U.S. 1081 (1979). After twice commanding suspect to stop and watching the suspect reach into her purse, the officer patted down the outside of the purse. *See id.* at 255. Upon feeling hard objects, the officer opened the purse. *See id.* at 255. While some courts have allowed *Terry* to support the search of a purse, the original scope of *Terry* was limited to the suspect's outer clothes. *Compare id.* at 255-56 (reasonable for police to stop suspect under *Terry* and to protect themselves by searching suspect's handbag) *and* United States v. Vigo, 487 F.2d 295, 298 (2d Cir. 1973) (search of purse within limits of *Terry* protective search) *with* Terry v. Ohio, 392 U.S. 1, 30 (1968) (limiting search to patdown of outer clothes).

27. *See* United States v. Johnson, 637 F.2d 532, 533-34 (8th Cir. 1980). The duffelbag remained inside a store while the suspect was brought outside. *See id.* at 533. While one officer frisked the suspect outside, the other reached back inside the door to get the duffelbag. *See id.* at 533. The weapon was protruding from the top of the bag, covered with a cloth. *See id.* at 533-34. The officer grabbed the object and removed the cloth. *See id.* at 533-34.

28. *See* United States v. Place, __ U.S. __, __, 103 S. Ct. 2637, 2644, 77 L. Ed. 2d 110, 120-21 (1983). The officers had a reasonable suspicion that the suspect was carrying drugs in his luggage. *See id.* at __, 103 S. Ct. at 2644, 77 L. Ed. 2d at 120. The officers seized the bags and took them to another airport to subject them to a canine sniff test. *See id.* at __, 103 S. Ct. at 2640, 77 L. Ed. 2d at 115. The sniff test was held not to be a search within the meaning of the fourth amendment, but, in this case, the detention of the bags for ninety minutes was outside the *Terry-scope. See id.* at __, 103 S. Ct. at 2645-46, 77 L. Ed. 2d at 121-22. A canine sniff is valid if it occurs subsequent to lawful temporary detention. *See* United States v. Klein, 626 F.2d 22, 26 (7th Cir. 1980). For a discussion on the use of dogs to conduct searches, see generally Gilligan & Lederer, *Searches By Dogs,* 3 SEARCH & SEIZURE L. REP., Jan. 1976, at 1 (discussing dog sniff searches, probable cause and expectations of privacy).

29. *See, e.g.,* United States v. Place, __ U.S. __, __, 103 S. Ct. 2637, 2644, 77 L. Ed. 2d 110, 120 (1983) (when officer reasonably believes luggage contains drugs, temporary deten-

validated because of the danger posed to police by the suspect's accessibility to weapons.[30]

Courts have recognized the increase in danger to police when confrontations involve vehicle occupants.[31] Initially, the Supreme Court held that police could order vehicle occupants to stand outside the car during a lawful stop.[32] Lower federal courts, utilizing the *Terry* rationale, extended the protective frisk to authorize a search of the vehicle passenger compartment for weapons after the occupant was out of the car.[33] The courts based their

---

tion of luggage permissible under *Terry);* United States v. Johnson, 637 F.2d 532, 534 (8th Cir. 1980) (information and police observation justified seizure of person); United States v. Walker, 576 F.2d 253, 256 (9th Cir. 1978) (stop made in good faith belief that there was criminal activity), *cert. denied,* 439 U.S. 1081 (1979). Additionally, the *Place* Court announced that detention of luggage would be limited to the standard set out in *Terry* for detention of suspects. *See* United States v. Place, __ U.S. __, __, 103 S. Ct. 2637, 2645, 77 L. Ed. 2d 110, 122 (1983). The recommended period of time to detain a person is twenty minutes. *See* MODEL CODE OF PREARRAIGNMENT PROCEDURE § 110.2(1) (1975). For an extensive discussion of luggage seized on reasonable suspicion, see generally Comment, *Fourth Amendment Seizure: The Fifth Circuit Adopts A Restrictive Definition,* 13 CUM. L. REV. 79, 87 (1982) (review of circuit courts' definitions of seizure); Comment, *Seizing Luggage on Less than Probable Cause,* 18 AM. CRIM. L. REV. 637, 643 (1981) (reliance on *Terry* not applicable to seizure of luggage).

30. *See, e.g.,* United States v. Johnson, 637 F.2d 532, 535 (8th Cir. 1980) (officers' safety endangered by weapon in close proximity to suspect); United States v. Walker, 576 F.2d 253, 256 (9th Cir. 1978) (search justified by officer's need for protection), *cert. denied,* 439 U.S. 1081 (1979); United States v. Vigo, 487 F.2d 295, 298 (2d Cir. 1973) (search of purse "normal, protective measure"). *But see* United States v. Place, __ U.S. __, __, 103 S. Ct. 2637, 2644-45, 77 L. Ed. 2d 110, 120-21 (1983) (*Terry* permits limited detention of bags on reasonable suspicion, but canine sniff not search for fourth amendment purposes).

31. *See* Adams v. Williams, 407 U.S. 143, 148 n.3 (1972) (statistics showing 30% of police shootings occur during police confrontations with suspects in vehicles), *cited with approval in* Pennsylvania v. Mimms, 434 U.S. 106, 110 (1977); *see also* International Chiefs of Police, Annual Law Enforcement Casualty Summary 2 (July 70-June 71), *cited with approval in* United States v. Green, 465 F.2d 620, 624 n.10 (D.C. Cir. 1972) (additional data on police shootings during vehicle stops).

32. *See* Pennsylvania v. Mimms, 434 U.S. 106, 109, 111 (1977) (precautionary measure of asking suspect to get out of car de minimis after lawful detention); *see also* Kremer, *Right Of Police To Order Traffic Violators Out Of Car,* 5 SEARCH & SEIZURE L. REP., Feb. 1978, at 1 (background and implication of *Mimms); cf.* Adams v. Williams, 407 U.S. 143, 148 (1972) (officer could reach into occupant's waistband while still sitting in car based on *Terry* stop and frisk). The Court considered the fact that the suspect was in a car, but the officer's fear for his safety within the terms of *Terry* was the dominant justification. *See id.* at 147-48. An *Adams* type of search of vehicle occupants has been held valid by other courts. *See* United States v. Vasquez, 634 F.2d 41, 42-43 (2d Cir. 1980) (as suspect reached under seat during lawful stop, officers justified in making protective search); United States v. Beardslee, 609 F.2d 914, 916 (8th Cir. 1979) (officer reached into car to divert suspect's arm after observing him holding gun), *cert. denied,* 444 U.S. 1090 (1980).

33. *See, e.g.,* United States v. Merritt, 695 F.2d 1263, 1271 (10th Cir. 1982) (flashlight search of cab of truck permissible when officer believes occupants armed and dangerous),

reasoning on the potential for hiding weapons in the car, the suspect's access to weapons, and the danger of retaliation once a suspect was permitted back in the car.[34] The scope of protective searches was limited to reaching under the front seat,[35] patting down a coat on the front seat,[36] and conducting a flashlight search of the passenger compartment.[37]

In *Michigan v. Long,*[38] the United States Supreme Court first announced approval of a *Terry-frisk* of a vehicle passenger compartment while the

---

cert. denied, __ U.S. __, 103 S. Ct. 1898, 77 L. Ed. 2d 286 (1983); United States v. Romero, 692 F.2d 699, 703 (10th Cir. 1982) (when suspect believed armed and dangerous, may search car for weapons); United States v. Rainone, 586 F.2d 1132, 1135 (7th Cir. 1978) (placing hands under front seat valid when officer had knowledge of prior violence in area), *cert. denied,* 440 U.S. 980 (1979).

34. *See* United States v. Merritt, 695 F.2d 1263, 1271-72 (10th Cir. 1982) (reasonable to conduct flashlight search of cab of truck because occupants could gain access to weapons if they escaped from police control), *cert. denied,* __ U.S. __, 103 S. Ct. 1898, 77 L. Ed. 2d 286 (1983); United States v. Romero, 692 F.2d 699, 703 (10th Cir. 1982) (danger of suspect hiding weapon that could become accessible if he broke away from police or when he returned to car); United States v. Wilkerson, 598 F.2d 621, 625 (D.C. Cir. 1978) (occupants potentially able to reach into car and use hidden weapon); United States v. Rainone, 586 F.2d 1132, 1134-35 (7th Cir. 1978) (hidden weapon accessible to suspect if he breaks away from police or possible motive to kill officer when he returns to his car), *cert. denied,* 440 U.S. 980 (1979); United States v. Green, 465 F.2d 620, 623 (D.C. Cir. 1972) (reasonable to conduct limited protective search after seeing furtive gestures); *cf.* Government of Canal Zone v. Bender, 573 F.2d 1329, 1332 (5th Cir. 1978) (search of car invalid because officers did not frisk occupants and therefore could not have reasonable fear for their safety and because officers were closer to car than suspects).

35. *Compare* United States v. Rainone, 586 F.2d 1132, 1133 (7th Cir. 1978) (after search of occupant and looking under seat, officer felt underneath and retrieved dynamite), *cert. denied,* 440 U.S. 980 (1979) *and* United States v. Green, 465 F.2d 620, 621 (D.C. Cir. 1972) (after observing furtive gestures, officer found pistol under driver seat) *with* Government of Canal Zone v. Bender, 573 F.2d 1329, 1330 (5th Cir. 1978) (reaching under front seat and retrieving frisbee with marijuana held invalid) *and* People v. Superior Court of Yolo County, 478 P.2d 449, 454-57, 91 Cal. Rptr. 729, 735-42 (ambiguity inherent in furtive gestures). For a discussion of furtive gestures and their role in justifying a stop and frisk, see 1 W. LAFAVE, SEARCH AND SEIZURE: A TREATISE ON THE FOURTH AMENDMENT § 3.6(d) (1978) (discussion of *Yolo County);* 1 W. RINGEL, SEARCHES AND SEIZURES, ARRESTS AND CONFESSIONS § 13.4(b)(2) (1982) (noting that furtive gestures often occur during vehicle stops); Bell, *Factors Which Justify A Stop And Frisk,* 6 SEARCH & SEIZURE L. REP., June 1979, at 3 (listing elements of stop and frisk).

36. *See* United States v. Wilkerson, 598 F.2d 621, 623 (D.C. Cir. 1978) (patting down coat which "appeared to be wrapped around something" valid); *cf.* United States v. Walker, 576 F.2d 253, 255-56 (9th Cir. 1978) (patdown of purse, followed by opening of purse after hard object felt, valid), *cert. denied,* 439 U.S. 1081 (1979).

37. *See* United States v. Merritt, 695 F.2d 1263, 1271-72 (10th Cir. 1982) (flashlight search of truck cab valid when reasonably believe occupant to be armed and dangerous), *cert. denied,* __ U.S. __, 103 S. Ct. 1898, 77 L. Ed. 2d 286 (1983). *See generally* G. Miller, *Visual Searches,* 3 SEARCH & SEIZURE L. REP., Feb. 1976, at 1 (discussion of plain view, surveillance, and aided observations).

38. __ U.S. __, 103 S. Ct. 3469, 77 L. Ed. 2d 1201 (1983).

occupant was lawfully detained.[39] The search must be limited to places where a weapon could be secreted and must be based on a reasonable belief that the suspect is armed and dangerous and may have access to weapons.[40] The Court relied on three justifications for the search.[41] First, the Court reaffirmed the need for police protection when confronting suspects reasonably believed to be armed and dangerous.[42] Second, the Court emphasized that dangers surrounding confrontations are increased when the suspect is in a vehicle.[43] Finally, the Court relied upon the hazard that

---

39. *See id.* at __, 103 S. Ct. at 3480, 77 L. Ed. 2d at 1221. There was a secondary issue regarding the United States Supreme Court's jurisdiction to review the case. The majority set out a procedure by which state courts could establish that their opinions were based on independent state grounds thereby precluding judicial review by the United States Supreme Court. *See id.* at __, 103 S. Ct. at 3476-77, 77 L. Ed. 2d at 1214. The majority reaffirmed the need to maintain the independence of state courts and to avoid issuing advisory opinions. *See id.* at __, 103 S. Ct. at 3475, 77 L. Ed. 2d at 1214. The Court announced that when a case relies on federal law exclusively or in part for its holding, and the sufficiency and independence of state law are not clearly established, the opinion will be considered to have been decided because federal law so required. *See id.* at __, 103 S. Ct. at 3476, 77 L. Ed. 2d at 1214. Should the state court choose to rely on federal law only as precedent equivalent to any other jurisdiction's precedent and not as a controlling factor, then the court need only state this. *See id.* at __, 103 S. Ct. at 3476, 77 L. Ed. 2d at 1214. The majority reasoned that the reliance on the Michigan State Constitution was not "sufficiently independent from the state court's interpretation of federal law" and that the decision primarily relied on federal law. *See id.* at __, 103 S. Ct. at 3471, 77 L. Ed. 2d at 1216. In a separate concurring opinion, Mr. Justice Blackmun admitted jurisdiction over the case, but because of the potential for advisory opinions, he disapproved of the majority's "presumption of jurisdiction." *See id.* at __, 103 S. Ct. at 3483, 77 L. Ed. 2d at 1223 (Blackmun, J., concurring). Mr. Justice Stevens, writing for the dissent, held that the reliance on the state constitution was adequate state grounds and rejected the majority's presumption that the state grounds were determined by federal laws unless the court indicates otherwise. *See id.* at __, 103 S. Ct. at 3489, 77 L. Ed. 2d at 1231 (Stevens, J., dissenting). The dissent reasoned that this was a case in which the state of Michigan was merely offering greater protection than would be offered by the United States Supreme Court, and which "offended no federal interest whatever." *Id.* at __, 103 S. Ct. at 3490, 77 L. Ed. 2d at 1233 (Stevens, J., dissenting).

40. *See id.* at __, 103 S. Ct. at 3480, 77 L. Ed. 2d at 1220. Reasonable belief is the same standard initially set out in *Terry,* wherein the officers' fear of a suspect must be justified by articulable and specific facts and the inferences from those facts. *See* Terry v. Ohio, 392 U.S. 1, 21 (1968).

41. *See* Michigan v. Long, __ U.S. __, __, 103 S. Ct. 3469, 3480, 77 L. Ed. 2d 1201, 1219-20 (1983).

42. *See id.* at __, 103 S. Ct. at 3478-79, 77 L. Ed. 2d at 1217-18. The Court used the balancing test and the reasonableness standard used in *Terry* to justify police protection actions. *See id.* at __, 103 S. Ct. at 3479, 77 L. Ed. 2d at 1217-18. The *Long* majority noted that the *Terry* Court anticipated the future limitations on a protective search would evolve in terms of the facts and circumstances of each case. *See id.* at __, 103 S. Ct. at 3479, 77 L. Ed. 2d at 1218; *see also,* Terry v. Ohio, 392 U.S. 1, 29 (1968).

43. *See* Michigan v. Long, __ U.S. __, __, 103 S. Ct. 3469, 3479, 77 L. Ed. 2d 1201, 1218-19 (1983). The majority cited Pennsylvania v. Mimms, 434 U.S. 106 (1977) and Adams

exists when the suspect is not armed, but when he has access to an area in which a weapon could be obtained.[44] The Court concluded that, in the interest of police safety, the search was not unreasonable in light of the facts and circumstances.[45]

Justice Brennan, writing for the dissent, objected to the search of the vehicle passenger compartment because it exceeded the scope of the original *Terry-frisk.*[46] Initially, the dissent asserted that the majority relied on the justifications of a search incident to arrest to create a *Terry-frisk* area rule and, therefore, ignored the significant differences between the two types of searches.[47] Secondly, the dissent disapproved of the majority's failure to define the limits of an area search, labelling the search different in both kind and degree from a *Terry* intrusion.[48] Finally, the dissent be-

---

v. Williams, 407 U.S. 143 (1972) to demonstrate the Court's concern for police safety in confronting suspects in vehicles. *See* Michigan v. Long, __ U.S. __, __, 103 S. Ct. 3469, 3479, 77 L. Ed. 2d 1201, 1218-19 (1983). The Court emphasized this concern noting that 30% of police shootings occur during police confrontations with a suspect in an automobile. *See id.* at __ n.13, 103 S. Ct. at 3479 n.13, 77 L. Ed. 2d at 1219 n.13.

44. *See* Michigan v. Long, __ U.S. __, __, 103 S. Ct. 3469, 3480, 77 L. Ed. 2d 1201, 1219 (1983). The Court used the reasoning from Chimel v. California, 395 U.S. 752 (1969) that the area within the suspect's immediate control may be searched to eliminate threats to officers. *See* Michigan v. Long, __ U.S. __, __, 103 S. Ct. 3469, 3480, 77 L. Ed. 2d 1201, 1219 (1983).

45. *See* Michigan v. Long, __ U.S. __, __, 103 S. Ct. 3469, 3480-81, 77 L. Ed. 2d 1201, 1220-21 (1983). The Court remanded the issue of marijuana found during the trunk search. *See id.* at __, 103 S. Ct. at 3482, 77 L. Ed. 2d at 1222-23. The Michigan Supreme Court had suppressed the trunk marijuana as fruit of an illegal search; consequently, they did not address the issue in their opinion. *See* People v. Long, 320 N.W.2d 866, 870 (Mich. 1982), *rev'd and remanded,* __ U.S. __, 103 S. Ct. 3469, 77 L. Ed. 2d 1201 (1983). The United States Supreme Court, having validated the initial search, remanded the issue for determination in light of South Dakota v. Opperman, 428 U.S. 364 (1976) and United States v. Ross, 456 U.S. 798 (1982). *See* Michigan v. Long, __ U.S. __, __, 103 S. Ct. 3469, 3482, 77 L. Ed. 2d 1201, 1222-23 (1983).

46. *See* Michigan v. Long, __ U.S. __, __, 103 S. Ct. 3469, 3484, 77 L. Ed. 2d 1201, 1224-25 (1983) (Brennan, J., dissenting).

47. *See id.* at __, 103 S. Ct. at 3485, 77 L. Ed. 2d at 1225-26 (Brennan, J., dissenting). The dissent noted the difference between the two types of searches as stated in *Terry. See id.* at __, 103 S. Ct. at 3485, 77 L. Ed. 2d at 1225-26 (Brennan, J., dissenting). The *Terry-frisk* was a brief intrusion limited to a search for weapons, whereas the search incident to an arrest is the first stage of prosecution which leads to further interference with a suspect's freedom. *See id.* at __, 103 S. Ct. at 3485, 77 L. Ed. 2d at 1226 (Brennan, J., dissenting). The dissent declared that the distinction between a *Terry* stop and frisk and a search incident to arrest was used by the Court to determine that *Terry* should not establish the limits of a search incident to arrest. *See id.* at __, 103 S. Ct. at 3485, 77 L. Ed. 2d at 1226 (Brennan, J., dissenting).

48. *See* Michigan v. Long, __ U.S. __, __, 103 S. Ct. 3469, 3486-87, 77 L. Ed. 2d 1201, 1227-28 (1983) (Brennan, J., dissenting) (potentially weapon could be hidden in variety of places in vehicle).

lieved that the vehicle frisk was the type of intrusion normally associated with arrest and, therefore, the majority should not have used the balancing test to determine if the search was reasonable.[49]

The opinions in *Long* restate the standing controversy over whether to extend the protective search authorized by *Terry* to a reasonable area or to limit the search to a patdown of the suspect's clothes.[50] Both the language in *Terry*[51] and subsequent case law indicate that the *Long* Court correctly expands the scope of the protective search to include areas beyond the suspect's outer clothes.[52] Although the *Long* Court follows the *Terry* reasoning, the limitations on the *Long* vehicle frisk are not as clearly defined as the original *Terry* stop and frisk standards.[53] Having seen the *Terry*

---

49. *See id.* at __, 103 S. Ct. at 3487, 77 L. Ed. 2d at 1229 (Brennan, J., dissenting). Arrests are justified by probable cause; whereas, the balancing test is applied to intrusions that fall short of an arrest. *See* Dunaway v. New York, 442 U.S. 200, 212 (1979). In applying the balancing test the interest of the government and the individual are balanced to determine if the intrusion is justified. *See, e.g., id.* at 212 (narrow intrusions of *Terry* and progeny governed by balancing test); Terry v. Ohio, 392 U.S. 1, 21 (1968) (balancing test applied to stop and frisk); Camara v. Municipal Court, 387 U.S. 523, 536-37 (1967) (balance need to search against intrusion present in administrative searches).

50. *See, e.g.,* United States v. Place, __ U.S. __, __, 103 S. Ct. 2637, 2644, 77 L. Ed. 2d 110, 120 (1983) (detaining luggage and permitting canine sniff based on reasonable suspicion); Pennsylvania v. Mimms, 434 U.S. 106, 111 (1977) (during vehicle detention, request to exit car de minimis compared to initial step); Adams v. Williams, 407 U.S. 143, 147-48 (1972) (reach into waistband to search for gun). The alternative view advocates a more narrow reading of *Terry*. *See, e.g.,* United States v. Place, __ U.S. __, __, 103 S. Ct. 2637, 2648, 77 L. Ed. 2d 110, 125 (1983) (Brennan, J., concurring) (*Terry* permits only "extremely limited searches"); Pennsylvania v. Mimms, 434 U.S. 106, 113 (1977) (Marshall, J., dissenting) (*Terry* intrusion related to reason for stop, does not allow intrusion unrelated to stop); Adams v. Williams, 407 U.S. 143, 158 (1972) (Marshall, J., dissenting) (*Terry-frisk* only permitted if suspect dangerous).

51. *See* Terry v. Ohio, 392 U.S. 1, 15-16 (1968) (stating narrowness of question and that case is not to "canvass in detail the constitutional limitations"); *see also id.* at 29 (limitations on protective search decided on facts and circumstances).

52. *See, e.g.,* United States v. Merritt, 695 F.2d 1263, 1271-72 (10th Cir. 1982) (flashlight search of truck cab allowed because suspects could have access to weapons), *cert. denied,* __ U.S. __, 103 S. Ct. 1898, 77 L. Ed. 2d 286 (1983); United States v. Rainone, 586 F.2d 1132, 1133 (7th Cir. 1978) (permitting officer to reach under front seat of car), *cert. denied,* 440 U.S. 980 (1979); United States v. Wilkerson, 598 F.2d 621, 623 (1978) (permitting patdown of coat on front seat of car).

53. *Compare* Terry v. Ohio, 392 U.S. 1, 30 (1968) ("We merely hold today that where a police officer observes . . . he is entitled for the protection of himself or others in the area, to conduct a carefully limited search of the outer clothing. . . .") *with* Michigan v. Long, __ U.S. __, __, 103 S. Ct. 3469, 3480, 77 L. Ed. 2d 1201, 1220 (1983) ("the search of the passenger compartment of an automobile, limited to those areas in which a weapon may be placed or hidden. . . ."). For a discussion of the scope of a protective search, see LaFave, *"Street Encounters" and the Constitution: Terry, Sibron, Peters, and Beyond,* 67 MICH. L. REV. 40, 84 (1969).

stop and frisk extend beyond its original guidelines,[54] the *Long* majority should anticipate that *Long,* too, will potentially expand beyond what is now permitted.[55]

By failing to clearly define the limits of a vehicle frisk, the *Long* decision becomes more vulnerable to unintended extensions[56] and leaves police unsure about implementing the search.[57] For example, the *Long* Court does not address whether a suspect may be forced to open an unlocked glove compartment in which a weapon could easily be hidden.[58] In the past, courts have maintained strict limitations on a search without compromis-

---

54. *Compare* Terry v. Ohio, 392 U.S. 1, 30 (1968) (search limited to suspect's outer clothing) *with* United States v. Johnson, 637 F.2d 532, 534-35 (8th Cir. 1980) (*Terry* protective search applied to duffelbag behind door, valid to retrieve gun protruding from bag) *and* United States v. Rainone, 586 F.2d 1132, 1136 (7th Cir. 1978) ("[W]e do not view *Terry* searches as necessarily restricted to the outer clothing of the suspect."), *cert. denied,* 440 U.S. 980 (1979).

55. *See* Comment, *Dilution of the Probable Cause Mandate of the Fourth Amendment--Michigan v. Summers,* 16 SUFFOLK U.L. REV. 805, 820 (1982) (*Terry* balancing test potentially a "vehicle for the wholesale dilution of probable cause and warrant requirement"); *cf.* Comment, *Extension of Terry Search to Nearby Automobile--United States v. Rainone,* 13 SUFFOLK U.L. REV. 1101, 1117 (1979) (expanding *Terry* stop and frisk undermines citizens' fourth amendment rights). *But see* Dutile, *Freezing the Status Quo In Criminal Investigations: The Melting Of Probable Cause And Warrant Requirements,* 21 B.C.L. REV. 851, 871 (1980) (*Terry* may have effect of closer scrutiny of police-citizen confrontations such as border stops, random vehicle checks, and identity statutes).

56. *See* Terry v. Ohio, 392 U.S. 1, 39 (1968) (Douglas, J., dissenting) ("There have been powerful hydraulic pressures throughout our history that bear heavily on the court to water down constitutional guarantees. . . ."); *see also* A. BARTH, THE PRICE OF LIBERTY 20 (1961) ("Liberty, therefore, requires a dual protection. It required . . . limitation of governmental authority to prevent an extension of authority beyond the need for it.").

57. *Cf.* G. Reamey, The Application of Stop and Frisk To Vehicles in Texas 35 (April 20, 1981) (unpublished manuscript) (officers have right to know extent of permissible searches). It has been recommended that police departments provide guidelines for officers. *See* THE PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, THE CHALLENGE OF CRIME IN A FREE SOCIETY 104 (1967) ("Police departments should develop and enunciate policies that give police personnel specific guidance for the common situations requiring exercise of police discretion."). An example of how police can be informed of recent judicial decisions is through subscription to a trade journal. *See* 31 TEXAS POLICE JOURNAL (Texas Police Association) (Sept. 1983) (capsule summary of *Long* case in Police Legal Digest).

58. *Cf.* Michigan v. Long, __ U.S. __, __, 103 S. Ct. 3469, 3480, 77 L. Ed. 2d 1201, 1219-20 (1983). Another ambiguous circumstance occurs during which the suspect and the officer are at the back of the car with the trunk slightly open. Clearly the suspect has access to potentially dangerous weapons hidden in the trunk. Under *Long,* however, the officer may not search that area. *Cf. id.* at __, 103 S. Ct. at 3480, 77 L. Ed. 2d at 1219-20 (permit search of passenger compartment where weapon could be secreted). *See generally* G. Reamey, The Application of Stop and Frisk To Vehicles in Texas 35 (April 20, 1981) (unpublished manuscript) ("[E]very police officer and every citizen has the right to know precisely how [vehicle frisks] are justifiable and what limits govern their application.").

ing its protective function.[59] Accordingly, the *Long* Court could have created an effective and minimally intrusive vehicle frisk by using limitations previously established by lower courts[60] or by identifying a point beyond which the officer may not search.[61]

Courts have previously validated cursory searches of vehicles in order to secure the officer's safety when it is genuinely in jeopardy.[62] While the *Long* decision may be a valid extension of the *Terry* protective search, the facts do not demonstrate that the officers honestly feared for their safety.[63]

---

59. *See, e.g.,* Ybarra v. Illinois, 444 U.S. 85, 96 (1979) (search invalid because no reasonable fear for safety); Sibron v. New York, 392 U.S. 40, 64 (1968) (must have reasonable suspicion of danger before officer allowed to search suspect); United States v. Romero, 692 F.2d 699, 703 (10th Cir. 1982) (reaching into pants pocket was not justified when no suspicion of weapon). In none of the instances were officers exposed to undue danger. *See Ybarra* v. Illinois, 444 U.S. 85, 93 (1979) (officers had no reason to think suspect would harm them); Sibron v. New York, 392 U.S. 40, 64 (1968) (watching suspects talk to drug users places no fear in officer); United States v. Romero, 692 F.2d 699, 703 (10th Cir. 1982) (officer knew there was no weapon in pants pocket).

60. *See, e.g.,* United States v. Wilkerson, 598 F.2d 621, 625 (D.C. Cir. 1978) (initial search limited to suspicious jacket on front seat of car); United States v. Rainone, 586 F.2d 1132, 1136 (7th Cir. 1978) (limited to area within immediate control, surface of front and back seats and under front seat), *cert. denied,* 440 U.S. 980 (1979); United States v. Green, 465 F.2d 620, 625 (D.C. Cir. 1972) (search under driver's seat of vehicle with door opened to which driver will return).

61. *See, e.g.,* United States v. Place, __ U.S. __, __, 103 S. Ct. 2637, 2645-46, 77 L. Ed. 2d 110, 122 (1983) (seizure of bags and canine sniff reasonable, but detaining for ninety minutes rendered detention unreasonable); United States v. Rainone, 586 F.2d 1132, 1135 (7th Cir. 1978) (search did not include trunk, under the hood, beneath back seat or chassis), *cert. denied,* 440 U.S. 980 (1979); United States v. Green, 465 F.2d 620, 625 (D.C. Cir. 1972) (no search of trunk, glove compartment or back seat).

62. *See, e.g.,* United States v. Merritt, 695 F.2d 1263, 1271 (10th Cir. 1982) (police had information that suspect, armed and dangerous and wanted for murder, would be in vehicle), *cert. denied,* __ U.S. __, 103 S. Ct. 1898, 77 L. Ed. 2d 286 (1983); United States v. Rainone, 586 F.2d 1132, 1133 (7th Cir. 1978) (officers had knowledge that suspect part of violent intra-family feud), *cert. denied,* 440 U.S. 980 (1979); United States v. Green, 465 F.2d 620, 621-22 (D.C. Cir. 1972) (furtive gestures observed gave rise to reasonable suspicion of danger).

63. *See* Respondent's Brief at 14-16, Michigan v. Long, __ U.S. __, 103 S. Ct. 3469, 77 L. Ed. 2d 1201 (1983). The Supreme Court considered a number of factors to justify the reasonableness of the officers' fear, such as it was a rural area, late at night, the suspect had been speeding, driving carelessly and had an accident, the officers thought he was "under the influence of something", there was a large knife in the car, and the leather pouch discovered could have been a weapon. *See* Michigan v. Long, __ U.S. __, __, 103 S. Ct. 3469, 3473, 77 L. Ed. 2d 1201, 1210-11 (1983). The Respondent's Brief urged that most of Barry County is rural and isolated, the late hour does not make people more violent, traffic violations are common, Long's appearance could have been due to the immediately preceding accident, and it was a closed hunting knife in the car. *See* Respondent's Brief at 16, Michigan v. Long, __ U.S. __, 103 S. Ct. 3469, 77 L. Ed. 2d 1201 (1983). The Respondent's Brief adds that Long was cooperative, never threatened the officers, and that the officer testified only to

Although the hunting knife and other potential hidden weapons were clearly threatening factors,[64] the facts also indicate that the knife was legal, the suspect was cooperative, showed no animosity toward the officers and did not have any weapons on his person.[65] Lower courts have held previous vehicle frisks to be reasonable for fourth amendment purposes specifically because the police confronted dangerous situations;[66] absent the police protection justification, vehicle frisks have been found unreasonable.[67] Consequently, the *Long* Court diminishes the citizen's fourth amendment protections by allowing *Long's* ambiguous facts to support the conclusion that such an extensive vehicle frisk is reasonable.[68]

"concern" about Long. *See id.* at 14-16; Michigan v. Long, __ U.S. __, 103 S. Ct. 3469, 77 L. Ed. 2d 1201 (1983).

64. *See* Michigan v. Long, __ U.S. __, __, 103 S. Ct. 3469, 3481-82, 77 L. Ed. 2d 1201, 1220-21 (1983) (suspect may break from custody and use weapon against police).

65. *See* Respondent's Brief at 15-16, Michigan v. Long, __ U.S. __, 103 S. Ct. 3469, 77 L. Ed. 2d 1201 (1983). *Compare* Michigan v. Long, __ U.S. __, __, 103 S. Ct. 3469, 3481, 77 L. Ed. 2d 1201, 1220-21 (1983) (suspect with knife on floor of car) *with* United States v. Merritt, 695 F.2d 1263, 1271 (10th Cir. 1982) (suspect believed to be armed and dangerous and wanted for murder), *cert. denied,* __ U.S. __, 103 S. Ct. 1898, 77 L. Ed. 2d 286 (1983). One court has held that although a suspect's furtive gestures could justify the officers' fear for their safety, the court added that "the fear must be a reasonable one." *See* United States v. Green, 465 F.2d 620, 623 (D.C. Cir. 1972). The *Green* court emphasized that the reasonable fear must be based on the objective standard, as mandated in *Terry. See id.* at 623. In contrast, the *Long* deputies testified only to their "concern" about Long and they did not handcuff him until after the marijuana was found in the trunk. *See* Respondent's Brief at 15, Michigan v. Long, __ U.S. __, 103 S. Ct. 3469, 77 L. Ed. 2d 1201 (1983).

66. *See* United States v. Merritt, 695 F.2d 1263, 1271 (10th Cir. 1982) (suspect wanted for murder, believed to be heavily armed, officers had seen suspect's residence containing weapons), *cert. denied,* __ U.S. __, 103 S. Ct. 1898, 77 L. Ed. 2d 286 (1983); United States v. Romero, 692 F.2d 699, 701-03 (10th Cir. 1982) (information that suspect carrying 40-60 pounds of marijuana resulted in valid search of van for hidden weapons); United States v. Wilkerson, 598 F.2d 621, 625 (D.C. Cir. 1978) (danger eliminated by frisk of coat on front seat of car); United States v. Rainone, 586 F.2d 1132, 1135 (7th Cir. 1978) (officer's personal knowledge of intra-family feud with violence), *cert. denied,* 440 U.S. 980 (1979); United States v. Green, 465 F.2d 620, 623-24 (D.C. Cir. 1972) (furtive gestures led officers to believe suspect armed).

67. *See* Government of Canal Zone v. Bender, 573 F.2d 1329, 1331-32 (5th Cir. 1978) (search of vehicle invalid because no articulable danger posed to officers), *cited with approval in* United States v. Ullrich, 580 F.2d 765, 769-70 (5th Cir. 1978) (suspect's action justified officer's fear and validated search of suspect in car).

68. *Cf.* Brinegar v. United States, 338 U.S. 160, 180 (1949) (Jackson, J., dissenting) ("Uncontrolled search and seizure is one of the first and most effective weapons . . . of every arbitrary government."); Comment, *Dilution of the Probable Cause Mandate of the Fourth Amendment--Michigan v. Summers,* 16 SUFFOLK U.L. REV. 805, 820 (1982) (narrow scope of "limited intrusion" must be maintained or could lead to whole dilution of probable cause and warrant requirement); Comment, *Extension of Terry Search to Nearby Automobile—United States v. Rainone,* 13 SUFFOLK U.L. REV. 1101, 1117-18 (1979) (extending *Terry* frisk to vehicle places untoward discretion in police, confuses *Terry* frisk with search

While the *Long* vehicle frisk is a significant expansion of the original *Terry-frisk* of a suspect,[69] the vehicle frisk necessarily becomes a new category of warrantless vehicle searches, and joins other exceptions such as the vehicle exception and the vehicle search incident to arrest.[70] The vehicle

---

incident to arrest, and consequently undermines guarantees of fourth amendment). Many commentators have addressed the impact that unbridled police discretion could have on fourth amendment rights. *See* A. BARTH, THE PRICE OF LIBERTY 35 (1961).

> Zeal leads policemen, at times, into a dangerous disregard of individual rights for the sake of what they believe to be the protection of society. This is why nothing is more fundamental to freedom than a recognition that the police . . . must always be kept under careful scrutiny and subjected to exacting judicial supervision. The relaxation of such scrutiny and supervision invites corruption.

Id. at 35; *see also* Comment, *Extension of Terry Search to Nearby Automobile--United States v. Rainone,* 13 SUFFOLK U.L. REV. 1101, 1117 (1979) (extending stop and frisk beyond *Terry* limits gives police untoward discretion and endangers fourth amendment rights). Commentators have suggested alternatives to police discretion in search and seizure cases. *See generally* L. TIFFANY, D. MCINTYRE, JR. & D. ROTENBERG, DETECTION OF CRIME 200 (1967) (discussing whether policy decisions should be responsibility of legislature, judiciary, or police); LaFave & Remington, *Controlling the Police: The Judge's Role in Making and Reviewing Law Enforcement Decisions,* 63 MICH. L. REV. 987, 993 (1965) (effect of judges' decisions on police).

69. *See* Michigan v. Long, __ U.S. __, __, 103 S. Ct. 3469, 3484, 77 L. Ed. 2d 1201, 1224 (1983) (Brennan, J., dissenting) ("nothing in *Terry* authorized police officers to search a suspect's car based on reasonable suspicion."). *Terry* discussed only the search of the person, while *Long* validated a permissible vehicle frisk. *Compare* Terry v. Ohio, 392 U.S. 1, 30 (1968) ("We merely hold today that . . . [a police officer may] conduct a carefully limited search of the outer clothing. . . .") *with* Michigan v. Long, __ U.S. __, __, 103 S. Ct. 3469, 3480, 77 L. Ed. 2d 1201, 1220 (1983) ("search of passenger compartment of an automobile, limited to those areas in which a weapon may be placed or hidden. . . .").

70. *See* Wilson, *Warrantless Automobile Searches,* 1 SEARCH & SEIZURE L. REP., Sept. 1974 at 1 (discussion of *Carroll, Robinson* and *Coolidge);* Comment, *Search and Seizure: From Carroll to Ross, The Odyssey of the Automobile Exception,* 32 CATH. L. REV. 221, 225-59 (1982) (review of automobile searches). Police may conduct warrantless searches of vehicle passenger compartments under four justifications. (1) *The Vehicle Exception.* The vehicle exception requires probable cause to search the car. *See, e.g.,* United States v. Ross, 456 U.S. 798, 824 (1982) (warrantless search of car and containers in which object of search may be hidden valid upon determination of probable cause); Chambers v. Maroney, 399 U.S. 42, 52 (1970) (authority to conduct warrantless search of vehicle does not cease after car in police custody); Carroll v. United States, 267 U.S. 132, 153 (1925) (warrantless search justified because of vehicle's inherent mobility). (2) *The Search Incident to Arrest Exception.* Following the lawful arrest of a vehicle occupant, an officer may search the passenger compartment. *See* New York v. Belton, 453 U.S. 454, 460 (1981) (subsequent to arrest, search of passenger compartment valid because within arrestee's immediate control). (3) *Inventory and Impoundment Exception.* While a vehicle is lawfully impounded, officers may conduct an inventory of the vehicle. *See* South Dakota v. Opperman, 428 U.S. 364, 369 (1976) (search justified to protect property in car, prevent false property claims against police, and guard police from potential danger). (4) *Plain View Exception.* Officer may seize contraband seen inadvertently. *See* Texas v. Brown, __ U.S. __, __, 103 S. Ct. 1535, 1543-44, 75 L. Ed. 2d 502, 515 (1983) (if lawfully in area and view suspicious object, it may be seized); *cf.*

exception is used to search for contraband or evidence,[71] whereas a vehicle search incident to arrest is used both as a police protective measure and to preserve evidence.[72] In contrast, the *Long* vehicle frisk addresses only the need for police safety during temporary confrontations with suspects in vehicles.[73] Additionally, previous warrantless vehicle searches were based on probable cause or a valid exception to the probable cause requirement, whereas *Long* permits a reasonable suspicion standard to justify the vehicle frisk.[74] Although the *Long* frisk is a type of warrantless vehicle search, the reasoning and goals of the search are clearly distinct from both the vehicle exception and the vehicle search incident to arrest exception.[75] The failure of the *Long* Court to label and distinguish the new vehicle frisk

---

Coolidge v. New Hampshire, 403 U.S. 443, 468-70 (1971) (plain view must be inadvertent discovery from position where officer may lawfully view contraband).

71. *See, e.g.,* United States v. Ross, 456 U.S. 798, 824 (1982) (warrantless search "defined by the object of the search and the places in which there is probable cause to believe that it may be found"); Chambers v. Maroney, 399 U.S. 42, 47-48 (1970) (probable cause existed to search for guns and money, incriminating evidence of robbery); Carroll v. United States, 267 U.S. 132, 162 (1925) (probable cause existed for bootleg whiskey). *See generally* 2 W. LAFAVE, SEARCH AND SEIZURE: A TREATISE ON THE FOURTH AMENDMENT § 7.2 (1978) (vehicle searches when evidence is object of search).

72. *See* New York v. Belton, 453 U.S. 454, 457-58 (1981). The Court determined that the passenger compartment was an area within the arrestee's immediate control, as defined in Chimel v. California, 395 U.S. 752, 763 (1969), and noted that the principles of *Chimel* regarding scope are not altered. *See* New York v. Belton, 453 U.S. 454, 460 n.3 (1981). *See generally* 1 W. RINGEL, SEARCHES AND SEIZURES, ARRESTS AND CONFESSIONS §11.1(a) (1982) (search of vehicle incident to arrest).

73. *See* Michigan v. Long, __ U.S. __, __, 103 S. Ct. 3469, 3480, 77 L. Ed. 2d 1201, 1219-20 (1983). The three reasons on which the Court based its holding directly refer to police safety, including the need for police to perform protective searches, the danger of vehicle stops, and the danger of weapons in a vehicle. *See id.* at __, 103 S. Ct. at 3480, 77 L. Ed. 2d at 1219-20. *But cf.* 2 W. LAFAVE, SEARCH AND SEIZURE: A TREATISE ON THE FOURTH AMENDMENT § 7.1(c) (1978) (noting instances in which officers cause suspect to move toward car to justify search).

74. *Compare* Texas v. Brown, __ U.S. __, __, 103 S. Ct. 1535, 1543-44, 75 L. Ed. 2d 502, 515 (1983) (probable cause not required to seize object if subject of plain view discovery) *and* United States v. Ross, 456 U.S. 798, 824 (1982) (probable cause required to justify search under vehicle exception) *and* New York v. Belton, 453 U.S. 454, 460 (1981) (search only conducted incident to lawful arrest) *and* South Dakota v. Opperman, 428 U.S. 364, 369-71 (1976) (search conducted because of three justifications, held reasonable for fourth amendment purposes) *with* Michigan v. Long, __ U.S. __, __, 103 S. Ct. 3469, 3481, 77 L. Ed. 2d 1201, 1220-21 (1983) (search of vehicle interior based on reasonable suspicion valid).

75. *Compare* Michigan v. Long, __ U.S. __, __, 103 S. Ct. 3469, 3480, 77 L. Ed. 2d 1202, 1219-20 (1983) (protection of police from potential danger of roadside stops) *with* United States v. Ross, 456 U.S. 798, 824 (1982) (if probable cause exists for vehicle, warrantless search of entire vehicle and any containers which may hold object of search valid) *and* New York v. Belton, 453 U.S. 454, 457-60 (1981) (search of vehicle interior incident to arrest valid for police protection and preservation of evidence).

could cause confusion in lower courts and law enforcement.[76] The application of different types of warrantless vehicle searches has been complex and uncertain[77] and the danger of confusing the new vehicle frisk with other types of searches is great.[78] Courts must exercise caution by recognizing that the purposes and limitations of the *Long* vehicle frisk are significantly more narrow than any other warrantless vehicle search.[79]

The *Long* vehicle frisk provides another police protection device during police-citizen confrontations. By authorizing a search of the vehicle passenger compartment for weapons, the Court has eliminated the danger of weapons hidden in cars and still accessible to suspects. The search, however, requires the citizen to surrender the fourth amendment protections guaranteed by the warrant and probable cause requirements because a vehicle is subjected to a search based on the more lenient standard of reasonable suspicion. The subjectivity and inconsistency implicit in the Court's determination of reasonableness is a "slender reed" on which to rest con-

---

76. *See* G. Reamey, The Application Of Stop And Frisk To Vehicles in Texas 34 (April 20, 1981) (unpublished manuscript) (courts should define scope of vehicle frisk); *cf.* New York v. Belton, 453 U.S. 454, 470 (1981) (Brennan, J., dissenting) (raising questions unanswered by *Belton's* bright-line rule and the failure of majority to give police guidance).

77. *Compare* United States v. Ross, 456 U.S. 798, 824 (1982) (scope of warrantless vehicle search determined by the object of the search and where it could be hidden, expressing inconsistency with *Arkansas v. Sanders,* but adhereing to holding of *Sanders) with* Arkansas v. Sanders, 442 U.S. 753, 764-65 (1979) (warrantless search of luggage in vehicle not justified by vehicle exception to warrant requirement). *See generally* 1 W. RINGEL, SEARCHES AND SEIZURES, ARRESTS AND CONFESSIONS § 11.1 (1982) ("Few areas of search and seizure law are more confused than automobile stops and searches"); Comment, *Search And Seizure: From Carroll To Ross, The Odyssey of the Automobile Exception,* 32 CATH. L. REV. 221, 222 (1982) (vehicle exception as example of difficulty inherent in applying any exception to warrant requirement).

78. *See* Comment, *Extension of Terry Search to Nearby Automobile—United States v. Rainone,* 13 SUFFOLK U.L. REV. 1101, 1112 (1979) (court erred in using search incident to arrest rationale to extend stop and frisk to vehicle). The commentator continued to criticize the *Rainone* court's use of *Terry* to justify the vehicle area search because it ignores the distinction between the two types of searches and the use of the *Terry* balancing test. *See id.* at 1112-18.

79. *Compare* Michigan v. Long, __ U.S. __, __, 103 S. Ct. 3469, 3480, 77 L. Ed. 2d 1201, 1219-20 (1983) (scope limited to area where weapon could be hidden and where suspect could have immediate control) *with* United States v. Ross, 456 U.S. 798, 824 (1982) (scope of warrantless vehicle search includes any place or container in which object of search could be concealed) *and* United States v. Belton, 453 U.S. 454, 460 (1981) (vehicle search incident to arrest includes entire passenger compartment) *and* South Dakota v. Opperman, 428 U.S. 364, 373-76 (1976) (pursuant to inventory search, car, including glove compartment, subject to inspection). *See generally* Note, *Reasonable Suspicion And Probable Cause In Automobile Searches: A Validity Checklist For Police, Prosecutors, And Defense Attorneys,* 40 WASH. & LEE L. REV. 361, 380-82 (1983) (review of automobile searches, standard announced by *Ross).*

stitutional protections.[80]

Paula C. Tredeau

---

80. *See* Posner, *Rethinking the Fourth Amendment,* 1981 SUP. CT. REV. 49, 55 ("A standard of reasonableness is inherently rather vague.") The slender reed analogy was used by Justice Holmes to describe the claim of a state's exclusive authority over migratory birds based on its claim to title. *See* Missouri v. Holland, 252 U.S. 416, 434 (1920).