

Arizona v. Johnson and The Frisk:
Not Just For Drivers Anymore
Legal Question of The Week
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Dateline: April 19, 2002¹

Location: Tucson, Arizona²

Protagonists: Officer Maria Trevizo³ and Detectives with Arizona's gang task force
Poor, Misunderstood Gang Member: Lemon Montrea Johnson⁴

Officer Trevizo and her colleagues were on patrol in Tucson near a neighborhood associated with the Crips gang. Around 9 p.m., they pulled over an automobile after running the tag and discovering an insurance stop. Under Arizona law, this was only an infraction so no arrest could be made solely on that charge. There were three people in the vehicle, including Lemon Johnson, who was seated in the back seat.

The three officers exited their vehicle and approached the stopped vehicle. One of them, Detective Machado, instructed all the occupants to keep their hands visible and asked if there were any weapons in the vehicle; all of them responded "no." Machado then directed the driver to get out of the car. While Machado was getting the driver's license and information from the driver, Officer Trevizo turned her attention to Mr. Johnson.

Officer Trevizo noticed that Mr. Lemon Johnson was wearing clothing, including a blue bandana, which she considered consistent with membership in the Crips gang. She also noticed a scanner in Johnson's jacket pocket which she would later testify was odd because normal people wouldn't carry a scanner around unless they were involved in criminal activity and trying to evade the police. The Lemon then volunteered that he was

¹ On this date in 1775, the "shot heard round the world" was fired and the American Revolutionary War began.

² Tucson is sometimes referred to as "The Old Pueblo." This will all be on the test later. Their motto: "Real. Natural. Arizona." Not. Very. Clever.

³ I love this name. Jersey girl moves to Tucson.

⁴ Lemon is a type of fruit, not generally a first name. This name sounds like something you order off the dessert menu: "I'll have the Lemon Montrea pie." Of course, maybe he pronounced it with the second syllable accented as in "Le-MON." Now he is a French aristocrat....or related to Pepe Le Pew from the old Bugs Bunny cartoons.

from Eloy, Arizona⁵ (a place Trevizo knew was home to a Crips gang⁶) and also told Trevizo that he had served time in prison for burglary and had been out for about a year.⁷

Since Mr. Johnson was being so cooperative, Trevizo decided to question him away from the others, so she asked him to step out of the car. Based on her observations and Lemon's answers to her previous questions, she suspected that he might have a weapon on him, so when he exited the car she "patted him down for officer safety." During the frisk, she felt the butt of a gun near his waist and Johnson started to struggle. Officer Trevizo then placed him in handcuffs. Johnson was subsequently convicted for possession of a weapon by a prohibited possessor. He moved to suppress the evidence, arguing that the patdown was unconstitutional and took his case, as they say, all the way to the highest court in the land.

The U.S. Supreme Court ruled on January 26, 2009 that the patdown was indeed constitutional and upheld poor Lemon's conviction. In doing so, they reviewed the history of the "Terry" frisk which gives us a good reason to do so as well.

Terry v. Ohio, 392 U.S. 1 (1968)

This case was the birthplace of the "frisk." In Terry, an officer observed two men who appeared to be "casing"⁸ a jewelry shop. He stopped the men and conducted a patdown, which disclosed weapons concealed in the men's overcoat pockets. The Supreme Court upheld this practice, saying that when the stop is justified by suspicion (reasonably grounded, but short of probable cause) that criminal activity is afoot, the police officer must be positioned to act instantly on reasonable suspicion that the persons temporarily detained are armed and dangerous. The Court would later hold that traffic stops were akin to these type of brief detention Terry stops.

Pennsylvania v. Mimms, 434 U.S. 106 (1977)

In Mimms, the Court held that "once a motor vehicle has been lawfully detained for a traffic violation, the police may order the driver to get out of the vehicle. This decision was reached by balancing the "legitimate and weighty" interest in officer safety against the minimal additional intrusion of requiring a driver who has already been lawfully stopped to exit the vehicle. The Court also stated that the driver could be patted down for weapons if the officer reasonably concludes that the driver "might be armed and presently dangerous."

Maryland v. Wilson, 519 U.S. 408 (1997)

The Wilson case held that the Mimms rule applied to passengers as well. In other words, an officer making a traffic stop may order passengers to get out of the car pending

⁵ Population as of the 2000 census: 10,375. Their motto: "Why aren't you living here?" (I am not making this up.) Eloy is also home to the world's largest skydive dropzone.

⁶ Couldn't you say this about most U.S. towns and cities?

⁷ This is not information I would want to share with a police officer. Certainly not on the first date.

⁸ I think this term went out of style after the 1960's, which is a shame. It harkens back to a more dignified time when criminals dressed up, the police officer's main tool was a nightstick that he would swing around by the cord, and the supervisors and DA's all wore fedoras. At least that's how it looked in the television shows.

completion of the stop. The Court said that the danger to officer safety is just as present whether the occupant of the stopped car is a driver or a passenger.

From these three cases, the logical next step was to uphold the constitutionality of a patdown search of a driver and passengers to a lawfully stopped vehicle upon reasonable suspicion that they may be armed and dangerous. And that is what the Supreme Court did in Arizona v. Johnson.

What's the bottom line?

For those of you that have skipped to the end, here is the bottom line.

1. You may stop someone for a brief period of time if you have reasonable suspicion that the person committed, is committing, or is about to commit a crime.
2. You may frisk someone if you have a reasonable suspicion that the person has a weapon and presents a danger to you or to others.
3. If your investigative stop is a traffic stop, you may order the driver and any and all passengers out of the car without any additional reasonable suspicion.
4. You may then frisk any of those individuals that you reasonably suspect may have weapons.

And of course, the moral of the story: If life hands you a piece of lemon, make sure the Lemon isn't carrying a piece.⁹

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⁹ Insert rimshot here. "Thank you! I'll be here all week! Don't forget to tip your waitresses."