**9.22 Particular Rights—Fourth Amendment—Unreasonable Search—Exception To Warrant Requirement—*Terry* Frisk**

In general, a search of a person is unreasonable under the Fourth Amendment if the search is not authorized by a search warrant. [A “search warrant” is a written order signed by a judge that permits a law enforcement officer to search a particular person, place, or thing.] Under an exception to this rule, a warrantless search of a person for weapons is permissible when an officer reasonably believes that the person is armed and dangerous.

A search for weapons is permissible if, under all the circumstances known to the officer[s] at the time:

1. the officer[s] had a reasonable suspicion that the person was armed and presently dangerous to the officer[s] or to others; and

2. the scope of the search was strictly limited to that which is necessary for the discovery of weapons.

“Reasonable suspicion” is a particularized and objective basis for suspecting the plaintiff is armed. The officer[s] [is] [are] permitted to draw on [his] [her] [their] own experience and specialized training to make inferences from and deductions about the cumulative information available to [him] [her] [them].

**Comment**

A police officer may conduct a patdown search to determine whether a person is carrying a weapon when the officer has a reasonable suspicion that the person is armed and presently dangerous to the officer or to others.  *Terry v. Ohio*, 392 U.S. 1, 24 (1983). “The purpose of this limited search is not to discover evidence of crime, but to allow the officer to pursue his investigation without fear of violence . . . .”  *Adams v. Williams*, 407 U.S. 143, 146 (1972). Thus, the scope of the search “must be strictly ‘limited to that which is necessary for the discovery of weapons which might be used to harm the officer or others nearby.’” *Minnesota v. Dickerson*, 508 U.S. 366, 373 (1993) (quoting *Terry*, 392 U.S. at 24).

Reasonable suspicion is an objective standard, which requires consideration of the totality of the circumstances. *Terry*, 392 U.S. at 28.

In assessing the totality of the circumstances, relevant considerations may include: observing a visible bulge in a person’s clothing that could indicate the presence of a weapon; seeing a weapon in an area the suspect controls, such as a car; “sudden movements” suggesting a potential assault or “attempts to reach for an object that was not immediately visible,”; “evasive and deceptive responses” to an officer’s questions about what an individual was up to; unnatural hand postures that suggest an effort to conceal a firearm; and whether the officer observes anything during an encounter with the suspect that would dispel the officer’s suspicions regarding the suspect’s potential involvement in a crime or likelihood of being armed.

*Thomas v. Dillard*, 818 F.3d 864, 877 (9th Cir. 2016) (internal citations omitted). While suspected domestic violence is a relevant consideration in assessing whether a person is armed and dangerous, suspicion of such a crime by itself does not provide a reason to suspect a person is armed. *Id*. at 878; *United States v. Taylor*, 60 F.4th 1233, 1242 (9th Cir. 2023) (upholding a *Terry* search where officers knew about defendant’s traffic offenses, that he was on federal supervision for being felon in possession of firearm; after defendant stepped out of car, officers could clearly see defendant's unzipped, empty fanny pack, which officers knew from their experience was commonly used to store weapons).

“A lawful frisk does not always flow from a justified stop.” *United States v. Thomas*, 863 F.2d 622, 628 (9th Cir. 1988). Rather, “[e]ach element, the stop and the frisk, must be analyzed separately; the reasonableness of each must be independently determined.”  *Id*. For *Terry* stops, use Instruction 9.21 (Particular Rights—Fourth Amendment—Unreasonable Seizure of Person—Exception to Warrant Requirement—*Terry* Stop).

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