MARCH 1977

POLICE OFFICER'S HANDBOOK

PART XXIV

PROTECTIVE SEARCH
UPON SUSPICION ALONE
(United States v. Hill)

STOP 'N' FRISK....
A SINGULAR CASE
(United States v. Liggons)

VEHICLE ON HIGHWAY
...CONTRABAND IN PLAIN SIGHT
(United States v. Powless)

FLEMING'S NOTEBOOK...Chapter 134

FORCING SUSPECT TO GIVE VOICE SAMPLE

Prepared under the direction of E. Fleming Mason Producer of Crime-to-Court ETV Law Enforcement Informational Programs, in cooperation with South Carolina Educational Television Network with funds provided through the South Carolina Criminal Justice Academy.

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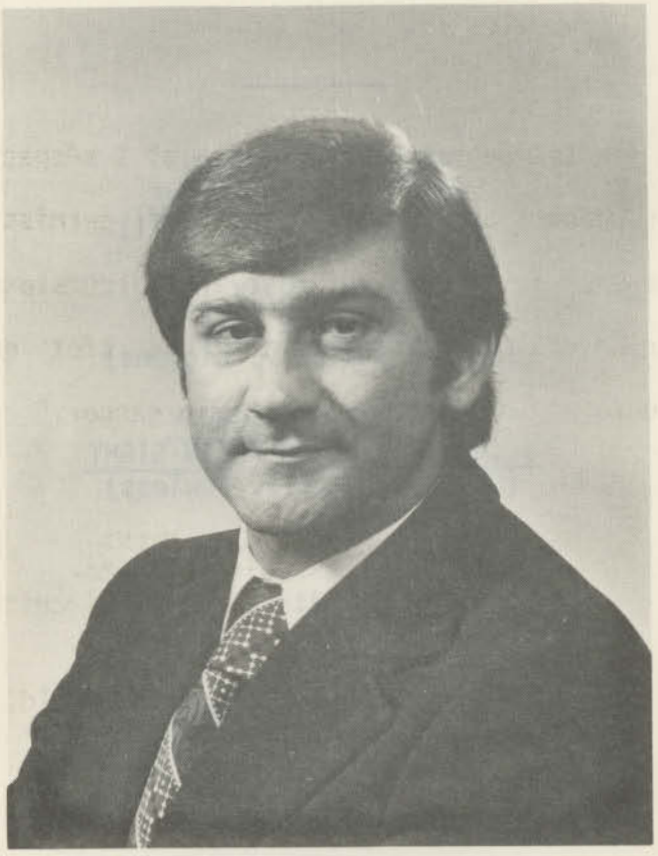


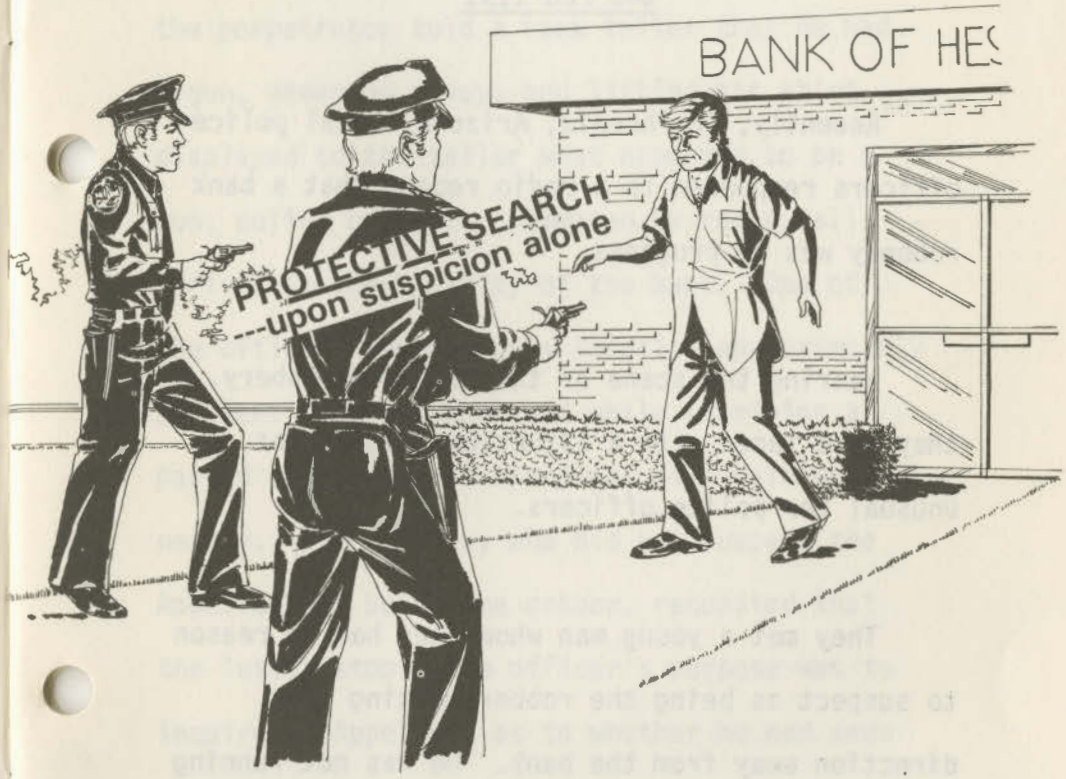
Hon. Donald V. Myers
Circuit Solicitor
11th Judicial Circuit
South Carolina
(Embracing Edgefield, Lexington,
McCormick and Saluda Counties)

"A limited search of the person of a suspect for weapons under the Terry case is permissible whenever it is reasonable in the circumstances for an officer to believe that his safety or the safety of others might be in danger."

Donald V. Myers
Circuit Solicitor
11th Judicial Circuit
South Carolina

(Embracing Edgefield,
Lexington, McCormick
and Saluda Counties)

CONTENT



PROTECTIVE SEARCH

UPON SUSPICION ALONE

United States v. Hill
545 F2d 1191

Recently, in Phoenix, Arizona, local police officers responded to a radio report that a bank robbery was in progress.

Nearing the scene of the reported robbery, they were faced with a situation that is not unusual for police officers.

They met a young man whom they had no reason to suspect as being the robber walking in a direction away from the bank. He was not running or doing anything else suspicious, but there was one thing about him that aroused their suspicion...!

FACTS OF THE CASE

Following a reported bank robbery wherein the perpetrator told a bank teller that he had a gun, demanded money, and lifting his shirt displayed to the teller what appeared to be a gun, police officers, summoned by radio call, arrived in the vicinity of the bank. One of the officers arrived at a location approximately 500 feet from the bank and while examining a parked auto observed Appellant Hill walking nearby. The officer, who did not suspect the Appellant of being the robber, requested that the latter stop. The officer's purpose was to inquire of Appellant as to whether he had seen anyone running through the area who matched the robber's description. The officer testified that while conversing with the Appellant he noticed a large bulge at Appellant's waistband which he suspected of being caused by a weapon. The officer raised Appellant's shirt which was

hanging outside his trousers, thus exposing his wasitband and revealing four to six rolls of currency stuffed therein.

ARGUMENT MADE AGAINST
THE OFFICERS' SEARCH

1. That the officer had insufficient reason to believe that Appellant constituted a danger to him;

2. That the lifting of the shirt was overly intrusive; and

3. That there was insufficient evidence to establish the existence of a bulge at Appellant's waistband.

FEDERAL COURT'S DISCUSSION

If the officer as a reasonably prudent person under all the circumstances then existing would be warranted in the belief that his safety and that of others was in danger, then the limited weapons search is justified. We think that the facts of this case reasonably support the officer's belief that his own safety and that of others was in danger. The incident in question occurred within 500 feet of the scene of an armed bank robbery and within a short period of time of its commission. The officer testified as to the existence of the bulge in Appellant's clothing which was consistent with the presence of a weapon. Although Appellant's clothing did not match the description of that worn by the robber we are of opinion that all the circumstances amply justify the officer's concern for his own safety and justify a weapons search. Any armed person at such a

time and place and in such physical and time proximity to an armed bank robbery could reasonably be suspected of being an actual or immediately potential danger.

We find that the lifting by the officer of Appellant's shirt was not, under the circumstances, overly intrusive. *Terry*, confines a self-protective search for weapons to an intrustion reasonably designed to discover instruments of assault. It precludes general exploratory searches. In the instant case the officer's investigation was wholly confined to the area of the bulge in question and was a direct and specific inquiry. As such it did not transcend the permissible bounds established by *Terry*.

Finally, *Terry* does not in terms limit a weapons search to a so-called "pat down" search. Any limited intrusion designed to discover guns,

knives, clubs or other instruments of assault are permissible. The raising of the shirt in the instant case is well within the boundaries established by *Terry*.

RULING

The initial stop of the defendant and the 'frisk' done by looking under his shirt was held to have been lawful. Conviction affirmed.

STOP 'N' FRISK...

A Singular Case

United States v. Liggons
545 F2d 1118

The case of *Terry v. Ohio*, involving 'Stop-'N'-Frisk' was one of the most important and useful decisions ever handed down by the United States Supreme Court.

It will be remembered *Terry*, a veteran detective observed suspects apparently 'casing' a store. On that basis, he was justified in 'frisk searching' the suspects for weapons, although there was no real probable cause to arrest any one of them.

Recently, in Minneapolis, local officers had obtained a search warrant for drugs. As we look in, they are approaching the door of the suspect apartment.

FACTS LEADING TO DECISION

This prosecution arises from the investigation by Minneapolis police of a suspected illegal after-hours drinking establishment, or "tippling house." A warrant had been issued for the search of the suspected premises. The warrant was executed in the early morning hours of December 8, 1974, by several Minneapolis police officers. Among the officers was Patrolman Robert Berneck. Patrolman Berneck testified that he had participated in some thirty or forty such raids; in almost all of these raids firearms had been discovered.

As Berneck approached the suspected house, he observed, through a large window in the door, six to eight people, most of them with drinks in their hands. The officers knocked and entered. Berneck observed appellant standing near the door, holding a drink in his hand. Appellant was wearing a light brown uniform, similiar to

those worn by officers of the Hennepin County Sheriff's Office. (He was in fact a privately employed building security officer.) The uniform suggested to Berneck that appellant might be in possession of a firearm. Berneck directed the occupants of the room to put their drinks down and put their hands against the wall. As the appellant turned toward the wall, his jacket lifted and Berneck observed a belt with an attached holster. Berneck reached over and removed a loaded revolver from the holster.

The District Court, after a pretrial suppression hearing, denied appellant's motion to suppress the revolver.

At trial, the government proved that appellant had been convicted of a felony, and that he had received and possessed the firearm. It proved also that the weapon had been manufactured in Springfield, Massachusetts,

between 1942 and 1944, and shipped to Great Britain shortly thereafter. There was no further proof of the weapon's history.

Appellant was found guilty of receipt of the weapon, and was sentenced to two years' imprisonment.

ARGUMENTS FOR REVERSAL

Appellant contends that the revolver should have been suppressed as the product of an unreasonable search and seizure. The government seeks to defend the discovery of the firearm either as the product of a search incident to arrest, or as the result of a preventive "frisk" justified under *Terry v. Ohio*. We hold that Officer Berneck's actions were justified under *Terry*, and so do not address the question whether the seizure could be justified under the theory of a search incident

to arrest.

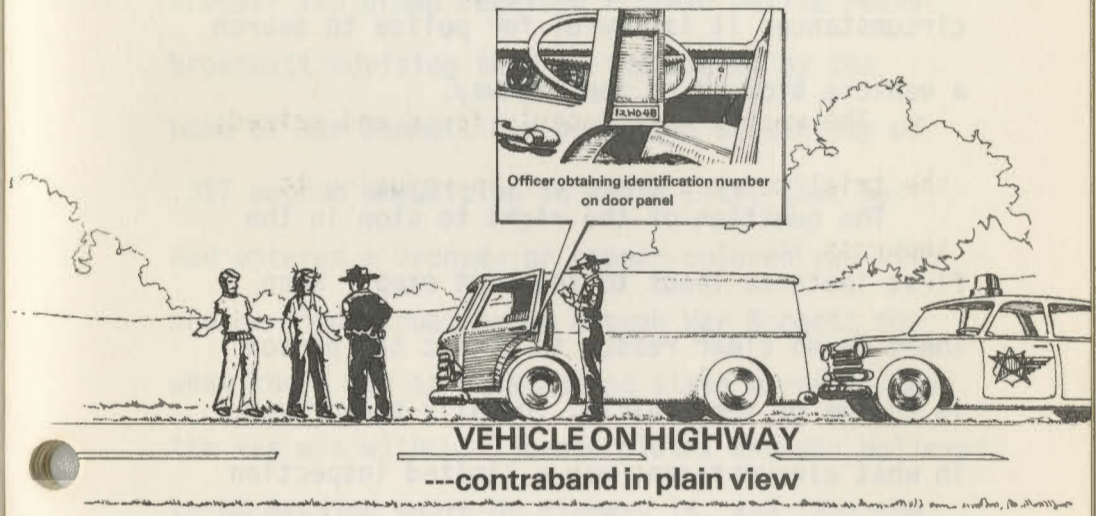
Terry established that a police officer may in some situations conduct a reasonable weapons search of an individual even in the absence of probable cause for the individual's arrest. "The officer need not be absolutely certain that the individual is armed; the issue is whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger."

Here, the Minneapolis officers were investigating an offense which Officer Berneck knew from experience was often connected with firearms. As the officers approached the building, they saw a number of suspects inside. Berneck observed appellant wearing a uniform, which suggested to him the possibility that appellant was carrying a firearm. In these circumstances, it was clearly reasonable for

Berneck, for his own protection and that of his fellow officers, to conduct a limited frisk to determine if appellant was carrying a weapon. It was as appellant turned to submit to this frisk that Berneck observed the revolver.

COURT RULING

The weapon was properly found and seized; the trial court did not err in refusing to suppress it.



VEHICLE ON HIGHWAY
---contraband in plain view

VEHICLE ON HIGHWAY

...CONTRABAND IN PLAIN VIEW

United States v. Powless
546 F2d 792

There is never an end to 'close' situations involving the question as to when and in what circumstances it is lawful for police to search a vehicle stopped on the highway.

The question of the right to stop in the first instance leads to the next step. When there is no clear reason to arrest the person in charge of the vehicle...usually the driver... in what circumstances may a limited inspection of the inside of the vehicle be made? And when and in what circumstances does the right to a limited inspection ripen into the right to a full-scale search?

State troopers in South Dakota were faced with that two-step question recently when they

received a radio message that a wanted felon might be headed their way.

FACTS LEADING TO CONFRONTATION

On March 1, 1975, about 1:30 p.m., State Trooper Van Orman received a state police radio broadcast advising that an individual by the name of War Bonnett had purchased a quantity of .357 magnum ammunition in Rapid City, that he had entered a bronze- or copper-colored van with another individual named Joseph War Bonnett for whom there was an outstanding state warrant, that the van was without license plates and was believed to be heading south on Highway 16, and that the van's occupants were considered armed and dangerous. Shortly thereafter a subsequent police broadcast advised that the van might be proceeding south on Highway 79. Van Orman, accompanied by another police officer, proceeded to Highway 79 and there observed a south-bound copper-colored van pass him,

the van having no license plates. Recognizing the van as the one described in the state broadcast, Van Orman informed the state police radio of his discovery of the vehicle and arranged for a roadblock by other state officers further south on Highway 79 at a place where travel of other cars would be limited. The pursuit was continued.

The van was stopped at the agreed-upon roadblock. The seven Indian occupants of the vehicle were directed to step out of the van and did so. They were interrogated by the officers, starting with the driver, James War Bonnett. They were patted down for weapons. A cartridge belt with ammunition was found on one of the occupants. Joseph War Bonnett produced title papers showing that the van was owned by the American Council on Alcoholism, Milwaukee, Wisconsin. For the purpose of running a National Crime Information Center check on the van, Van Orman proceeded to the van to obtain its serial number, which he found on the

back portion of the left door panel about two and one-half feet above the ground. While stooping over to read the serial number, Van Orman observed what appeared to be the butt end of a firearm in the rear of the van. He then, with the keys which had been left in the van, opened the back door and discovered four loaded firearms under a blanket, including the gun involved in this case.

RULING OF THE COURT

Defendant attacks the search and the seizure of the gun here involved as a violation of his constitutional rights upon three grounds: (1) the search for weapons to protect the officers was unnecessary as the occupants of the van had been removed from it and placed under guard; (2) the search was without a warrant and was not an incident to a valid arrest; (3) the vehicle exception to a warrantless search does not come

into operation under the facts of this case.

The trial court, after an extensive evidentiary hearing on the motion to suppress, in its unreported memorandum opinion, states:

> Law enforcement officers are entitled to act on the strength of a radio bulletin. In this case, a pair of radio bulletins advised that a bronze or copper-colored van would be traveling on Highway 79, that it contained one person for whom an arrest warrant had been issued, another who had purchased a quantity of ammunition, and that the van's occupants were considered armed and dangerous. The van in question matched the description given in the bulletin and was traveling on the highway where the van cited in the bulletin was predicted to be. Under these circumstances, the officers were justified in making an investigatory stop of the van. In furtherance

of this investigatory stop, it was disclosed that the van registered to the American Indian Council on Alcoholism. The record in this case does not disclose that anyone present identified himself as being associated with that entity. This fact, coupled with information in the radio bulletin, justified Patrolman Van Orman in obtaining the vehicle's serial number.

Since, in the judgement of this Court Patrolman Van Orman had a legitimate reason for checking the serial number, his limited intrusion in opening the van door to obtain the number was justified. His discovery of what appeared to be part of a firearm was inadvertent since it occured while he was looking in the direction of the rear of the van to read the serial number. This discovery, coupled with the information on the radio bulletin, gave Patrolman Van Orman

grounds for suspicion of a possible violation of law. Under these circumstances, the butt of the firearm can be said to have been in plain view, and thus its discovery was not the result of a search.

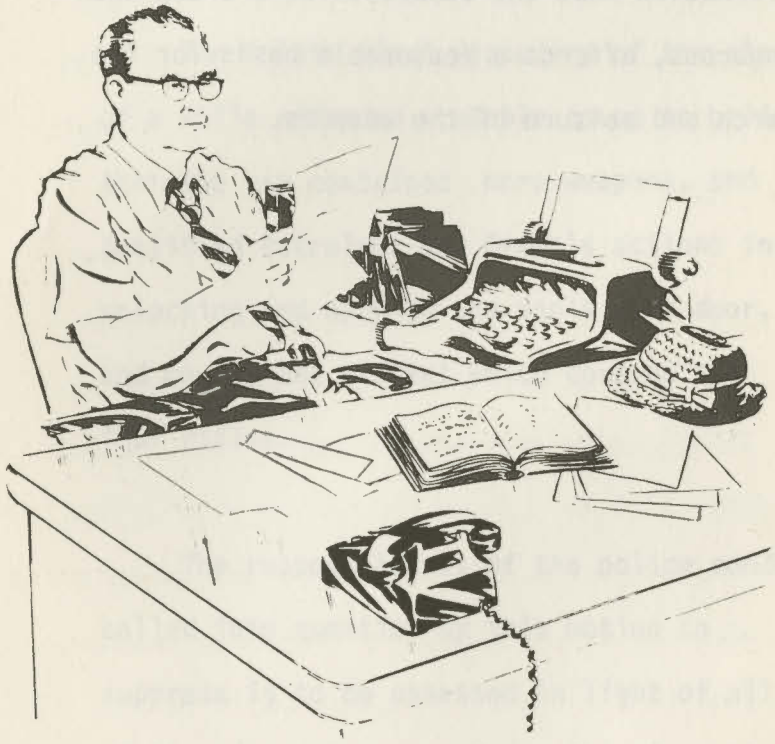
The "plain view" discovery of the stock of a rifle afforded probable cause to believe that the van contained more weapons, and justified Patrolman Van Orman's actions in unlocking and opening the van's rear door, and moving the blanket which covered the four rifles.

The reasonableness of the police conduct called into question by this motion to suppress is to be assessed in light of all of the circumstances. Under the circumstances of this case, this Court concludes that the four firearms in the rear of the van were not found as the result of an unreasonable search

and seizure.

We agree with the trial court that the plain view doctrine applies and that the observation of the gun butt, buttressed by the state radio information that the occupants were armed and dangerous, affords a reasonable basis for the search and seizure of the weapons.

FLEMING'S NOTEBOOK



FLEMING'S NOTEBOOK...Chapter 134

LINE-UP

At a police line-up in Richland County, an armed robbery suspect was placed with five others of approximately the same size and build...all six wore similar clothing and footgear...and each were required to put on white pillowcases with the nose and eyes cut out. Each person in the line-up was required to walk up to the one-way glass viewing window and use the words uttered by the robber at the crime scene.

The robber was identified by four eyewitnesses at the line-up and in court. Procedure was OK, said the South Carolina Supreme Court in State v. Jones, No. 20375, filed March 4, 1977. A suspect may be compelled to speak certain words or required to wear certain clothing. The court said in Jones:

"Compelling (a suspect) to speak... was not compulsion to other statements of a 'testimonial' nature; he was required to use his voice as an identifying physical characteristic, not to speak his guilt."

EVIDENCE OF PRIOR CRIMES

Ordinarily, evidence that a defendant committed prior crimes is not admissable against him at trial...but such evidence may be admissable if proof of previous crimes of a like nature tend to show a common scheme or plan. Conyers was on trial for poison murder. Evidence of three previous poison murders, of which there was clear proof, was admissable against her. State v. Conyers, No. 20369, March 1, 1977.

Evidence that her first husband was poisoned six years previously was not admissable...because

there was no clear evidence that the defendant had committed the murder. Conviction was reversed on this ground.

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