

Argument Overview

- **MAY IT PLEASE THE COURT THAT** the search of the defendant, John Gaither violated his fourth amendment right to be secure against unreasonable searches and seizures. We will prove that the search of Gaither was not supported by reasonable and articulate suspicion at its inception due to the lack of credibility of the anonymous tips and the lack of suspicious behavior on Gaither's part, as proven in *Florida v. J.L.* and *Illinois v. Wardlow*. Assuming that firearms are used in drug trafficking and that Gaither was involved in drug trafficking are both invalid according to *Terry v. Ohio*. We will also prove that Detective Emerson exceeded the scope of a lawful *Terry* search by investigating an item he knew wasn't a weapon, with the case precedent being the "Plain View, Plain Touch" doctrine.

Anonymous tip

Before entering Miller's business, the Newton PD received 2 tips about drug trafficking occurring there.

- In *Florida v. J.L.*, the validity of an anonymous tip is assessed in association with the credibility of the anonymous tipster and the incriminating nature of a tip.
 - The tip gave a general description of a young black man wearing a plaid shirt was standing at a particular bus stop carrying a gun
 - SIMILAR to the anonymous tip received by the Newton PD, which described a white male with brown hair in his 20's who was also selling cocaine.
 - This tip does not have enough credibility by itself to have incriminating effects on Gaither, according to *Alabama v. White*.
 - The tip only gives a vague description of a man in a specific location.
 - The tipster's intentions are unclear because of their anonymity.
 - We don't know how they got the information for the tip.
 - This tip would have been reliable had they predicted Gaither's movements in Miller's shop or explained the frequency of his visits.
 - There is no substance from this tip to incriminate Gaither
 - The other tip, provided by the suspect pulled over for possession of marijuana, provided the same details about drug trafficking in Miller's business.
 - This tip, although credible, does not connect Gaither to the situation in Miller's shop at all.
 - The suspect mentions "the guys" in Miller's business, but doesn't elaborate over who "the guys" are. He offers no connection between himself and Gaither
 - Lastly, detective Emerson's extensive background in drug trafficking is not sufficient enough to substantiate his belief that drug trafficking usually involves firearms
 - "Correlation versus causation" remains true in this case
 - Emerson pushes the correlation of the use of firearms with drug trafficking too far by assuming that in every case of drug trafficking there are firearms used.
 - In *Terry v. Ohio*, the case *Beck v. Ohio* said if subjective good faith of the police were the sole test for a search, the protections of the Fourth Amendment would go away.
 - Based off of the testimony of Detective Emerson, his faith was a deciding factor in whether or not he decided to frisk Gaither.
- Ms. Trim will continue this discussion

Atmosphere/Behavior

Gaither's actions did not warrant the reasonable and articulate suspicion needed for a valid *Terry* search. The only potentially suspicious activity exhibited by Gaither was his presence in the auto shop and his perceived nervousness when talking to the police officer. All other suspicious behavior can be attributed to Miller.

- Miller was the owner of the auto shop so any suspicion raised about the auto shop can be attributed to Miller and not Gaither.
 - Gaither was just there he could have just been a regular customer
- Miller did lie about Gaither's whereabouts but that reflects on Miller and not Gaither.
- Gaither can't be held guilty by association to Miller's actions.

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- We are left to look at whether Gaither's behavior alone warranted a reasonable suspicion of his involvement in criminal activity and being armed.
- A similar case, *Illinois v. Wardlow* ruled the officers involved in the case had the right to search because the defendant was in a high crime area and attempted to flee from the police officers. The combination of evasiveness and the location in a high crime area is what allowed reasonable suspicion.
 - Nervous, evasive behavior is a pertinent factor in determining reasonable suspicion (*US v. Brignoni - Ponce*, *Florida v. Rodriguez*, *US. v. Sokolow*)
- But Gaither was just nervous. Not evasive.

So, the sole reasonable basis for suspicion of Gaither is his presence in Miller's auto shop, which on its own isn't enough to justify a Terry search

- Miller's shop was accused on multiple accounts of drug trafficking, so it can be implied that Miller's auto shop is similar to that of a high crime area.
 - An individual's presence in an area of expected criminal activity, standing alone, is not enough to support a reasonable, particularized suspicion that the person is committing a crime. *BROWN V TEXAS*
 - Being present in a high crime area does not imply that Gaither was involved in any illegal activities

Exceeded scope

Even if the Terry search was justified by reasonable and articulate suspicion, which as previously stated, it wasn't, Detective Emerson exceeded the lawful scope of the search in his investigation of Gaither's pockets

- (*Adams v. Williams*) "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*. (of a Terry search)
- A Terry search must be strictly limited to what's necessary to determine if the subject is armed.
 - (*Sibron v. New York*) If the protective search goes beyond what is necessary to determine if the subject is armed it's no longer valid under Terry and will be suppressed
 - Emerson kept investigating Gaither's pocket when he knew it didn't contain a weapon, which was not necessary to determine if Gaither was armed. This exceeded the scope of the search
- The scope of the search must be 'strictly tied to and justified by' the circumstances which rendered its initiation permissible, and evidence seized (*Warden v. Hayden*).
 - By its nature, a Terry search is justified by suspicion of criminal activity that involves danger to the police officer or others in the area, making the circumstances of the search dependent on the presence of a weapon.
 - This means it must be limited to that which is necessary for the discovery of weapons which might be used to harm the officer or others nearby (*Warden v. Hayden*)
- According to the Supreme Court in *Minnesota v. Dickerson*, it was found that a plain-feel rule is an acceptable analogy to the plain-view warrant requirement. However, this exception only applies under narrow circumstances: (neither of which hold up in this case)
 - The other requirements of a Terry search are already being complied with
 - Any contraband seized during an illegal Terry search is constitutionally invalid and definitely not protected by the plain-touch warrant exception.
 - If the incriminating character of the object is immediately apparent
 - (*Arizona v. Hicks*, *Horton v. Arizona*) If police lack probable cause to believe that an object in plain view is contraband without conducting some further search, plain view doctrine can't justify its seizure.
- Emerson didn't have the certainty needed for it to be immediately apparent that Gaither had crack cocaine.

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- The rulings of both *Minnesota v. Dickerson* and *Kentucky v. Crowder* both support the idea that investigating past the point of what is necessary to determine if the subject is armed exceeds the scope of a Terry search and isn't supported by the plain-view doctrine

Conclusion

Based on the case law and precedent as well as the circumstances of the case, the search of Gaither was unconstitutionally invalid from start to finish. The reasonable suspicion was not sufficient, being based only on an anonymous tip of which the legitimacy was unverified and the presence and nervousness of Gaither. The scope of the search was exceeded because Emerson went beyond what was necessary to identify if Gaither was armed. Due to these facts, the evidence resulting should be suppressed as fruits of an invalid search.