

## ***An Introduction to Commonwealth v. Gaither***

This year's case is *Commonwealth v. Gaither*, a criminal case. The defendant, John Gaither, was arrested and charged with possession of a controlled substance (cocaine). He was arrested while he was visiting an auto body shop owned by his friend, Nick Miller. The arresting police officer suspected that Gaither might be involved in illegal drug trafficking, and did a pat-down search of Gaither. He felt the cocaine in Gaither's pocket and arrested him.

The Fourth Amendment to the U.S. Constitution protects every citizen from unreasonable searches. If a court determines that the search is reasonable, then the evidence found during the search can be used against the defendant. If a court determines that the search is unreasonable, then any evidence found during the search cannot be used against the defendant (in other words, the evidence must be "suppressed").

Before the case goes to trial, Gaither's attorney files a "Motion to Suppress". In Gaither's motion to suppress, his attorney argues that the police officer was not justified in conducting the pat-down search. He also argues that, even if the officer was justified in conducting the frisk, that he "exceeded the scope of the search". More specifically, Gaither's lawyer argues that the officer was only allowed to frisk for weapons – he was not permitted to reach into Gaither's pocket because he thought drugs might be in there. He asks the court to suppress the cocaine that they found in Gaither's pocket.

A suppression hearing is held, and the police officer testifies. The court determines that the pat-down search was unreasonable and that evidence cannot be used against Gaither. The prosecution – in Kentucky, called the "Commonwealth" – appeals this decision.

You will be representing **both** parties, at least once, before the Kentucky Supreme Court. **There are two main issues that you will be addressing: (1) whether the police officer was permitted to conduct the pat-down search of Gaither and (2) whether the officer exceeded the scope of that search.** The Appellant – the Commonwealth – will argue that the search was reasonable and that the evidence can be used against Gaither. The Appellee, Gaither, will argue that the trial court reached the right conclusion and that the search was unreasonable.

## ***Where to Start***

You have several documents before you, collectively referred to as “the record”. You have a copy of the Newtown Circuit Court judgment and a transcript of the police officer’s testimony at the suppression hearing.

You also have the following supporting authorities provided in this packet:

- **Kentucky Rules of Criminal Procedure (RCr) Rule 9.78** – governing motions to suppress evidence in Kentucky courts.
- **Terry v. Ohio** (U.S. 1968) – the landmark case that first defined the scope of a lawful stop-and-frisk.
- **Florida v. J.L.** (U.S. 2000) – considering whether an anonymous tip is sufficient to justify a frisk.
- **Illinois v. Wardlow** (U.S. 2000) – explaining how a suspect’s behavior, such as flight in a high-crime area, can factor into reasonable suspicion.
- **Minnesota v. Dickerson** (U.S. 1993) – clarifying the “plain feel” doctrine and its limits.
- **Adcock v. Commonwealth** (Ky. 1982) – a Kentucky case applying stop-and-frisk principles under state law.
- **Commonwealth v. Banks** (Ky. 1992) – addressing the balance between officer safety and constitutional rights in searches.
- **Commonwealth v. Crowder** (Ky. 2003) – considering whether officers can exceed the scope of a pat-down by seizing items not weapons.

**Important:** You must limit yourself to the cases and materials contained in this packet. Do not conduct outside research, and do not cite cases or statutes not included here.

Begin by reading through the lower court judgment and all the testimony. Then read the case law you have been provided. Because it defines a proper “pat-down search”, you should begin with the U.S. Supreme Court case of *Terry v. Ohio*, which has been provided in your packet. Then read the remaining cases, and determine whether they support your side of the case. If it does not, consider how you might distinguish that case from Gaither’s case.

## ***Questions to Consider***

As you prepare, you may find it helpful to think about questions like these:

- What facts must be present before an officer is permitted to conduct a pat-down search?
- Does the officer's suspicion that Gaither might have drugs justify a frisk for weapons?
- What is the difference between searching for weapons and searching for drugs?
- Does the "plain feel" doctrine permit the officer to remove items that are clearly contraband, even if they are not weapons?
- How do the Kentucky cases refine or distinguish the rules set out by the U.S. Supreme Court?

***Oral Argument Outline:***

You must submit your oral argument outline to the justices and opposing counsel during the Supreme Court on the first day of KYA. This outline should simply be a roadmap of the argument you plan to make, including the key points and the record/case sources you intend to rely on (1–2 pages). It should focus on the conclusions you will be reaching, not the facts of the case. The summary should be a tool to help you organize your oral argument and find the best points that support your position. A sample argument summary is attached for your help.

The scoring judges will review your argument summary before the competition. Be sure to carefully proofread your summary for typos and other errors. Do NOT read from your argument summary at the oral argument competition.

## ***SAMPLE ORAL ARGUMENT OUTLINE***

### GENERAL ORAL ARGUMENT OUTLINE GUIDELINES

1. Advocate names and position (appellant/appellee)
  2. General case facts/description of what happened, according to specific position (*no more than one paragraph*)
  3. Brief outline of legal argument (roadmap of what oral argument will be)
  4. Each part of legal argument supported with case law and provided materials
    - a. State an argument/point
    - b. Walk through thought process leading to the argument reasoning
    - c. Support argument with case law
  5. Closing including recap of argument and stating whether the decision should be upheld or overturned
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**Advocate Names:** ABC, XYZ (School)

**Representing:** Appellant (Malcom)

**Case/Position Overview:** In the matter of Malcom vs. Commonwealth of Kentucky, we will be arguing on behalf of Malcom in this case as it pertains to the First and Fourth Amendments. Malcom's son died in combat on March 3, 2011 while serving as a Marine. To honor his son, Malcom planned a **private** funeral. Since his son was widely respected among the community, a news segment featured him and his service. After seeing this, the Cowbird Baptist Church decided to picket this **private** funeral. The sight of the picketers was inevitable to Malcom due to the one street available to reach the church. Due

to hearing and seeing the protestors, Malcom has been diagnosed with severe depression and more intense existing health conditions.

**Argument Outline:**

1. The Commonwealth of Kentucky acted **unconstitutionally** in two ways:
  1. The Commonwealth should have applied the Gertz Test due to the appellant being a private figure
  2. The media used by the Cowbird Baptist Church related to matters of **private** concern
2. Argument pertaining to requirement of Commonwealth using the Gertz Test for a private figure:
  1. Lower courts applied precedents from cases from public figures and vast variables on the spectrum among the canon of cases
  2. For example, *NYT v. Sullivan* competing interests between the extension of free speech for criticism vs. claiming libel and receiving compensation for a **public figure**.
  3. Fact pattern of *NYT v. Sullivan* (Sullivan had public office, speech was print vs. spoken)
  4. Balancing Act: right to compensation versus the severity of falsehood inflicted for **private figures**.
  5. Precedent would ensure more stringency and safety for private figures

3. Argument pertaining to media used by the Cowbird Baptist Church related to matters of **private** concern

1. According to *Commonwealth v. Bridget* (and subsequent law), a public controversy does not become one because they merely attract attention; instead, a public controversy is described as "A dispute that in fact has received public attention because its ramifications are felt by persons who are not direct participants."
2. Court of Commonwealth states (*from case document*) states , "expressive conduct" was "intended to spark the debate in which the **defendants** are concerned."
3. Therefore, the presence of this protest at a funeral is a matter of private concern because its motive is the violence inflicted by a Marine in a specific time and place unrelated to Kirkland, and not of spreading messages of public concern.

4. Overview/Conclusion (IF APPELLANT, this is your REBUTTAL)

1. Gertz Test recap
2. Media Recap
3. For these reasons, we ask the court to reverse the decision of the lower court.