OPEN CARRY TEXAS - THE REST OF THE STORY:

The following are some important things that every citizen should know and understand about TEXAS OPEN CARRY.

SPECIAL NOTE: As always never replace my judgement and opinions for your actions. I have giving my opinions on Open Carry based on my knowledge, experience and understanding of the law. Your actions and decisions are your responsibility and your consequences. Remember if you play stupid games, you win stupid prizes.

Some Texas Laws You Should Know:

411.207 Government Code (GC) : Removal of gun from License holder

a) A peace officer who is acting in the lawful discharge of the officer's official duties may disarm a license holder **at any time** the officer reasonably believes **it is necessary** for the protection of the license holder, officer, or another individual. If you carry a gun you **must show CHL to officer** or you commit class c misdemeanor, 200 fine. (My Note: Remember you can be arrested for a misdemeanor and your gun will be seized and held by the Gov until your case is adjudicated, being an idiot and arguing with the cop about your rights is NOT a good move and may end badly for you.)

NOTE: **If you open carry a cop can detain you to confirm if you have a CHL**

Sec. 411.205 GC- REQUIREMENT TO DISPLAY LICENSE. If a license holder is carrying a handgun on or about the license holder 's person when a magistrate or a peace officer demands that the license holder display identification, the license holder shall display both the license holder 's driver 's license or identification certificate issued by the department and the license holder 's handgun license. (this is where some Open Carry obstructionist want to argue about they are not committing a crime so they don't have to show ID, which may be technically right for Open Carry of a long gun, but IN NOT right for Open Carry of a handgun IMO)

42.01 TPC Disorderly Conduct:

DISORDERLY CONDUCT. (a) A person commits an offense if he **intentionally or knowingly**:

(8) displays a firearm or other deadly weapon in a public place in a manner calculated to alarm;

(9) discharges a firearm on or across a public road;

NOTE: When you open carry you are intentionally or knowingly displaying a firearm, the only question will be was it in a manner to calculate alarm? If people are calling 911, even falsely, is it reasonable that you are calculating alarm. This is a problem any idiot can call 911 claim alarm or fear and they are subject to NO penalty, yet the lawful gun owner is subjected to being stopped, cops responding, gun pointed at him, detained and questioned for doing nothing but lawful carry.

NOTE: Sec. 6.02. REQUIREMENT OF CULPABILITY (knowingly defined)

Sec. 42.06. FALSE ALARM OR REPORT. (a) A person commits an offense if he knowingly initiates, communicates or circulates a report of a present, past, or future bombing, fire, offense, or other emergency that he knows is false or baseless and that would ordinarily:

(1) cause action by an official or volunteer agency organized to deal with emergencies;

(b) An offense under this section is a Class A misdemeanor unless the false report is of an emergency involving a public or private institution of higher education or involving a public primary or secondary school, public communications, public transportation, public water, gas, or power supply or other public service, in which event the offense is a state jail felony.

- (My Opinion) There should be a requirement that any complaint against an open carry person, the complainant must provide their name and contact info since they are claiming to be a victim and that information can be shared with

the open carry member, until these reporting people are sued and held accountable they will keep calling and harassing legal open carry people.

Sec. 46.02. UNLAWFUL CARRYING WEAPONS. (This is where CHL holders have exemption to Open Carry)

Text of subsection effective on January 01, 2016

(a-1) person commits an offense if the person intentionally, knowingly, or recklessly carries on or about his or her person a handgun in a motor vehicle or watercraft that is owned by the person or under the person ’s control at any time in which:

(1)the handgun is in plain view, unless the person is licensed to carry a handgun (CHL) under Subchapter H, Chapter 411, Government Code, and the handgun is carried in a shoulder or belt holster;

Sec. 38.15 Interfering with police or public duties: cops have duty and authority to confirm open carry person has a CHL.

(a) A person commits an offense if the person with criminal negligence interrupts, disrupts, impedes, or otherwise interferes with:

(1) a peace officer while the peace officer is performing a duty or exercising authority imposed or granted by law;

Sec. 22.05. DEADLY CONDUCT.

(a) A person commits an offense if he recklessly engages in conduct that places another in imminent danger of serious bodily injury. (MY NOTES: Is carrying a loaded gun in plain sight reasonable? Is it reasonable that an Officer or other would have concern or feel in danger, which the Gov will say since they received many 911 calls and were dis

(b) A person commits an offense if he knowingly discharges a firearm at or in the direction of:

(1) one or more individuals; or

(2) a habitation, building, or vehicle and is reckless as to whether the habitation, building, or vehicle is occupied.

(c) Recklessness and danger are presumed if the actor knowingly pointed a firearm at or in the direction of another whether or not the actor believed the firearm to be loaded.

(d) For purposes of this section, "building," "habitation," and "vehicle" have the meanings assigned those terms by Section 30.01.

(e) An offense under Subsection (a) is a Class A misdemeanor. An offense under Subsection (b) is a felony of the third degree.

TITLE 10. OFFENSES AGAINST PUBLIC HEALTH, SAFETY, AND MORALS - CHAPTER 46. WEAPONS

Sec. 46.15. NONAPPLICABILITY. (Text of subsection effective until January 01, 2016)

(6) is carrying a concealed handgun and a valid license issued under Subchapter H, Chapter 411, Government Code, to carry a concealed handgun;

Anyone Carrying A Gun in Public Certainly qualifies for Terry Stops and Frisks

Reasonable suspicion for a stop and investigative detention for Open Carry is based on several factors:

Calls from the public

Reasonable belief the public is alarmed

Terry Stops

Open carry is still ILLEGAL IN TEXAS – unless you possess a CHL

NOTE: Default assumption of UCW (unlawful carry of weapon) under **46.02** - until the detainee demonstrates exception to prosecution under **46.15** (see above)

****NOTE: Carry your CHL in a position where you don't have to reach for a pocket by your Gun. Have it ready if you see cops responding or approaching, as soon as the police confirm you are CHL Holder, their reason for contact or further action is removed. They feel safe faster and they can move on faster.****

(Remember Open Carry is Still Illegal in TEXAS, CHL holders are exempt)

When can a police officer justify a frisk (pat-down of the outer clothing) to determine the presence of anything that could be used to harm the officer?

Nervousness

An obvious bulge in clothing

Conceals his/her hand in their clothing (pockets)

Refuses to show identification or conceals their identity?

No reasonable explanation for actions that caused the investigatory stop

Area is known for violent crime or high crime area

Belligerent, verbally combative, uncooperative or argumentative

Known to be armed or previously armed

Prior contacts by officer or known to have prior criminal history or charges

Matches description of suspects or wanted persons in the area

Matches description of alarming conduct or actions which caused 911 reports

Officer's collective knowledge and **totality of circumstances**, including time of day, number of potential suspects, is back up available, number of officers, lighting or lack of lighting, weapons involved, high risk situations, etc…

392 U.S. at 23, 88 S.Ct.at 1881, 20 L.Ed.2d at 907 developed a standard articulating that the safety of a police officer performing his duty is paramount in importance to the expectation of privacy of a person detained for investigative purposes. (See State v. Thomas below for more details on this)

Why are Police Nervous and Suspicious of People With Guns:

FBI Statistics show that most Deadly Force Situation (DFS) contain the following Five Elements:

1 - The officer and suspect are less than 5 feet apart.

2 - Normally DFS happens in urban areas in low light conditions.

3 - At the end of contact at least one party in DFS has life threatening injuries.

4 - Time of DFS is less than 4 seconds from start to finish.

5 - DFS involves a gun and 3-5 shots are fired.

(Is it **reasonable** for cops to be concerned or on high guard when contacting people with guns?)

If you are participating in Open Carry and an Officer approaches you and says this, what will you do?

Officer – "My name is Officer Joe of the (your location) police department and I am here in response to multiple calls about your conduct from alarmed citizens. This is not a voluntary encounter and you are not free to leave. You have been legally approached, stopped, and detained for investigation into two possible criminal code violations (22.05 deadly conduct, 42.01 disorderly conduct). From this point forward your movements will be restricted with directives I issue and you may be restrained for my safety and yours if necessary. Please keep your hands away from your weapon and I will disarm you. Do you understand everything I said to you?"

FOR POLICE OFFICER: This approach is legal under Terry v Ohio and based on reasonable suspicion criminal activity is occurring, may have recently occurred, or is about to occur. Once in a place you have a legal right to be under US v Robinson (536 F2d 1298 9th Circuit Court) officers must evaluate the open carrier's conduct to determine if reasonable suspicion exists to approach, stop, and detain the individuals. They may get to the location legally under Robinson; however, they still have to justify the approach, stop, and detention under Terry.

Texas Constitution Article I, Section 23

"Every citizen shall have the right to keep and bear arms in the lawful defense of himself or the State; but the Legislature shall have the power, by law, to regulate the wearing of arms, with a view to prevent crime."

NOTE: Texas is currently one of five states that **does not** allow licensed handgun owners to carry their weapons openly. The others are Florida, New York, Illinois and South Carolina, as well as Washington, DC

***850,000 Texans** already have permits to carry concealed weapons, this does not count other lawful gun owners

Don't forget some cities have their own city ordinance preventing Open Carry of a rifle even thou it is legal in State Law

IE: You cannot Open Carry a long gun in San Antonio since they passed an cite ordinance making it illegal.

****More Complete Information on Some Cases:**

UNITED STATES V. ROBINSON

UNITED STATES OF AMERICA, APPELLEE, V. STEVEN LINWOOD ROBINSON, APPELLANT. NO. 75-3727. UNITED STATES COURT OF APPEALS, NINTH CIRCUIT. JUNE 16, 1976. REHEARING AND REHEARING EN BANC DENIED OCTOBER 26, 1976.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA.

Before HUFSTEDLER and CHOY, Circuit Judges, and SMITH,_ District Judge.

OPINION

HUFSTEDLER, Circuit Judge:

This appeal presents the question: Can founded suspicion, unlike probable cause, be based solely on the receipt by the stopping officer of a radio dispatch to stop the described vehicle, without any proof of the factual foundation for the relayed message? We hold that it cannot.

Robinson appeals from his conviction for interstate transportation of a stolen motor vehicle in violation of 18 U.S.C. § 2312. The district court denied his motion to suppress evidence obtained after the vehicle that Robinson was driving was stopped by Officer Holland, a state police officer. Robinson claimed that the evidence was the fruit of a stop that was not justified by founded suspicion and thus was obtained in violation of the Fourth Amendment.

On the evening of September 25, 1975, Officer Holland received a radio message from the Kingman, Arizona police dispatcher advising him to be on the lookout for a possible stolen 1976 Oldsmobile Cutlass, Nevada license CKC 434. Officer Holland testified that at the time he received the message, he believed that the dispatcher had obtained some information from an inspector at the Agricultural Inspection Station located at the Nevada-Arizona border. The Government did not call either the dispatcher or the inspector to testify. Officer Holland knew nothing more about the information upon which the dispatcher relied, and he knew none of the facts upon which the inspector relied to transmit the message. Based solely on the dispatcher's report, and not upon any observations of his own to justify the stop, Officer Holland saw the described vehicle and stopped it. Robinson was unable to produce his driver's license or the vehicle registration. A search of the automobile followed, during the course of which a bill of lading was discovered showing that the automobile had been shipped to a dealer in Las Vegas. The speedometer registered the exact mileage between Las Vegas, Nevada, and Kingman, Arizona. Officer Holland arrested Robinson for driving without a license. While Robinson was in custody, after effectively waiving his Miranda rights, he confessed the theft and the interstate transportation of the automobile. Robinson moved to suppress all of the evidence obtained after the stop as fruit of the illegal stop. Because we agree that the stop was illegal, the evidence should have been suppressed.

As the Supreme Court stated in United States v. Brignoni-Ponce (1975) 422 U.S. 873, 878, 95 S.Ct. 2574, 2578, 45 L.Ed.2d 486:"The Fourth Amendment applies to all seizures of the person, including seizures that involve only a brief detention short of traditional arrest. Davis v. Mississippi, 394 U.S. 721, 89 S.Ct. 1394, 22 L.Ed.2d 676 (1969); Terry v. Ohio, 392 U.S. 1, 16-19, 88 S.Ct. 1868, 1877, 20 L.Ed.2d 899 (1968)."

The stop violated the Fourth Amendment unless specific articulable facts, taken together with rational inferences from those facts, reasonably warranted a founded suspicion that Robinson was engaged in criminal activity. (E. g., Terry v. Ohio, supra, 392 U.S. at 21, 88 S.Ct. 1868; United States v. Mallides (9th Cir. 1973) 473 F.2d 859, 861.)

Officer Holland had no personal knowledge of any facts upon which to found suspicion. The foundation, if any, had to be supplied by the person whose observations and information generated the suspicion. The dispatch to Officer Holland, standing alone, does not prove the existence of founded suspicion. A facially valid direction from one officer to another to stop a person or a vehicle insulates the complying officer from assuming personal responsibility or liability for his act done in obedience to the direction. But the direction does not itself supply legal cause for the detention, any more than the fact of detention supplies its own justification.

We recognize that effective law enforcement cannot be conducted unless police officers can act on directions and information transmitted by one officer to another and that officers, who must often act swiftly, cannot be expected to cross-examine their fellow officers about the foundation for the transmitted information. The fact that an *13001300 officer does not have to have personal knowledge of the evidence supplying good cause for a stop before he can obey a direction to detain a person or a vehicle does not mean that the Government need not produce evidence at trial showing good cause to legitimate the detention when the legality of the stop is challenged. If the dispatcher himself had founded suspicion, or if he had relied on information from a reliable informant who supplied him with adequate facts to establish founded suspicion, the dispatcher could properly have delegated the stopping function to Officer Holland. But if the dispatcher did not have such cause, he could not create justification simply by relaying a direction to a fellow officer to make the stop.

The Government's argument that effective law enforcement requires us to validate stops made in response to calls from fellow law enforcement officers, without any proof at trial that a factual foundation existed to support the call, was made and firmly rejected in Whiteley v. Warden (1970) 401 U.S. 560, 91 S.Ct. 1031, 28 L.Ed.2d 306. Whiteley involved probable cause, rather than founded suspicion, but we perceive no substantive difference between the two doctrines that would warrant a different result.

Reversed.

[11] SMITH, District Judge (dissenting).

This case involves the right to stop and nothing more — if the stop was valid, the arrest was valid, and the search, a lawful incident of it, was valid.

I think that the rule should be that a police officer possessed of information given by a police dispatcher is entitled to stop on the basis of that information in the absence of evidence that the stopping officer did not act in good faith or that the whole of what was done was done for the purpose of avoiding the requirements of the fourth amendment. I take it that the majority does not quarrel with this rule.

Thus, the majority says:

". . . A facially valid direction from one officer to another to stop a person or a vehicle insulates the complying officer from assuming personal responsibility or liability for his act done in obedience to the direction . . . .

"We recognize that effective law enforcement cannot be conducted unless police officers can act on directions and information transmitted by one officer to another and that officers, who must often act swiftly, cannot be expected to cross-examine their fellow officers about the foundation for the transmitted information . . . ."

I do not believe that the act of a stopping officer which was reasonably done by him when done should be held to be tainted by later revelations that his informants were themselves inadequately informed. In short, in a stop case I would judge the conduct of the stopping officer and no more.

2.

See Adams v. Williams, 407 U.S. 143, 92 S.Ct. 1921, 32 L.Ed.2d 612 (1972). Would the police officer have been less justified than he was had it been revealed after the stop that the usually reliable informant was motivated by a desire for revenge and was lying? In any event, the stop in that case was based solely on the tip. The Government was not required to prove that the informant had a founded suspicion.

The evidence here, as I see it, while not conclusive, tends to support the proposition that the port of entry agent's suspicion was founded. The car, brand new, bore but one bug-covered license plate. That plate was on the rear where bugs would not normally splatter. The car did not have the license card used on new cars in Nevada. An officer stopping the car at an agricultural inspection station certainly could notice these things.

The Constitution does not mandate the exclusion of illegally obtained evidence. In Wolf v. Colorado, 338 U.S. 25, 69 S.Ct. 1359, 93 L.Ed. 1782 (1949), Mr. Justice Frankfurter said at 28, 69 S.Ct. at 1361:

In Weeks v. United States, supra [232 U.S. 383, 34 S.Ct. 341, 58 L.Ed. 652 (1914)], this Court held that in a federal prosecution the Fourth Amendment barred the use of evidence secured through an illegal search and seizure. This ruling was made for the first time in 1914. It was not derived from the explicit requirements of the Fourth Amendment; it was not based on legislation expressing Congressional policy in the enforcement *13011301 of the Constitution. The decision was a matter of judicial implication. Since then it has been frequently applied and we stoutly adhere to it.3

3.

While Wolf was overruled in Mapp v. Ohio, 367 U.S. 643, 81 S.Ct. 1684, 6 L.Ed.2d 1081 (1961), the quoted proposition remains valid.

As I understand it, the exclusionary rule was designed as a prophylactic rule — one which would deter federal and state police officers from violating the fourth and 14th amendments — one which would free the courts from the stigmas necessarily generated by court approval of illicit police action. In Elkins v. United States, 364 U.S. 206, 80 S.Ct. 1437, 4 L.Ed.2d 1669 (1960), Mr. Justice Stewart, in answering the objections to the exclusionary rule by Justice Cardozo and Professor Wigmore4 said at 217, 80 S.Ct. at 1444:

4.

"The exclusionary rule has for decades been the subject of ardent controversy. The arguments of its antagonists and of its proponents have been so many times marshalled as to require no lengthy elaboration here. Most of what has been said in opposition to the rule was distilled in a single Cardozo sentence — `The criminal is to go free because the constable has blundered.' People v. Defore, 242 N.Y. 13, 21, 150 N.E. 585, 587. The same point was made at somewhat greater length in the often quoted words of Professor Wigmore: `Titus, you have been found guilty of conducting a lottery; Flavius, you have confessedly violated the constitution. Titus ought to suffer imprisonment for crime, and Flavius for contempt. But no! We shall let you both go free. We shall not punish Flavius directly, but shall do so by reversing Titus' conviction. This is our way of teaching people like Flavius to behave, and of teaching people like Titus to behave, and incidentally of securing respect for the Constitution. Our way of upholding the Constitution is not to strike at the man who breaks it, but to let off somebody else who broke something else.' 8 Wigmore Evidence (3d ed. 1940), § 2184." Elkins v. United States, supra, 364 U.S. at 216-17, 80 S.Ct. at 1443.

Yet, however felicitous their phrasing, these objections hardly answer the basic postulate of the exclusionary rule itself. The rule is calculated to prevent, not to repair. Its purpose is to deter — to compel respect for the constitutional guaranty in the only effectively available way — by removing the incentive to disregard it.

and further at 222-23, 80 S.Ct. at 1447:

. . . But there is another consideration — the imperative of judicial integrity. It was of this that Mr. Justice Holmes and Mr. Justice Brandies so eloquently spoke in Olmstead v. United States, 277 U.S. 438, at pages 469, 471 [48 S.Ct. 564, at pages 569, 570, 72 L.Ed. 944], more than 30 years ago. "For those who agree with me," said Mr. Justice Holmes, "no distinction can be taken between the government as prosecutor and the government as judge." 277 U.S., at page 470 [48 S.Ct. at page 575]. (Dissenting opinion.) "In a government of laws," said Mr. Justice Brandeis, "existence of the government will be imperiled if it fails to observe the law scrupulously. Our government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy."

One cannot read Wolf v. Colorado, supra, and Mapp v. Ohio, supra, note 3, without concluding that, in the formulation of the exclusionary rule under the fourth amendment,5 the court was largely concerned with enforcement of the fourth amendment. Mr. Justice Frankfurter in Wolf discussed at length the remedies afforded by state law to the victims of unlawful searches and seizures and finally concluded (338 U.S. at 31, 69 S.Ct. at 1362) that:

. . . it is not for this Court to condemn as falling below the minimal standards assured by the Due Process Clause a State's reliance upon other methods which, if consistently enforced, would be equally effective. Weighty testimony against such an insistence on our own view is the opinion of Mr. Justice (then Judge) Cardozo in People v. Defore, 242 N.Y. 13, 150 N.E. 585. (Footnote omitted.)

*13021302

5.

These were of course, 14th amendment cases, but the concept involved was that expressed in the fourth amendment.

In Mapp, Mr. Justice Clark, who had joined the majority in Wolf, concerned himself with deterrents to the violation of fourth amendment rights and concluded (367 U.S. at 652-53, 81 S.Ct. at 1690) that:

. . . [t]he experience of California that such other remedies have been worthless and futile is buttressed by the experience of other States. The obvious futility of relegating the Fourth Amendment to the protection of other remedies has, moreover, been recognized by this Court since Wolf.

In Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968), the Supreme Court summed it all up (at 12-13, 88 S.Ct. at 1875) in these words:

. . . Ever since its inception, the rule excluding evidence seized in violation of the Fourth Amendment has been recognized as a principal mode of discouraging lawless police conduct. See Weeks v. United States, 232 U.S. 383, 391-393 [34 S.Ct. 341, 344, 58 L.Ed. 652] (1914). Thus its major thrust is a deterrent one, see Linkletter v. Walker, 381 U.S. 618, 629-635 [85 S.Ct. 1731, 1741, 14 L.Ed.2d 601] (1965), and experience has taught that it is the only effective deterrent to police misconduct in the criminal context, and that without it the constitutional guarantee against unreasonable searches and seizures would be a mere "form of words." Mapp v. Ohio, 367 U.S. 643, 655, 81 S.Ct. 1684, 1692, 6 L.Ed.2d 1081] (1961). The rule also serves another vital function — "the imperative of judicial integrity." Elkins v. United States, 364 U.S. 206, 222 [80 S.Ct. 1437, 1447, 4 L.Ed.2d 1669] (1960).

If these are the purposes of the exclusionary rule, just how does the application of the rule here serve those purposes? The majority does not condemn the action of the stopping officer; rather the stop is treated as proper at the time it was made, but, on the basis of hindsight, is held to be tainted, and the fruits of it are suppressed. That being so, the rule of this case will not protect citizens from invasions of their personal security because the stops will continue to be made with court approval. I think that, if the purposes of the exclusionary rule are not served by the application of it, it should not be applied. All that the application of the exclusionary rule accomplishes here is to free a guilty felon.

In Whiteley v. Warden, 401 U.S. 560, 91 S.Ct. 1031, 28 L.Ed.2d 306 (1971), the majority opinion does, in an arrest case, exactly what the majority opinion does in this stop case, i. e., it approves the conduct of the police arresting officer6 who arrested on the basis of information that a warrant had issued, but it then permits that conduct to be tainted by proof that the warrant of arrest was improperly issued. I appreciate that what the majority does here is to make a legally logical extension of Whiteley to a stop case. But at the heart of the fourth amendment is the test of reasonableness. Reasonableness may not always require that there be logical extensions of word patterns. What is reasonable in one case may not be in another, not because of some logical process, but rather because the degree of intrusion in one case is less than in another. "There is `no ready test for determining reasonableness other than by balancing the need to search [or seize] against the invasion which the search [or seizure] entails.'" Terry v. Ohio, supra, 392 U.S. at 21, 88 S.Ct. at 1879. Presumably it was on such a balancing that the court in Terry was able to hold that, although a stop was a seizure, it could be justified by founded suspicion rather than probable cause. On such balancing, I look at the state of mind of the arresting officer and find that he did what he should have done with no intent to *13031303 flout the law. I look at the seizure and I find nothing more than the stopping of an automobile, which if not then stopped may never have been seen again, and the asking of routine questions. I look at the purpose to be served by excluding the evidence and I find none. Because I think it wrong to frustrate without purpose the search for truth, I would affirm.

6.

"We do not, of course, question that the Laramie police were entitled to act on the strength of the radio bulletin. Certainly police officers called upon to aid other officers in executing arrest warrants are entitled to assume that the officers requesting aid offered the magistrate the information requisite to support an independent judicial assessment of probable cause. Where, however, the contrary turns out to be true, an otherwise illegal arrest cannot be insulated from challenge by the decision of the instigating officer to rely on fellow officers to make the arrest." Whiteley v. Warden, supra, at 568, 91 S.Ct. at 1037.

State v. Thomas (DEALING WITH OFFICER SAFETY SEARCHES & PAT DOWNS)

110 N.J. 673 (1988)

542 A.2d 912

STATE OF NEW JERSEY, PLAINTIFF-RESPONDENT, v. ISAAC THOMAS, DEFENDANT-APPELLANT.

The Supreme Court of New Jersey.

Argued March 1, 1988.

Decided June 30, 1988.

The opinion of the Court was delivered by STEIN, J.

The question presented in this case is whether a police officer was justified in conducting a protective search for weapons on a suspect who was the target of an investigatory stop. Defendant, Isaac Thomas, pled guilty to possession of a controlled dangerous substance after the trial court denied his motion to suppress evidence discovered during the search. The Appellate Division affirmed the conviction, upholding the denial of the motion. We granted certification, 108 N.J. 658 (1987), and we now reverse.

Both defendant and the investigating officer testified at the suppression hearing. The trial court accepted the credibility of the officer. We find no basis to disturb that ruling and therefore accept as true the officer's account of the relevant facts.

On May 3, 1985, at about midnight, Detective-Sergeant Williams of the Passaic Detective Bureau received a message from a police dispatcher that an anonymous informant had telephoned the police. The caller said that a man named Ike, dressed in a plaid cap, tan jacket, and wearing gold frame glasses, was in possession of illegal drugs inside the Shangri La Bar at 265 Passaic Street.

Williams and two other officers proceeded to the Shangri La Bar. The officers entered the bar, and Williams observed that the defendant, one of approximately twenty-five people in the bar, fit the informant's description. The officer also recognized defendant from a prior arrest for drug possession. Williams testified that on confronting the defendant, he immediately *676 "asked him to stand away from the bar and I proceeded to frisk him * * * for any possible weapons or anything that may be in his possession at that time." Further, Williams recalled that "I felt [sic] what he had was inside his jacket pocket, was something that appeared to be sharp inside of the pocket." The following colloquy occurred during Williams' cross-examination:

Q. Okay. So you went into his pocket and the first item that you felt when you went in his pocket was a straw, or the thing that alerted you that it might be a possible weapon was a straw, is that correct? A. Sort of a weapon or a potential weapon. You have to be careful with cocaine dealers because they carry razor blades with them, not to harm anyone, but to cut the cocaine up prior to injecting it, so you have to be very when you're putting your hand inside somebody's pocket, you have to be careful because you might end up losing your finger, inadvertently losing your finger, so it's a situation like that. I felt something sharp there so I went there to extract it because I didn't know if it potentially could be used as a weapon.

When the detective reached into the pocket, he took hold of several objects. He pulled out a two-inch straw (later identified as the sharp object), a pack of rolling papers, a hand-rolled cigarette, a tinfoil packet containing cocaine, and a manila envelope containing marijuana. Thereafter, Williams placed defendant under arrest

In denying defendant's motion to suppress the articles seized during the search, the trial court found that it was proper for the police to have responded to the anonymous tip and confront defendant in the bar. Further, the court held that the "combination of all the factors" described by Officer Williams provided a justifiable basis for the pat-down search of defendant. Finally, the court concluded that Detective Williams had not exceeded the permissible scope of such a search by emptying defendant's pocket, and thus the cocaine was discovered legitimately. Following denial of the suppression motion, defendant pled guilty to unlawful possession of a controlled dangerous substance.

The Appellate Division affirmed in an unpublished decision. The court agreed with the trial court that the anonymous tip justified the initial investigatory stop. The Appellate Division observed that when the information relayed by the tip was *677 "combined with the detective's knowledge of defendant's prior drug law violation, a sufficient degree of suspicion justified frisking the defendant for a razor." Further, "[t]he likelihood the defendant possessed the razor came from the detective's prior drug law enforcement experience." The court also held that the search "did not go beyond the scope of a protective purpose."

II

In this case we have no occasion to consider the subjective factors that might prompt a law-enforcement official to search a suspect who is the subject of a lawful investigatory stop and is thought to pose a threat to the officer's safety. Rather, we apply the principles established by the United States Supreme Court in Terry v. Ohio, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968), and its progeny to determine whether the record contains sufficient evidence of objective criteria to support the search of defendant, which in turn determines the admissibility of the evidence seized. Cf. State v. Bruzzese, 94 N.J. 210, 219 (1983) (constitutionality of search and seizure determined by "objectively reasonable" standard).

In Terry the Court addressed for the first time the issue of when and how law-enforcement personnel may stop and question a suspect, without his consent, in the absence of grounds for an arrest. The Court recognized that establishing the fourth-amendment parameters for such procedures required balancing significant governmental interests. On the one side is the interest in prohibiting unreasonable and unwarranted official intrusion on private citizens. On the other side, as the Court stated, "[w]e are now concerned with more than the governmental interest in investigating crime; in addition, there is the more immediate interest of the police officer in taking steps to assure himself that the person with whom he is dealing is not armed with a weapon that could unexpectedly and fatally *678 be used against him." 392 U.S. at 23, 88 S. Ct. at 1881, 20 L. Ed. 2d at 907.

The Court announced what has become known as the Terry rule:

We merely hold today that where a police officer observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot and that the persons with whom he is dealing may be armed and presently dangerous, where in the course of investigating this behavior he identifies himself as a policeman and makes reasonable inquiries, and where nothing in the initial stages of the encounter serves to dispel his reasonable fear for his own or others' safety, he is entitled for the protection of himself and others in the area to conduct a carefully limited search of the outer clothing of such persons in an attempt to discover weapons which might be used to assault him. [Id. at 30-31, 88 S. Ct. at 1884-85, 20 L. Ed. at 911.]

The first component of the Terry rule concerns the level of reasonable suspicion that must exist before an "investigatory stop" legitimately may be undertaken. This involves something less than the probable cause standard needed to support an arrest. A police officer must be able "to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant" the intrusion. Id. at 21, 88 S. Ct. at 1879, 20 L. Ed. 2d at 906. More recently, in United States v. Cortez, 449 U.S. 411, 101 S. Ct. 690, 66 L. Ed. 2d 621 (1981), the Court reiterated this requirement, stating that an investigatory stop must be justified by some objective manifestation that the suspect was or is involved in criminal activity. Id. at 417, 101 S. Ct. at 695, 66 L. Ed. 2d at 628. The essence of this standard is "that the totality of the circumstances the whole picture must be taken into account. Based upon that whole picture the detaining officers must have a particularized and objective basis for suspecting the particular person stopped of criminal activity." Id. at 417, 101 S. Ct. at 695, 66 L. Ed. 2d at 629; accord State v. Davis, 104 N.J. 490, 504 (1986) (adopting totality-of-circumstances standard announced in Cortez).

Under the Terry rule, whether there is good cause for an officer to make a protective search incident to an investigatory stop is a question separate from whether it was permissible to *679 stop the suspect in the first place. Terry established that to protect himself, an officer may perform a reasonable search for weapons

where he has reason to believe that he is dealing with an armed and dangerous individual, regardless of whether he has probable cause to arrest the individual for a crime. 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. * * * * * * * * And in determining whether the officer acted reasonably in such circumstances, due weight must be given, not to his inchoate and unparticularized suspicion or "hunch," but to the specific reasonable inferences which he is entitled to draw from the facts in light of his experience. [392 U.S. at 27, 88 S. Ct. at 1883, 20 L. Ed. at 909 (citations omitted; emphasis supplied).]

The reasonableness of the search, therefore, is to be measured by an objective standard. More than an officer's generalized statements and subjective impressions are required. The officer must be able "to point to particular facts from which he reasonably inferred that the individual was armed and dangerous." Sibron v. New York, 392 U.S. 40, 64, 88 S. Ct. 1889, 1903, 20 L. Ed. 2d 917, 935 (1968).

In Ybarra v. Illinois, 444 U.S. 85, 100 S. Ct. 338, 62 L. Ed. 2d 238 (1979), the Court invalidated a protective frisk because there was no evidence of an objectively reasonable belief that the suspect was armed and dangerous. Id. at 92-93, 100 S. Ct. at 343, 62 L. Ed. 2d at 246. Justice Stewart characterized the Terry rule as creating

An exception to the requirement of probable cause, an exception whose "narrow scope" this Court "has been careful to maintain." Under that doctrine a law enforcement officer, for his own protection and safety, may conduct a patdown to find weapons that he reasonably believes or suspects are then in the possession of the person he has accosted. * * * Nothing in Terry can be understood to allow a generalized "cursory search for weapons" or, indeed, any search whatever for anything but weapons. The "narrow scope" of the Terry exception does not permit a frisk for weapons on less than reasonable belief or suspicion directed at the person to be frisked * * *. [444 U.S. at 93-94, 100 S. Ct. at 343, 62 L. Ed. 2d at 247 (emphasis supplied).]

Various circumstances may give rise to an objectively reasonable suspicion that a suspect is armed and dangerous. In some *680 instances the right to conduct a protective search flows directly from the basis for the investigatory stop. In his concurring opinion in Terry, Justice Harlan stated that "the right to frisk must be immediate and automatic if the reason for the stop is, as here, an articulable suspicion of a crime of violence." 392 U.S. at 33, 88 S. Ct. at 1886, 20 L. Ed. at 913. Courts regularly approve of protective searches based solely on the suspicion that the suspect was involved in a violent crime. See People v. Shackelford, 37 Colo. App. 317, 546 P.2d 964 (1976) (rape); State v. Kea, 61 Hawaii 566, 606 P.2d 1329 (1980) (assault with a deadly weapon); State v. Gilchrist, 299 N.W.2d 913 (Minn. 1981) (homicide); Mays v. State, 726 S.W.2d 937 (Tex.Cr.App. 1986), cert. denied, Mays v. Texas, ___ U.S. ___, 108 S. Ct. 1059, 98 L. Ed. 2d 1020 (1988) (burglary).

Further, courts are more likely to approve of "automatic" protective searches when officers, before they even approach the suspect, have a specific and objectively credible reason to believe the suspect is armed. See Adams v. Williams, 407 U.S. 143, 92 S. Ct. 1921, 32 L. Ed. 2d 612 (1972) (upholding protective search based on informant's tip that suspect seated in car was carrying narcotics and had "a gun at his waist."); State v. Collins, 479 A.2d 344 (Me. 1984) (upholding automatic search of suspect whom police knew had prior weapons conviction).

However, in situations where the suspect is not thought to be involved in violent criminal conduct and the officers have no prior indication that the suspect is armed, more is required to justify a protective search. See United States v. Ward, 682 F.2d 876 (10th Cir.1982) (suspicion of bookmaking offense alone not enough to justify search); Whitten v. United States, 396 A.2d 208 (D.C.App. 1978) (suspicion of shoplifting not enough); State v. Cobbs, 103 N.M. 623, 711 P.2d 900 (Ct.App. 1985) ("In order, however, to conduct a frisk of a person suspected of engaging in a nonviolent offense, such as possession of small amounts of marijuana, vagrancy, or possession of liquor, additional articulable facts of potential danger must be present, as well as the suspicion of criminal activity"); see also 3 W. *681 LaFave, Search and Seizure: A Treatise on the Fourth Amendment § 9.4(a) at 507 (1987) (collecting other cases).

In cases where there is an insufficient basis for a protective search at the threshold of an encounter between an officer and a suspect, events occurring subsequent to a permissible investigatory stop may give rise to an objectively justified suspicion that the suspect is armed. In Pennsylvania v. Mimms, 434 U.S. 106, 98 S. Ct. 330, 54 L. Ed. 2d 331 (1977), police officers stopped an automobile to issue the driver a traffic summons. As the driver exited the vehicle to produce his owner's card and operator's license, one of the officers noticed a large bulge under the driver's jacket. The officer frisked the driver and found a revolver in his waistband. The Court held that the gun was properly received into evidence. The "stop" of the automobile was justified by the traffic violation. Then, once the driver was out of the car, "[t]he bulge in the jacket permitted the officer to conclude that [the driver] was armed and thus posed a serious and present danger to the safety of the officer. In these circumstances, any man of `reasonable caution' would likely have conducted the `pat down.'" Id. at 112, 98 S. Ct. at 334, 54 L. Ed. 2d at 338. See also Lightbourne v. State, 438 So. 2d 380, 388 (Fla. 1983)

(upholding protective search on basis of suspect's "furtive movements and nervous appearance"), cert. denied, 465 U.S. 1051, 104 S. Ct. 1330, 79 L. Ed. 2d 725 (1984); State v. Wanczyk, 201 N.J. Super. 258 (App.Div. 1985) (protective search justified after officers properly stopped car carrying arson suspect, who appeared nervous and exhibited bulge in shirt sleeve).

Several courts have dealt with the Terry rule in the context of drug-related crime. When reviewing protective searches in this setting, courts are influenced by the seriousness of the suspected drug offense in determining whether officers were reasonable in believing the suspect was armed and dangerous. See United States v. Oates, 560 F.2d 45, 62 (2d Cir.1977) (observing that "to `substantial dealers in narcotics' firearms are as much `tools of the trade' as are most commonly recognized *682 articles of narcotics paraphernalia." (emphasis supplied)); United States v. Santana, 485 F.2d 365, 368 (2d Cir.1973) ("it would not be unreasonable for a policeman to assume that a man believed to be one of the top narcotic violators in the New York area would be carrying arms or would be otherwise violent.") (emphasis supplied), cert. denied, 415 U.S. 931, 94 S. Ct. 1444, 39 L. Ed. 2d 490 (1974).

Even when officers have reason to believe a suspect is engaged in drug dealing, courts frequently require more to justify a protective search. In United States v. Trullo, 809 F.2d 108 (1st Cir.) cert. denied, ___ U.S. ___, 107 S. Ct. 3191, 96 L. Ed. 2d 679 (1987), the court upheld a protective search, noting that the officer's suspicions that a narcotics dealer might be armed were justifiably elevated when the officer confronted the suspect in a high-crime area known for drug dealing, and noticed a bulge in the suspect's pocket. Id. at 113. See also United States v. Pajari, 715 F.2d 1378 (8th Cir.1983) (pat-down justified by officers' belief that they were confronting major narcotics dealer who nervously reached for lower leg as officers approached); People v. Lee, 194 Cal. App. 3d 975, 977, 240 Cal. Rptr. 32, 36 (1987) (pat-down allowed; "coupled with the officer's knowledge that persons engaged in selling narcotics frequently carry firearms" was fact that suspect "placed his hand inside his jacket" as he turned toward officer); State v. Ransom, 169 N.J. Super. 511 (App.Div. 1979) (search justified because informant's tip concerning narcotics also indicated suspect was armed).

The final component of the Terry rule concerns the scope of a protective search. If it has been established that there was a sufficient basis for an officer to make an investigatory stop and then conduct a limited search for weapons, the question to be addressed is whether the search was narrowly confined to the purposes the intrusion is supposed to serve. Since "[t]he sole justification of the search * * * is the protection of the police officer and others nearby * * * it must * * * be confined in scope to an intrusion reasonably designed to discover guns, *683 knives, clubs, or other hidden instruments for the assault of the police officer." Terry v. Ohio, supra, 392 U.S. at 29, 88 S. Ct. at 1884, 20 L. Ed. 2d at 911. As Chief Justice Rehnquist has observed, "[t]he 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, supra, 407 U.S. at 146, 92 S. Ct. at 1923, 32 L. Ed. 2d at 617.

III

Applying these principles to the facts of this case, we conclude that although Officer Williams was justified in making an investigatory stop, the record before us does not provide a specific and particularized basis for an objectively reasonable suspicion that defendant was armed and dangerous. The information provided the police included a detailed description of the appearance, name, and location of a person allegedly in possession of illegal drugs. It is well established that information provided by an informant can provide the basis for an investigatory stop. Adams v. Williams, supra, 407 U.S. at 143, 92 S. Ct. at 1921, 32 L. Ed. 2d at 612; cf. State in Interest of H.B., 75 N.J. 243 (1977) (holding that corroborated tip relating to armed suspect from anonymous informant can provide basis for stop). The veracity of the tip was corroborated by Officer Williams when he entered the bar. Defendant was the only person matching the description, and Officer Williams also recognized him from a prior arrest for drug possession. Based on the applicable "totality of the circumstances" standard, United States v. Cortez, supra, 449 U.S. at 411, 101 S. Ct. at 692, 66 L. Ed. 2d at 621; State v. Davis, supra, 104 N.J. at 490, we conclude that Officer Williams had a "particularized and objective basis for suspecting the particular person stopped of criminal activity." Cortez, supra, 449 U.S. at 417, 101 S. Ct. at 695, 66 L. Ed. 2d at 629.

Officer Williams testified that on entering the bar, he immediately confronted defendant, had him stand away from the bar, *684 and "proceeded to frisk him." This is not a case, however, where the right to conduct a protective search

flowed directly from the basis for the investigatory stop. The tip alleged that defendant was in possession of an unidentified illegal drug. Therefore, defendant was not suspected of the violent criminal activity that would justify an "automatic" search. Terry, supra, 392 U.S. at 33, 88 S. Ct. at 1886, 20 L. Ed. 2d at 913 (Harlan, J., concurring). Further, the information had not indicated that defendant was armed, and Officer Williams testified that he had no recollection of defendant being armed at his prior arrest. There was no evidence of any kind adduced at the suppression hearing suggesting a basis for an objectively reasonable suspicion that defendant was armed.

The Appellate Division accepted Officer Williams' general experience with cocaine dealers as a basis for justifying his assumption that defendant might be armed and dangerous. However, the record in this case contained no evidence that defendant was a cocaine dealer or that Officer Williams had a reasonable basis for believing defendant to be a cocaine dealer. The informant did not describe defendant to be a drug dealer and did not specify the type of drug defendant possessed. Moreover, there was no evidence indicating Williams' prior arrest of defendant was for cocaine possession. Defendant was not a "substantial dealer in narcotics," United States v. Oates, supra, 560 F.2d 45, and there is no evidence that the Shangri La Bar is located in a "high-crime area known for * * * drug dealing." United States v. Trullo, supra, 809 F.2d at 109.

We also note that Officer Williams said he frisked defendant for possible weapons or "anything that may be in his possession at that time." That approach is similar to the police conduct disapproved of in Sibron v. New York, supra, 392 U.S. at 40, 88 S. Ct. at 1889, 20 L. Ed. 2d at 917, which was a companion case to Terry. There, the Court critically reviewed testimony of the officer making the search, which "show[ed] that he was looking for narcotics, and he found them." Id. at 65, 88 S. Ct. at 1904, 20 L. Ed. at 936. Such conduct is not sanctioned by the *685 Terry rule, for "[n]othing in Terry can be understood to allow * * * any search whatever for anything but weapons." Ybarra v. Illinois, supra, 444 U.S. at 93-94, 100 S. Ct. at 343, 62 L. Ed. 2d at 247.

The standard for a protective search adopted in Terry is whether "a reasonably prudent [officer] in the circumstances would be warranted in the belief that his safety or that of others was in danger." 392 U.S. at 27, 88 S. Ct. at 1883, 20 L. Ed. 2d at 909. Obviously, we have no insight into what may have been sensed or perceived by the officers on entering the bar. Our review is restricted to the record at the suppression hearing. We hold only that there was an insufficient basis in this record for the pat-down search of defendant, and that therefore the evidence discovered pursuant to the frisk should have been suppressed. In so holding, we adopt no hard and fast rule that suspicion of illegal drug possession never can form the basis for a protective search of a suspect. We concur with Judge Friendly's warning that "courts should not set the test of sufficient suspicion that the individual is `armed and presently dangerous' too high when protection of the investigating officer is at stake." United States v. Riggs, 474 F.2d at 699, 705 (2d Cir.1973). However, we conclude that this record does not establish a specific, particularized basis for an objectively reasonable belief that defendant was armed and dangerous.

The judgment of the Appellate Division is reversed, and the matter is remanded to the Law Division for further proceedings consistent with this opinion.

Texas Penal Code Sec. 6.02. REQUIREMENT OF CULPABILITY. (a) Except as provided in Subsection (b), a person does not commit an offense unless he intentionally, knowingly, recklessly, or with criminal negligence engages in conduct as the definition of the offense requires.

(b) If the definition of an offense does not prescribe a culpable mental state, a culpable mental state is nevertheless required unless the definition plainly dispenses with any mental element.

(c) If the definition of an offense does not prescribe a culpable mental state, but one is nevertheless required under Subsection (b), intent, knowledge, or recklessness suffices to establish criminal responsibility.

(d) Culpable mental states are classified according to relative degrees, from highest to lowest, as follows:

(1) Intentional;

(2) knowing;

(3) reckless;

(4) criminal negligence.

(e) Proof of a higher degree of culpability than that charged constitutes proof of the culpability charged.

(f) An offense defined by municipal ordinance or by order of a county commissioners court may not dispense with the requirement of a culpable mental state if the offense is punishable by a fine exceeding the amount authorized by Section 12.23.