



A T T O R N E Y S

SMITH, RODGERS &  
STRICKLAND, PLLC

24 Hour Legal Support for Law Enforcement

## The SR&S “How To Guide” Presents the Following Lesson: How to Frisk an Automobile in One Easy Lesson

By Your Favorite “How To” Attorneys

Tara G. “Gee, She's the Smart One” Harper

Ralph B. “All Thumbs & Big Toes” Strickland, Jr.

### **Betcha Didn't Know:**

The same circumstances that justify the frisk of a person will authorize the frisk of an automobile and you may do more than pat-down the fenders.

### **The Case:**

*Michigan v. Long*, 463 U.S. 1032, 103 S.Ct.3469, 77 L.Ed.2d 1201 (1983).

### **The Washington, D.C. “Supremes” Held in Long:**

As follows:

“...the search of the passenger compartment of an automobile, limited to those areas in which a weapon may be placed or hidden, is permissible if the police officer possesses a reasonable belief based on 'specific and articulable facts which, when taken together with the rational inferences from those facts, reasonably warrant' the officer in believing that the suspect is dangerous and the suspect may gain immediate control of weapons.”

### **Well! There You Are!**

That's the ruling of this case in just one measly little run-on sentence! But we are not finished. As usual, there are the facts to be discussed and a number of points that need to be made for clarification purposes.

### **The Facts:**

Two Michigan deputies were on routine patrol in a rural area of that state when, just after midnight, they saw the defendant driving "erratically and at an excessive speed." They followed the car and saw it swerve into a ditch. Bam! They approached Mr. Long who met them at the rear of the car.

He had left the driver's door open. When asked for his operator's license, Long did not at first respond; drunks seldom handle these situations well. After a little prompting, and repetitious prodding, he produced his license, and then turned and walked toward the open door of the vehicle. Believing that he was "under the influence of something," they followed him, and both observed a large hunting knife on the floorboard of the driver's side of the car.

## **ROLL CALL TRAINING**

*From North Carolina's 24/7 Police  
Attorney Law Firm*

PO Box 4803

Greensboro, NC 27404

Phone (336) 691-7058

Fax (336) 969-1879

[www.policehelp.net](http://www.policehelp.net)

**JUNE 2006**

**VOLUME V NUMBER 5**

After a protective pat-down of Long, which revealed he was unarmed, one of the deputies shined his flashlight into the interior to search for weapons other than the knife. The deputy noticed something protruding from under the armrest in the front seat. He knelt in the vehicle, lifted the armrest, and found an open pouch. It contained what appeared to be marijuana. They arrested Long for possession of that controlled substance.

Then they searched the remainder of the passenger area (glove compartment, etc.) under the authority of a search-incident-to-an-arrest, but found nothing else incriminating. The deputies impounded the vehicle, and during a inventory search, discovered **75 pounds of marijuana** in the trunk! Drug mules are never very bright, are they, and often receive l-o-n-g active sentences.

### **The Clarification Points:**

**One!** In *Terry v. Ohio*, decided in 1968, the US Supreme Court held that where you have a reasonable belief

"...that the individual whose suspicious behavior [you are] investigating at close range is armed and presently dangerous to [you] or to others, it would appear to be clearly unreasonable to deny [you] the power to take necessary measures to determine whether the person is in fact carrying a weapon and to neutralize the threat of physical harm."

*With Terry* the Court created an officer survival technique - if you have reasonable suspicion that a person is armed and dangerous, then you may "frisk" or pat-down the outer shell of that person's clothing to determine if he or she has a weapon. You are not required to have probable cause for the frisk because it is not a search. It is just a brief touching or pat-down.

**Two!** *Terry* authorizes the **frisk** of a person on reasonable suspicion; *Long* authorizes the **search** of the passenger compartment of an automobile on only reasonable suspicion. How did the Court make that leap - the leap from frisking with reasonable suspicion to **searching** with reasonable suspicion?

Well, the Supreme Court has recognized for years that "investigative detentions involving suspects in vehicles are fraught with danger to police officers." And there is an "inordinate risk confronting an officer as he approaches a person seated in an automobile." Finally, there is a "danger presented to police officers in 'traffic stop' and automobile situations."

The Supreme Court further recognized "that suspects may injure police officers and others by virtue of their access to weapons, even though they may not themselves be armed."

Thus, if you may frisk a person because you have reasonable suspicion to believe that he is armed, or *unarmed with immediate access to a weapon*, **then you may search the passenger compartment of an automobile, limited to those areas where your training and experience lead you to believe that a weapon may be hidden. You must have reasonable suspicion that the suspect is dangerous and may gain immediate control of a weapon from the vehicle.**

**Three!** Remember that reasonable suspicion is less than probable cause. The Supreme Court of the United States has said in *U.S. v. Cortez* that reasonable suspicion is the totality of the circumstances leading you as a reasonable officer to have a particularized and objective basis for suspecting the person you have stopped of some criminal activity. In order to frisk the person you must also have a reasonable suspicion that they are armed and dangerous as well.

**Four!** Note that after arresting Long for the marijuana, the deputies searched his car's passenger compartment as a search incident to his arrest. The case that establishes that authority is from the United States Supreme Court as well - *N.Y. v. Belton* (1981).

**Five!** Finally, after Long was arrested, and he and the passenger compartment of his vehicle were searched incident to that arrest, the deputies decided to impound his vehicle. Prior to having it towed the deputies did an inventory search and found the big cache of marijuana in the trunk. Were they correct? YES! Let us quote from Professor Farb's text, *Arrest, Search, and Investigation in North Carolina*, Institute of Government, Third Edition, 2003, pp. 93-94:

Impoundment and inventory of vehicles are seizures and searches, respectively, under the Fourth Amendment and therefore must be reasonable. However, impoundment and inventory need not be supported with reasonable suspicion, probable cause, or a search warrant because their purpose is not to discover evidence of a crime ... although *written* impoundment and inventory procedures are not constitutionally required, an impoundment or inventory must be conducted under standard operating procedures that are reasonable under the Fourth Amendment...a law enforcement agency should consider adopting written standard operating procedures...

### **Summation:**

Well, allow us to sum up this commentary with a second and final quote from the ever affable Farb at p. 93:

Officers often interact with people in or near a vehicle but do not make an arrest; for example, they may stop a vehicle to issue a citation. The United States Supreme Court has recognized that officers may search a vehicle for weapons without a warrant, even when they are not making an arrest, if they have reasonable suspicion that a person is dangerous and a weapon may be the vehicle that could be used to harm them. This search - sometimes called a 'car frisk'- may be no more intrusive than is necessary to locate weapons.

### **Afterword:**

This has been the law of the land, even North Carolina, since 1983 - and some of you are not even that old. Yet it remains a little known or understood exception to the warrant requirement. It is an “officer survival” decision. You need to know it, understand it, and apply it where necessary.

Bob Dylan said this about Ricky Nelson: “He sang his songs calm and steady, like he was in the middle of a storm, men hurling past him. His voice was sort of mysterious and made you fall into a certain mood.” Of course, this has nothing to do with this bulletin.

(Tara says to Ralph: “Bob Dylan? How did you understand what he was saying?”)

### **A Word From Our Sponsor**

**Documenting The Use Of Force** — Smith Rodgers & Strickland highly recommends this Quick Series Guide from FORCE-Concepts, Inc. To order, contact FORCE-Concepts, Inc. toll free at 866.714.1765. Smith Rodgers & Strickland PLLC is not affiliated with FORCE-Concepts, Inc.



**Smith, Rodgers & Strickland PLLC**  
**provides 24-hour real-time legal support for client law enforcement agencies.**

“The materials on this website are instructional only, and do not constitute legal advice or create an attorney-client relationship. Readers should consult in-house counsel or city/county attorneys for advice and guidance on specific legal issues and applications. Clients of SR&S may of course contact the firm’s 24-hour switchboard for immediate legal consultation in real-time.”