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Chief's Counsel: Responding to Gun Possession Reports

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Because it is legal in most states to carry a handgun if properly licensed, a report that an individual possesses a handgun, without any additional information suggesting criminal activity, might not create reasonable suspicion that a crime is being or will be committed.¹ Where simply carrying a handgun is not in itself illegal and does not constitute probable cause to arrest,² it follows that carrying a handgun, in and of itself, does not furnish reasonable suspicion justifying a Terry stop. The same applies to persons in motor vehicles. An investigatory stop is only justified when the police have "a reasonable suspicion, based on specific, articulable facts and reasonable inferences there from," that the subject "had committed, was committing, or was about to commit a crime."³

State laws vary regarding both open and concealed carrying of firearms, but courts are usually sensitive to officer and public safety concerns over the presence in public of firearms. Mere possession may not be sufficient to authorize police action, but in circumstances where the gun presents an imminent threat because of shots just fired, or likely to be fired, and thereby presents a "suggestion of threats of violence, acts of violence, impending criminal activity, or concern for public safety," a court is likely to find there was reasonable suspicion for a threshold inquiry.⁴

Anonymous Tip

In a 1990 decision, the U.S. Supreme Court confirmed that, through corroboration of its detail, an anonymous tip can be enough to give rise to the reasonable suspicion required for a stop.⁵ More recently though, the U.S. Supreme Court in 2000 ruled that an anonymous tip that a person is carrying a gun is not sufficient to justify a police officer's stop and frisk of that person, even where descriptive detail regarding the subject has been corroborated. The Court declined to adopt the "firearms exception" to Terry's requirement of reasonable suspicion.⁶ Similarly, in another 2000 Supreme Court case, an anonymous tip with a physical description and location that a person had a gun was not enough for reasonable suspicion, absent anything else to arouse the officer's suspicion.⁷ In that case the Court ruled that it was irrelevant that the defendant fled when the officer got out of his car and ordered the defendant to approach him.⁸ The tipster need not deliver an ironclad case to the police to justify an investigatory stop; it suffices if a prudent law enforcement officer would reasonably conclude that the likelihood existed that criminal activities were afoot and that a particular suspect was probably engaged in them.⁹

Clearly, not every report of a citizen is worthy of belief or sufficient to justify a response by an officer. A caller could, for example, intend merely to harass someone by making an anonymous call to police and claiming someone had a gun hidden in his or her vehicle or on his or her person.

The ultimate issue on the report's usefulness is whether the contents (and other attendant circumstances) create a reasonable suspicion that a dangerous situation exists, creating authority to detain or frisk or both. It certainly helps if the report contains particular facts that do one or more of the following:

- Create a suggestion of threats of violence in this situation
- Are themselves acts of violence
- Indicate impending criminal activity
- Raise a reasonable concern for public safety

Of course, in the many jurisdictions where carrying a concealed weapon is illegal, this analytical step may be obviated and inquiry will proceed to the next issue, the likely veracity of the information source. In the case of an anonymous tip, the question will be whether corroboration of detail goes beyond the mere description of a person already in public.

Examples of Appropriate Police Actions

Examples may be helpful here. Police officers would be acting reasonably in stopping and frisking an individual after receiving information on the street from a known bystander that the person was displaying a handgun on a street corner in a high crime area at 5:30 in the morning, or if it reasonably appears that a suspect is not only armed but also dangerous, as would be the case if the individual appeared to be reaching for his or her weapon. The possession of a firearm by a minor in many states may be viewed as presumptively illegal, and thus sufficient to justify an investigatory stop of the minor by the police, again provided the information source is sufficiently credible. A constitutionally reliable report of the sighting of someone carrying a sawed-off shotgun—especially in states where this is illegal—would likely justify an immediate investigatory stop. Loading a weapon in public, especially where there is no clearly lawful reason for doing so (to begin hunting or target shooting, for instance), and especially in a high crime area at night or during early morning hours, could provide the extra information some courts require in order to allow police officers to conduct an investigatory stop and frisk of a person reportedly in possession of a firearm.

Enforcement Guidelines

Where a police officer receives a report that a person is in possession of a firearm, but the weapon is not visible to the officer, the following options are available:

- 1. Engage in a voluntary contact and simply ask the person if he or she has a firearm.
- 2. If he or she confirms he or she is in possession of a gun, the officer may ask the person to voluntarily hand it over just while the interview takes place, or insist that they hand it over if there is a reasonable belief that the safety of the officer or public is in jeopardy, or that the person has used it in a crime or is about to do so.
- 3. If the person denies having a firearm or refuses to answer, and the officer does not otherwise have (legally sufficient) reasonable suspicion of criminal activity, the officer must allow the person to continue on his or her way.
- 4. If the person denies having a firearm or refuses to answer, but the officer has a reasonable suspicion that the person is armed and presents a danger to the officer or public, the officer may conduct a stop and frisk the person. If the officer finds a weapon, the officer may hold it while conducting the field inquiry. As long as the person is properly licensed, and no arrest takes place, the officer must return the gun at the conclusion of the interview.
- 5. If the officer has a warrant or has probable cause to arrest the person for a crime, the officer may conduct a thorough search (not merely a frisk) and take possession of any weapon.
- 6. Where the person appears to be a minor and therefore too young to have firearm (in most states), the police may have reason to believe that a crime is being committed (unlawful carrying of a firearm) and may therefore conduct a stop rather than a mere encounter.

¹ See, for example, *Com. v. Couture*, 407 Mass. 178, 552 N.E.2d 538 (1990), cert. denied, 498 U.S. 951, 111 S. Ct. 372, 112 L.Ed.2d 334 (1990).

² *Id.*

³ See *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 20 L.Ed.2d 889 (1968).

⁴ *Com. v. Alvarado*, 423 Mass. 277, 667 N.E.2d 858 (1998).

⁵ *Alabama v. White*, 496 U.S. 325, 110 S. Ct. 2412, 110 L.Ed.2. 301 (1990).

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- 1 [Florida v. J.L.](#), 529 U.S. 266, 120 S. Ct. 1375, 146 L.Ed.2d 254 (2000).
- 2 [Pennsylvania v. D.M.](#), U.S. 120 S. Ct. 203, 146 L.Ed.2d 953 (2000).
- 3 [Id.](#)
- 4 [Alabama v. White](#), 496 U.S. 325, 110 S. Ct. 2412, 110 L.Ed.2d 301 (1990); [U.S. v. Diallo](#), 29 F.3d 23 (1st Cir. 1994); [U.S. v. Taylor](#), 182 F.3d 12 (1st Cir. 1999).

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