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Cleveland Plain Dealer

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High Court to Eye Frisk Case

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Cleveland's Terry case goes before the U.S. Supreme Court today as one of four stop-and-frisk issues.

The high court is hearing arguments on the four cases to come up with a set of constitutional ground rules for routine police street work.

Lawyer Louis Stokes, brother of the mayor, will argue to protect the rights, under the Fourth Amendment, of John W. Terry Jr.

TERRY was convicted of carrying a concealed weapon four years ago, after a policeman frisked him and found a gun.

Arguing for Det. Martin J. McFadden's right to stop and frisk a suspect "on suspicion alone" will be Reuben Payne, assistant county prosecutor.

The court has decided to hear the case, along with two other frisking cases in New York and a stopping case in New Orleans, to come to

grips with two questions on the Fourth Amendment:

- How much right does a policeman have to stop and question a suspicious person he has no legal reason to arrest?
- If a policeman frisks a person he does not have reason to arrest and finds incriminating evidence, can that evidence be used against the person in court?

McFadden, like many policemen who fear the effects of recent Supreme Court decisions on law enforcement, is afraid the court may take away his right to stop and frisk suspicious persons.

"IF THEY do that, there's no use in being a policeman," he said yesterday.

McFadden thinks his case is clear-cut. On Oct. 31, 1963, he was making his routine beat of checking hotels and stores. He saw three men who repeatedly peered into a store

window near E. 14th Street, Huron Road S.E. and Euclid Avenue.

McFadden said he approached the three, told them he was a policeman and asked their names. They mumbled something, he said. He then touched Terry's coat.

"I FELT the handle of a pistol and then took them inside the store and had the manager call for a wagon," he said.

McFadden found a gun on Terry, then 31, of 1275 E. 105th Street, and one on Richard D. Chilton, 26, who was killed recently during a hold-up in Columbus. The third man was later released.

Terry and Chilton were convicted. Stokes had asked Common Pleas Judge Bernard Friedman to decide whether the men had been searched in violation of their constitutional rights.

Judge Friedman ruled that "police have the right when

circumstances dictate, and to protect the community and their own lives, to frisk a reasonable suspect."

THE RULING was upheld in the court of appeals and the Ohio Supreme Court.

At issue is the U.S. Constitution's rule against "unreasonable search and seizure." The Fourth Amendment says no search warrant can be issued without "probable cause," which has been defined as the amount of evidence that would lead a prudent person to believe a suspect has committed a crime.

The appellate court here held that, although McFadden did not have "probable cause" for his search, the search was necessary for his own safety.

Since the constitutional rule was written to prohibit improper searches, the rule is irrelevant at times when the search must be made anyway to protect the policeman, the court said.