12-13-1967

67/12/13 Justices Argue with Lawyers at Cleveland Frisk Hearing

Cleveland Press

Follow this and additional works at: http://engagedscholarship.csuohio.edu/terryvohio_newspaper

How does access to this work benefit you? Let us know!

Recommended Citation
Cleveland Press, "67/12/13 Justices Argue with Lawyers at Cleveland Frisk Hearing" (1967). Newspaper Coverage. 9.
http://engagedscholarship.csuohio.edu/terryvohio_newspaper/9
Justices Argue With Lawyers at Cleveland's Frisk Hearing

By ROBERT CRATER
Press Washington Writer

WASHINGTON — A Cleveland case heard by the U.S. Supreme Court yesterday could further limit police powers.

The question debated was: Did Detective Martin McFadden violate late John W. Terry’s rights under the Fourth Amendment when he searched him on a downtown street in Cleveland four years ago?

There was no indication when the justices would rule in the case.

McFadden’s search turned up a gun and Terry’s conviction for carrying a concealed weapon was appealed to the high court here.

Court justices engaged in spirited exchanges and opposing views while Attorney Louis Stokes, brother of Cleveland Mayor Carl Stokes, presented Terry’s appeal, and Reuben Payne, assistant prosecutor of Cuyahoga County, defended the conviction.

STOKES CONTENDED McFadden made the frisk in a search for evidence. This, he said, was a violation of the Fourth Amendment which forbids unreasonable search and seizure.

Payne countered that the detective frisked Terry and his two companions, convinced they planned a robbery, were armed and therefore dangerous.

(A gun also was found on Richard D. Chilton. He was killed recently during a Columbus holdup.)

Chief Justice Earl Warren asked Stokes whether McFadden had a right to make the search if he believed his life was in danger.

“He WAS A LITTLE ahead of himself,” replied Stokes. “He didn’t allow the situation to ripen.

“Through Terry, we look at hundreds of people who walk the streets today,” added Stokes. “We’re subjecting additional people to violation of their privacy.”

Payne told the court McFadden testified he made the search because he thought the suspects were planning a robbery and were armed.

“He had reasonable grounds that something was going to happen,” commented Associate Justice Hugo Black.

JUSTICE THURGOOD MARSHALL countered that McFadden testified he never before had witnessed anyone casing stores to commit a robbery.

“His testimony was that he didn’t like their looks,” replied Payne. He noted McFadden had 40 years police experience.


“While (McFadden) had no cause for arrest, there was probable cause to question,” said Justice Black, “and to frisk.”

MARSHALL SAID TERRY’S “freedom of action” was hindered when McFadden swung him around, and that this freedom was arrested for a long time afterward.

“Not because McFadden swung him around,” replied Payne. “He was arrested after McFadden felt Terry’s weapon and ordered him into the store and removed his coat to get the weapon.”

In a brief rebuttal, Stokes reminded the court Ohio had refused to enact a “stop and frisk” law like New York’s.

“When an officer chooses to interrogate a citizen on the street, in order to justify control under the Fourth Amendment he must have probable cause,” Stokes concluded.

A Columbus holdup.

Justice Warren said although many persons were frisked, only a few were found to be carrying weapons.