Terry v. Ohio
392 U.S. 1, 88 S.Ct. 1868
U.S.Ohio 1968.
June 10, 1968

The Fourth Amendment provides that '**the right of the people to be secure in their persons**, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated * * *.' This inestimable right of personal security belongs as much to the citizen on the streets of our cities as to the homeowner closeted in his study to dispose of his secret affairs. For, as this Court has always recognized,

'No right is held more sacred, or is more carefully guarded, by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law.' Union Pac. R. Co. v. Botsford, 141 U.S. 250, 251, 11 S.Ct. 1000, 1001, 35 L.Ed. 734 (1891).

The Fourth amendment protects people, not places. Therefore, before a person may be seized and arrested, the officer must have probable cause to do so.

(In Douglas' dissent) Police officers up to today have been permitted to effect arrests**1888 or searches without warrants only when the facts within their personal knowledge would satisfy the constitutional standard of probable cause. At the time of their 'seizure' without a warrant they must possess facts concerning the person arrested that would have satisfied a magistrate that 'probable cause' was indeed present. The term 'probable cause' rings a bell of certainty that is not sounded by phrases such as 'reasonable suspicion.' Moreover, the meaning of 'probable cause' is deeply imbedded in our constitutional history. As we stated in Henry v. United States, 361 U.S. 98, 100—102, 80 S.Ct. 168, 170:

'The requirement of probable cause has roots that are deep in our history. The general warrant, in which the name of the person to be arrested was left blank, and the writs of assistance, against which James Otis inveighed, both perpetuated the oppressive practice of allowing the police to arrest and search on suspicion. Police control took the place of judicial control, since no showing of 'probable cause' before a magistrate was required.

49 While it is true that the Fourth Amendment to the United States Constitution allows an officer to briefly detain a suspect if there is a reasonable, articulable suspicion that the suspect committed a crime, Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968), an officer must have probable cause to arrest that suspect. Myrick, 91 N.C.App. 209, 371 S.E.2d 492. Probable cause to arrest has been found to exist where a suspect is found in the general area of the crime and fits the description given by a witness to the crime. Wrenn, 316 N.C. 141, 340 S.E.2d 443; Joyner, 301 N.C. 18, 269 S.E.2d 125. See also State v. Harrell, 67 N.C.App. 57, 312 S.E.2d 230 (1984) (recognizing that a description of either a person or an automobile may furnish reasonable grounds for arresting and detaining a criminal suspect); in accord State v. Phillips, 300 N.C. 678, 268 S.E.2d 452 (1980); State v. Tippett, 270 N.C. 588, 155 S.E.2d 269 (1967), rev'd on other grounds, State v. Worsley, 336 N.C. 268, 443 S.E.2d 68 (1994).

Moore v. Evans
124 N.C.App. 35, 476 S.E.2d 415
N.C.App.,1996.
October 15, 1996 (Approx. 25 pages)

To determine whether an officer has probable cause to arrest, courts have had to balance the need to search or seize against the invasion which the search entails. And in balancing those needs, it is imperative that the facts be judged against an objective standard: would the facts available to the officer at the moment of the seizure or the search "warrant a man of reasonable caution in the belief that the action taken was appropriate. Anything less would invite intrusions upon constitutionally guaranteed rights based on nothing more substantial than inarticulate hunches. And simple good faith on the part of the arresting officer is not enough.

The facts which the Terry court considered were the following:

At the hearing on the motion to suppress this evidence, Officer McFadden testified that while he was patrolling in plain clothes in downtown Cleveland at approximately 2:30 in the afternoon of October 31, 1963, his attention was attracted by two men, Chilton and Terry, standing on the corner of Huron Road and Euclid Avenue. He had never seen the two men before, and he was unable to say precisely what first drew his eye to them. However, he testified that he had been a policeman for 39 years and a detective for 35 and that he had been assigned to patrol this vicinity of downtown Cleveland for shoplifters and pickpockets for 30 years. He explained that he had developed routine habits of observation over the years and that he would 'stand and watch people or walk and watch people at many intervals of the day.' He added: 'Now, in this case when I looked over they didn't look right to me at the time.

~~What are the facts in Banerjee? No clues in walk and turn and one leg stand. 6 clues in the Ign?~~

Evidence must be suppressed if its exclusion is required by the protection provided under the United States Constitution. N.C.Gen.Stat. § 15A–974 (1988). The Fourth Amendment forbids the government from convicting a person of a crime by using evidence obtained from him by an unreasonable search and seizure. Mapp v. Ohio, 367 U.S. 643, 81 S.Ct. 1684, 6 L.Ed.2d 1081 (1961). See also Davis v. Mississippi, supra, ("illegally seized evidence is inadmissible at trial, however relevant and trustworthy the seized evidence may be as an item of proof."). For the foregoing reasons, the evidence obtained by Officer Williams as a result of his unreasonable seizure of defendant is inadmissible.
State v. Fleming
106 N.C.App. 165, 415 S.E.2d 782
N.C.App.,1992.
May 05, 1992 (Approx. 6 pages)