

1996

# State of Utah v. Robert Wells Thompson : Reply Brief

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

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DOCKET NO. 960388-CA

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STATE OF UTAH,	:	
	:	
Plaintiff/Appellee,	:	Case No. 960388-CA
	:	
vs.	:	
	:	Category No. 2
ROBERT WELLS THOMPSON,	:	
	:	
Defendant/Appellant.	:	

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REPLY BRIEF OF APPELLANT

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**ARGUMENT**

The State essentially argues that the search of Thompson was justifiable under a "slightly different rule" than the requirements in Terry. (Brief of Appellee [Br.App.] at 13). The State cites case law holding that "a search of a companion of an arrestee is proper when under the totality of the circumstances, the officer could point to specific, articulable facts that led the officer to reasonably conclude that the companion might be armed or pose a risk to the safety of the officers or others" (Br.App. at 13). Under the totality of the circumstances test, the State concludes that the police officers had a "reasonable belief that [Thompson] might be armed and dangerous" (Br.App. at 22). The State also argues that the securing of the arrest scene is a factor to be considered along with other factors to determine if the frisk was justifiable (Br.App. at 23).

## POINT I

THE TRIAL COURT ERRED IN ITS CONCLUSION THAT THE SEARCH OF THOMPSON WAS JUSTIFIABLE BECAUSE OF THE STATE'S NEED TO SECURE AN ARREST SCENE.

The State concedes the trial court's conclusion is erroneous to the extent the ruling allows police officers, while securing an arrest scene, a carte blanche to search all persons present at the arrest scene (Brief of Appellee [Br.App.] at 25). The State argues the trial court's conclusion could be interpreted as meaning that the securing of the arrest scene is only one factor to be considered for determining whether the search was reasonable (Br.App. at 24-25). However, the State does not cite any case law or authority that considers securing an arrest scene as a factor to be considered in determining the reasonableness of a search by a police officer.

Including securing an arrest scene as a factor would be expanding the Terry rule beyond its intended purpose. The Terry Court held that a frisk was reasonable and justified: "(1) 'where a police officer observes unusual conduct' which he interprets 'in light of his experience' as indicating possible criminal activity and present danger, (2) 'where in the course of investigating this behavior he identifies himself as a policeman and makes reasonable inquiries, and (3) where nothing in the initial stages of the encounter dispel his reasonable fear for his own or other's safety.'" State v. White, 856 P.2d 656, 660

(Utah App. 1993) (quoting Terry v. Ohio, 392 U.S. 1, 30 (1968)). Adding securing an arrest scene as a factor to the Terry rule would be confusing and would give police officers an extension of their power to frisk people at arrest scenes.

Therefore, Thompson asks this Court to correct the trial court's conclusion that "securing an arrest scene" justified the pat down frisk even if the trial court only considered securing the arrest scene as one factor of many to justify the search.

#### POINT II

**THE TRIAL COURT ERRED IN ITS CONCLUSION THAT THE DETENTION AND SUBSEQUENT PAT-SEARCH OF THOMPSON WAS LAWFUL PURSUANT TO THE GUIDELINES SET FORTH IN TERRY.**

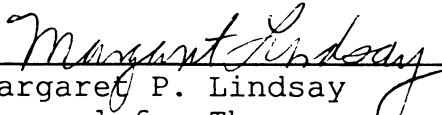
Thompson asks this Court to use the rule as set forth in Terry and as adopted by the Utah Supreme Court that a pat-down frisk is justifiable by "whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of the others was in danger." State v. Carter, 707 P.2d 656, 659 (Utah 1985) (quoting Terry, 392 U.S. at 27). "Every frisk must be 'justified at its inception, and ... reasonably related in scope to the circumstances which justified the interference in the first place.'" White, 856 P.2d at 660 (quoting Terry, 392 U.S. at 20). In making a determination of "reasonableness" the need to search should be balanced against the invasion which the search entails. White, 856 P.2d at 661; Terry, 392 U.S. at 21.

In determining the "reasonableness" of the search, the



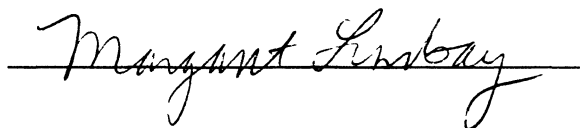
particular circumstances leading up to the pat-down frisk should be considered. If Officer Walker had a reasonable belief that Thompson was armed and dangerous, why didn't Walker detain Thompson at the initial encounter? Thompson was simply allowed to slip away as Walker was making the arrest of Lamoreaux. The fact that Walker had been involved in a drug related arrest in which semi-automatic weapons were seized one week earlier and that he allowed Thompson to leave his presence demonstrates, under the circumstances of this case, that a "reasonable prudent man" would not be warranted in a belief that Thompson was armed and dangerous. And, if Officer Salvage had a reasonable belief that Thompson was armed and dangerous, why didn't Salvage detain Thompson at the back of the house and at least escort Thompson to the front of the house? The actions of both Salvage and Walker demonstrate that the circumstances did not justify the pat-down frisk of Thompson. Therefore, Thompson asks this Court to correct the trial court's erroneous conclusion that the detention and search of Thompson was a lawful Terry search.

RESPECTFULLY SUBMITTED this 6 day of February, 1997.

  
Margaret P. Lindsay  
Counsel for Thompson

**CERTIFICATE OF MAILING**

I hereby certify that I sent two true and correct copies, postage prepaid, to Laura Dupaix, Assistant Attorney General, 160 East 300 South, 6th Floor, P.O. Box 140854, Salt Lake City, Utah 84114, this   4   day of February, 1997.

A handwritten signature in cursive script, reading "Margaret Lindsey", is written over a horizontal line.