



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**STATE OF ARIZONA v. ANTHONY BENARD PRIMOUS
CR-16-0205-PR**

PARTIES:

Petitioner: Anthony Benard Primous

Respondent: State of Arizona

Amici Curiae: Arizona Attorneys for Criminal Justice and American Civil Liberties Union
Foundation of Arizona

FACTS:

In February of 2012, at approximately 10:15 a.m., five police officers, including Officer O and Officer C, arrived at a Phoenix apartment complex in a neighborhood known for violent crimes. They were looking for an individual who had an outstanding felony arrest warrant, and acting on information that the individual frequented the area, carried weapons, and sold drugs and weapons.

Officers O and C approached a group of four men gathered outside one of the apartments. The officers noticed surveillance cameras on the apartment. Two of the men were standing; two others were seated, including Petitioner, who held his one-year-old child on his lap. The group appeared to be talking. None of the four matched the description of the subject of the arrest warrant.

Officers identified themselves as police officers and asked the men how they were doing. Both officers noticed that one of the standing men appeared nervous. When the standing man noticed the other two officers approaching from a different direction, he ran and three officers gave chase. The remaining men did not move. Petitioner remained seated with the child on his lap. He was cooperative and did not exhibit any nervous behavior or make any sudden moves, and he was not visibly armed.

Officers asked another one of the men if he had any weapons and he volunteered that he had some “weed” and produced a baggie with a small amount of marijuana. Petitioner was still seated when Officers then directed him to get up to conduct a quick pat down search or “*Terry* frisk” for officer safety. During the pat down, Officer O found and removed a baggie holding two grams of marijuana from Petitioner’s pocket.

The State prosecuted Petitioner for misdemeanor marijuana possession. The court denied Petitioner’s motion to suppress the marijuana as the product of an unlawful search. The court found that “[b]ased on the totality of the circumstances, officers had a reasonable suspicion that criminal

activity may be afoot,” and that as a result of “the one individual who ran, coupled with the reason for their encounter with the group, the dangerousness of the area, the number of individuals remaining compared to the number of officers, and the cameras, officers appropriately decided to perform a pat down search for officer safety.” The trial court found at bench trial that Petitioner was guilty of possession of marijuana. The Court of Appeals affirmed.

ISSUE:

Under *Terry v. Ohio*, 392 U.S. 1 (1968), an officer may frisk a person if the officer has: 1) reasonable suspicion that criminal activity is afoot and 2) reasonable suspicion that the individual is armed and dangerous. Here, police conducted a consensual encounter with Petitioner and his neighbors to locate a subject. When one of his neighbors fled and another was found with marijuana, the officers escalated the encounter to a frisk even though there was no reasonable suspicion that Petitioner was involved in criminal activity or that he was armed and dangerous. The Court of Appeals held that suggestion of wrongdoing created by his companions justified a frisk of Petitioner, who remained seated and gave no indication of complicity in either the flight or the drug possession. Did the lower court err?

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