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# **ONE MINUTE BRIEF**

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**NUMBER:** 2020-19    **DATE:** 05-28-20    **BY:** Devallis Rutledge    **TOPIC:** Vehicle Weapons “Frisk”

## **ISSUE: What justifies a limited officer-safety search of a vehicle for weapons?**

In *Terry v. Ohio* (1968) 392 US 1, the US Supreme Court held that a lawfully-detained suspect could be frisked for weapons (pat-down of outer clothing) if the officer had a reasonable suspicion the person was armed and dangerous. See 1MB 2006-20. The same officer-safety considerations also allow a **limited “frisk” of a lawfully-stopped vehicle**, based on the same standard:

*“[T]he search of the passenger compartment of an automobile, **limited to those areas in which a weapon may be placed or hidden**, is permissible if the police officer possesses a reasonable belief based on specific and articulable facts which, taken together with the rational inferences from those facts, reasonably warrant the officer in believing that the suspect is **dangerous** and the suspect may gain **immediate control** of weapons.”* *Michigan v. Long* (1983) 463 US 1032, 1049 (plain view of a hunting knife on the floorboard justified a search of areas, compartments and containers that could conceal a weapon).

*“In a sense, **Long authorized the ‘frisk’ of an automobile for weapons.**”* *Maryland v. Buie* (1990) 494 US 325, 332.

- The *Long* rule applies, **even if one occupant is secured in custody**, if another occupant is suspected of being dangerous and might access suspected weapons in the vehicle. *“Michigan v. Long permits an officer to search a vehicle’s passenger compartment when he has reasonable suspicion that an individual, **whether or not the arrestee**, is dangerous and might access the vehicle to gain immediate control of weapons.”* *Arizona v. Gant* (2009) 556 US 332, 346-47.

- “The rule applies even where a defendant is **outside his car and nominally under the control** of law enforcement officers.” *People v. Bush* (2001) 88 Cal.App.4<sup>th</sup> 1048, 1052 (vehicle frisk was justified by information from the dispatcher that the detainee had a record of convictions for being a felon in possession of concealed firearms).

- After occupants of a lawfully-stopped vehicle have been ordered out (see 1MB 2013-19), an officer’s **plain-view observation through the car windows or open doors** may justify a weapons frisk. *People v. Lomax* (2010) 49 Cal.4<sup>th</sup> 530, 564 (handle of a Glock 9 was visibly protruding from the map pouch, justifying a further weapons search, which yielded another handgun).

- A reliable citizen’s fresh complaint of **threats or brandishing** by an occupant of an identifiable vehicle may also justify a weapons frisk of the vehicle. *People v. Dolly* (2007) 40 Cal.4<sup>th</sup> 458, 463.

- However, a weapons frisk of a vehicle under *Long* may **not** be justified by simply asserting that it was “**standard procedure**” to frisk suspects and vehicles in gang areas late at night. “A frisk for weapons is not justified unless the officer can point to specific and articulable facts which, considered in conjunction with rational inferences to be drawn therefrom, give rise to a reasonable suspicion that the suspect is armed and dangerous. ... [T]ime and location of an encounter are insufficient **by themselves** to cast reasonable suspicion on an individual.” *People v. Medina* (2003) 110 Cal.App.4<sup>th</sup> 171, 176-77.

“We stress that our decision does not mean that the police may conduct [weapons] searches whenever they conduct an investigative stop. ... [O]fficers who conduct [safety] searches during investigative detentions must do so **only** when they have the level of suspicion identified in *Terry* [reasonable suspicion of weapons and danger].” *Michigan v. Long, supra*, at 1049, fn. 14. Of course, searches may also be justified on **other grounds** (consent, probation/parole/PRCS search term, fleeting targets, incident to arrest, etc.).

**BOTTOM LINE:** With reasonable suspicion that an occupant of a stopped vehicle may be dangerous and might gain access to a weapon in the vehicle, officers may search any places or containers in the passenger compartment that could conceal a weapon.

(Emphases added; citations and punctuation omitted from quoted material.)

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