

Summary of SC92252, *State of Missouri v. Elton J. Norfolk*

Appeal from the St. Louis County circuit court, Judge Donald L. McCullin
Argued and submitted May 23, 2012; opinion issued June 12, 2012

Attorneys: Norfolk was represented by Timothy J. Forneris of the public defender's office in St. Louis, (314) 340-7662; and the state was represented by John M. Reeves of the attorney general's office in Jefferson City, (573) 751-3321. The Missouri Association of Criminal Defense Lawyers and the National Association of Criminal Defense Lawyers, which submitted a brief as a friend of the Court, were represented by Talmage E. Newton IV of Pleban & Petruska Law LLC in St. Louis, (314) 645-6666, and Burton H. Shostak of Shostak Law LLC in Clayton, (314) 725-3200.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: A man convicted of unlawful use of a weapon and possession of marijuana appeals his conviction, challenging the constitutional validity of the officer's search of him and seizure of the weapon and marijuana. In a 7-0 decision written by Judge Zel M. Fischer, the Supreme Court of Missouri affirms the judgment. There is sufficient evidence to support the trial court's finding that the arresting officer articulated a reasonable suspicion that criminal activity was afoot when she stopped and frisked the man pursuant to *Terry v. Ohio*, 392 U.S. 1, 20 (1968). As such, the man's Fourth Amendment rights were not violated, and the weapon and marijuana seized during the search were admitted properly into evidence.

Judge Jon E. Beetem, a circuit judge in the 19th Judicial Circuit (Cole County), sat in this case by special designation in place of Judge George W. Draper III.

Facts: A police officer on routine patrol saw a man, later identified as Elton Norfolk, standing alone on a street corner in St. Louis. When the officer made eye contact, Norfolk adjusted his pants by reaching around to his back with a single hand, leading her to believe he was concealing a weapon. The officer stopped her vehicle, and Norfolk went into a nearby convenience store. She followed him in and asked him to come outside, turn around and place his hands on the wall of the convenience store so she could check him for weapons. He complied, and when his shirt came up, the butt of a gun became visible. The officer arrested Norfolk. During a search incident to the arrest, the officer retrieved the gun she saw in Norfolk's waistband as well as marijuana from his pocket. After a trial before a judge – Norfolk waived his right to a jury – the court found him guilty of unlawful use of a weapon and possession of fewer than 35 grams of marijuana. The court sentenced him to concurrent terms of three years in prison for the weapons charge and one year in jail for the possession charge, suspended execution of his sentences, and placed him on probation for three years of supervised probation for the weapons charge and one year of unsupervised probation for the possession charge. Norfolk appeals.

AFFIRMED.

Court en banc holds: Norfolk's constitutional rights were not violated, and the evidence supports his convictions. The Fourth Amendment to the United States Constitution preserves the right of citizens to be free from unreasonable searches and seizures. Generally, a search or seizure only is permissible if there is probable cause to believe a person has committed or is committing a crime. For Fourth Amendment purposes, a "seizure" occurs when the totality of circumstances surrounding the incident indicate that a reasonable person would believe he is not free to leave. A brief investigative detention without a warrant is permissible if the officer has a reasonable suspicion, based on specific and articulable facts, that illegal activity has occurred or is occurring. *Terry v. Ohio*, 392 U.S. 1, 20 (1968). In evaluating reasonable suspicion, a court must determine if the information the police possessed and its degree of reliability was sufficient to create a reasonable suspicion of illegal activity. Officers may use all the information available and draw on their own experiences and specialized training when forming a particularized and objective basis for suspecting criminal activity. Here, based on the totality of the circumstances, reviewed in the light most favorable to the trial court's ruling, there is sufficient evidence to support the court's finding that the officer articulated a reasonable suspicion that criminal activity was afoot when she stopped and frisked Norfolk pursuant to *Terry*. As such, his Fourth Amendment rights were not violated, and the weapon and marijuana seized during the search were admitted properly into evidence.