

# A CULTURE OF FREEDOM



# Do we live in a Free Society?



# THEORY OF THE CASE

- ***That combination of facts (beyond dispute) and law which, in a common sense and emotional way leads the jury to conclude that a fellow person has been wrongfully accused. -Tony Natale***

# THEORY OF THE MOTION

- ***That combination of facts (beyond dispute) and law which, in a common sense and emotional way leads the COURT to conclude that LIBERTY HAS BEEN LOST.***

# Facts in St. Rose

- Traffic stop – defendant is passenger
- Police decide to tow car
- Nervousness, sweating profusely
- “I don’t like police.”
- Consent to search

# Facts in St. Rose

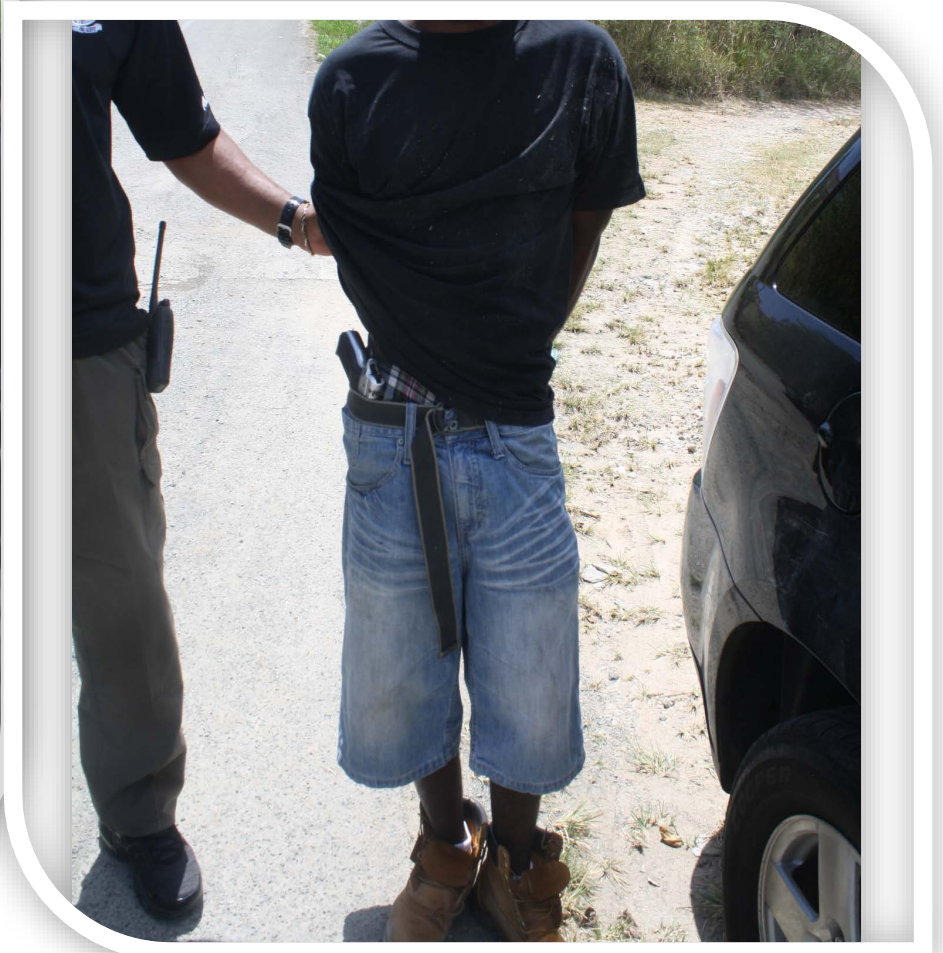
- Gun found in waistband
- Police draw weapons, order D to ground
- Police question D - D provides responses
  - MJ in containers inside car
  - No license to carry firearm

# Court Issues

- Whether the initial stop of the vehicle was valid
- Whether the officers unlawfully prolonged the duration of the traffic stop as to Mr. SR by not telling him he was free to leave
- Whether SR consented to a pat down search, and if so
- Whether such consent was an involuntary submission to a claim of unlawful authority

- Whether the officers had lawful authority to draw their weapons and handcuff after discovering the gun, but before learning that the gun was possessed illegally
- Whether Miranda was violated
- Whether the statements were obtained involuntarily, and if so
- Whether the exclusionary rule is applicable

# Safety of the Officer





# “HIGH CRIME AREA”



# Facts in Wrensford

- Passenger in red truck shoots victim on sidewalk at 8pm
- Two men stopped by Officer Mendez – both sweating profusely
- Questions where are they coming from.
- Both men take off running
- Mendez give description on radio at 8:46pm

# Facts in Wrensford

- Officer Cruz gets description of men stopped by Mendez
- Two black males, slim, rasta.
- Cruz sees a man in white shirt with locks running across street
- Drives towards area sees client with back to road
- Orders client to ground.
- Cruz draws firearm. Handcuffs client.
- Removes contents of client's pocket.
- Client transported at 9:06pm to police station, placed in cell.

# Facts in Wrensford

- Eyewitnesses asked to come to station
- Arrive when Wrensford is being taken in cuffs to another station
- Eyewitnesses identify Wrensford; statements at 10pm
- Officers question Wrensford that night
- DNA collected during booking

# What are The Themes?



- Critical Events

- Critical Facts

# Terry Stop or De Facto Arrest

- Began analysis by focus on the duration of the seizure
- Drawing of weapon
- Handcuffs
- Description

## *United States v. Sharpe*, 470 U.S. 675 (1985)

- “courts consider the duration of the stop, the LE purposes justifying the stop; whether the police diligently sought to carry out those purposes given the circumstances; and alternative means by which the police could have served those purposes.”

# Cruz's Search

- Went beyond the scope of Terry
- Beside the knife – no other item presented danger.
- Government failed to provide evidence of inevitable discovery



# Transporting Wrensford to Police Station

- Argued *Dunaway, Royer, Hayes* and *Davis*
- Court remained focused on *Sharpe*
- “reasonably related in scope to the initial justification . . . and the officers’ legitimate concerns for safety. . . .”
- Court found no *de facto* arrest after detention in jail cell.

## St. Rose

### Focuses on *Miranda* and 5th

- ✓ Privilege against self-incrimination
- ✓ **“in custody”** = similar to arrest
- ✓ Guns drawn while asking questions
- ✓ Perspective on citizen being compelled to talk
- ✓ Fruit of involuntary statement
- ✓ Court quoted 2<sup>nd</sup> Cir. Case stating that handcuffs are hallmark of arrest



## Wrensford

### Focuses on Fourth Amendment

- ✓ Protection from searches and seizures
- ✓ **“de facto”** arrest
- ✓ Transport suspect to station against will perspective of police officer’s safety while conducting investigation
- ✓ Fruit of unlawful detention
- ✓ Court quoted Sharpe to suggest that there's is no strong precedent against transporting suspect to station

# CRITICAL FACTS in McIntosh

- High crime area
- 2 unmarked cars approach from different directions
- Client runs, drops magazine
- Hand in front
- Officer yells “Drop It!”
- Client tosses gun; runs in opposite direction

# When did the seizure occur?

- “For there to be a seizure, the police must apply physical force to the person seized or, where force is absent, have the person seized submit to a show of police authority.” *United States v. Valentine*, 232 F.3d 350, 358 (3d Cir. 2000), citing *California v. Hodari D.*, 499 U.S. 621, 624 (1991).

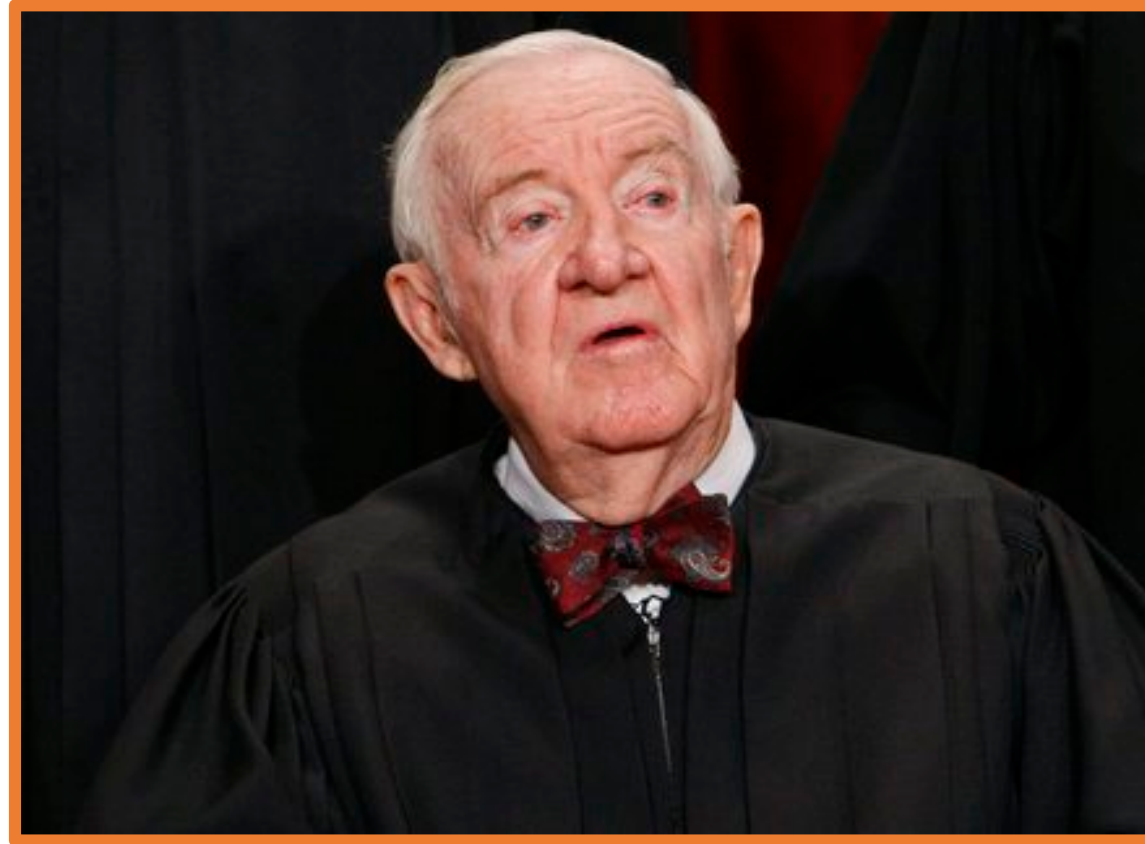
# Possession of Firearm and Reasonable Suspicion

Mere allegation that person has a firearm does not justify stop absent RD  
VI Law contains **no presumption** that person does not have a permit

*United States v. Lewis*, 672 F.3d 232, 240 (3d Cir. 2012) (quoting *United States v. Ubiles*, 224 F.3d 213, 217 (3d Cir. 2000)).

## *Ubiles and Valentine*

- *Ubiles* - mere allegation that defendant possessed firearm insufficient
- *Valentine* – Officers had tip that D had gun and D began walking away in HCA when he noticed police.



“[Some citizens believe] that contact with the police can itself be dangerous, apart from any criminal activity associated with the officer’s sudden presence.”  
-Justice John Paul Stevens

# WHEN WILL COURT DISTINGUISH PROVOKED FLIGHT FROM UNPROVOKED FLIGHT?

When can you run away from the police without abandoning your right to be left alone?



# Facts in Nisbett

- Stationary car in passing lane on highway
- Officer activates lights and horn.
- First officer draws her weapons, points it at 45 degree angle.
- 3 Officers approach car with guns drawn

# Facts in Nisbett

- Male officer discovers D reclined in driver's seat –asleep
- Officer opens door, shakes D, helps him from car.
- Smell of marijuana and alcohol
- D is dazed and confused
- First officer searches car
- Male officer pats D down and finds gun.
- “It's not mine anyway.”

# Exigent Circumstances

- “The exigencies of the situation [may] make the needs of law enforcement so compelling that the warrantless search is objectively reasonable.” *Michigan v. Fisher*, 558 U.S. 45, 47 (2009).
- Warrantless entry onto premises allowed if police reasonably believe a person is in need of immediate aid. *Flippo v. W. Virginia*, 528 U.S. 11, 14 (1999)
- Objectively reasonable basis for believing medical assistance needed or persons were in danger.

# Was there justification for the pat-down?

- “Once the officers ascertained that the sole occupant of the vehicle was an unresponsive, groggy male who required assistance to get out, and walk to the rear of the vehicle, there was no reason that a reasonably prudent man in the circumstances would believe Defendant posed any threat to the officers or anyone else.”
- None of the officers articulated a reasonable suspicion that defendant was armed and dangerous.

# Supreme Court quote in Nisbett

- “Even a limited search of the outer clothing . . . constitutes a severe, though brief, intrusion upon cherished personal security, and it must surely be an annoying, frightening and perhaps humiliating experience.”



It's hard to  
beat a person  
who NEVER  
GIVES UP.

— Babe Ruth  
POSITIVEMOTIVATION.NET



# A CHANCE FOR REDEMPTION



It's not always about figuring out how you are going to lose. It's about discovering the many ways that you can win!





**MAKING THE CASE  
FOR LIBERTY**

# A CULTURE OF FREEDOM

