



# MICHIGAN STATE POLICE LEGAL UPDATE

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## CRIMINAL LAW AND PROCEDURE MANUAL

The third edition of *Michigan Criminal Law and Procedure: A Manual for Michigan Police Officers* is now available for purchase in print and eBook formats.

The manual is published by [Kendall Hunt Publishing Co.](http://www.kendallhunt.com/michigan_criminal_law/) Copies may be ordered online at [https://www.kendallhunt.com/michigan\\_criminal\\_law/](https://www.kendallhunt.com/michigan_criminal_law/) or by calling Kendall Hunt Customer Service at (800) 228-0810.

## SEARCH AND SEIZURE

**A police officer may frisk a suspect only if there is reasonable suspicion to believe the suspect is armed and dangerous.**

In [United States v. Noble](#), members of a Drug Enforcement Administration (DEA) task force following a vehicle asked a local police officer to stop the vehicle for a traffic violation. The local officer was told only that the vehicle was suspected of being linked to a DEA drug investigation.

Upon making contact with the driver, the officer noticed that a passenger in the vehicle, defendant Noble, was very nervous. The driver gave the officer consent to search the vehicle and the officer removed the defendant from the vehicle and frisked him for weapons. On the defendant's person, the officer found several baggies of methamphetamine, a pipe used for smoking drugs, and a handgun. The defendant filed a motion to suppress the evidence arguing the officer lacked reasonable suspicion that the defendant was armed and dangerous in order to frisk him. The trial court denied the motion.

The United States Court of Appeals for the Sixth Circuit noted that most traffic stops represent a minor inconvenience to the vehicle's occupants, but they are especially fraught with danger to police officers. As a result, police officers may order drivers and passengers out of the vehicle during the traffic stop without violating the Fourth Amendment. However, to frisk a suspect, an officer must have reasonable suspicion to believe the suspect is armed and dangerous.

The officer testified he believed the frisk was necessary for officer safety because of the defendant's nervousness, the fact that the vehicle was suspected in

a DEA investigation, and the officer's training which told him that drug traffickers are often armed. The court examined the totality of the circumstances and held the officer did not have reasonable suspicion to believe the defendant was armed and dangerous.

The court noted that many citizens are nervous during traffic stops, even if they have nothing to fear or hide. As a result, even extreme nervousness is an unreliable indicator of dangerousness. The court pointed out there was no evidence the defendant failed to comply with any commands or became noticeably more nervous as the stop progressed. Also, the fact the officer evaluated the vehicle's window tint and performed field sobriety tests on the driver *after* observing the defendant's nervousness, but *before* frisking the defendant, substantially discounted the relevance of the defendant's nervousness in the court's reasonable suspicion analysis.

Likewise, a person's mere presence in a car believed to be connected to drug trafficking is not an automatic "green light" for frisking that person. The Supreme Court has held that an officer must have specific, articulable reasons to believe *a particular person* is armed and dangerous before the officer may frisk that person.

Lastly, the court recognized that a police officer can rely on his or her training and experience that drug dealers frequently carry weapons, but pointed out the court has always required some corroboration that particular individuals are involved in dealing drugs before allowing a frisk for weapons. The court noted that there were no specific facts linking the defendant to the drug-trafficking operation beyond being in a vehicle. The officer did not recognize the driver of the vehicle, nor did he have any idea of who the defendant was prior to the frisk. Accordingly, the court reversed the trial court.

Police officers are reminded there is no general "officer safety" exception to the search warrant requirement. An officer may lawfully *stop* a person upon reasonable suspicion to believe the person is involved in criminal activity. However, once stopped, an officer may only conduct a *frisk* or *patdown* when the officer has reasonable suspicion to believe the particular person to be searched is armed and dangerous.

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