

In a city, a number of armed bank robberies were committed near closing time by a masked man wearing a white hooded sweatshirt and blue sweatpants. Police saw a man wearing a white hooded sweatshirt and blue sweatpants pacing nervously outside one of the city's banks just before it closed. The police stopped the man and frisked the outer layers of his clothing for weapons but found none. They asked the man what he was doing outside the bank and pointed out that he was wearing clothing similar to clothing worn by the perpetrator of recent robberies. After pausing for several moments, the man confessed. The police had not provided him with any Miranda warnings.

After being charged with the bank robberies, the man moved to suppress his confession. The parties agreed, and the court properly found, that the police had reasonable suspicion, but not probable cause, at all times before the man confessed.

Should the man's motion to suppress be granted?

- A. No, because there was neither a Fourth Amendment violation nor a Miranda violation.
- B. Yes, because the confession was the fruit of a Fourth Amendment violation, even though there was no Miranda violation.
- C. Yes, because the confession was the fruit of a Miranda violation, even though there was no Fourth Amendment violation.
- D. Yes, because the confession was the fruit of both a Fourth Amendment violation and a Miranda violation.

## Explanation:

### Police-citizen encounters

Type	Characteristics
<b>Consensual encounter</b>	No suspicion required Officer may approach citizen/engage in conversation Citizen may: respond to officer <i>or</i> walk away
<b>Terry stop</b> (stop & frisk)	Reasonable suspicion required Officer may: briefly question to confirm/dispel suspicion frisk if reasonably believes person armed Investigative in nature
<b>Arrest</b>	Probable cause required Officer may: search incident to arrest interrogate after Mirandizing Initiates criminal prosecution

A motion to suppress should be granted if the court finds that evidence (eg, a confession) was obtained in violation of the defendant's constitutional rights. These include the Fourth Amendment right to be free from unreasonable searches and seizures and the Fifth Amendment privilege against self-incrimination.

Under the **Fourth Amendment**, police may stop an individual for investigative purposes if they have a **reasonable suspicion**—ie, a reasonable belief, based on specific and articulable facts—that a person is (or will soon be) involved in criminal activity. During the **investigatory detention** (ie, **Terry stop**), police may:

**briefly stop and question** a person to confirm or dispel their suspicions about the criminal activity *and*

**frisk** (pat down) the person's outer garments to search for weapons if they reasonably suspect that the person may be **armed and dangerous**.

Under the **Fifth Amendment**, police must give a suspect **Miranda warnings** before conducting a custodial interrogation—ie, an interrogation that occurs when a suspect's freedom of movement is restricted to such a degree that a reasonable person would not feel free to leave (eg, an arrest). Since a **Terry stop** is typically brief and does not substantially

limit the suspect's freedom of movement (ie, no custody), **Miranda warnings are not required** before police questioning.

Here, police stopped and frisked the man when he was standing outside a bank before closing. However, this Terry stop did not violate the Fourth Amendment since police had reasonable suspicion that the man was (1) engaged in criminal activity and (2) armed and dangerous since he was wearing the same clothes as a man who had committed armed bank robberies near closing time **(Choices B & D)**. And since Miranda warnings are not needed to question a suspect during a Terry stop, the man's confession is not protected by the Fifth Amendment. As a result, his motion to suppress his confession should be denied **(Choices C & D)**.

#### **Educational objective:**

During a Terry stop, police may (1) briefly stop and question a person if they reasonably suspect he/she is (or will soon be) involved in criminal activity and (2) frisk that person's outer garments if they reasonably suspect he/she is armed and dangerous. Additionally, Miranda warnings are not required to question a suspect during a Terry stop.

#### **References**

U.S. Const. amend. IV (prohibiting unreasonable searches and seizures).

Terry v. Ohio, 392 U.S. 1, 21 (1968) (holding that investigatory detentions require reasonable suspicion).

U.S. Const. amend. V (privilege against self-incrimination).

Miranda v. Arizona, 384 U.S. 436, 468–70 (1966) (listing Miranda warnings).

Berkemer v. McCarty, 468 U.S. 420, 440 (1984) (recognizing that a person is not in custody during an investigatory detention).

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