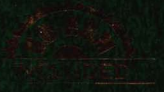
JANUARY 2015

# District of Columbia Criminal Law and Procedure



LEXISNEXIS

# DISTRICT OF COLUMBIA CRIMINAL LAW AND PROCEDURE

January 2015



Reprinted from the District of Columbia Official Code current through laws effective as of October 1, 2014, and through D.C. Act 20-376

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# Foreword

As publishers of *District of Columbia Official Code,* we are pleased to offer to the legal and law enforcement community the January 2015 edition of **District of Columbia Criminal Law and Procedure**.

This compilation of selected laws is current through the October 2014 Advance Service to the *Code*, which includes laws effective as of October 1, 2014, through D.C. Act 20-376, except for Act 20-348. Changes made by Act 20-348 "Sexual Assault Victims' Rights Amendment Act of 2013" went into effect too late to be included in this volume, but will be included in the upcoming 2015 midyear edition.

In planning this volume, suggestions as to format and content were solicited from many sources, and we are indebted to all those professionals who provided us with direction..

We are committed to providing attorneys and law enforcement professionals with the most comprehensive, current and useful publications available. Accordingly, regular revisions are planned, and we publish a host of other publications covering various topics of law in neighboring jurisdictions.

We actively solicit your comments and suggestions. If you believe that there are statutes which should be included (or excluded), or if you have suggestions regarding index improvements, please write to us or call us toll-free at 1-800-833-9844; fax us toll free at 1-800-643-1280; E-mail us at LEpublications@lexisnexis.com; or visit our website at http://www.lexisnexis.com/lawenforcement. By providing us with your informed comments, you will be assured of having available a working tool which increases in value each year.

January 2015

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**Note:** In addition to the sections listed below, users of this edition should be aware that additional section and case note annotations have also been appropriately incorporated throughout this publication. The sections with new and/or revised case annotations do *not* appear in this listing.

| Section Affected | Effect | Effective Date | Law No. | Act No. | Sec. No. | DCR Citation |
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Editor's Note: This is a general overview of criminal procedure law. It should be used to achieve understanding of basic principles but is not to be relied upon for guidance in a specific application. It is not to be used as a substitute for the opinion or advice of the appropriate legal counsel for the reader's department. To the extent possible, the information is current. However, very recent statutory and case law developments may not be covered.

## I. INTRODUCTION

The Bill of Rights to the federal Constitution provides citizens with certain fundamental safeguards from intrusive governmental conduct. Particularly relevant to situations involving a criminal suspect or defendant are the Fourth, Fifth, Sixth and, to a lesser extent, the Fourteenth Amendments. As a preliminary matter, the reader should note that the federal Bill of Rights, as ultimately interpreted by the Supreme Court, guarantees U.S. citizens enumerated fundamental freedoms and provides the constitutionally required minimum levels of protection.

The Fourth Amendment guarantees the people the right to be secure in their persons, houses, papers and effects against unreasonable searches and seizures. This amendment also provides that no search or arrest warrants shall be issued, except those based on probable cause and which particularly describe both the place to be searched and the person or things to be seized.

The Fifth Amendment provides (in pertinent part) that no person shall be compelled to be a witness against oneself in a criminal case. The Supreme Court has also found that an integral part of an accused's right to be free from compelled incrimination is a judicially created right to have counsel present and a right to refuse to answer questions during a custodial interrogation, even though the Constitution does not specifically provide such a safeguard.

The Sixth Amendment provides that a defendant in a criminal case—and a suspect in a criminal investigation when the investigation has focused on him or her or has reached a critical stage—shall enjoy the right to counsel to aid in his or her defense.

The Fifth and Fourteenth Amendments provide that no person shall be deprived of life, liberty or property without the due process of law. In the context of the rights of a criminal suspect, this provision has been construed as offering protection against certain fundamentally unfair governmental conduct, particularly the use of suggestive, prejudicial or discriminatory identification procedures.

The ramifications of constitutional violations impact not only a law enforcement officers' efforts to enforce the law and obtain the conviction of criminal offenders, but also may lead to monetary sanctions against individual officers and the particular department employing them. Evidence seized in violation of the foregoing principles (whether it is physical evidence, e.g., contraband, or testimonial evidence, e.g., a statement or confession) generally cannot be introduced into evidence in any subsequent trial. The evidence will be excluded by the operation of a doctrine known as the exclusionary rule. The mechanism by which the use of evidence is denied to prosecutors is called suppression. Moreover, officers who violate a person's constitutional rights may be civilly liable to that person in monetary damages. Officers, or the municipalities for which they work when they act in a manner inconsistent with their lawful authority, may also be held accountable for such damages.

## II. DETENTION AND ARREST

### A. Levels of Encounters

When reviewing the legality of police interactions with citizens, courts initially assess the nature and extent of the contact. To aid in this analysis, interactions, or encounters, are divided into three conceptual categories. First, there are encounters of a consensual nature. This has sometimes been called the "common law right to inquire." This is a right to ask a question enjoyed by all citizens, whether they work in law enforcement or not.

Occupying the next tier of encounters are interactions of a more intrusive character. These are encounters commonly called detentions, investigatory stops or *Terry* stops. The justifications offered by law

enforcement for this more forceful contact must be based on facts that are specific and articulable and lead to a rational inference or a reasonable suspicion that criminal activity is being undertaken.

The final level of encounter is a formal arrest. To justify this action, law enforcement officials must possess a higher degree of suspicion, *i.e.*, "probable cause" to believe that a crime is being, or has been, perpetrated and that a specific person committed it.

This initial categorization of encounters is essential to a determination of the rights of the individual. If the encounter was consensual, the Constitution is not implicated because no seizure of a person, within the meaning of the Fourth Amendment, has taken place. However, if the encounter rises to the level of a detention or a full-scale arrest, then that person has been seized, and law enforcement conduct will be judged according to the standards of the Fourth Amendment. The person seized can then avail himself or herself of the Amendment's protections.

**B. Consensual Encounters—Right of Inquiry**

The basic premise underlying a consensual encounter is that it is voluntary. Such an encounter is an interaction based on consent and is terminable by either party. Law enforcement officers do not infringe on a citizen's Fourth Amendment rights by merely approaching him or her at random in a public place in order to ask a few questions, as long as a reasonable person would understand that he or she could refuse to cooperate and excuse themselves from the exchange, if they choose to do so. Simply identifying oneself as an officer or asking for someone's name and identification is not an unreasonable intrusion or a seizure within the meaning of the Fourth Amendment. Courts reason that merely asking a few further questions, without more, does not constitute a seizure of the person. *Casey v. U.S.*, 788 A.2d 155 (D.C. 2002). This is an important distinction; if the person has not been constitutionally seized, then the Fourth Amendment is not implicated and no constitutional violation can occur. A constitutional seizure occurs when the officer, by means of physical force, coercion or show of authority, has in some way restrained the freedom of a citizen so that a reasonable person in the suspect's position would no longer feel as though he or she were free to leave. *Rice v. D.C.*, 774 F. Supp. 2d 18 (D.D.C. 2011); *Carr v. U.S.*, 758 A.2d 944 (D.C. 2000). Detentions and arrests are viewed as seizures of a person. These actions are reviewed under the Fourth Amendment's reasonableness standard and are subject to constitutional controls.

The objective test in a consensual encounter is whether a reasonable person would think that he or she were free to go. The following are suggestions for the law enforcement officer to establish a consensual encounter:

(i) ask the citizen:

- o "May I talk to you?"
- o "Can I have a minute of your time?"
- o "Do you mind if I search you for drugs?"
- o "Would you mind showing me what's in your hand?"
- o "May I look in your purse/luggage?"

or (ii) simply walk up to a citizen in a public place and start a conversation.

In *Michigan v. Chesternut*, 486 U.S. 567 (1988), defendant was not seized when an officer accelerated his patrol car and began to drive alongside defendant. The officer did not activate his siren or flashers, did not command defendant to halt, did not display a weapon, and did not drive aggressively so as to block defendant's path.

In *Brown v. U.S.*, 983 A.2d 1023 (D.C. 2009), two MPD officers on routine patrol saw five or six individuals gathered on a sidewalk. While one officer walked up to the of the men, the second officer walked 2 to 3 feet behind defendant and, "speaking in a normal tone," asked, "Do you have any guns, drugs, or narcotics on you?" (The other members of the group walked away as police approached). Defendant replied, "I'm not doing anything here. I'm counting my money." The officer repeated her question. This time defendant said nothing, but handed over a pill bottle; inside, the officer found three ziplock bags of cocaine. The Court found that there was no seizure. Although the officer was armed, her gun remained holstered and she did not even place a hand on it. Nor did she make any threatening gestures, and she spoke in a "normal" tone of voice. She remained 2 to 3 feet from defendant, while the second officer was even farther away. Notably, two or three members of defendant's group walked away as the encounter began. The Court concluded that a reasonable person in defendant's position would have felt free to leave.

In *Jacobs v. U.S.*, 981 A.2d 579 (D.C. 2009), there was no seizure when officers pulled behind defendant's parked vehicle and activated their patrol car's emergency lights. Defendant had already stopped the car of his own volition, and there were non-coercive, safety-related reasons for activating the emergency lights. There was no evidence defendant attempted to drive away or that the lights would have prevented him from doing so. Nor was defendant seized when an officer walked up to the driver's side of his car and asked him to roll down the window. Rolling down the window was the only way the officer could speak with defendant, and as mentioned above, merely asking an individual if he or she will talk does not constitute a seizure.

The courts will probably rule that what the officer thought was a consensual encounter was in fact a detention if the officer does one or more of the following:

- o displays a weapon;
- o uses a harsh, accusatorial tone of voice;
- o orders the citizen to do something, *e.g.*, "Stop," "Open your hands," "Don't move," "Stay right there," or "Come over here";
- o blocks the individual's path with his or her body or a police vehicle;

- o tells the individual that he or she is a suspect;
- o physically touches the individual;
- o retains the individual's property (*e.g.* driver's license, airline ticket).

See, *e.g.*, *Trice v. U.S.*, 849 A.2d 1002 (D.C. 2004) (defendant seized when an officer aimed his weapon at him and ordered him to put his hands up against his car); *Jackson v. U.S.*, 805 A.2d 979 (D.C. 2002) (defendant seized when officer asked him to turn around and touched his jacket pocket); *Davis v. U.S.*, 781 A.2d 729 (D.C. 2001) (pedestrian seized when officers in a marked car with lights flashing and siren sounding drove up to him, then one officer got out of the car and asked him to "come over"); *Carr v. U.S.*, *supra* (defendant seized when officer pulled him away from the door frame of a car he was leaning into); *In re D.T.B.*, 726 A.2d 1233 (D.C. 1999) (juvenile seized inside laundromat when an armed, uniformed officer blocked the building's only exit and twice ordered him to "come here" in an "undoubtedly stern voice"); *Ware v. U.S.*, 672 A.2d 557 (D.C. 1996) (officer seized defendant when he told him to get off his bicycle and keep his hands where the officer could see them); *Gomez v. U.S.*, 597 A.2d 884 (D.C. 1991) (defendant seized when officer ordered him out of a parked car and told him to place his hands on the vehicle); *Duhart v. U.S.*, 589 A.2d 895 (D.C. 1991) (officer seized defendant by grabbing his wrist after ordering him to take his hand out of his pocket).

A seizure does not occur until either the suspect complies with a "show of authority" by police or there is an application of physical force (however slight) to the suspect by police. *California v. Hodari D.*, 499 U.S. 621 (1991); *Dalton v. U.S.*, 58 A.2d 1005 (D.C. 2013).

A stop of a moving vehicle constitutes a seizure of both the driver and any passengers, even if the purpose of the stop is limited and the resulting detention quite brief. *Brendlin v. California*, 551 U.S. 249 (2007); *Berkemer v. McCarty*, 468 U.S. 420 (1984); *Mitchell v. U.S.*, 746 A.2d 877 (D.C. 2000).

Often an officer will approach a person in a public place (*i.e.* airport, bus station, train, plane or bus, etc.). The officer needs no reasonable suspicion to ask questions, or ask for a person's identification, as long as a reasonable person would understand that he or she could refuse to cooperate. *Florida v. Bostick*, 501 U.S. 429 (1991).

For example, in *U.S. v. Drayton*, 536 U.S. 194 (2002), defendant was not seized when officers boarded a bus and began questioning the passengers, even when an officer asked consent to search his bag. Although the officers displayed their badges, they did not brandish weapons or make intimidating moves. They gave the passengers no reason to believe that they were required to answer the officers' questions, and they left the aisle free so that passengers could exit the bus. Only one officer did the questioning, and he spoke in a polite, quiet (not authoritative) voice: "Nothing he said would suggest to a reasonable person that he or she was barred from leaving the bus or otherwise terminating the encounter."

Compare with *Oliver v. U.S.*, 618 A.2d 705 (D.C. 1993). Four detectives were assigned to a drug interdiction team at Union Station. The detectives were in plain clothes, with their weapons and handcuffs concealed under their clothing. Defendant arrived on a train from New York. One of the detectives walked up to him, showed his badge, and asked to speak with him. Of the other detectives, one stood about 15 feet to defendant's right, another stood about 15 feet behind him, while the fourth interviewed another individual. The first officer spoke in a conversational tone and polite manner. Neither he nor any of the other detectives blocked defendant's path. There was no seizure, and thus no need for reasonable suspicion.

Note: It is important for the law enforcement officer to remember that in a consensual encounter, the officer does not have to give the citizen *Miranda* warnings. Once an arrest is made, or there is a detention equivalent to arrest, the person must be advised of his or her *Miranda* rights if the officer plans on questioning the person while he or she is in custody (see below).

### C. Detentions and Investigatory Stops

The next conceptual category in the hierarchy of encounters involves interactions that courts refer to as investigatory stops, temporary detentions or *Terry* stops. The U.S. Supreme Court articulated the standard officers require as a justification for this more intrusive action in *Terry v. Ohio*, 392 U.S. 1 (1968). The Court held that when an officer observes specific and articulable events which give rise to a reasonable suspicion that illegal activity may be underway then the officer is justified in detaining and questioning the individual. The requisite suspicion must derive from facts and inferences from those facts. Such suspicions cannot lead to a mere hunch that something is amiss. More is needed. The facts producing the officer's suspicions must be objectively reasonable at the time, taking into account all of the circumstances attendant to the encounter. Note that the observations made by the officer to justify a *Terry* stop need not be as convincing as information that would create "probable cause" for arrest.

In the *Terry* case, the Court also held that when a law enforcement officer has a reasonable suspicion that illegal activity may be under way and the suspect has been detained, the officer is entitled to conduct a limited pat-down, or frisk, of the outer garments of the detainee to determine whether the suspect is armed or possesses an item that could be used to harm the officer. The requirements for, and the parameters of, this limited search are discussed below. The legal standard for the stop is reasonable suspicion to believe the detainee is somehow engaged in unlawful activity. The legal standard for the frisk,

unlike the stop, relates to fear that the suspect is armed with a deadly weapon.

1. **Reasonable Suspicion.**

a. **In General**. The level of doubt needed to permit this more intrusive type of encounter (*i.e.*, a *Terry* stop) is phrased as "reasonable suspicion of criminal activity." This suspicion must be reasonable to a judge or jury looking at the encounter in hindsight, not suspicion that was subjectively reasonable to the officer at the time. To ascertain if the suspicion was, in fact, reasonable, one must look to all the circumstances surrounding the encounter. The facts known by the officer are relevant here (*e.g.*, the suspect was arrested for burglary two months ago or an all-points bulletin just came out for a murder only two blocks away), as well as his or her observations (*e.g.*, the suspect was stumbling or slurring words or seemed nervous when the officer spoke to him) and experience (*e.g.*, "I've been a cop for fifteen years and I know what a drug deal looks like."). When taken together these elements must coalesce and point to a conclusion that a circumspect, judicious person would come to, namely, that some form of criminal endeavor was afoot. The facts given to support the suspicion must be detailed. The officer must be able to state them in a clear and concise fashion. A mere intuition or instinctive feeling, standing alone, is insufficient. Facts are needed to bolster the conclusion that the suspicion was reasonable. Assuming there was adequate justification for the stop, the means of investigation employed must be reasonably related to the suspicion created. Moreover, the detention must last no longer than reasonably necessary to dispel or confirm the suspicion (15 to 30 minutes is the time frame courts seem to routinely permit, although substantially longer detentions have been upheld, and shorter ones have been found excessive).

Note: If the officers do not have a justification for making the initial stop (*i.e.*, at least a reasonable suspicion that criminal activity is underway), everything that may happen afterwards (*e.g.*, guns or drugs are found) will be of no consequence. Any evidence that might have been used against the suspect becomes tainted by the police misconduct and will be suppressed as the result, or fruit, of an unconstitutional detention. This is known as the exclusionary rule.

b. **Factors to Consider**. For the professional officer, an important point to note is that an individual fact or observation alone may be as consistent with innocuous, perfectly lawful conduct and activities, as it is with criminal enterprise. Courts consistently look at the combination of several different observations, each of which when isolated may appear innocent, but when taken together would lead to a reasonable impression that illegal activities are taking place.

Investigatory stops are routinely conducted in a variety of factual settings. The process of detaining and questioning a person is not limited to an "on-the-street" scenario, where an officer detains and questions a pedestrian. Investigatory stops are permissible in situations involving vehicles and motorists as well. An officer may briefly detain and question the driver or passengers of a vehicle if he has a reasonable suspicion that the occupants are involved in criminal activity. Following a lawful stop an officer may, as a matter of course, order the driver and any passengers to step out of the vehicle, even without any particularized suspicion that the vehicle occupants are armed or may otherwise pose a threat to the officer.

c. **Investigatory Stops**. The police may briefly detain and question a person upon a reasonable suspicion, short of probable cause for arrest, that the person is involved in criminal activity. What is, or is not, reasonable suspicion depends on balancing, weighing and meshing a variety of factors, taking into account the particular factual setting with which an officer is confronted. Some factors commonly cited by courts when determining the existence or absence of reasonable suspicion are as follows:

(1) A prior criminal record does not create a reasonable suspicion that there is current criminal activity. However, if that knowledge is coupled with other concrete facts or observations, an officer may rely on the combination to create a reasonable suspicion of present criminal activity.

(2) An officer's awareness that a crime was recently committed in the vicinity is a pertinent consideration. Standing alone, however, this knowledge does not create a reasonable suspicion that an individual who happens to be in that area, a short time later, was the perpetrator.

(3) A suspect's presence in a high-crime area, or an area known for drug trafficking, standing alone, is not a basis for reasonable suspicion. But a suspect's presence in such an area is an articulable fact. Coupled with other more solid observations, such presence can create reasonable suspicion that the suspect is engaged in the unlawful activity for which the neighborhood is known.

(4) Evasive conduct, furtive gestures, concealing or attempting to conceal one's identity are criteria an officer may weigh in assessing if his suspicion is reasonable. However, each individual observation, without more, will not create a reasonable suspicion of criminal endeavor.

(5) The time of day or night in which the individual is observed is relevant. However, merely being out in public at a late hour, without more, will not justify a stop.

(6) Information given to an officer by a third party, an informant, is generally insufficient by itself to create reasonable suspicion. However, when this information is corroborated by officers through independent investigation, or there is extraneous evidence that the informant is reliable and truthful, reasonable suspicion may be based on the tip. An officer may also rely on a flyer or bulletin describing a suspect and

disseminated by another law enforcement agency as a source for reasonable suspicion. The officer relying on the bulletin does not have to demonstrate personal knowledge of the facts necessary to justify the stop. However, the party issuing the bulletin or flyer must have facts in his or her possession which would support a finding of reasonable suspicion. Moreover, the scope of the stop made by the officer relying on the bulletin may be no more intrusive than that the issuing agency would have been justified in conducting.

d. **Legality of a Stop.** A determination that an officer possessed reasonable suspicion, justifying a detention, is only the first step in determining the legality of a stop. A reviewing court will ask initially if the officer's action was justified at its inception, and secondly whether it was reasonably related in scope to the circumstances which justified the interference in the first place. An examination of the scope of the stop addresses the following: (i) the length of the detention, and (ii) the methods employed during the stop. The duration of, and methods employed during the stop must be tailored to serve the purpose of confirming or alleviating the officer's suspicions. If those concerns are confirmed, and an officer's observations during the detention create probable cause, an arrest may be made. If the suspicions are dispelled, then the suspect should be let go. The detention must be sufficiently limited in temporal duration to satisfy the conditions of an investigative seizure. The nature of the questioning and level of force employed during the detention must be similarly limited. Even though the initial stop was justified, if the detention exceeds the scope authorized by its justification, *i.e.*, "reasonable suspicion of criminal activity," it will be deemed an illegal stop, and any incriminating evidence found thereafter will not be admissible in court.

e. **Justification for a Detention.**

(1) **Flight.** A suspect's flight, when confronted with police presence, may give the officer reasonable suspicion to pursue and detain the suspect. Note, however, that not all conduct that merely avoids contact with law enforcement is considered flight from law enforcement.

See, *e.g.*, *Illinois v. Wardlow*, 528 U.S. 119 (2000). Two uniformed officers were in the last car of a four-car police caravan that converged on an area of Chicago known for heavy narcotics trafficking, in order to investigate drug transactions. The officers observed defendant, who was standing next to a building holding an opaque bag, look at the police caravan, then run in the opposite direction. Given the character of the area and defendant's headlong flight ("the consummate act of evasion"), the officers had reasonable suspicion to stop him.

Compare with *Wilson v. U.S.*, 802 A.2d 367 (D.C. 2002). Two MPD detectives were standing in the 1400 block of Fairmont Street, N.W., an area they knew to be characterized by "a high level" of narcotics activity, looking for a witness in connection with a homicide investigation. The detectives saw two men walking toward the entrance of an apartment building; one matched the description of the witness they were seeking, and the other was defendant. The men looked at the detectives, and quickened their pace as the detectives "paid more attention to them." One detective began to approach the men, causing their pace to quicken even more, "to the point where, once [he] got to the front door of the building, they were hurrying down the hallway and quickly went around the corner out of [his] sight." The detective followed them inside, where he met a uniformed MPD officer who happened to be in the building on unrelated business. He had seen the men round the corner and run down another hallway. He later testified, "If I was in a rush and needed to get somewhere quickly and not run, that's how I would describe it." The detectives then heard "pounding on [a] door" in the direction the men had fled. Because of their flight, police had reasonable suspicion to stop and question the men.

But see *In re A.F.*, 875 A.2d 633 (D.C. 2004). Two officers were in the area of First and O Streets, N.W., in response to a drug complaint at 90 O Street. The officers were in an unmarked car, and wore plain clothes (although one wore a vest with the word "POLICE" on it, there was no evidence that this marking was visible as he sat in the car). From a quarter of a block away, they saw defendant on the sidewalk talking with other individuals near a car with its hood up in front of 78 O Street. Defendant looked over and made eye contact with on or both of the officers, then "placed his right hand inside his right fronts pants pocket in a very quick manner" and walked off in the opposite direction from the officers. However, he then turned around, walked back to the car, and sat behind the wheel. The Court found the officers had no reason to stop or frisk defendant. The facts in the record did not establish that defendant recognized the officers as police, and his conduct in leaving then returning was ambiguous, not necessarily indicating flight.

(2) **High-Crime Area.** Presence in a high-crime area, when coupled with observations of suspicious activity, can create reasonable suspicion.

See, *e.g.*, *Brown v. U.S.*, 546 A.2d 390 (D.C. 1988). A plain clothes officer was assigned to the Georgetown area due to a number of street robberies. At 1:00 a.m., he observed the three co-defendants walking in a "hurried manner" and dressed in jogging outfits. The three men had come from a block that was not well-lit and contained only condominiums and a nightclub the officer knew to have a dress code. As the officer watched, the men got into a car and sped off. The officer followed in an unmarked car. He saw one of the men lay down in the back seat, then peer over his shoulder periodically to look through the rear window. The officer thought these maneuvers typical of those trying to flee a crime scene, so, given the history of robberies in the area, he had reasonable suspicion for an investigatory stop.

See also *Black v. U.S.*, 810 A.2d 410 (D.C. 2002). Two officers were patrolling the 400 block of H Street, N.E., an area with a high level of narcotics activity. One of the officers testified that he had made "plenty" of arrests in that "particular area [of H Street,]" and that the city had recently installed high-intensity lights there, at least partially in response to requests from the MPD. The officers saw defendant and another man standing close together at the mouth of an alley. "[Defendant] appeared to be showing his companion a small object cupped in his hand, while his companion held currency." Upon seeing the officers, the other man fled, while defendant appeared to place the object he had been holding in his pocket. The Court stated that, as a general rule, a two-way transaction or imminent two-way transaction in a high-crime area will establish reasonable suspicion; therefore, the officers were justified in stopping defendant. (The Court also noted, however, that a one-way exchange will generally not establish reasonable suspicion.)

In *U.S. v. Moore*, 394 F.3d 925 (D.C. Cir. 2005), two officers were traveling along I-295 around 4:00 a.m. near Kenilworth Avenue; the officers characterized this as "a high crime area" in general, and specifically as an area where recently there had been a lot of "crimes involving [taxi]cabs." One of the officers noticed a cab on a service road alongside Kenilworth. Although there were several houses in the area, the cab stopped where there was "nothing...but open field, grassy area." This was "not a place where one would normally hair or alight from a taxicab." The cab had its interior light on, and the officer could see a lone individual in the back seat. "[T]he cab driver started moving, and all of a sudden he stopped. He did this maybe two or three times." Concerned that the driver was being robbed, the officers stopped the cab and frisked the passenger, finding an illegal gun. The Court upheld this stop and frisk. Especially given the recent history of taxi-related crimes in the area, the officer's "suspicion the taxicab driver was being robbed was among the most probable explanations for the peculiar circumstances he observed; it was reasonable to suspect that a taxicab driver, while being robbed, would behave erratically, whether from shock or confusion, or perhaps in the hope of attracting the attention of the police."

(3) **Officer's Experience**. Officers are entitled to rely on their own knowledge and experience in forming reasonable suspicion.

See, *e.g.*, *In re C.A.P.*, 633 A.2d 787 (D.C. 1993). An officer saw a car with a smashed right rear vent window. He thought it strange that the broken window remained uncovered, because it was early December and "kind of cool." Moreover, in four or five of the six arrests he had made for unauthorized use of a vehicle, the vent window of the car had been broken. Based on his observations, the officer had reasonable suspicion for an investigatory stop.

In *Flores v. U.S.*, 769 A.2d 126 (D.C. 2000), an officer saw defendants Marino and Flores standing on a sidewalk in the 1400 block of Park Road, an area "notorious for the sale of crack/cocaine[sic]." Marino handed Flores a Chapstick container. The officer knew that Chapstick containers had become a common means of packaging crack, and also knew that an item so personal as lip balm is not usually shared. When the officer approached the two defendants, getting within 8 to 10 feet, Flores dropped the container and covered it with his foot. This surprised reaction, in combination with the officer's knowledge, established reasonable suspicion for a stop.

Note: **Marijuana**. Other than when an officer is investigating a potential DUI investigation, the odor of marijuana or of burnt marijuana or the possession of or the suspicion of possession of marijuana without evidence of quantity in excess of 1 ounce does not constitute reasonable articulable suspicion of a crime. *D.C. Code* §48-921.02a.

Moreover, knowledge of an earlier crime in the area, coupled with observation of suspicious conduct, can justify a detention.

In *McFerguson v. U.S.*, 770 A.2d 66 (D.C. 2001), officers heard a radio report of a burglary in the 3400 block of Garfield, near Massachusetts Avenue. The suspected burglars were described as two black males, "tall," wearing white shirts and red pants. About six minutes after this broadcast (approximately 20 minutes after the victim's first report), the officers were driving on Rock Creek Parkway near Waterside Drive, which connects the Parkway to Massachusetts Avenue, about 1½ miles from the scene of the burglary. They saw two black men (defendants Worthington and McFerguson) running down the side of the road, "dodging in and out of traffic." Defendant Worthington was tall, carried a red bag, and wore a white shirt, though he had gray, not red, pants (however, the officers knew that criminals commonly change clothing while fleeing). Both men were "sweating profusely...out of breath...[and appeared] frantic." The officers had reasonable suspicion to stop and question the men (though they did not yet have probable cause to arrest).

In *Hampleton v. U.S.*, 10 A.3d 137 (D.C. 2011), three people were robbed at gunpoint by five men while walking to a nightclub in northeast D.C. The robbers fled, and soon after a lookout was broadcast for five or six black males in "dark clothing" riding in a black Jeep Liberty with Virginia plates. Two to three minutes later, MPD officers spotted the Jeep and tried to stop it; a chase ensued that ended with the Jeep crashing into a tree near Second and Taylor Streets, N.E. The suspects bailed out of the vehicle and fled on foot. One suspect "ran into the woods" while four others ran off "in a bunch" toward the grounds of the nearby Archbishop Carroll High School. Additional officers began canvassing the area. One of those officers, stationed on Scale Gate Road Bridge overlook-

ing North Capitol Street broadcast a lookout that she had observed "black males. . .wearing dark clothing" attempting to climb over the fence of Archbishop Carroll High School from the school grounds onto North Capitol Street. She further noted that, after seeing her cruiser, the individuals abandoned their attempt and retreated back inside the school grounds. Within seconds of this broadcast—and within 10 to 15 minutes of the initial Jeep crash—another officer saw defendant walking northward in the 3700 block of North Capitol Street, on the opposite side of the street from Archbishop Carroll High School. Defendant, a black male, was wearing dark clothing and talking on a cell phone. Defendant was the only person the officer had seen in the area since the initial lookout. Given this and the closeness in time and area of the bailout and the stop, and the clear indication that at least one of the robbers had fled across the high school grounds toward North Capitol Street, the officer had reasonable suspicion to detain defendant under the totality of the circumstances.

See also *Trice v. U.S.*, 849 A.2d 1002 (D.C. 2004). At 11:40 p.m., a lookout was broadcast for the suspect in a stabbing at Hadley Hospital. The suspect was described as a black male wearing a black, red, and white shirt, who had left the hospital "between one and five minutes ago," headed towards Elmira Street. About two minutes later, a detective saw two men walking side by side in the 4300 block of First Street, half a mile from the hospital, in the direction of Elmira. One of the men resembled the description in the lookout, while the other was defendant, who did not match the description. Nevertheless, the officer had reasonable suspicion to stop both men. When another officer saw a small silver object sticking out of defendant's pocket, he then had reasonable suspicion to frisk defendant, as well.

Compare with *U.S. v. Abdus-Price*, 518 F.3d 926 (D.C. Cir. 2008). MPD officers heard a "lookout" broadcast regarding two armed robbers last seen fleeing in a "Crown Vic Ford model, tan on the side, black on top with smoked-out windows." Less than 40 minutes after the robbery, an officer spotted a Crown Vic with dark-tinted windows, roughly two blocks from the crime scene—however, it was dark blue with a white driver's side rear door, not black and tan on the side as the victim had described. Nevertheless, the Court found that the officer had reasonable suspicion to make an investigatory stop of the car. Although the colors were not an exact match, this was a two-tone Crown Vic with a door lighter in color than the top of the car—dark blue and white are easy to confuse with black and tan, especially after dark, and especially when still shaken following a robbery.

(4) **Tips**. Information provided by someone outside the circles of law enforcement may provide sufficient justification for a stop if it carries with it sufficient indicia of reliability. Factors that bolster the reliability of information may include: the reliability and reputation of the person providing the tip; corroboration of the details contained in the tip by independent police work; and the extent to which any information provided by the informant has proved to be accurate or useful in the past.

See, *e.g.*, *Nixon v. U.S.*, 870 A.2d 100 (D.C. 2005). A "concerned citizen" flagged down two MPD officers at First and S Streets, N.W. He told the officers that some person was using drugs inside a red "construction type" pick-up truck parked in front of his house in the 200 block of S Street. Although the officers did not know this citizen, they went to the described location. About 90 seconds after receiving the tip, they saw a matching pick-up. Although it was unoccupied, they saw two men (one of whom was defendant) walking on the sidewalk about 20 feet from the truck. No one else was in the area, and there were no other similar pick-ups on the block. One of the officers called out from the police car and asked defendant if he had just left the tuck; defendant said yes. The officer then pointed and asked, "that truck right there?" Defendant again said yes. The Court found that, at this point, the officers had reasonable suspicion for an investigatory stop. The officers had an in-person tip from a citizen who, by all appearances, almost contemporaneously observed the occurrences he was describing. As an ordinary citizen, the informant was presumed credible, even more credible than a paid police informant. Because he gave his information face-to-face, the officers could assess his reliability first hand. Moreover, the officers corroborated the tip when they saw a red pick-up just a minute and a half later and defendant admitted that he had been in the truck.

Compare with *Parker v. U.S.*, 601 A.2d 45 (D.C. 1991). A woman flagged down an MPD officer and said a man in a brown Plymouth with D.C. plates was about to make a drug drop at a specified location a few blocks away. The woman gave her name and address, and said that the drugs were in a paper bag on the front seat. Because the woman was an identified citizen informant, and made herself accountable for the information she gave, she was presumed reliable. Moreover, when the officer went to the specified address, he saw a brown Plymouth parked there; as he approached, he could see a paper bag sitting between the driver and passenger. Based on the tip, the officer had reasonable suspicion to seize both occupants by ordering them out of the car.

In *Joseph v. U.S.*, 926 A.2d 1156 (D.C. 2007), a man called 911 at 9:24 p.m. to report that a man with a gun "in the side of is waist" was standing in front of a house at 646 Newton Place, N.W., with two or three other men. The caller said that his last name was Williams and gave the dispatcher his address and telephone number. Williams went on to say that the man with the gun was wearing a grey sweatshirt, blue jeans, and brown Timberland boots. Two officers responded to this call, the first arriving at the specified address in less than a minute. He saw three men—all wore jeans, but only one, defendant, wore

a gray sweatshirt. The officer stopped and frisked defendant, finding a loaded pistol in his waistband. The Court found that the 911 call supported this stop. The caller identified himself by last name, address, and telephone number—therefore, could be held accountable for a false report. In addition, based on his conversation with the dispatcher (which was taped), the Court could infer that Williams was continuously viewing the scene while making the call because he was able to provide additional information when the dispatcher asked a direct question about who else was on the scene at that very moment. This enhanced his reliability, as did the fact that the officer was able to confirm his description of defendant's clothing within a minute after the call. The pat-down of defendant was lawful.

See also *Fleming v. U.S.*, 923 A.2d 830 (D.C. 2007). An MPD officer received a call "around 3:55 p.m." from a person who had "provided information in the past about certain patterns of narcotic sellers in certain areas[.]" The informant was not known as a drug user, nor a paid informant. On two occasions, information from the informant resulted in arrests. The informant told the officer that "he knew a person by the name of Tray"—whom he described as "a black male..., wearing a brown jacket, khaki type; khaki-like color, like brown khaki-like color pants...[with] a close fade-type haircut" and "wearing white tennis shoes"—and that Tray "would be between Sixth and Seventh and N Street," in the Northwest quadrant of the District "selling PCP and that he had PCP on his person." The officer communicated this information to fellow officers who preceded to the N Street area, arriving around 4:45 p.m. The officers noticed between 10 and 12 males. Only one of the males, defendant, wore beige khakis and a beige-colored top; the others all wore black tops and blue jeans. The officer approached defendant, then stopped him, which ultimately led to his arrest. In reviewing this case, the Court noted that not only was the informant known to the officer, on two prior occasions his information had resulted in arrests. "Moreover, the informant spoke from personal knowledge and direct observations, referring to the defendant by the name 'Tray,' specifying the precise place where he could be found, providing a detailed description, including type of clothes and shoes worn, racial identity, and describing his haircut." Because the informant was not paid, he had no reason to lie to gain monetary payment. The informant also understood that if he gave false information, that could have an impact on his own sentencing in a pending criminal matter. Under these circumstances, the informant was reliable, and his information was sufficient to establish reasonable suspicion.

(5) **Anonymous Tips**. An anonymous tip, if corroborated by other observations and supported by indicia of reliability, can create reasonable suspicion.

See, *e.g.*, *Alabama v. White*, 496 U.S. 325 (1990). Montgomery police received an anonymous tip stating that defendant, carrying a brown briefcase filled with cocaine, would leave a specific unit of an apartment building and travel in her brown Plymouth station wagon, which had a broken taillight, to a specific motel. Police watched the apartment complex, and saw a brown Plymouth wagon with a broken taillight. They then watched defendant, empty-handed, exit the specified apartment, get into the car, and drive directly toward the motel. Even though not every detail in the tip turned out to be totally correct, the partial corroboration by police alone provided reasonable suspicion for a stop.

Compare with *Gomez v. U.S.*, 597 A.2d 884 (D.C. 1991). At around 10:00 p.m., an anonymous tip reported that drugs were being sold out of a vehicle in the rear of 1223 N Street, N.W. Approximately four minutes later, two officers arrived at that location (a narrow alley between 12th and 13th Streets known for illegal narcotics sales). They entered on foot and saw two automobiles side by side with their lights off; four people were in one car, two were in the other. The unusual presence of these cars so soon after the tip corroborated it, and established reasonable suspicion for a stop.

In *Speight v. U.S.*, 671 A.2d 442 (D.C.), *cert. denied*, 519 U.S. 956 (1996), an anonymous caller told police that two black males (one in a white cap, jeans, and a red hooded sweatshirt, the other in a black cap and black coat with a black fur collar) had placed guns and drugs in a blue Dodge Aspen with a specified license plate parked near a Mexican restaurant in the 3300 block of 11th Street, N.W. Officers arrived at this location within two to three minutes and saw a parked blue Aspen with the given tag number. Two men dressed as described in the call were crossing the street to the 3400 block. A few other persons were in the area but none were similarly dressed. Given the level of detail in the tip and the independent police corroboration thereof, the officers had reasonable suspicion to stop and frisk the two men.

See also *Navarette v. California*, 572 U.S. __ (2014). In Mendocino County, California, a driver called 911 to report that a silver Ford F-150 pickup truck with a specified license plate had just run her off the road, at mile marker 88 on southbound Highway 1. Roughly 18 minutes after the call, a California Highway Patrol officer spotted the same truck at mile marker 69, 19 miles south of the reported incident. The U.S Supreme Court ruled that, assuming the 911 call was anonymous, the officer nevertheless had reasonable suspicion to stop the truck. By reporting that she had been run off the road by a specific vehicle, the caller necessarily claimed eyewitness knowledge of the alleged dangerous driving—a driver's claim that another vehicle ran her off the road implies that the informant knows the other car was driven dangerously. That basis of knowledge lent significant support to the tip's reliability. In addition, the officer saw the truck in a location suggesting that the caller must have reported the incident soon after she