

What Makes a Search Reasonable



By Paul Engel

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- Most people know that the Fourth Amendment protects our right to not be unreasonable searched or seized.
- But what makes a search reasonable?
- In the legal profession, reasonable searches in traffic stop is based on the case *Pennsylvania v. Mimms*.

I doubt it would surprise you that I watch a fair amount of videos that involve interactions with the police. One question that comes up is when is an officers attempt to search or detain someone reasonable? One of the cases attorneys frequent refer to is *Pennsylvania v. Mimms*. So I decided it was worth some time reviewing that case.

Background

To understand the decision, it's important to first understand the case.

After police officers had stopped respondent's automobile for being operated with an expired license plate, one of the officers asked respondent to step out of the car and produce his license and registration. As respondent alighted, a large bulge under his jacket was noticed by the officer, who thereupon frisked him and found a loaded revolver. Respondent was then arrested and subsequently indicted for carrying a concealed weapon and unlicensed firearm. His motion to suppress the revolver was denied and after a trial, at which

the revolver was introduced in evidence, he was convicted. The Pennsylvania Supreme Court reversed on the ground that the revolver was seized in violation of the Fourth Amendment.

[Pennsylvania v. Mimms, 434 U.S. 106 \(1977\)](#)

Put yourself in Mr. Mimms' shoes. Personally, I expect the officer to ask the typical question, "Do you know why I pulled you over?" Instead, the officer asks you not only for your driver's license and registration, but to get out of the car.

What is Reasonable?

This entire case, along with the protection of your rights, come down to whether or not it is reasonable for an officer to ask you to exit your car in that situation.

The Pennsylvania court did not doubt that the officers acted reasonably in stopping the car. It was also willing to assume, *arguendo*, that the limited search for weapons was proper once the officer observed the bulge under respondent's coat. But the court nonetheless thought the search constitutionally infirm because the officer's order to respondent to get out of the car was an impermissible "seizure." This was so because the officer could not point to "objective observable facts to support a suspicion that criminal activity was afoot or that the occupants of the vehicle posed a threat to police safety.

[Pennsylvania v. Mimms, 434 U.S. 106 \(1977\)](#)

No one disagrees that the officers had a valid reason to pull Mr. Mimms over: His expired license plate. (*Arguendo* means "In the course of the argument.") Under those circumstances, the officer also had a reasonable, articulable belief that a crime had been committed: He was driving an unregistered vehicle. This also justified requiring Mr. Mimms identification. But what was the reason to have Mr. Mimms get out of his car? The Pennsylvania Supreme Court stated that the officer could not point to an objective observable fact to support criminal

activity or that there was a threat to police safety. So what made the order for Mr. Mimms to exist his vehicle reasonable?

The State freely concedes the officer had no reason to suspect foul play from the particular driver at the time of the stop, there having been nothing unusual or suspicious about his behavior. It was apparently his practice to order all drivers out of their vehicles as a matter of course whenever they had been stopped for a traffic violation. The State argues that this practice was adopted as a precautionary measure to afford a degree of protection to the officer, and that it may be justified on that ground. Establishing a face-to-face confrontation diminishes the possibility, otherwise substantial, that the driver can make unobserved movements; this, in turn, reduces the likelihood that the officer will be the victim of an assault.

[Pennsylvania v. Mimms, 434 U.S. 106 \(1977\)](#)

The State argues that it is reasonable to remove someone from his vehicle for the sole purpose that a face-to-face confrontation diminishes the possibility the driver can make unobserved movements. This is done for police safety, but what about the safety of the accused? I could understand asking the driver to get out of the car, but only if there was an articulable reason to believe the officer's safety was compromised.

We think it too plain for argument that the State's proffered justification – the safety of the officer – is both legitimate and weighty. "Certainly it would be unreasonable to require that police officers take unnecessary risks in the performance of their duties." *Terry v. Ohio*, supra at 392 U. S. 23. And we have specifically recognized the inordinate risk confronting an officer as he approaches a person seated in an automobile.

[Pennsylvania v. Mimms, 434 U.S. 106 \(1977\)](#)

I recognize the dangers of police work. An officer is

subjected to risk every time they answer a call or pull a vehicle over. However, by the court's logic, every person accused could be required to be treated as a criminal without cause. Exiting a vehicle introduces risks to the accused. An unintended "furtive move" could easily lead to an overreach by the police. A slip or stumble in front of an officer who has been trained that every encounter with the public could present an unnecessary risk, could lead to dangerous police actions. In short, by training law enforcement that everyone is to be considered dangerous until proven otherwise, actually creates a dangerous imbalance of power leaving the average citizen at the whim of law enforcement, without any way to protect themselves.

"According to one study, approximately 30% of police shootings occurred when a police officer approached a suspect seated in an automobile. Bristow, Police Officer Shootings – A Tactical Evaluation, 54 J.Crim.L.C. & P.S. 93 (1963)."

[Pennsylvania v. Mimms, 434 U.S. 106 \(1977\)](#)

While one study may show that 30% of police shootings occur during a traffic stop, that is not enough to show probable cause. For example, how many of those 30% of shootings involved people being pulled over for minor traffic violations? Has anyone compared that to how many of the registered owners of those vehicle came back with warrants? Even the court acknowledged the limitations of their data.

We are aware that not all these assaults occur when issuing traffic summons, but we have before expressly declined to accept the argument that traffic violations necessarily involve less danger to officers than other types of confrontations. United States v. Robinson, 414 U. S. 218, 414 U. S. 234 (1973).

[Pennsylvania v. Mimms, 434 U.S. 106 \(1977\)](#)

Again, by this logic, every police encounter should begin with

handcuffs and a pat down. I mean, if every encounter with law enforcement has the same level of danger as other types of confrontations, they should be treated the same. But again, is that reasonable.

The hazard of accidental injury from passing traffic to an officer standing on the driver's side of the vehicle may also be appreciable in some situations. Rather than conversing while standing exposed to moving traffic, the officer prudently may prefer to ask the driver of the vehicle to step out of the car and off onto the shoulder of the road where the inquiry may be pursued with greater safety to both.

[Pennsylvania v. Mimms, 434 U.S. 106 \(1977\)](#)

This is a situation where it could be reasonable to ask (not demand) that the driver join the officer in a safer location. However, it is reasonable for a driver to not wish to risk injury by getting out of his vehicle into traffic. After all, a person's vehicle is their property, and not that different from your home. Furthermore, the officer has the ability to mitigate his or her risk of standing beside the vehicle by placing his vehicle where it can help shield him from traffic.

Against this important interest, we are asked to weigh the intrusion into the driver's personal liberty occasioned not by the initial stop of the vehicle, which was admittedly justified, but by the order to get out of the car. We think this additional intrusion can only be described as de minimis.

[Pennsylvania v. Mimms, 434 U.S. 106 \(1977\)](#)

This is not simply a question of "personal liberty," but of a constitutionally protected right. One which should not be violated without due process, which includes making sure a law enforcement officer has a reasonable cause to ask a driver to leave their vehicle before ordering them to do so.

The driver is being asked to expose to view very little more

of his person than is already exposed. The police have already lawfully decided that the driver shall be briefly detained; the only question is whether he shall spend that period sitting in the driver's seat of his car or standing alongside it.

[Pennsylvania v. Mimms, 434 U.S. 106 \(1977\)](#)

There is a difference between being detained and being ordered out of your vehicle. Would this logic extend to a person's home? Can law enforcement come to your home and order you to exit the residence? Furthermore, should law enforcement have other than honorable intentions, this not only exposes the accused to further harassment, but the physical intimidation of being ordered around without cause.

Not only is the insistence of the police on the latter choice not a "serious intrusion upon the sanctity of the person," but it hardly rises to the level of a "petty indignity.'" Terry v. Ohio, supra at [392 U. S. 17](#). What is, at most, a mere inconvenience cannot prevail when balanced against legitimate concerns for the officer's safety.

[Pennsylvania v. Mimms, 434 U.S. 106 \(1977\)](#)

I wonder if the judges were pulled over for a minor traffic infringement find it a serious intrusion to be ordered to exit their vehicle without a good reason. Remember, this is a situation where law enforcement can, and has been known to, use their position to intimidate drivers into compliance, even self-incrimination.

Opinion

Now we get to the opinion of the court.

Respondent's motion to proceed in forma pauperis is granted. The petition for writ of certiorari is granted, the judgment of the Supreme Court of Pennsylvania is reversed, and the case

is remanded for further proceedings not inconsistent with this opinion.

[Pennsylvania v. Mimms, 434 U.S. 106 \(1977\)](#)

The court decided for the State, and sent the case back to the Supreme Court of Pennsylvania for further proceedings. The Supreme Court of the United States cannot order the Supreme Court of Pennsylvania to decide a certain way, but they can encourage that they do so.

Conclusion

Not only has the Supreme Court once again placed the interests of law enforcement above those of the general public. While I believe the vast majority of law enforcement are honest and honorable people trying to do a difficult job, there are those who use the badge as a power trip. They believe they have the power to order people around, without reasonable cause, and this case reinforces that belief.

The saddest part is that this case is NOT law ???, neither does it supersede the Constitution of the United States. That means law enforcement, who took an oath to support said Constitution, needs an articulable reason to order anyone around. Yet law enforcement and courts still infringe on the rights of Americans because of this case. To me, this is why it is so important that everyone needs to read and study the Constitution, because we cannot trust that the judicial system is familiar with it.

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