

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

United States v. Jay

87 F. App'x 49 (9th Cir. 2004) · Decided January 26, 2004

SUMMARY

The Ninth Circuit reversed and remanded a district court order suppressing evidence obtained during an encounter involving defendants Baker and Jay. The court held that the officers had reasonable suspicion for a Terry stop, that a protective sweep of the vehicle would inevitably have revealed the firearms and drugs, and that those items supplied probable cause supporting Jay’s statements and a warrant for a related residence.

CASE DETAILS

|                    |                                                                                                                     |
|--------------------|---------------------------------------------------------------------------------------------------------------------|
| COURT              | United States Court of Appeals for the Ninth Circuit                                                                |
| JURISDICTION       | Federal                                                                                                             |
| DECIDED            | January 26, 2004                                                                                                    |
| DISPOSITION        | reversed_and_remanded                                                                                               |
| PROCEDURAL POSTURE | The government appealed the district court's order granting the defendants' motion to suppress evidence.            |
| STANDARD OF REVIEW | Motions to suppress are reviewed de novo, while the district court's factual findings are reviewed for clear error. |
| PRECEDENTIAL VALUE | nonprecedential                                                                                                     |
| PARTIES            | United States v. Jay, Baker                                                                                         |

TOPICS

- suppression of evidence
- fourth amendment
- search and seizure
- probable cause
- appellate procedure

PRACTICE AREAS

- criminal procedure
- appellate practice

QUESTIONS PRESENTED

1. Whether the government waived or abandoned reliance on Terry v. Ohio.
2. Whether the officers had reasonable suspicion to initiate and continue a Terry stop of Baker and Jay.

3. Whether drawing a weapon and handcuffing the defendants were reasonable measures within the scope of the Terry stop.
4. Whether the drugs and guns found in the Chevrolet Caprice were admissible under the inevitable-discovery doctrine.
5. Whether the vehicle evidence supplied probable cause for the defendants' arrests and for a search warrant covering Foster's duplex, making Jay's statements and the duplex evidence admissible.

## HOLDINGS

1. The government did not waive or abandon its Terry theory because it cited Terry and argued that the officers had reasonable suspicion as well as probable cause.
2. The officers had reasonable suspicion that Baker and Jay were engaged in illegal activity involving a firearm or drugs, so they permissibly could initiate a Terry stop and question them.
3. Drawing a weapon and handcuffing the defendants were reasonable responses to legitimate officer-safety concerns and were consistent with a Terry stop under the circumstances.
4. The drugs and guns found in the Caprice were not subject to suppression because they inevitably would have been discovered during a reasonable protective sweep conducted as part of the Terry stop.
5. The evidence found in the Caprice would have given the officers probable cause to arrest both defendants and to obtain a search warrant for Foster's duplex; accordingly, Jay's statements and the evidence found in the duplex were not subject to suppression.

## KEY QUOTATIONS

*“The items found in the car are not subject to suppression, because they inevitably would have been found as part of the Terry stop.” (at 50)*

*“The items found in the car, in turn, would have given the officers probable cause to arrest both Defendants and probable cause to obtain a search warrant for Ms. Foster’s duplex.” (at 51)*

## FACTUAL BACKGROUND

Officers encountered Baker and Jay on N.E. Portland Boulevard Court while investigating suspected illegal possession of a firearm or drugs. The officers reasonably suspected that the defendants were armed, Officer Santos drew his weapon, and the defendants were handcuffed after additional officers arrived. Santos feared that Baker was reaching for a gun under the passenger seat of a gray Chevrolet Caprice; the court determined that a protective sweep of the vehicle would have been a reasonable and inevitable safety response, leading to the discovery of drugs and guns. Those items would have supported probable cause to arrest the defendants and obtain a warrant to search Foster's duplex.

## PROCEDURAL HISTORY

The district court granted a motion to suppress evidence discovered in a vehicle and in Foster's duplex, apparently including statements made by Jay. The Ninth Circuit reversed and remanded for further proceedings, concluding that the officers had reasonable suspicion to conduct a Terry stop and that the vehicle evidence was

admissible under inevitable discovery; the vehicle evidence then supplied probable cause for the arrests and for a warrant to search the duplex.

#### **DISPOSITION**

reversed\_and\_remanded

#### **REMAND INSTRUCTIONS**

Further proceedings consistent with the opinion.

#### **CASES CITED**

- Terry v. Ohio, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968)
- United States v. Fernandez-Castillo, 324 F.3d 1114, 1117 (9th Cir. 2003), cert. denied, 124 S. Ct. 418, 157 L. Ed. 2d 299 (2003)
- United States v. Miles, 247 F.3d 1009, 1012-13 (9th Cir. 2001)
- United States v. Ramirez-Sandoval, 872 F.2d 1392, 1399 (9th Cir. 1989)
- Michigan v. Long, 463 U.S. 1032, 1049-50, 103 S. Ct. 3469, 77 L. Ed. 2d 1201 (1983)