

**[J-149-2004]**  
**IN THE SUPREME COURT OF PENNSYLVANIA**  
**EASTERN DISTRICT**

**CAPPY, C.J., CASTILLE, NIGRO, NEWMAN, SAYLOR, EAKIN, BAER, JJ.**

COMMONWEALTH OF PENNSYLVANIA,	:	No. 50 EAP 2003
	:	
Appellee	:	Appeal from the Opinion and Order of the
	:	Superior Court entered November 20,
	:	2002 at Docket Number 898 EDA 2001,
v.	:	affirming the Order of the Court of
	:	Common Pleas of Philadelphia County
	:	entered March 5, 2001 at Criminal No.
JAMES REVERE,	:	9708-0403.
	:	
Appellant	:	814 A.2d 197 (Pa. Super. Ct. 2002)
	:	
	:	ARGUED: October 18, 2004
	:	

**CONCURRING OPINION**

**MR. CHIEF JUSTICE CAPPY**

**DECIDED: December 28, 2005**

I join the majority under the limited facts in this appeal. I write separately, however, for two reasons: first, to emphasize the limited scope of our holding; and second, to clarify that consideration of the nature of the police response to exigent circumstances is a significant component of the analysis regarding justification for the relocation of a detainee.

Today our Court holds that “where exigent circumstances exist, a brief detention and transportation in a police vehicle does not automatically constitute an arrest which must be supported by probable cause.” Majority Opinion at 1. As the majority explains, Fourth Amendment jurisprudence has embraced a certain limited degree of elasticity with respect to the scope of a Terry stop, Terry v. Ohio, 392 U.S. 1 (1968), and has permitted the

reasonably necessary involuntary transportation of a detainee during an investigative stop to a different location due to safety concerns. Such action does not transform the temporary seizure pursuant to Terry into an arrest. Our narrow holding that exigent circumstances involving the safety of police officers *may* justify police placing a detainee in a police vehicle and transporting that detainee a short distance for a brief period of time during the course of an investigative detention pursuant to Terry, and the conclusion that such conduct *does not automatically constitute* an arrest that must be supported by probable cause is consistent with this now generally accepted body of law.<sup>1</sup>

That said, it cannot be overemphasized that an investigatory detention pursuant to Terry is in and of itself an extremely limited exception to the constitutional mandate that seizure of our citizens without probable cause is unlawful. Commonwealth v. Rodriguez, 614 A.2d 1378, 1382 (Pa. 1992); see also Terry, 392 U.S. at 29. Properly placed in this perspective, the extraordinary situations in which police officers may be justified in not only seizing a citizen for a period pursuant to Terry, but also further intruding upon the individual's freedom by placing that person in a police vehicle against his will and transporting him to a different locale, necessarily will be exceedingly rare.

Second, I wish to clarify that the analysis of whether the existence of exigent circumstances justifies the placing of a detainee in a police vehicle and transporting him a short distance during an investigative detention includes a reasonably necessary response

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<sup>1</sup> Appellant James Revere makes no claim that the approach under Article I, Section 8 of the Pennsylvania Constitution is different than that under the Fourth Amendment to the United States Constitution, and thus, the majority properly presumes similarity in legal analysis. Majority Opinion at 8 n.6. While our Court has consistently followed Terry, in investigative detention cases under the Pennsylvania Constitution, our case law makes equally clear that we are not in any way bound by Terry for purposes of Article I, Section 8 jurisprudence and that if Terry and its federal progeny evolve to a point that is inconsistent with our Constitution's guarantees, we are free to embrace a standard other than adhered to by the United States Supreme Court. In the Interest of D.M., 781 A.2d 1161, 1163 (Pa. 2001).

component. That is to say, and as urged by the Commonwealth throughout its brief, the additional intrusion on a citizen's freedom by placement in a police vehicle and relocation must be a reasonably necessary response to the exigent circumstances or it will exceed the scope of Terry and constitute an unconstitutional *de facto* arrest.

If, as in this case, the concept of exigent circumstances is understood as the potential for danger to fellow officers, this exigency does not automatically justify the relocation of an individual. Rather, the proper analysis will consist of both a determination of whether exigent circumstances exist (assumed for purposes of this appeal), and whether the officers' conduct was a reasonably necessary response to the exigent circumstances based upon the totality of the circumstances.<sup>2</sup> Cf. Terry, 392 U.S. at 20 (offering that the inquiry is "a dual one -- whether the officer's action was justified at its inception, and whether it was reasonably related in scope to the circumstances which justified the interference in the first place.")<sup>3</sup> Based upon the limited facts present in this appeal, I join the majority in concluding that the police officers' conduct was a reasonably necessary

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<sup>2</sup> I agree with the majority that, in performing this inquiry, reviewing courts must appreciate that police are often acting in dangerous and fluid situations and that reviewing courts should not engage in unrealistic second-guessing. Consideration of reasonably less intrusive alternatives should be part of the relevant inquiry and serves to balance the concerns of citizens and law enforcement officers. See, e.g., Commonwealth v. Lovette, 450 A.2d 975, 980 (Pa. 1982) ("The police had the option of detaining the suspects at the site of the initial encounter and either bringing the complainant to the site for his identification of the questioned articles or taking those items to him. Either situation would present a much stronger case for the position the Commonwealth presently urges."); People v. Harris, 540 P.2d 632, 636 (Cal. 1975)(explaining that usually less intrusive and more reasonable alternatives exist to pre-arrest relocation and noting that officers pursued none of the alternative procedures); Florida v. Royer, 460 U.S. 491, 504-06 (1983)(plurality)(same).

<sup>3</sup> Indeed, if there were ten police officers at the crime scene while investigating the two detainees, and the officers were faced with the exigency of safety concerns for their fellow officers, relocating the detainees might very well be considered to be unreasonable under the totality of the circumstances and thus, an unconstitutional arrest.

response to the exigent circumstances of concern for the safety of their fellow officers, and thus, did not constitute an arrest.

Mr. Justice Baer joins this concurring opinion.