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Expansion of the Terry Doctrine to Completed Felonies, The--Fourth Amendment: United States v. Hensley, 105 S. Ct. 675 (1985)

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FOURTH AMENDMENT—THE EXPANSION OF THE *TERRY* DOCTRINE TO COMPLETED FELONIES

United States v. Hensley, 105 S. Ct. 675 (1985).

I. INTRODUCTION

In *United States v. Hensley*,[1] the United States Supreme Court held that when law enforcement officers have a reasonable suspicion, based on specific and articulable facts, that a suspect is wanted in connection with a completed felony, the officers may stop and investigate that person.[2] The Court in *Hensley* derived its holding from the landmark case of *Terry v. Ohio*,[3] which held that the police may stop a person and briefly detain him if the officers have a reasonable suspicion that the person is involved in criminal activity.[4] The *Hensley* Court thus expanded the *Terry* decision to encompass the investigation of any person who is suspected of being involved in completed criminal activity.

The Court in *Hensley* also held that if a flyer has been issued on the basis of articulable facts, grounded in a reasonable suspicion that the person sought has committed a criminal offense, then officers in a neighboring department may rely on the flyer.[5] This reliance justifies the officers' stop of the person to check identification and ask him questions, and the officer may briefly detain the person while attempting to elicit additional information.[6]

This Note will examine the reasoning that underlies the Court's willingness to extend the *Terry* decision to include the investigation of completed felonies and to foster interdepartmental reliance. In addition, this Note will argue that the Supreme Court's decision in *Hensley* is justified in light of the compelling governmental interests of bringing at large offenders to justice.

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1 105 S. Ct. 675 (1985).
2 *Id.* at 681.
3 392 U.S. 1 (1968).
4 *Id.* at 30.
5 *Hensley*, 105 S. Ct. at 684.
6 *Id.*

II. BACKGROUND

The fourth amendment guarantees an individual the right to be secure in his home and property against unreasonable searches and seizures,[7] and provides that no warrants shall be issued against an individual, unless grounded in probable cause.[8] In *Terry v. Ohio*, the Supreme Court carved out a narrow exception to the fourth amendment's probable cause standard.[9] The Court held that a law enforcement officer may stop, search, and detain briefly for questioning an individual whom the officer has a reasonable suspicion to believe is connected with criminal activity.[10] The Court noted, however, that the officer must be able to justify his intrusion by citing to "specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion."[11] The Court noted that while there is no hard and fast rule for determining the reasonableness of a search and seizure, a balancing test must be employed to weigh the need to perform the search aganst the individual's right to be free from intrusion.[12]

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7 U.S. CONST. amend. IV. The fourth amendment states that:

> [t]he rights of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Id.

8 *Id.*

9 *Terry*, 392 U.S. at 27.

10 *Id.* at 30. The issue in *Terry* was whether guns seized during an officer's brief on-the-spot "stop and frisk" of three men suspected by the officer of contemplating a robbery should be admitted into evidence at trial. *Id.* at 12. The prosecution argued that the guns should be admitted into evidence because the arresting officer had probable cause to arrest the suspects prior to his pat-down search, thereby making the guns' seizure incidental to a lawful arrest. Although the trial court rejected this notion, it denied the defendants' motion to suppress the guns from evidence, reasoning that the officer's law enforcement experience gave him "reasonable cause" to believe that the defendants' conduct was suspicious and required further investigation. The trial court held that since the officer had reasonable cause to believe that the men may have been contemplating a felony and may have been armed, his pat-down search was "essential to the proper performance of the officer's investigatory duties," and helped to insure his own protection. *Id.* at 7-8. Therefore, the court ruled that the discovery of a loaded gun during a "stop and frisk" was admissible into evidence. The Court of Appeals for the Eighth Circuit affirmed. *Id.* at 8.

11 *Id.* at 21. Moreover, the Supreme Court stated that it would be unreasonable to preclude an offcer from taking necessary measures to ascertain whether, in fact, an individual is armed, if the officer is justified in believing that the individual is armed and poses a potential threat to the officer's safety. *Id.* at 24.

12 *Id. See* Dunaway v. New York, 442 U.S. 200 (1979). Citing to *Terry*, the Court in *Dunaway* noted that the *Terry* exception balances "the limited violation of individual privacy involved against the opposing interest in crime prevention and detection and the police officer's safety." *Id.* at 209.

In *Adams v. Williams*,[13] the Supreme Court relied on *Terry* to hold that an officer could forcibly stop and investigate a suspect from an informant's tip that the suspect was carrying narcotics and weapons.[14] The Court in *Adams* held that "[a] brief stop of a suspicious individual, in order to determine his identity or to maintain the *status quo* momentarily while obtaining more information, may be most reasonable in light of the facts known to the officer at the time."[15]

Similarly, in *United States v. Brignoni-Ponce*,[16] the Supreme Court held that in light of the enforcement problems unique to Border Patrol agents, these agents may stop vehicles traveling the border route if the officers have specific, articulable facts that the vehicles are transporting illegal aliens.[17] In the factually similar case of *United States v. Cortez*,[18] the Court attempted to define the circumstances that evoke a reasonable suspicion on the part of an investigating officer making a *Terry*-like stop.[19]

The Court in *Cortez* noted that the common theme enunciated by various courts that have interpreted the *Terry* "reasonableness" standard is the idea that the officer must derive his reasonable suspicion from the "totality of the circumstances."[20] Implicit in this derivation process are two elements, each of which must be present before a stop is permissible.[21] First, the officer must make an assessment based on all the circumstances leading to the stop, including his objective observations, information from police reports, and a consideration of the behavior patterns associated with certain categories of criminals.[22] Second, the product of the officer's analysis must raise a suspicion that the individual being stopped is engaged in wrong-doing.[23] The Court used this two-step reasonableness analysis to hold that the information acquired by two border patrol

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13 407 U.S. 143 (1972). *See infra* notes 87-95 and accompanying text.

14 *Adams*, 407 U.S. at 149. The Supreme Court noted that the informant was known to the officer and had supplied him with information in the past. *Id.* at 146.

15 *Id.* at 146. The *Adams* Court cited *Terry* for the proposition that this type of procedure is "the essence of good police work." *Id.* at 145.

16 422 U.S. 873 (1975).

17 *Id.* at 881. The Court ultimately ruled, however, that in this particular case, the *Terry* exception did not justify roving border patrol agents' random stops of vehicles when the agents suspected the vehicles' occupants of being illegal aliens merely because they were of Mexican ancestry. *Id.* at 886-887.

18 449 U.S. 411 (1981). *See infra* notes 101-02 and accompanying text.

19 *Cortez*, 449 U.S. at 417-18.

20 *Id.* at 417.

21 *See id.* at 418.

22 *See id.*

23 *See id.*

agents was sufficient to justify the agents' stop of a vehicle suspected of carrying illegal aliens.[24]

The Supreme Court reaffirmed the validity of the *Terry* rationale in *Michigan v. Summers*.[25] In *Summers*, the Court held that

> [t]hese cases [*Terry* and its progeny] recognize that some seizures admittedly covered by the Fourth Amendment constitute such limited intrusions on the personal security of those detained and are justified by such substantial law enforcement interests that they may be made on less than probable cause, so long as police have an articulable basis for suspecting criminal activity.[26]

III. FACTS

Officer Kenneth Davis of the St. Bernard Police Department in Ohio interviewed an informant regarding the armed robbery of a St. Bernard tavern.[27] The informant stated that Thomas Hensley drove the getaway car during the robbery.[28] Although Officer Davis did not believe that he could establish probable cause to arrest Hensley on the basis of the informant's information, the St. Bernard Police Department issued a flyer stating that if seen, Hensley should be stopped "for investigation only" regarding the robbery.[29] The flyer was issued for circulation to neighboring communities, including Covington, Kentucky.[30] Having been alerted by the flyer, Covington policeman Daniel Cope stopped Hensley while he was driving within Covington's city limits.[31] Because the officer knew that Hensley was wanted in connection with the robbery, Officer Cope drew his service revolver and ordered Hensley and his passenger, Albert Green, to step out of the automobile and place their hands on the trunk of their car until back-up units arrived.[32]

When the back-up unit arrived, Officer David Rassache looked at the opened passenger door of Hensley's car and noticed the butt

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24 *Id.* at 421.

25 452 U.S. 692 (1981). In this case, the Court permitted the detention of the occupant of a house while the police, pursuant to a warrant, searched the house, even though they lacked probable cause to arrest the occupant prior to the search. *Id.* at 705.

26 *Id.* at 699.

27 United States v. Hensley, 713 F.2d 220, 221 (6th Cir. 1983) The informant, Janie Hansford, had been told by her boyfriend's brother that he (the brother) and another man had robbed the tavern and that Hensley had driven the getaway car. *Id.*

28 *Id.*

29 *Id.* at 222.

30 *Id.*

31 *Id.*

32 *Id.* Officer Cope testified at trial that he feared for his safety while making the stop. He also stated that he intended to detain Hensley only long enough to ascertain whether there was a warrant outstanding for Hensley's arrest. In the absence of a warrant, Cope testified that he intended to release Hensley. *Id.*

of a gun protruding from under the passenger seat.[33] A search of Hensley's car by the officers revealed two more firearms, and both Hensley and Green were placed under arrest.[34]

At trial, Hensley argued that the guns were inadmissible evidence because they were obtained during an illegal search.[35] He also argued that the St. Bernard police, by their own admission, believed that they lacked probable cause to arrest based on the informant's statement,[36] and therefore, that the Covington officers' arrest violated the flyer's directive to detain Hensley "for investigation only."[37] The United States District Court for the Eastern District of Kentucky, however, ruled that the informant's statement constituted probable cause for Hensley's arrest.[38] The court, therefore, admitted the guns into evidence and convicted Hensley for violating a federal statute prohibiting the possession of a firearm by a convicted felon.[39]

The Court of Appeals for the Sixth Circuit reversed the district court's holding that Hensley had been arrested legally.[40] The court of appeals held that the Covington officers were not justified in making a *Terry* stop of Hensley because the Supreme Court had limited the *Terry* exception to the investigation of "ongoing crimes."[41] The Sixth Circuit distinguished *Hensley* from *Terry* and its progeny, noting that at the time of Hensley's arrest there was an absence of exigent circumstances justifying Hensley's detention by the Covington police.[42] The court of appeals also held that the St. Bernard flyer lacked sufficient information to create a reasonable suspicion in the minds of the Covington officers to warrant their *Terry* stop of Hensley.[43] The Sixth Circuit, therefore, concluded that the illegality of

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33 *Id.*

34 *Id.* Immediately after finding the gun, the officers searched for other weapons in a jacket lying between the two front seats and an open gym bag on the back seat. The officers found a handgun wrapped in the jacket and another in the gym bag. All three guns were loaded. The gym bag also contained hypodermic needles, ski masks, a change of clothing and a controlled substance. Brief for Petitioner at 7-8, United States v. Hensley, 105 S. Ct. 675 (1985).

35 *Hensley*, 713 F.2d at 221.

36 *Id.* at 223.

37 *Id.*

38 *Id.* at 222.

39 *Id.* at 221.

40 *Id.* at 225.

41 *Id.*

42 *Id.* at 224. The court also refused to apply the "collective knowledge" doctrine, holding that even if the St. Bernard Police Department had probable cause, this fact would not have imbued the Covington officers with probable cause because the two departments were not directly working together in the investigation. *Id.* at 223.

43 *Id.* at 225. The court's holding on this point reads as follows: "we hold that the

the Covington officers' arrest precluded the admissibility of the guns seized during the stop.[44] The Supreme Court granted certiorari to determine whether officers may stop and briefly detain a person, for whom a wanted flyer has been issued, to check whether there is also a warrant outstanding for the person's arrest.[45]

IV. The Supreme Court Decision

In *United States v. Hensley*, the Supreme Court, in a unanimous decision[46] reversed the court of appeals' holding that the *Terry* exception is confined to the investigation of imminent or ongoing crimes.[47] The Court in *Hensley* held that the *Terry* exception is equally applicable to both the investigation of completed felonies and the investigation of future or ongoing crimes.[48] The *Hensley* court based its conclusion on the opinions given in several earlier cases, including *United States v. Cortez*[49] and *United States v. Place*.[50] In *Cortez*, the Supreme Court noted, in dicta, that an officer may stop and investigate a suspect if there are reasonable grounds to believe that the suspect was involved in past criminal activity.[51] Similiarly, in *United States v. Place*, the Supreme Court stated that an officer may stop and question a person if the officer has a reasonable, articulable suspicion that the person was engaged in criminal activity.[52]

The Supreme Court in *Hensley* determined that the Sixth Circuit's reliance on *Florida v. Royer*[53] was erroneous for two reasons.[54] First, the Sixth Circuit cited *Royer* to support its belief that the Supreme Court intended the *Terry* exception to be applicable only to ongoing crimes.[55] The *Hensley* Court, however, distinguished

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Fourth Amendment does not permit police officers in one department to seize a person simply because a neighboring police department has circulated a flyer reflecting the desire to question that individual about some criminal investigation that does not involve the arresting officers of their department." *Id.*

44 *Id.*

45 *Hensley*, 105 S. Ct. at 677-78.

46 105 S. Ct. at 685. Justce Brennan filed a brief concurrence indicating his approval of the Court's application of the *Terry* exception to this case. *Id.*

47 *Id.* at 680.

48 *Id.* at 681.

49 449 U.S. 411 (1981).

50 462 U.S. 696 (1983).

51 *Hensley*, 105 S. Ct. at 680 (citing *Cortez*, 449 U.S. at 417 n.2 (1981)).

52 *Hensley*, 105 S. Ct. at 680 (quoting *Place*, 462 U.S. at 702). The *Place* Court found that the length of detention of a traveler suspected by Drug Enforcement Administration agents of transporting narcotics violated the suspect's fourth amendment rights, thereby rendering inadmissible cocaine discovered in his luggage. *Place*, 462 U.S. at 710.

53 460 U.S. 491 (1983).

54 *Hensley*, 105 S. Ct. at 680.

55 *Id.*

Royer stating that in *Royer* it held that, although the crime being investigated was ongoing, the intrusive nature of the search removed it from the ambit of the *Terry* exception.[56] Second, the Supreme Court in *Hensley* declared that *Royer* was consistent with prior case law that recognized the applicability of the *Terry* exception to completed crimes.[57] The *Hensley* Court cited *Royer* for the explict proposition that "*Terry* created a limited exception to this general rule: certain seizures are justifiable under the Fourth Amendment if there is articulable suspicion that a person *has committed* or is about to commit a crime."[58]

The Court in *Hensley* set forth a balancing test to determine the extent of limitations to be placed on police investigations of completed felonies.[59] That test, based on the fourth amendment's reasonableness standard, weighs the quality and nature of the intrusion of an individual's right to privacy against the government's interest in solving crimes and bringing offenders to justice.[60] The Court held that when a reasonableness analysis is applied to the investigations of completed crimes, probable cause need not always be present to justify an investigation.[61] Accordingly, the Court held that where the police have a "reasonable suspicion grounded in specific and articulable facts"[62] that a person they encounter was involved in or is wanted in connection with a completed felony,[63] the strong

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56 *Id.* (citing to *Royer*, 460 U.S. at 501). The *Royer* Court determined that:

> the bounds of an investigative stop had been exceeded. In its (the Florida District Court of Appeals) view the 'confinement' in this case went beyond the limited restraint of a *Terry* investigative stop, and Royer's consent was thus tainted by the illegality, a conclusion that required reversal in the absence of probable cause to arrest. The question before us is whether the record warrants that conclusion. We think that it does.

Royer, 460 U.S. at 501.

57 *Hensley*, 105 S. Ct. at 680.

58 *Id.* (quoting *Royer*, 460 U.S. at 498 (emphasis added)).

59 *See Hensley*, 105 S. Ct. at 680.

60 *See id.*

61 *Id.* The Court stated that the factors in the balance may be different when a stop is made to investigate a completed crime rather than an imminent or ongoing one. In the latter categories, the governmental interests of crime prevention, public safety, and the necessity of action in the midst of exigent circumstances figure prominently in the balance. On the other hand, when an investigaton is made of a completed crime, the Court stated that the dominant governmental interests are solving crimes and bringing offenders to justice. Nevertheless, the Court reasoned that these latter interests are compelling enough to justify brief stops and questioning of individuals suspected by policemen of completed criminal activity. The Court concluded that these interests outweigh the intrusion on the individual's freedom. *Id.* at 680-81.

62 *Id.* at 681.

63 *Id.* The Court declined to extend its holding to include all completed crimes. Rather, it restricted its application only to the most serious crime classification felonies. The Court stated that, "[p]articularly in the context of felonies or crimes involving a

governmental interests in apprehending the offender and solving the crime allows the police to make a brief stop of the person for questioning and to check his identification.[64]

The *Hensley* Court then considered the validity of the investigative stop conducted by the Covington officers in reliance on the flyer issued by the St. Bernard Police Department.[65] The Court analogized *Hensley* to the factually similar case of *Whiteley v. Warden*,[66] in which a Wyoming sheriff obtained an arrest warrant for Whiteley, a suspected burglar, and issued a report over the state's police radio network describing Whiteley, his car, and the stolen property.[67] The report, however, did not specify the evidence underlying the issuing officer's belief that he had sufficient probable cause to arrest Whiteley.[68] Acting in reliance on the report, police officers in another department stopped Whiteley's car, arrested him, and then searched the car.[69]

The Supreme Court in *Whiteley* concluded that because the sheriff lacked probable cause to obtain an arrest warrant, the evidence discovered during the officer's search was inadmissible.[70] The *Whiteley* Court noted, however, that if the sheriff had probable cause to obtain an arrest warrant, the interdepartmental arrest would have been valid, despite the arresting officer's ignorance of the specific facts supporting the determination of probable cause.[71] Thus, the *Whiteley* Court held that when evidence is discovered during a search incidental to an arrest by officers from a separate department, the evidence is admissible if the department issuing the report had probable cause to make an arrest.[72] In accordance with

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threat to public safety, it is in the public interest that the crime be solved and the suspect detained as promptly as possible." *Id.*

64 *Id.* Applying the reasoning to the facts of *Hensley*, the Supreme Court reasoned that the informant's statement to Officer Davis was sufficient to arouse a reasonable suspicion in Davis that Hensley was involved in an armed robbery. *Id.* at 683-84. Further, the Court stated that since Hensley was at large from the instant Davis' suspicion arose until he was finally stopped by the Covington police, Hensley's stop and detention at the earliest possible moment was not inconsistent with the principles of the fourth amendment. *Id.* The Court, however, did not state what these principles were.

65 *Id.*

66 401 U.S. 560 (1971).

67 *Hensley*, 105 S. Ct. at 681; (citing *Whiteley*, 401 U.S. at 563). The stolen property was money, including an assortment of old coins. *Whiteley*, 401 U.S. at 564.

68 *Hensley*, 105 S. Ct. at 681 (citing *Whiteley*, 401 U.S. at 565).

69 *Id.* (citing *Whiteley*, 401 U.S. at 563). The arresting officer removed a number of items from Whiteley's car, including tools and old coins. One of the establishments which Whiteley was suspected of robbing was a hardware store. *Whiteley*, 401 U.S. at 562.

70 *Hensley*, 105 S. Ct. at 681-82 (citing *Whiteley*, 401 U.S. at 568).

71 *Id.* at 682 (citing *Whiteley*, 401 U.S. at 568).

72 *Id.* (citing *Whiteley*, 401 U.S. at 568).

the *Whiteley* Court's implicit approval of interdepartmental reliance on warrants issued by other police departments, the *Hensley* Court stated that in an era when criminals have ready mobility, the notion of interdepartmental reliance is nothing more than the exercise of "common sense" by law enforcement officials.[73]

The Court in *Hensley*, while noting its previous approval of interdepartmental reliance in *Whiteley*, distinguished *Whiteley* from *Hensley* on the basis of the report relayed by the issuing police department.[74] Whereas the report in *Whiteley* mentioned an arrest warrant, the flyer circulated by the St. Bernard Police Department in *Hensley* stated that Hensley was only wanted for investigation of a robbery.[75] The *Hensley* Court determined the relevance of this distinction by referring to the Court of Appeals for the Ninth Circuit's opinion in *United States v. Robinson*.[76]

In *Robinson*, the Ninth Circuit applied *Whiteley* and concluded that if an officer who issues a bulletin has a reasonable suspicion sufficient to justify an investigatory stop, an officer from another department may act in reliance on that bulletin.[77] The latter officer need not have personal knowledge of the information or evidence that underlies the issuing officer's reasonable suspicion.[78] The *Robinson* court determined that in such circumstances, interdepartmental reliance serves to promote effective law enforcement.[79] The *Hensley* Court held that the Ninth Circuit's interdepartmental reliance theory served to promote the same governmental interest that weighed in favor of permitting *Terry* stops to investigate completed felonies.[80] The Supreme Court in *Hensley* stated that the countervailng interest of security from personal intrusion was minimal by comparison.[81]

Accordingly, Justice O'Connor in *Hensley* concluded that the balancing test that operates to permit officers to make a *Terry* stop of a person suspected of committing completed crimes should permit officers from one department relying on bulletins issued by another

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73 *Id.*

74 *Id.*

75 *Id.*

76 536 F.2d 1298 (9th Cir. 1976).

77 *Hensley*, 105 S. Ct. at 681 (citing *Robinson*, 536 F.2d at 1300).

78 *Id.* (citing *Robinson*, 536 F.2d at 1299-1300).

79 *Id.* (citing *Robinson*, 536 F.2d at 1299). The Ninth Circuit stated that, "effective law enforcement cannot be conducted unless police officers can act on directions and information transmitted by one officer to another and that officers, who must often act swiftly, cannot be expected to cross-examine their fellow officers about the foundation for the transmitted information." *Robinson*, 536 F.2d at 1299.

80 *Hensley*, 105 S. Ct. at 681.

81 *Id.*

department to make investigatory stops regarding completed felonies.[82] The Supreme Court, therefore, held that evidence obtained during an investigatory stop is admissible if the officer issuing the bulletin or flyer harbored a reasonable suspicion justifying the stop, provided that the stop was not significantly more intrusive than the stop that would have been conducted by officers of the issuing department.[83]

V. ANALYSIS

The Supreme Court's decision in *Hensley* extends the *Terry* exception[84] to include completed criminal activity. The *Hensley* decision also enunciates the Court's approval of interdepartmental police cooperation to bring at-large offenders to justice. These extensions of crime-solving procedures currently available to law enforcement officials represent a willingness by the Supreme Court to further the governmental interest of solving past crimes and apprehending felons while safeguarding the rights of citizens as guaranteed by the fourth amendment.

A. THE EXTENSION OF THE *TERRY* EXCEPTION INTO THE AREA OF COMPLETED CRIMES.

The first issue the *Hensley* Court addressed was the scope of the fourth amendment probable cause exception formulated by the Court in *Terry v. Ohio*.[85] The *Terry* exception states that, consistent

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[82] *Id.*

[83] *Id.* at 683. Applying the principle of interdepartmental reliance to the facts of *Hensley*, the Court reasoned that an objective reading of the St. Bernard flyer contained facts sufficient to indicate to an experienced officer that, if seen, Hensley should be stopped, positively identified, questioned, and informed that he was wanted for questioning by the St. Bernard police. Thus, based on the articulable facts that supported the reasonable suspicion, the Court concluded that a brief stop to ascertain and relate the aforementioned information was not unreasonable. Further, the Court noted that once Hensley was stopped, it was reasonable to assume that an experienced officer would be inclined to check whether a warrant had been issued for Hensley's arrest. The Court, therefore, held that in light of the reasonable suspicion of the issuing department, coupled with an objective reading of the flyer, the length and level of intrusiveness of this stop was justified and did not violate Hensley's fourth amendment rights. The Covington police were entitled to seize evidence obtained during the lawful stop and such evidence was admissible at trial. The Court also stated that once the guns were discovered, the Covington police then had probable cause to arrest Hensley for firearms possession. Although the Court stated that the length of Hensley's detainment was irrelevant once the weapons were discovered, the Court cautioned that the Covington police may have overstepped their fourth amendment authority had they detained Hensley solely on the basis of the flyer until the St. Bernard police could question him. *Id.* at 684.

[84] *See supra* note 10 and accompanying text.

[85] 392 U.S. 1 (1968). *See supra* note 10 and accompanying text.

with the fourth amendment, policemen may stop and investigate suspects absent a showing of probable cause only when the policemen have a reasonable suspicion based on articulable facts.[86] The Court in *Hensley* held that the exception was applicable to an investigatory stop of a person suspected of having committed a completed felony.[87] The Court undertook a review of cases that dealt with the applicability of the *Terry* exception and correctly concluded that there existed no proscription against extending the *Terry* exception to law enforcement officials investigating individuals reasonably believed to have perpetrated a completed felony.[88]

Although *Terry* involved a policeman's stop and investigation of men whom the officer personally believed were contemplating an imminent robbery,[89] its exception is not confined to that particular situation. For example, in *Adams v. Williams*,[90] the Supreme Court held that the *Terry* rule is applicable to an investigation conducted by a police officer based on an informant's report, rather than on the actual citing of the criminal incident.[9192] In *Adams*, the informant told the police officer that Adams was seated with a gun at his waist in a nearby vehicle and possessed narcotics.[93] Acting on this information, the officer approached Adams' car and asked him to get out of the vehicle.[94] When Adams responded by rolling down the car window, the officer seized the gun and conducted a search of the car, which uncovered the narcotics.[95] The *Adams* Court held that in light of the facts available to the officer at the time of the encounter, the search and seizure was both reasonable and lawful.[96]

The Supreme Court concluded that the weapon and narcotics seized by the officer were the fruits of a lawful search and were ad-

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86 *See Terry*, 392 U.S. at 27. The *Terry* Court stated that in determining whether an officer acted reasonably, the standard to be applied was not whether the officer relied on intuition but rather whether the officer relief on "the specific reasonable inferences which he is entitled to draw from the facts in light of his experience." *Id.* The facts referred to in the exception appear to be the officer's observations, including unusual conduct by the suspect and any other observations that lead the officer, in light of his experience, to believe that criminal activity may be imminent. *Id.* at 30.

87 *Hensley*, 105 S. Ct. at 681.

88 *Id.* at 679-83. *See supra* notes 10-26 and accompanying text.

89 *See supra* note 13 and accompanying text.

90 407 U.S. 143 (1972).

91 *Id.* at 149.

92 *Id.* at 145.

93 *Id.*

94 *Id.* at 145.

95 *Id.* at 148; *see supra* note 14.

96 *Id.*

missible at trial.[97] As a result, *Adams* extended the *Terry* exception in two ways. First, it illustrated the Court's willingness to permit policemen to act on reliable information supplied by others.[98] Second, and more pertinent to the *Hensley* decision, the *Adams* Court implicitly expanded the *Terry* exception to include investigations of ongoing crimes.[99]

Having previously applied the *Terry* exception to investigations of imminent and ongoing crimes, the task before the Supreme Court in *Hensley* was to determine whether the exception was equally applicable to the investgation of a completed crime. The Supreme Court disagreed, and rightfully so, with the Sixth Circuit's decision in *Hensley* holding that the *Terry* exception was inapplicable to the investigation of completed crimes.[100] Although the Sixth Circuit attempted to restrict the Supreme Court's application of the *Terry* exception to the realm of ongoing offenses by citing *Florida v. Royer*,[101] the Sixth Circuit's reliance on *Royer* was misplaced. The Supreme Court in *Royer* specifically held that an investigative detention is outside the scope of the *Terry* exception only when it escalates into a prolonged and severely intrusive detention search.[102] Furthermore, nothing in the *Royer* decision stated that the *Terry* exception is confined to the investigation of ongoing crimes.[103] Justice White in *Royer* explicitly stated that "if there is articulable suspicion that a person has committed or is about to commit a crime" then the *Terry* exception is applicable.[104]

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97 *Id.* at 146. The *Adams* Court did not specify whether the information had to come from a civilian or whether officers could rely on information supplied by other officers.

98 *See Hensley*, 105 S. Ct. at 680. The *Hensley* Court cited *Adams* as standing for the proposition that the *Terry* exception applied to investigation of suspects whom an officer believed "was committing a crime at the moment of the stop." *Id.*

99 *Id.* (citing *Hensley*, 713 F.2d at 224).

100 460 U.S. 491 (1983). *See supra* notes 51-56 and accompanying text.

101 *Royer*, 460 U.S. at 507. In *Royer*, two narcotics agents at Miami International Airport observed Royer and determined that he fit a "drug courier profile." The agents, suspicious that Royer was carrying narcotics, approached Royer and asked him to produce his driver's license and airline ticket. Noting discrepancies in the documents, the agents identified themselves, related to Royer their suspcion, and asked him to accompany them to a small room. There, the officers, having retrieved Royer's luggage, asked Royer if they could search the bags. Without giving his oral consent, Royer produced the luggage key. The search revealed marijuana and Royer was placed under arrest. The trial court convicted him of the felony of possession of marijuana but the appellate court reversed, holding that Royer had been involuntarily detained without probable cause. *Id.* at 493-495.

102 Brief for Petitioner at 14 n.9, United States v. Hensley, 105 S. Ct. 675 (1985).

103 *Royer*, 460 U.S. at 498.

104 449 U.S. 411 (1981). In *Cortez*, border patrol agents were judged to have reasonable cause to stop and investigate a person suspected of transporting illegal aliens after the agents had made a detailed study of the suspect's movements. *Id.* at 421-22.

Similarly, in *United States v. Cortez*,[105] the Supreme Court established that "an officer may stop and question a person if there are reasonable grounds to believe that a person is wanted for past criminal conduct."[106] Further, in *United States v. Place*,[107] the Supreme Court declared that "when the officer has reasonable, articulable suspicion that the person has been, or is about to be engaged in criminal activity," he may effect an investigation of that individual.[108] These cases illustrate that the Supreme Court's decision in *Hensley* is consistent with precedent.

Moreover, the Court's extension of the *Terry* exception promotes the governmental interests of solving crimes and apprehending offenders. The *Hensley* Court balanced these interests against an individual's fourth amendment rights, and correctly concluded that the governmental interests were compelling enough to warrant the extenson of the *Terry* exception to include investigatory stops of individuals reasonably suspected of having committed completed crimes.[109] The Supreme Court stated that "[t]he law enforcement interests at stake in these circumstances outweigh the individual's interests to be free of a stop and detention that is no more extensive than permissible in the investigation of ongoing crimes."[110]

B. THE *HENSLEY* DECISION FOSTERS INTERDEPARTMENTAL RELIANCE

The second issue addressed by the Supreme Court in *Hensley* was the justification underlying the stop of an individual by officers of one police department in reliance on a flyer issued by another department stating that the individual was wanted for investigation of a felony.[111] The Supreme Court in *Hensley* correctly reversed the Sixth Circuit's decision that the flyer issued by the St. Bernard Po-

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105 *Id.* at 417 n.2.

106 462 U.S. 696 (1983). In *Place*, two Drug Enforcement Administration agents at Miami International Airport suspected Place of transporting narcotics and alerted DEA agents in New York. Place was detained by agents upon arrival at LaGuardia in New York for nearly two hours while the agents attempted to learn whether his luggage contained narcotics. *Id.* at 698-700. The Supreme Court held that the length of the detention and the prolonged seizure of Place's luggage exceeded the limited scope of investigative stops permitted under the *Terry* exception. *Id.* at 709. Therefore, the narcotics found in Place's luggage were inadmissible into evidence at trial. *Id.* at 710.

107 *Id.* at 702.

108 *See Hensley*, 105 S. Ct. at 681.

109 *Id.*

110 *Id.*

111 *Id.* at 684. The Sixth Circuit stated that "[t]he St. Bernard flyer contained no information regarding Hensley's purported role in the robbery, and thus contained no 'specific and articulable facts' that would have justified the stop." *Hensley*, 713 F.2d at 225. *See supra* note 43.

lice Department failed to provide sufficient facts that would arouse a reasonable suspicion in the Covington officers, thereby rendering the Covington officers' stop and investigation of *Hensley* illegal.[112]

Moreover, the Sixth Circuit's conclusion in *Hensley* that the St. Bernard flyer lacked sufficient facts to justify an investigative stop is inconsistent with other appellate cases which held that an officer may make an investigative stop in reliance on a police bulletin, although he has no personal knowledge of facts warranting the investigation.[113]

In *United States v. Maryland*,[114] a police department broadcasted a radio message to neighboring law enforcement agencies stating that several individuals were suspected of passing counterfeit bills.[115] The message described the suspects and their automobile, and requested that law enforcement officers aid in the arrest of the suspects.[116] After hearing the broadcast, a policeman from another department spotted the suspects' automobile, stopped it, and took the suspects in his patrol car to the local courthouse.[117] Once the officer escorted the suspects to the courthouse, the officer returned to their car, searched it, and found counterfeit bills hidden near where one of the suspects sat.[118]

The suspects argued that the officer's search was not incident to a lawful arrest because probable cause did not exist to justify the arrest.[119] The Court of Appeals for the Fifth Circuit, however, held that the radio message contained information sufficient to supply probable cause for the suspect's arrest.[120] In addition, the court held that the arresting officer was "entitled to rely on the radio bulletin issued by the neighboring department."[121]

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112 Brief for Petitioner at 18, United States v. Hensley, 105 S. Ct. 675 (1985).

113 479 F.2d 566 (5th Cir. 1973).

114 *Id.* at 568.

115 *Id.*

116 *Id.*

117 *Id.*

118 *Id.*

119 *Id.* at 569. The Court's decision noted that the interdepartmental arrest occurred "only a short time after" the crime was committed. *Id.* It is unclear, however, whether the Court gave weight to the time differential or whether this fact was merely collateral to the officer's citing of the automobile described in the message.

120 *Id.*

121 482 F.2d 197 (5th Cir. 1973). The Secret Service reported to police in Witchita Falls, Texas that Impson, suspected of possessing counterfeit currency, would soon be in the area. The report described Impson's automobile and the package containing the currency. A Witchita Falls officer cited Impson's car, stopped it and searched the vehicle, spotting in plain view the package containing the counterfeit bills. The bills were introduced into evidence at trial against Impson. *Id.* at 198.

Similarly, in *United States v. Impson*,[122] the Fifth Circuit held that "[w]e do not question in the least the correctness of the principle that the searching-arresting officer can act on the basis of information of which he has no personal knowledge which has been relayed to him by police transmission facilities."[123] These cases indicate that interdepartmental reliance is not a novel concept in law enforcement procedure. The Supreme Court's favorable view towards interdepartmental reliance does not, therefore, represent a radical departure from conventional police practice, as illustrated by *Maryland* and *Impson*.

In *Hensley*, the Supreme Court discussed two cases, *Whiteley v. Warden*[124] and *United States v. Robinson*,[125] to support its approval of interdepartmental reliance, where the issuing police department's report is based on a reasonable suspicion grounded in specific articulable facts.[126] The *Robinson* decision focused directly on the connection between the reasonable suspicion standard and law enforcement's reliance on interdepartmental communications. In *Robinson*, a police officer's actions were in reliance on a police radio dispatcher's message asking that he be alerted to the interstate transportation of a possible stolen car.[127] The only information related by the dispatcher was a license plate number. The officer knew no facts about the alleged crime, nor was he aware of the basis for the dispatcher's report.[128] The Court of Appeals for the Ninth Circuit held that the arresting officer's search of the supposedly stolen vehicle was illegal and the evidence discovered during the search was inadmissible at trial.[129] The Ninth Circuit's opinion stated, however, that "[i]f the dispatcher himself had founded suspicion, or if he had relied on information from a reliable informant who supplied him with adequate facts to establish founded suspicion, the dispatcher could properly have delegated the stopping function" to

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122 *Id.* at 199. The Court cautioned, however, that if the report is the sole cause for the detention and the resulting search . . . then the government has the burden of showing that the information on which the action was based *itself* had a reasonable foundation." *Id.*

123 401 U.S. 560 (1971). *See supra* notes 66-72 and accompanying text. *Whiteley* is pertinent to the *Hensley* Court's analysis because it focuses on interdepartmental reliance. Yet, it is distinguishable from *Hensley* in that it involves a probable cause standard rather than the reasonable suspicion standard of the *Terry* exception.

124 536 F.2d 1298 (9th Cir. 1976). *See supra* notes 76-79 and accompanying text.

125 *Hensley*, 105 S. Ct. at 682-83.

126 *Robinson*, 536 F.2d at 1299.

127 *Id.*

128 *Id.* at 1300.

129 *Id.*

the officer making the stop.[130] The Ninth Circuit's opinion explicitly conveys its approval of interdepartmental reliance that is grounded in a reasonable suspicion based on articulable facts by the issuing department. The *Hensley* Court cited with approval the *Robinson* Court's theory on interdepartmental reliance.[131]

Applying the *Robinson* opinion of interdepartmental reliance to the facts of *Hensley*, the Supreme Court properly concluded that the details contained in the informant's statement to Officer Davis of the St. Bernard Police Department provided Davis with facts sufficient to evoke a reasonable suspicion that Hensley had been involved in the armed robbery.[132] The Court held, therefore, that the Covington officers' investigatory stop and search of Hensley was not unlawful and that their attempt to detain him long enough to ascertain whether there was a warrant outstanding for his arrest was a rational procedure characteristic of experienced law enforcement officials.[133] Furthermore, the *Hensley* Court concluded that since the stop was lawful, any evidence obtained during the officers' search of Hensley's car was admissible at trial.[134]

The interdepartmental reliance standard employed by the Supreme Court in *Hensley* is commendable because it serves the governmental interest of effective law enforcement while protecting the fourth amendment rights of those individuals detained by law enforcement officials. On the one hand, interdepartmental cooperation increases the likelihood that crimes will be solved and offenders brought to justice. The *Hensley* Court exhibited insight regarding these governmental objectives when it observed that, in an age when criminals have ready access to transportation and are likely to flee the investigating department's jurisdictional boundary, interdepartmental cooperation is a necessity.[135] Yet, the standard's requirement that the report relied upon be the product of the issuing department's reasonable suspicion serves to protect the fourth amendment rights of those individuals detained by police. The *Robinson* court explicitly stated that the absence of a reasonable suspicion based on articulable facts invalidates a search, thereby rendering any incriminating evidence discovered during the search inadmissible.[136] This requirement undoubtedly will have a deter-

130 *Hensley*, 105 S. Ct. at 683.
131 *Id.*
132 *Id.*
133 *Id.* at 684.
134 *Id.* at 682.
135 *See supra* notes 124-28 and accompanying text.
136 *Hensley*, 105 S. Ct. at 682.

rent effect on law enforcement officials, discouraging random stops of individuals that the officers encounter.

The *Hensley* Court's holding that police in one department may rely on a report issued by another department—provided that the flyer is grounded in a reasonable suspicion based on articulable facts that the individual wanted was involved in a completed felony[137]—strikes a tempered balance between two compelling societal concerns. Most importantly, the *Hensley* decision manages to promote both of these concerns without sacrificing either to the other.

VI. CONCLUSION

The Supreme Court's analysis of *Hensley* sets a new and valuable standard in the area of law enforcement. The Court's ruling that an investigation of individuals suspected of committing completed felonies does come within the purview of the *Terry* exception serves to aid law enforcement officials in apprehending wanted felons. Although the Court recognized the fourth amendment's general probable cause requirement, the Court also recognized the competing governmental interests of bringing offenders to justice and solving crimes. Both constitutional guarantees and effective police practices are important societal concerns and must be protected.

The *Hensley* decision also strengthens law enforcement practices by permitting one department to rely on information issued by another department, provided the latter's correspondence reflects a reasonable suspicion based on articulable facts that the person wanted was involved in a completed crime. This standard of interdepartmental reliance promotes the governmental objectives of solving crimes and apprehending offenders, while safeguarding the fourth amendment rights of individuals detained by law enforcement officials.

JOLENE D. PETTUS

137 *See supra* note 10 and accompanying text.