

How Should the Police Respond to a Report of a Man with a Gun?

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Case study: the Neenah stop. Recently in Neenah, WI, a woman called the police to report a man with a gun strapped to his back walking down the street. The call was placed to the non-emergency police number and the caller didn't report that the man was doing anything threatening, but she did suggest that the police check on the situation. As a result, an officer stopped the man and his companion. The officer engaged in a protracted dialogue with the man, at one point telling the man that he would be shot in the head if he made any furtive movements. Other officers also responded, and at least one drew her weapon. The man who was stopped remained calm throughout the interaction and was eventually permitted to depart. The full 18-minute video of the stop is [here](#). A local news article about the stop is [here](#). It has generated quite a bit of controversy. Were the officer's actions lawful and justified by public safety concerns? Or was it an unjustified response to lawful open carry? This post breaks down the legal issues.

Legality of open carry. From media reports and statements made by the officer during the stop, there appears to be no question that open carry is legal in Wisconsin. In fact, it seems that during a recent revision of its disorderly conduct statute, Wisconsin changed the law to protect open carry. Wis. Stat. § 947.01(2) ("Unless other facts and circumstances indicate a criminal or malicious intent . . . a person is not in violation of . . . this section for loading, carrying, or going armed with a firearm, without regard to whether the firearm is loaded or is concealed or openly carried.") As I noted in [this](#) prior blog post, open carry is generally legal in North Carolina as well.

Was the stop justified? A *Terry* stop requires reasonable suspicion that the subject of the stop is engaged in criminal activity. Carrying a gun openly isn't criminal in itself. Nor, under most circumstances, is it particularly indicative of other criminal activity. In some instances, though, such as when there is a large group of armed individuals in an unusual location, or when an individual displays his or her firearm in a menacing manner, a *Terry* stop may be appropriate. There is limited case law in this area, and the few reported decisions aren't always consistent. Consider the following:

- *United States v. Black*, 707 F.3d 531 (4th Cir. 2013) ("[W]here a state permits individuals to openly carry firearms, the exercise of this right, without more, cannot justify an investigatory detention.")
- *United States v. Williams*, 731 F.3d 678 (7th Cir. 2013) (two judges found reasonable suspicion to support a *Terry* stop based principally on a 911 call reporting a group of about 25 people outside a rowdy bar, three or four of whom had their "guns out"; one judge would have found no reasonable suspicion in light of increasing legal support for open carry)
- *Burgess v. Wallingford*, 2013 WL 4494481 (D. Conn. May 15, 2013) (unpublished) (holding that a *Terry* stop was justified based on reports "that a man carrying a weapon [openly] on his person was pacing outside of a pool hall"; this provided reasonable suspicion of disorderly conduct; the court states that "[w]eapons cause unique concerns for the safety of the public and the police").
- *Banks v. Gallagher*, 2011 WL 718632 (M.D. Pa. Feb. 22, 2011) (unpublished) (holding that an investigative detention was proper in light of "multiple fearful calls to 911 by concerned citizens, the unusual and unprecedented circumstance of nearly a dozen armed men in a family eating establishment refusing to explain their purpose," and other factors)
- *Schubert v. City of Springfield*, 589 F.3d 496 (1st Cir. 2009) (holding, in connection with a 42 U.S.C. § 1983 claim, that an officer properly stopped a pedestrian who was wearing a holstered handgun and walking towards a courthouse; that the gun seems to have been somewhere between concealed and carried openly, so the

case isn't perfectly on point)

I tend to think that the Neenah stop was improper, as there wasn't much to suggest criminal intent on behalf of the subject. But again, the law's not completely settled in this area.

Scope of the stop. Assuming *arguendo* that the Neenah stop was lawful at its inception, I doubt that the officers were justified in detaining the subject for more than 15 minutes. Much of the stop consisted of the officer remonstrating with the subject about the Second Amendment. Investigative stops must be brief, and it was clear early on that the subject was calm, rational, and interested more in publicity than in criminal activity.

Alternatives for officers. None of the foregoing means that officers can't respond to community concerns about people carrying guns openly, a phenomenon that is unsettling to many citizens. An officer can always seek to engage a person carrying a gun in a consensual conversation. That conversation may allay any concerns the officer has, or it may increase the officer's concerns to the point that an investigative detention is justified.

Further reading. The Pennsylvania Chiefs of Police Association published [this short paper](#) for officers about dealing with people carrying guns openly. Some of it is specific to Pennsylvania, but much of it strikes me as sound advice for North Carolina officers as well. Michigan's Law Enforcement Action Forum published [this analysis](#) of the legal issues officers face when dealing with open carry. If others are aware of other resources, please let me know or post a comment.