Have you ever wondered how we got Stop and Frisk? In this episode, Dr. Artello and Nia talk about stop and frisk decision in Terry v. Ohio case.

Nia: Hi Dr. Artello

Dr. Artello: Hi Nia

Nia: I have a question. I have never understood how someone can be bothered just walking down the street. How did we get here? How is this constitutional? I thought we had a Fourth Amendment!

Dr. Artello: that is a great question and a common one. And a complex story spanning nearly 4 decades.

Nia-as always nothing is easy or simple in the law!!

Dr. Artello: everything has a context and you need to understand the context—it is why I talk about what was happening surrounding the cases.

Nia: but I thought law especially constitution law comes only from the Constitution?

Dr. Artello: I love this question! Modern constitution interpretation has been attempting to constrain the law. But the Law is more than mere words on paper. It requires us to interpret what they mean; sometimes it changes over time.

Nia: ok but how did we get this stop and frisk thing?

Dr. Artello: We will travel to 1960s and the Warren court again.

Nia: I remember we talked about him in the Dr. Artellotz case.

Dr. Artello: That is right. Terry was decided by the same court that also decided Dr. Artellotz, Mapp and Miranda.

Nia: So who was Terry?

Dr. Artello: John Terry and a couple friends were seen by Officer McFadden on Euclid Ave on Halloween in 1963.

Nia: Well that sounds normal to me.

Dr. Artello: Well McFadden watched them for about a half hour where one guy waited at one corner and the other guy at the other corner. Then the guys took turns walking back and forth along the single block.
Nia—that sounds a little weird but still not criminal. What am I missing?

K—there was a jewelry store in the middle of the block and they were taking turns walking back and forth in front of it. At one point, the third man walks away and McFadden can’t see him. The other two men walk to a different point and about 5 minutes later the third man returns.

N: that is sounding a little fishy

K yes. Terry and his friends were wearing long and heavy coats as well.

N: is that unusual? It gets cold in Cleveland.

K: not that cold in October and not for us locals.

N: so what happened?

K as McFadden is watching the three guys now move to the middle of the block close to the jewelry store.

N now it sounds a little interesting but may be it is a guy nervous about getting a ring. I imagine that may be nerve wrecking.

K McFadden approaches the three guys and asks them to keep their hands out of their pockets. He asked them what they were doing and the three mumbled in response. Believing that these men were casing the store for a robbery and consequently, they may be carrying weapons, he proceeds to lightly pat over their clothing and finds two guns. The third guy didn’t have a gun.

N: what happened next?

K: John Terry and Richard Chilton were charged with carrying concealed weapons.

N: What did the judge think of McFadden’s actions?

K: the trial judge found that given the suspicious nature of their actions and the potential threat to the officer’s safety, the decision to frisk was permissible.

N: Wow, so the judge let the guns in.

K: He did and they were convicted.

N: So how did it get to the Supreme Court?
K: Terry and Chilton appealed the decision to allow the guns into evidence because they were seized illegal and should be suppressed. The Court of Appeals agreed with the trial judge so that is how they ended up in the Supreme Court.

N: What did the court decide?

K: In an 8 to 1 decision, the court held that search undertaken by the officer was reasonable under the Fourth Amendment and that the weapons seized could be introduced into evidence against Terry.

Nia: Hold your horses! I am totally confused. I thought that the Warren Court protected individuals from such police actions--Like Dr. Artellotz..

Dr. Artello: That is what makes Terry so interesting. Some speculate that the Terry decision was to equalize some of the power since so many decisions had been curtailing police actions.

Nia: So how did they arrive at this decision?

Dr. Artello: The court ruled that stopping someone for brief questioning and conducting a pat-down search did constitute a search as defined by the Fourth Amendment.

Nia: See they said it was a search under the Fourth Amendment, so they can’t do it without probable cause.

Dr. Artello: Well not quite. They held that such a stop-and-frisk did not necessarily violate the constitutional ban on unreasonable searches and seizures.

Nia: This makes no sense.

Dr. Artello: Let’s try to think of it this way. The Court viewed this action about whether the officer’s actions were reasonable at the inception of the search and whether McFadden’s actions were reasonably consistent in scope with the circumstances that provided the justification for the initial search.

Nia: so they are not using probable cause.

Dr. Artello: No they are not. They ended up creating the standard of reasonable suspicion, which is more than a hunch.

Nia: how so?
Dr. Artello: the officer must have "specific and articulable facts", "taken together with rational inferences from those facts", and the suspicion must be associated with a specific individual has been, is, or is about to be engaged in criminal activity.

Nia: ok but that does not really address the guns, right? That is just about detaining someone.

Dr. Artello: very good. The court said that reasonably prudent man would have been warranted in believing [Terry] was armed and thus presented a threat to the officer's safety while he was investigating his suspicious behavior.

Nia: so It was about police safety.

Dr. Artello: that is how it was framed by the majority.

Nia: You mentioned that there was a sole dissenter. What did he say?

Dr. Artello: Justice William Douglas argued that the Court had provided the police with more legal authority to conduct searches and seizures than magistrates have to provide a court order that authorizes a search or seizure.

Nia: WOW, he really didn't seem to like it.

Dr. Artello: No he did not. In many ways he foreshadowed what happened. Justice Douglas was troubled by the implications that clearly provide more power and authority to the police at the expense of individual liberty.

Nia; he got that right. Did the majority consider this at all?

Dr. Artello: Interestingly they had. They rejected the contention that a pat down is a petty indignity for the individual.

Nia: Well, I think they got that wrong.

Dr. Artello: Sometimes the court does.

Nia: So what happened to Terry?

Dr. Artello: Terry, a heroin addict, was in and out of jail for much of his life and eventually died while incarcerated. Chilton was killed while attempting to rob a Columbus pharmacy the year before the case was decided by the Supreme Court.

Nia: not a good outcome for them.
Dr. Artello: Interestingly, nephews of Terry and Chilton grew up to become police officers in Columbus Oh. So the uncles demons did not continue to another generation.

Nia: WOW That I did not expect at all. So can you brief this case for us?

Dr. Artello: Certainly, On Halloween afternoon in 1963 while on a routine beat through downtown Cleveland, Cleveland Police detective Martin McFadden with 39 years of police experience noticed three men acting suspiciously and pacing in front of a jewelry store on Euclid Avenue. Concerned the men were “casing a job, a stick up” and were carrying weapons, McFadden identified himself as a police officer and asked them their names. When the men only “mumbled something” in response, McFadden frisked them and found a pistol in John W. Terry’s overcoat pocket, and a revolver in Richard Chilton’s coat pocket. The third man, Dr. Artellotz, was unarmed. McFadden arrested and charged Terry and Chilton with carrying concealed weapons. They were found guilty by trial judge and sentenced to three years. They appealed and the Court of Appeals affirmed the trial court judge’s decision. The issue before the Supreme Court Was the search and seizure of Terry and the other men in violation of the Fourth Amendment? The Supreme Court decided in 8 to 1 decision that the Court held that the search undertaken by the officer was reasonable under the Fourth Amendment and that the weapons seized could be introduced into evidence against Terry. The standard set out is that "a reasonably prudent man would have been warranted in believing [Terry] was armed and thus presented a threat to the officer's safety while he was investigating his suspicious behavior." The Court found that the searches undertaken were limited in scope and designed to protect the officer's safety incident to the investigation. Justice Douglas in his dissent argued that police searches should remain constrained by the standard threshold of probable cause. In particular, he was troubled by the implications that clearly provide more power and authority to the police at the expense of individual liberty.