# Attachment 5

# NYPD Investigative Encounters In-Service FAQ Rider #1

## Protective Measures

**Question/Issue #1: If instructors want to read more information about (a) cases where courts dealt with the use of Protective Measures at Level 1[i] or (b) when a suspect's refusal to comply with a legitimate protective measure elevated the encounter,[ii] cases are collected in the endnotes of this Rider.**

## Anonymous Calls/Caller ID

**Question/Issue #2: We live in a world with recorded 9-1-1 calls and caller ID – why are these calls considered anonymous today?**

A person can borrow another person's cell phone to make a 9-1-1 call. So if the caller refuses to provide a name, even with caller ID, we consider this anonymous.

## Stopping/Frisking Companions

**Question/Issue #3. What if I have reasonable suspicion for *only one suspect* (i.e., the caller only reported one perpetrator) but when I respond to the location, the suspect is with another individual? Can I stop and possibly frisk his companion?**

Officers cannot automatically detain or frisk a person who is merely standing beside someone for whom they have reasonable suspicion. However, some situations will warrant it.

For starters, officers must make an initial assessment whether the suspect and this other person really *are* together. Some person who happens to be waiting next to the suspect at a bus stop or standing near him on the street does not mean that he is truly accompanying the suspect. If their positions, their interactions, or the circumstances suggest they truly are together, then consider:

- When did the suspected crime occur? Did it just happen, such that the companion may have been the lookout or been passed the gun? Or is this an approach on a crime in the past, such as a domestic violence assault in the past, thus suggesting that the companion with the suspect may have had absolutely no involvement?
- The nature of the crime suspected. Is it a crime that, based on your training experience, is often committed in concert or with a lookout?
- The behavior of the companions, and whether they are in a confined space.

Here are examples of when the companion could NOT be frisked:[1] *People v. Martin*, 32 N.Y. 2d 123 (1973) (people who were merely walking with two other people engaged in a narcotics transaction should not be detained absent behavior or observations based on training and experience that reflects the others were acting in concert); *People v. Chinchillo*, 120 A.D.2d 266 (3d Dept. 1986) (officers had an arrest warrant for person "A" for a prior crime, they received a tip that person "A" would be at an airport, they find him there, he happens to be with person B, court finds officers had no basis to detain/frisk person B); *People v. Durant*, 175 A.D.2d 176 (2d Dept. 1991) (a complainant who is on the scene points out suspect who just assaulted him, c/w does not implicate any other assailants, but at the moment of the point out, the suspect happens to be hanging out with three friends, the suspect runs upon being pointed out and then so do his friends, however, the friends should not have been pursued/stopped/frisked); *People v. Terrell*, 185 A.D.2d 906 (2d Dept. 1992) (complainant on the scene identified suspect who had previously robbed her and the suspect happened to be standing with a friend, the friend cannot be detained/frisked); *People v. Martinez*, 191 A.D.2d 457 (2d Dept. 1993) (radio run for two men selling drugs, two men observed matching the descriptions and they are talking to a third person but there were no observations that this third person was a buyer or coconspirator so he should not have been seized/searched); *People v. McLoyd*, 35 Misc.3d 822 (NY Co. 2012) (suspect was wanted for a prior shooting, detectives go to residence in search of suspect and a second man happens to be standing with the suspect, as the detectives approach the second man starts to walk off but the detectives had no basis to stop or frisk the second man). Basically, in these cases, while some were violent crimes, those crimes were committed sometime in the past (thus no reason to believe the suspect's present companion was involved), or the report was of a solo actor, or the nature of the crime or observations were not indicative of acting in concert. Basically these are other people who happen to be present.

Here are examples of when the companion COULD be frisked: *People v. Fernandez*, 261 A.D.2d 178 (1st Dept. 1999) (officers observed a group of men leaving the scene as they arrived to investigate a report of an armed robbery in progress, upon seeing the police, the group exhibited "nervous and furtive" behavior which the court found to be Level 2 and which then elevated because suspect was carrying a security box, his companion had a bulge in his waistband and no one in the group could provide reasonable answers to basic questions); *People v. Jenkins*, 87 A.D.2d 526 (1st Dept. 1982) (officers were arresting an individual for whom they had "more than probable cause" to believe committed an armed bank robbery and they were justified in detaining

[1] We're excluding *People v. Trapier*, 47 A.D.2d 481 (1st Dept. 1975) from this list. *Trapier* is an old case. The officer's error was the way he ordered his tasks. Furthermore, to the extent it does stand for the proposition that you cannot search a companion, it is contrary to more recent 1st Dept. opinions (Jenkins, Wiley). In *Trapier*, the caller described three men at a location and said that one of them, the one with the camel coat, had a gun. Officers get there; put all three against the wall. The defendant (who was not wearing the camel coat) kept taking his hands off the wall and the officer saw his pocket is swinging, officer goes in and recovered bullets and then later a gun. If they had searched the camel coat guy first and found no gun, the search of the other two men may have been permitted based on the cases cited in this section.

and frisking his sole companion who they suspected "may have been an accomplice of the robber"); *People v. Burgos*, 175 A.D.2d 211 (2d Dept. 1991) (vertical patrol in a building known for drug sales, on the second floor they see two men face to face in a narrow hallway, one male dropped vials of cocaine to the ground and the officers were justified in directing both men to freeze and get up against the wall because even if there was no reasonable suspicion as to the other male, they were arresting his companion in a narrow hallway in a building known for drug trafficking); *People v. Wiley*, 209 A.D.2d 361 (1st Dept. 1994) (identified informant said a man wearing a red T-shirt fired shots into the air and got into a burgundy car with out-of-state plates, officers arrive at location, hear gun shots and see a car matching the description and two men running from the park, one of whom was wearing a red T-shirt, and officers were authorized to stop and frisk both); *People v. Curry*, 213 A.D.2d 664 (2d Dept. 1995) (officers responded at about 2 a.m. to shots fired at a location and observed two males, one of them had a suspicious bulge, he was frisked, a weapon was recovered and it was reasonable for officer to frisk is companion, who it turns out also had a gun). These cases are different. Some are violent, including robberies which are crimes often aided by another even if the c/w doesn't see the other person, or the apprehension was in close quarters.

**Multiple Individuals Matching Description of One Perpetrator**

**Question/Issue #4: What if the radio run is for a M/W, early 20s, wearing a gray T-shirt and blue jeans with a gun at a specific location and upon arriving officers see two or more males who fit the description?**

If anyone in the class takes this to an extreme ("what if there are TEN people who match the description?"), ground them back in reality. If 10 people truly fit the description, it's not a sufficiently detailed description for a *Terry* stop anyway. S*ee People v. Choy*, 173 A.D.2d 883 (2d Dept. 1991) (Description of robbers as "four young male [Asians], dressed in dark clothing" was insufficient by itself to support stop and frisk 4 young male Asians in dark clothing 3 hours later and almost a half a mile away). Plus, realistically, they can't stop ten people at once.

Remember, the description has to be sufficiently detailed and can't just include race, age and gender, but if they spot two males matching the description of M/W, early 20s, gray T-shirt, blue jeans and the sighting is very close in time and place to the report, officers could stop and frisk both of them. If the numbers grow, it can lower the value of the information and the encounter. For example, in *People v. Abdul-Mateen*, 126 A.D.3d 986, (2d Dept. 2015), the radio run was for a M/B wearing a white T-shirt and black pants with a gun at a specific location. When the officers arrived, they saw a total of four M/Bs and 3 of the males matched the general description, including the defendant. The court said that this started as a Level 2 because the description was so general. The officers were authorized to direct all of the males to raise their hands (a Protective Measure) but the defendant was the only one who did not comply. Instead, he

turned, reached for his waistband, and an officer grabbed his hands and felt a gun (another Protective Measure). The court found the officers' actions to be appropriate.

**Handcuffing**

**Question/Issue #5: Officers have sought more information in class about when they can handcuff a suspect during a *Terry* stop. We added more information to the Instructor Guide and additional case information appears below.**

Handcuffs should not be automatic, but if an officer has to deal with a rapidly unfolding, dangerous situation, handcuffs may be used during a *Terry* stop. If a suspect acts violently, resists being detained, or tries to flee, handcuffs may be used. If you reasonably suspect that the suspect may be armed or there may be a weapon near the site of the stop, handcuffs may be used.

*See People v Allen*, 73 N.Y.2d 378, 380 (1989) (armed robbery suspect apprehended in poorly lit alley, attempting to scale a wall); *People v. Barnes*, 4 A.D.3d 433 (2d Dept. 2004) (handcuffed detention of robbery suspect to conduct prompt show up identification did not transform the detention to an arrest); *People v. Williams*, 305 A.D.2d 804 (3rd Dept. 2003) (handcuffs warranted where police had reason to believe defendant and two codefendants were armed); *People v. Wright*, 257 A.D.2d 365 (1st Dept. 1999) (brief use of handcuffs permitted pending complainants' immediate arrival at scene where defendants attempted to flee and ignored orders to stop); *People v. Johnston*, 103 A.D.3d 1202 (4th Dept. 2013) ("Inasmuch as the officer had reason to believe that defendant was armed, he was justified in handcuffing him and frisking him for weapons to ensure his own safety."); People *v. Nonni*, 135 A.D.3d 52 (1st Dept. 2015) (physical resistance to detention coupled with the visible appearance of a weapon justified use of handcuffs while officers completed their investigation); *People v. Roberts*, 138 A.D.3d 461 (1st Dept. 2016) (flight to avoid apprehension and defendant's violent behavior toward a store employee prior to the stop warranted the use of handcuffs); *People v. Franquiera*, 143 A.D.3d 1164 (3d Dept. 2016); *Matter of Jose T.*, 127 A.D.3d 875 (2d Dept. 2015); *People v Chestnut*, 51 N.Y.2d 14 (1980).

**Prior Criminal History**

**Question/Issue #6: If I know a person has a criminal history or a gang affiliation, can I use that information as part of the totality of the circumstances when making a decision about conducting an investigative encounter with that person?**

Yes, a person's criminal history, criminal background or gang affiliation can, in certain situations, be a factor an officer considers when conducting an investigative encounter. However, knowledge of a person's criminal history or gang affiliation in and of itself is not

tantamount to an indication of criminality.[2] There must be additional information or observable behavior that adds to the suspicion of criminality.

*People v. Boulware*, 130 A.D.2d 370 (1st Dept. 1987). At around 11 p.m., officers on patrol in area with a high incidence of drug and weapons arrests observe a group of 10 – 15 people on a corner. They saw the defendant among the group and recognized him as a person who had a long arrest record for gun possession offenses. They approached the crowd, and when one of the officers was about 10 feet from the defendant, he called out to talk to the defendant. The defendant then put his hand on his right coat pocket. The officer then put his hand on his holster and told the defendant to remove his hand from his pocket. The defendant then fled and the officer pursued and the court said the pursuit was not justified. "Knowledge of a person's past record may, like the high crime area factor, be relevant in determining whether a police officer's conduct during a lawful encounter is reasonable. But founded suspicion of criminal activity arises only when there is some present indication of criminality based on what they see the suspect do or what has been reported to them about the suspect." [High crime area + record for CPW + hand in pocket. That might have amounted to a Level 1 but not Level 2, which is what they would have needed to properly pursue.]

*People v. Lynah*, 56 A.D.3d 375 (1st Dept. 2008). At a particularly drug-prone location, an officer recognized the defendant from a recent investigation into a possible drug transaction. Defendant was holding a plastic bag and counting something. When defendant saw the officer, he pushed the bag up his sleeve, and when the officer approached, defendant secreted the bag in his pants, apparently placing it in his buttocks. This unusual and furtive behavior was highly suspicious, particularly since defendant's behavior on the prior occasion had similarities to this incident, and the police accordingly had reasonable suspicion justifying a forcible stop and detention. When defendant told the officer that he had drugs in his buttocks, this provided probable cause for his arrest

*People v. Woods*, 64 N.Y.2d 736 (1984). During a VTL stop, one of the officers recognized the driver has a person he had stopped before. The officer warned his partner as they approached the car that he had stopped the driver before and that in the prior car stop, the driver had reached for a loaded gun. As the officer approached, the person quickly reached for his breast pocket and the court said a frisk of that area was permitted.

*People v. Thomas*, 115 A.D.3d 69 (1st Dept. 2014). The defendant was with a man known to officers as a Times Square pickpocket. Officers saw the two men running across Broadway

[2] *People v. Johnson*, 64 N.Y.2d 617 (1984). ("A stop based on no more than that a suspect has previously been arrested for burglary and that there have been burglaries in the area is premature and unlawful"). *See also People v. Thomas*, 115 A.D.3d 69 (1st Dept. 2014).

looking over their shoulders and stopped them. The court said this was not enough for a Level 3 *Terry* stop of the defendant.

*People v. Daley*, 51 Misc.3d 1204(A) (Queens Co. 2016). The arresting officer had extensive experience in apprehending subjects carrying firearms and was trained in how subjects carry and maneuver concealed weapons. Based on that training and experience, when the officer observed the defendant — a known gang member — who was walking down the street, reach into his waistband and appear to grab an object and move it toward the front of his waistband, the officer was justified in getting out of his car to approach defendant to request information from him (Level 2). Then, when defendant broke into a run and removed what appeared to be a handgun from his waistband, the officer had reasonable suspicion to chase and detain him. *See also* REAL CASES role-play section, *In re Tyheem S.*, 10 Misc. 3d 177 (Queens Co. 2005) (apparent gang membership could be considered in assessing Level of encounter).

**Definition of Violent Crime**

**Question/Issue #7: I can automatically frisk if I have reasonable suspicion for a violent crime. How does the law define violent? The way the Penal Code does?**

The offenses include those formally recognized in PL 70.02 as violent (rape, murder, felony assault, robbery 1 and 2, kidnapping, burglary 1 and 2), but the definition also includes additional crimes that, pursuant to the *Mack* doctrine (*People v. Mack*, 26 N.Y.2d 311 (1970)) are "serious and violent" crimes, including crimes involving potentially dangerous instruments (i.e. automobile break-ins). *People v. Burks*, 235 A.D.2d 373 (1st Dept. 1997); *People v. Jones*, 287 A.D.2d 300 (1st Dept. 2001).

There are crimes that clearly fall outside this definition, like forgery, larceny, and gambling. And there are crimes that clearly fit into the Mack doctrine (burglary, menacing, assault). The more difficult call can be drug cases, and no court has per se held that the *Mack* doctrine applies to narcotics cases, even though some courts have recognized that violence is often associated with drug trafficking. So, for a stop on reasonable suspicion of a drug crime, we can't invoke the suspicion of the crime itself, there must be other factors giving rise to a reasonable suspicion that the person is armed and dangerous. *People v. Harrill*, 19 Misc.3d 1141(A) (1st Dept. 2008).

**Frisking**

**Question/Issue #9: If I am at Level 3 and I have reasonable suspicion that the suspect is armed and dangerous, are there any circumstances under which I can skip the frisk and go straight to a search?**

Yes. "[U]nder certain unusual circumstances, a police officer can forgo a frisk of the outer clothing and conduct an immediate *search* of a specific location on the suspect's person. This exception to the frisk rule applies only when the officer has some information as to the *precise* location of a weapon."[3] An example of this exception includes the immediate seizure of an observed of a pistol-shaped bulge from defendant's waistband.[4]

**Question/Issue #10: If I have to place a suspect in my vehicle at Level 3 to transport him for a show-up, can I frisk even if it's a non-violent crime?**

Yes. "The justification for the pat-down is not that the suspect is reasonably suspected of being armed; it is rather a matter of sound police administration. Police officers should be certain before transporting members of the public, whom they do not know, that none of them is armed." *United States v. McCargo*, 464 F.3d 192 (2d Cir. 2006); *People v. Henderson*, 26 A.D.3d 444 (2d Dept. 2006); *People v. Gamble*, 210 A.D.2d 903 (4th Dept. 1994); *In re D'Angelo H.*, 184 A.D.2d 1039 (4th Dept. 1992).

**Civil Summonses**

**Question/Issue #11**: **Does the new civil summons policy change what an officer can do if the person who committed the violation does not have identification?**

No. In that case, the person who committed the violation should be searched and then taken back to the officer's command.

**Question/Issue #12: Does the new civil summons policy impact an officer's ability to frisk someone during a summons encounter?**

No. If the person is aggressive, hostile, or suspiciously uncooperative during processing for a summons of any kind, an officer may frisk that person in order to dispel reasonable safety concerns.

**Miscellaneous**

**Question/Issue #13: Will my CO getting this training? Will the CCRB?**

Yes.

[3] Kamins *Search & Seizure*, 2.05[1].
[4] *People v. Williams*, 111 A.D.3d 448 (1st Dept. 2013)(citing *People v. Taggart*, 20 N.Y.2d 335 (1967)).

[i] *People v. Ortiz*, 186 A.D. 2d 505 (1st Dept. 1992). At 4 a.m., officers heard three gunshots somewhere beyond Grand Concourse and Mt. Eden Ave. They traveled a block and saw the defendant, who was the only person in the area. He had his back to the officers, and as they approached, he walked away looking back at them. He briefly went into a store and came out. Officers approached on foot and asked him if he heard gunshots, he said yes and pointed toward 174th St., but then brought his right hand toward his inner breast pocket and the officers grabbed his hand, felt a hard object, and recovered a gun. The court said the officer clearly had an objective credible reasons to approach, and when the defendant reached for his inside breast pocket, the officer's reflexive action of grabbing the defendant's hand was appropriate.

*People v. Giles*, 223 A.D.2d 39 (1st Dept. 1996). On a hot August night, the defendant was seen walking in the road in between lanes of opposing traffic. Officers saw him adjust something in the rear of his waistband. He saw the officers, quickly turned and walked in the other direction. Only one of the officers got out to approach him and his gun was not drawn. He approached the defendant and asked what he was doing. The defendant reached into his front waistband, the officer grabbed his hand and felt a gun. The court found it was proper for the officer to reach out and grab the defendant's hand.

*People v. Stevens*, 255 A.D.2d 145 (1st Dept. 1998). Officers were inquiring of a group inside the lobby of a building about a report of an armed dispute months in the past. Coincidentally, the group itself appeared to be engaged in some kind of dispute. Officers observed that the men were nervous, evasive and one said he was a state trooper. The court found it was appropriate on these facts to tell all of the men to raise their hands because it was a minimally intrusive measure and designed to insure officer safety. [Information that a gun was possessed by at least one person, the trooper, but preemptive protective measure allowed for all of the men.]

*People v. Walton*, 4 Misc.3d 1018(A) (Bronx Co. 2004). Suspect's presence near location reported for shots fired coupled with his evasive behavior provided officer with an objective credible reason to approach him. The officer approached and said "good evening, Police Department. Can I talk to you for a second?" and the defendant looked down, walked around and appeared to place something in the trunk of a car and acted confused. When the officer asked him his name, the suspect did not respond but rather put his hand on the outside of his pants pocket. The officer asked him to take his hands away from his sides and the defendant complied by raising them halfway up and responded incoherently. The officer could smell the odor of alcohol on the defendant and observed the defendant lower his arms again. The officer reached out and blocked the defendant's right arm with his arm before it could reach his side; he then grabbed the outside of defendant's right pants pocket and felt a gun. The request to take his hands away from his side was a minimally intrusive measure designed to simply insure the officer's safety. The court first treats the pocket grab as a frisk, so it analyzes whether there was enough to get from 1 to 3 and finds there was based on the totality of the circumstances (shots fired, confirmed by on-scene witness, evasive behavior by suspect one block away, possibly intoxicated and arm gesture = reasonable suspicion of armed and dangerous). In the alternative, the court said that even if it had found no reasonable suspicion, the grab was an authorized and minimally intrusive protective measure and cites *Giles* and *Samuels*.

*People v. Wyatt*, 14 A.D.3d 441 (1st Dept. 2005). The court found officers had an objective credible reason for approaching a man in a crime-ridden area after observing him pass two other men and stare back and the two men repeatedly, with an angry, menacing look. Upon approach, the officers asked if he had a problem with the two men but he did not answer their question, glared angrily at the officers and began to reach for his back pocket. The court found the officer was justified in putting his hand on the defendant's back pocket to protect himself – they said this was not a frisk. Upon feeling the hard object there was reasonable suspicion the defendant was armed.

*People v Pinckney*, 32 Misc.3d 1240(A) (Bronx Co. 2011). People at the scene identified the defendant as the driver who side swiped parked cars. Defendant was at the scene and there is no information in the case that suggests he was uncooperative or

intoxicated/high. The officer walked up to the defendant and told him to take his hands out of his pockets, he complied, and a small quantity of marijuana fell out of his pocket. The court declares that in the First Department, telling someone to take their hands out of their pockets is a per se Level 2 tool and cites *Boodle*. *People v. Boodle*, 47 NY 2d 398 (1979) does not actually stand for that principle and that's probably why *Pinckney* has not be cited in any other case in 6 years. In *Boodle*, the defendant was approached because the police got a tip that the defendant might have information about a homicide. They asked him to come over to their car and to get in. They asked him if he was "clean" and told him that he should keep his hands where they could see them. The court said this was a seizure, naturally, because they told him to get into their car and they drove off with him. The court also took issue with the directive about his hands. *Pinckney's* reliance on *Boodle*, a 1979 case, for a per se First Department rule that "show me your hands" is a Level 2 police action appears to be erroneous given all the intervening First Department authority since 1979.

*People v. Crawford*, 89 A.D.3d 422 (1st Dept. 2011). Officers saw the defendant adjust something in his right pants pocket by cupping his hand over the outside of the pocket and pulling upward. They observed him do this three to four times. The object in his pocket created a bulge and looked heavy. The officers pulled up next to defendant and asked if they could talk to him. He approached the car with his hands in his pockets and one of the officers asked him to take his hands out of his pockets. He complied and produced ID, but when the officer started to get out of the car, he fled. They pursued him and recovered a weapon. The court said this information could have supported an objective credible reason to request information *and to ask him to remove his hands from his pockets* as a precautionary measure, but found that the officers were not justified in chasing/seizing him.

*Matter of Darryl C*, 98 A.D.3d 69 (1st Dept. 2012). Not truly a protective measures case per se, case involves officers speaking with a youth they suspect is a truant (which would be a Level 1) and in this case they over-reach in terms of the tools they ultimately use but the request to remove hands when talking to a potential truant was not one of the tools to which the court objected. The court refers to the officer saying "do me a favor – don't put your hands in your pocket" as standard protocol (they also felt the phrasing of the request belied a fear of armed and dangerous and that among other things did not justify a full frisk).

*People v. Perez*, 142 A.D.3d 410 (1st Dept. 2016). Officers were doing a vertical in NYCHA building with a robbery pattern and narcotics activity. They saw the defendant in the elevator on the 7th floor. Upon seeing the officers, the defendant retreated back into the elevator. They asked him to hold the elevator, but he kept pushing the button to close the door. The officers were unable to get on before the elevator door closed. They saw that the elevator continued to go up, so they walked up to the 9th floor and saw the defendant again. They asked the defendant if he lived in the building and he did not reply but rather turned to face the wall with his head down and hood up. They saw a bulge in the defendant's sleeve. He was holding his arm stiffly and straight down and his hands were hidden under his sleeve. They asked him again if he lived in the building and he did not respond. The officers then asked the defendant to show his hands a number of times, but the defendant did not comply. The officer grabbed the defendant's wrist and felt a metal object and recovered a machete. The court found the officer's actions were appropriate and the defendant's refusal to answer was counted among the factors that justified the officer's actions.

*People v. Newhirk*, 279 A.D.2d 535 (2d Dep't 2001). An officer observed a man standing at a corner for an hour and a half period, walking back and forth to a vacant lot where other people were and looking up and down the street. There had been complaints that drugs were sold in the area and a rise in bike thefts. The officer approached the man and asked what was going on. The man kept his hand in his pocket and said he was just walking by. The officer thought the man and his friends seemed "very apprehensive" and felt a "little upset for his safety," so he grabbed the man's hand while it was in his pocket, felt bullets, and pulled out the man's hand. The court ruled that the officer did not have a basis for grabbing the man's hand and pulling it out of his pocket as a protective measure. The evidence was suppressed because it was a Level 1 and nothing happened to escalate the encounter.

[ii] *People v. Oppedisano*, 176 A.D.2d 667 (1st Dept. 1991). This is a Level 2 Protective Measures case. The defendant showed up at an apartment where officers were executing a search warrant. He knocked, they opened the door and asked him to take his hands out of his pockets. He did not comply but rather took a few steps back. The court stated that officers were allowed to

conduct an inquiry and were authorized to direct him to raise his hands. His stance and lack of cooperation justified the forced removal of his hands, and that's when officer saw a bulge which, based on all circumstances, warranted a frisk.

*People v. Montague*, 175 A.D.2d 54 (1st Dept. 1991). 10:30 at night, defendant and four others were hanging out by a notorious drug trafficking building. When the RMP pulled up, the crowd dispersed. The defendant broke off from his companions and walked at a quick pace and kept looking nervously at the officers. The officers approached him (guns not drawn) and asked, in substance, what he was doing. The defendant then reached into his front waistband. One officer grabbed the defendant's arm while it was still in his waistband, the defendant tried to push the officer away, and during this struggle, the officer's partner reached into the suspect's waistband and recovered a gun. The court said the officers had an OCR to approach and the defendant's waistband gesture and struggle elevated the encounter and their actions were proper.

*People v Herold*, 282 A.D.2d 1 (1st Dept. 2001). 9-1-1 caller said there was a man involved in an armed dispute in his apt. building. The caller did not provide his name but provided his apt. number in the apt. building. Officers responded and were buzzed in after hitting the caller's apt. number. The court says this really wasn't anonymous because the officers had an address and apartment number. The court goes on to say that even if this were only a level 2, courts have consistently found that when an inquiry at 2 relates to a weapon, officers are allowed to take limited precautionary measures to protect themselves. Officers saw individual that matched caller's description in the building and were permitted to say "hands up" and when he didn't comply, the officers were authorized to put his hands on the wall. The defendant's failure to comply and blading took this to Level 3 reasonable suspicion of armed and dangerous.

*People v Abdul-Mateen*, 126 A.D.3d 986 (2d Dept. 2015). Officers received a radio run for a M/B, white T-shirt, black pants, with a gun. Officers arrived and see four men and three of them match the description, including the defendant. Officers told the group to raise their hands. The defendant did not comply, turned/bladed, and moved his hand near his waist. The court said the officers were authorized to tell the group to raise their hands, and given the nature of the job, the defendant's failure to comply, and the movement of his hand near his waist, the officer was justified in grabbing the suspect's hands. Once the officer felt the gun, he could seize it.