

# Recent Case Report

## U.S. v. Flatter

(9<sup>th</sup> Cir. 2006) \_\_ Fed. 3rd \_\_ [2006 WL 2269055]

### ISSUE

Can officers pat search a suspect on grounds they were going to question him about a crime?

### FACTS

U.S. Postal Inspectors suspected that Flatter, a postal employee in Spokane, Washington, was stealing packages containing class II medications, primarily painkillers. While conducting surveillance, they saw him remove a “decoy package” of medicine. They then asked him to accompany them to their office for questioning.

When they arrived, the inspectors “told Flatter that, in order to ensure their own safety, they were going to pat him down for weapons.” The inspectors later testified they did this because they thought “the situation might turn confrontational,” and that they were in a “small room.” While pat searching Flatter, one of the inspectors discovered the missing decoy package.

Flatter’s motion to suppress the package was denied, and he was subsequently convicted of mail theft.

### DISCUSSION

Flatter contended the package should have been suppressed because the pat search was unlawful. The Ninth Circuit agreed.

As a general rule, officers may pat search a detainee only if they reasonably believe he was armed or dangerous.<sup>1</sup> In determining whether such a belief was reasonable, the courts give officers a great deal of latitude and will consider a wide variety of circumstantial evidence. For example, they routinely uphold pat searches when the suspect was detained for a crime associated with violence or weapons, or when officers saw a bulge under the detainee’s clothing that was consistent with a weapon. The courts also consider furtive gestures, sudden movements, hostility, nervousness, and the officer’s awareness that the detainee had a history of violence or gun possession.

In this case, however, there was simply nothing to indicate that Flatter posed a threat. In the words of the court:

[The] officers had absolutely no reason to believe that Flatter was armed. They did not observe any bulges in his clothing. Nothing in Flatter’s demeanor aroused the officers’ concerns for their safety, or suggested that he might be armed; he did not act in a threatening manner at any time, nor were the officers aware of any past violent conduct. Mail theft by postal employees is not a crime

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<sup>1</sup> See *Terry v. Ohio* (1968) 392 U.S. 1, 27-8.

that is frequently associated with weapons, such as robbery or large-scale drug dealing.

Consequently, the court ruled the pat search was unlawful, and that the evidence should have been suppressed.