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Illinois v. Wardlow

An Individual's Presence in a High Crime Area Combined with Unprovoked Flight after Seeing a Police Officer Is Sufficient Basis for Reasonable Suspicion

By Lee A. Dix

The Supreme Court of the United States, in a five to four decision, held that there is sufficient basis for a *Terry* stop when an individual in a high crime area flees, without provocation, after noticing a police presence. *Illinois v. Wardlow*, 120 S.Ct. 673 (2000). The Court explained that for purposes of a *Terry* stop, a "totality of the circumstances" approach is applied to determine if reasonable suspicion exists under the circumstances. In so holding, the Court stated that a determination of reasonable suspicion requires commonsense judgments and inferences concerning human behavior.

On September 9, 1995, four police cars carrying a total of eight Chicago Police Department officers were converging on an area of the city known for drug trafficking. Officers Nolan and Harvey, in uniform, were in the last car. Officer Nolan observed the defendant ("Wardlow") holding an opaque bag. Wardlow looked in the direction of the officers and, without provocation, immediately began to run. Officers Nolan and Harvey pursued Wardlow and eventually overtook him. Upon apprehension, Officer Nolan immediately conducted a *Terry* frisk, as it was common knowledge and procedure to locate weapons in close proximity to drug transactions. Upon

squeezing the bag Wardlow was carrying, Officer Nolan felt a hard object in the shape of a gun and further inspection revealed Wardlow was carrying a loaded .38 caliber handgun.

The trial court denied Wardlow's motion to suppress. Subsequently, Wardlow was convicted of unlawful possession of a handgun by a felon. The appellate court reversed, stating that reasonable suspicion did not exist for Officer Nolan to detain Wardlow. In affirming the decision, the Illinois Supreme Court held that sudden flight in a high crime area did not create reasonable suspicion justifying a *Terry* stop because flight is not determinative of wrongdoing. The Supreme Court granted certiorari solely to review the question of whether the initial stop was supported by reasonable suspicion.

The Court began its analysis by stating that an individual's mere presence in a high crime area, without more, does not rise to the level of reasonable suspicion that criminal activity is afoot. *Wardlow*, 120 S.Ct. at 676. However, location is a factor in determining if reasonable suspicion exists. *Id.* Furthermore, the Court stated that officers should consider the relevance of location along with other factors to determine if further police action is warranted. *Id.* In addition to location, the Court explained that a high crime area is a relevant

consideration in the *Terry* analysis. *Id.* (citing *Adams v. Williams*, 407 U.S. 143, 144 (1972)).

The Court next addressed Wardlow's actual behavior after he noticed the police. *Id.* The Court stated that nervous and evasive behavior of an individual is another pertinent factor in determining reasonable suspicion. *Id.* Noting that flight is the ultimate act of evasion, the Court held that it is suggestive of wrongdoing, but not indicative. *Id.* The Court opined that "the determination of reasonable suspicion must be based on commonsense judgments and inferences about human behavior." *Id.* Applying this totality of the circumstances approach, the Court concluded that Wardlow's detention was based on reasonable suspicion that he was involved in illegal activities. *Id.*

Aware of the potential conflict with prior decisions, the Court reconciled its holding in *Wardlow* with the *Bostick v. Florida* holding that "refusal to cooperate, without more, does not furnish the minimal level of objective justification needed for detention or seizure." *Id.* (quoting *Florida v. Bostick*, 501 U.S. 429, 437 (1991)). The Court opined that a *Terry* stop is a minimal intrusion on an individual's Fourth Amendment rights, and that police officers may stop innocent people. However, if

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probable cause does not arise during a *Terry* stop, the individual is free to go. *Id.* at 677. The Court also addressed its holding in *Royer v. Florida*, that an individual has a right to go about his business if approached by an officer lacking the requisite reasonable suspicion or probable cause. *Id.* at 676 (citing *Florida v. Royer*, 460 U.S. 491 (1983)). The Court, however, reasoned that unprovoked flight is more than a refusal to cooperate and is not merely going about one's business. *Id.*

Four justices concurred in part and dissented in part. The justices concurred with the majority in adopting a totality of the circumstances approach to determining reasonable suspicion. However, they rejected a "bright-line-rule," allowing the detention of an individual who flees after seeing a police officer. *Id.* Furthermore, the concurring justices stated that some minorities, particularly those in high crime areas, believe contact with police officers can be dangerous, which provides a completely innocent explanation for fleeing. *Id.* at 680.

The dissent rejected the majority holding that flight occurring in a high crime area is sufficient justification for reasonable suspicion. *Id.* 683-84. They emphasized that many factors providing innocent reasons for unprovoked flight are concentrated in high crime areas. *Id.* at 684. Flight and the high crime area factor, the dissent stated, are both too susceptible to innocent interpretation to form the basis for reasonable suspicion. *Id.* at 678-80.

With this decision, the Supreme

Court gives police officers broad discretion to stop individuals, specifically minorities and the poor, in high crime areas for behavior that may be overlooked in a different community. This decision creates a two-tier system of Fourth Amendment rights and may contribute to increased harassment of minorities and the less fortunate by police officers. The likelihood that evidence seized during a *Terry* stop will be suppressed is significantly decreased by this decision. Defense attorneys face a substantial hurdle to defeat the validity of the *Terry* stop if their client is stopped after running in a high crime area. As a result of this holding, prosecutors are merely required to argue that the individual attempted to flee instead of the individual's intent to engage in criminal activity.

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