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ILLINOIS V. WARDLOW 528 U.S. 119 (2000)

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FACTS

Police officers Nolan and Harvey were patrolling a Chicago area known for drug trafficking when Nolan saw Sam Wardlow, respondent, standing in front of a building holding an opaque white bag.[1] Nolan and Harvey were traveling in the last car of a four car police caravan that consisted of eight police officers.[2] Wardlow allegedly glanced in the direction of the approaching caravan and fled.[3] Officers Nolan and Harvey followed Wardlow in their car and eventually cornered him.[4] Nolan got out of the car and stopped Wardlow.[5] He did not announce that he was a police officer or ask questions of Wardlow.[6] During a pat down search, Officer Nolan recovered a .38 caliber handgun from Wardlow's bag.[7] He arrested respondent at approximately 12:00 p.m.[8]

The officers were traveling in a caravan because the area they were patrolling was known for drug trafficking and they had expected to encounter numerous drug dealers, buyers, and lookouts.[9] In Nolan's experience as a police officer, weapons were often in the vicinity of drug transactions.[10] This experience led him to conduct the pat down search of Wardlow.[11] During the stop and search, Nolan was in uniform, but no evidence established whether the police cars in the caravan were marked.[12]

Wardlow argued that his presence in a high crime area and his flight from police were insufficient to justify Officer Nolan's stop and frisk.[13] Nonetheless, the Illinois trial court convicted Wardlow of unlawful use of a firearm by a felon, denying Wardlow's motion to suppress the gun found during the stop.[14] Relying on *Terry v. Ohio*,[15] the Illinois Appellate Court

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1. Illinois v. Wardlow, 528 U.S. 119, 121-122 (2000).
2. *Wardlow*, 528 U.S. at 121.
3. *Id.* at 122.
4. *Id.*
5. *Id.*
6. Illinois v. Wardlow, 678 N.E.2d 65, 66 (Ill. App. Ct. 1997), *aff'd*, 701 N.E.2d 484 (Ill. 1998), and *cert. granted*, 528 U.S. 119 (2000).
7. *Wardlow*, 528 U.S. at 122.
8. *Id.* at 137.
9. *Id.* at 121.
10. *Id.* at 122.
11. *Id.*
12. *Id.* at 137.
13. *Id.* at 122-123.
14. *Id.* at 122.
15. *See* Terry v. Ohio, 392 U.S. 1 (1968). In *Terry*, the Supreme Court considered all the circumstances of a police officer's stop and search of the petitioner to determine whether the petitioner's

reversed the trial court's holding because it found that Nolan did not have reasonable suspicion to make the stop.[16] The Illinois Appellate Court concluded that Wardlow was not in a high crime area.[17] The Supreme Court of Illinois affirmed the appellate court's ruling despite its finding that the testimony was sufficient to establish that Wardlow was in a high crime area.[18] The court noted that a stop under such circumstances is unwarranted because one has a right to flee and to "go on one's way" when an officer's suspicion of him is unreasonable.[19] Because one's presence in a high crime area is insufficient, standing alone, to justify a stop, the court held that the stop and arrest violated the Fourth Amendment[20].[21] The United States Supreme Court granted certiorari to determine whether a reasonable suspicion existed to support the initial stop.[22] The Court did not consider the lawfulness of the frisk independent of the stop.[23]

HOLDING

The United States Supreme Court, in a 5-4 decision, held that one's presence in an area of heavy narcotics trafficking combined with one's unprovoked flight upon noticing police creates a reasonable suspicion justifying a *Terry* stop and does not violate the Fourth Amendment.[24]

Fourth Amendment right to personal security was violated by an unreasonable search and seizure. *Id.* at 9. Petitioner sought review of his conviction for carrying a concealed weapon, contending that the weapon seized from him was obtained through an illegal search under the Fourth Amendment, and that the trial court improperly denied his motion to suppress. *Id.* at 8. The Supreme Court determined that the police officer had observed unusual conduct by the petitioner, which led him reasonably to conclude in light of his experience that criminal activity might be afoot. *Id.* at 30. Furthermore, the officer reasonably believed that the petitioner may have been armed and presently dangerous, so he justifiably investigated this behavior by identifying himself as a policeman and making reasonable inquiries. *Id.* The Court determined that because nothing in the initial stages of the encounter served to dispel the officer's reasonable fear for his own or others' safety, he was entitled to conduct a carefully limited search of the outer clothing of the petitioner in an attempt to discover weapons which might be used to assault him. *Id.* The Court concluded that the sole justification for the search in the present situation was the protection of the police officer and others nearby, and it must have, therefore, been confined in scope to an intrusion reasonably designed to discover hidden weapons for the assault of the officer. *Id.* at 29. Consequently, the Court held that the officer's search was reasonable under the Fourth Amendment, and that the weapons seized were properly introduced in evidence against the petitioner. *Id.* at 31.

16. *Wardlow*, 528 U.S. at 122.
17. *Id.* at 122.
18. *Id.*
19. *Id.* at 123.
20. U.S. CONST. amend. IV.
21. *Wardlow*, 528 U.S. at 122.
22. *Id.*
23. *Id.* at 124 n.2.
24. *Id.* at 124-125.

ANALYSIS

The majority opinion, written by Chief Justice Rehnquist, relied on its holding in *Terry* to reverse the Supreme Court of Illinois' ruling, and to determine that Officer Nolan's pat down search of Wardlow was not a Fourth Amendment violation.[25] *Terry* held that an officer must have a reasonable, articulable suspicion of criminal activity to conduct a brief, investigatory stop.[26] The Court noted that this conclusion was in compliance with the mandates of the Fourth Amendment which require "at least a minimal level of objective justification for making the stop."[27] Specifically, the *Terry* Court insisted that an officer be able "to articulate more than an 'inchoate and unparticularized suspicion or hunch' of criminal activity."[28]

According to the Supreme Court, a reasonable suspicion depends on "commonsense judgments and inferences about human behavior," since no court can demand "scientific certainty" from police in their decision-making.[29] To determine whether Nolan acted reasonably in stopping Wardlow, the Court considered as relevant factors the location in which the stop occurred and the suspect's reaction to police presence.[30] Although one's location cannot provide sole justification for search and seizure, an individual's presence in a high-crime area may be a relevant consideration in determining whether further investigation is warranted.[31] In addition, the Court noted that "nervous, evasive behavior" is a relevant factor in determining whether reasonable suspicion to justify a stop exists.[32] Thus, the Court concluded that Wardlow's presence in an area known for narcotics trafficking, coupled with his unprovoked flight, provided ample justification for Nolan's suspicions that led him to stop Wardlow.[33]

The Supreme Court then reasoned that its holding was consistent with its prior decision in *Florida v. Royer*,[34] which held that when one is approached by an officer who lacks reasonable suspicion, he is under no obligation to cooperate with that officer.[35] Justice Rehnquist further explained that "refusal to cooperate, without more, does not furnish the minimal level of objective

25. *Id.* at 125-126.
26. *Id.* at 123.
27. *Id.*
28. *Id.* at 124 (quoting *Terry*, 392 U.S. at 27).
29. *Id.* at 125.
30. *Id.* at 124-125.
31. *Id.* at 124.
32. *Id.*
33. *Id.* at 125.
34. 460 U.S. 491 (1983).
35. *Wardlow*, 528 U.S. at 125.

justification needed for a detention or seizure."[36] Although flight alone does not indicate criminal behavior, the possibility of innocent justifications for flight do not necessarily lead to the conclusion that stopping a fleeing person is violative of the Fourth Amendment.[37] In the present case, the Court determined that unprovoked flight such as Wardlow's is the opposite of staying silent, or merely refusing to cooperate by "going about one's business," as is permitted by *Royer*.[38] In fact, the Court labeled Wardlow's flight as "the consummate act of evasion" and suggestive of wrongdoing.[39]

Next, the Court compared Wardlow's "unprovoked flight" to the "suspicious" behavior of the defendants in *Terry* in order to emphasize that police officers may conduct a stop to investigate ambiguous behavior, such as flight, even if an innocent explanation for the behavior might exist.[40] In *Terry*, the two defendants paced in front of a store and repeatedly peered into its windows.[41] A police officer thought that the defendants were planning a robbery, and that belief provided adequate justification for his stopping and searching the individuals to investigate further.[42] The Court stated that while the defendants' behavior could have had a lawful explanation, the officer's objectively reasonable suspicion permitted him to "detain individuals to resolve the ambiguity."[43]

The Court recognized that its ruling in *Terry* may result in the stopping of innocent people, but it noted that the "*Terry* stop is [a far more] . . . minimal intrusion" than that allowed by the Fourth Amendment, which clearly accepts this risk.[44] A *Terry* stop merely allows a policeman to investigate a situation further.[45] In fact, "if [an] officer does not learn facts rising to the level of probable cause, the individual must be allowed to go on his way."[46] In contrast, however, Officer Nolan recovered a handgun during his search of Wardlow, and consequently arrested him for violating an Illinois firearms statute.[47] Because of Wardlow's presence in a high crime area and due to his unprovoked flight, the Court concluded that Officer Nolan's stop and frisk was in compliance with the Fourth Amendment.[48] Accordingly, the Court reversed

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36. *Id.* at 125 (quoting Florida v. Bostick, 501 U.S. 429 (1991)).
37. *Id.*
38. *Id.*
39. *Id.* at 124.
40. *Id.* at 125.
41. *Id.*
42. *Id.*
43. *Id.*
44. *Id.* at 126.
45. *Id.*
46. *Id.*
47. *Id.*
48. *Id.* at 121.

and remanded the decision of the Supreme Court of Illinois for further proceedings consistent with its opinion.[49]

CONCURRENCE AND DISSENT

Justice Stevens, joined by Justices Souter, Ginsburg, and Breyer, concurred in part and dissented in part with the judgment.[50] First, Justice Stevens concurred on the majority's rejection of a *per se* rule as proposed by petitioner and respondent.[51] Next, however, he dissented as to the Court's evaluation of Officer Nolan's "reasonable suspicion" of Wardlow's criminality. [52] In contrast to the majority, Justice Stevens was not persuaded by Officer Nolan's testimony that there existed adequate reason for Nolan to suspect Wardlow of criminal activity, permitting him to stop and investigate Wardlow.[53]

Justice Stevens supported the majority's rejection of a *per se* rule regarding the propriety of detaining a person who flees after seeing a police officer.[54] The State of Illinois argued that temporary detention should be permitted for anyone who flees at the mere sight of a police officer.[55] On the other hand, respondent asked the Court to adopt a *per se* rule stating that flight after seeing a police officer should never justify a temporary stop.[56] According to Justice Stevens, because varied reasons for flight exist, a *per se* rule would inappropriately categorize such behavior, because it would fail to consider the reasons and circumstances for flight.[57] Justice Stevens noted that flight does not always indicate criminal activity since legitimate reasons for flight, such as one's running to catch a bus, to resume exercise, or to get home for dinner, could coincide with an officer's presence.[58] On the other hand, Justice Stevens conceded that one might run from police because he has recently committed a crime.[59] In Justice Stevens' view, because of the numerous reasons for flight, the Court correctly rejected a *per se* rule that would have treated all flight in the same manner.[60]

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49. *Id.* at 126.
50. *Id.*
51. *Id.*
52. *Id.* at 127.
53. *Id.*
54. *Id.*
55. *Id.* at 126.
56. *Id.*
57. *Id.* at 126-127.
58. *Id.*
59. *Id.* at 129.
60. *Id.*

Justice Stevens then recalled the magnitude of the Court's holding in *Terry*, in which it declared that police intrusion based on less than probable cause was constitutional.[61] In *Terry,* the Court opined that "even a limited search, constitutes a severe, though brief, intrusion upon cherished personal security, and it must be an annoying, frightening, and perhaps humiliating experience."[62] Consequently, the Court justified such stops only in limited circumstances, recognizing merely a "narrowly drawn authority" for when an officer reasonably believes he is dealing with an armed and dangerous individual.[63] Justice Stevens distinguished Wardlow's circumstances from those in *Terry*.[64] In *Terry*, the defendants' repeated pacing, conversing, and searching amounted to suspicious behavior.[65] In contrast, Wardlow's only questionable behavior was fleeing when police were nearby, behavior which "is not at all like a series of acts...which taken together warrant further investigation."[66]

According to Justice Stevens, the Court was required to consider the totality of the circumstances in order to determine whether Officer Nolan had reasonably suspected criminal activity when he stopped and frisked Wardlow.[67] Because a court should look objectively at all surrounding circumstances to evaluate the reasonableness of an officer's stop, a crucial determination is defining what "commonsense conclusions" an officer may derive from an individual's flight.[68] Stevens articulated a number of relevant factors in considering whether one's flight is objectively suspicious, including "the time of day, the number of people in the area, the character of the neighborhood, whether the officer was in uniform...and the person's behavior...."[69]

The State of Illinois argued that behavior such as "unprovoked flight" is "aberrant" and "abnormal," suggesting that all unprovoked flight should justify a stop.[70] The dissent, however, noted that flight does not always indicate criminal guilt.[71] For instance, one may flee from police in an attempt to avoid his name appearing in connection with criminal acts or because he does not wish to deal with the hassle or expense of defending himself.[72]

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61. *Id.* at 127.
62. *Id.* (quoting *Terry*, 392 U.S. at 24-25).
63. *Id.* at 128.
64. *Id.* at 130 n.4.
65. *Id.*
66. *Id.* (quoting *Terry*, 392 U.S. at 22).
67. *Id.* at 126-127.
68. *Id.* at 128.
69. *Id.* at 129-130.
70. *Id.* at 131.
71. *Id.*
72. *Id.*

Furthermore, a person could reasonably infer nearby criminal activity from an officer's presence.[73] In other words, even if an individual runs after seeing the police, "the inference to be drawn may still vary from case to case."[74]

Moreover, substantial evidence shows that it would not be unusual for minorities in high crime neighborhoods to run from police because many such people believe that contact with police could be dangerous, even if those persons are not involved in criminal activity.[75] Justice Stevens cited statistics demonstrating that people who have witnessed abusive police interrogations and have seen the arrests of innocent people are inclined to fear police.[76] Furthermore, Justice Stevens noted that police are aware that minorities fear them and he indicated that evidence of such fear among minorities "is too pervasive to be dismissed as random or rare, and too persuasive to be disparaged as inconclusive or insufficient."[77] Justice Stevens, therefore, proposed that "[b]ecause many factors providing innocent motivations for unprovoked flight are concentrated in high crime areas, the character of [such a] neighborhood arguably makes an inference of guilt less appropriate, rather than more so."[78] Accordingly, a court should consider such factors in its examination of a particular stop.[79]

The second part of Justice Stevens' opinion addresses his disagreement with the majority's determination that Officer Nolan had reasonable suspicion to stop respondent.[80] Justice Stevens did not think that Wardlow's standing on a sidewalk and looking in the officers' direction before running was sufficient to warrant Officer Nolan's stop.[81] Justice Stevens emphasized the importance of examining "the totality of the circumstances" when determining the reasonableness of an officer's stop and pointed to an insufficiency of evidence to support an objectively reasonable belief that Wardlow was involved in criminal activity.[82] Justice Stevens noted that Officer Nolan did not testify as to whether the cars in the police caravan were marked, if anyone else was standing near Wardlow, how fast the officers were driving, or whether the respondent noticed any patrol cars other than Nolan's.[83] Nor did Nolan's testimony establish whether the caravan passed by Wardlow before he ran.[84]

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73. *Id.*
74. *Id.*
75. *Id.* at 132.
76. *Id.* at 135 n.7.
77. *Id.* at 133-134.
78. *Id.* at 139.
79. *Id.*
80. *Id.* at 137.
81. *Id.* at 140.
82. *Id.* at 137.
83. *Id.* at 138.
84. *Id.*

Furthermore, no police officer testified that he knew of any suspected criminal activity near the street address where Wardlow stood.[85]

The majority's decision that Officer Nolan had a reasonable suspicion to stop Wardlow rested on its determination that Wardlow's flight was unprovoked and in a high crime area.[86] According to the dissent, these facts alone were not enough for the State to adequately meet its burden of "articulat[ing] facts sufficient to support reasonable suspicion."[87]

CONCLUSION

The Court claimed that its analysis in *Terry* governed the present case,[88] yet it only partially applied the *Terry* analysis. For example, in its evaluation of Officer Nolan's reasonableness, the Court failed to consider reasonableness in light of all the circumstances, a critical inquiry under the Fourth Amendment.[89] The majority stated that Wardlow's location in a high crime area independently would not warrant a reasonable suspicion of his criminality.[90] Yet, the majority generalized that unprovoked flight indicates evasiveness, which in a high crime neighborhood justifies an officer's belief that one is guilty of criminal behavior.

In *Terry*, the Court carefully parsed out the reasonableness standard and deliberately restricted its holding to specific circumstances.[91] The *Wardlow* majority applied the *Terry* holding without addressing the disparities between that holding's strictures and the present case's circumstances. *Terry* established that a search in absence of probable cause to arrest "must...be strictly circumscribed by the exigencies which justify its initiation" and limited to a search for weapons intended to harm the officer or other citizens.[92] However, the Court in *Wardlow* never addressed whether Officer Nolan was afraid for his own or others' safety. Instead, the Court implied that Wardlow's flight was just as suspicious as the *Terry* suspects' repeated acts of pacing, looking in store windows, and conferring.[93] In *Terry*, the Court emphasized the *repetition* of those acts, which were completed in an identical manner about twenty-four times.[94] The police officer in *Terry* recognized those actions

85. *Id.* at n.16.
86. *Id.* at 139.
87. *Id.* at 140.
88. *Id.* at 123.
89. *Terry*, 392 U.S. at 19.
90. *Wardlow*, 528 U.S. at 124.
91. *See supra* note 15.
92. *Terry*, 392 U.S. at 25-26.
93. *Id.* at 23.
94. *Id.* at 23.

as the casing of a robbery. In contrast, Officer Nolan merely witnessed Wardlow's running from the police caravan. Wardlow's behavior was hardly repetitious and calculated.

Furthermore, the *Terry* Court confined its holding to stop and frisks during which a police officer identified himself as an officer and made reasonable inquiries of the suspect.[95] It emphasized the officer's "tempered act[s]," which were not "undertaken simply as an act of harassment."[96] Specifically, that officer had asked the suspects their names after "he had observed enough to make it quite reasonable to fear that they were armed."[97] The *Wardlow* majority never addressed Officer Nolan's failure to identify himself or to make any inquiries of the petitioner.[98]

A fairer examination would consider flight in the context of its location and circumstances. The Court in *Terry* required more than an officer's good faith when considering whether an officer was reasonable in his belief that he was stopping someone involved in criminal activity.[99] In fact, it demanded that an officer articulate "specific reasonable inferences" drawn from his experience in the line of duty.[100] The Court reiterated this standard in *Wardlow* by stating that an officer must articulate a "particularized suspicion that [one] is committing a crime," in order to be justified in stopping and searching that individual. [101] The Court, however, never required such specificity from Officer Nolan. Officer Nolan's only explanations for suspecting Wardlow of criminal behavior were his location and flight. The Court did not consider the number of cars in the caravan, whether the cars were marked, or how fast the cars were traveling. Surely those factors should have played a role in the Court's evaluation of the petitioner's flight. Perhaps the petitioner ran from police because of fears resulting from living in a high crime neighborhood. If Wardlow had witnessed frequent arrests, many of them involving innocent citizens, his flight from four police cars speeding toward him may not have been unreasonable for one living in his neighborhood. Furthermore, if the cars were unmarked, Wardlow may not have even realized the caravan was comprised of police officers.

While one's flight may indicate criminality, the Court's limited inquiry into the circumstances surrounding Wardlow's flight requires little from police officers in future cases of stops absent probable cause for arrest. The Court's

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95. *Id.* at 30.
96. *Id.* at 28.
97. *Id.*
98. *Illinois v. Wardlow*, 678 N.E. 2d at 66.
99. *Terry*, 392 U.S. at 22.
100. *Id.* at 27.
101. *Wardlow*, 528 U.S. at 124 (quoting Brown v. Texas, 443 U.S. 47 (1979)).

failure to inquire into the specifics for which *Terry* calls, sets a dangerous precedent. By applying *Terry* incompletely, the court opens the door for unjustified police stops.

Although the Court in the present case conspicuously fails to mention the respondent's race, it is obvious that minorities living in high crime neighborhoods are more likely to be subjected to searches on the basis of this holding. Because police are aware that minorities fear them, if police approach a minority citizen who lives in a high crime neighborhood in an intimidating manner - by speeding, using excessive force, or in large numbers - that citizen's running from officers need not indicate criminality. After *Wardlow*, police may stop and frisk without being required to explain their behavior as long as they are patrolling "an area of expected criminal activity" and a person flees when police are nearby.

While searches are imperative to effective law enforcement, standardless searching will strain relations between police officers and those living in high crime communities who are mostly ethnic and racial minorities. When assessing an officer's reasonableness, a court should consider flight in the context of crime and circumstance, instead of automatically assuming that flight indicates a general propensity toward crime. Requiring that officers conduct searches only in response to a reasonable suspicion that one is involved in criminal behavior will prevent many unjustified searches of those who live in high crime neighborhoods, and consequently, will increase citizens' trust in law enforcement.

Summary and Analysis Prepared by:
Lisa Fry