Illinois v. Wardlow (2000)[1]

Richardson, J.

The issue in this case is whether a person's sudden and unprovoked flight from a clearly identifiable police officer, who is patrolling a high crime area, is sufficiently suspicious, without more, to justify a temporary investigatory stop pursuant to *Terry v. Ohio*. We hold that it is not.

I.

On September 9, 1995, Officers Nolan and Harvey were working as officers in the special operations section of the Chicago Police Department. At around noon, the officers were in the last car of an eight-officer, four-car caravan that was headed to a location in the 11th District of Chicago that, according to one of the officers, was an area of high narcotics trafficking. App. 8. Officer Nolan did not recall whether any of the cars were marked or whether any officer was in uniform. App. at 4.

When Officer Nolan drove past 4035 West Van Buren, he observed Mr. Wardlow, an African American male,[2] standing in front of the building holding an opaque bag. According to Nolan, Wardlow was not doing anything illegal. *Id.*, at 5. Then Wardlow looked in their direction and "began running." *Id.*, at 5, 9. The officers chased Wardlow as he ran through a gangway and an alley. The officers did not identify themselves nor ask Wardlow to stop. They also did not observe Wardlow attempt to conceal or discard anything. When Wardlow eventually ran towards them, Nolan jumped out of the car and restrained him. Nolan immediately conducted a frisk and discovered a loaded .38–caliber handgun.[3] J.A. 4-6. Nolan arrested Wardlow at 12:15 pm. People v. Wardlow, 287 Ill.App.3d 367, 369 (appellate court of Illinois, first district, Second Division 1997).

Respondent was charged with weapons offenses. App. at 1. At trial, he brought a motion to suppress, arguing that both the stop and the frisk violated his rights under the Fourth Amendment. The court denied the motion, deciding that the gun was discovered during a lawful stop and frisk. App. at 14. After a stipulated bench trial, Wardlow was convicted of unlawful use of a weapon by a felon and sentenced to two years in the Illinois Department of Corrections. App. 16.

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[1] Thanks so my UCI colleagues for valuable comments, …

[2] Illinois v. Wardlow, 1999 WL 606996 (U.S.), 2 (U.S.Amicus.Brief,1999)
Brief of Amicus Curiae for NAACP Legal Defense and Educational Fund, Inc.

[3] We granted certiorari solely on the question whether the initial seizure was supported by reasonable suspicion. Thus, we express no opinion as to the lawfulness of the frisk independent of the seizure. However, we question whether the frisk was supported by reasonable suspicion since there was no evidence that Wardlow was involved in a drug transaction or that the officers had any information concerning any crimes occurring in the area where they observed Wardlow simply standing in front of a building.

On appeal, the Illinois Appellate Court unanimously reversed Wardlow's conviction. The Court held that because Officer Nolan lacked reasonable suspicion to conduct a *Terry* stop, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968), the gun should have been suppressed. 287 Ill.App.3d 367, 222 Ill.Dec.658, 678 N.E.2d 65 (1997). First, the court found insufficient evidence in the record to determine whether the area where the officers observed Wardlow was high in narcotics trafficking. Instead, the record only supported the conclusion that "the officers were simply driving by, on their way to some unidentified location, when they noticed defendant standing at 4035 West Van Buren." People v. Wardlow, 287 Ill. App. 3d 367, 371, 678 N.E.2d 65, 67 (1997), aff'd, 183 Ill. 2d 306, 701 N.E.2d 484 (1998), rev'd sub nom. Illinois v. Wardlow, 528 U.S. 119, 120 S. Ct. 673, 145 L. Ed. 2d 570 (2000).

Second, the Court also determined that the record was "simply too vague to support the inference" that Wardlow fled in response to an expectation that the police would focus their attention on him. People v. Wardlow, 287 Ill. App. 3d 367, 371, 678 N.E.2d 65, 67 (1997), aff'd, 183 Ill. 2d 306, 701 N.E.2d 484 (1998), rev'd sub nom. Illinois v. Wardlow, 528 U.S. 119, 120 S. Ct. 673, 145 L. Ed. 2d 570 (2000). Thus, the Court concluded, "Because…we find no support in the record for the contention that defendant was in a high crime location, we are left only with the fact of his sudden flight from an area past which police officers were driving. That circumstance alone does not satisfy the requirements for a lawful investigatory stop." People v. Wardlow, 287 Ill. App. 3d 367, 372, 678 N.E.2d 65, 66-67 (1997.

The Illinois Appellate Court noted that flight from the police in a high crime area might give rise to a reasonable suspicion of criminality sufficient to justify stop. However, citing *Brown v. Texas*, 443 U.S. 47, 51, 99 S. Ct. 2637, 2640, 61 L.Ed.2d 357, 362 (1979), the court cautioned that "the high crime area should be a sufficiently localized and identifiable location". "This limitation is necessary to 'assure that an individual's reasonable expectation of privacy is not subject to arbitrary invasions solely at the unfettered discretion of officers in the field,' simply because he or she happens to live in a neighborhood where crime is prevalent." People v. Wardlow, 287 Ill. App. 3d 367, 371, 678 N.E.2d 65, 68 (1997), aff'd, 183 Ill. 2d 306, 701 N.E.2d 484 (1998), rev'd sub nom. Illinois v. Wardlow, 528 U.S. 119, 120 S. Ct. 673, 145 L. Ed. 2d 570 (2000)(citations omitted).

The Illinois Supreme Court affirmed. 183 Ill.2d 306, 233 Ill.Dec. 634, 701 N.E.2d 484 (1998). Although the Court found that the incident occurred in a high crime neighborhood, it concluded that flight in a high crime area is not in and of itself sufficient to give rise to a reasonable suspicion of criminality. 183 Ill.2d, at 310, 233 Ill.Dec. 634, 701 N.E.2d, at 486. The Court noted that while officers are free to approach people and ask them questions, people are free to ignore the officers' request and go about their business. Exercising that right does not give officers a lawful basis for conducting a *Terry* stop. Id. at 311-312, citing *Florida v. Royer*, 460 U.S. 491, 103 S.Ct. 1319, 75 L.Ed.2d 229 (1983). The fact that individuals might choose to run as a means of exercising their right to go about their business does not change the analysis. *Id.* at 312. Finding that no reasonable suspicion existed, the Court held that the stop and arrest violated the Fourth Amendment.

We granted certiorari, 526 U.S. 1097, 119 S.Ct. 1573, 143 L.Ed.2d 669 (1999), and now affirm.

II.

The Fourth Amendment to the United States Constitution guarantees the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const., amend. IV. This provision applies to all seizures of the person, including seizures that involve only a brief detention short of a traditional arrest.

This case involves a brief encounter between a civilian and the police on a public street and thus is governed by the analysis we applied in *Terry v. Ohio.* In *Terry,* we recognized for the first time "that a police officer may in appropriate circumstances and in an appropriate manner approach a person for purposes of investigating possibly criminal behavior even though there is no probable cause to make an arrest," 392 U.S., at 22, 88 S.Ct. 1868. We also approved "a reasonable search for weapons for the protection of the police officer, where he has reason to believe that he is dealing with an armed and dangerous individual." 392 U.S., at 27, 88 S.Ct. 1868.

We recognized the magnitude of our decision permitting an intrusion on the liberty of individuals on less than probable cause. *Id.,* at 11–12, 20, 88 S.Ct. 1868. We noted that stops and frisks in the absence of probable cause "constitutes a severe, though brief, intrusion upon cherished personal security, and … must be an annoying, frightening, and perhaps humiliating experience," *id.,* at 24–25, 88 S.Ct. 1868, that might "inflict great indignity and arouse strong resentment" 392 U.S., at 17, 88 S.Ct. 1868, and will "only exacerbate police-community tensions in the crowded centers of our Nation's cities." *Id.*, at 12, 15. In order to ameliorate some of these concerns, and to protect "the individual's right to personal security free from arbitrary interference by law officers," *United States v. Brignoni–Ponce,* 422 U.S. 873, 878, 878, 95 S.Ct. 2574, 2579, 45 L.Ed.2d 607, 615 (1975), we held that a brief, investigatory stop is reasonable only when officers have a reasonable, articulable suspicion that criminal activity is afoot. 392 U.S., at 30, 88 S.Ct. 1868.

It is the State's burden to present facts sufficient to support a reasonable suspicion of criminal activity. *Brown v. Texas,* 443 U.S., at 52, 99 S.Ct. 2637; *see also Florida v. Royer,* 460 U.S. 491, 500, 103 S.Ct. 1319, 75 L.Ed.2d 229 (1983) (plurality opinion). While the requirement of "reasonable suspicion" is a considerably less demanding standard than preponderance of the evidence, the Fourth Amendment requires at least this minimal level of objective justification for making an investigatory stop. *United States v. Sokolow,* 490 U.S. 1, 7, 109 S.Ct. 1581, 104 L.Ed.2d 1 (1989). Officers must articulate more than an "inchoate and unparticularized suspicion or 'hunch'" of criminal activity. *Terry, supra,* at 27, 88 S.Ct. 1868. Rather, they must "point to specific and articulable facts which . . . lead[] [them] reasonably to conclude . . . that criminal activity may be afoot[,]" 392 U.S. at 21, 30, and that the individual with whom they are interacting is

armed and dangerous. Id. at 27.

We conclude that petitioner has failed to meet its burden. The mere fact that an individual, who is standing in front of a building, takes off running after glancing in the direction of officers does not provide evidence sufficient to give rise to a reasonable suspicion of criminal activity justifying a forcible stop and frisk, even when this behavior occurs in a so-called high crime neighborhood.

III.

Petitioner asks this Court to create one of two alternative per se rules. First, Petitioner argues for a bright-line rule that flight upon noticing a police officer is reasonably suspicious conduct. Petitioner, 8-9. Petitioner acknowledges that individuals have the right to avoid the police when reasonable suspicion or probable cause is absent. However, petitioner contends that "unprovoked flight at the sight of the police is not only unusual, but innately and objectively suspicious behavior that justifies a temporary investigatory stop." Petitioner, 8.

Alternatively, Petitioner argues that even if flight from a clearly identified officer alone is insufficient to give rise to a reasonable suspicion justifying a *Terry* seizure, if this flight occurs in a high crime area, this additional fact should support the "particularized ground necessary to support a reasonable suspicion." Petitioner, 36. We decline to adopt either per se rule.

A.

In *Terry*, this Court recognized that "No right is held more sacred, or is more carefully guarded, by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law." *Terry*, 392 U.S. at 9, quoting *Union Pac.R.Co. v. Botsford*, 141 U.S. 250, 251 (1891). While officers can always approach individuals and pose questions, Royer, 460 U.S. 491(1983), in the absence of reasonable suspicion, "The person approached … need not answer any question put to him; indeed, he may decline to listen to the questions at all and may go on his way. He may not be detained even momentarily without reasonable, objective grounds for doing so; and his refusal to listen or answer does not, without more, furnish those grounds." *Florida v. Royer*, 460 U.S. 491, 497-98 (1983)(citations omitted). Terry at 32-33 (Harlan, J., concurring)("the person addressed [by a police officer] has an equal right to ignore his interrogator and walk away"). *Terry*, at 34 (White, J., concurring)("Absent special circumstances, the person approached [by an officer] may not be detained or frisked but may refuse to cooperate and go on his way"). *Florida v. Bostick*, 501 U.S. 429, 437 (1991)(citations omitted)("We have consistently held that a refusal to cooperate, without more, does not furnish the minimal level of objective justification needed for a detention or seizure.")(citations omitted).

We have never held that the right to avoid police contact turns on the manner in which the individual exercises that right. People are under no obligation to interact with the

police in the absence of the requisite level of suspicion. To the contrary, they are free to avoid contact in any lawful manner.

There are many ways individuals might exercise that right. Petitioner acknowledges that "avoidance of the police is a general factual category that includes a wide spectrum of conduct." Petitioner, 9. For instance, people might avoid eye contact with or sneer at a clearly identifiable officer and that alone "cannot give rise to an inherent suspicion justifying a temporary investigatory stop." Pet, 8-9. Petitioner also recognizes that if a person "turns around or walks away to avoid contact with the police," this too would not justify a *Terry* seizure. Id. at 8-9.

However, petitioner attempts to distinguish between these methods of avoiding police contact and "running away from a clearly identifiable police officer," arguing that "[a] person's unprovoked flight from a police officer is such an extreme reaction that it unquestionably falls outside the boundaries of normal human conduct. Moreover, such a reaction constitutes aberrant behavior whether it takes place in an urban or rural setting." Petitioner, 8. Thus, this latter conduct should, as a matter of law, be considered reasonably suspicious conduct. Pet. at 9. We reject this proposed rule.

Certainly, flight might indicate a guilty conscience. The dissent cites to Proverbs 28:1 to make this point. ("The wicked flee when no man pursueth: but the righteous are as bold as a lion."). As petitioner's speculate, flight might mean that the "person may be, *inter alia*, (1) an escapee from jail; (2) wanted on a warrant, (3) in possession of contraband, (i.e drugs, weapons, stolen goods, etc.); or (4) someone who has just committed another type of crime." Petitioner, 9-10 n.4. It is unsurprising that officers view flight, or any attempt to avoid police contact, as suspicious behavior warranting further investigation. After all, officers are engaged in the "competitive enterprise of ferreting out crime," and this mindset influences their interpretation of ambiguous behaviors. Johnson v. United States, 333 U.S. __, 10, 13-14 (1948).

However, officer suspicions alone do not transform mere hunches into reasonable suspicion justifying a *Terry* seizure. There are myriad innocent reasons why individuals might attempt to avoid police contact, including by fleeing. They may not trust the police, may want to avoid the hassle of being subjected to police questioning, may be late to an appointment, or may believe the presence of police signals trouble and may simply want to quit the area. See Stevens, J. concurring. *See also* Proverbs 22:3. ("A shrewd man sees trouble coming and lies low; the simple walk into it and pay the penalty.") Thus, without more, the inferences to be drawn from flight are simply "inchoate and unparticularized suspicion[s] or 'hunch[es],"' Terry, at 27. Our decision in *Terry* establishes that mere hunches are insufficient to give rise to a reasonable suspicion of criminal activity justifying any restraint on liberty.

To support its per se rule, petitioner asserts that "most citizens, regardless of their personal attitude toward the police, do not react by fleeing at the mere sight" of law enforcement officers. Pet. Br. 8-9. Instead, petitioner characterizes flight as "abnormal" and "an extreme reaction that … unquestionably falls outside the boundaries of normal human conduct." Petitioner's Brief at 8-9. However, these assumptions about the

meaning of flight takes the perspective of privileged communities who have little reason to fear interactions with the police. The situation is much different when viewed from the perspective of less privileged communities. Hence, petitioner's argument concerning the inferences to be drawn from flight reveals a profound blind spot when it comes to relationships between communities of color and the police.

Empirical evidence consistently demonstrates that Black individuals distrust the police and disproportionately bear the brunt of proactive policing practices such as stops and frisks that rarely lead to an arrest. Illinois v. Wardlow, 1999 WL 606996 (U.S.), 16-17 (NAACP,1999) A May 1999 report of the Department of Justice based on a twelve-city survey on community perceptions of law enforcement found that Blacks were twice as likely to be dissatisfied with police practices than were white residents. Illinois v. Wardlow, 1999 WL 606996 (U.S.), 15-16 (NAACP,1999)(citations omitted). Furthermore, a Joint Center for Political and Economic Studies report in April 1996 found that 43% of Blacks believe that "police brutality and harassment of African-Americans are a serious problem" in their communities. Illinois v. Wardlow, 1999 WL 606996 (U.S.), 15-16 (NAACP,1999)(citations omitted). Additionally, a survey of polls conducted across the country suggests that "many black Americans are disaffected and suspicious. They are not confident that the police will be fair. They are not confident that the police will be professional. They are not confident that the police will 'protect and serve.'" Illinois v. Wardlow, 1999 WL 606996 (U.S.), 15-16 (NAACP,1999)(citations omitted). David Cole, No Equal Justice: Race and Class in the American Criminal Justice System 23, 24, 26 (1999) (discussing the mistrust people of color have in the police).

Not only are Black individuals disproportionately stopped and frisked, even when not involved in criminal activity, but they are also more likely to be subjected to harsher treatment than Whites. Illinois v. Wardlow, 1999 WL 606996 (U.S.), 19-20 (NAACP,1999) For instance, the "Christopher Commission's examination of police practices in Los Angeles in the wake of the first Rodney King verdict documented how minority residents were more likely to be subjected to excessive force, longer detentions not resulting in a charge, and to invasive and humiliating police tactics." Illinois v. Wardlow, 1999 WL 606996 (U.S.), 19-20 (NAACP,1999), citing UNITED STATES COMMISSION ON Civil Rights, Racial and Ethnic Tensions in American Communities: Poverty, Inequality and Discrimination 25 (May 1999). The Mollen Commission in New York City also reported that people of color bear the brunt of police brutality. David Cole, No Equal Justice: Race and Class in the American Criminal Justice System 23 (1999). Even police are not immune from these contacts. One Black Philadelphia police officer explained that he steers clear of the New Jersey Turnpike in order to avoid being stopped by state patrol officers.

These experiences are part of our nation's sordid racial history. "A dangerous, humiliating, sometimes fatal encounter with the police is almost a rite of passage for a black man in the United States." Randall Kennedy, Race, Crime, and the Law, 152-53 (1997)(quoting Don Wycliff, Blacks and Blue Power, N. Y. Times, Feb. 8, 1987) *See also* James Baldwin, Nobody Knows My Name: More Notes of a Native Son 66 (1961)("Rare, indeed, is the Harlem citizen, from the most circumspect church member to the most shiftless adolescent, who does not have a long tale to tell of police

incompetence, injustice, or brutality.")(quoted in Brief for the NAACP LDF as Amicus Curiae in Support of Respondent at 11, Illinois v. Wardlow, 528 S. Ct. 673 (2000)). These longstanding experiences of police brutality and harassment explain why the reality of police violence is "etched deep in the collective consciousness of American blacks." Coramae Richey Mann, Unequal Justice 160-61 (1993).

In light of this copious evidence, it is unsurprising that people of color flee from police, regardless of whether they are engaged in wrongdoing. Instead, it is a "prudent lesson of survival on the streets." Kennedy at 153. See also "Editorial, "For Some Running Away Not Suspicious But Rational: Fleeing From A Police Officer Should Not Be The Sole Basis For A Search," Portland Press Herald (Maine), May 11, 1999 (noting that for people who have had or witnesses bad experiences with the police, "running away at the sight of police wouldn't be suspicious behavior, it would be sensible"). As one amici recognizes, in "minority communities in contemporary America, youth and adults are to a staggering degree subjected to stops, frisks, beatings, and in some instances, to lethal injuries, in the absence of any wrongdoing on their part. These tragic patterns of pervasive police misconduct have many harmful consequences, not the least of which is that many minority citizens - and especially young men in inner cities - no longer perceive an approaching police officer as a benign force." Illinois v. Wardlow, 1999 WL 606996 (U.S.), 10 (NAACP Amicus.Brief,1999).[4]

Petitioner's argument concerning the meaning of flight are not grounded in any empirical evidence but rather on their "common sense conclusion[s] about human behavior," Petitioner's Brief at 8-9. We have previously given the impression that it is appropriate for officers and courts to rely upon commonsense conclusions when determining whether behavior is reasonably suspicious. *United States v. Cortez*, 449 U.S. 411, 418 (1981). However, an entire field of inquiry in the social sciences demonstrates that too often, commonsense inferences and judgments about human behavior are incorrect. See, e.g., Amos Tversky & Daniel Kahneman, *Judgment Under Uncertainty: Heuristics and Biases*, 185 SCIENCE 1124, 1124–31 (1974). As such, assumptions about human behavior are not entitled to deference. It is one thing to acknowledge common sense views, but quite another to elevate them to constitutional significance, especially in light of overwhelming evidence that in communities of color, flight from the police is a natural, probable, and reasonable reaction.[5]

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[4] Of course, any student of history understands that for many innocent Blacks, running from White authorities or civilians was a completely sensible and rational reaction. In cities such as Boston, for instance, freed and free Blacks fled bounty hunters who would chase them down and catch them in order to sell them into slavery. Additionally, long before modern tensions between the police and communities of color, the brutality of the slave patrols, which morphed into the KKK and the modern police, gave Blacks good cause to fear contact with the state. (Author's note: The author wishes to thank her colleague Michele Goodwin for raising these important points).

[5] In the absence of empirical evidence, it is tempting to rely upon common sense conclusions about the meaning of ambiguous behaviors, such as fleeing. However, even if our commonsense conclusions are empirically confirmed, that should not end the analysis. Rather, "the

We decline to adopt Petitioner's per se rule. Flight may result from the sincere, reasonable and justifiable fear that many individuals of color, both law-abiding and non law-abiding, have of the police. Additionally, adopting Petitioner's rule would represent a radical departure from our prior precedents. Whether walking or running from the police, individuals are exercising their constitutional right to avoid police contact. Chicago v. Morales, 527 U.S. 41, 53 (1999) (plurality opinion)("We have expressly identified this 'right to remove from one place to another according to inclination' as 'an attribute of personal liberty' protected by the Constitution" (citation omitted)); Florida v. Bostick, 501 U.S. 429, 437 (1991) (noting that that "refusal to cooperate, without more, does not furnish the minimal level of objective justification needed for a detention or seizure")." As one state court put it,

> A prime concern underlying the *Terry* decision is protecting the right of law-abiding citizens to eschew interactions with the police. Authorizing the police to chase down and question all those who take flight upon their approach would undercut this important right and upset the balance struck in *Terry* between the individual's right to personal security and the public's interest in prevention of crime.

Hicks, 241 Neb. at 363–64, 488 N.W.2d at 363–64.

We hold that flight from a clearly identified officer alone cannot serve as the basis for conducting a forcible seizure in the absence of additional facts giving rise to a reasonable suspicion of criminality. Our holding is also consistent with the norms of the Fourth Amendment, which are meant to protect individuals from unjustified encroachments by the state, and also with the majority of jurisdictions which have held that flight alone is insufficient to constitute reasonable suspicion, see, *e.g.*, *State v. Hicks*, 241 Neb. 357, 488 N.W.2d 359 (1992) (flight is not enough); *State v. Tucker*, 136 N.J. 158, 642 A.2d 401 (1994); *People v. Shabaz*, 424 Mich. 42, 378 N.W.2d 451 (1985); *People v. Aldridge*, 35 Cal.3d 473, 674 P.2d 240, 198 Cal.Rptr. 538 (1984); *People v. Thomas*, 660 P.2d 1272 (Colo.1983); *Watkins v. State*, 288 Md. 597, 420 A.2d 270 (1980) versus *State v. Anderson*, 155 Wis.2d 77, 454 N.W.2d 763 (1990) (flight alone is sufficient).

B.

We also reject the alternative per se rule advocated by petitioner that even if flight from a clearly identified officer alone is insufficient to give rise to a reasonable suspicion of criminality, when that flight occurs in a high crime neighborhood, this additional fact provides the particularized suspicion necessary to elevate flight to reasonably suspicious behavior.

Petitioner's proposed rule would make the character of the neighborhood the critical factor in the reasonable suspicion analysis. However, we have consistently held that

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constitutional prohibition of unreasonable searches and seizures assigns to the judiciary some prescriptive responsibility." Smith v. Maryland, 442 U.S. 735, 750, 99 S. Ct. 2577, 2585, 61 L.Ed2d 220 (1979)(Marshall, J. dissenting).

courts must consider "the totality of the circumstances -- the whole picture," *United States v. Cortez*, 449 U.S. 411, 417 (1981), when determining whether a reasonable suspicion exists. *See also United States v. Sokolow*, 490 U.S. 1, 8 (1989) We see no reason to adopt a contrary rule concerning the meaning to accord to conduct in high crime neighborhoods.

The character of the neighborhood has never been the decisive factor in the reasonable suspicion analysis. Brown v. Texas, 443 U.S. 47, 52 (1979). And with good reason. First, we decline to adopt a rule that creates two different levels of citizenship. Simply because an area experiences heightened criminal activity does not mean that individuals who happen to find themselves in these communities should experience fewer freedoms. Embracing petitioner's proposed rule would criminalize entire communities of people simply because they are present in a site of heightened criminal activity. People's presence in such an area by itself should not warrant a suspicion that they are involved in crime. Brown v. Texas, 443 U.S. 47, 52 (1979).[6]

Second, petitioner's proposed rule is based upon assumptions on the meaning of flight in high crime neighborhoods. However, we do not need to rely upon assumptions. The relationship of flight to the likelihood of criminal activity in these neighborhoods has recently been studied in precisely the circumstances raised by this case.

The New York Office of the Attorney General analyzed the stops and frisks conducted by the New York Police Department from 1999 through early 1989. Civil Rights Bureau, Off. of the Att'y Gen., The New York City Police Department's "Stop & Frisk" Practice: A Report from the Office of the Attorney General, iv (December 1, 1999). Of relevance are their findings related to stops conducted after suspects fled upon noticing the police.

In general, when police made stops of individuals who fled upon noticing the police, the ratio of stops to arrests was 15.8 to 1. However, when these stops occurred in *high crime neighborhoods*, the stop to arrest ratio was 45 to 1.[7] We recognize that these abysmal hit rates, the rate at which officers are likely to find evidence leading to an arrest, occurred in New York City and that officers in other jurisdictions may be better at determining when an individual's flight from the police is the result of involvement in criminal activity. However, in balancing the right of citizens to remain free from unjustified encroachments on their liberty against the need for effective law enforcement, the choice is an easy one.

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[6] Furthermore, equating flight in high crime neighborhoods upon noticing the police with criminality would "substantially shape the totality of a person's daily life and consciousness. Laws that force such undertakings on individuals may properly be called 'totalitarian' and the right to privacy exists to protect against them." 102 Harvard L. Rev . 737, 801-2 (1989).

[7] Author note: These ratios are from the analysis of the OIG report data conducted by Professors Tracey Meares and Bernard Harcourt. Tracey L. Meares & Bernard E. Harcourt, Foreword: Transparent Adjudication and Social Science Research in Constitutional Criminal Procedure, 90 J. Crim. L. & Criminology 733, 788 - 98 (2000).

In the face of these hit rates, flight in a high crime neighborhood upon noticing the police is not sufficient evidence to give rise to a reasonable suspicion of criminality.

We do not suggest that the character of a neighborhood is an irrelevant consideration. As Professor Wayne R. LaFave notes in his treatise, "the area in which the suspect is found is itself a highly relevant consideration." W.R. LaFave, *Search and Seizure*, "Police Observations of Other Suspicious Circumstances," Sec. 9.4(f), 189 (West 1996). However, he cautions that "[u]nspecific assertions that there is a crime problem in a particular area should be given little weight, at least compared to more particular indications that a certain type of criminal conduct of the kind specified is prevalent in that area." *Id.* at 189-190." Thus, while the nature of the neighborhood might cast a different light upon conduct, it is simply one factor to consider in the totality of the circumstances analysis. However, it should never be the decisive factor.

To the extent that the character of a neighborhood is a relevant consideration, we provide some guidelines to aid lower courts in their analysis of this criteria. First, relying upon a bare bones statement that an area is high in criminal activity is dangerous because officers' judgments might be influenced by stereotypes about race and class. There is the risk that similarly situated neighborhoods will be more likely to be characterized as high in crime when the inhabitants are predominantly people of color. The high crime neighborhood moniker is often used by police as shorthand for communities of color and assumptions about the crime-ridden nature of these neighborhoods rather than actual empirical proof. Hence, we advise courts not to simply rely on the testimony of the officer, but to require proof of 1) the bounds of the neighborhood, 2) the type of crime that is occurring in the neighborhood, 3) why the amount of crime occurring should be considered high, and 4) other data supporting their conclusions.

Second, we urge courts to be cognizant of the fact that pro-active police activity can create "high crime areas," resulting in a self-fulfilling prophecy effect. In other words, through their activity, police can create the high crime neighborhoods that then justifies their encroachments upon individual liberty and privacy. For instance, if officers patrol urban, majority-minority neighborhoods for drug activity more often than college campuses and Wall Street, they are more likely to make arrests in those neighborhoods, thereby earning the neighborhood the high crime designation.

Third, even if sufficient evidence is provided by the State that a particular neighborhood is "high in crime," this alone does not provide the individualized suspicion necessary to believe that a *particular individual* is engaged in criminal activity. A contrary finding would subject everyone in the neighborhood, innocent and guilty alike, to decreased privacy protections under the Fourth Amendment. Such a result is untenable.

Fourth, courts should consider the nature of the crimes taking place in a particular neighborhood. As one commentator importantly acknowledged, "unless there is some identity between the prevalent crime and the crime suspected, a 'crime-prone' neighborhood does not increase the probability that a particular crime is being committed…. In a state where consensual sodomy is illegal, for example, a gay

community may be demonstrably 'crime-prone,' but this is irrelevant if the crime suspected is a drug deal. Conversely, in a community that has a low overall crime rate but a disproportionate number of rapes, police may consider that pattern when investigating possible rape." Jerome Skolnick, JUSTICE WITHOUT TRIAL 218 (2d ed. 1975)(citations omitted).

Fifth, even if an area is appropriately considered high in crime, this should not relax the reasonable suspicion standard. Brown v. Texas, 443 U.S. 47, 52 (1979) ("The fact that appellant was in a neighborhood frequented by drug users, standing alone, is not a basis for concluding that appellant himself was engaged in criminal conduct."). In other words, conduct which would not be sufficiently suspicious in an affluent community should not be viewed as reasonably suspicious in another simply because of the high crime neighborhood designation.[8] It is simply one factor among many to consider.

A final reason we reject petitioner's per se rule is that if flight in a "high crime neighborhood" is sufficient in and of itself to give rise to a reasonable suspicion of criminal activity, officers will have incentives to create the very reasonable suspicion that is meant to limit their discretion.

If individuals choose to exercise their right to avoid the police, Petitioners acknowledge that officers find this behavior to be suspicious. In Michigan v. Chesternut, 486 U.S. 567, 575–76 (1988), we held that officers can pursue individuals who arouse their suspicions without the necessity of reasonable suspicion or probable cause. In that case, officers in a patrol car decided to pursue Chesternut after he ran away upon observing them. Once they caught up to him, the officers drove alongside him for an unspecified amount of time. Id. at 569. Eventually they developed probable cause to arrest him for drug possession. Chesternut challenged the police pursuit, arguing that it constituted a seizure unsupported by the requisite level of suspicion. However, we held that no seizure had occurred. Instead, we concluded that

> the police conduct involved here would not have communicated to the reasonable person an attempt to capture or otherwise intrude upon respondent's freedom of movement. . . . While the very presence of a police car driving parallel to a running pedestrian could be somewhat intimidating, . . . [it] was not "so intimidating" that respondent could reasonably have believed that he was not free to disregard the police presence and go about his business.

Id. at 575-76. Thus, our decision in *Chesternut* already permits officers to follow individuals, either in their patrol car or on foot, based solely on a mere hunch of criminality.

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[8] *See* Margaret Raymond, Down on the Corner, Out in the Street: Considering the Character of the Neighborhood in Evaluating Reasonable Suspicion, 60 Ohio St. L.J. 99, 100–01 (1999)(noting cases where "standing on a street corner or sitting in a parked car have been held to amount to reasonable suspicion that criminal activity is afoot.").

If we now hold that flight upon noticing the police in a high crime neighborhood gives rise to a reasonable suspicion of criminal activity, then in so-called high crime neighborhoods, officers can create a reasonable suspicion of criminality in order to act on their hunches simply by goading people into fleeing. Since people of color are more likely to believe that interactions with the police are dangerous, *see infra*, it will be much easier for police to scare those individuals into running away, regardless of whether they are involved in criminal activity.

Furthermore, in California v. Hodari D, 499 U.S. 621 (1991), we held that shows of authority on the part of officers do not, in and of themselves, constitute a seizure requiring reasonable suspicion or probable cause. Thus, officers might engage in aggressive shows of authority such as shouting at people to halt or using their lights and sirens to pursue individuals walking down the street in order to push people into fleeing. The more aggressive they are, the more likely people might be to flee. This demonstrates the danger of creating a rule that fleeing from the police in high crime neighborhoods is sufficient to give rise to a reasonable suspicion of criminal activity justifying a forcible seizure. Our prior jurisprudence gives officers the unfettered discretion to provoke flight and then to use that flight to justify a *Terry* seizure. In high crime neighborhoods, officers could turn their inchoate hunches into reasonable suspicion to conduct a seizure simply by engaging in aggressive shows of force that scare people into fleeing. If they flee, then officers have successfully created reasonable suspicion to conduct a forcible seizure. This result is untenable and would exacerbate the already fraught relationships that exist between police and communities of color.

Indeed, the tactic of engaging in aggressive shows of authority is encouraged by some police departments. The Chicago Police Department began a special operation known as Operation Clean Sweep. Specialized units were created to carry out its mandate to crack down on the drug trade. One such unit, known as "jump-out" squads, involved teams of officers pulling up to corners known for drug activity and jumping out of their cars, which were often unmarked. Individuals would flee and those who were not fast enough were subjected to questioning and searches.[9]

Furthermore, while we have previously acknowledged the importance of bright line rules in Fourth Amendment jurisprudence, New York v. Belton, 453 U.S. 454 (1981) Petitioner's rule raises more questions than it answers. Under its proposed rule, police and courts would have to determine whether the individual's behaviors indicate the exercise of their right to avoid the police, or instead is "aberrant" and "innately suspicious." Pet. Brief. 9. Does walking away quickly constitute flight? How about a slow jog? Did the individual notice the police? Was this fact what precipitated their flight? Petitioner's proposed rule is anything but bright.

In sum, as we have stated on many occasions, the totality of the circumstances must be taken into account in determining whether a reasonable suspicion of criminality exists. "The concept of reasonable suspicion ... is not readily, or even usefully, reduced to a neat

[9] Author Note: Lenese Herbert, "Can't You See What I'm Saying?," at 137. This article was written after the *Wardlow* decision.

set of legal rules." U.S. v. Sokolow, 490 U.S. 1, 7-8, 109 S.Ct. 1581, 104 L.Ed.2d 1 (1989). Rather, it must be determined by "the totality of the circumstances—the whole picture," U.S. v. Sokolow, 490 U.S. 1, 7-8, 109 S.Ct. 1581, 104 L.Ed.2d 1 (1989)(citation omitted).

IV.

It is the State's burden to present facts sufficient to support a reasonable suspicion of criminal activity. *Brown v. Texas,* 443 U.S., at 52, 99 S.Ct. 2637. The State falls far short of meeting its burden.

Officers Nolan and Harvey were not responding to a call for service investigating the particular area where Mr. Wardlow was found, or looking for a particular suspect. App 24, 25. Instead, at around noon on September 9, 1995, they were part of a four-car caravan patrol team that was heading to an undisclosed location in the 11th District of Chicago where they expected to encounter a large number of people, including drug dealers, customers and lookouts. App. 8. On their way, officers Nolan and Harvey observed Mr. Wardlow simply standing in front of a building at 4035 West Van Buren, holding a white opaque bag under his arm. Mr. Wardlow exhibited no behavior evidencing involvement in criminal activity. None of these facts give rise to a reasonable suspicion of criminality. Wardlow was simply standing in front of a building holding a bag. The fact that Wardlow ran from the area does not change our conclusion.

First, no facts were presented to explain why Wardlow chose to run. Officer Nolan testified that Wardlow "looked in our direction and began fleeing." App. 9. However, this conclusion provides no basis for concluding that Wardlow saw the officers or even knew that they were the police. Nolan was in the last car of a 4-car caravan and Wardlow did not flee in response to the first three cars. Additionally, Officer Nolan could not recall whether he was in a marked car or whether he and his partner were in uniform. App. at 4. There was also no evidence about whether any of the other cars were marked or whether the other officers were in uniform. Thus, there is insufficient evidence about whether or not Wardlow's flight was based upon him noticing the police.

Second, whether or not an area is high in crime is a factual question. We agree with the Illinois Appellate Court's conclusion that the record is "too vague to support the inference that defendant was in a location with a high incidence of narcotics trafficking." *Id*

Petitioner argues that in the instant case, the "'high crime area' is not arbitrary or ephemeral because it can be quantitatively verified." Petitioner's brief at 7, 38. While that may be true, the record provides no support for this conclusion. The state failed to introduce any evidence to quantitatively verify or to identify the location or boundaries of the so-called high crime neighborhood known for narcotics trafficking. App. 32. Without evidence, it is too easy to rely on stereotypes of neighborhoods based on the race and class of who happen to live in a particular neighborhood.

In sum, the evidence presented by the State falls short of showing a reasonable suspicion that Mr. Wardlow was involved in criminal activity. Officer Nolan's testimony that he was standing in front of a building holding a bag and that he fled after looking in their direction does not provide specific and articulable facts to justify the *Terry* seizure. Rather, Officer Nolan was simply acting on a hunch. Where, as here, the police conduct a stop in the absence of objective evidence giving rise to a reasonable suspicion of criminal activity, "the risk of arbitrary and abusive police practices exceeds tolerable limits." *Brown v. Texas*, 443 U.S. at 52, 99 S. Ct. at 2641, 61 L.Ed.2d at 363. We conclude that Officer Nolan was not justified in suspecting that Wardlow was involved in criminal activity, and, therefore, in investigating further. Since Officer Nolan had no constitutional justification for seizing Mr. Wardlow and conducting a search, we affirm the Illinois Supreme Court's decision to reverse the trial court's denial of Respondent's motion to suppress evidence. The gun that was found should have been suppressed as the product of an unconstitutional seizure. *Wong Sun v. United States*, 371 U.S. 471, 488, 83 S.Ct. 407, 417, 9 L.Ed.2d. 441, 455 (1963).

It is so ordered.