

CIRCUMSTANCES FOUND TO JUSTIFY POLICE STOPS

Two recent cases, one from the U.S. Supreme Court and one from the Vermont Supreme Court, have dealt with circumstances under which police officers may stop and question potential suspects. Both cases revealed divided courts and involved the same legal standards for making a stop, but the cases involved very different facts. The U.S. Supreme Court case, a five to four decision, is *Illinois v. Wardlow*, No. 98-1036 (Jan. 12, 2000). Two police officers were driving in a police car caravan which was heading toward an area in Chicago known for heavy drug trafficking, in order to investigate drug transactions. One of the officers saw Mr. Wardlow standing next to a building holding an opaque bag. Mr. Wardlow looked in the direction of the officers and then fled, running through an alley. The officers were able to follow him and corner him on the street, where they stopped him and conducted a pat-down search. They found a handgun with live ammunition in the bag he was carrying, and arrested him.

The question on appeal to the U.S. Supreme Court was whether the officers had reasonable suspicion enough to justify an investigative stop, as required by the case of *Terry v. Ohio*, 392 U.S. 1 (1968). In order for the police to stop a person, *Terry* requires the officer to have a “reasonable, articulable suspicion that criminal activity is afoot.” A stop is not justified if a person simply happens to be in an area of expected criminal activity. *Brown v. Texas*, 443 U.S. 47 (1979). Nor is a stop justified if a person fails to cooperate with the police when they approach him, but simply ignores them and goes about his business. *Florida v. Royer*, 460 U.S. 491 (1983). However, in this case, it was Mr. Wardlow’s flight that attracted the officers’ attention. The Court observed, “. . . nervous, evasive behavior is a pertinent factor in determining reasonable suspicion. [citations omitted] Headlong flight – wherever it occurs – is the consummate act of evasion . . . the determination of reasonable suspicion must be based on commonsense judgments and inferences about human behavior.” The five-justice majority ruled that the totality of the circumstances in this case created a reasonable suspicion of criminal activity and thus justified the stop. Here, the circumstances involved both Mr. Wardlow’s presence in a high-crime area and his flight when he saw the officers. The four dissenting justices disagreed that these circumstances were sufficient to rise to the level of reasonable suspicion.

The Vermont Supreme Court case, *State v. Kindle*, No. 99-041 (Jan. 14, 2000), was a three to two decision. In this case, two Burlington police officers were stopped at a red light at an intersection at 2:10 a.m. They saw a car go through the intersection and, as it passed them, a steady red beam of light passed across the windshield of their cruiser. They thought the beam resembled a laser-sighting device sometimes used for aiming a gun, so they pursued the car and stopped it. They patted down the occupants of the car and discovered that the red beam had come from a hand-held laser pointer used as a visual aid for presentations, not a gun sight. They also saw that the driver, Mr. Kindle, appeared to be intoxicated, so they arrested him for driving under the influence.

The case was appealed on the question whether the officers had a reasonable suspicion to stop the car. Vermont’s formulation of the legal rule for a vehicle stop is “whether, looking at the entire picture, police officers could reasonably surmise that occupants of [the] vehicle they stopped were engaged in unlawful activity.” *State v. Kettlewell*, 149 Vt. 331, 335 (1987). As in the *Wardlow* case discussed above, the justices disagreed on whether this entire picture justified the stop. Three of the justices ruled that it did. They observed that it was reasonable for the officers to conclude that an occupant of the car might have been pointing a firearm, potentially threatening not only the officers’ safety but that of others. Noting that “laser-sighting devices are a part of the gun culture” and that there have been attempts to regulate or ban certain uses of them in other parts of the country, the Court concluded that the stop was lawful. The two dissenting justices believed that the fact that the car moved away from the officers and down the road was inconsistent with the actions of a person pointing a firearm, and therefore that it was unreasonable for the officers to stop the car.

Both cases reaffirm the “totality of the circumstances” or, stated another way, the “entire picture” rule that applies to police stops. Although it is very difficult, if not impossible, for officers on the street to predict how a court will rule in a close case, officers must continue to use their common sense and take all the circumstances into account when making the rapid decision whether or not to stop a person.