EMERYVILLE POLICE DEPARTMENT
PROFESSONIAL
SERVICES DIVISION

20-13 Training Bulletin

To: Officers and Dispatchers

From: Officer M. Shepherd

Date: 8/5/20

Re: Foot Pursuits

A foot pursuit is a skill used by law enforcement that involves pursuing a fleeing offender actively trying to evade capture. Like all skills, refresher training is necessary for officers and dispatchers to maintain proficiency in the application. Teams shall review EPD's Foot Pursuit policy 428 and review the two attached resources on foot pursuits:

- FBI's Law Enforcement Officers Killed and Assaulted Report (LEOKA)
- Standing case laws Illinois v. Wardlow and California v. Hodari (See attached)

As we experience the constantly changing profession of policing, it is incumbent upon all to conduct ongoing training to prepare themselves, prior to engaging in a foot pursuit and to effectively articulate their justification if you are involved in one.

Supervisors, please review and discuss with patrol and dispatch teams.

FBI LEOKA Website
https://ucr.fbi.gov/leoka/2019/topic-pages/officers-feloniously-killed

Thank you,

Officer M. Shepherd #351
Professional Service
Division Emeryville Police Department

United States Supreme Court
ILLINOIS v. WARDLOW (2000)

Respondent Wardlow fled upon seeing police officers patrolling an area known for heavy narcotics trafficking. Two of the officers caught up with him, stopped him and conducted a protective pat-down search for weapons. Discovering a .38-caliber handgun, the officers arrested Wardlow. We hold that the officers' stop did not violate the Fourth Amendment to the United States Constitution.

On September 9, 1995, Officers Nolan and Harvey were working as uniformed officers in the special operations section of the Chicago Police Department. The officers were driving the last car of a four car caravan converging on an area known for heavy narcotics trafficking in order to investigate drug transactions. The officers were traveling together because they expected to find a crowd of people in the area, including lookouts and customers.

As the caravan passed 4035 West Van Buren, Officer Nolan observed respondent Wardlow standing next to the building holding an opaque bag. Respondent looked in the direction of the officers and fled. Nolan and Harvey turned their car southbound, watched him as he ran through the gangway and an alley, and eventually cornered him on the street. Nolan then exited his car and stopped respondent. He immediately conducted a protective pat-down search for weapons because in his experience it was common for there to be weapons in the near vicinity of narcotics transactions. During the frisk, Officer Nolan squeezed the bag respondent was carrying and felt a heavy, hard object similar to the shape of a gun. The officer then opened the bag and discovered a .38-caliber handgun with five live rounds of ammunition. The officers arrested Wardlow.

The Illinois trial court denied respondent's motion to suppress, finding the gun was recovered during a lawful stop and frisk. App. 14. Following a stipulated bench trial, Wardlow was convicted of unlawful use of a weapon by a felon. The Illinois Appellate Court reversed Wardlow's conviction, concluding that the gun should have been suppressed because Officer Nolan did not have reasonable suspicion sufficient to justify an investigative stop pursuant to Terry v. Ohio, 392 U. S. 1 (1968). 287 Ill. App. 3d 367, 678 N. E. 2d 65 (1997).

The Illinois Supreme Court agreed. 183 Ill. 2d 306, 701 N. E. 2d 484 (1998). While rejecting the Appellate Court's conclusion that Wardlow was not in a high crime area, the Illinois Supreme Court determined that sudden flight in such an area does not create a reasonable suspicion justifying a Terry stop. Id., at 310, 701 N. E. 2d, at 486. Relying on Florida v. Royer, 460 U. S. 491 (1983), the court

explained that although police have the right to approach individuals and ask questions, the individual has no obligation to respond. The person may decline to answer and simply go on his or her way, and the refusal to respond, alone, does not provide a legitimate basis for an investigative stop. 183 Ill. 2d, at 311-312, 701 N. E. 2d, at 486-487. The court then determined that flight may simply be an exercise of this right to "go on one's way," and, thus, could not constitute reasonable suspicion justifying a Terry stop. Id., at 312, 701 N. E. 2d, at 487.

The Illinois Supreme Court also rejected the argument that flight combined with the fact that it occurred in a high crime area supported a finding of reasonable suspicion because the "high crime area" factor was not sufficient standing alone to justify a Terry stop. Finding no independently suspicious circumstances to support an investigatory detention, the court held that the stop and subsequent arrest violated the Fourth Amendment. We granted certiorari, 526 U. S. ___ (1999), and now reverse. 1

This case, involving a brief encounter between a citizen and a police officer on a public street, is governed by the analysis we first applied in Terry . In Terry , we held that an officer may, consistent with the Fourth Amendment, conduct a brief, investigatory stop when the officer has a reasonable, articulable suspicion that criminal activity is afoot. Terry , supra, at 30. While "reasonable suspicion" is a less demanding standard than probable cause and requires a showing considerably less than preponderance of the evidence, the Fourth Amendment requires at least a minimal level of objective justification for making the stop. United States v. Sokolow, 490 U. S. 1, 7 (1989). The officer must be able to articulate more than an "inchoate and unparticularized suspicion or `hunch' " of criminal activity. Terry , supra, at 27. 2

Nolan and Harvey were among eight officers in a four car caravan that was converging on an area known for heavy narcotics trafficking, and the officers anticipated encountering a large number of people in the area, including drug customers and individuals serving as lookouts. App. 8. It was in this context that Officer Nolan decided to investigate Wardlow after observing him flee. An individual's presence in an area of expected criminal activity, standing alone, is not enough to support a reasonable, particularized suspicion that the person is committing a crime. Brown v. Texas, 443 U. S. 47 (1979). But officers are not required to ignore the relevant characteristics of a location in determining whether the circumstances are sufficiently suspicious to warrant further investigation. Accordingly, we have previously noted the fact that the stop occurred in a "high crime area" among the relevant contextual considerations in a Terry analysis. Adams v. Williams, 407 U. S. 143, 144 and 147-148 (1972).

In this case, moreover, it was not merely respondent's presence in an area of heavy narcotics trafficking that aroused the officers' suspicion but his unprovoked flight upon noticing the police. Our cases have also recognized that nervous, evasive behavior is a pertinent factor in determining reasonable suspicion. United States v. Brignoni-Ponce, 422 U. S. 873, 885 (1975); Florida v. Rodriguez, 469 U. S. 1, 6 (1984) (per curiam); United States v. Sokolow, supra, at 8-9. Headlong flight--wherever it occurs--is the consummate act of evasion: it is not necessarily indicative of wrongdoing, but it is certainly suggestive of such. In reviewing the propriety of an officer's conduct, courts do not have available empirical studies dealing with inferences drawn from suspicious behavior, and we cannot reasonably demand scientific certainty from judges or law enforcement officers where none exists. Thus, the determination of reasonable suspicion must be based on commonsense judgments and inferences about human behavior. See United States v. Cortez , 449 U. S. 411, 418 (1981). We conclude Officer Nolan was justified in suspecting that Wardlow was involved in criminal activity, and, therefore, in investigating further.

Such a holding is entirely consistent with our decision in Florida v. Royer , 460 U. S. 491 (1983), where we held that when an officer, without reasonable suspicion or probable cause, approaches an individual, the individual has a right to ignore the police and go about his business. Id ., at 498. And any "refusal to cooperate, without more, does not furnish the minimal level of objective justification needed for a detention or seizure." Florida v. Bostick , 501 U. S. 429, 437 (1991). But unprovoked flight is simply not a mere refusal to cooperate. Flight, by its very nature, is not "going about one's business"; in fact, it is just the opposite. Allowing officers confronted with such flight to stop the fugitive and investigate further is quite consistent with the individual's right to go about his business or to stay put and remain silent in the face of police questioning.

Respondent and amici also argue that there are innocent reasons for flight from police and that, therefore, flight is not necessarily indicative of ongoing criminal activity. This fact is undoubtedly true, but does not establish a violation of the Fourth Amendment. Even in Terry , the conduct justifying the stop was ambiguous and susceptible of an innocent explanation. The officer observed two individuals pacing back and forth in front of a store, peering into the window and periodically conferring. Terry , 392 U. S., at 5 -6. All of this conduct was by itself lawful, but it also suggested that the individuals were casing the store for a planned robbery. Terry recognized that the officers could detain the individuals to resolve the ambiguity. Id., at 30.

In allowing such detentions, Terry accepts the risk that officers may stop innocent people. Indeed, the Fourth Amendment accepts that risk in connection with more drastic police action; persons arrested and detained on probable cause to believe they have committed a crime may turn out to be innocent. The Terry stop is a far more minimal intrusion, simply allowing the officer to briefly investigate further. If the officer does not learn facts rising to the level of probable cause, the individual must be allowed to go on his way. But in this case the officers found respondent in possession of a handgun, and arrested him for violation of an Illinois firearms statute. No question of the propriety of the arrest itself is before us.

United States Supreme Court
California v. Hodari D., 499 U.S. 621 (1991)

Syllabus : A group of youths, including respondent Hodari D., fled at the approach of an unmarked police car on an Oakland, California, street. Officer Pertoso, who was wearing a jacket with "Police" embossed on its front, left the car to give chase. Pertoso did not follow Hodari directly, but took a circuitous route that brought the two face to face on a parallel street. Hodari, however, was looking behind as he ran and did not turn to see Pertoso until the officer was almost upon him, whereupon Hodari tossed away a small rock. Pertoso tackled him, and the police recovered the rock, which proved to be crack cocaine. In the juvenile proceeding against Hodari, the court denied his motion to suppress the evidence relating to the cocaine. The State Court of Appeal reversed, holding that Hodari had been "seized" when he saw Pertoso running towards him; that this seizure was "unreasonable" under the Fourth Amendment, the State having conceded that Pertoso did not have the "reasonable suspicion" required to justify stopping Hodari; and therefore that the evidence of cocaine had to be suppressed as the fruit of the illegal seizure.

Held: The only issue presented here -- whether, at the time he dropped the drugs, Hodari had been "seized" within the meaning of the Fourth Amendment -- must be answered in the negative. To answer this question, this Court looks to the common law of arrest. To constitute a seizure of the person, just as to constitute an arrest -- the quintessential "seizure of the person" under Fourth Amendment jurisprudence -- there must be either the application of physical force, however slight, or, where that is absent, submission to an officer's "show of authority" to restrain the subject's liberty. No physical force was applied in this case, since Hodari was untouched by Pertoso before he dropped the drugs. Moreover, assuming that Pertoso's pursuit constituted a "show of authority"

enjoining Hodari to halt, Hodari did not comply with that injunction, and therefore was not seized until he was tackled. Thus, the cocaine abandoned while he was running was not the fruit of a seizure, *cf. Brower v. Inyo County,* 489 U. S. 593, 489 U. S. 597; *Nester v. United States,* 265 U. S. 57, 265 U. S. 58, and his motion to exclude evidence of it was properly denied. *United States v. Mendenhall,* 446 U. S. 544, 446 U. S. 554 (opinion of Stewart, J.), and its progeny, distinguished. Pp. 499 U. S. 623-629.