

# ILLINOIS v. WARDLOW

No. 98-1036, 2000 WL 16315 (U.S. JAN. 12, 2000)

## INTRODUCTION

Over the past few years the United States Supreme Court has decided several contentious Fourth Amendment issues. In interpreting the Constitution, the Supreme Court has developed several exceptions to the Fourth Amendment's warrant requirement.<sup>1</sup> Perhaps the most controversial interpretation came in the landmark case *Terry v. Ohio*.<sup>2</sup> The key concept in *Terry* is that an officer may do a protective pat-down search, or *Terry* stop, of a person who the officer believes, based on a reasonable articulable suspicion, is planning, or is part of, a crime.<sup>3</sup> Reasonable articulable suspicion is a level of suspicion below probable cause. Consequently, the officer does not need to obtain a warrant to conduct a pat-down under *Terry*. The question of whether reasonable suspicion exists has created the most debate. In *Illinois v. Wardlow*,<sup>4</sup> the Court reviewed whether flight of an unprovoked bystander in a high crime area (drug area) created enough reasonable suspicion to allow Chicago police officers to conduct a protective pat-down search under *Terry*. The Court answered this question in the affirmative.<sup>5</sup>

## FACTS OF THE CASE

On September 9, 1995, two uniformed police officers, Officers Nolan and Harvey, were part of a four-car caravan en route to an area

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1. See *Maryland v. Wilson*, 519 U.S. 408, 414-15 (1997) (asserting that asking a passenger to exit a vehicle is minimally intrusive when measured against the safety of the officer); *California v. Acevedo*, 500 U.S. 565, 573 (1991) (holding that the Fourth Amendment does not require the officer to obtain a warrant to search a sack in a moveable car even though the officer lacked probable cause to search the car). See generally *Pennsylvania v. Mimms*, 434 U.S. 106, 111 (1977) (finding that under *Terry*, officers have an automatic right to ask a driver to exit the car).

2. 392 U.S. 1 (1968).

3. See *id.* at 24 (noting the unreasonableness of disallowing an officer to frisk a person, whom he has reasonable suspicion to believe has a weapon, in lieu of obtaining a warrant).

4. No. 98-1036, 2000 WL 16315 (U.S. Jan. 12, 2000).

5. *Id.* at 5.

of Chicago known for heavy narcotics trafficking.<sup>6</sup> As part of a special operations section of the Chicago Police Department, the officers were investigating drug transactions in the area.<sup>7</sup> The officers in charge of the operation expected to find a crowd of people engaged in selling, buying, and watching for police.<sup>8</sup>

As the caravan approached 4035 West Van Buren Street, Officer Nolan noticed William "Sam" Wardlow standing near a building and holding an opaque bag.<sup>9</sup> When Wardlow noticed the police caravan, he immediately began to run in the opposite direction.<sup>10</sup> The officers pursued and watched Wardlow dart down a gangway and then down an alley.<sup>11</sup> The officers eventually cornered Wardlow on the street.<sup>12</sup> Once cornered, Officer Nolan performed a protective pat-down search of Wardlow.<sup>13</sup> Officer Nolan testified that, in his experience, narcotics transactions and weapons are commonly found in the same place.<sup>14</sup> During the pat-down, Officer Nolan squeezed the bag that Wardlow was carrying.<sup>15</sup> Officer Nolan testified that he determined that the object he felt in the bag felt like a weapon.<sup>16</sup> When Officer Nolan opened the bag, he revealed a .38-caliber handgun containing several rounds of ammunition.<sup>17</sup> Wardlow was arrested and charged with unlawful use of a weapon by a felon.<sup>18</sup>

At Wardlow's first trial the trial judge denied a motion to suppress

6. See *People v. Wardlow*, 701 N.E.2d 484, 485 (Ill. 1998) (describing the circumstances surrounding Wardlow's arrest).

7. See *id.* (noting the special nature of the police operation in the area of the arrest).

8. See *Wardlow*, 2000 WL 16315, \*2 (explaining why the Chicago police department elected to approach the area of the arrest in the manner that they did).

9. See *Wardlow*, 701 N.E.2d at 485 (citing Officer Nolan's description of Wardlow's actions).

10. See *id.* (describing the actions taken by Wardlow as he ran in the opposite direction of the police).

11. *Id.*

12. See *Illinois v. Wardlow*, 2000 WL 16315, at \*2 (U.S. Jan. 12, 2000) (noting Officer Nolan's description of the scene at trial).

13. See *Terry*, 392 U.S. at 27 (authorizing officers to conduct a protective pat-down search of a suspected criminal).

14. See *Wardlow*, 2000 WL 16315, at \*2 (stating Officer Nolan's personal belief about the relationship between narcotics and weapons).

15. See *id.* (recounting Officer Nolan's actions when he and Officer Harvey had cornered Wardlow). But see *Terry*, 392 U.S. at 29 (authorizing officers to conduct a pat-down of the outer clothing of the suspect).

16. See *id.* at \*2 (noting Officer Nolan's belief that the object he felt was a gun).

17. See *Wardlow*, 701 N.E.2d at 485 (describing Officer Nolan's actions after he determined the object in the bag to be a gun).

18. See 720 ILL. COMP. STAT. 5/24-1.1 (West 1961) (making possession of a firearm by a felon a criminal offense).

the gun as evidence.<sup>19</sup> The court found that the gun was discovered during a lawful stop and frisk.<sup>20</sup> Wardlow was convicted at the conclusion of a stipulated bench trial.<sup>21</sup> On appeal, the Illinois Appellate Court reversed the conviction, finding that the gun should have been suppressed.<sup>22</sup> The appellate court concluded that Officer Nolan did not have reasonable suspicion sufficient to satisfy the requirements of *Terry*<sup>23</sup> and that Wardlow was not in a high crime area.<sup>24</sup>

The State of Illinois appealed to the Illinois Supreme Court.<sup>25</sup> While rejecting the appellate court's determination on the high crime area issue, the Illinois Supreme Court found that the sudden flight of Wardlow in such an area was insufficient to create the required reasonable suspicion of criminal activity.<sup>26</sup> The Illinois Supreme Court concluded that, although officers have a right to approach and question a person at will, the individual has no obligation to respond.<sup>27</sup> Additionally, a person who decides not to respond may walk away, and this alone will not be enough to justify an investigative stop by the police.<sup>28</sup> Officers must have, at the very least, reasonable suspicion of criminal activity to restrict a person's movements.<sup>29</sup> The Illinois Supreme Court reasoned that flight could simply be an exercise of this right to "go on one's way."<sup>30</sup> Hence, without more, the officers did not have reasonable suspicion to pat-

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19. See *Illinois v. Wardlow*, 2000 WL 16315, at \*2 (U.S. Jan. 12, 2000) (summarizing the decision of the trial court).

20. See *id.*

21. See *id.*

22. See *Wardlow*, 701 N.E.2d at 486 (noting the approach taken by the Illinois Appellate Court).

23. See *Terry*, 392 U.S. at 27 (concluding that reasonable suspicion that a suspect is armed is the standard for a stop-and-frisk).

24. See *Wardlow*, 701 N.E.2d at 486 (quoting the appellate court).

25. *Id.*

26. See *id.* at 489 (finding that the appellate court had correctly decided that flight alone was not enough to justify a *Terry* stop).

27. See *Wardlow*, 701 N.E.2d at 486-87 (citing the United States Supreme Court's decision in *Florida v. Royer* which allowed officers to approach a person and ask questions, but the approached person was not required to answer unless the officers had reasonable suspicion of criminal activity, a determination of which must be made without regard to the person refusal to speak with officers).

28. See *Florida v. Royer*, 460 U.S. 491, 503 (1983) (creating a standard of feeling free to leave as a line beyond which requires reasonable suspicion to question).

29. See *Terry*, 392 U.S. at 27 (articulating reasonable suspicion as the standard for a protective weapons sweep).

30. See *Wardlow*, 701 N.E.2d at 487 (citing *People v. Shabaz*, 378 N.W.2d 451, 460 (Mich. 1985)) (asserting that flight could simply be a person exercising his right to leave a scene, "at top speed," and does not allow reasonable suspicion).

down Wardlow.<sup>31</sup>

The Illinois Supreme Court took the analysis a step further and found that flight in a high drug area alone did not create a reasonable suspicion.<sup>32</sup> Since the court could not find any independent suspicious activity, the court ruled that the stop and subsequent arrest violated Wardlow's Fourth Amendment rights.<sup>33</sup> The United States Supreme Court granted *certiorari* on May 3, 1999<sup>34</sup> and oral arguments were heard November 2, 1999.

### HOLDING

In reversing the Illinois high court, the Supreme Court began by reiterating the holding in *Terry*.<sup>35</sup> Recognizing that an individual's presence in a high crime area is alone insufficient to give the officer the right to frisk under *Terry*,<sup>36</sup> the Court found the officer may consider the relevant characteristics of the area in determining whether further investigation is warranted.<sup>37</sup> Consequently, the characteristics of the area have been allowed to be a relevant factor in the determination of reasonable suspicion.<sup>38</sup> In addition to the character of the area, the Court noted that prior decisions allowed nervous or evasive behavior as a relevant factor for a reasonable suspicion determination.<sup>39</sup> The Court reasoned that "headlong flight," while not necessarily indicative of wrongdoing, serves as a strong suggestion of wrongdoing.<sup>40</sup>

The Court stated that courts do not have empirical studies relating

31. See *id.* at 489 (finding that Officer Nolan needed more than a hunch to be allowed to stop Wardlow).

32. *Id.*

33. See *id.* (citing *Wong Sun v. United States*, 371 U.S. 471, 488 (1963)) (noting that illegal evidence must be suppressed).

34. 119 S. Ct. 1573 (1999).

35. See *Illinois v. Wardlow*, 2000 WL 16315, at \*3 (U.S. Jan. 12, 2000) (summarizing the holding in *Terry* and its application to the *Wardlow* case).

36. See *Brown v. Texas*, 443 U.S. 47, 52 (1979) (stating that an individual's presence in a high crime area alone cannot justify a stop).

37. See *Wardlow*, 2000 WL 16315, at \*4 (noting that common sense does play a role in the determination of reasonable suspicion).

38. See *Adams v. Williams*, 407 U.S. 143, 144, 147-48 (1972) (allowing presence in a high crime area late at night to be a factor in reasonable suspicion).

39. See generally *United States v. Sokolow*, 490 U.S. 1, 7 (1989) (finding that proof of wrongdoing is not required to justify a stop); *Florida v. Rodriguez*, 469 U.S. 1, 6 (1984) (*per curiam*) (holding that the defendant's unusual movements aroused justifiable suspicion); *United States v. Brignoni-Ponce*, 422 U.S. 873, 885 (1975) (noting that erratic behavior or attempts to evade support reasonable suspicion).

40. See *Illinois v. Wardlow*, 2000 WL 16315, at \*4 (U.S. Jan. 12, 2000) (stating that evasion is certainly suggestive of wrongdoing).

to *Terry* stops detailing inferences drawn by police from suspicious behavior.<sup>41</sup> Reviewing courts cannot be expected to make scientific determinations where none exist.<sup>42</sup> Courts should employ commonsense when determining reasonable suspicion.<sup>43</sup>

Wardlow argued, as the Illinois Supreme Court found, that allowing flight as a factor in reasonable suspicion determination would undermine the Court's previous conclusions in *Florida v. Royer*<sup>44</sup> and *Florida v. Bostick*.<sup>45</sup> Both cases addressed the issue of whether a persons' refusal to cooperate when approached by an officer without reasonable suspicion or probable cause was enough to warrant reasonable suspicion.<sup>46</sup> The Court did not accept the analogy that unprovoked flight is the same as a mere refusal to cooperate.<sup>47</sup> Flight, the Court found, is not the same as "going about one's business."<sup>48</sup> Allowing an officer to investigate for unprovoked flight, under the circumstances of *Wardlow*, was not inconsistent with a person's right to refuse to cooperate.<sup>49</sup> The Court agreed, as Wardlow and *amici* asserted, that innocent reasons for flight exist.<sup>50</sup> However, the fact that flight is not indicative of criminal activity does not establish a violation of the Fourth Amendment.<sup>51</sup> Most *Terry* analysis cases, including *Terry* itself, involve a situation that is "ambiguous and susceptible to an innocent explanation."<sup>52</sup> While the conduct at issue could have an innocent explanation, the facts have an equally suggestive criminal explanation and *Terry* assumes that some

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41. See *id.* (finding that courts cannot be expected to have hard facts in front of them when determining reasonable suspicion).

42. *Id.*

43. See *United States v. Cortez*, 449 U.S. 411, 418 (1981).

44. 460 U.S. 491 (1983).

45. 501 U.S. 429 (1991).

46. *Bostick*, 501 U.S. at 436; *Royer*, 460 U.S. at 497.

47. See *Illinois v. Wardlow*, 2000 WL 16315, at \*4 (U.S. Jan. 12, 2000) (holding that flight and refusal to cooperate are not analogous occurrences).

48. *Id.*

49. See *id.* (surmising that an officer faced with the situation in *Wardlow* should be allowed to consider flight as an element of reasonable suspicion since flight is more than a refusal to cooperate); cf. *Royer*, 460 U.S. at 498 (holding that an individual has a right not to cooperate with police of the officer has approached the individual without probable cause or reasonable suspicion); *Bostick*, 501 U.S. at 437 (admitting that "flight is not necessarily indicative of ongoing criminal activity").

50. See *Wardlow*, 2000 WL 16315, at \*5 (admitting that the respondent is correct in his assertion that there are innocent reasons for flight).

51. See *id.* (stating that a violation of the Fourth Amendment under the respondent's theory requires more than was presented).

52. See cf. *Terry*, 392 U.S. at 6-7 (summarizing the facts to be an activity, such as walking back and forth in front of a store front, that is generally viewed as innocent).

innocent people will be caught in the net.<sup>53</sup> The Fourth Amendment assumes the same risk as *Terry* under a probable cause examination.<sup>54</sup>

### DISSENT

The dissent agreed with the Court's rejection of a *per se* rule either way on the flight issue.<sup>55</sup> The dissenting justices were troubled by the majority's acceptance of reasonable suspicion arising from the facts of the case.<sup>56</sup> Invoking the principles of *Terry*, the dissent argued that the narrow exception recognized in *Terry* cannot apply in this case.<sup>57</sup> Conceding the State's point, that flight can be based on criminal reasons, the dissent noted that flight could also occur for completely innocent reasons.<sup>58</sup> With these varied reasons as a consideration, the rejection of a *per se* rule is warranted and instead the several different circumstances present will determine the rights under *Terry*.<sup>59</sup> With regard to the *per se* rule, the dissent stated:

The probative force of the inferences to be drawn from flight is a function of the varied circumstances in which it occurs. Sometimes those inferences are entirely consistent with the presumption of innocence, sometimes they justify further investigation, and sometimes they justify an immediate stop and search for weapons. These considerations have lead us to avoid categorical rules concerning a person's flight and the presumptions to be drawn therefrom . . . .<sup>60</sup>

The dissent reasoned that unprovoked flight describes a category that is too broad to adopt a *per se* rule to deal with.<sup>61</sup>

Employing a totality of the circumstances analysis, as the majority

53. See *Illinois v. Wardlow*, 2000 WL 16315, at \*5 (U.S. Jan. 12, 2000) (asserting that the risk of stopping innocent people, balanced against officers' safety in the field, is an acceptable compromise).

54. See generally *Johnson*, 333 U.S., at 14 (noting that the reason officers must seek a neutral magistrate's determination of probable cause is because officers, "often engaged in the competitive enterprise of ferreting out crime," are unable to make objective determinations of the evidence).

55. See *Wardlow*, 2000 WL 16315, at \*6 (Stevens, Souter, Ginsburg & Breyer, JJ., dissenting) (agreeing with the majority on rejecting a *per se* rule of flight alone satisfying reasonable suspicion).

56. See *id.* (articulating dissatisfaction with the record's facts and the determination of reasonable suspicion based on them).

57. See *id.* (reminding the Court that *Terry* established a narrow exception to the requirement of probable cause to question).

58. See *id.* at \*7 (articulating the question presented to be the degree of suspicion that attaches to flight alone or in conjunction with other circumstances).

59. *Id.*

60. *Id.* at \*8

61. See *Illinois v. Wardlow*, 2000 WL 16315, at \*9 (U.S. Jan. 12, 2000) (Stevens, J., dissenting) (finding flight an overly broad category of action).

did, the dissent concluded that there are too many questions of fact to determine whether the two factors cited by Officer Nolan are sufficient to justify a *Terry* stop.<sup>62</sup> Officer Nolan's testimony is too vague to truly ascertain what the circumstances were surrounding the flight of Wardlow.<sup>63</sup> The dissent also noted issues related to the designation of the area as a "high crime area."<sup>64</sup> Like flight, high crime area is too general a designation for meaningful analysis.<sup>65</sup> Concluding, the dissent noted that it is the State's burden to articulate reasonable suspicion, a burden not met in *Wardlow*.<sup>66</sup>

#### IMPLICATIONS AND ISSUES

The *Wardlow* majority's allowance of reasonable suspicion based solely on the high crime area and flight raise a pair of equally important concerns. First, flight carries with it several interpretations regarding what it is and whether it actually occurred. Second, high crime area is extremely subjective and difficult to accept as a general concept.

As the dissent notes, flight from the scene can occur for several reasons.<sup>67</sup> The person may simply be attempting to catch up with a friend who has gone ahead of him, or he may discover that he is late for some engagement and must hurry to that place. The real question is what constitutes flight? Flight could either be a flat out run away from the police or a skulking slide away from the area where the police are located.<sup>68</sup> Ambiguity in the definition of flight raises some serious concerns. The majority asserts that any determination assumes that some innocent people will be stopped and patted down.<sup>69</sup> One problem with making flight a determinative factor in the decision whether to detain someone is that some citizens, especially minority citizens, may be predisposed to flee from

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62. *Id.*

63. *See id.* at \*10 (citing Officer Nolan's terse testimony as strengthening the assertion that key facts are too vague).

64. *See id.* at \*11 (questioning the majority's reliance on the vague concept of a high crime area).

65. *See Brown v. Texas*, 443 U.S. 47, 52 (1979).

66. *See Illinois v. Wardlow*, 2000 WL 16315, at \*11 (U.S. Jan. 12, 2000) (Stevens, J., dissenting) (noting that the burden of proving reasonable suspicion is on the state).

67. *See id.* at \*8 (stating that it is common knowledge that people flee a scene for a multitude of reasons, the least of which could be innocent in nature).

68. *See id.* at \*8 (asserting that a reasonable person might feel that the presence of police in the area will inevitably bring violence).

69. *See id.* at \*5 (citing the assumption that *Terry* makes with regard to catching innocent people). *See also Terry*, 392 U.S. at 24-25 (questioning the position that the intrusion by an officer in a stop-and-frisk is too great).

police.<sup>70</sup> Additionally, since police sweeps occur disproportionately in depressed areas of the city, where drug related violence tends to be centered. In these areas, people on the street may flee to seek shelter from a possible police gunfight or violence. Detaining people for protecting themselves from violence sends a negative message to minority citizens who should expect to be protected from the violence by the police and not stopped at every chance the officer have.<sup>71</sup>

The designation of an area as "high crime" also carries some concerns. What factors define a high crime area? Is that area designated high crime because police patrol efforts are concentrated there or because there is actually a high occurrence of crime? Who decides that the area is high crime? These are all questions the majority in *Wardlow* elected not to answer. In fact, the majority accepts as fact the officer's testimony that the area was high crime without meaningful exploration of the issue.<sup>72</sup> High crime area is a subjective assessment of an area that is likely to be very depressed.<sup>73</sup> Courts may want to consider viewing officer assessments of urban areas with more skepticism than they do currently. To base reasonable suspicion on a person being present in a high crime area generalizes reasonable suspicion beyond its original intent.<sup>74</sup> Reasonable suspicion must be articulable. It seems that the officers could articulate nothing more than general assumptions about the area and Wardlow's presence in that area.<sup>75</sup>

How will *Wardlow* impact racial profiling cases?<sup>76</sup> Racial profiling is not a new concept and is based on the same general stereotypes and circumstances under which the *Wardlow* court allows this search.<sup>77</sup>

70. See generally Paul Butler, 'Walking While Black': Encounters with the Police on My Street, *LEGAL TIMES*, Nov. 10, 1997, at 23-26 (describing an encounter that the author had with D.C. police on the front steps of his own house).

71. See INTERIM REPORT OF THE STATE POLICE REVIEW TEAM REGARDING ALLEGATIONS OF RACIAL PROFILING at 45-82 (N.J. Apr. 20, 1999) (detailing the effects of racial profiling to include a disregard for officer orders and a loss of faith in the police's ability to ensure community safety).

72. See *Illinois v. Wardlow*, 2000 WL 16315, at \*4 (U.S. Jan. 12, 2000) (accepting the presumption that the area was known for high narcotics trafficking).

73. See generally *Brown v. Texas*, 443 U.S. 47, 52 (1979) (noting that high crime area, alone, cannot justify reasonable suspicion).

74. See *Terry* 392 U.S. at 21-22 (1968) (articulating that reasonable suspicion is a standard that still requires a level of specificity to allow a search without a warrant).

75. See *Wardlow*, 2000 WL 16315, at \*4 (stating that the officer stopped Wardlow because he was in an area of expected criminal activity and he fled upon seeing the police).

76. See *Whren v. United States*, 517 U.S. 806, 819 (1996) (concluding that pretextual traffic stops will be viewed under an objective standard as to their legality).

77. See generally *United States v. Prandy-Binett*, 995 F.2d 1069, 1075 n.2 (D.C. Cir. 1993) (Edwards, J., dissenting) (arguing that the real reason the defendant was stopped was based on



Admittedly, some officers possess experience allowing them to more accurately predict events, but that experience is too vague to be the bases of a violation of the Fourth Amendment.<sup>78</sup> Proof of the circumstances surrounding the encounter in this case should have been a prerequisite to a finding of reasonable suspicion. To this end, a factual determination of the time of day, the officers' attire, the vehicle carrying the officers, and the nature of the area the officers' patrolled only allow the Court find that there was reasonable suspicion,<sup>79</sup> but does not establish reasonable suspicion. To allow judicial determinations without factual bases may cause similar problems to those encountered in racial profiling and pre-textual traffic stops.<sup>80</sup>

Another concern raised by *Wardlow* is its effect on the principle announced in *Terry*. *Terry* carved a very narrow exception to the warrant requirement and this exception was only triggered under special circumstances.<sup>81</sup> Over the years, the Court has expanded the *Terry* exception to include several related circumstances.<sup>82</sup> Debate over *Terry*'s relevance is only exacerbated by this decision. The concern is that the pat-down exception realizes the dissent's fear in *Terry* by authorizing searches by officers with only limited reason to do so.<sup>83</sup> The greatest concern centers on how substantial a factor an officer's gut feeling plays in deciding who to stop as opposed to a true articulation of the circumstances that lead him to stop and frisk the suspect. This is not the first extension of the *Terry* search, since

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the color of his skin and not the nature of the package he was carrying).

78. See generally *United States v. McClain*, 452 F. Supp. 195, 199 (E.D. Mich. 1977) (citing testimony of Agent Markonni regarding the creation of the drug courier profile).

79. See *Illinois v. Wardlow*, 2000 WL 16315, at \*10 (U.S. Jan. 12, 2000) (asserting that more facts could add to a determination of reasonable suspicion).

80. See Angela Anita Allen-Bell, *The Birth of the Crime: Driving While Black (DWB)*, 25 S.U.L. REV. 195, 218 (1997) (describing the disproportionate amount of minorities stopped on Interstate 95 in Florida).

81. See *Terry*, 392 U.S. at 27 (stating that there needs to be a "narrowly drawn authority to permit a reasonable search for weapons").

82. See, e.g., *Pennsylvania v. Mimms*, 434 U.S. 106, 111 n.6 (1977) (finding that officer safety justifies allowing the officer to order a driver out of the car without a reasonable articulable suspicion). See also *New York v. Belton*, 453 U.S. 454, 460 (1981) (allowing a search incident to arrest even though, prior to the search, the officer had removed the occupants of the car); *United States v. Robinson*, 414 U.S. 218, 235 (1973) (holding that the search incident to arrest was allowed under the Fourth Amendment, even in the car setting); *Gustafson v. Florida*, 414 U.S. 260, 263-64 (1973) (finding the same as *Robinson*); *United States v. Rusher*, 966 F.2d 868, 875 (4th Cir. 1992) (invoking the *Terry* doctrine to examine the legality of drugs taken during the stop); cf. *Chimel v. California*, 395 U.S. 752, 765-66 (1969) (allowing the protective search of a house to protect officers and preserve evidence).

83. See *Terry*, 392 U.S. at 38 (voicing concerns with allowing officers to search on less than probable cause and removing the magistrate from that determination).

similar expansion of the automobile exception has occurred.<sup>84</sup>

#### CONCLUSION

At the center of *Terry* is an officer's right to do a protective pat-down of the outer clothing of the suspect where reasonable suspicion exists. The *Wardlow* majority correctly held that flight should be a factor in the determination of reasonable suspicion. Concern develops over the weight flight is given by the majority. The Court ignores social realities, replacing them with idealistic aspirations of the state of urban America. Ultimately, the Court has afforded flight too much weight, providing minimal Fourth Amendment guidance to the lower courts who will spend considerable time sorting out the implications of *Wardlow*.<sup>85</sup>

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84. Compare *Mimms*, 434 U.S. at 111 n.6 (finding that officer safety justifies allowing the officer to order a driver out of the car without a reasonable articulable suspicion), and *Michigan v. Long*, 463 U.S. 1032, 1051 (1983) (reasoning that officers should be allowed to conduct an area search of a car if reasonable articulable suspicion exists), with *Carroll v. United States*, 267 U.S. 132, 149 (1925) (finding that a search and seizure of contraband in a car, conducted without a warrant, is valid if that search is based upon a reasonable belief arising from the circumstances that the automobile contains items subject to seizure).

85. See, e.g., *Florida v. Bostick*, 501 U.S. 429, 439 (1991) (noting that courts should apply a totality of circumstances test in deciding whether a reasonable person was free to end the seizure).