

Flight And Reasonable Suspicion:
“Can” Doesn’t Always Mean “Should”
Legal Question of The Week
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“The wicked flee when no man pursueth: but the righteous are bold as a lion.”
-- Proverbs 28:1²

For those of you that enjoy a little physical fitness on the job, here is a legal update especially about running.³ More specifically, we are talking today about suspects who run and the police who chase them.⁴ I’m going to lay out for you what the law says that you CAN do, but I’m also going to suggest to you why there are going to be times when you SHOULDN’T do what you are allowed to do.

The main case that we’re looking at today is a 2000 decision by the United States Supreme Court: Illinois v. Wardlow.⁵ In Wardlow, Chicago Police Officers Nolan and Harvey were driving the last car in a four car caravan arriving in a high-drug area to investigate drug offenses. There was testimony that a lot of officers were working together because they expected a lot of people, including lookouts and customers, in the area partly because it was around noon. As they arrived, Officer Nolan saw Mr. Wardlow standing next to a building holding a bag. When Mr. Wardlow saw the officers, he took off running.

Nolan and Harvey turned their car around and watched as Wardlow ran and the opinion tells us they eventually “cornered him on the street.” Officer Nolan exited the

¹ By Jackson Browne: “Running on empty (running on), running blind (running on). Running into the sun, but I’m running behind.” Today’s legal update is the sing-a-long version. Follow the bouncing ball.

² King James Version. Back before our appellate courts started frowning on quoting the Bible in jury arguments, I used to beat this verse to death in any case I was prosecuting where the defendant had fled from the scene. Actually, I continued to use it in my arguments even after it was objectionable. I would say it and the defense would object. Even though the objection was sustained, most jurors would realize that the defense just objected to me QUOTING THE GOOD BOOK. As you can imagine, that didn’t sit well with a lot of them.

³ A good friend and former colleague of mine, Guilford County Assistant District Attorney Christon Halkiotis, recently went to San Francisco and ran in the 2009 Nike Women’s Marathon. After finishing that, she vacationed in Hawaii. Apparently the salaries of Assistant District Attorneys went way, way, up after I left last year. But I’m not bitter.

⁴ We will NOT be talking about what happens once they catch the suspect. I’d rather not think about that.

⁵ 528 U.S. 119 (2000).

car and stopped Wardlow. He frisked him for weapons and squeezed the bag Wardlow was carrying. When he did so, he felt a heavy, hard object that felt like a gun, so he opened the bag and discovered a .38-caliber handgun with five live rounds of ammunition. Wardlow was arrested and charged with the unlawful use of a weapon by a felon.⁶

Wardlow's case made its way to the U.S. Supreme Court on the issue of whether the stop and frisk was legal under these circumstances. In a 5-4 decision, the Supremes held that the officer's actions were justified because the fact that this was a high crime area plus the flight of Wardlow upon seeing the officers rose to the level of reasonable suspicion which allowed them to conduct an investigatory stop. The frisk was justified because in the officers' experience it was common for there to be weapons in the near vicinity of drug transactions.

Now if I was practicing math instead of practicing law (perish the thought!), I could sum up the Court's decision with the following equation:

High crime area + Unprovoked flight = Reasonable Suspicion

So if you are in a high crime area, and a person sees you and runs away, you have the right to pursue and conduct an investigatory stop of the person. Make sure, however, that you keep in mind that a person's presence in a high crime area, standing alone, is not enough for reasonable suspicion⁷ and in situations where an officer, without reasonable suspicion or probable cause, approaches a person, that person has the right to ignore the officer and go about his business. That refusal to cooperate, without more, does not give rise to reasonable suspicion either.⁸

One more note: an area is not a "high crime area" simply because you decree in your most serious law enforcement voice that it is a "high crime area." You need to be able to articulate how you know it is a high crime or high drug area. Perhaps you are familiar with the area because you patrol it regularly. Maybe you have made many drug arrests or other types of arrests in that area. It could be that you have executed search warrants on homes in the area or participated in the execution of search warrants there. The key is being able to tell the judge that it is your experience that the area is a high drug or high crime area and why.

Now that I've told you that legally you can chase a person and temporarily seize them based only on their unprovoked flight from you in a high crime area, let me give

⁶ "Running Down A Dream" by Tom Petty: "Yeah, running down a dream that never would come to me. Working on a mystery, going wherever it leads. Running down a dream."

⁷ *Florida v. Royer*, 460 U.S. 491 (1983). Let's reach back for an obscure one. How about "Break My Stride" by Matthew Wilder? "Ain't nothin' gonna break my stride, nobody's gonna slow me down. Oh, no. I've got to keep on movin'. Ain't nothin' gonna break my stride, I'm runnin' and I won't touch ground. Oh, no. I've got to keep on movin'."

⁸ *Florida v. Bostick*, 501 U.S. 429 (1991). "It Keeps You Runnin'" by the Doobie Brothers: "It keeps you running, yeah, it keeps you running." That's it – just repeat that line about 100 times.

you some warnings about why it may be best in many situations to let the runner go and live to chase another day.

First of all, in my experience, prosecutors and judges are very suspicious of these types of stops and there is a better than average chance that your case will be looked at with skeptical eyes in the court system. Wardlow is a great case for us, and if you have a case with facts similar to Wardlow, I encourage you to make sure that the prosecutor is aware of this decision. But keep in mind that Wardlow represents in many regards the basement minimum of what is considered reasonable suspicion. You might be better off to try to gather more information before running headlong after a person when you don't know why you're running in the first place or where.⁹ If you don't, you might find yourself fighting an uphill battle in the courtroom.

Second, let's consider the possible outcomes of a pursuit in this scenario. It's entirely possible that you are chasing an innocent person who simply decided to take up jogging when you arrived.¹⁰ For the possibility of finding something, you are putting yourself in a potentially dangerous situation and placing yourself at risk of injury. As my buddy Greg Rodgers¹¹ says, "Think before you do is always better than do before you think." In math terms, I guess that would be spelled out like this:

Think before you do > Do before you think

And finally, consider the following situation: It's late at night and you are patrolling a high crime area. You see a guy who looks at you and suddenly takes off running in the other direction. You give chase and during the pursuit you see the guy come around the corner of a building. You can see that he is holding something small in his right hand but can't tell what it is. He is refusing to follow your commands.

This situation could go a lot of different ways at this point, but if you have to use force, whether it's the TASER, your service weapon, or something less, remember that your use of force will be examined in court under the Graham v. Connor¹² test. A big part of that test asks how serious was the crime the officer suspected was or had been committed. In the above scenario, at the time you are going to be forced to make the pivotal decision on use of force, you don't have an answer to that question. So in the worst case scenario where deadly force is used and it turns out the person wasn't breaking any laws, you and your agency are now in a very bad position.

⁹ "Where Are We Running?" by Lenny Kravitz: "Where are we runnin'? We need some time to clear our heads, where are we runnin', keep on working 'til we're dead. Where are we runnin'? Oo wee oo wee oo, where are we runnin' now?"

¹⁰ In all seriousness, there are a lot of reasons why a person might be running and even running from the police when they haven't got anything or done anything that you are going to be able to arrest them for.

¹¹ The Rodgers of Smith, Rodgers, and Strickland, PLLC. <http://www.policehelp.net>

¹² 490 U.S. 386 (1989). "The Long Run" by the Eagles: "You can go the distance. We'll find out in the long run (in the long run). We can handle some resistance, if our love is a strong one (is a strong one)."

Since it's the policy of the legal office not to end these updates on such a sinister note, we'll share a story that happened in High Point this week. A man walked into a local bank and handed the teller a note demanding money. The teller handed the money over and the robber left. However, in his haste to leave, the robber left behind an envelope containing some personal documents which happened to have his name and address on them.¹³ Our crack Robbery Task Force was quickly able to solve the crime, but you could say that the robber took the money and ran. Cue music.¹⁴

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¹³ This is what we call in the business, "a clue."

¹⁴ "Take the Money and Run" by Steve Miller. EVERYBODY NOW! "Go on, take the money and run. Ooh, ooh, ooh. Go on, take the money and run. Ooh, ooh, ooh." Repeat and fade.