

Student Handout 2
***Illinois v. Wardlow* — Background Information**

The Case Facts

Sam Wardlow, a 44 year-old-black man, was standing on a sidewalk in what is considered one of Chicago's high-crime areas when four police cars containing eight officers came into sight. Though Wardlow was not doing anything visibly suspicious, he fled the scene when he saw the police officers. Timothy Nolan, a veteran police officer, chased Wardlow. They believed that his flight indicated unlawful activity since Wardlow was in what the officers believed to be a high crime area. They caught Wardlow and frisked him. During the pat-down search, the two officers found a handgun.

Wardlow was charged in the Cook County Circuit Court with several counts of unlawful use of a weapon by a felon and unlawful use of a weapon. His attorney filed a motion to have the gun evidence suppressed before the trial. Wardlow and his attorney contended that the pat-down search violated the Fourth Amendment right against unreasonable search and seizure because the police had no reasonable cause to stop him. However, the motion was denied by the trial court. The court found that, although Wardlow was not engaged in a crime or acting otherwise suspiciously, the combination of Wardlow's flight and the knowledge that drugs and weapons are commonly carried in the area justified the stop and frisk by the police.

The evidence was then allowed in court. Wardlow was convicted for unlawful use of a weapon by a felon. He appealed his case to the Illinois Appellate Court. That court unanimously ruled in Wardlow's favor, reversing the lower court decision. The appeals court ruled that there was not enough evidence to support the police allegations that Wardlow was in a high crime area. That being the case, the officers could not stop Wardlow for simply fleeing the scene.

This time the state of Illinois appealed the case to the Illinois Supreme Court. That court sided unanimously with Wardlow, affirming the appellate court's decision. The Illinois Supreme Court agreed with the circuit court that the area where they saw Wardlow was indeed a high crime area; however, this did not justify the stop and frisk. The Illinois Supreme Court declared that the search violated the Fourth Amendment. The state of Illinois then appealed the case to the U.S. Supreme Court.

Illinois v. Wardlow — Background to the Fourth Amendment**The Fourth Amendment**

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

— Fourth Amendment to the U.S. Constitution

The Fourth Amendment was included in the Bill of Rights to protect people from unreasonable and arbitrary intrusion on their privacy by the government. It sets out broad guidelines for police searches of persons and property — that searches can be conducted with a warrant and they must be reasonable — but the courts have had to make significant interpretations of the Fourth Amendment over time. For instance, it is not always clear what a reasonable search is; the courts must examine the facts and circumstances of each case to determine if the search was reasonable. In addition, the courts have found that some searches can be conducted without a warrant.

When can police stop a person and conduct a frisk?

At the time the Wardlow case was heard, past courts had determined that the police were allowed to conduct a warrantless stop and frisk search if the officer saw the person acting suspiciously or had reason to believe the person was likely to be armed. A frisk is a brief search of a person with the aim of determining whether the person is armed. It is not a full search. Instead, it is a pat-down of the outer clothing. The rule allowing a stop and frisk in certain circumstances came from the Supreme Court's ruling in *Terry v. Ohio* (1968). The Court said:

“where a police officer observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot and that the person with whom he is dealing may be armed and presently dangerous, where in the course of investigating this behavior he identifies himself as a policeman and makes reasonable inquires, ...he is entitled for the protection of himself and others in the area to conduct a carefully limited search of the outer clothing of such persons in an attempt to discover weapons which might be used to assault him.” (p. 30)

The Terry decision requires that police have reasonable cause to conduct a stop and frisk. This is a lower standard of proof than probable cause. In determining whether there is reasonable cause to stop a person, the police must be able to point to specific and articulable facts that support the inference of suspicion. In other words, the police cannot act on gut feelings. The consequence of this lower standard is that police can stop and frisk when they have a suspicion, grounded in concrete facts, that illegal activity may be taking place, or about to take place. They do not have to see the illegal activity itself.

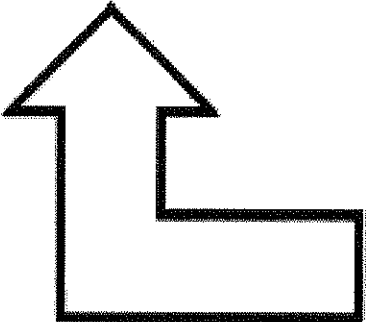
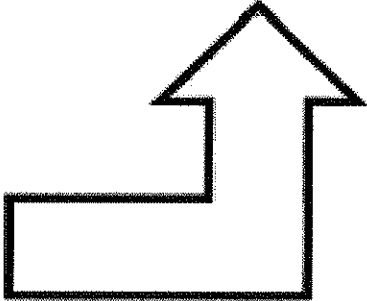
In Sam Wardlow's case, the only indication that the police had of suspicious activity was Wardlow's flight from the police. He was not engaged in other activity, nor did they have any indication he was carrying a gun. The question then became whether Wardlow's flight from the police was reason enough to justify a stop and frisk. The state of Illinois claims in this case that fleeing from police officers is suspicious in and of itself; in case the court doesn't agree, Illinois also claims that a person's flight in combination with the surroundings of a high crime area are enough to make the fleeing person suspicious. On the other hand, Wardlow claims that there are many reasons a person might flee at the sight of police, making it impossible to determine suspicion or not. Ambiguities like these make search and seizure law very complex and force the courts to address the law on a case-by-case basis. This is why it is very important to examine carefully the circumstances of the Wardlow case.

Why is the suspicion attached to flight so important for Wardlow?

Generally speaking, if a court finds a search to be unreasonable, then the evidence obtained during the search cannot be used against a defendant during trial. The principle by which illegally seized evidence is kept out of trials is called the exclusionary rule. When Sam Wardlow was preparing for trial, his attorney filed a pretrial motion to get the gun evidence suppressed. They claim that the search was unreasonable because Wardlow was doing nothing suspicious and was not obviously engaged in crime. Therefore, the gun should not be allowed as evidence to support the weapons charge. However, in this case, the trial court declared that his flight in a high crime area was suspicious and denied the motion to suppress the gun. During the trial, this evidence was enough to convince a jury to convict Wardlow. The evidence also became the reason for Wardlow's appeal to the Illinois Appellate Court.

SUPREME COURT OF THE UNITED STATES
IS A PERSON'S SUDDEN AND UNPROVOKED FLIGHT FROM A
CLEARLY IDENTIFIABLE POLICE OFFICER, WHO IS
PATROLLING A HIGH CRIME AREA, SUFFICIENTLY SUSPICIOUS
TO JUSTIFY A TEMPORARY INVESTIGATORY STOP,
PURSUANT TO TERRY V. OHIO?

ILLINOIS SUPREME COURT
Court sides with Wardlow. An individual's
flight from police in a high crime area is
not sufficient cause to justify a police
investigatory stop.



**ILLINOIS APPELLATE COURT,
FIRST DIVISION**
Court sides with Wardlow. Not enough
evidence of a high crime area and the flight
alone cannot justify a police investigatory
stop.

**COOK COUNTY CIRCUIT
COURT (trial)**
Trial court denies Wardlow's motion to
suppress the gun evidence stating that the
high crime area coupled with Wardlow's
flight justifies the investigatory stop.
Wardlow is convicted of unlawful use of a
weapon by a felon.



Student Handout 5
***Illinois v. Wardlow* — Classifying Arguments for the Case**

The following is a list of arguments used in the Wardlow court case. Read through each argument and decide whether it supports Illinois (**I**), Wardlow (**W**), both sides (**B**), or neither side (**N**). Write the appropriate letter(s) beside the argument in the space provided. Below each argument, you may take notes justifying your position.

- _____ 1. It is common sense that when a person sees the police and runs away, the police would have reason to believe that the person is engaged in illegal activity. As a rule, the police must be able to stop those who flee at their sight.
- _____ 2. People may have many different reasons for wanting to flee the police. The Supreme Court stated in *Alberty v. United States* (1896) that the innocent sometimes flee the police because they are scared of being accused of a crime they didn't commit or out of fear of humiliation. Establishing a general rule allowing the police to stop and search fleeing subjects would not account for these ambiguous circumstances. In this case, any reasonable person might leave the scene where four police cars converged suddenly.
- _____ 3. In the case of *Terry v. Ohio*, the Supreme Court gave police the right to conduct warrantless stops and searches to protect themselves and bystanders from those who may be carrying a concealed weapon. Police can stop a person when they have reasonable suspicion supported by articulable facts that a person is engaged or about to engage in illegal activity. However, to search the subject, the police must have reasonable suspicion, again supported by articulable facts, that the person is armed.
- _____ 4. In the case of *Terry v. Ohio*, the Supreme Court established a lower standard, that of reasonable suspicion, to guide warrantless investigatory stops. Police do not need probable cause to stop a person, only a reasonable suspicion that illegal activity is taking or about to take place. A reasonable police officer would consider flight suspicious and should not ignore that behavior.

- _____ 5. Common law at the time the Fourth Amendment was passed regarded flight as a confession of guilt. However, many, if not all, Supreme Court cases that deal with common law on this issue are associated with post-accusation flight. In other words, if a person fled after being accused of a crime the flight would be considered evidence of guilt. Whether this also applies to pre-accusation flight is disputed by law experts.
- _____ 6. If the Supreme Court allows officers to stop people who are in flight, how are police officers supposed to determine whether a person is in flight or merely refusing police contact? The Court in *Florida v. Royer* (1983) and *Brown v. Texas* (1979) ruled that people have the right to refuse police contact and go their own way. The Court did not say how quickly or slowly the person had to walk. If the police are given the right to stop anyone they say is fleeing the scene, this will give them too much discretion to conduct groundless searches.
- _____ 7. The environment of the fleeing suspect should be a factor in determining the suspiciousness of the flight. There are a number of Supreme Court cases that stress that police are able to take into account their knowledge and experience about an area where a suspect is located in order to determine suspicion.
- _____ 8. Allowing the police to use their judgment about the reputation of a geographic area in determining the suspicion of a person fleeing from them in that area is not fair. Just because a person happens to be in a particular part of a city does not automatically make them guilty or suspicious of a crime. In addition, if the Court allows police to consider this factor, it would essentially allow people to flee the police in some areas; but not in others.
- _____ 9. In the case of *California v. Hodari* (1991), a man fled when he saw an approaching police car. While the police were giving chase, he threw away what appeared to be crack cocaine. The police retrieved the cocaine and then were able to subdue Hodari. Hodari asserted that the police stopped him without reasonable suspicion, but the Supreme Court held that the police seized him after the crack cocaine was picked up. The police then certainly had reasonable suspicion to seize him.