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Legal Advisor's Update

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A summary of laws that may be of interest to you. More information is available in the Legal Advisor's Office at 645-4530. This is not an inspectional item.

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I. Introduction—*Terry* Stops and Pat-Downs

Terry stops and pat-downs are frequently litigated in Ohio courts thru motions to suppress and related appeals. Officers are often called to testify in order to justify a stop or pat-down that led to the discovery of a gun. Doing these stops within the legal boundaries is important. It is thus imperative officers fully understand the legal boundaries by understanding how Ohio courts currently view various *Terry* stop and pat-down concepts. While the basic stop/briefly detain/pat-down if armed and dangerous holding of *Terry* remains undisturbed, the manner in which these concepts are applied by Ohio courts requires occasional review. In this Update we try to give you some insights into how Ohio courts are currently evaluating some critical *Terry* issues.

One thing we have seen over the last few years is a greater emphasis on the concept of “particularized” or “individualized” reasonable suspicion. When courts use that phrase, they are essentially saying that not only does an officer need reasonable suspicion that criminal activity is afoot, but also reasonable suspicion that the specific individual stopped is in fact involved in that activity. To reinforce that point, courts point out that an individual's presence in, or proximity to, an area of suspected criminal activity, standing alone, is not enough to support a reasonable, particularized/individualized suspicion that the person is committing a crime. This issue comes up in the last three cases cited below, and I think if you read the cases, this concept will make more sense.

Another thing we are seeing more than ever in *Terry* stop cases is courts relying on BWC footage to decide when a detention/stop was actually initiated, and if the stop/detention, or pat-down, was supported by reasonable suspicion. Officer testimony as to how they perceived the situation at the time of the stop based on their experience as an officer is still very important, but the BWCs are playing a larger role in these cases. Bear in mind, conversations officers have with one another leading up to a stop/detention, which are captured on BWCs, may also be relevant to a court's assessment of a stop/detention. The *Walton* case below, which is a Columbus Division of Police case, is a prime example of how officer conversations can play a major role in a court's analysis of a stop/detention/pat-down.

Finally, and this isn't new, but it bears repeating: officers must have reasonable suspicion the person they are detaining is armed and dangerous to justify a pat-down for weapons. Officers cannot pat-down everyone they stop/detain, and absent reasonable suspicion a person is armed and dangerous, a weapon should never be pointed at a detainee. As you can see from the cases in this Update, courts are still mindful of officer safety, but they require justification for that second or extra step of a detention. Three of the cases in this Update were decided in the past year, and one in 2019, thus this Update should give you some sense for how Ohio courts currently feel about various *Terry* stop issues.

II. Columbus Police Stop and Pat-Down Supported by Reasonable Suspicion

State v. Howard, 2021-Ohio-1792 (10th App. Dist.)

Critical Points of the Case:

- This is simply good observant police work by a veteran officer. Also, as you can see, the BWC footage played a big role in the court's decision.
- An investigatory stop is permitted to stop and detain an individual when the officer has a reasonable suspicion, based on specific, articulable facts, that criminal activity is afoot.
- *Terry v. Ohio* permits a police officer to conduct a brief warrantless search of an individual's person for weapons if the officer has a reasonable and articulable suspicion that the individual whose suspicious behavior he is investigating at close range is armed and presently dangerous to the officer or others. The purpose of such a limited search is not intended to discover evidence of a crime, but to allow the officer to pursue his duties without fear of violence.

Facts: At approximately 10 p.m. on May 17, 2018, **Columbus Police Officer Michael Shannon** and his partner were engaged in a "proactive bicycle patrol" of a residential area in the Hilltop. Officer Shannon is a 17-year patrol officer and had been working as a bicycle patrol officer in that area for the preceding ten years. Officer Shannon and his partner were riding east on Olive St. when they noticed a young man on the corner of Olive St. and South Terrace Avenue, pacing back and forth. As they approached the corner, the man apparently noticed them and walked away. He walked south from the corner down South Terrace Avenue, and up onto the porch of the second house from the corner, 125 South Terrace Avenue. Officer Shannon was familiar with the residence and knew that the occupants were an elderly couple who were unlikely to have a young visitor at that time of night. He also observed that it was a quiet night, that the man did not knock on the door, and that it did not seem he had rung a doorbell either. Officer Shannon and his partner decided to approach the man and ask questions. They were subsequently able to identify the man as Kamashon D. Howard.

Officer Shannon's bodycam video of the encounter with Howard was admitted at a hearing on Howard's motion to suppress. Because Officer Shannon did not turn on his bodycam until he walked up and began asking questions of Howard, there is no audio for the first minute of the video—this was within policy at the time. During the video, Officer Shannon—apparently positioned at the entryway to the porch—can be heard questioning Howard, who is sitting on the porch railing in front of the door to the residence.

Officer Shannon first asks Howard whose house this is, and Howard replies that he does not know whose house it is but that he is "waiting on a girl." Howard could not tell the officers the girl's last name. Howard claims that his car is "right there" on the street, and repeatedly attempts to put his left hand into his pocket. Officer Shannon asks him several times not to put his hand in his pocket. Then, in response to Officer Shannon's question whether he has his driver's license, Howard attempts to retrieve his keys from his right pocket, and Officer Shannon again tells him not to put his hands in his pockets. It was also apparent from the BWC footage that Howard was attempting to shield one side of his body from the officers' view.

Howard indicates that his ID may be in his car, and that he wants to reach into his right pocket to get his keys. Officer Shannon indicates that he will pat Howard down, stating that "I'm just going to make sure you don't have any weapons and then you can grab your key." He retrieves Howard's cell phone from his hand and places it on the ledge behind him and begins to pat Howard down. Officer Shannon retrieves the keys from Howard's right pocket, but notices that Howard also has a visible and large wad of cash in that same pocket.

Officer Shannon places the keys on the ledge with Howard's phone and continues the pat-down. Within a few seconds, he feels a firearm at the bottom of Howard's right leg, and immediately tells Howard not to move. Officer Shannon handcuffs Howard and he and his partner arrest him; Officer Shannon then retrieves the gun from Howard's leg and calls for a cruiser. Officer Shannon's partner can then be heard on the bodycam video stating that he felt a baggie in Howard's left pocket, and Officer Shannon states "yeah, I felt that too." That bag is retrieved after Howard is removed from the porch (search incident to arrest), and after testing is found to contain a quantity of cocaine. Howard was charged with carrying a concealed weapon and possession of cocaine with a firearm specification.

Issue: Was the detention and pat-down of Howard, which led to the discovery of the gun and cocaine, warranted under *Terry v. Ohio*?

Holding and Analysis: Yes. Officer Shannon's detention and pat down of Howard were justified by his reasonable suspicion that Howard was engaged in illegal activity, and that he was armed and dangerous.

As an initial matter, Howard argued that "the officers did not have reasonable suspicion to approach him based on their hunch that he was waiting to conduct a drug deal." The court pointed out that Howard's argument misstates the law—officers generally do not need "reasonable suspicion to approach," as police encounters with the public generally begin as consensual. The court found that Howard provided no basis to suggest that the initial approach by Officers Shannon was anything other than a consensual encounter.

However, Howard certainly was seized later during the encounter, and reasonable suspicion supported the seizure. Given the time of night, Howard's actions in walking onto the porch without knocking on the door, the bodycam video demonstrating that Howard was shielding half his body from view, and Howard's inability to answer Officer Shannon's basic questions—who lived in the house, the last name of the girl he claimed to be meeting, whether he had his ID on his person—created a reasonable suspicion justifying further investigation and a detention.

Moreover, Officer Shannon's initial pat-down of Howard is closely tied to *Terry's* underlying safety rationale. Howard was shielding part of his body from the view of the officers, had reached into his pockets several times during the initial questioning despite being asked not to do so, and Officer Shannon gave Howard the specific warning that he was patting down Howard simply to ensure that he didn't have weapons.

III. Columbus Stop Lacking Individualized/Particularized Reasonable Suspicion

State v. Walton, 2020-Ohio-5062 (10th App. Dist.)

Critical Points of the Case:

- **Officers cannot stop someone solely because that person is near a suspected crime location, and when a caller gives a specific description of a suspect, officers must consider that description when deciding whether to make a stop of an individual.**
- **Reasonable suspicion is sometimes called "particularized" or "individualized" because it must be directed toward a particular individual in order to be legally effective. For this precise reason, the U.S Supreme Court has held, 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.**
- **Even in high crime areas, where the possibility that any given individual is armed is significant, *Terry* requires reasonable, individualized suspicion before a frisk for weapons can be conducted.**
- **Even a reliable tip will justify an investigative stop only if it creates reasonable suspicion that criminal activity may be afoot and the individual detained is involved in the criminal activity.**

Facts: On March 31, 2018, **Officers A and E of the Columbus Division of Police** were dispatched to 1034 South Kellner Avenue. In relevant part, the dispatcher said, "Ten thirty-four South Kellner, male black, maroon jogging suit, supposedly has a 33 standing outside of a blue

Honda." The "PatrolView" log revealed that the caller to the police dispatcher had not seen the gun firsthand but that her daughter had. The log also revealed the first name and phone number of the caller and alleged that the black fellow in the maroon jogging suit was "trying to harm the caller." Officer A confirmed at a hearing that the dispatch constituted the entirety of the information he and his partner had when they approached the area of 1034 South Kellner Avenue.

According to Officer A, he and Officer E encountered defendant approximately 40 or 50 yards from the steps of 1034 South Kellner Avenue. Body camera videos from both Officer A and E, show what occurred. As the officers drove to the scene, Officer E said, "Blue Honda." Officer A responded, "Straight ahead. See it?" As they got closer and could see people standing near a Honda, Officer E objected, "That's not any of our people, though. No track suit." Officer A responded, "That's a light blue Honda, though." Officer E then mused, "Maroon jogging suit. Where's a maroon jogging suit?"

Video shows that the police officers parked near two Hondas (one silver and one, parked several feet behind it, which was light blue). Two black men were standing at the trunk of the silver car eating chicken wings from a container perched on the trunk lid. One wore a red-hooded sweatshirt and jeans. The other, defendant, wore a gray-hooded sweatshirt and jeans. Immediately upon approaching the men, Officer A said, "What's up, guys? Were you guys in a dispute earlier? (Pointing toward houses behind the men.) With them?" Defendant gestured in the same direction and responded, "No, sir. No. I know them, we're fine." After confirming that defendant lived in the area and owned the blue Honda, Officer A inquired, "Why did they say you have a gun?" Defendant asked, "Who?" A number of voices then spoke at once but Officer A responded, loudly over the rest, that the police had received a call saying someone near a light blue Honda had a gun. Defendant denied it, saying, "No, sir. No. No, sir. No." Officer A responded, "None of you guys?" Then he began to move toward the men saying, "Alright. I'm just gonna check you real quick. Okay, just keep your hands up." Defendant and the others were detained at this time.

As Officer A approached, defendant slid both hands down the sides of his gray sweatshirt toward the center pocket. Officer A reacted by repeating the command to defendant to keep his hands raised. As defendant stood with his hands raised, Officer E approached, held defendant's hands behind his back, and, withdrew a pistol from the front pocket of defendant's sweatshirt. Ultimately, the police handcuffed and detained defendant, the man in the red sweatshirt, and a black woman who had been seated in the Honda.

Officers A's testimony during the hearing generally agreed with the body camera footage. He agreed, for example, that neither defendant nor the other man had been wearing a maroon jogging suit. He agreed that the tip was not for multiple persons near a blue Honda but rather just a single black male in a maroon jogging suit. However, he stated that he stopped because there was a black male next to a blue Honda in the suspect area.

Officer A confirmed that neither defendant nor the other man made furtive movements when he and the other officer initially approached—the two simply carried on eating chicken wings from the container on the back of the car. Officer A also agreed that, when he asked defendant if he had a gun and made the decision to check him, he did not know if defendant had a gun. He only noticed the heavily laden pocket of defendant's sweatshirt *after* he told defendant he was going to pat him down, approached in order to do so, and defendant appeared to make a move toward that pocket. Officer A admitted that, when he spoke to the 911 caller after arresting defendant, the caller asked why defendant had been arrested and indicated that the police had arrested the wrong person. Defendant was arrested/charged for CCW.

Issue: Was there reasonable suspicion to detain Defendant?

Holding and Analysis: No. A 911 caller informed police that a man in a maroon jogging suit standing near a blue Honda near 1034 South Kellner Avenue and, according to her daughter, had a gun, and she believed he was trying to harm her. The police responded and detained two men and one woman, none of whom were wearing anything resembling a maroon jogging suit, all clustered around a silver Honda eating chicken wings. Even assuming the 911 caller's tip was a sufficient basis for reasonable suspicion to stop and frisk a black male in a maroon jogging suit in the area of 1034 South Kellner Avenue, that is not who the officer in this case stopped and frisked. Because the subsequent observations about defendant's pocket, the pat-down, and the search were all obtained by exploiting the illegal detention, meaning *after* defendant was already detained without reasonable suspicion, the evidence obtained (in this case, the gun) was suppressed.

Based on the caller being identified, the court assumed that the caller's tip was a sufficient basis for developing reasonable suspicion to briefly detain a person matching the description given by the caller and investigate the situation. However, the court found there was a problem with how the police applied the information given to them by the caller. Reasonable suspicion is sometimes called "particularized" or "individualized" because it must be directed toward a particular individual in order to be legally effective. For this precise reason, the United States Supreme Court has held, "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." In this case, as noted, the officers did not see an individual in a maroon jogging suit—the only thing that would have allowed the officers to differentiate between the defendant, and several other people standing around or near the general location. Defendant, in particular, was wearing a gray sweatshirt and jeans at the time the officers confronted him, and there were also several other men nearby who fit the same general description as defendant. The detention of defendant was not supported by reasonable suspicion because there was nothing to say the defendant, that specific person, was involved in the criminal activity that was afoot nearby.

IV. Columbus Stop Where Suspect Proximity to Shots Fired Was Relevant

State v. Hairston, 156 Ohio St. 3d 363 (2019)

Critical Points of the Case:

- This was a close call, but the officer did a good job articulating why he did what he did. This case is a lot different than the last one because here the officer heard the shots fired himself, knew exactly where they came from, went immediately to the location (took about 30-60 seconds to get there), it was a high-crime area, and the defendant was the *only* person anywhere near where the shots came from, thus making it reasonable to think he was the individual involved. This stop was supported by individualized reasonable suspicion because of all of these factors.
- The determination whether an officer had reasonable suspicion to conduct a Terry stop must be based on the totality of circumstances viewed through the eyes of the reasonable and prudent police officer on the scene who must react to events as they unfold. An assessment of the totality of the circumstances does not deal with hard certainties, but with probabilities. A court considers the cumulative facts not in terms of library analysis by scholars, but as understood by those versed in the field of law enforcement.
- Police officers may take steps that are reasonably necessary to protect their personal safety and to maintain the status quo during the course of a stop. The mere use or display of force in making a stop will not necessarily convert a stop into an arrest. Whether an investigative stop is converted into an arrest depends on, first, whether the officers had reasonable suspicion to make the stop, and second, whether the degree of intrusion into the suspect's personal security was reasonably related to the officers' suspicions and the surrounding circumstances.

Facts: At about 9:20 one evening in March 2015, **Columbus Police Officer Samuel Moore** and his partner responded to a police dispatch about a domestic dispute. As they were getting out of their police cruiser, they heard the sound of four or five gunshots. The shots "weren't faint"; rather, "they appeared to be close." The officers immediately jumped back in their car and rushed to the area where the shots seemed to be coming from—outside a nearby elementary school.

It took the officers about 30 to 60 seconds to get to an intersection just outside the school—a distance by car of about four-tenths of a mile. As they approached the intersection, they spotted an individual whom they later identified as Jaonte Hairston, walking away from the school into a

crosswalk while talking on a cell phone. There was no one else around. The officers got out of the car and with weapons drawn ordered Hairston to stop. Officer Moore asked Hairston if he had heard the gunshots. Hairston replied that he had. Officer Moore then asked Hairston whether he was carrying any weapons. Hairston said he had a gun and nodded toward his jacket pocket. Officer Moore patted Hairston down and retrieved a handgun from his jacket. According to Officer Moore, at the time of the stop, Hairston talked to the officers calmly but "was somewhat nervous."

Following the arrest, Officer Moore wrote a police report stating that when the officers were exiting their cruiser, "they heard 4 to 5 gun shots west of their location" and that they "responded to the area where they heard the gun shots from." In explaining his actions, Officer Moore testified that he had patrolled the zone where he was working that night for his entire six-year police career. Drug activity—as well as assaults, robberies, and domestic violence—frequently occurred in the area around the school during the evening hours. He had previously made arrests there for those types of crimes, including gun-related arrests. Hairston was charged with carrying a concealed weapon.

Issue #1: Was there reasonable suspicion to stop Hairston?

Holding and Analysis: Yes. The cumulative facts support the conclusion that the officers had a reasonable suspicion to stop Hairston. First, Officer Moore personally heard the sound of gunshots—the gunshots were not faint and sounded close-by. This is not a case in which the officers relied on a radio dispatch or other secondhand information about shots being fired, but one in which they heard and immediately reacted to the sound of nearby gunfire.

Second, Officer Moore knew from personal experience that crime often occurred at night in the area where the stop took place. Officer Moore had worked the same beat for six years. He was familiar with drug and other criminal activity near the school, and he had made arrests for illegal weapons and other crimes there in the past. An officer's experience with criminal activity in an area and an area's reputation for criminal activity are factors we have found relevant to the reasonable-suspicion analysis. Further, the stop occurred after dark—another circumstance we have found to be of some significance in the reasonable-suspicion analysis.

But the most important considerations here are that the stop occurred very close in time to the gunshots and Hairston was the only person in the area from which the shots emanated. Officer Moore testified that upon hearing the shots, the officers immediately jumped in the cruiser and that it took them only 30 to 60 seconds to get to the intersection outside the school. When they arrived, Hairston—and no one else—was there.

The court concluded that these facts, taken together and viewed in relation to each other, rise to the level of reasonable suspicion. The Ohio Supreme Court pointed out that part of police work is

investigating criminal activity that officers detect while out on patrol. Here, the officers did exactly what one would expect reasonable and prudent police officers to do in their situation. Upon hearing gunshots, they proceeded immediately to the location they believed the shots to be coming from to investigate. Finding only Hairston in the area and knowing that criminal activity frequently occurred there, the officers were not required to ignore Hairston's presence, nor was it necessary for them to attempt to speak to him without taking precautions for their own safety. To the contrary, it was reasonable and prudent for the officers to stop Hairston to see if he was the source of or had information about the gunshots. And because the gunshots gave the officers reason to suspect that Hairston was armed, they were justified in patting him down for their safety.

Issue#2: Was this detention done in a reasonable manner? Was this a *Terry* stop, or did the amount and type of force make this an immediate arrest?

Holding and Analysis: Yes, this was a *Terry* stop, and it was done in a reasonable manner given the nature of the stop. Hairston argued that by approaching him with their guns drawn, the officers placed him under arrest and that they lacked probable cause for the arrest. The court disagreed. The officers' suspicions and the surrounding circumstances warranted approaching Hairston with weapons ready. And because the officers were justified in having their weapons drawn, the showing of firearms did not convert the stop into an arrest.

Police officers may take steps that are "reasonably necessary to protect their personal safety and to maintain the status quo during the course of a stop." The "mere use or display of force in making a stop will not necessarily convert a stop into an arrest." Whether an investigative stop is converted into an arrest depends on, first, whether the officers had reasonable suspicion to make the stop, and second, whether the degree of intrusion into the suspect's personal security was reasonably related to the officers' suspicions and the surrounding circumstances.

Investigating gunshots and suspects who are potentially armed presents a dangerous situation for the responding officers. Here, the officers were in an area known for criminal activity and they had just heard someone fire a gun. Their suspicions that it was Hairston who had fired the shots and that he was still armed justified the precautions they took in approaching him with their weapons drawn. Because the officers had legitimate safety concerns, the fact that they had their guns drawn when they approached Hairston did not convert the investigative stop into an arrest.

V. Again,,, Reasonable Suspicion must be Particularized/Individualized—Officers Cannot Detain Solely because a Person is Close to Law Breakers

State v. Mosby, 2021-Ohio-2255 (6th App. Dist. 2021)

Critical Points of the Case:

- Officers cannot detain everyone near crowd where criminal activity is occurring—there must be particularized suspicion as to each individual detained.
- In order to pass constitutional muster, an investigative stop must be premised upon an officer's reasonable, articulable suspicion of criminal activity. Such suspicion must be objective, particularized, and based on the totality of the circumstances confronted by the officer prior to the stop. Based upon that whole picture the detaining officers must have a particularized and objective basis for suspecting the particular person stopped of criminal activity.
- For purposes of examining the propriety of an investigative stop that took place in a high crime area, and stated that factor alone is not sufficient to justify an investigative stop. To hold otherwise would result in the wholesale loss of the personal liberty of those with the misfortune of living in high crime areas. Being in a neighborhood frequented by drug users, standing alone, is not a basis for concluding that an appellant himself was engaged in criminal conduct. Further, defendant's mere proximity to others independently suspected of criminal activity does not, without more, provide a sufficient constitutional basis to stop that person.

Facts: Sgt. Melvin Stachura of the Toledo Police Department gang unit testified that he was on duty on the morning of August 16, 2019, and participated in detaining defendant Timothy Mosby at a parking lot located adjacent to an apartment complex known as the Greenbelt Place Apartments, which are also known as the Cherrywood apartments. According to Stachura, the parking lot at which the stop was initiated is known as the Wayne Lot. Stachura testified that the Cherrywood apartment complex is a high crime area.

Stachura indicated that the Cherrywood Crips had an ongoing feud with the Gear Gang Crips in Toledo, which led to frequent police calls to the area around the Greenbelt Place apartments. According to Stachura, police "were in that area every night" in response to reports of disorderly conduct, open containers, drinking, drug use, loitering, and shots fired. These encounters, according to Stachura, led to the confiscation of "a lot of weapons."

Stachura patrolled the area around the Wayne Lot earlier in his shift on August, 16, 2019, taking note of the large crowd that had gathered there. Upon his return to the Wayne Lot at 2 a.m., Stachura observed that there were "at least 25 people" in the parking lot. He testified that he observed "open alcohol consumption" and detected the odor of burnt marijuana in the area. He further explained that the individuals in the parking lot were "hanging out," which he determined met the definition of loitering. Stachura explained that loitering was a "huge problem" at the Wayne Lot, where Stachura frequently encountered "from 20 all the way up to a hundred people * * *, and there would be several fights that would break out."

Before engaging the crowd at the Wayne Lot, additional police units were requested. Stachura explained that the request for additional units was made out of concern for officer safety based upon prior incidents of violence and the prevalence of weapons confiscations in that area. Moreover, Stachura stated that the decision to engage in the crowd was made by law enforcement and was not the product of any citizen complaints of criminal activity occurring at that location.

When he arrived on the scene, Stachura noticed that there were "two or three cars" parked with the engines not running, around which there were individuals who were drinking alcohol. He stated that "at that point we were going to make a stop on everybody." He proceeded to the vehicle where Mosby was seated as a rear passenger, and "asked all the occupants of that vehicle to please exit their vehicle." He stated at the suppression hearing that he ordered the occupants out of the vehicle for officer safety in light of the "type of activities that go on in that area," which he again identified as "several instances of weapons and shootings even with police on scene." He further elaborated that he wanted to detain everyone at the scene so that he could "find out who is actually doing the open consumption of alcohol, all the other various criminal activity that's going on at that moment." Moreover, Stachura indicated that he wanted to check everyone's identification so that he could ascertain who belonged at the apartment complex and who was loitering.

Mosby initially ignored the command to exit the vehicle. Eventually, Mosby was removed from the vehicle by police, at which point Stachura overheard other officers stating that they saw a firearm. Thereafter, officers removed Mosby from the vehicle, confiscated a firearm from his waistband, and arrested him.

On cross-examination, Stachura was pressed on his claim that the individuals, including Mosby, were loitering at the Wayne Lot. He acknowledged that one of the passengers in the vehicle was a resident of the apartment complex, and was thus permitted to be there at the time. He also admitted that the vehicle was not impeding access to the parking lot or denying anyone passage.

As to his observation of criminal activity, Stachura stated that the odor of burnt marijuana was not localized to the subject vehicle, and he acknowledged that the odor of burnt marijuana "can carry"

over a distance depending on the wind and "several factors." Stachura testified that he did not see Mosby or any of the occupants of the vehicle drinking alcohol, using marijuana, or engaging in any specific criminal activity. Nonetheless, Stachura indicated that he stopped the vehicle "because there [were] several individuals around it drinking and smoking marijuana." Several other officers testified consistent with Stachura, and also acknowledged the gun was not seen until *after* the detention of Mosby had started. Mosby was indicted for carrying a concealed weapon, having weapons while under disability and other offenses.

Issue: Was there reasonable suspicion to detain Mosby?

Holding and Analysis: No. Because the officers failed to articulate an objectively reasonable basis to suspect that Mosby was engaged in criminal activity, relying instead on the fact that Mosby was sitting in a parked car in a high crime area, the court held that reasonable suspicion was lacking here. The court said the following about this stop: Were we to hold otherwise, we would obliterate the particularization requirement set forth in *Terry* and its progeny, and establish an "unwise precedent that a police officer may conduct an investigative stop of any person present in a so-called 'high crime' area * * *, without any specific and articulable facts pointing more directly to that particular person's being engaged in criminal activity."

The court said, to be sure, an investigative stop cannot be "based on nothing more substantial than inarticulate hunches * * *." Rather, "before stopping a person, the officers must have an objective basis for suspecting that *that* particular person was involved in the criminal activity. In determining whether or not the officer has a reasonable suspicion we look at the totality of the circumstances and not to any one factor.

The investigative stop at issue in this case took place upon officers' arrival at the Wayne Lot. Bodycam footage of the encounter with Mosby and testimony from the officers reveals that the vehicle in which Mosby was a passenger was targeted for detention almost immediately upon officers' arrival on the scene, without any observation of criminal or even suspicious conduct on Mosby's part.

The investigative stop began, and Mosby was detained, at the moment he was ordered out of the car. Mosby's suspicious activity occurred *after* the investigative stop was already underway. Mosby's actions in response to the officers' commands, whether suspicious or not, are irrelevant to the question of whether the investigative stop was supported by reasonable suspicion.

The court agreed that the testimony of the officers established that the stop was initiated by experienced officers, in a high crime area, late at night. However, these factors alone do not support the initiation of an investigative stop, because the officers who responded to the Wayne

Lot did not possess the requisite reasonable suspicion to believe that *Mosby* was engaged in criminal activity.

According to Stachura and the other officers, a large crowd of individuals were gathered at the Wayne Lot upon his arrival on the scene. Some of these individuals were openly consuming alcohol, but Mosby and the other occupants of the vehicle were not. Further, there was an odor of burnt marijuana in the air, but none of the officers testified that it was emanating from the vehicle, and the officers acknowledged that they did not see the vehicle's occupants using marijuana.

Rather than limit their encounter to the individuals who were engaged in criminal activity, Stachura decided to "make a stop on everybody" so that he could "find out who is actually doing the open consumption of alcohol, all the other various criminal activity that's going on at that moment." Stachura indicated that he stopped the vehicle "because there were several individuals around it drinking and smoking marijuana."

The court found this testimony revealing (in a bad way), because it demonstrates that officers lacked any particularized suspicion that the occupants of the vehicle (including Mosby) were engaged in, or about to be engaged in, any criminal activity. In essence, the investigative stop at issue here was premised upon officers' knowledge of historical criminal activity in this high crime area, and observations of conduct of other individuals outside the vehicle, not any observations specific to Mosby or the other occupants of the vehicle. Mosby's "mere proximity to others independently suspected of criminal activity does not, without more, provide a sufficient constitutional basis to stop that person."