



Police Law Bulletin



City Attorneys' Office

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UNITED STATES SUPREME COURT



Exigent Circumstances Based On The Sound Of Gunshots In The Area Did Not Justify Stop And Frisk

U.S. v. Curry, 965 F.3d 313 (July 15; amended July 16, 2020).

On September 8, 2017, four Richmond police officers were patrolling Creighton Court, a densely populated area in Richmond, Virginia, as part of a “focus mission team” in response to recent shootings and homicides. About 9:00 p.m., the officers heard 5-6 gunshots and, within a minute, responded to the area where they believed the shots had originated. They encountered a number of people, some remaining in the area, and others, including a half-dozen men, not necessarily together, walking away. Although the officers had no specific reason to believe that any of the men had been involved in the shooting, the proximity in time and place to the gunshots led the officers to shine their flashlights on the men and instruct them to stop, raise their hands, and lift their shirts to expose their waistbands for any concealed weapons. The defendant, Curry, complied in a “lackadaisical” manner and eventually, two officers patted him down, finding a gun. The defendant was charged with felon in possession of a firearm.

The defendant moved to suppress the firearm. The district court held that there was no reasonable suspicion to support Curry's detention, and rejected the government's argument that exigent circumstances justified the suspicionless, investigatory stop. Therefore, it granted his motion to suppress. The government appealed to the Fourth Circuit Court of Appeals. The government conceded that there was no reasonable suspicion for the stop, but maintained its position that exigent circumstances justified the detention. The Fourth Circuit agreed and reversed the district court. The defendant then appealed to the United States Supreme Court.

The question before the Court was whether the suspicionless seizure of Curry, which was not a legal *Terry* stop, was nevertheless lawful due to exigent circumstances?

The exigent circumstances doctrine typically involves emergencies justifying a warrantless search of private premises, not an investigatory stop of a person. Very few cases have applied the doctrine in the investigatory seizure context and all of those involved specific and clear limiting principles. In those cases, the government isolated a geographic area with clear boundaries or a discrete group of people in an effort to search for a suspect implicated in a known crime in the immediate aftermath of that crime. These limiting principles were wholly absent from Curry's stop. In the case at hand, although the officers had heard shots, and received information regarding their general location, the officers did not have any specific description of the scene of the shooting or its perpetrator and randomly seized only certain individuals in the area. Therefore, the Court held that the stop was not justified by exigent circumstances and thus, was not reasonable under the Fourth Amendment, noting that "to hold otherwise would create a sweeping exception to *Terry v Ohio*, 392 U.S. 1 (1968)."

Officers Had Probable Cause to Arrest Individuals and Were Entitled to Qualified Immunity in Civil Suit Filed Against Them Alleging False Arrest

District of Columbia et. al. v. Wesby et. al., No. 15–1485 (January 22, 2018).

Around 1 a.m. on March 16, 2008, the District of Columbia's Police Department received a complaint about loud music and illegal activities at a house. The caller told police that the house had been vacant for several months. When officers arrived at the scene, several neighbors confirmed that the house should have been empty.

The officers approached the house and heard loud music playing inside. After the officers knocked, they saw a man look out the window and then run upstairs. One of the partygoers opened the door, and the officers entered. They immediately observed that the inside of the house "was in disarray" and looked like "a vacant property." The officers smelled marijuana and saw beer bottles and cups of liquor on the floor. In fact, the floor was so dirty that one of the partygoers refused to sit on it while being questioned. Although the house had working electricity and plumbing, it had no furniture downstairs other than a few padded metal chairs. The only other signs of habitation were blinds on the windows, food in the refrigerator, and toiletries in the bathroom. In the living room, the officers found a makeshift strip club. Several women were wearing only bras and thongs, with cash tucked into their garter belts. The women were giving lap dances while other partygoers watched. After seeing the officers, many partygoers scattered into other parts of the house and some hid. The officers found more debauchery upstairs. A naked woman and several men were in the bedroom. A bare mattress—the only one in the house—was on the floor, along with some lit candles and multiple open condom wrappers. The officers found a total of 21 people in the house. After interviewing all 21, the officers did not get a consistent story. Many partygoers said they were there for a bachelor party, but no one could identify the bachelor. Each of the partygoers claimed that someone had invited them to the house, but no one could say who. Two women working the party said that a woman named "Peaches" or "Tasty" was renting the house and had given them permission to be there. An officer asked the woman to call Peaches so he could talk to her. Peaches answered and explained that she had just left the party to go to the store. When the officer asked her to return,

Peaches refused. At first, she claimed that she was renting the house and had given the partygoers permission to have the party, but she eventually admitted that she did not have permission to use the house. The officers then contacted the owner. He told them that he had been trying to negotiate a lease with Peaches, but they had not reached an agreement. He confirmed that he had not given Peaches (or anyone else) permission to be in the house.

At that point, the officers arrested the 21 partygoers for unlawful entry. The charges were eventually dropped (there is no discussion in the case as to why the charges were dismissed). 16 of the 21 partygoers sued the District of Columbia and five of the arresting officers for false arrest. The trial court awarded summary judgment to the party-goers agreeing that the officers lacked probable cause to arrest them for unlawful entry. An element of unlawful entry in the District of Columbia is that the defendant “knew or should have known that his entry was unwanted.” The trial court reasoned that the officers had been told that Peaches had invited the partygoers to the house, and nothing in their investigation suggested that the partygoers knew or should have known that the invitation was against the owner’s will. The jury awarded the partygoers \$680,000 in damages which, along with attorney’s fees, lead to a total award of nearly \$1 million. The defendants appealed. A divided panel of the Court of Appeals for the District of Columbia affirmed. The defendants appealed to the United States Supreme Court.

The Fourth Amendment protects the right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures. Because arrests are “seizures,” they must be reasonable. An arrest is reasonable if the officer has probable cause to believe that the suspect committed a crime. Probable cause is determined by examining the totality of the circumstances. Considering the totality of the circumstances, the Supreme Court concluded that the officers made an entirely reasonable inference that the partygoers were knowingly taking advantage of a vacant house as a location for their late-night party.

Most homeowners do not live in near-barren houses. And most homeowners do not invite people over to use their living room as a strip club, to have sex in their bedroom, to smoke marijuana inside, and to leave their floors filthy. In addition, the partygoers’ reaction to the officers gave them further reason to believe that the partygoers knew they lacked permission to be in the house. Many scattered at the sight of the uniformed officers. Two hid themselves, one in a closet and the other in a bathroom. The partygoers’ answers to the officers’ questions also suggested their guilty state of mind. When the officers asked who had given them permission to be there, the partygoers gave vague and implausible responses. They could not say who had invited them. Only two people claimed that Peaches had invited them, and those two individuals were working the party, not attendees. If Peaches was the hostess, it was odd that none of the partygoers mentioned her name. Additionally, some of the partygoers claimed the event was a bachelor party, but no one could identify the bachelor.

For these reasons, the Supreme Court reversed the Court of Appeals’ holding that the officers lacked probable cause to arrest.

Next, the Supreme Court held that the officers were entitled to qualified immunity. Even if the officers had lacked probable cause for the arrests (which the Court already concluded they did not), officers are entitled to qualified immunity under §1983 unless the unlawfulness of their

conduct has been clearly established. This means that, at the time of the officer's conduct, the law was sufficiently clear that every reasonable official would understand that what he was doing was unlawful. The Court was unable to identify a single case where an officer acting under similar circumstances was held to have violated the Fourth Amendment.

Therefore, the judgment of the Court of Appeals for the District of Columbia was reversed.



NORTH CAROLINA COURT OF APPEALS

Law Enforcement's Show of Authority Does Not Rise to the Level of a Seizure Unless the Suspect Submits to That Authority or is Physically Restrained

State v. Turnage, No. COA17-803 (May 15, 2018).

On March 23, 2016, detectives with the Duplin County Sheriff's Department were conducting surveillance in the area of 155 John David Grady Road due to complaints of drug activity. A detective, in plainclothes and in an unmarked pickup truck, observed a burgundy van leaving the residence and decided to follow the vehicle. After about 1 ½ miles, the driver suddenly, and without warning, stopped in the middle of the roadway. Detective Miller waited approximately fifteen seconds, and then activated his blue lights. As Detective Miller attempted to approach the driver's side of the vehicle, he noticed a male subject exit the passenger side. Detective Miller recognized the male as Donnie Barton, an individual known to him through prior law enforcement encounters. Barton began walking towards the patrol unit with his hands in his pockets. Detective Miller told Detective Williams, who was also in the patrol vehicle, to get out of the vehicle. Barton then ran back to the van, yelling, "Go, go, go." The van sped away, and Detective Miller returned to the Ford pickup truck, activated the siren, and began pursuing the van. During the 1 ½ mile pursuit, Detective Miller observed the van run off the shoulder of the road, cross the center line, and travel in excess of 80 mph in a 55 mph zone. Deputy Toler positioned his vehicle at an intersection and prevented the van from advancing. Defendant was removed from the driver's seat. Detective Miller then heard two children, ages two and three, crying in the back of the van. Defendant was arrested for fleeing to elude arrest, resisting a public officer, and two counts of child abuse. DSS was contacted and Barton's father assumed custody of the two children.

Defendant filed a motion to suppress alleging law enforcement did not have reasonable suspicion to stop her vehicle. The trial court granted Defendant's motion concluding that there was a seizure of the van and its occupants when Detective Miller came up behind the stopped van and activated his blue lights. The trial court further concluded that there was no reasonable suspicion of criminal activity at the time of the seizure. The State appealed.

The Constitution prohibits unreasonable searches and seizures. There must be a physical application of force *or* submission to a show of authority for a seizure to be found. A simple show of authority by law enforcement, such as the activation of blue lights, does not rise to the level of a seizure unless and until the suspect submits to that show of authority.

In the case at hand, there was no action on the part of law enforcement that caused Defendant to stop her vehicle. For reasons unknown, Defendant inexplicably stopped her van in the middle of the road prior to any show of authority from law enforcement. The earliest point at which detectives made a show of authority was the activation of the blue lights on the pickup truck. The mere activation of the vehicle's blue lights, however, did not constitute a seizure because Defendant did not yield to that show of authority. Rather, Mr. Barton exited Defendant's vehicle as Detective Miller was attempting to approach and instructed Defendant to flee. Defendant did not submit to the officers' show of authority until she discontinued fleeing and further movement was prevented by Deputy Toler's vehicle. It was not until this point that Defendant was seized pursuant to the Fourth Amendment. The criminal activity observed by Detective Miller during the 1 ½ mile car chase, and subsequently his observations of the two minor children in the van, justified Defendant's arrest for fleeing to elude arrest, resisting a public officer, and two counts of child abuse.

Thus, the North Carolina Court of Appeals reversed the trial court's granting of Defendant's motion to suppress.