Chapter 9:  
The Fourth Amendment Guarantee Against Unreasonable Searches and Seizures

Fourth Amendment issues received frequent attention from the Supreme Court. Although the Court decided only one Fourth Amendment case [Whren v. United States (1996)] during the 1995 term, there were numerous notable decisions during subsequent terms. Although several of the decisions endorsed broader police authority, other decisions defined limits for governmental authority to conduct searches and undertake seizures in specific contexts. Many of the liberal and conservative decisions embodied fairly strong consensus among the justices with two or fewer dissenters. However, in its most recent terms, the justices have divided more often in 6-to-3 and 5-to-4 decisions.

SEARCH AND SEIZURE: VEHICLES

In Whren v. United States, plainclothes narcotics officers in Washington, D.C. noticed a car with temporary license plates and youthful occupants that sat for an unusually long time at a stop sign. When the officers made a U-turn in their unmarked car to follow the vehicle, the vehicle made a quick turn--without signaling--and took off at an excessive speed. When the suspicious vehicle stopped behind traffic at a stoplight, the police car pulled alongside and an officer approached the driver's side window. He identified himself as a police officer and instructed the driver to shift the vehicle into "park." He noticed two plastic bags that appeared to be crack cocaine in the hands of the car's passenger, and both the driver and passenger were arrested. Both men were convicted of narcotics offenses. They challenged their convictions by claiming that the police had stopped their vehicle improperly.

Under existing Fourth Amendment doctrines, police officers are not supposed to stop cars based on hunches or whims. They must have a legitimate reason, such as an observed traffic law violation, in order to interfere with citizens' liberty by stopping the vehicle. Whren claimed that his car was stopped improperly because under Washington, D.C. police department policies, narcotics officers in unmarked vehicles are not supposed to enforce traffic laws unless they observe violations that are "so grave as to pose an immediate threat to the safety of others" (Biskupic, 1996, A1). He argued that traffic stops should be permitted only if the officer would have stopped the car for suspected traffic violations absent any other circumstances. In effect, he asserted that the officers suspected him of drug activity and used the traffic stop as a pretext for examining his vehicle because they lacked the proper basis to stop him to investigate any narcotics crimes.

Commentators who awaited the Court's decision in the case expressed concern that police could use pretextual traffic stops to stop any vehicle that they wish to stop--because an officer can always claim that he or she believed that a vehicle was going too fast or failed to use a turn signal. Moreover, there were concerns that pretextual traffic stops can be used to mask racially discriminatory police practices that target African Americans and Hispanics for investigation of suspected drug activity based on nothing more than the ethnicity or skin color of a car's driver.

Ultimately the Supreme Court issued a unanimous decision upholding the validity of the search and endorsing the authority of any police officers to make traffic stops whether or not such stops are part of their usual duties. Justice Scalia's majority opinion declared that the Fourth Amendment requires across-the-board rules about police authority and cannot vary from city to
city depending on whether local law enforcement policies encourage their plainclothes officers to monitor traffic laws. Moreover, the Court clearly shied away from any Fourth Amendment interpretations that would require courts to make a subjective determination of what a "reasonable officer" would do under the policies and practices in a particular city. Scalia acknowledged that selective and discriminatory enforcement of traffic laws under pretextual automobile stops would raise constitutional problems, but he indicated that evidence of such activities should be presented as an equal protection claim and not through an effort to create new Fourth Amendment rules.

Serious issues concerning the risk of discriminatory law enforcement practices lurk beneath the debate about pretextual traffic stops. However, it would be extremely difficult to formulate a workable rule that sought to bar some sworn law enforcement officers from enforcing observed traffic law violations. Thus the justices' unanimity behind a single majority opinion is not surprising.

During the 1995-96 term, the Court decided one additional case related to the Fourth Amendment and automobiles. Although the case did not shape Fourth Amendment doctrine, it concerned the standards to be applied by appellate courts in reviewing search and seizure decisions by the lower courts. In Ornelas v. United States (1996), the Court ruled in an 8-to-1 decision that appellate courts should not simply accept trial court decisions about the existence of reasonable suspicion and probable cause. Instead, the appellate court should make a de novo review -- meaning "anew; afresh; a second time" -- of the existence of reasonable suspicion and probable cause that officers claimed to rely upon in justifying the search of a vehicle. Justice Scalia was the lone dissenter in this decision that empowers appellate courts to monitor closely trial courts' decisions about Fourth Amendment issues.

In the Court's next automobile search case [Ohio v. Robinette (1996)], a sheriff's deputy clocked Robert Robinette driving 69 miles per hour through a construction zone with a posted speed limit of 45 miles per hour. The deputy stopped Robinette, ran a check on his driver's license, found no previous violations, and issued Robinette a verbal warning. After returning Robinette's license, the deputy asked whether there were any drugs or weapons in the car. Robinette answered "no." The deputy then asked if he could search the car. Robinette consented to the search, and the deputy subsequently discovered a small amount of marijuana and an illegal amphetamine pill in the car. Robinette was convicted of possessing controlled substances. However, the Ohio Supreme Court overturned the conviction by declaring that under "the federal and Ohio Constitutions...citizens stopped for traffic offenses [must] be clearly informed by the detaining officer when they are free to go...before an officer attempts to engage in consensual interrogation." In other words, the Ohio Supreme Court announced that officers must inform drivers that they are free to go before asking to undertake a consent search of the vehicle. Otherwise, drivers who believe that they are not free to leave may not be consenting to searches freely and voluntarily.

The U.S. Supreme Court rejected the rule imposed by the Ohio Supreme Court. The justices should have respected the Ohio court's judgment if they believed that the decision was based on the Ohio Constitution. However, the justices declared that the Ohio decision was actually based on the U.S. Constitution and U.S. Supreme Court precedents, and therefore they possessed the authority to reverse it.

Chief Justice Rehnquist's majority opinion rejected an absolute requirement that drivers must be notified of their freedom to leave in favor of a reasonableness test that considers the overall circumstances of each individual stop. The justices are not concerned about whether a driver has actual knowledge of his or her freedom to leave. The justices are only concerned with whether the officers' actions and inquiries were reasonable and the driver's consent, under the circumstances, is voluntary.

In an opinion concurring in judgment, Justice Ginsburg agreed that the ambiguous basis for the Ohio court's decision required a decision confirming that the Fourth Amendment does not require officers to inform drivers that they are free to leave before requesting permission to
search. However, Ginsburg reminded the Ohio Supreme Court that it could impose such a rule on its own state's police officers if it clearly issued the decision on the basis of the Ohio Constitution alone.

The lone dissenter, Justice Stevens, disagreed with the majority's assumption that Robinette should have known he was free to leave. In examining the actions of the individual deputy involved in the case, Stevens noted:

The fact that this particular officer successfully used a similar method of obtaining consent to search roughly 786 times in one year ... indicates that motorists generally respond in a manner that is contrary to their self-interest. Repeated decisions by ordinary citizens to surrender that interest cannot satisfactorily be explained on any hypothesis other than an assumption that they believed they had a legal duty to do so. (177 S.Ct. at 425)

In Maryland v. Wilson (1997), a state trooper, employing his flashing lights and siren, pursued a speeding car that had no regular license plate. The car eventually stopped. The trooper noticed two passengers in the car turning to look at him and then ducking down in the seat. The driver immediately got out of the car and met the trooper before he could walk up to the car. The trooper instructed the driver to return to the car to retrieve the car rental documents. Throughout the encounter, the trooper noticed that the driver and the passengers appeared to be extremely nervous. When the trooper ordered the front seat passenger out of the car, a quantity of crack cocaine fell from the car as the passenger exited the vehicle. The passenger, Wilson, was charged with possession of cocaine with intent to distribute. The Maryland courts excluded the cocaine from evidence by ruling that the trooper lacked sufficient grounds or authority to order passengers out of a stopped vehicle.

The U.S. Supreme Court reversed the Maryland courts' decisions. Again, the justices focused on the reasonableness of the circumstances in which searches and seizures occur. They sought to balance the officer's need to guard against danger with the intrusion upon the liberty of passengers ordered out of stopped vehicles. Chief Justice Rehnquist's majority opinion emphasized the number of officers assaulted and killed annually during traffic stops when placing greater weight upon the public safety interests than upon the liberty interests at stake.

Justices Stevens and Kennedy dissented. Justice Stevens expressed concern about the lack of information regarding the extent to which passengers rather than drivers have assaulted or killed police officers. He also asserted that the majority had undervalued the potential daily burden on thousands of innocent citizens who "have a constitutionally protected right to decide whether to remain comfortably seated within the vehicle rather than exposing themselves to the elements and the observation of curious bystanders" (117 S.Ct. at 889). Justice Kennedy added that because "[t]he practical effect of our holding in Whren...is to allow the police to stop vehicles in almost countless circumstances[,]....the Court puts tens of millions of passengers at risk of arbitrary control by the police" (117 S.Ct. at 990).

The Court decided three additional automobile search cases during the 1998 term. In Knowles v. Iowa (1998), the justices unanimously decided that an officer cannot search an automobile merely because the driver has been cited for a traffic offense. The Court’s decision invalidated an Iowa statute that authorized vehicle searches whenever officers write traffic tickets.

In Florida v. White (1999), officers suspected that a man was using his car to deliver cocaine. They arrested him on unrelated charges at his place of work and, upon seizing and searching his parked vehicle without a warrant, discovered cocaine. The officers were able to seize the vehicle under a state statute, the Florida Contraband Forfeiture Act. On behalf of a seven-justice majority, Justice Thomas’ majority opinion approved the search of the vehicle. According to Thomas, although the officers lacked probable cause to believe that the vehicle
contained contraband, they “had probable cause to believe that the vehicle itself was contraband under Florida law” (526 U.S. at 565). Thomas also emphasized officers’ expanded authority to conduct searches in public places. Thus Thomas concluded that “because the police seized the respondent’s vehicle from a public area--respondent’s employer’s parking lot--the warrantless seizure also did not involve any invasion of respondent’s privacy” (526 U.S. 566). Justice Stevens and Ginsburg dissented by emphasizing the Fourth Amendment’s presumption in favor of warrants and noting that the police had ample opportunity to obtain a warrant after arresting the suspect. According to Stevens:

[T]he particularly troubling aspect of this case is not that the State provides a weak excuse for failing to obtain a warrant either before or after White’s arrest, but that it offers us no reason at all … [O]n this record, one must assume that the officers who seized White’s car simply preferred to avoid the hassle of seeking approval from a judicial officer. I would not permit bare convenience to overcome our established preference for the warrant process as a check against arbitrary intrusions by law enforcement agencies. (526 U.S. at 573).

In Wyoming v. Houghton (1999), three justices dissented against the majority’s approval of the search of a female automobile passenger’s purse after a hypodermic syringe was found in the pocket of the male driver. In an opinion written by Justice Scalia, the Supreme Court declared that the existence of probable cause for a search as to one occupant of the car served as a justification for a search of all occupants’ containers. Scalia cited historical evidence underlying the Court’s prior precedents and asserted that law enforcement interests favoring a search outweighed the diminished expectation of privacy that automobile passengers may possess. In effect, the Court’s decision expanded the scope of permissible warrantless searches of containers within automobiles and increased police officers’ discretionary authority to make their own determinations of probable cause for automobile searches. Dissenting Justices Souter, Ginsburg, and Stevens accused the majority of creating a new rule that eliminated the previous distinctions between drivers and passengers. The dissenters argued that the scope of the search should “be defined by the…places in which there is probable cause to believe that [a particular object] may be found” (526 U.S. 310). Therefore, officers should not be permitted to search other places in the vehicle where contraband might be found when there is no probable cause to believe that it is located in these other places. The dissenters also objected to the Court’s conclusion that the interests of law enforcement outweigh the passenger’s privacy interests.

During the 1999 term, the Court decided another case involving a container in a vehicle, although the type of search at issue was not necessarily limited to vehicular contexts. In Bond v. United States (2000), a U.S. Border Patrol Agent squeezed the soft luggage on an overhead rack on a Greyhound bus. In one duffel bag, he felt a brick-like object. Bus passenger Bond admitted that he owned the duffel bag, and he consented to the search of the bag. The bag was found to contain a “brick” of methamphetamine. Bond was convicted on drug charges. He sought to suppress the introduction of the drugs as evidence against him, arguing that his Fourth Amendment rights were violated when the agent, with no basis for suspicion, manipulated and squeezed the duffel bag. In essence, Bond claimed that the random squeezing of soft-sided luggage by law enforcement officials looking for contraband constitutes an impermissible “unreasonable” search under the Fourth Amendment. On behalf of a seven-member majority, Chief Justice Rehnquist concluded that Bond’s rights were violated. Rehnquist found that Bond had a reasonable expectation of privacy when he placed his possessions in the duffel bag, and that this expectation -- and his Fourth Amendment rights -- were violated when the agent manipulated the bag. In dissent, Justice Breyer, joined by Scalia, argued that bus passengers do not have a reasonable expectation of privacy because they must expect that their soft-sided luggage will be touched and moved around in the course of traveling by commercial transportation. By placing a
limitation on officers’ authority to search, this decision runs counter to the predominant trends in search and seizure cases during the Rehnquist Court era.

The Court decided two additional cases concerning search and seizure in vehicle contexts during the 2000 term. In City of Indianapolis v. Edmond (2000), a six-justice majority rejected the practice of Indianapolis police who set up checkpoints and stopped cars in an effort to combat illegal drug sales and use. Officers stopped each car for approximately five minutes. As officers asked each driver for a license and registration, a trained law enforcement dog was led around the car to sniff for evidence of drugs. A positive signal from a dog would lead to a search. Justice O’Connor’s majority opinion noted: “We have never approved a checkpoint program whose primary purpose was to detect evidence of ordinary criminal wrongdoing. Rather, our checkpoint cases have recognized only limited exceptions to the general rule that a seizure must be accompanied by some measure of individualized suspicion.” Thus she distinguished the Indianapolis practice from approved contexts for vehicle stops such as borders stops and sobriety checkpoints. The majority opinion concluded: “We decline to suspend the usual requirement of individualized suspicion where the police seek to employ a checkpoint primarily for the ordinary enterprise of investigating crimes. We cannot sanction stops justified only by the generalized and ever-present possibility that interrogation and inspection may reveal that any given motorist has committed some crime.” Chief Justice Rehnquist, joined by Scalia and Thomas, dissented because he saw the brief stop as imposing only a minimal intrusion on the privacy of a car’s occupants.

In Atwater v. City of Lago Vista (2001), the Court considered whether the Fourth Amendment forbids a warrant less arrest for a minor criminal offense, such as a misdemeanor seatbelt violation punishable only by a fine. A five-member majority decided that such arrests do not violate the Fourth Amendment. In the case at issue, a mother and her two children were not wearing seatbelts in their pickup truck. The woman claimed that they had removed their seatbelts as they drove slowly along the shoulder of the road in order to look out the window for a toy that they believed had fallen out of the truck. A police officer arrested her and placed her jail for the misdemeanor offense. Justice Souter, who departed from his usual liberal colleagues in order to write the majority opinion on behalf of conservatives Rehnquist, Scalia, Thomas, and Kennedy, traced the common law history of arrests as well as colonial police practices to support the conclusion that no rights violation occurred. The dissenting opinion, on behalf of Justices Stevens, Ginsburg, and Breyer, was written by Justice O’Connor, who frequently provides a dependable vote in favor of law enforcement authority. According to O’Connor:

Because a full custodial arrest is such a severe intrusion on an individual’s liberty [as it includes being subjected to a full search and confiscation of possessions], its reasonableness hinges on “the degree to which it is needed for the promotion of legitimate governmental interests.” *** In light of the availability of citations to promote a State’s interests when a fine-only offense has been committed, I cannot concur in a rule which deems a full custodial arrest to be reasonable in every circumstance.

O’Connor also noted that the majority’s decision effectively expanded police authority because it gave them permission to make arrests for fine-only minor offenses. By virtue of making an arrest, the officer then automatically can search the driver, search the entire passenger compartment of the car, and impound the car to conduct an inventory search of its contents. According to O’Connor, “Such unbounded discretion carries with it grave potential for abuse.”

Overall, the Court’s vehicle search and seizure cases expanded the authority of police officers to both make arrests and conduct searches. The Court constrained officers’ authority to feel soft-sided luggage and to create drug checkpoints, but those limitations merely indicate that the majority of justices still see limits to police officers’ authority. The general trend of decisions
was a conservative expansion of governmental power and concomitant reduction in individuals’ protections under the Fourth Amendment.

**SEARCH AND SEIZURE: PLACES**

A significant division occurred within the Court for a Fourth Amendment case that concerned the applicability of the exclusionary rule to parole revocation proceedings. In *Pennsylvania Board of Probation and Parole v. Scott* (1998), a parolee, who had signed a parole agreement consenting to warrantless searches of his "person, property, and residence," objected when parole officers searched his residence without a warrant and found weapons which were used as evidence in his parole revocation hearing. The Pennsylvania courts said that the evidence should be excluded as a product of an unreasonable search notwithstanding the parole agreement consenting to such searches. The U.S. Supreme Court reversed. On behalf of a five-member majority, Justice Thomas declared that the Fourth Amendment's exclusionary rule does not apply to parole revocation proceedings. Thomas concluded that the exclusionary rule would impose excessively high costs and interfere with the traditional administrative flexibility of parole revocation proceedings. In dissenting opinions, Justice Stevens declared that the exclusionary rule is required by the Constitution, and Justice Souter argued that the deterrent purposes of the exclusionary rule are important for parole revocation just as they are for criminal trials.

The justices unanimously declined to expand police officers' authority in *Richards v. Wisconsin* (1997). In seeking a search warrant for a drug investigation, Madison, Wisconsin police officers asked a magistrate to authorize their entry into a hotel room without knocking in order to conduct a search. The magistrate issued a search warrant but refused to authorize the no-knock entry. An officer dressed as a maintenance worker knocked on the hotel room door and identified himself as an employee of the hotel maintenance department. Richards cracked the door open, with the chain still attached, saw uniformed officers outside and slammed the door shut. The officers quickly broke down the door, found cash and cocaine, and arrested the suspect. Richards sought to have evidence excluded based on the officers' failure to identify themselves as police officers conducting a search. The Wisconsin Supreme Court rejected this argument and announced that officers are never required to knock and announce their presence when they are executing a search warrant in a felony drug investigation.

A unanimous U.S. Supreme Court disagreed with this conclusion. Justice Stevens' majority opinion noted that the "knock and announce" requirement discussed in *Wilson v. Arkansas* (1995) does not apply in circumstances posing danger to the officers or when the officers reasonably believe that evidence may be destroyed. However, on behalf of the other justices, Stevens concluded that a blanket exception to the "knock and announce" rule for felony drug cases would grant the government too much authority. Instead, any "no-knock" entry must be supported by a reasonable basis for fears about safety or the destruction of evidence in each search situation. Although the justices rejected the Wisconsin Supreme Court's no-knock rule for drug cases, they upheld the validity of the search in this case because of the circumstances in which evidence could have been destroyed and the suspect may have escaped out a window if the police announced themselves.

In a subsequent "no-knock" case, the justice unanimously endorsed officers' actions in breaking a garage window during the search to make sure no suspects attempted to reach weapons that an informant said were hidden in the garage [*United States v. Ramirez* (1998)].

In *Wilson v. Layne* (1999), the unanimous Court decided that police officers violated citizens’ Fourth Amendment rights when they allowed the media to accompany officers as search warrants were executed in homes. In this case, United States Marshals invited a photographer and reporter to “ride-along” as they executed a warrant. The police made a protective sweep inside the house to look for the suspect, and the reporters observed and took photographs. This
decision will create opportunities for citizens to sue law enforcement officers and agencies if people other than officers enter homes when carrying out a search or arrest warrant.

During that same term, in Minnesota v. Carter (1998) a police officer looked into an apartment window through a gap between closed blinds and saw two men dividing cocaine and placing it into bags. The men were arrested outside the apartment. They sought to have the evidence excluded based on a claim that their Fourth Amendment rights were violated. Chief Justice Rehnquist’s majority opinion acknowledged that the Court’s precedents established that residents and overnight guests have a legitimate expectation of privacy that is protected by the Fourth Amendment. However, the Court decided that someone “merely present with the consent of the householder” does not have the same protected interest. Here, the men were only visitors to the apartment and not overnight guests. Moreover, the commercial nature of the defendants’ activities in the apartment further diminished their privacy interests and distinguished them from someone who lives in a house that has been searched. The Court did not even consider the question whether a search had occurred when the officer peered through the window because it found that there was no legitimate expectation of privacy.

Justice Ginsburg wrote the dissenting opinion on behalf of Stevens and Souter. According to Ginsburg, “when a homeowner or lessor personally invites a guest into her home to share in a common endeavor, whether it be for conversation, to engage in leisure activities, or for business purposes licit or illicit, that guest should share his host’s shelter against unreasonable searches and seizures” (526 U.S. at 106). Moreover, the dissenters argued that the Court’s decision would diminish privacy protections for homeowners because it “will tempt police to pry into private dwellings without a warrant, to find evidence incriminating guests who do not rest there through the night” (526 U.S. at 108).

During the 2000 term, Illinois v. McArthur (2001) decided that officers with probable cause to search a home may bar a homeowner from entering the home unless accompanied by a police officer as they waited two hours to obtain a search warrant. The eight-justice majority recognized a special need of law enforcement to prevent the suspect from destroying evidence. In Kyllo v. U.S. (2001), a closely-divided Court decided that law enforcement officers acting without a warrant may not aim a thermal imaging device at a home in order to detect heat indications from “grow lights” used to cultivate marijuana indoors. Because the government used a device that is not in general use by the public in order to explore details of a private home that would have been previously unknowable without a physical entry, the Fourth Amendment protection against unreasonable searches was violated. The Court divided into unusual groupings that were inconsistent with its usual “liberal” and “conservative” divisions. The five-member majority supporting the individual’s right included conservatives Scalia and Thomas as well as their more liberal colleagues Souter, Ginsburg, and Breyer. By contrast, the Court’s most liberal justice, Stevens, joined the consistent conservatives Rehnquist, O’Connor, and Kennedy, in arguing that the government’s action was permissible. This case provides a good illustration of the fact that certain fact situations will strike the justices in ways that separate them from their usual allies.

SEARCH AND SEIZURE: PERSONS

In Chandler v. Miller (1997), the Court examined a Georgia statute requiring candidates for political office to prove that they have passed a urinalysis drug test. This requirement of blanket drug testing for a category of people voluntarily undertaking a government-regulated activity was analogous to the situation in Vernonia School District v. Acton (1995), in which the justices narrowly approved suspicionless drug testing for public school students wishing to participate on school sports teams. This time, however, the justices overwhelmingly rejected the
drug-testing requirement. Only Chief Justice Rehnquist dissented in favor of the mandatory drug tests for political candidates.

Justice Ginsburg's majority opinion compared the interests underlying the Georgia statute with situations in which the Court had approved suspicionless drug tests. The Court previously approved testing of railroad employees involved in accidents or who violated safety rules because of an overriding interest in public safety and the individuals' diminished privacy expectations from working in a highly-regulated industry [Skinner v. Railway Executives' Assn., (1989)]. The Court also approved drug tests for U.S. Customs Service employees because of that agency's unique mission as first line of defense against drug smuggling [Treasury Employees v. Von Raab (1989)]. Finally, schools' responsibilities for students' health and well-being and the desire to deter drug use justified the mandatory tests for student-athletes in Vernonia.

In Chandler, by contrast, the Court could not identify any special need for suspicionless drug testing of political candidates, particularly because there was no evidence that drug use was a particular problem among this category of individuals. Moreover, the Georgia tests could be scheduled by the candidates themselves any time within thirty days prior to qualifying for the ballot, so actual drug users -- unless severely addicted -- could control their usage to avoid testing positive at the time of the test. Thus there would be no deterrent effect. Ginsburg's majority opinion ultimately concluded that Georgia's purposes were symbolic and therefore did not justify a suspicionless search. According to Ginsburg, "However well meant, the candidate drug test Georgia has devised diminishes personal privacy for a symbol's sake. The Fourth Amendment shields society against that state action" (117 S.Ct. at 1305). Fundamentally, suspicionless searches are not reasonable unless there is a legitimate special justification for invading an individual's privacy.

Chief Justice Rehnquist's dissent argued that states should possess the authority to determine their own affairs. According to Rehnquist, "But surely the State need not wait for a drug addict, or one inclined to use drugs illegally, to run for or actually become Governor before it installs a prophylactic mechanism" (117 S.Ct. at 1306).

During the 2000 term, the Court decided two cases concerning the stop-and-frisk doctrine from Terry v. Ohio (1968) that justified pat down searches on the street when officers have sufficient reason to believe that an individual is involved in criminal activity. In Florida v. J.L. (2000), an anonymous caller told police that a young African-American male standing at a particular bus stop and wearing a plaid shirt was carrying a weapon. Officers went to the bus stop, observed that one of the three African-American youths at the bus stop was wearing a plaid shirt, and proceeded to frisk each young man. The young man wearing the plaid shirt had a handgun in his pocket, which served as the basis for criminal charges. The Supreme unanimously solidified Terry v. Ohio's (1968) fundamental premise that police officers do not possess unlimited discretion to stop and frisk people on the streets. An anonymous tip alone is not a sufficient basis to justify a Terry stop, and therefore the search of the youth violated his Fourth Amendment rights. Justice Ginsburg's opinion on behalf of the Court distinguished the instant case from two prior cases in which informant's tips were accepted as the basis for a stop-and-frisk. In one prior precedent, the tip came from a known informant, thus providing an indicator of reliability. In the other case, the officers made further observations that verified the tip's accuracy before conducting the search. By contrast, in the instant case, there was no suspicious behavior observed by the officers. They conducted the search based entirely on the anonymous tip of unproven reliability. In a concurring opinion, Justice Kennedy noted that there might be other situations in which indicators of reliability might provide the basis for a stop-and-frisk resting on an anonymous tip.

Unlike the consensus that emerged in Florida v. J.L., the Court examined the Terry doctrine in a different case that divided the justices along their predominant philosophical fault line with the five most conservative justices constituting the majority and the four most liberal justices in dissent. In Illinois v. Wardlow (2000), a man fled upon seeing police officers drive
into an area characterized as one known for drug activities. Police stopped the man and found a handgun in his possession when they frisked him. He was convicted on weapons charges, but the Illinois Supreme Court reversed his conviction because it said that sudden flight does not create the required reasonable suspicion to justify a Terry stop. The U.S. Supreme Court reversed.

According to Chief Justice Rehnquist’s majority opinion, when a person runs at the sight of police officers in a high-crime area, officers have reasonable suspicion to conduct a stop and frisk. As described by Rehnquist, “Headlong flight -- wherever it occurs -- is the consummate act of evasion: it is not necessarily indicative of wrongdoing, but it is certainly suggestive of such” (528 U.S. at 124). In effect, the Court adopted a totality-of-circumstances test that permits police officers to include flight as a significant indicator of suspiciousness.

On behalf of four justices concurring in part and dissenting in part, Stevens agreed with the majority that the Court should not adopt a per se rule that either permits running away to justify a stop or precludes the use of flight as a determining factor. These four justices disagreed, however, with the majority’s conclusion that the stop-and-frisk was justified by the facts of this case. Stevens noted that the officer involved in the stop testified that he could not remember whether he was in a marked or unmarked car. Thus Stevens concluded that if the officers were in unmarked cars, the record does not eliminate the possibility that the defendant ran for his own reasons without knowing that police officers were in the passing cars. This scenario would counteract the officers’ underlying inference that he ran because police officers were driving down the street. According to Stevens, “I am not persuaded that the mere fact that someone standing on a sidewalk looked in the direction of a passing car before starting to run is sufficient to justify a forcible stop and frisk.” It appeared that the four dissenters were much more open than their colleagues to the possibility that people could run down the street for innocent reasons. Indeed, Stevens even endorsed the possibility that it is understandable for innocent people to run when they see the police because of perceptions of police brutality or the risk of harm to bystanders during police-citizen encounters in some neighborhoods.”

Among some citizens, particularly minorities and those residing in high crime areas, there is also the possibility that the fleeing person is entirely innocent, but, with or without justification, believes that contact with the police can itself be dangerous, apart from any criminal activity associated with the officer’s sudden presence. For such a person, unprovoked flight is neither “aberrant” nor “abnormal.” Moreover, these concerns and fears are known to the police officers themselves, and are validated by law enforcement investigations into their own practices (528 U.S. at 132-133).

Although the majority and dissenters agree on the desirability of a totality-of-circumstances test, it is clear that their applications of the test are quite different. The majority’s application appears to be very deferential to police discretionary judgments about suspiciousness and potentially has wide applicability since stops can be triggered by people running in areas labeled as “high crime” or “known for criminal activity.” By contrast, the dissenters would not accept the factors of a person’s presence in a high crime area or a person’s flight, alone or in combination, as the primary basis for reasonable suspicion. Instead, the dissenters would require detailed articulation of facts specific to each situation to provide the basis for the Terry stop.

There is a risk that the Court’s decision will open the door to a variety of additional cases that test the contours of the Wardlow decision. What if a person jogs away at the sight of the police? Rehnquist emphasized in Wardlow that the stop was triggered by “head-long flight,” but his rationale could be used to support stopping someone who is merely jogging. What if the person merely walks away very quickly? What if the person is not in a high crime area but is recognized by the police as someone with a criminal record? Because of the majority’s apparent deference to the judgments of police officers on the street, it seems likely that stops could be justified in all of these circumstances.
MARYLAND V. WILSON  
117 S.Ct. 882 (1997)  

[The facts are omitted because they were discussed in the preceding pages.]

The case is important because it determined whether police officers could order passengers to exit a stopped vehicle without any evidence of wrongdoing by the passengers. As you read the opinion, consider the following questions: (1) Is it reasonable to give police officers the authority to order passengers out of a car in all situations? (2) How much of a burden will this decision impose on the liberty of people traveling in automobiles throughout the United States?  

VOTE:

7 justices found the police officer's actions to be constitutional (Breyer, Ginsburg, O'Connor, Rehnquist, Scalia, Souter, Thomas)  

2 justices found police officers' blanket authority over all automobile passengers to be unconstitutional (Kennedy, Stevens)  

Chief Justice Rehnquist delivered the opinion of the Court.  

In this case we consider whether the rule of Pennsylvania v. Mimms (1977), that a police officer may as a matter of course order the driver of a lawfully stopped car to exit his vehicle, extends to passengers as well. We hold that it does.  

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In Mimms, we considered a traffic stop much like the one before us today. There, Mimms had been stopped for driving with an expired license plate, and the officer asked him to step out of his car. When Mimms did so, the officer noticed a bulge in his jacket that proved to be a .38-caliber revolver, whereupon Mimms was arrested for carrying a concealed deadly weapon. Mimms, like Wilson, urged the suppression of the evidence on the ground that the officer's ordering him out of the car was an unreasonable seizure, and the Pennsylvania Supreme Court, like the Court of Special Appeals of Maryland, agreed.  

We reversed, explaining that "[t]he touchstone of our analysis under the Fourth Amendment is always 'the reasonableness in all circumstances of the particular governmental invasion of a citizen's personal security,'...and that reasonableness "depends 'on a balance between the public interest and the individual's right to personal security free from arbitrary interference by law officers[.]'"***  

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We must therefore now decide whether the rule of Mimms applies to passengers as well as to drivers. On the public interest side of the balance, the same weighty interest in officer safety is present regardless of whether the occupant of the stopped car is a driver or passenger. Regrettably, traffic stops may be dangerous encounters. In 1994 alone, there were 5,762 officer assaults and 11 officers killed during traffic pursuits and stops.... In the case of passengers, the danger of the officer's standing in the path of oncoming traffic would not be present except in the case of a passenger in the left rear seat, but the fact that there is more than one occupant of the vehicle increases the possible sources of harm to the officer.  

On the personal liberty side of the balance, the case for the passengers is in one sense stronger than that for the driver. There is probable cause to believe that the driver has committed a minor vehicular offense, but there is no such reason to stop or detain the passengers. But as a
practical matter, the passengers are already stopped by virtue of the stop of the vehicle. The only change in their circumstances, which will result from ordering them out of the car, is that they be outside of, rather than inside of, the stopped car. Outside the car, the passengers will be denied access to any possible weapon that might be concealed in the interior of the passenger compartment. It would seem that the possibility of a violent encounter stems not from the ordinary reaction of a motorist stopped for a speeding violation, but from the fact that evidence of a more serious crime might be uncovered during the stop. And the motivation of a passenger to employ violence to prevent apprehension of such a crime is every bit as great as that of a driver.

***

In summary, danger to an officer from a traffic stop is likely to be greater when there are passengers in addition to the driver in the stopped car. While there is not the same basis for ordering the passengers out of the car as there is for ordering the driver out, the additional intrusion on the passenger is minimal. We therefore hold that an officer making a traffic stop may order passengers to get out of the car pending completion of the stop.

The judgment of the Court of Special Appeals of Maryland is reversed, and the case is remanded for proceedings not inconsistent with this opinion.

It is so ordered.

Justice Stevens, with whom Justice Kennedy joins, dissenting.

*** This case, in contrast [to Mimms], raises a separate and significant question concerning the power of the State to make an initial seizure of persons who are not even suspected of having violated the law.

My concern is not with the ultimate disposition of this particular case, but rather with the literally millions of other cases that will be affected by the rule the Court announces. Though the question is not before us, I am satisfied that--under the rationale of Terry v. Ohio (1968)--if a police officer conducting a traffic stop has an articulable suspicion of possible danger, the officer may order passengers to exit the vehicle as a defensive tactic without running afoul of the Fourth Amendment. Accordingly, I assume that the facts recited in the majority's opinion provided a valid justification for this officer's order commanding the passengers to get out of this vehicle. But the Court's ruling goes much farther. It applies equally to traffic stops in which there is not even a scintilla of evidence of any potential risk to the police officer. In those cases, I firmly believe that the Fourth Amendment prohibits routine and arbitrary seizures of obviously innocent citizens.

***

[The Court's] statistics [regarding attacks on officers during traffic stops] do not tell us how many of the incidents involved passengers. Assuming that many of the assaults were committed by passengers, we do not know how many occurred after the passenger got out of the vehicle, how many took place while the passenger remained in the vehicle, or indeed, whether any of them could have been prevented by an order commanding the passengers to exit. *** In short, the statistics are as consistent with the hypothesis that ordering passengers to get out of a vehicle increases the danger of assault as with the hypothesis that it reduces that risk.

Furthermore, any limited additional risk to police officers must be weighed against the unnecessary invasion that will be imposed on innocent citizens under the majority's rule in the tremendous number of routine stops that occur each day. ***

***

In contrast, the potential daily burden on thousands of innocent citizens is obvious. That burden may well be "minimal" in individual cases.... But countless citizens who cherish individual liberty and are offended, embarrassed, and sometimes provoked by arbitrary official
commands may well consider the burden to be significant. In all events, the aggregation of thousands upon thousands of petty indignities has an impact on freedom that I would characterize as substantial, and which in my view clearly outweighs the evanescent safety concerns pressed by the majority.

***

In my view, wholly innocent passengers in a taxi, bus, or private car have a constitutionally protected right to decide whether to remain comfortably seated within the vehicle rather than exposing themselves to the elements and the observation of curious bystanders. The Constitution should not be read to permit law enforcement officers to order innocent passengers about simply because they have the misfortune to be seated in a car whose driver has committed a minor traffic offense.

Unfortunately, the effect of the Court's new rule on the law may turn out to be far more significant than its immediate impact on individual liberty. *** Today...the Court takes the unprecedented step of authorizing seizures that are unsupported by any individualized suspicion whatsoever.

The Court's conclusion seems to rest on the assumption that the constitutional protection against "unreasonable" seizures requires nothing more than a hypothetically rational basis for intrusions on individual liberty. How far this ground-breaking decision will take us, I do not venture to predict. I fear, however, that it may pose a more serious threat to individual liberty than the Court realizes.

I respectfully dissent.

Justice Kennedy, dissenting.

***

Traffic stops, even for minor violations, can take upwards of 30 minutes. When an officer commands passengers innocent of any violation to leave the vehicle and stand by the side of the road in full view of the public, the seizure is serious, not trivial. ***

***

The practical effect of our holding in Whren, of course, is to allow the police to stop vehicles in almost countless circumstances. When Whren is coupled with today's holding, the Court puts tens of millions of passengers at risk of arbitrary control by the police. If the command to exit were to become commonplace, the Constitution would be diminished in a most public way. ***

***
8 justices found the Georgia statute to be unconstitutional (Breyer, Ginsburg, Kennedy, O'Connor, Scalia, Souter, Stevens, Thomas)

1 justice found the Georgia statute to be constitutional (Rehnquist)

Justice Ginsburg delivered the opinion of the Court

***
To be reasonable under the Fourth Amendment, a search ordinarily must be based on individualized suspicion of wrongdoing....But particularized exceptions to the main rule are sometimes warranted based on "special needs, beyond the normal need for law enforcement."...When such "special needs"--concerns other than crime detection--are alleged in justification of a Fourth Amendment intrusion, courts must undertake a context specific inquiry, examining closely the competing private and public interests advanced by the parties....As Skinner stated: "In limited circumstances, where the privacy interests implicated by the search are minimal, and where an important governmental interest furthered by the intrusion would be placed in jeopardy by a requirement of individualized suspicion, a search may be reasonable despite the absence of such suspicion." ***

***

Skinner concerned Federal Railroad Administration (FRA) regulations that required blood and urine tests of rail employees involved in train accidents; the regulations also authorized railroads to administer breath and urine tests to employees who violated certain safety rules. *** Recognizing that the urinalysis tests, most conspicuously, raised evident privacy concerns, the Court noted two offsetting considerations: First, the regulations reduced the intrusiveness of the collection process,...and, more important, railway employees, "by reason of their participation in an industry that is regulated pervasively to ensure safety," had diminished expectations of privacy...

***

In Von Raab, the Court sustained a United States Customs Service program that made drug tests a condition of promotion or transfer to positions directly involving drug interdiction or requiring the employee to carry a firearm....While the Service's regime was not prompted by a demonstrated drug abuse problem,...it was developed for an agency with an "almost unique mission,"...as the "first line of defense" against the smuggling of illicit drugs into the United States. *** The Court held that the government had a "compelling" interest in assuring that employees placed in these positions would not include drug users....Individualized suspicion would not work in this setting, the Court determined, because it was "not feasible to subject [these] employees and their work product to the kind of day to day scrutiny that is the norm in more traditional office environments."...

Finally, in Vernonia, the Court sustained a random drug testing program for high school students engaged in interscholastic athletic competitions. The program's context was critical, for local governments bear large "responsibilities, under a public school system, as guardian and tutor of children entrusted to its care."...An "immediate crisis"...caused by "a sharp increase in drug use" in the school district...sparked installation of the program. *** Our decision noted that "students within the school environment have a lesser expectation of privacy than members of the population generally."...We emphasized the importance of deterring drug use by schoolchildren and risk of injury a drug using athlete cast on himself and those engaged with him on the playing field....

*** We are aware of no precedent suggesting that a State's power to establish qualifications for state offices--any more than its sovereign power to prosecute crime--diminishes the constraints on state action imposed by the Fourth Amendment. We therefore reject respondents' invitation to apply in this case a framework extraordinarily deferential to state
measures setting conditions of candidacy for state office. Our guides remain *Skinner, Von Raab,* and *Vernonia.*

***

Our precedents establish that the proffered special need for drug testing must be substantial—important enough to override the individual's acknowledged privacy interest, sufficiently vital to suppress the Fourth Amendment's normal requirement of individualized suspicion....Georgia has failed to show, in justification of [its statute], a special need of that kind.

Respondents' defense of the statute rests primarily on the incompatibility of unlawful drug use with holding high state office. The statute is justified, respondents contend, because the use of illegal drugs draws into question an official's judgment and integrity; jeopardizes the discharge of public functions, including anti-drug law enforcement efforts; and undermines public confidence and trust in elected officials.... The statute, according to respondents, serves to deter unlawful drug users from becoming candidates and thus stops them from attaining high office...Notably lacking in respondents' presentation is any indication of a concrete danger demanding departure from the Fourth Amendment's main rule.

Nothing in the record hints that the hazards respondents broadly describe are real and not simply hypothetical for Georgia's polity. The statute was not enacted, as counsel for respondents readily acknowledged at oral argument, in response to any fear or suspicion of drug use by state officials: ***

***

In contrast to the effective testing regimes upheld in *Skinner, Von Raab,* and *Vernonia,* Georgia's certification requirement is not well designed to identify candidates who violate antidrug laws. Nor is the scheme a credible means to deter illicit drug users from seeking election to state office. The test date--to be scheduled by the candidate anytime within 30 days prior to qualifying for a place on the ballot--is not secret. As counsel for respondents acknowledged at oral argument, users of illegal drugs, save for those prohibitively addicted, could abstain for a pretest period sufficient to avoid detection. ***

***

What is left, after close review of Georgia's scheme, is the image the State seeks to project. By requiring candidates for public office to submit to drug testing, Georgia displays its commitment to the struggle against drug abuse. The suspicionless tests, according to respondents, signify that candidates, if elected, will be fit to serve their constituents free from the influence of illegal drugs. But Georgia asserts no evidence of a drug problem among the State's elected officials, those officials typically do not perform high risk, safety sensitive tasks, and required certification immediately aids no interdiction effort. The need revealed, in short, is symbolic, not "special," as that term draws meaning from our case law.

***

However well meant, the candidate drug test Georgia has devised diminishes personal privacy for a symbol's sake. The Fourth Amendment shields society against that state action.

***

We reiterate, too, that where the risk to public safety is substantial and real, blanket suspicionless searches calibrated to the risk may rank as "reasonable"--for example, searches now routine at airports and at entrances to courts and other official buildings....But where, as in this case, public safety is not genuinely in jeopardy, the Fourth Amendment precludes the suspicionless search, no matter how conveniently arranged.

For the reasons stated, the judgment of the Court of Appeals for the Eleventh Circuit is Reversed.

*Chief Justice Rehnquist, dissenting.*
I fear that the novelty of this Georgia law has led the Court to distort Fourth Amendment doctrine in order to strike it down. ***

***

The privacy concerns ordinarily implicated by urinalysis drug testing are "negligible,"...when the procedures used in collecting and analyzing the urine samples are set up "to reduce the intrusiveness" of the process. Under the Georgia law, the candidate may produce the test specimen at his own doctor's office, which must be one of the least intrusive types of urinalysis drug tests conceivable. But although the Court concedes this, it nonetheless manages to count this factor against the State, because with this kind of test the person tested will have advance notice of its being given, and will therefore be able to abstain from drug use during the necessary period of time. But one may be sure that if the test were random--and therefore apt to ensnare more users--the Court would then fault it for its intrusiveness....

***

Although petitioners might raise questions as to some of the other positions covered by the Georgia statute, there is no question that, at least for positions like Governor and Lieutenant Governor, identical concerns [about handling sensitive information that justify drug testing for other jobs] are implicated. In short, when measured through the correct lens of our precedents in this area, the Georgia urinalysis test is a "reasonable" search; it is only by distorting [our] precedents that the Court is able to reach the result it does.

***

Nothing in the Fourth Amendment or in any other part of the Constitution prevents a State from enacting a statute whose principal vice is that it may seem misguided or even silly to the members of the Court. I would affirm the judgment of the Court of Appeals.

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CITY OF INDIANAPOLIS V. EDMOND

[The fact of this case were described in the preceding section].

This case is important because it clarifies the Supreme Court’s accepted justifications for traffic checkpoints under the special-needs-of-law-enforcement exception to the warrant requirement. As you read the case, ask yourself the following questions: (1) Is society’s need to stop drug abuse and drug trafficking less compelling than the need to stop drunk driving? (2) Is a brief stop and a “dog sniff” intrusive and threatening to privacy interests? (3) Is the reasoning in this case consistent with the reasoning in cases concerning other kinds of traffic checkpoints?

Vote:

6 justices found that the traffic checkpoints violated the First Amendment (O’Connor, Kennedy, Stevens, Breyer, Souter, Ginsburg)

3 justices found that the traffic checkpoints were permissible (Rehnquist, Scalia, Thomas)

Justice O’Connor delivered the opinion of the Court.

In Michigan Department of State Police v. Stitz (1990), and United States vs. Martinez-Fuerte (1976), we held that brief, suspicionless seizures at highway checkpoints for the purposes of combating drunk driving and intercepting illegal immigrants were constitutional. We now consider the constitutionality of a highway checkpoint program whose primary purpose is the discovery and interdiction of illegal narcotics.
The First Amendment requires that searches and seizures be reasonable. A search or seizure is ordinarily unreasonable in the absence of individualized suspicion of wrongdoing. Chandler v. Miller (1997). While such suspicion is not an "irreducible" component of reasonableness,...we have recognized only limited circumstances in which the usual rule does not apply [citing examples of drug testing of student-athletes, customs service officers, railway employees involved in accidents]....

We have also upheld brief, suspicionless seizures of motorists at a fixed Border Patrol checkpoint designed to intercept illegal aliens, Martinez-Fuerte,...and at sobriety checkpoints aimed at removing drunk drivers from the road, Michigan Department of State Police v. Sitz,... In addition, Delaware v. Prouse (1979), we suggested that a similar type of roadblock with the purpose of verifying drivers' licenses and vehicle registrations would be permissible. In none of these cases, however, did we indicate approval of a checkpoint program whose primary purpose was to detect evidence of ordinary criminal wrongdoing.

In Martinez-Fuerte, we found that the balance tipped in favor of the Government's interests in policing the Nation's borders.... In so finding, we emphasized the difficulty of effectively containing illegal immigration at the border itself.... We also stressed the impracticality of the particularized study of a given car to discern whether it was transporting illegal aliens, as well as the relatively modest degree of intrusion entailed by the stops....

In Sitz,...[t]he gravity of the drunk driving problem and the magnitude of the State's interest in getting drunk drivers off the road weighed heavily in our determination that the program was constitutional....

[W]hat principally distinguishes these [Indianapolis drug] checkpoints from those we have previously approved is their primary purpose. As petitioners concede, the Indianapolis checkpoint program unquestionably has the primary purpose of interdicting illegal narcotics.***

We have never approved a checkpoint program whose primary purpose was to detect evidence of ordinary criminal wrongdoing. Rather, our checkpoint cases have recognized only limited exceptions to the general rule that a seizure must be accompanied by some measure of individualized suspicion. We suggested in Prouse that we would not credit the "general interest in crime control" as justification for a regime of suspicionless stops....Consistent with this suggestion, each of the checkpoint programs that we have approved was designed primarily to serve purposes closely related to the problems of policing.

The primary purpose of the Indianapolis narcotics checkpoints is in the end to advance "the general interest in crime control,".... We decline to suspend the usual requirement of individualized suspicion where the police seek to employ a checkpoint primarily for the ordinary enterprise of investigating crimes. We cannot sanction stops justified only by the generalized and ever-present possibility that interrogation and inspection may reveal that any given motorist has committed some crime.

It goes without saying that our holding today does nothing to alter the constitutional status of the sobriety and border checkpoints that we approved in Sitz and Martinez-Fuerte, or of the type of traffic checkpoint that we suggested would be lawful in Prouse. The constitutionality of such checkpoint programs still depends on a balancing of the competing interests at stake and the effectiveness of the program.... When law enforcement authorities pursue primarily general crime control purposes at checkpoints such as here, however, stops can only be justified by some quantum of individualized suspicion.

Our holding also does not affect the validity of border searches or searches at places like airports and government buildings, where the need for such measures to ensure public safety can
be particularly acute. Nor does our opinion speak to other intrusions aimed primarily at purposes beyond the general interest in crime control. Our holding also does not impair the ability of police officers to act appropriately upon information that they properly learn during a checkpoint stop justified by lawful purpose, even where such action may result in the arrest of a motorist for an offense unrelated to that purpose. Finally, we caution that the purpose of the inquiry in this context is to be conducted only at a programmatic level and is not an invitation to probe the minds of individual officers acting at the scene.

Because the primary purpose of the Indianapolis checkpoint program is ultimately indistinguishable from the general interest in crime control, the checkpoints violate the Fourth Amendment. The judgment of the Court of Appeals is accordingly affirmed.

Chief Justice Rehnquist (with Justice Scalia and Thomas) dissenting

The State's use of a drug-sniffing dog, according to the Court's holding, annuls what is otherwise plainly constitutional under our Fourth Amendment jurisprudence: brief, standardized, discretionless, roadblock seizures of automobiles, seizures which effectively serve a weighty state interest with only minimal intrusion on the privacy of their occupants. Because these seizures serve the State's accepted and significant interests of preventing drunken driving and checking for driver's licenses and vehicle registrations, and because there is nothing in the record to indicate that the addition of the dog sniff lengthens these otherwise legitimate seizures, I dissent.

***

ILLINOIS V. WARDLOW

[The facts of the case are discussed in preceding sections].

The case is important because it clarified the appropriate justifications for stops and frisk searches under the doctrine of Terry v. Ohio (1968). As you read the case, ask yourself the following questions: (1) Does the majority opinion give police too much discretion to make stops? (2) Should running in a “high crime area” constitute evidence of suspicious activity? (3) Is the dissent correct in questioning whether the facts of this case provide an adequate justification for a stop?

Vote:

5 justices concluded that police officers were justified in stopping a man that they saw running in a high crime area (Rehnquist, O'Connor, Kennedy, Scalia, Thomas)

4 justices concluded that there may be many non-suspicious reasons for running so that the facts of this case did not justify a police stop (Stevens, Ginsburg, Souter, Breyer)

Chief Justice Rehnquist delivered the opinion of the Court

Respondent Wardlow fled upon seeing police officers patrolling an area known for heavy narcotics trafficking. Two of the officers caught up with him, stopped him, and conducted a protective patdown search for weapons. Discovering a .38-caliber handgun, the officers arrested Wardlow. We hold that the officers' stop did not violate the Fourth Amendment to the United States Constitution.

On September 9, 1995, Officers Nolan and Harvey were working as uniformed officers in the special operations section of the Chicago Police Department. The officers were driving the
last car of a four car caravan converging on an area known for heavy narcotics trafficking in order to investigate drug transactions. The officers were traveling together because they expected to find a crowd of people in the area, including lookouts and customers.

As the caravan passed 4035 West Van Buren, Officer Nolan observed respondent Wardlow standing next to the building holding an opaque bag. Respondent looked in the direction of the officers and fled. Nolan and Harvey turned their car southbound, watched him as he ran through the gangway and an alley, and eventually cornered him on the street. Nolan then exited his car and stopped respondent. He immediately conducted a protective pat-down search for weapons because in his experience it was common for there to be weapons because in his experience it was common for there to be weapons in the near vicinity of narcotics transactions. During the frisk, Officer Nolan squeezed the bag respondent was carrying and felt a heavy, hard object similar to the shape of a gun. The officer then opened the bag and discovered a .38-caliber handgun with five live rounds of ammunition. The officers arrested Wardlow.

*** [T]he Illinois Supreme Court determined that sudden flight in such an area does not create a reasonable suspicion justifying a Terry stop....[It said that] flight may simply be an exercise of this right to "go on one's way," and, thus, could not constitute reasonable suspicion justifying a Terry stop....

*** Accordingly, we have previously noted the fact that the stop occurred in a "high crime area" among the relevant contextual considerations in a Terry analysis....

*** Our cases have also recognized that nervous, evasive behavior is a pertinent flight upon noticing the police.... Headlong flight--wherever it occurs--is the consummate act of evasion: it is not necessarily indicative of wrongdoing, but it is certainly suggestive of such....We conclude Officer Nolan was justified in suspecting that Wardlow was involved in criminal activity, and, therefore, in investigating further.

*** [U]nprovoked flight is simply not a mere refusal to cooperate. Flight, by its very nature, is not "going about one's business"; in fact, it is just the opposite. Allowing officers confronted with such flight to stop the fugitive and investigate further is quite consistent with the individual's right to go about his business or to stay put and remain silent in the face of police questioning.

*** In allowing such detentions, Terry accepts the risk that officers may stop innocent people. Indeed, the Fourth Amendment accepts that risk in connection with more drastic police action; persons arrested and detained on probable cause to believe they have committed a crime may turn out to be innocent. The Terry stop is a far more minimal intrusion, simply allowing the officer to briefly investigate further. If the officer does not learn facts rising to the level of probable cause, the individual must be allowed to go on his way. But in this case the officers found respondent in possession of a handgun, and arrested him for violation of an Illinois firearms statute....

The judgment of the Supreme Court of Illinois is reversed....

Justice Stevens, with whom Justice Souter, Justice Ginsburg, and Justice Breyer join, concurring in part and dissenting in part.

The State of Illinois asks this Court to announce a "bright-line rule" authorizing the temporary detention of anyone who flees at the mere sight of a police officer....Respondent counters by asking us to adopt the opposite per se rule--that the fact that a person flees upon seeing the police can never, by itself, be sufficient to justify a temporary investigative stop of the kind authorized by Terry v. Ohio....

The Court today wisely endorses neither per se rule. Instead,...[reasonable suspicion] must be determined by looking to "the totality of the circumstances--the whole picture."...
Abiding by this framework the Court concludes that "Officer Nolan was justified in suspecting that Wardlow was involved in criminal activity."...

Although I agree with the Court's rejection of the per se rules proffered by the parties, unlike the Court, I am persuaded that in this case the brief testimony of the officer who seized respondent does not justify the conclusion that he had reasonable suspicion to make the stop....

***

The question in this case concerns "the degree of suspicion that attaches to" a person's flight--or, more precisely, what "commonsense conclusions" can be drawn respecting the motives behind that flight. A pedestrian may break into a run for a variety of reasons--to catch up with a friend a block or two away, to seek shelter from an impending storm, to arrive at a bus stop before the bus leaves, to get home in time for dinner, to resume jogging after a pause for rest, to avoid contact with a bore or a bully, or simply to answer the call of nature--any of which might coincide with the arrival of an officer in the vicinity. A pedestrian might also run because he or she has just sighted one or more police officers....

***

The inference we can reasonably draw about the motivation for a person's flight, rather, will depend on a number of different circumstances. Factors such as the time of day, the number of people in the area, the character of the neighborhood, whether the officer was in uniform, the way the runner was dressed, the direction and speed of the flight, and whether the person's behavior was otherwise unusual might be relevant in specific areas ...

***

... A reasonable person may conclude that an officer's sudden appearance indicates nearby criminal activity. And where there is criminal activity there is also a substantial element of danger—either from the criminal or from a confrontation between the criminal and the police. These considerations can lead to an innocent and understandable desire to quit the vicinity with all speed.

Among some citizens, particularly minorities and those residing in high crime areas, there is also the possibility that the fleeing person is entirely innocent, but, with or without justification, believes that contact with the police can itself be dangerous, apart from any criminal activity associated with the officer's sudden presence. For such a person, unprovoked flight is neither "aberrant" or "abnormal." Moreover, these concerns and fears are known to the police officers themselves, and are validated by law enforcement investigations into their own practices.***

***

Guided by the totality-of-the-circumstances test, the Court concludes that Officer Nolan had reasonable suspicion to stop respondent....In this respect, my view differs from the Court's. The entire justification for the stop is articulated in the brief testimony of Officer Nolan. Some facts are perfectly clear; others are not. This factual insufficiency leads me to conclude that the Court's judgment is mistaken.

***

Officer Nolan testified that he was in uniform on that day, but he did not recall whether he was driving a marked or unmarked car.

***[Nolan] was not even asked whether any of the other three cars in the caravan were marked, or whether any of the other seven officers were in uniform....Officer Nolan's testimony also does not reveal how fast the officers were driving. It does not indicate whether he saw respondent notice the other patrol cars. And it does not say whether the caravan [of police cars], or any part of it, had already passed Wardlow by before he began to run.

***

The State, along with the majority of the Court, relies as well on the assumption that this flight occurred in a high crime area. Even if that assumption is accurate, it is insufficient because even in a high crime neighborhood unprovoked flight does not invariably lead to reasonable suspicion. On the contrary, because many factors providing innocent motivations for unprovoked flight are concentrated in high crime areas, the character of the neighborhood arguably makes an inference of guilt less appropriate, rather than more so. Like unprovoked flight itself, presence in
a high crime neighborhood is a fact too generic and susceptible to innocent explanation to satisfy the reasonable suspicion inquiry....

REFERENCES
