



## Revisiting *State v. Jackson*, the Pedestrian Evasion Case

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Last summer, I [wrote](#) about *State v. Jackson*, \_\_\_ N.C. App. \_\_\_, 758 S.E.2d 39 (2014), in which the court of appeals ruled that an officer lacked reasonable suspicion to stop a pedestrian who engaged in what the officer viewed as suspicious and evasive behavior. Last month, the state supreme court reversed the court of appeals. The opinion is [here](#); my summary and analysis of it is below.

**Facts.** The case arose at 9:00 p.m., when a Greensboro officer saw the defendant and another man talking outside a convenience store. The store was a frequent site of drug transactions, and the officer was familiar with both men from prior investigations. When the pedestrians saw the officer, they split and began walking away in opposite directions. The officer continued driving past the store, made a U-turn, and came back. The same two men were talking again outside the store. As the officer began pulling into the store's parking lot, the men again separated and began walking in opposite directions. The officer detained the defendant, obtained consent to search, and found a gun.

**Trial court.** The officer charged the defendant with being a felon in possession of a firearm. The defendant moved to suppress, arguing that the officer lacked reasonable suspicion for the stop. A superior court judge denied the motion and the defendant pled guilty, reserving the right to appeal the motion.

**Court of appeals.** The court of appeals reversed. It acknowledged that presence at a location known for drug activity, combined with evasive action, can provide reasonable suspicion. But it held that "merely walking away from one's companion in the presence of law enforcement officers" does not amount to evasive action. Judge Dillon dissented.

**North Carolina Supreme Court.** The state supreme court reversed the court of appeals unanimously. The opinion doesn't attempt to announce any new legal rules or principles. It simply, and briefly, concludes that the facts provide reasonable suspicion, emphasizing that the events took place at a "specific location known for hand-to-hand drug transactions" and that the defendant and his interlocutor "walked apart a second time" upon seeing the officer.

**United States Supreme Court?** I don't think a cert petition has been filed in this case, though there's still plenty of time for the defendant to do so if he wishes. The case is rather fact-bound so it may not make a strong candidate for Supreme Court review.

**Analysis.** As I see it, the factors supporting reasonable suspicion here were (1) the location, (2) the pedestrians' decision to walk away as the officer approached, (3) the fact that the pedestrians went in opposite directions, and (4) the fact that they reconvened when the officer left, and separated again when the officer returned. I think (4) is the key.

As to (1) and (2), walking away from a law enforcement officer, even in a high crime area, generally isn't enough to provide reasonable suspicion to support an investigative stop. *See, e.g., State v. Fleming*, 106 N.C. App. 165 (1992) (officers patrolling housing project lacked reasonable suspicion to stop pedestrians who walked away from them, as it was "neither unusual nor suspicious that they chose to walk in a direction which led away from the group of officers"); *United States v. Beauchamp*, 659 F.3d 560 (6<sup>th</sup> Cir. 2011) ("[W]alking away from an officer does not create . . . reasonable suspicion.").

For the sake of completeness, I will add that when the decision to walk away is prompted by making eye contact with the officer, reasonable suspicion may be present under *State v. Butler*, 331 N.C. 227 (1992). And of course, headlong, unprovoked flight from an officer may support reasonable suspicion. *Illinois v. Wardlaw*, 528 U.S. 119 (2000).

As to (3), the fact that two individuals walked in different directions as police approach also is generally insufficient to establish reasonable suspicion. *Brown v. Texas*, 443 U.S. 47 (1979) (no reasonable suspicion where officers “observed appellant and another man walking in opposite directions away from one another in an alley”); *Duhart v. United States*, 589 A.2d 895 (D.C. Ct. App. 1991) (“Neither does the . . . fact . . . that appellant and the other person began walking in opposite directions as the officer approached, add to a finding of reasonable suspicion.”).

Thus, it strikes me that it is the fourth factor, the reconvening of the pedestrians and their decision to walk away from one another again when the officer returned, that most strongly supports the court’s finding of reasonable suspicion. That factor suggests that the pedestrians had some business with one another that they wanted to conduct, but did not want a police officer to see. If I were to try to distill a rough legal rule from *Jackson*, it would be that a person who walks away from an officer once is just going about the person’s business, while a person who walks away from an officer twice in quick succession is suspiciously evasive.