Warrantless Stops 101 -- Was the Stop Supported by Reasonable Suspicion?

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In my first Warrantless Stops 101 post, I offered these basic questions to frame the analysis:

1. Did a seizure occur?
2. If so and it was a stop, was it supported by reasonable suspicion or other valid basis?
3. If reasonable suspicion supported the stop, was the officer's subsequent conduct sufficiently limited in scope?
4. If the seizure was an arrest, was it supported by probable cause?
5. If the arrest was supported by probable cause, was the search permissible?

My first post focused on whether a seizure occurred. This one looks at whether the stop was supported by reasonable suspicion. If so, the stop itself is constitutional and the only remaining issue is whether the officer's conduct exceeded the scope of the stop, a topic I'll take up in a later post.

Reasonable Suspicion

The black letter law is that an officer may make an investigatory stop when the officer "observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot." Terry v. Ohio, 392 U.S. 1, 30 (1968). This standard is known by the shorthand, "reasonable suspicion," although other terms such as "articulable suspicion" are sometimes used. The standard requires the officer to articulate more than an "inchoate and unparticularized suspicion or 'hunch.'" *Id.* at 27. The determination is made from the officer's perspective; basically, this means that the officer may make "inferences and deductions that might well elude an untrained person" and the evidence should be evaluated "as understood by those versed in the field of law enforcement." United States v. Cortez, 449 U.S. 411, 418 (1981). The determination is an objective one, *Terry,* 392 U.S. at 21-22, that must consider the totality of the circumstances. *Cortez*, 449 U.S. at 417. Among the factors that may be considered are:

- The officer's personal observations. *See, e.g., Terry*, 392 U.S. at 30 (officer personally observed the suspicious behavior).
- Information the officer received from others, including witnesses, informants, tipsters, and other law enforcement officers. *See, e.g.,* Navarette v. California, 572 U.S. __, 134 S. Ct. 1683, 1688 (2014).
- The officer's corroboration of information provided by witnesses, informants and tipsters. *See, e.g.,* Alabama v. White, 496 U.S. 325, 332 (1990) (anonymous tip plus officer corroboration provided reasonable suspicion).
- The suspect's presence in a high or drug crime area. *See, e.g.,* Illinois v. Wardlow, 528 U.S. 119, 124 (2000). However, a person's presence in such an area, standing alone, won't be enough. *See* Brown v. Texas, 443 U.S. 47, 52 (1979).
- The suspect's proximity to the crime scene near the time of the crime. *See, e.g.,* United States v. Goodrich, 450 F.3d 552, 562 (3d Cir. 2006) (so holding and citing similar cases from other circuits). But this factor is unlikely to be enough on its own. *See, e.g.,* State v. Campbell, 188 N.C. App. 701, 706-08 (1988).
- The suspect's reaction to the officer's presence, including flight. While a refusal to cooperate with law enforcement officers during a consensual encounter, standing alone, can't support a stop, Florida v. Bostick, 501 U.S. 429, 437 (1991), a person's evasive behavior in response to officers' presence can contribute to

reasonable suspicion. *Wardlow*, 528 U.S. at 124 (so stating). In this respect, headlong flight "is the consummate act of evasion." *Id.* at 124-25. But simply walking away from the location where an officer is present won't do it. In re J.L.B.M., 176 N.C. App. 613, 617-22 (2006). On the other hand, attempting to hide something from an officer can contribute to reasonable suspicion. *See, e.g.,* State v. Sutton, __ N.C. App. __, 754 S.E.2d 464, 472-74 (2014) (reasonable suspicion existed where the defendant was in a high crime area and grabbed at his waistband "to clinch an item," which the officer interpreted as trying to hide something); In re I.R.T., 184 N.C. App. 579, 586 (2007) (reasonable suspicion existed where, among other things, the juvenile turned away from the officer and did not open his mouth while speaking, leading the officer to conclude that the juvenile was hiding drugs in his mouth).

- The officer's knowledge of the suspect's prior criminal record. United States v. Sprinkle, 106 F.3d 613, 617 (1997) (while a prior criminal record is not, standing alone, enough to create reasonable suspicion, it can, "couple[d] . . . with more concrete factors," provide a basis for a stop).
- The officer's knowledge of patterns or modes of behavior of certain types of criminals. *See, e.g., Cortez*, 449 U.S. at 417-18 (proper to consider the "modes or patterns of operation of certain kinds of lawbreakers"); United States v. Sokolow, 490 U.S. 1, 9-10 (1989) (defendant's behavior was consistent with a drug courier).
- The detainee's similarity to a sought-for suspect. *See, e.g.,* United States v. Seelye, 815 F.2d 48, 51 (8th Cir. 1987) (stop was justified where the officer "confirmed that [the defendant's] appearance closely matched the description" of the suspect).

I often get asked about pretextual stops. The rule is that if a stop is supported by reasonable suspicion, the officer's subjective motivation is irrelevant, Whren v. United States, 517 U.S. 806, 813 (1996); State v. McClendon, 350 N.C. 630, 636 (1999), except perhaps to the extent it's pertinent to the officer's credibility.

Other Reasons for a Stop

Although reasonable suspicion is typically offered to justify a stop, other valid reasons for a stop exist, including community caretaking and service of process.

Want more information on all of this? Check out my judges' benchbook chapter on point here.