WARDLOW REVISITED: HOW MEDIA COVERAGE OF POLICE BRUTALITY MAKES EMPIRICAL DATA MORE RELEVANT THAN EVER

Jack T. Vanderford[*]

INTRODUCTION[**]

Freddie Gray stood on a street corner in West Baltimore when he made eye contact with a uniformed police officer.[1] Gray ran from the area after seeing the officer, who chased Gray down and forced him to stop by drawing and threatening to use his Taser gun.[2] A video taken by a bystander captures Gray screaming in pain as his arms are handcuffed behind his back and he is dragged into a police wagon by three police officers.[3]

Subsequent to Gray's arrest, and while he was in police custody, Gray's spine was partially severed.[4] Gray was taken to a nearby hospital where he

---

* J.D. 2020, University of Pennsylvania Law School; B.S. 2016, University of Southern California. Thank you to Professor David Rudovsky for his inspiration and thoughtful supervision on this Comment. I also thank my parents, Tom and Madelene Vanderford, my brothers, Ryan and Ty, and my partner, Megan, for their love and support.

** The killings of black Americans, George Floyd, Ahmaud Arbery, and Breonna Taylor, occurred during this Comment's final stages of publication. These tragedies and their extensive media coverage suggests that revisiting empirical data and reversing *Wardlow* is more imperative than ever.

1 *See* Federal Officials Decline Prosecution in the Death of Freddie Gray, DEP'T JUST., Office of Public Affairs (Sept. 12, 2017), https://www.justice.gov/opa/pr/federal-officials-decline-prosecution-death-freddie-gray (providing a detailed account of the circumstances leading up to Freddie Gray's death and announcing that the Department of Justice found insufficient evidence to prosecute the police officers involved in Freddie Gray's arrest).

2 *Id.* All that was discovered upon a frisk of Gray was a small switchblade, the legality of which was highly contested after the incident. *See Freddie Gray's death in police custody - what we know*, BBC (May 23, 2016), https://www.bbc.com/news/world-us-canada-32400497 (noting one state prosecutor's opinion that Gray was falsely accused of carrying an illegal knife).

3 *See, e.g.*, *Video Shows Arrest of Freddie Gray*, WASH. POST (Apr. 20, 2015, 6:05 PM), https://www.washingtonpost.com/video/local/video-shows-arrest-of-freddie-gray/2015/04/20/c4afcd2c-e7c3-11e4-8581-633c536add4b_video.html?utm_term=.56eb9b06a683 (showing the forty-six second cell phone video capturing Gray's arrest).

4 It is unclear exactly how Gray suffered his injury; however, reports from the incident suggest he suffered the injury after entering the police wagon. *See Freddie Gray's Death in Police Custody - what we know*, *supra* note 2 (explaining that when "Mr. Gray was placed inside that van, he was able to talk . . . . [But when] Gray was taken out of that van he could not talk and he could not breathe[,]" and that some medical experts believe a "significant force" similar to a car crash would be required to inflict the sort of injury that Gray suffered); *see also* Joshua Barajas, *Freddie Gray's death ruled a homicide*, PBS (May 1, 2015, 11:13 AM), https://www.pbs.org/newshour/nation/fredd

underwent spinal surgery, lapsed into a coma, and died a week later.[5] The six officers involved in Freddie Gray's arrest and death were charged with manslaughter and murder by Baltimore State's Attorney; however, all charges were ultimately dropped.[6] Civil unrest spread throughout Baltimore in the wake of Freddie Gray's death.[7] Protests turned to riots as multiple businesses were looted and at least fifteen police officers were wounded.[8]

Freddie Gray's arrest and subsequent death highlights the potential for physical abuse of those in police custody. The Freddie Gray tragedy also forces us to ask harder questions about how our society should balance effective policing policy with individual autonomy: Why did Freddie Gray run from the police in the first place? Were the police justified in pursuing him? What gave the police the legal authority to stop Gray?

The answer to the latter question comes from the Supreme Court's ruling in *Illinois v. Wardlow*.[9] The facts of *Wardlow* are remarkably similar to those that led to the arrest and death of Freddie Gray. On September 9, 1995, a four-car caravan carrying uniformed police officers converged on a neighborhood of Chicago known for drug trafficking.[10] As the caravan passed through the neighborhood, one of two officers in the last car of the caravan spotted Sam Wardlow standing next to a building carrying an opaque bag.[11] The officer observed Wardlow look in the direction of the caravan and flee in the opposite direction.[12] After a brief maneuver to cut

---

ie-grays-death-ruled-homicide (quoting Maryland's state attorney Marilyn Mosby's belief that Gray's fatal injury "occurred while Mr. Gray was unrestrained by a seatbelt in the custody of the Baltimore Police Department wagon.").

5 Christina Sterbenz, *A 'big question' surrounds the arrest of Freddie Gray, which sparked riots across Baltimore*, BUS. INSIDER (Apr. 30, 2015, 3:37 PM), https://www.businessinsider.com/did-police-have-a-right-to-stop-freddie-gray-2015-4.

6 *See* Rebecca R. Ruiz, *Baltimore Officers Will Face No Federal Charges in Death of Freddie Gray*, N.Y. TIMES (Sept. 12, 2017), https://www.nytimes.com/2017/09/12/us/freddie-gray-baltimore-police-federal-charges.html (reporting the Justice Department's decision to not press charge against the police officers involved in Gray's death because it lacked evidence proving the officers "willfully violated Gray's civil rights".).

7 *See, e.g.*, Andrea K. McDaniels, *Civil unrest related to Freddie Gray death caused depressive symptoms among mothers in affected neighborhoods, study finds*, BALT. SUN (July 20, 2017, 4:00 PM), https://www.baltimoresun.com/health/bs-hs-stress-freddie-gray-20170720-story.html (detailing a University of Maryland School of Medicine survey that found a twenty percent increase in those experiencing symptoms of depression among African American mothers in the Baltimore area just after Gray's death, many of whom attributed their anxiety to "what was happening to their neighborhoods").

8 Holly Yan & Dana Ford, *Baltimore riots: Looting, fires engulf city after Freddie Gray's funeral*, CNN (Apr. 28, 2015, 10:30 AM), https://www.cnn.com/2015/04/27/us/baltimore-unrest/index.html.

9 Illinois v. Wardlow, 528 U.S. 119, 123 (2000).

10 *See id.* at 121 (detailing the factual background).

11 *See id.* at 121–22 (detailing the factual background).

12 *See id.* at 122 (detailing the factual background).

him off, the officers frisked Wardlow and discovered a .38–caliber handgun.[13]

Following his arrest, Wardlow moved to suppress the handgun found on him from evidence, arguing that the police did not have reasonable suspicion[14] to stop him in the first place.[15] After noting that a reasonable suspicion determination must be based on "commonsense judgements and inferences about human behavior[,]" the Supreme Court held that the gun was recovered during a lawful stop and frisk under the Fourth Amendment.[16] The Court explained that Wardlow's unprovoked flight alone did not create enough reasonable suspicion to justify a stop.[17] Rather, the Court held that Wardlow's unprovoked flight, in conjunction with his presence in a high-crime area, justified the officers' reasonable suspicion that he was engaged in criminal activity.[18] This precedent provided the police officers who stopped Freddie Gray the legal authority to do so, as Gray was in what was deemed to be a high-crime area of Baltimore[19] when he fled.[20]

Giving police officers additional authority to conduct stops of individuals that are located in high-crime areas raises the concern that such a policy will deny citizens equal protection of the law, under the Fourteenth Amendment, by allowing officers to use "high-crime area" as a proxy for stopping individuals based on race or socioeconomic status.[21] While undoubtedly

---

13 *See id.* (detailing the factual background).

14 "Reasonable suspicion" is the legal standard required for a police officer to stop and frisk someone on less than probable cause. The standard is met when an officer "observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot and that the persons with whom he is dealing may be armed and presently dangerous . . . ." Terry v. Ohio, 392 U.S. 1, 30 (1968).

15 Wardlow, 528 U.S. at 122.

16 *Id.* at 125.

17 *Id.* at 124.

18 *Id.*

19 What constitutes a "high-crime area" is the subject of some debate and is often criticized as being an overly broad and prejudicial term. This Comment does not attempt to define what constitutes a "high-crime area." Instead, this Comment will critique the merits of *Wardlow*'s analysis as well as the ambiguity of the term "high-crime area." In the context of Freddie Gray's case, the Justice Department stated after the incident that the police officers were in an area known for drug sales when they began chasing Gray. *See* Federal Officials Decline Prosecution in the Death of Freddie Gray, *supra* note 1 ("At the time [Freddie Gray fled], the bicycle officers were conducting proactive enforcement in an area known for drug sales.").

20 *See* Todd Oppenheim, Opinion, *The bad court ruling that let police chase Freddie Gray*, WASH. POST (Dec. 21, 2015), https://www.washingtonpost.com/opinions/the-bad-court-ruling-that-let-police-chase-freddie-gray/2015/12/21/28bc1e54-a78d-11e5-9b92-dea7cd4b1a4d_story.html?utm_term=.d4f9bdc7b903 (explaining that the Supreme Court's decision in *Wardlow* is what gave police the legal authority to chase Freddie Gray).

21 *See* Ben Grunwald & Jeffrey Fagan, *The End of Intuition-Based High-Crime Areas*, 107 Cal. L. Rev. 345, 396 (2019) (detailing an empirical investigation based on administrative data from the NYPD,

important, this Comment will not focus on the effect of *Wardlow*'s ruling, but rather will challenge the merit of its arguments and underlying assumptions. Specifically, this Comment will challenge *Wardlow*'s assumption that an individual who runs from the police in a high-crime area is more likely to be engaged in criminal behavior than an individual who runs from the police in an area with less criminal activity.

First, this Comment will provide a brief overview of the *Terry* Doctrine and explain how the Supreme Court in *Wardlow* filled the gaps left from previous Supreme Court decisions with "commonsense judgements." Second, this Comment will review and address the arguments in favor of *Wardlow*'s precedent. Third, this Comment will explain how empirical evidence, available to the Supreme Court when *Wardlow* was decided, counters the Court's assumption that an individual's flight from the police in a high-crime area is a reliable indicator of criminal activity. Fourth, this Comment will argue for the continued applicability of old empirical evidence, especially within the context of increased media coverage of police brutality against blacks and waning confidence in the police among those most likely to live in high-crime areas. Fifth, this Comment will explain the structural problem with *Wardlow*'s opinion and introduce possible alternatives to *Wardlow*'s precedent.

I. THE TERRY DOCTRINE AND *WARDLOW*'S USE OF "COMMONSENSE JUDGEMENTS"

A brief overview of the constitutional framework behind stop and frisk is helpful to understand *Wardlow*'s underlying assumptions. The Fourth Amendment establishes that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause . . . ."[22] Until the 1960's, the Supreme Court had not authorized the search or seizure of a person on anything less than probable cause.[23] However, in the landmark case of *Terry v. Ohio*, the Supreme Court focused on the Fourth Amendment's prohibition on "unreasonable searches and

which found that "[t]he racial composition of the area and the identity of the officer are stronger predictors of whether an officer deems an area high crime than the crime rate. And officers may even be using high-crime area as cover to bolster the appearance of constitutional validity in their weakest stops.").

22 U.S. CONST. amend. IV.

23 *See* Terry v. Ohio, 392 U.S. 1, 20–21 (1968) (holding that the Fourth Amendment's general proscription against unreasonable searches and seizures does not preclude an officer from stopping an individual and frisking them for weapons if the officer can "point to specific and articulable facts which . . . reasonably warrant that intrusion").

seizures" to make a new carve out for "on-the-street encounter[s]" between police officers and "suspicious persons[,]" commonly known as stop and frisks.[24]

The *Terry* court did not explicitly address what constitutes permissible grounds for a stop. Instead, the Court implicitly established that police officers have the authority to stop individuals if they have reasonable suspicion that an individual is engaging in serious criminal activity.[25] The Supreme Court later expanded the *Terry* doctrine to allow officers to stop individuals if the officer has reasonable suspicion that a given individual is engaged in virtually any illegal activity, even minor traffic violations.[26] Unfortunately, the *Terry* court failed to specifically define what constitutes reasonable suspicion, noting only that the standard falls somewhere below probable cause[27] and above an "inchoate and unparticularized suspicion or hunch."[28] Later Supreme Court decisions provided additional guidance on what constitutes reasonable suspicion, which would instruct the *Wardlow* Court in its decision decades later.

First, the Supreme Court recognized in *United States v. Sokolow* that a reasonable suspicion "is not readily, or even usefully, reduced to a neat set of legal rules . . . . [Rather, a reviewing court] must consider the totality of the circumstances—the whole picture."[29] In *United States v. Brignoni-Ponce*, the Supreme Court held that nervous or evasive behavior is a factor that can point to reasonable suspicion.[30] However, in *Florida v. Bostick*, the Supreme

---

24 *Id.* at 9–10.

25 *See id.* at 30 (holding that "where a police officer observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot[,]" he can stop the individual and search him or her for weapons); *see also id.* at 33 (Harlan, J., concurring) (reasoning that an officer's "justifiable suspicion" that an individual is about to engage in robbery "afforded a proper constitutional basis" for stopping that individual). The *Terry* Court was explicit in laying out the standard for when an officer can frisk an individual, stating that a police officer can conduct "a reasonable search for weapons for the protection of the police officer, where he has reason to believe that he is dealing with an armed and dangerous individual . . . ." *Id.* at 27 (majority opinion).

26 *See* Arizona v. Johnson, 555 U.S. 323, 327 (2009) ("[I]n a traffic-stop setting, the first *Terry* condition–a lawful investigatory stop–is met whenever it is lawful for the police to detain an automobile and its occupants pending inquiry into a vehicular violation. The police need not have, in addition, cause to believe any occupant of the vehicle is involved in criminal activity.").

27 Probable cause is defined as existing where "'the facts and circumstances within their [the officers'] knowledge and of which they had reasonably trustworthy information [are] sufficient in themselves to warrant a man of reasonable caution in the belief that' an offense has been or is being committed." Brinegar v. United States, 338 U.S. 160, 175–76 (1949) (citation omitted).

28 Terry, 392 U.S. at 27.

29 United States v. Sokolow, 490 U.S. 1, 7–8 (1989) (internal quotation marks and citations omitted).

30 *See* United States v. Brignoni-Ponce, 422 U.S. 873, 885 (1975) ("[E]rratic driving or obvious attempts to evade officers can support a reasonable suspicion."); Florida v. Rodriguez, 469 U.S. 1,

Court acknowledged that "a refusal to cooperate, without more, does not furnish the minimal level of objective justification needed for a detention or seizure."[31]

Previous Supreme Court cases discussing whether an individual's presence in a high-crime area supports reasonable suspicion provided the *Wardlow* Court with ambiguous precedent for its decision. In *Adams v. Williams*, the Supreme Court noted an individual's presence in a high-crime area to be a relevant contextual consideration in deciding whether an officer had reasonable suspicion to stop that person.[32] Yet, the Supreme Court later added in *Brown v. Texas* that an individual's presence in a high-crime area alone was not sufficient to establish reasonable suspicion.[33]

These decisions provided the Supreme Court in *Wardlow* guidance for its analysis of whether Wardlow's flight in a high-crime area supported reasonable suspicion. However, the *Wardlow* Court ultimately based its decision on "commonsense judgements." The use of "commonsense judgements" in the reasonable suspicion analysis can trace its roots all the way to the Supreme Court's decision in *Terry*. While acknowledging that the Fourth Amendment demands that an officer "be able to point to specific and articulable facts" that form the basis for his or her suspicion, the Court went on to explain that these facts may be "taken together with rational inferences from those facts" to arrive at a reasonable suspicion.[34]

Importantly, the *Terry* Court qualified its endorsement of officers' use of inferences from facts to arrive at a reasonable suspicion. The *Terry* Court warned that "the Fourth Amendment becomes meaningful only when it is assured that at some point the conduct of those charged with enforcing the laws can be subjected to the more detached, neutral scrutiny of a judge who must evaluate the reasonableness of a particular search or seizure in the light of the particular circumstances."[35] In making its determination, the Court explained "it is imperative that the facts be judged against an objective standard . . . ."[36]

---

6 (1984) (holding that two persons who spoke furtively to one another and urged others to leave the scene amounted to reasonable suspicion).

31 Florida v. Bostick, 501 U.S. 429, 437 (1991).

32 Adams v. Williams, 407 U.S. 143, 144, 147–48 (1972). *But see id.* at 158–59 n.5 (Marshall, J., dissenting) ("The fact that [an individual suspected of carrying a gun is] in a high-crime area is irrelevant [to *Terry*'s reasonable suspicion analysis]. In such areas it is more probable than not that citizens would be more likely to carry weapons authorized by the State to protect themselves.").

33 *See* Brown v. Texas, 443 U.S. 47, 52 (1979) ("The fact that [a person] was in a neighborhood frequented by drug users, standing alone, is not a basis for concluding that [the person] himself was engaged in criminal conduct.").

34 Terry v. Ohio, 392 U.S. 1, 21 (1968).

35 *Id.*

36 *Id.*

Later Supreme Court decisions reaffirmed the use of common sense in reasonable suspicion determinations.[37] This ultimately led the Supreme Court in *Wardlow* to adopt the use of "commonsense judgements and inferences about human behavior" and inject its own view of the world into its determination of the case.[38] An individual's flight at the sight of the police, according to the Court, goes beyond an individual's right to ignore the police and go about one's business.[39] Instead, the Court argued that Wardlow's headlong flight at the sight of a police officer was "the consummate act of evasion."[40]

As previously mentioned, the Court did not go as far as to create a bright-line rule that flight in the presence of a police officer automatically gives rise to probable cause that that individual is involved in criminal activity.[41] Instead, the Court relied on the context of Wardlow's flight, specifically his presence in an area known for narcotics trafficking, to justify a finding of reasonable suspicion.[42] In doing so, the Court relied on its "commonsense" judgement that a man who runs at the sight of the police in a high-crime neighborhood is likely to be engaged in criminal activity.[43]

At first glance, the *Wardlow* Court's decision may not seem problematic. Minimizing the level of crime in society is a goal most people support and increasing police power could help achieve that goal.[44] An individual's flight at the sight of a police officer may naturally indicate to many that the

---

37 *See, e.g.*, United States v. Cortez, 449 U.S. 411, 418 (1981) ("The [reasonable suspicion analysis] does not deal with hard certainties, but with probabilities. Long before the law of probabilities was articulated as such, practical people formulated certain common-sense conclusions about human behavior; jurors as factfinders are permitted to do the same–and so are law enforcement officers.").

38 Illinois v. Wardlow, 528 U.S. 119, 125 (2000).

39 *See* Florida v. Royer, 460 U.S. 491, 497–98 (1983) ("[A] person approached [by an officer] need not answer any question put to him; indeed, he may decline to listen to the questions at all and may go on his way.").

40 Wardlow, 528 U.S. at 124.

41 The majority in *Wardlow* does not explicitly state that headlong flight alone is not sufficient to support probable cause. However, the majority, as well as Justice Stevens' concurrence in part and dissent in part, made it clear that the majority did not adopt the bright-line rule requested by the prosecution: That flight at the sight of a police officer automatically creates reasonable suspicion. *See* Wardlow, 528, U.S. at 124 ("Headlong flight . . . is not necessarily indicative of wrongdoing . . . ."); *id.* at 126 (Stevens, J., concurring in part and dissenting in part) ("The Court today wisely endorses neither *per se* rule. Instead, it rejects the proposition that flight is . . . necessarily indicative of ongoing criminal activity . . . .") (internal quotation marks omitted).

42 *Id.* at 124–25 (majority opinion).

43 *Id.*

44 *See, e.g.*, Inimai M. Chettiar, *More Police, Managed More Effectively, Really Can Reduce Crime*, THE ATLANTIC (Feb. 11, 2015), https://www.theatlantic.com/national/archive/2015/02/more-police-managed-more-effectively-really-can-reduce-crime/385390/ (finding that a 28% increase in the amount of police officers employed correlated with a drop in crime of about 5% over the same period).

individual wants to avoid police contact, potentially, because the individual is engaged in criminal activity. The fact that such behavior occurs in a high-crime area, one may reason, only amplifies the suspicion that may accompany unprovoked flight.

This logic, along with the rest of *Wardlow*'s "commonsense judgements," is better understood when placed within its historical context. *Wardlow* was decided in 2000 in the wake of a period of law enforcement reform that popularized "broken windows" policing. The concept was introduced in 1982 when George Kelling and James Wilson published an article in the *Atlantic* arguing for increased criminalization of quality-of-life offenses, such as public drinking and vagrancy, and emphasizing the necessity to maintain order in public places.[45] Although Kelling and Wilson's goal of maintaining order in public places did not explicitly call for an increase in *Terry* stops, in practice the increased police enforcement of quality-of-life crimes coincided with a need to increase police investigation of individuals suspected of engaging in criminal activity.[46]

Kelling and Wilson's ideas were soon implemented across the country, most famously in New York City where Police Commissioner William Bratton and Mayor Rudy Giuliani specifically traced the roots of their quality-of-life initiative back to Kelling and Wilson's article.[47] The effectiveness of broken windows policing is still contested today.[48] Regardless, by 2000, the year in which *Wardlow* was decided, broken

---

45 George L. Kelling & James Q. Wilson, *Broken Windows: The police and neighborhood safety*, THE ATLANTIC (Mar. 1982), https://www.theatlantic.com/magazine/archive/1982/03/broken-windows/304465/?mod=article_inline.

46 *See* Philip B. Heymann, *The New Policing*, 28 Fordham Urb. L.J. 407, 429 (2000) ("As a matter that was secondary in theory but, perhaps, primary in practice, 'Broken Windows' policing also justified very large numbers of 'frisks' . . . .").

47 N.Y.C. POLICE DEP'T, POLICE STRATEGY NO. 5: RECLAIMING THE PUBLIC SPACES OF NEW YORK 4 (1994), http://marijuana-arrests.com/docs/Bratton-blueprint-1994—Reclaiming-the-public-spaces-of-NY.pdf.

48 *See* William McGurn, Opinion, *The Idea That Made America's Cities Safer*, WALL ST. J., https://www.wsj.com/articles/the-idea-that-made-americas-cities-safer-11546039296?emailToken=ca76f543912d90cd5ba5bdd69c30f12falFQ7PAk3kBzqRi6uicOITP/LuOfGHTitr49pst+R/GexuEU1XpNygEqMrVMwXq7QdqjcScJIYc06+JyAxDn8r5pOWlrntGl+l/krIg0nog%3D&reflink=article_imessage_share (last updated Dec. 29, 2018, 11:43 AM) (arguing that recent legislation aimed at relieving overincarceration represents a dangerous move away from broken windows policing); Bernard E. Harcourt & Jens Ludwig, *Broken Windows: New Evidence from New York City and a Five-City Social Experiment*, 73 CHI. L. REV. 271, 271 (2006) ("[E]vidence from New York City and from the five-city social experiment provides no support for a simple first-order disorder-crime relationship as hypothesized by Wilson and Kelling, nor for the proposition that broken windows policing is the optimal use of scarce law enforcement resources.").

windows policing was championed by many as an effective means by which to reduce crime.[49]

With "broken windows" in the backdrop, *Wardlow* expanded further police authority to stop and frisk individuals. The *Wardlow* Court recognized that strengthening police power does not come without costs. The fact that "there are innocent reasons for flight from police[,]" the Court admitted, "is undoubtedly true."[50] That was a risk the Court was willing to accept, however, reasoning that a "*Terry* stop [results in] far more minimal intrusion" than more drastic police action, such as an arrest on probable cause.[51] This may be true in a world where instances of police brutality do not regularly appear in the media[52] or where police profiling is not substantially documented.[53] But in a world where routine *Terry* stops end in questionable arrests[54] and in the case of Freddie Gray's death, the intrusions that *Wardlow* waives off as acceptable risks do not seem so minimal.

II. THE ARGUMENTS IN FAVOR OF *WARDLOW*

In order to understand *Wardlow*'s flaws, it is important to review and address the arguments in favor of the Court's decision. These arguments include: (1) an assumption that an individual's flight at the sight of a police officer in a high-crime area indicates criminal behavior; (2) a concern that not allowing stops in this context would handcuff police officers and

---

49 *See, e.g.*, Bernard E. Harcourt, *Reflecting on the Subject: Critique of the Social Influence Conception of Deterrence, the Broken Windows Theory, and Order-Maintenance Policing New York Style*, 97 MICH. L. REV. 291, 293 (1998) ("[I]t is today practically impossible to find a single scholarly article that takes issue with the quality-of-life initiative.").

50 Illinois v. Wardlow, 528 U.S. 119, 125 (2000).

51 *Id.* at 126.

52 *See, e.g.*, Byron Mason II, *Is the Media to Blame for Police Brutality?*, PRINDLE POST (Apr. 12, 2018), https://www.prindlepost.org/2018/04/is-media-to-blame-for-police-brutality/ (documenting the string of highly publicized instances of police brutality against African Americans such as Trayvon Martin, Tamir Rice, Michael Brown, Philando Castile, and Stephon Clark).

53 *See, e.g.*, N.J. ST. POLICE REV. TEAM, INTERIM REPORT OF THE STATE POLICE REVIEW TEAM REGARDING ALLEGATIONS OF RACIAL PROFILING (Apr. 20, 1999) (announcing the findings of a New Jersey report, which found that although a majority of the motorists using the New Jersey Turnpike were white, roughly 40% of motorists stopped were non-white, over 77% of searches involved non-whites, and 61.7% of arrests involved blacks); Floyd v. City of New York, 959 F. Supp. 2d 540, 563 (S.D.N.Y. 2013) (holding the New York Police Department's stop and frisk practices to be racially discriminatory and therefore in violation of the Equal Protection Clause of the Fourteenth Amendment).

54 *See* N.Y.C. BAR ASS'N, REPORT ON THE NYPD'S STOP-AND-FRISK POLICY 1 (May 15, 2013), https://www2.nycbar.org/pdf/report/uploads/20072495-StopFriskReport.pdf ("[M]any of the arrests [subsequent to a stop and frisk] occur under questionable circumstances, such as when people are asked to remove marijuana from their pockets and then arrested for possessing marijuana 'in public view.'").

incentivize bad behavior; and (3) a belief that the benefits resulting from such stops outweigh any accompanying costs. As explained in later sections, these arguments falter when analyzed using empirical evidence and when viewed in light of the practical realities of how some *Terry* stops are conducted.

The *Wardlow* Court explicitly makes the first argument that a person's flight at the sight of a police officer indicates they are engaged in criminal activity. The Court notes that, "nervous, evasive behavior is a pertinent factor in determining reasonable suspicion."[55] But running from the police, the Court argues, goes above and beyond mere nervousness in the presence of an officer. The Court highlights this distinction by describing headlong flight as "the consummate act of evasion[,]" which is certainly suggestive of wrongdoing.[56] The Court goes on to reject the notion that running at the sight of a police officer conforms with the precedent that individuals have the right to ignore the police and go about their business. Instead, the Court concludes that "[f]light, by its very nature, is not going about one's business; in fact, it is just the opposite."[57]

Wardlow may be defended further on the grounds that an individual's flight from the police is even more indicative of criminal activity when it occurs in a high-crime area. Again, the *Wardlow* Court makes this argument explicitly. Acknowledging that flight alone cannot support a finding of reasonable suspicion, the *Wardlow* Court argues that Wardlow's presence in a high-crime area, in conjunction with his flight at the sight of a police officer, does support reasonable suspicion.[58] The Court notes that "the fact that the stop occurred in a 'high crime area' [is] among the relevant contextual considerations in a *Terry* analysis."[59] Essentially, the Court imputes the characteristics of an individual's neighborhood onto the individual, reasoning that the likelihood that a person present in a high-crime area is committing a crime is higher than it would be for a person in a low-crime area. While this assumption may hold true in the aggregate,[60] it does not necessarily hold true when the context is confined to a specific situation, such as when an individual runs at the sight of a police officer. As explained in

55 Wardlow, 528 U.S. at 124.

56 *Id.*

57 *Id.* at 125 (internal quotation marks omitted).

58 *Id.* at 124–25.

59 *Id.* at 124 (citation omitted).

60 There is reason to believe that this assumption may not be true, even in the aggregate, as disproportionate levels of policing and both conscious and unconscious bias can lead to inaccurate crime statistics. *See* Kim Farbota, *Black Crime Rates: What Happens When Numbers Aren't Neutral*, HUFFINGTON POST (Sept. 2, 2015), https://www.huffingtonpost.com/kim-farbota/black-crime-rates-your-st_b_8078586.html (explaining how the heavier policing of urban neighborhoods and overt racism can lead to minorities being arrested and convicted at much higher rates than demographics that engage in criminal activities at the same rate).

later sections, the empirical evidence in this context points to the conclusion that running from the police is not a reliable indicator of criminal activity, especially in the context of high-crime areas.

A second argument in favor of *Wardlow* is that its outcome yields the most favorable incentive structure.[61] Barring the police from stopping those who flee at the sight of them would arguably incentivize non-compliance with officers' questioning. If fleeing at the sight of an officer in a high-crime area does not give rise to reasonable suspicion, individuals who are engaged in criminal activity will be encouraged to flee from the police safe in the knowledge that the police will not have the authority to pursue them. This may handcuff police officers in situations where they might otherwise curb illegal activity.

While it may be true that prohibiting officers from stopping those who run at the sight of them may incentivize those engaged in criminal activity to always run, this rule would hold true for criminals in low and high-crime areas alike. Having a rule that differentiates between low and high-crime areas disregards the potential skewed incentive structure that such a rule would create in low-crime areas. Distinguishing between low and high-crime areas is especially problematic in the face of empirical evidence, discussed below, that suggests that those who run from the police in low-crime areas are actually more likely to be engaged in criminal activity than those who run in high-crime areas.

A third argument in favor of *Wardlow* is that the benefit gained from investigating individuals that flee at the sight of the police in high-crime areas outweighs the cost of whatever liberty is sacrificed by allowing such stops.[62] A *Terry* stop "simply allow[s] the officer to briefly investigate further[,]" the Court explains.[63] "If the officer does not learn facts rising to the level of probable cause, the individual must be allowed to go on his way."[64] Moreover, while a *Terry* frisk for weapons has been viewed since its inception as "a serious intrusion upon the sanctity of the person, which may inflict great indignity and arouse strong resentment,"[65] *Wardlow* stops short of creating a

---

61 This argument is not directly articulated in the *Wardlow* majority's opinion. However, the Court does address the balance between allowing officers to investigate individuals further with individuals' right to go about their business. *See Wardlow*, 528 U.S. at 125 ("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.").

62 *See id.* at 126 (explaining that *Terry* accepts the risk of stopping innocent individuals and that such stops result in minimal intrusion).

63 *Id.*

64 *Id.*

65 Terry v. Ohio, 392 U.S. 1, 17 (1968).

bright-line rule legalizing such frisks in all situations where an individual has been stopped subsequent to running from the police.[66] Instead, the precedent remains that *Terry* frisks can only be conducted when an officer has reasonable suspicion that the person stopped is armed and dangerous.[67]

Thus, one might argue that the liberty lost by an individual who is stopped after fleeing from the police in a high-crime area is outweighed by the benefit that would result from preventing potential criminal activity. But when the number of innocents stopped becomes disproportionate to the number of criminals discovered, this cost-benefit argument falters. Furthermore, *Wardlow*'s silence as to whether flight from a police officer in a high-crime area justifies a frisk for weapons fails to protect individuals that are subject to such stops. Judges often accept officers' justifications for frisks despite empirical evidence suggesting that many of the common justifications are poor indicators that an individual is armed.[68] Finally, stopping an individual who flees at the sight of a police officer presents the possibility that someone will be injured as a result of the chase. This danger is not theoretical; it is a reality as evidenced by the death of Freddie Gray.

III. EMPIRICAL EVIDENCE DEBUNKS *WARDLOW*'S UNDERLYING ASSUMPTIONS

Wardlow's conclusion that an individual's flight from the police in a high-crime area supports reasonable suspicion to stop that individual relies on two major assumptions. First, *Wardlow* assumes that a person who runs at the sight of a police officer in a high-crime area is, in fact, reasonably likely to be involved in criminal activity. Second, *Wardlow*'s distinction between high and low-crime areas assumes that a person in a low-crime area that runs at the sight of a police officer is *less* likely to be involved in criminal activity than a person who does so in a high-crime area. When analyzed in light of empirical evidence and societal trends, however, these assumptions prove to be highly questionable.

Wardlow justifies its commonsense judgement that running from the police in a high-crime area corresponds with criminal behavior by pointing

66 In fact, the *Wardlow* Court explicitly states from the outset that it takes "no opinion as to the lawfulness of the frisk independently of the stop." *Wardlow*, 528 U.S. at 124 n.2.

67 *Terry*, 392 U.S. at 27.

68 *See* David Rudovsky & David A. Harris, *Terry Stops and Frisks: The Troubling Use of Common Sense in a World of Empirical Data*, 79 OHIO ST. L.J. 501, 541 (2018) ("The data show that certain factors regularly reported by police, such as observations of a 'bulge,' a suspect not being cooperative, having their hands in their pockets, presence in a high-crime neighborhood, acting nervous or making furtive movements, and 'flight' are poor predictors of whether one is armed and dangerous, yet the courts have regularly credited these explanations in sustaining police frisks.").

to the scientific uncertainties that surround reasonable suspicion determinations. "In reviewing the propriety of an officer's conduct," the Court rationalized, "courts do not have available empirical studies dealing with inferences drawn from suspicious behavior, and we cannot reasonably demand scientific certainty from judges or law enforcement officers where none exists."[69] Thus, because the Court believed there was no objective data on which it could rely on, it turned to personal experience to justify its belief.

In the absence of empirical data, common sense might well serve a court to arrive at the best outcome possible. However, personal experience is no substitute for empirical data, and as it turns out, the *Wardlow* Court did indeed have access to "empirical studies dealing with inferences drawn from suspicious behavior."[70] In fact, New York's Office of Attorney General (OAG) released a report (the Report) just six weeks before *Wardlow* was decided providing relevant empirical data with which to analyze the propositions set forth in *Wardlow*.[71]

According to the Report, which collected data on approximately 175,000 stops that occurred in New York City over the course of the year, the city-wide hit-rate, or ratio of total stops to the number of stops that led to an arrest, was 9:1.[72] This means that for every nine people stopped on the street by an officer suspecting that person of criminal behavior, only one person was eventually arrested. The Report also includes more specific data relating to the central question that was presented to the court in *Wardlow*.

The Report shows that the hit-rate on individuals who run after noticing the police[73] is 15.8:1.[74] The hit-rate for individuals who run in the presence of the police, not controlling for whether they noticed the police or not, in a high-crime area is 20.3:1.[75] Most relevantly, the hit-rate for individuals who, while in a high-crime area, run after noticing the police—the same context the Court analyzed in *Wardlow*—is an astounding 45:1.[76] The empirical data from the Report illustrates that an individual who runs after seeing a police officer while in a high-crime area is about five times *less* likely to ultimately

69 *Wardlow*, 528 U.S. at 124–25.

70 *Id.*

71 *See* Tracey L. Meares & Bernard E. Harcourt, *Foreword: Transparent Adjudication and Social Science Research in Constitutional Criminal Procedure*, 90 J. CRIM. L. & CRIMINOLOGY 733, 786 (2000) (detailing the results of the New York State Attorney General's report on stop and frisk practices in New York City).

72 *Id.* at 787.

73 Note that "unprovoked flight *upon noticing* the police" was the relevant criteria that the Court considered in *Wardlow*. *Wardlow*, 528 U.S. at 124 (emphasis added).

74 Meares & Harcourt, *supra* note 71, at 790.

75 *Id.*

76 *Id.*

be arrested on probable cause than those stopped in all other situations.[77] Thus, New York's 1999 OAG Report suggests that *Wardlow*'s underlying assumption is false. Flight from the police in a high-crime area proves to be an incredibly poor indicator of criminal activity.

We should not turn a blind eye to such powerful empirical data, especially in a world where data analysis has infiltrated nearly all facets of our lives. Empirical data provides more objective information to supplement our easily skewed "commonsense judgements" in reasonable suspicion analyses.[78] Additionally, this kind of empirical data can provide broader insight into how our communities perceive and interact with law enforcement. In other words, the empirical data provided by New York's 1999 OAG Report should not only be used to challenge *Wardlow*'s precedent, it should also prompt deeper questions into why forty-four innocent individuals in a high-crime area run after noticing the police for every one individual that is arrested.[79]

It is not a novel idea that there are innocent reasons for an individual to run from the police. In fact, Justice Stevens expressed this belief when he concurred in part and dissented in part to *Wardlow*'s majority opinion.[80] Justice Stevens agreed that the Court should not adopt a bright-line rule regarding whether running from the police supports reasonable suspicion.[81] He stated reviewing courts should look to the "totality of the circumstances–the whole picture."[82] However, Justice Stevens disagreed with the majority's commonsense conclusion that flight in the presence of police is a reliable indicator of criminal behavior.

Justice Stevens' listed a number of innocent explanations for why a person would run in the presence of a police officer. "A pedestrian may

---

77 As compared to the previously mentioned 9:1 hit-rate for all stops conducted in New York City during the course of the study. *Id.* at 787, 790.

78 *See* David Rudovsky & David A. Harris, *supra* note 68 (discussing the potential positive impacts that the use of empirical data could have on *Terry* stop and frisk analyses more broadly).

79 This of course assumes that those who are not arrested are found to not be engaging in criminal activity. It is possible that a police officer might find evidence supporting probable cause, but nonetheless not arrest an individual. However, I have come across no evidence to suggest such is the case for a large number of stops. *See* Caroline Forell, *Stopping the Violence: Mandatory Arrest and Police Tort Liability for Failure to Assist Battered Women*, 6 BERK. J. GENDER L. & JUST. 215, 221 n.29 (suggesting that police officers may be more likely to not arrest despite having probable cause in white middle class communities, compared with arrest rates with probable cause in poor or minority communities).

80 Illinois v. Wardlow, 528 U.S. 119, 128–29 (2000) (Stevens, J., concurring in part and dissenting in part).

81 *Id.* at 127.

82 *Id.*

break into a run for a variety of reasons,"[83] Justice Stevens stated, "any of which might coincide with the arrival of an officer in the vicinity."[84] In addition to coincidental flight, Justice Stevens added, there are entirely innocent reasons for flight "[e]ven assuming . . . that a person runs because he sees the police."[85] Among the reasons that Justice Stevens lists for why an innocent individual might run after noticing a police officer is a fear of being apprehended as a guilty party, an unwillingness to appear as a witness, and a desire to escape the danger from ongoing criminal activity that an officer's sudden presence may signify.[86]

But perhaps the most pertinent motive Justice Stevens puts forth for why individuals may run at the sight of the police is a fear of the police themselves. "Among some citizens, particularly minorities and those residing in high crime areas,"[87] explains Justice Stevens "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 . . . ."[88] Stevens cites to a host of survey findings and empirical studies that help explain the findings of New York's 1999 OAG Report. The surveys and studies illustrate discriminatory police practices and a corresponding distrust and fear of the police, especially in the context of stop and frisks.[89] One article Justice Stevens cites provides an account from black leaders complaining that innocent people were being picked up in drug sweeps, noting that "[s]ome

---

83 For example, a pedestrian may begin running "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." *Id.* at 128–29.

84 *Id.*

85 *Id.* at 131.

86 *Id.*

87 Due to the high-concentration of minorities in inner-city neighborhoods and poverty police practices that disproportionately target minorities for drug offenses, minorities such as African Americans disproportionately live in high-crime areas. *See* Reshaad Shirazi, *It's High Time to Dump the High Crime Area Factor*, 21 BERKELEY J. CRIM. L. 76, 87 (2016) (showing that although African Americans account for only 17% of drug use nationwide, they represent 37% of those arrested for drug use, and 46% of those convicted for drug offenses, while whites account for 82% of drug use and only 62% of drug arrests).

88 *Wardlow*, 528 U.S. at 132.

89 For example, Justice Stevens cites to a brief from the NAACP Legal Defense and Educational Fund, which details disproportionate street stops of minority residents in Pittsburgh and Philadelphia, Pennsylvania and St. Petersburg, Florida. *See* Wardlow, 528 U.S. at 132 n.7 (citing Brief for NAACP Legal Defense & Educational Fund as *Amicus Curiae* at 17–19, Illinois v. Wardlow, 528 U.S. 119 (2000) (No. 98-1036)). Justice Stevens also cites to a report by the National Institute of Justice, which found that 43% of African-Americans consider "police brutality and harassment of African-Americans a serious problem" in their own communities. Wardlow, 528 U.S. at 132 n.7 (citing Jean Johnson et al., *Americans' Views on Crime and Law Enforcement: A Look at Recent Survey Findings*, NAT. INST. JUST. J. 133, 138 (Sept. 1997)).

teen-agers were so scared of the task force [that] they ran even if they weren't selling drugs."[90]

We will never know what led Freddie Gray to run at the sight of the police. We do know, from studies like those cited to by Justice Stevens, that flight from the police can be spurred by fear over the presence of police officers themselves, rather than a desire to avoid being caught while engaged in criminal activity. The fear and distrust of the police that those living in high crime areas may hold cannot be ignored, especially given a meager 45:1 hit-rate among those fleeing from the police in a high-crime area.[91] Thus, with empirical evidence indicating that flight from the police in a high-crime area is a poor indicator of criminal activity, it is time the Supreme Court reconsider *Wardlow* and its "commonsense judgements" about human behavior.

IV. EMPIRICAL EVIDENCE AND ITS CONTINUED APPLICABILITY TODAY

Unfortunately, there has not been another study analyzing data akin to that used in New York's 1999 OAG Report.[92] Racial disparities continue to exist in the use of *Terry* stop and frisks.[93] For example, while the total number of stops conducted in New York City has dramatically decreased in recent years,[94] blacks and Latinos continue to be the overwhelming targets, with 59% of stops being conducted on blacks, 29% on Latinos, and only 9% on whites in 2019.[95] This is in stark contrast to the demographic makeup of

90 Wardlow, 528 at 133, n.8 (citing Kotlowitz, *Hidden Casualties: Drug War's Emphasis on Law Enforcement Takes a Toll on Police*, WALL ST. J. (Jan. 11, 1991)).

91 Meares & Harcourt, *supra* note 71, at 790.

92 The most recent report that New York State's OAG released on stop and frisks came in November of 2013 but does not contain hit-rate data on individuals stopped after fleeing from the police in a high-crime area. *See generally* CIV. RTS. BUREAU, N.Y.S OFF. ATT'Y GEN., REPORT ON ARRESTS ARISING FROM THE NEW YORK CITY POLICE DEPARTMENT'S STOP-AND-FRISK PRACTICES (Nov. 2013) (reviewing data collected from New York's stop and frisk data, with a particular focus on arrests resulting from stop and frisks).

93 *See id.* at 5 (showing an increase in the amount of stop and frisks in New York City from 1998 to 2012, the vast majority of which is due to an increase in stops conducted on black and Hispanic individuals); N.Y. CIV. LIBERTIES UNION, *Stop-and-Frisk Data*, https://www.nyclu.org/en/stop-and-frisk-data (providing data on stops conducted in New York City in 2019, which shows that 88% of stops were conducted on blacks or Latinos while only 9% of stops were conducted on whites).

94 Between 2011 and 2019, the number of recorded stops that occurred in New York City went from 685,724 to 13,459. N.Y. C.L. UNION, *Stop-and-Frisk Data*, https://www.nyclu.org/en/stop-and-frisk-data.

95 *Id.*

New York City, which is 24.3% black, 29.1% Latino, and 42.7% white.[96] With the rise of social media[97] leading to increased media coverage of police brutality against minorities,[98] the motivation for a minority individual to flee at the sight of a police officer may be becoming stronger. Thus, with the overall level of distrust and fear of the police arguably on the rise, the empirical data provided in New York's 1999 OAG Report is as relevant as ever.

The history of police brutality and its media coverage provide important context for understanding *Wardlow* today. The trend of mass-media coverage of police brutality against minorities arguably began in 1991 with the highly publicized beating of Rodney King by police officers and the ensuing riots that took hold across Los Angeles.[99] Beginning in 2012 with the death of Trayvon Martin, an unarmed, seventeen-year-old African American, at the hands of George Zimmerman, a neighborhood watch coordinator, there has been a trend of extensive media coverage of instances of police brutality against unarmed black people.[100] Martin's death was followed by the killing of a number of unarmed[101] black men and boys, including Michael Brown, Eric Garner, Tamir Rice, and eventually Freddie Gray, among others.[102] Most recently, the killings of George Floyd and Breonna Taylor have caused nation-wide protests and reignited calls for

96 *See* U.S. Dep't of Commerce, United States Census Bureau, Quick Facts: New York City, New York, available at https://www.census.gov/quickfacts/newyorkcitynewyork (last visited Apr. 3, 2020).

97 Social media has been instrumental in raising awareness of racial injustice in America. *See* Bijan Stephen, *Social Media Helps Black Lives Matter Fight the Power*, WIRED (Nov. 2015), https://www.wired.com/2015/10/how-black-lives-matter-uses-social-media-to-fight-the-power/ (discussing social media's pivotal role in spurring the Black Lives Matter Movement by making videos of police violence against minorities go viral).

98 *See, e.g.*, Mason II, *supra* note 52 (documenting the string of highly publicized instances of police brutality against African Americans such as Trayvon Martin, Tamir Rice, Michael Brown, Philando Castile, and Stephon Clark).

99 *See* Hemant Shah, *Press Coverage of Interethnic Conflict: Examples from the Los Angeles Riots of 1992*, 2007 J. DISP. RESOL. 177, 181–82 (2007) (suggesting that mass media may have been a cause of some of the social unrest that followed the beating of Rodney King).

100 *See* Eliott C. McLaughlin, *We're Not Seeing More Police Shootings, Just More News Coverage*, CNN (Apr. 21, 2015, 7:26 AM), https://www.cnn.com/2015/04/20/us/police-brutality-video-social-media-attitudes/index.html (proposing that the belief that the number of instances minorities are being victimized by the police is increasing is untrue, but rather, increased media coverage is distorting society's perspective of how common police brutality against minorities is).

101 The only exception being the small knife that was found on Freddie Gray after officers frisked him. *See Freddie Gray's Death in Police Custody - What We Know*, *supra* note 2.

102 *See 14 High-Profile Police-Related Deaths of U.S. Blacks*, CBC (Dec. 7, 2017, 10:40 PM), https://www.cbc.ca/news/world/list-police-related-deaths-usa-1.4438618 (documenting fourteen high-profile deaths of black men that occurred during police encounters).

police reform.[103] Each death came at the hand of law enforcement officers and received substantial media coverage.[104]

While the deaths of these young black men and women received extensive media coverage and spurred the Black Lives Matter Movement, they represent only a small portion of the total number of minority individuals killed by police officers in recent years.[105] While the more heinous killings of unarmed minorities are usually the ones to attract extensive media coverage, a total of 1,000 people per year are killed by the police, with Latino and black men being on average three times more likely to be killed by the police than white men.[106] These deaths take a significant toll on the mental health of minority communities.[107] Highly publicized incidences of police brutality against minorities also contribute to a growing fear of police contact among minority communities.[108] In the wake of Freddie Gray's death, for example, many Baltimore men said they would

---

103 *See* Deneen L. Brown, *Violent deaths of George Floyd, Breonna Taylor reflect a brutal American legacy*, NAT'L GEOGRAPHIC (June 3, 2020), https://www.nationalgeographic.com/history/2020/06/history-of-lynching-violent-deaths-reflect-brutal-american-legacy/ (explaining how the killings of George Floyd, Breonna Taylor, and Ahmaud Arbery led to nation-wide protests and demonstrate why the oppression of black people remains the nation's greatest burden).

104 *See Police Shootings Have Not Increased, But Media Coverage Has*, 10-8 VIDEO, https://www.10-8video.com/blog/police-shootings-not-increased-media-coverage (last visited Jan. 29, 2020) (detailing the rise of smartphones, social media, and police dash and body cams and the role they have played in the coverage of police shootings).

105 *See* Garrett Chase, *The Early History of the Black Lives Matter Movement, and the Implications Thereof*, 18 NEV. L.J. 1091, 1099 (2018) (covering the history of the Black Lives Matter Movement and its use of social media to combat police brutality against blacks).

106 *See* Frank Edwards & Michael H. Esposito, *Police kill about 3 men per day in the US, according to new study*, CONVERSATION (Aug. 6, 2018, 6:40 AM), http://theconversation.com/police-kill-about-3-men-per-day-in-the-us-according-to-new-study-100567 (noting that 0.7 white men per 100,000 are killed by police annually, compared with 2.2 deaths per 100,000 black and Latino men annually).

107 One study conducted by the *Lancet*, a prominent medical journal, found that police killings correlate with an additional 1.7 days of poor mental health annually among black adults. *See* Erin B. Logan, *This Is How Police Killings Affect Black Mental Health*, WASH. POST (July 9, 2018, 9:41 PM), https://www.washingtonpost.com/news/post-nation/wp/2018/07/09/this-is-how-police-killings-affect-black-mental-health/?utm_term=.fe0de63b0662 (detailing the results of a new medical study, which found there to be an adverse effect on mental health among minorities subsequent to police shootings).

108 *See* Angelica Delgado, *Police Brutality: Impacts on Latino and African American Lives and Communities*, SANTA CLARA UNIV. SCHOLAR COMMONS 1, 14 (2016) (noting that some people have a fear of the police instilled in them at a very young age due to instances of police brutality that occur in their communities). The fear of the police that some minorities share is also fueled by police officers' words, rather than their actions. *See* Christine Hauser & Jacey Fortin, *'We Only Kill Black People,' Police Officer Says During Traffic Stop*, N.Y. TIMES (Aug. 31, 2017), https://www.nytimes.com/2017/08/31/us/black-kill-police-georgia.html (reporting on a video that captured a police officer comforting a white woman, saying "But you're not black . . . Remember, we only kill black people. Yeah. We only kill black people, right?").

continue to run from the police in the future, with one man saying Gray's death "makes you run faster."[109]

These highly publicized deaths coincide with a growing distrust of the police among blacks. The percent of blacks that have confidence in the police has fallen from 34% in 1998, a year which compromises a majority of the data New York's 1999 OAG Report analyzed,[110] to an even more meager 30% in June of 2017, according to Gallup polls.[111] This suggests that overall confidence in the police among blacks may be lower now than it was in 1999, when New York's 1999 OAG Report found the hit-rate for individuals in high-crime areas who run after noticing the police to be just 45:1.[112] While correlation does not necessarily mean causation, and there are undeniably additional factors at play, mass-media coverage of police brutality against young, black men coincides with a declining confidence in the police among blacks. This trend suggests that innocent, minority individuals' motivation to run after noticing the police has, if anything, increased since New York's 1999 OAG Report was released.

Distrust of the police becomes an even more relevant motive for flight in the face of police presence when placed in the context of high-crime areas. Blacks are more likely than other demographics to live in inner-city neighborhoods, which disproportionately correspond with high-crime

---

109 Those interviewed in Baltimore after Freddie Gray's death said that running from the police is "a way of life" and that people often run when they have done nothing wrong. *See* John Eligon, *Running From Police is the Norm, Some in Baltimore Say*, N.Y. TIMES (May 10, 2015), https://www.nytimes.com/2015/05/11/us/running-from-police-is-the-norm-some-in-baltimore-say.html ("Young men in the heavily policed neighborhood where 25-year-old Freddie Gray was chased by the police . . . say running from officers is a way of life with its own playbook . . . . And if getting caught seems inevitable, surrender where there are plenty of witnesses to reduce the odds of being beaten.").

110 New York's 1999 OAG Report covered stops that occurred in 1998 and the first three months of 1999. Meares & Harcourt, *supra* note 71, at 786 n.187.

111 *Compare* Lawrence W. Sherman, *Trust and Confidence in Criminal Justice* 8 (2001), https://www.ncjrs.gov/pdffiles1/nij/189106-1.pdf ("[A] Gallup poll reports that whites have almost twice as much confidence in police (61 percent) as do blacks (34%).") *with* Eugene Scott, *Only One-Third of African Americans Say They Have Confidence in the Police. Killings Like Alton Sterling's Are Part of the Reason.*, WASH. POST (Mar. 27, 2018, 4:08 PM), https://www.washingtonpost.com/news/the-fix/wp/2018/03/27/only-one-third-of-african-americans-say-they-have-confidence-in-the-police-killings-like-alton-sterlings-are-part-of-the-reason/?utm_term=.3d72c26f731d ("Only 30 percent of black Americans have confidence in the police, according to a Gallup poll from June."). *See also* Claire Gecewicz & Lee Rainie, *Why Americans Don't Fully Trust Many Who Hold Positions of Power and Responsibility*, PEW RES. CTR. (Sept. 19, 2019), https://www.people-press.org/2019/09/19/why-americans-dont-fully-trust-many-who-hold-positions-of-power-and-responsibility/ ("Roughly seven-in-ten white Americans (72%) say police officers treat racial and ethnic groups equally at least some of the time. By way of comparison, half of Hispanics and just 33% of black adults say the same.").

112 *See* Meares & Harcourt, *supra* note 71, at 790.

areas.[113] Additionally, statistics show blacks to be disproportionately targeted by the police for violent crimes and drug offenses.[114] For example, while blacks account for only 14% of the United States population and 17% of drug use nationwide, they represent 37% of those arrested for drug use and 46% of all defendants convicted for drug offenses.[115]

This phenomenon could explain the findings from New York's 1999 OAG Report that while the hit-rate for all individuals who ran after noticing the police was 15.8:1, the hit-rate when confined to individuals who ran after noticing the police in high-crime areas is 45:1.[116] Thus, the empirical data suggests that *Wardlow*'s second assumption, that a person in a low-crime area who runs at the sight of a police officer is *less* likely to be involved in criminal activity than a person who does so in a high-crime area, is false. Instead, the data suggests that those running to elude the police are less likely to be engaged in criminal activity in high-crime areas, which are disproportionately comprised of minorities, compared to individuals running to elude the police in low or average-crime areas.

It may be impossible to know exactly why a given individual living in a high-crime area may run at the sight of the police despite being innocent of criminal behavior. However, the belief among many minorities that the highly publicized instances of police brutality against minorities are not isolated incidents, but signs of a broader problem, suggests that a distrust of the police may be the driving force behind such behavior.[117] At the same time, it is less common for whites to believe that the deaths of blacks during encounters with the police are signs of a broader problem,[118] and the deaths of whites during encounters with the police happen at a much lower rate.[119] This explains why a white individual living in Beverly Hills who runs at the sight of a police officer may be more likely to be engaged in criminal activity than a minority individual who does so while living in a high-crime area, as

---

113 *See* Reshaad Shirazi, *It's High Time to Dump the High-Crime Area Factor*, 21 BERKELEY J. CRIM. L. 76, 86 (2016) (examining how the high-concentration of blacks in inner-city neighborhoods, combined with the targeting of blacks for drug offenses, has led to blacks disproportionately living in high-crime areas).

114 *Id.* at 86–87.

115 *Id.* at 87.

116 *See* Meares & Harcourt, *supra* note 71, at 790.

117 *See* Rich Morin et al., *Behind the Badge: Police views, public views*, PEW RES. CTR. (Jan. 11, 2017), http://www.pewsocialtrends.org/2017/01/11/police-views-public-views/ (showing that while 72% of white police officers believe that the deaths of blacks during encounters with the police are isolated incidents, 79% of blacks overall believe such incidents are signs of a broader problem).

118 *See id.* (showing that 54% of whites believe that the deaths of blacks during encounters with the police are signs of a broader problem, compared with 79% of blacks that believe the same).

119 *See* Edwards & Esposito, *supra* note 106 (showing that blacks are three times more likely to be killed by the police than are whites).

the data in New York's 1999 OAG Report suggests.[120] This trend of declining confidence in the police among minorities indicates that the findings of New York's 1999 OAG Report are as relevant today as ever.

V. *WARDLOW*'S STRUCTURAL PROBLEM AND PROPOSED SOLUTIONS

Putting aside the statistical ineffectiveness of *Wardlow*'s assumptions in predicting criminal activity, *Wardlow* also contains a structural problem in its reliance on an ambiguous and undefined high-crime rate factor to establish reasonable suspicion. In concluding that an individual's flight in a high-crime area created reasonable suspicion to conduct a *Terry* stop, the Supreme Court recognized that each factor alone, both flight and an individual's presence in a high-crime area, are not enough to constitute reasonable suspicion.[121] Yet, *Wardlow*'s reliance on an individual's presence in a high-crime area as a determinative factor in the reasonable suspicion analysis is misguided due to the factor's ambiguity. Even if the Supreme Court adopts a more objective test for defining what constitutes a high-crime area, the use of the factor still proves to be an ineffective predictor of criminal activity based on the empirical evidence described earlier. Thus, because the high-crime area factor adds little to a reasonable suspicion analysis, and because flight alone cannot support reasonable suspicion, *Wardlow*'s precedent that flight in a high-crime area supports reasonable suspicion is inherently flawed.

The Supreme Court first established an area's crime rate as a relevant factor in a reasonable suspicion analysis in *Adams v. Williamson*.[122] In upholding a stop that was based on less than probable cause, the Court concluded that, "[w]hile properly investigating the activity of a person who was reported to be carrying narcotics and a concealed weapon and who was sitting alone in a car in a high-crime area at 2:15 in the morning, [the investigating officer] had ample reason to fear for his safety."[123] However, after including an area's crime rate as a relevant factor in a reasonable suspicion analysis, the Supreme Court failed to offer guidance as to what qualifies as a high-crime area for Fourth Amendment purposes.[124]

In the years that followed *Adams*, the Supreme Court began incorporating the characteristics of neighborhoods into reasonable suspicion analyses, most notably in cases dealing with illegal immigration where stops were conducted

120 *See* Meares & Harcourt, *supra* note 71, at 790 (finding that flight "motivated by the presence of a police officer" resulted in a stop-to-arrest ratio of 15.8:1, but in high crime areas, the stop-to-arrest ratio was 45:1).

121 Illinois v. Wardlow, 528 U.S. 119, 124–25 (2000).

122 Adams v. Williamson, 407 U.S. 143 (1972).

123 *Id.* at 147–48.

124 *Id.*

in areas known for illegal immigrant traffic.[125] Despite these developments, the Court opted not to establish an objective basis for determining when a location constitutes a high-crime area but rather deferred to officers' prior experience in the area.[126] Perhaps unsurprisingly, what constitutes a high-crime area presented a difficult question for the lower courts in *Wardlow*.

Following a state bench trial that found Sam Wardlow guilty of unlawful use of a weapon by a felon, the Illinois Appellate Court reversed the judgement, explaining that the court found "no support in the record for the contention that [the] defendant was in a high crime location" other than an officer's testimony that they noticed the defendant while on the way to a place that "was known to be a location where drugs were sold."[127] In defending its ruling, the appellate court recognized that "[t]o pass constitutional muster . . . the high crime area should be a sufficiently localized and identifiable location."[128] The Illinois Supreme Court disagreed with the appellate court about whether the incident occurred in a high-crime area but nonetheless affirmed the reversal of the trial court on grounds that the stop was not "based upon objective criteria pointing to a reasonable suspicion of criminal activity."[129] Where a lower court split practically teed up the issue, the Supreme Court whiffed, failing to provide a clear definition for what constitutes a high-crime area and instead reversing the Illinois Supreme Court's decision on the general principle that flight in a high-crime area constitutes reasonable suspicion.[130] Since *Wardlow*, courts have developed a myriad of definitions for what constitutes a high-crime area, none of which provide an easily applicable, objective basis for determining when a stop occurs in a high-crime area.[131]

---

125 *See* United States v. Brignoni-Ponce, 422 U.S. 873, 884–85 (1975) ("Officers may consider the characteristics of the area in which they encounter a vehicle. Its proximity to the border, the usual patterns of traffic on the particular road, and previous experience with alien traffic are all relevant."); United States v. Cortez, 449 U.S. 411, 419 (1981) ("Of critical importance [to the *Terry* analysis], the officers knew that the area was a crossing point for illegal aliens.").

126 *See Cortez*, 449 U.S. at 418 ("[T]he evidence thus collected must be seen and weighed not in terms of library analysis by scholars, but as understood by those versed in the field of law enforcement.").

127 People v. Wardlow, 678 N.E.2d 65, 67–68 (Ill. App. Ct. 1997), *aff'd*, 701 N.E.2d 484 (Ill. 1998), *rev'd*, 528 U.S. 119 (2000).

128 *Id.* at 68.

129 People v. Wardlow, 701 N.E.2d 484, 486–489 (Ill. 1998), rev'd, 528 U.S. 119 (2000).

130 Illinois v. Wardlow, 528 U.S. 119, 124 (2000). The closest the Supreme Court gets to defining what constitutes a high-crime area is its description of the term as "an area of expected criminal activity." *Id.* at 124.

131 *See, e.g.*, United States v. Baskin, 401 F.3d 788, 793 (7th Cir. 2005) (rejecting the idea that specific data be required to prove an event took place in a high-crime area and adopting *Wardlow*'s description of the term as an area of expected criminal activity); Cunningham v. State, 884 So. 2d 1121, 1122 (Fla. Dist. Ct. App. 2004) (describing a high-crime area "in [its] usual sense [as] being

Without a clear, objective definition for what constitutes a high-crime area, the factor raises far more questions than it answers. At its most basic level, the high-crime area factor raises the question of how high the incidence of crime must be for an area to be considered a high-crime area. Answering this question is not as simple as one might think. Is it sufficient for an area to have above-average levels of crime, or is there some higher bar that must be met before high-crime area status is attained? If the factor does refer to above average crime rates, does the standard relate to the national, state, or city average? What constitutes the geographic scope of a high-crime area? Do we only look at a few square blocks, or do we analyze crime areas by neighborhood or city? Does a high incidence of any type of crime in an area satisfy the high-crime area factor, or must the area have a high incidence of the type of crime that the officer is suspicious of an individual committing? Can high-crime area status change over time, and if so, when and how often? Does an officer's prior knowledge of an area's status as a high-crime area play a role in whether she has reasonable suspicion when she stops an individual, or do we analyze the factor in hindsight?

Without answers to these questions, *Wardlow*'s high-crime area factor will remain substantially subjective, adding little, if any, value to the reasonable suspicion analysis. This is especially true when an area's high-crime status is determined almost entirely by the retrospective and subjective testimony of police officers.[132] A court should not shirk its responsibility to make a legal conclusion of fact to police officers.[133] While police officers may act in good faith in testifying to their personal experience regarding a neighborhood's characteristics, their perspective may easily be skewed by the inevitable correlation between the time they spend in the areas they patrol and the rate

---

riddled with narcotics dealings and drug-related shootings"); People v. Davis, 815 N.E.2d 92, 98–99 (Ill. Ct. App. 2004) (defining a high-crime area as being an area that is "notorious for any type of criminal activity"); United States v. Rogers, No. Crim. 03-10313-RGS, 2005 WL 478001, at *1 (D. Mass. Mar. 1, 2005) (describing a high-crime area as an area that is "plagued by gang-related shootings, drug dealings, assaults, and robberies"); State v. Biehl, No. 22054, 2004 WL 2806340, at *5 (Ohio Ct. App. Dec. 8, 2004) (defining a high-crime area as "an area of known drug activity, or perhaps a location under police surveillance").

132 *See, e.g.*, Hannah Rose Wisniewski, *It's Time to Define High-Crime: Using Statistics in Court to Support an Officer's Subjective "High-Crime Area" Designation*, 38 NEW ENG. J. CRIM. & CIV. CONFINEMENT 101, 122 (2012) ("It is presumptively unreasonable that courts allow a mathematical conclusion like 'high-crime area' to be defined by subjective testimony . . . ."); Reshaad Shirazi, *It's High Time to Dump the High-Crime Area Factor*, 21 Berk. J. Crim. L. 76, 98 (2016) ("What is most troubling about [the *Wardlow* opinion] is that [it] allowed the prosecution to satisfy the 'high-crime area' designation based *solely* on the subjective testimony of a single officer.").

133 *See* Andrew Guthrie Ferguson & Damien Bernache, *The "High-Crime Area" Question: Requiring Verifiable and Quantifiable Evidence for Fourth Amendment Reasonable Suspicion Analysis*, 57 AM. U. L. REV. 1587, 1624 (2008) ("[I]n relying on the testifying officer for the opinion about an area, courts are shifting the responsibility to police to make what is a legal conclusion.").

at which they perceive crimes to occur in those areas.[134] Thus, if an area's crime-rate is to add any objective value to the reasonable suspicion analysis, courts must shift away from their reliance on officers' personal experiences and towards the use of empirical data.

The implementation of an objective method for determining whether a stop occurred in a high-crime area is not a far-flung idea. In fact, some prominent academics have already put forth proposals that could replace the existing subjective method with an objective approach based on empirical data. For example, Andrew Ferguson and Damien Bernache proposed an objective approach to determining when an incident occurred in a high-crime area based on three components:

> First, the area in question would have to be demonstrated to be marked by a high incidence of particularized criminal activity in comparison to neighboring areas with objective and verifiable data. Second, the area at issue would have to be narrowly tailored to a certain geographic location (perhaps including particular blocks, housing complexes, parks, or intersections) and would have to be current, limited to a recent temporal finding of recent crime activity. Third, the nexus between the particularized criminal activity and the officer's observation would have to be demonstrated.[135]

The Supreme Court adopting such an approach would resolve a number of ambiguities around the current methods courts use to determine when a stop occurred in a high-crime area. With new crime-mapping technologies, this approach could be implemented to not only inform courts' reasonable suspicion analyses retrospectively, but also to inform officers in real-time as to whether an individual they are suspicious of is located in an area with recent criminal activity of the type they suspect the individual to be engaged in.[136] If the Supreme Court is to continue its use of a location's crime-rate in reasonable suspicion analyses, it is imperative for it to adopt an objective determination to prevent an area's crime rate from serving as a proxy for speculative hunches and unconscious biases.

Yet, even with an objective approach to defining what constitutes a high-crime area, the use of an individual's presence in a high-crime area to impute reasonable suspicion remains problematic. In *Wardlow*'s context, for

---

134 *See id.* ("[W]e expect police officers to consider their beats a high-crime area because they are looking for—or responding to—reports of crime every day.").

135 *Id.* at 1628.

136 *See* Andrew Guthrie Ferguson, *Crime Mapping and the Fourth Amendment: Redrawing "High-Crime Areas"*, 63 HASTINGS L.J. 179, 219 (2011) ("With advancement in GIS technology, data-collection mechanisms now allow for a more particularized understanding of crime patterns in Fourth Amendment suppression hearings . . . . In some jurisdictions, new crime maps are generated every twenty-four hours and can be shared with officers and staff and even emailed to officers on the beat.").

example, an individual who flees after noticing a police officer is less likely to have been engaged in criminal activity than an individual who does the same in an average to low-crime area, according to empirical evidence.[137] Additionally, some minorities are more likely than other demographics to live in urban neighborhoods where crime rates tend to be higher.[138] This phenomenon may be explained by disproportionate targeting of minorities for violent crimes and drug offenses.[139] While transitioning to a more objective approach to determine high-crime areas would limit the use of the high-crime area factor as a substitute for "specific and articulable facts,"[140] it would distribute uneven levels of constitutional protections to citizens based on where they live.[141] The *Terry* doctrine's use of reasonable suspicion inherently requires police officers to consider the context of their observations, but it is important for both courts and law enforcement to not "tar people with the sins of their neighbors."[142]

Therefore, a reasonable suspicion analysis would be improved by doing away with the high-crime area factor altogether. In fact, some state courts have already begun challenging *Wardlow*'s precedent using empirical data.[143] For example, in *Commonwealth v. Warren*, the Massachusetts Supreme Court held that flight from a police officer, even in a high-crime area,[144] does not

137 *See* Meares & Harcourt, *supra* note 71, at 787, 790 (noting that the stop-to-arrest ratio upon noticing the police is 45:1 in high crime areas, but 15.8:1 generally).

138 *See* Shirazi, *supra* note 113 ("[P]oor African Americans are more likely to reside in inner-city neighborhoods than whites" where there is more violent crime).

139 See *id.* at 86–87 (noting that African Americans are disproportionately arrested for violent crimes and drug offenses and that high rates of "poverty police practices" target inner-city neighborhoods).

140 Terry v. Ohio, 392 U.S. 1, 21 (1968).

141 *See* Shirazi, *supra* note 113, at 104 ("[T]he main concern [with the use of the high-crime area factor] is that high-crime areas are predominately high-black areas, and thus overly policing these areas disparately impact African Americans.").

142 *See* United States v. Montero-Camargo, 208 F.3d 1122, 1139 n.32 (9th Cir. 2000) (en banc) ("[M]ore than mere war stories are required to establish the existence of a high-crime area . . . . [C]ourts should examine with care the specific data underlying any such assertion. Moreover, both courts and law enforcement must be careful not to tar people with the sins of their neighbors.").

143 *See* David Rudovsky & David A. Harris, *Terry Stops and Frisks: The Troubling Use of Common Sense in a World of Empirical Data*, 79 OHIO ST. L.J. 501, 538 (2018) ("[S]ome courts have recognized the relevance of empirical evidence in providing a more particularized Fourth Amendment analysis of the reasons provided for stops and frisks.").

144 The Massachusetts Supreme Court never explicitly mentions crime-rate as being a factor in the reasonable suspicion analysis. However, the area the officer first saw the defendant, on Martin Luther King Boulevard in the Roxbury section of Boston, has been described as a high-crime area by those covering the case. John G. Malcolm, *Massachusetts Supreme Court Says It's Perfectly Legitimate for Black Men to Flee Police*, DAILY SIGNAL (Sept. 23, 2016), https://www.dailysignal.com/2016/09/23/massachusetts-supreme-court-says-its-perfectly-legitimate-for-black-men-to-flee-police/. Thus, the Massachusetts Supreme Court's silence on the high-crime area factor, in addition to its holding that empirical data suggests flight does not provide a valid inference of

support reasonable suspicion due to a recent Boston Police Department report documenting a pattern of racial profiling of black males in the city.[145] The court explained that it does not forbid lower courts from considering flight in a reasonable suspicion analysis but rather urges them to consider empirical data that bears on the validity of the motivations behind a *Terry* stop.[146]

The Supreme Court should adopt a similar approach to the one used by Massachusetts' Supreme Court, by either adopting a more objective method to defining high-crime areas or, preferably, dropping the high-crime area factor altogether. Should the Court retain the high-crime area factor, it should be careful to confine its use to sufficiently specific locations within a narrow period of time, to prevent excessive and unwarranted variances in constitutional protections among citizens. Importantly, improvements in data collection and technology since *Wardlow* have made switching to a more objective, data-driven approach to reasonable suspicion analyses more accessible than ever.[147] It is now time for the courts to rectify *Wardlow*'s antiquated approach to the reasonable suspicion analysis by foregoing subjective judgements based on personal experience for more objective decisions based on empirical evidence.

CONCLUSION

Twenty years ago, the Supreme Court used its "commonsense judgements" to conclude that an individual's flight from the police in a high-crime area supports reasonable suspicion to stop that individual. However, empirical data provided by New York's 1999 OAG Report shows that individuals who run to elude the police in a high-crime area are five times less likely to be engaged in criminal behavior than all other individuals stopped.

A study analyzing hit-rate data on individuals who flee after noticing the police, as was done in New York's 1999 OAG Report, has not been recreated. However, mass media coverage of police brutality against

---

criminal activity, is tantamount to a rejection of *Wardlow*'s precedent that flight in a high-crime area supports reasonable suspicion.

145 Commonwealth v. Warren, 58 N.E.3d 333, 342–43 (Mass. 2016).

146 *Id.* at 342.

147 *See* David Rudovsky & David A. Harris, *Terry Stops and Frisks: The Troubling Use of Common Sense in a World of Empirical Data*, 79 OHIO ST. L.J. 501, 513 (2018) ("[T]here now exists an almost inexhaustible stream of data concerning a wide array of human activities . . . . Using powerful analytical computing, we can examine these vast troves of data to discover patterns that might otherwise remain hidden.").

blacks,[148] accompanied by growing levels of distrust of the police among minorities,[149] suggests that the motivation for minorities to avoid police contact has grown stronger since 1999 when New York's OAG Report was published. Furthermore, *Wardlow*'s reliance on the high-crime area factor presents an inherent structural flaw to *Wardlow*'s precedent due to the ambiguity surrounding the factor's definition and the variance in constitutional protections that it provides to citizens. Thus, the Supreme Court should either adopt a more objective, data-driven approach for determining what constitutes a high-crime area or, preferably, drop the high-crime rate factor altogether.

It is now time for the Supreme Court to reject the precedent it set in *Wardlow* by recognizing that an individual's effort to avoid police contact in a high-crime area does not, without additional information, support reasonable suspicion. By foregoing its subjective use of "commonsense judgements" in favor of empirical data and the observance of societal trends, the Court may avoid unsubstantiated and often dangerous *Terry* stops in the future, such as the one that led to the death of Freddie Gray.

148 *See* Stephen, *supra* note 97 (discussing social media's role in spurring the Black Lives Matter Movement); Mason II, *supra* note 52 (analyzing the role of media on police brutality); McLaughlin, *supra* note 100 (noting the increasing media coverage of police brutality against minorities); *14 high-profile police-related deaths of U.S. blacks*, *supra* note 102 (documenting 14 high-profile police-related deaths of black Americans).

149 *See* Sherman, *supra* note 111 (noting a Gallup poll that recorded that whites have almost twice as much confidence in police as do blacks); Scott, *supra* note 111 (reporting that a Gallup poll recorded decreasing levels of confidence in police from black Americans between 2001 and 2018).