



ROLL CALL REPORTER

July 2014

QUESTION: How important is an officer's knowledge that an area is a "high crime" area in establishing reasonable suspicion to make a traffic stop or other detention?

ANSWER: Knowledge that an area is one in which there is a high level of criminal activity cannot, standing alone, justify a traffic stop or other detention. It is, however, a relevant fact to consider with all of the other observations made by the officer in determining whether reasonable suspicion existed at the time.

CASE: *United States v. John Stacks*, U.S. Court of Appeals for the Fourth Circuit
Decided May 8, 2014 (Unpublished)

The Area: At 4:00 a.m. on March 18, 2011, Officers Bryan Overman and Chandos Williams, veteran officers of the Charlotte-Mecklenberg Police Department, were on patrol in the "Westpark Corridor," surrounding Westpark Drive, in Charlotte, North Carolina. The Westpark Corridor, a commercial area on the western side of Charlotte near Interstate 77, is home to several hotels, restaurants, and nightclubs. The area is known to police as a "hot spot" for breaking and entering motor vehicle cases, particularly during the early morning hours. Consequently, the officers were doing surveillance on the hotels and surrounding area to prevent auto break-ins and thefts.

The Suspicious Vehicle: After an initial sweep of the area, the officers parked their unmarked patrol car in a business park. They turned off the vehicle's headlights and internal lights. From where they were sitting, the officers could see the parking lots of several hotels on Westpark Drive. The parking lots and the street were well-lit and only a few people were out, most of whom were hotel employees or deliverymen. At 4:30 a.m., the officers observed a brown two-door Cadillac drive past them on Westpark Drive. The Cadillac was driven by an African-American male later identified as John Stacks. There was no one else in the car. As the Cadillac passed the officers' parked car, the officers saw Stacks look towards the nearby hotels and parking lots. Stacks did not look in the direction of the officers. The Cadillac then turned into the parking lot of the Residence Inn and drove up and down the rows of cars in the lot. The Cadillac then proceeded into the next parking lot and again drove up and down the rows of cars without stopping or lingering. The officers thought the driver was either looking for a parking space or lost. The Cadillac left the second lot and drove towards a third hotel and parking lot, this one being the last one on Westpark Drive before it dead-ended into a cul-de-sac. The officers decided to stay with the Cadillac and drove towards the hotel. They did not turn their headlights on and drove slowly towards the hotel parking lot. The Cadillac came out of the parking lot and drove back on Westpark Drive, away from the hotels and the cul-de-sac. The Cadillac passed the patrol car. As the cars passed, Stacks saw the officers and turned around in his seat to get a better look. As he did so, he slowed the Cadillac, almost to a stop. Based on Stacks' reaction, the officers initiated a traffic stop.

The Traffic Stop: The officers activated their car's blue lights and Stacks pulled over. Officer Overman approached and asked for Stacks' license and registration. Stacks turned them over and the

officer returned to the patrol car to run a check through the DMV database. Officer Williams, who had also approached the Cadillac, began to ask Stacks questions. He asked Stacks why he was in the Westpark corridor. Stacks said that he was dropping off his girlfriend, but he could not tell the officers where he had taken her. From his position, Officer Williams could see a camouflage jacket in the back seat, spread out as if it was covering something. In other arrests Officer Williams had made, defendants had hidden things in cars under clothes, in the trunk, and under the seats. The DMV check revealed that Stacks had been arrested several times for armed robbery. Officer Overman then joined Officer Williams, and both noticed that Stacks was obviously nervous. He was talking very fast and fumbling with his cell phone. The officers asked him to step out of the car. Stacks wanted to know if the officers had “probable cause” for their request. They told him they did not need probable cause for their actions and again asked Stacks to step out. In response, Stacks started the car, pulled from the curb and sped off. The officers tried to catch him but were unsuccessful.

The Warrant, the Gun, and the Arrest: The officers obtained a warrant for Stacks’ arrest for resisting, delaying and obstructing officers, as well as for careless and reckless driving, all in violation of North Carolina law. Just hours after they obtained the warrant, a guest at one of the hotels along Westpark Drive found a firearm – a Cobra enterprises Model CA-380 semiautomatic pistol – underneath some bushes outside the Residence Inn and gave it to a police officer who was nearby. Stacks eventually turned himself in later that morning to the Charlotte-Mecklenberg Police. He was questioned by a detective who asked Stacks about the gun. Stacks denied knowing anything about it. While in custody on the charges, Stacks made five telephone calls to an unidentified female, all of which were recorded. During the calls, Stacks made incriminating statements about getting rid of a firearm, calling it a “gun,” a “burner,” and an “iron.”

The Gun Charge and the Conviction: A federal grand jury returned an indictment charging Stacks with being a felon in possession of a firearm. Stacks moved to suppress all of the evidence derived from the traffic stop-including his identity and his statements made during the stop and after his arrest, as well as the gun recovered near the hotel. Stacks argued that all of the evidence was tainted as fruit of the poisonous traffic stop. The federal trial court denied Stacks’ motion and the case proceeded to trial. The State identified a police detective as an expert witness who would provide expert testimony as to the general jargon and slang terminology used to describe firearms (including “burner” and “iron”). Stacks objected but the testimony was allowed. Stacks was found guilty by a jury and he was sentenced to 212 months in prison. He appealed.

The Appeal and the Result: On appeal, the United States Court of Appeals for the Fourth Circuit upheld Stacks’ conviction. It did so on grounds that the officers had reasonable suspicion to stop Stacks’ Cadillac. Once again, it was the “totality of the circumstances” that led to the result. The court looked at the area where the stop occurred and the type of crime it was known for, the time of day, the limited activity in the area at 4:00 a.m., together with the suspiciousness of Stacks’ behavior, including his reaction to the officers. All of these factors led to a reasonable suspicion that Stacks was about to engage in criminal activity. As a result, his conviction was upheld.

NOTE: An officer should always be prepared to testify at a suppression hearing and/or trial as to what he/she means by a “high crime area.” Know how many arrests you and/or others have made in the area, for what crimes, and over what period of time. Finally, if an officer is going to testify as to his/her “understanding” of slang terminology for firearms, the officer must be either: (1) qualified as an expert based on training and credentials, or (2) be in position to offer a lay opinion, based on the officer’s having actually heard the defendant use the terminology and applying such use to the officer’s personal knowledge and experience. (Example: “I heard Defendant X tell his friend he got rid of the ‘burner.’ In my personal experience as a police officer, I know of at least ten other instances where a defendant has described a handgun as a ‘burner.’”

By John F. Breads, Jr., Director of Legal Services, Local Government Insurance Trust

This publication is designed to provide general information on the topic presented. It is distributed with the understanding that the publisher is not engaged in rendering legal or professional services. Although this publication is prepared by professionals, it should not be used as a substitute for professional services. If legal or other professional advice is required, the services of a professional should be sought.