

## U.S. v. Curry

(4th Cir. 2020) \_\_ F.3d \_\_ [2020 WL 3980362]

### Issues

(1) Did officers have grounds to detain a person who was leaving a location from which gunshots had just been fired? (2) Under what circumstances, if any, may officers detain a person on grounds of exigent circumstances?

### Facts

At about 9 P.M., four officers on patrol in Richmond, Virginia heard five or six gunshots coming from a public housing complex about three blocks away. The officers were aware that there had been six shootings and two homicides in the complex over the past three months, and the most recent homicide occurred just eleven days earlier.

When the officers arrived about a minute later, they saw several people who were acting normally. They also saw about seven men who were walking away from the area. At about this time, dispatch reported that several people who lived in the area had reported hearing “random gunfire,” but none of the callers had seen the shooter.

One of the men who was walking away from the field was Billy Curry. According to the officers, Curry was walking at a normal pace, his hands were in plain view, and he made no furtive gestures. Nevertheless, one of the officers told Curry—in an “authoritative tone”—“Let me see your hands.” There is some uncertainty as to whether Curry complied, although he did *start* to raise his hands. In any event, when the officer instructed him to pull his shirt up, Curry did not lift it all the way up. So the officer pat searched him and felt a “hard object like the butt of a handgun.” It was, in fact, a handgun, and Curry was arrested and charged with possession of a firearm by a felon. He filed a motion to suppress the weapon on grounds that it was discovered during an illegal detention. The motion was granted and the government appealed to the Fourth Circuit.

### Discussion

Curry was detained when the officer—in an “authoritative tone”—told him, “Let me see your hands.” The issue, then, was whether, at that point, the officers had sufficient grounds to believe that Curry was the shooter or was otherwise involved in the incident. Plainly, they did not.

Although detentions are permitted if officers have “reasonable suspicion”—a relatively low level of proof—a suspicion cannot be reasonable unless officers can articulate one or more facts that support it. But because the officers did not have a physical description of the shooter, and because Curry “made no furtive gestures” and was not walking at an “accelerated pace,” the officers had insufficient reason to believe he was involved in the incident.

As a backup argument, the government contended that the detention was lawful because there were exigent circumstances. Specifically, prosecutors claimed that officers who are responding to a shots fired call ought to be able to detain people who are leaving the area, even if there was no specific reason to believe they were involved.

The test for determining whether there were exigent circumstances is whether the need for the police action outweighed its intrusiveness. As the Supreme Court explained,

“The government interest must outweigh the degree to which the search invades an individual's legitimate expectations of privacy.”<sup>1</sup>

In applying this test, the first step is to determine the strength of the need for the intrusion. And this will ordinarily depend on the severity of the emergency and the amount of proof that the suspect responsible or, at least, involved. While the firing of a gun in a public place is dangerous and may indicate that someone might have been shot, the officers who detained Curry were unable to cite any reason to believe that he was the shooter or even an accomplice. Consequently, the court ruled that the detention of Curry was not justified by exigent circumstances. Said the court, “Allowing officers to bypass the individualized suspicion requirement based on the information they had here—the sound of gunfire and the general location where it may have originated—would completely cripple a fundamental Fourth Amendment protection and create a dangerous precedent.”

### **Comment**

This was not a difficult case. And yet, the court's opinion spanned ninety-nine pages, with four separate concurring opinions, plus one dissenting opinion. Most of this discussion focused on the issue of whether the detention was justified by “community caretaking,” which is essentially a “lite” version of exigent circumstances. However, as we have discussed many times, there is no “community caretaking” exception to the warrant requirement. Instead, whenever officers seek to justify a search or seizure because of an emergency, the only applicable exception to the warrant requirement is exigent circumstances. Thus, in *People v. Ovieda*<sup>2</sup> the California Supreme Court ruled that the warrantless entry into a home based on exigent circumstances was unlawful because, although officers had some reliable information that a resident was suicidal, these circumstances did not outweigh the extreme severity of forcible entries into homes. POV

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<sup>1</sup> *Maryland v. King* (2013) 569 U.S. 435, 461. Also see *Illinois v. Lidster* (2004) 540 U.S. 419, 426 [“[I]n judging reasonableness, we look to the gravity of the public concerns served by the seizure, the degree to which the seizure advances the public interest, and the severity of the interference”].

<sup>2</sup> See *People v. Ovieda* (2019) 7 Cal.5th 1034, 1048.