

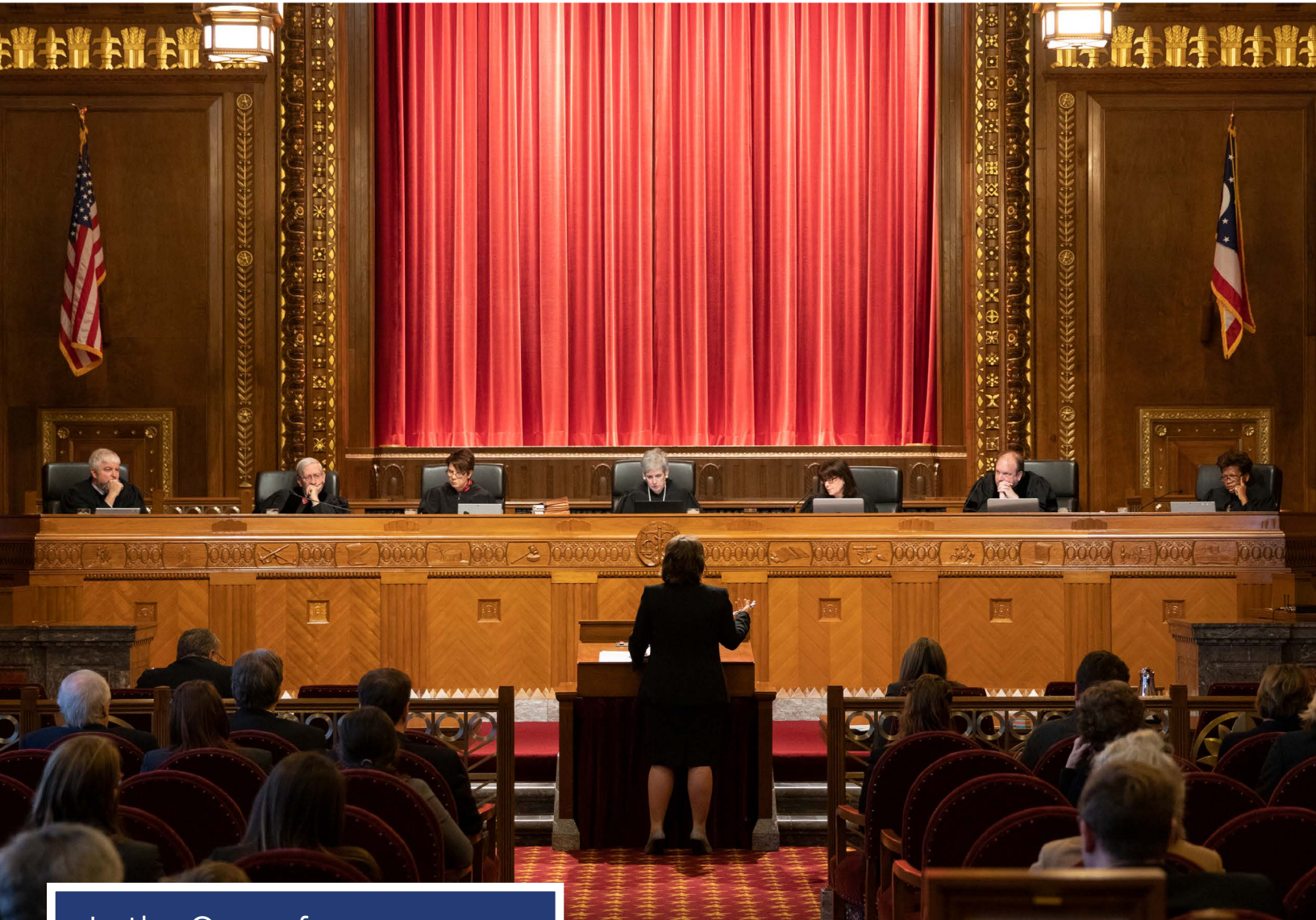
THE SUPREME COURT *of* OHIO

PRESENTS

UNDER ADVISEMENT

Ohio Supreme Court Cases On Demand

STUDENT RESOURCE GUIDE



In the Case of:

State of Ohio v. Jaonte D. Hairston,
Case no. 2017-1505

Two Columbus police officers heard several gunshots while responding to a call on the southeast side of the city. After driving in the direction they thought the shots came from, they encountered Jaonte Hairston, a 23-year-old Black man, as he walked into a crosswalk talking on his cell phone. He was the only person in the area, and the officers approached him with guns drawn. After placing his hands behind his back, Hairston notified the officers that he had a loaded pistol in his front jacket pocket. Hairston was arrested for carrying a concealed weapon. The Ohio Supreme Court is asked to decide if the officers had reasonable suspicion to stop and search Hairston, and thereby charge him with the concealed-carry offense.

Introduction

THE SUPREME COURT *of* OHIO



The title of this program, **Under Advisement**, comes from the statement that Chief Justice Maureen O'Connor uses to end each case heard during oral arguments: "Thank you. We'll take the matter under advisement and you'll be notified of our decision." In the Supreme Court setting, taking the matter "under advisement" means the justices will consider the legal arguments of each party in a case before issuing a ruling.



Wood County Courthouse, Bowling Green, Ohio

OHIO'S COURT SYSTEM

The courts oversee and administer the law. They resolve disputes under the law and strive to apply the law in a fair and impartial manner. As in other states, Ohio is served by separate state and federal court systems organized into trial courts,

intermediate courts of appeals, and a Supreme Court in each system. State courts primarily deal with cases arising under state law, and federal courts primarily deal with cases arising under federal law.

STATE COURTS

Ohio Trial Courts

In Ohio, most cases begin and are resolved in trial courts, which are the workhorses of the state's judicial system. Ohio has several kinds of trial courts and each has venue and jurisdiction over cases. Simply stated, venue is the geographical location where a case is heard. Jurisdiction is the power and authority to hear and decide certain types of cases. Ohio's trial courts include common pleas courts, municipal and county courts, and mayor's courts.

- ▶ Common pleas courts have countywide venue and jurisdiction to decide all levels of civil and criminal cases. The common pleas court is Ohio's court of general jurisdiction, which means that it has the authority to hear almost any civil or criminal matter. The most serious civil or criminal cases must be heard in common pleas court. Each of the state's 88 counties has a common pleas court.
- ▶ Municipal and county courts have more limited jurisdiction than common pleas courts, and the authority to only decide less serious civil and criminal cases.
- ▶ Mayor's courts do not have civil jurisdiction and only have limited authority to hear minor criminal matters that occur within a city or village. Mayor's courts are not courts of record because they are not required to keep a record of their proceedings.

Ohio Courts of Appeals

The goal of every judicial system is to achieve complete and equal justice with every trial, but trial courts sometimes make mistakes or parties may disagree about the outcome of a particular case. This is why the courts of appeals were established. Ohio's courts of appeals review questions brought from common pleas courts, municipal courts, and county courts.

Only a final judgment or order can be appealed, and appeals generally must be on questions of law and not the facts of a case. Appeals court judges generally do not hear new testimony. They review transcripts from the lower court's hearings to determine if the law was interpreted and applied correctly. The party appealing the lower court's decision is the appellant, and files a written argument explaining why the trial court erred. The party that won the case in the trial court is the appellee, and also may file a written brief, but is not required to do so. The court then may hold

The Supreme Court of Ohio

The Supreme Court of Ohio's main purpose is to serve as a court of appeals and Ohio's court of last resort. The Court is empowered to review final judgments and orders of lower courts; to affirm, reverse, remand (send back to a lower court), or modify judgments. Appeals to the Supreme Court generally are from the 12 district courts of appeals, rather than from the trial courts. The Court is required to hear some types of cases (cases involving the death penalty, some appeals from state agencies, cases involving state constitutional issues, and others), but most of its jurisdiction is discretionary and it selects cases of great importance or public interest to resolve.

The Supreme Court of Ohio has original (trial) jurisdiction for certain special remedies that permit a person to file an action in the Supreme Court. These extraordinary remedies include writs of habeas corpus (involving the release of persons allegedly unlawfully imprisoned or committed),

oral arguments, at which time the judges can ask questions about the case before making a decision. Ohio's appeals court system is divided into 12 districts.

The number of judges in each district varies based on population, but each district has a minimum of four appellate judges. A panel of three of the district's judges hear cases challenging decisions made by a lower trial court located within its district. Although many cases end with a decision by a district court of appeals, such courts are not the last resort; rather they are an intermediate step from the trial courts to the Supreme Court of Ohio.

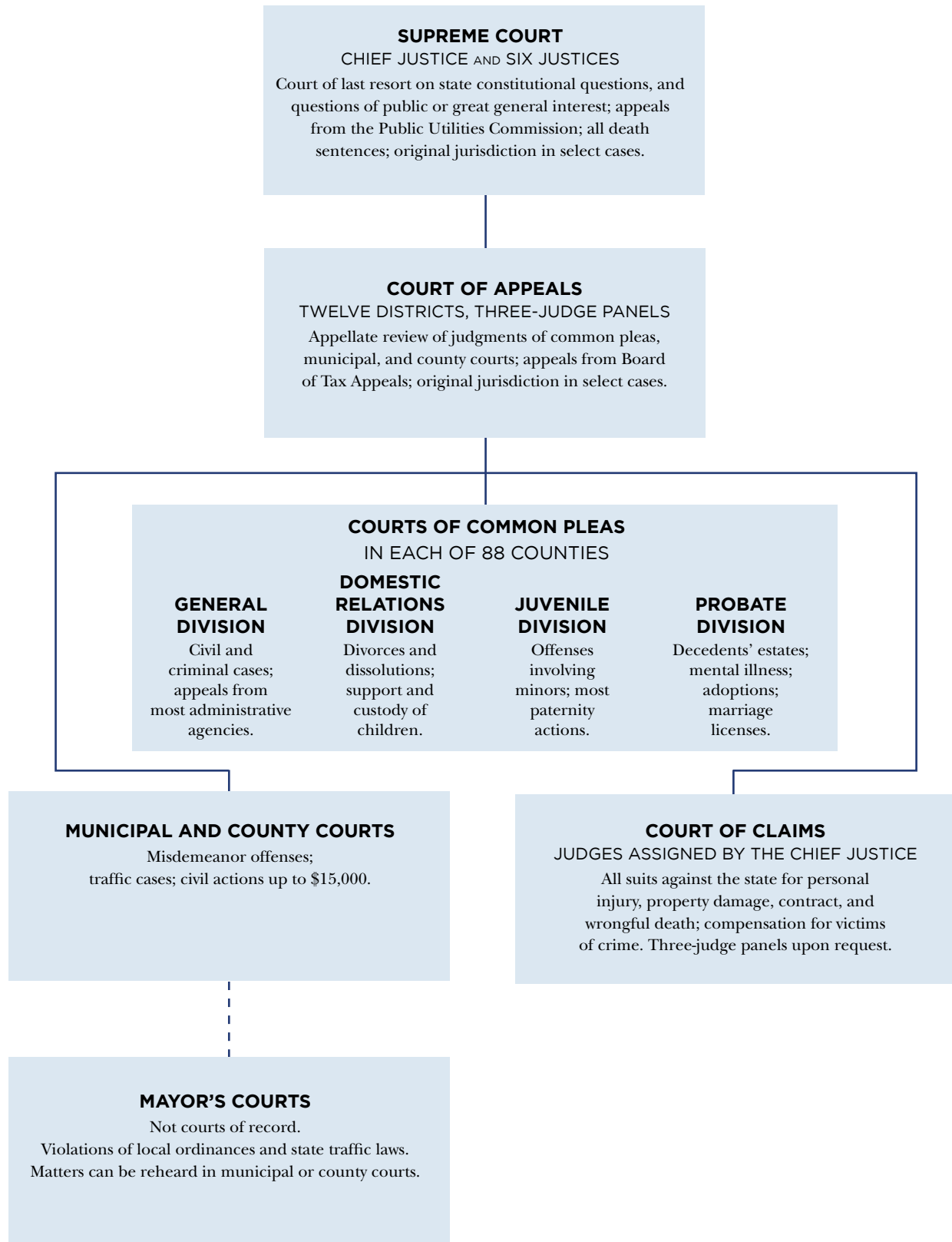
To qualify for election, court of appeals judges must be licensed attorneys with at least six years' experience. Once elected, they serve six-year terms.

writs of mandamus and procedendo (ordering a public official to do a required act), writs of prohibition (ordering a lower court to cease an unlawful act), and writs of quo warranto (against a person or corporation for usurpation, misuse, or abuse of public office or corporate office or franchise).

The Supreme Court of Ohio also has other important duties. These duties include prescribing rules of procedure for and providing general oversight of all lower courts, and overseeing the practice of law by attorneys.

The Supreme Court of Ohio consists of a chief justice and six justices. To qualify for election, candidates must be licensed attorneys with at least six years' experience. Once elected, they serve six-year terms. The Supreme Court of Ohio is located in downtown Columbus.

OHIO JUDICIAL STRUCTURE



Oral Argument Preview

State of Ohio v. Jaonte D. Hairston, Case no. 2017-1505



KEY TOPICS FROM THIS CASE

- What are the rights of citizens when approached by police officers?
- What is a *Terry* stop?
- When is it considered reasonable for a police officer to stop and search a potential suspect?
- What is the significance of the Fourth Amendment to the U.S. Constitution?
- What is the role of amicus briefs?

Glossary of Legal Terms

Admissible: Allowed to be considered as evidence by a judge or jury.

Amicus curiae: Latin, meaning “friend of the court.” A person or group that is not a party in a case, but who asks a court or is requested by a court to file a brief because of a special interest in the subject of the case.

Appeal: A request made by a party that lost on one or more issues for a higher court to review the decision for correctness.

Appellant: The party who appeals a court’s decision and seeks to have the decision overturned.

Appellee: The party who opposes an appeal and seeks to have an earlier court decision affirmed.

Brief: A written statement submitted to a court explaining legal and factual positions.

Capital offense: A crime punishable by death.

Community control: A type of sentence that allows a convicted person to stay out of prison, but under control of the court for a specific amount of time.

Concurring opinion: A vote in favor of the court’s judgment, but for different reasons than stated in the majority opinion.

Defendant: In a civil case, someone against whom a lawsuit is filed. In a criminal case, someone accused of a crime.

Dispositive: A decisive fact, motion, or point of law when answering a question of law.

Dissenting opinion: An opinion disagreeing with the judgment reached by the majority of the court.

Due process: In criminal law, the constitutional guarantee a defendant will receive a fair and impartial trial. In civil law, a party’s right to notice and to be heard.

Evidence: Information presented in testimony or in documents, according to specific court rules, and used to prove a case to the judge or jury.

Exclusionary rule: Doctrine stating evidence obtained in violation of a criminal defendant’s rights is not admissible at trial.

Felony: A serious crime, punishable by at least six months in prison.

Grand jury: A group of citizens called for jury service to listen to evidence of criminal allegations presented by prosecutors to determine whether there is probable cause to believe someone committed a crime.

Improvidently allowed: The Ohio Supreme Court’s decision to dismiss a case it had previously accepted because the case lacks a substantial constitutional question, a question of public or great general interest, or otherwise does not need to be decided by the court.

Inadmissible: Not able to be allowed or considered in a legal case.

Indictment: The grand jury’s formal statement that a person is alleged to have committed a specific crime or crimes.

Justice: One of the seven members of the Supreme Court of Ohio.

Majority opinion: An opinion joined by more than half of those judges considering a case, which becomes the opinion of the court.

Glossary of Legal Terms

Motion to suppress: A formal request to the court to exclude certain evidence at a criminal trial because the evidence was obtained illegally.

Misdemeanor: A crime punishable by imprisonment (in prison or in jail) of one year or less.

Municipal court: Trial court created by the General Assembly with the authority to conduct preliminary hearings in felony cases and having jurisdiction over traffic and non-traffic misdemeanors, and some civil cases.

Opinion: A judge's written explanation of the decision of the court in a case.

Oral argument: An opportunity for lawyers to argue their positions and answer questions from the judges who will decide the case being appealed.

Party: In court proceedings, one who files a civil or criminal case, one against whom a case is filed, or one with a direct interest in a case.

Plea of no contest: This is not an admission of guilt, but is an admission of the truth of the facts alleged in the indictment or complaint. The admission cannot be used against the defendant in any subsequent civil or criminal proceedings.

Precedent: A decision in an earlier case – with facts and legal issues similar to a dispute currently before a court – that should be followed unless there is good reason to depart from the earlier ruling.

Presentment: An informal statement in writing by a grand jury, representing to the court that a public offense was committed that is triable in the county, and that there is reasonable ground for believing a particular individual named or described in the statement has committed the offense.

Probable cause: Enough facts to allow law enforcement to arrest someone, or search someone or something.

Prosecutor: One who represents the government in cases against criminal defendants.

Reasonable suspicion: An objectively justifiable suspicion based on specific facts or circumstances and justifying stopping and sometimes searching a person thought to be involved in criminal activity at the time.

Suppression of evidence: Court ruling where evidence is excluded from the trial because it was obtained illegally.

Terry stop: In the United States, a *Terry* stop is a brief detention of a person by police on reasonable suspicion of involvement in criminal activity but short of probable cause to arrest.

Trial: A formal court proceeding in which a judge or a jury decides disputed facts and determines guilt or liability based upon the evidence presented.

Witness: A person called on in a lawsuit to give testimony before the judge or jury.

Background



GUNFIRE PROMPTS SUSPECT SEARCH

- ▶ Around 9:00 p.m. on March 29, 2015, two Columbus police officers responded to a call about a domestic dispute on the southeast side of the city near Independence High School.
- ▶ Upon their arrival, they heard several gunshots unrelated to the dispute, which they thought came from the west.
- ▶ They returned to their cruiser and drove in the direction of the gunshots. After driving about four-tenths of a mile along residential streets they saw Jaonte Hairston.
- ▶ Hairston, a 23-year-old Black man who lived in the area, was walking into the crosswalk on Whitlow Road, talking on his cell phone.
- ▶ Hairston was the only person the officers saw in the area and they exited their cruiser with their guns drawn as they approached him.
- ▶ The officers asked if Hairston heard the gunshots and he replied that he had.
- ▶ The officers told Hairston to place his hands behind his back and asked whether he had any weapons. He said he did and nodded to his front jacket pocket.
- ▶ The officers found a loaded pistol and arrested Hairston for carrying a concealed weapon.
- ▶ There were no shell casings found nearby, nor any other indication that Hairston was the person who fired the shots.

OFFICERS SEARCH FOR SOURCE OF GUNSHOTS



Map showing where the officers started and where they stopped Hairston.

“Officer Moore testified that he heard gunshots that sounded as if they were coming from the west. They headed in the general direction of where they thought the shots might have come from. They drove through a residential neighborhood heading south on **Falcon Bridge Drive** and passed approximately twelve houses before turning onto **Paladim Road**. They drove on **Paladim**, and continued past the intersection of **Argonne Court**, then continued west past the **Gentry Lane** intersection and continued driving the length of **Paladim Road** until it changed into **Reynard Road**. At that point they jogged onto **Paladim Place** and headed west to **Whitlow Road** where they observed the defendant crossing the intersection at a crosswalk. He was just walking normally through a residential area where there were “a lot of houses” and talking on his cell phone at the time. This observation of the defendant occurred about four-tenths of a mile from where the officers were when they heard the shots.”

- The public defender’s [memorandum opposing jurisdiction](#)

CASE PROCEEDINGS

Hairston Challenges Charges

Charges against Hairston are filed in the Franklin County Common Pleas Court.

- Hairston wants to suppress, or keep the trial judge and/or jury from considering, the evidence from the search.
- A “motion to suppress” evidence is a formal request made to the court to exclude certain evidence at a criminal trial because the evidence was obtained illegally.
- Hairston argues that the officers’ search of him was unreasonable. Therefore, the evidence was obtained through an unconstitutional search and seizure in violation of the Fourth Amendment of the U.S. Constitution and Article I, Section 14 of the Ohio Constitution.
- The trial court denies the motion and allows the evidence to be considered.
- Hairston enters a plea of no contest. The court finds him guilty of carrying a concealed weapon and imposes a sentence of one year of community control under basic supervision.

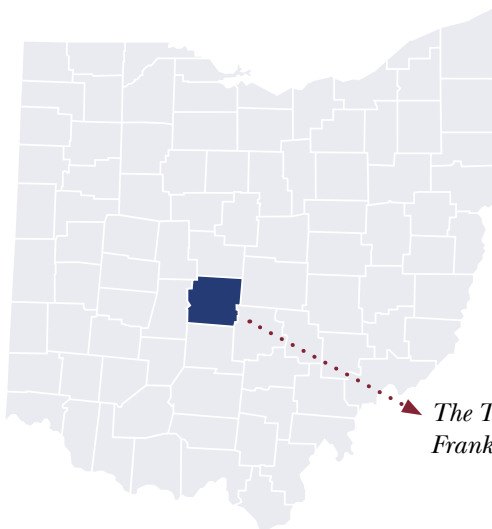


*Franklin County Common Pleas Court, Columbus, Ohio
Image by MJ via Wikimedia, [creative commons license](#).*

More than a year passed from the time Hairston appealed the trial court’s decision to when the Tenth District heard his argument, and Hairston had already served his one-year community control sentence. He is appealing to have the conviction removed from his record.

Hairston Appeals Decision

Parties that oppose a key decision by the trial court can appeal the decision to a higher court before any further action is taken.



*The Tenth District:
Franklin County.*

- Ohio has 12 district courts of appeals, which review and consider arguments in cases from trial courts in their region of the state.
- Trial court decisions made in Franklin County may be appealed to the Tenth District Court of Appeals, located in Columbus.
- The Tenth District reverses the trial court’s ruling, concluding that the police lacked reasonable suspicion to stop and search Hairston. The prosecutors can again file charges in the common pleas court against Hairston. However, they cannot use the evidence found during the search of Hairston.

Appeal to the Ohio Supreme Court

The Franklin County Prosecutor appeals the Tenth District's decision to the Ohio Supreme Court.

- ▶ Parties that lose at the appellate court level can ask the Ohio Supreme Court to review their case.
- ▶ Four of the seven justices on the Ohio Supreme Court must vote in favor of accepting the case.
- ▶ The Supreme Court agrees to hear the prosecutor's appeal.
- ▶ Because the Supreme Court agreed to hear the case, the Tenth District's order for the case to return to trial court is put on hold.



The locations of the Ohio Supreme Court and the Tenth District Court of Appeals in downtown Columbus.

ORAL ARGUMENT SCHEDULED

When the Supreme Court accepts a case, the parties submit written arguments, then the Court sets a date for oral argument.

- ▶ Prior to appearing before the Supreme Court, the parties are expected to submit merit briefs. These are written arguments explaining why each side thinks it should win the case.
- ▶ An attorney for each party typically presents arguments in front of the justices of the Supreme Court and answers questions from the justices.
- ▶ Other organizations interested in how the court might rule can file “amicus” briefs. These also are known as friend-of-the-court briefs.
- ▶ The Supreme Court accepted the prosecutor's appeal to decide:
 - ▶ If, when responding to very recent gunfire in a high-crime area, it is reasonable for police officers to have their weapons drawn and to briefly detain the only individual seen in the area.

STATUTES EXPLAINED

The following statute is relevant to this case:

- ▶ Hairston is not being charged with a crime related to the gunshots that led to his stop. He was charged with carrying a concealed weapon, which is in violation of R.C. 2923.12 (A). This statute reads that “no person shall knowingly carry or have, concealed on the person's person or concealed ready at hand, any of the following:
 1. A deadly weapon other than a handgun;
 2. A handgun other than a dangerous ordnance; or
 3. A dangerous ordnance.”
- ▶ There are exceptions to this statute that involve having a concealed-handgun license, which Hairston did not have. Hairston's case deals with whether the evidence that proves he was in violation of the statute was illegally obtained.

FOURTH AMENDMENT



The Fourth Amendment to the U.S. Constitution states:

“The 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, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

Fourth Amendment Exceptions

The Fourth Amendment is not a guarantee of protection against all government searches and seizures. There are a number of exceptions to the amendment that have been determined by the courts over the years. It is the courts' job to balance personal privacy with government interests. Some of these exceptions include if:

- ▶ A police officer asks and is given consent to search
- ▶ A police officer, or other citizens, are in immediate danger
- ▶ Evidence may be destroyed
- ▶ A suspect may escape
- ▶ The objects being searched are in plain view
- ▶ A police officer has reasonable suspicion to make an investigatory stop of a suspect (stop and frisk)

HAIRSTON'S ARGUMENTS

Terry Stops Exception Does not Apply

- The exception to the Fourth Amendment for investigatory stops is made on the authority of *Terry v. Ohio*, a 1968 U.S. Supreme Court opinion. In *Terry*, the U.S. Supreme Court ruled the police may stop a person only if the officer has a reasonable suspicion based on specific and articulable facts that criminal behavior has occurred or is imminent.
- Hairston argues that the officers lacked reasonable suspicion to stop and search him.

Search Was Unreasonable

- Police cannot detain a person at gunpoint to investigate gunshots when they have no description of a suspect, do not know the direction a suspect was heading, and have no other particularized information connecting the person to the sound of gunshots.
- The precedent set in *Terry v. Ohio* is based on an objective interpretation of the facts of a situation, not on the police officers' personal interpretation about whether a person committed some wrongdoing.
- Police must be able to clearly identify the reasons for stopping and searching an individual. In this situation they did not have reasonable suspicion to do so.
- Hairston's behavior was not suspicious, he did not flee when the officers approached him, and he answered the officers' questions.
- Hairston's conduct, when viewed objectively, provided no evidence that he was engaged in criminal conduct and, therefore, he should not have been stopped and searched.

FRIEND-OF-THE-COURT BRIEFS

Amicus curiae briefs were filed by organizations with a high level of interest in the outcome of the case.

- The Supreme Court allows these groups to submit written briefs, but generally doesn't allow them to present oral arguments.
- In some cases, a party named in a lawsuit will agree to split oral argument time with one of the amicus groups supporting the party's position.

STATE'S ARGUMENTS

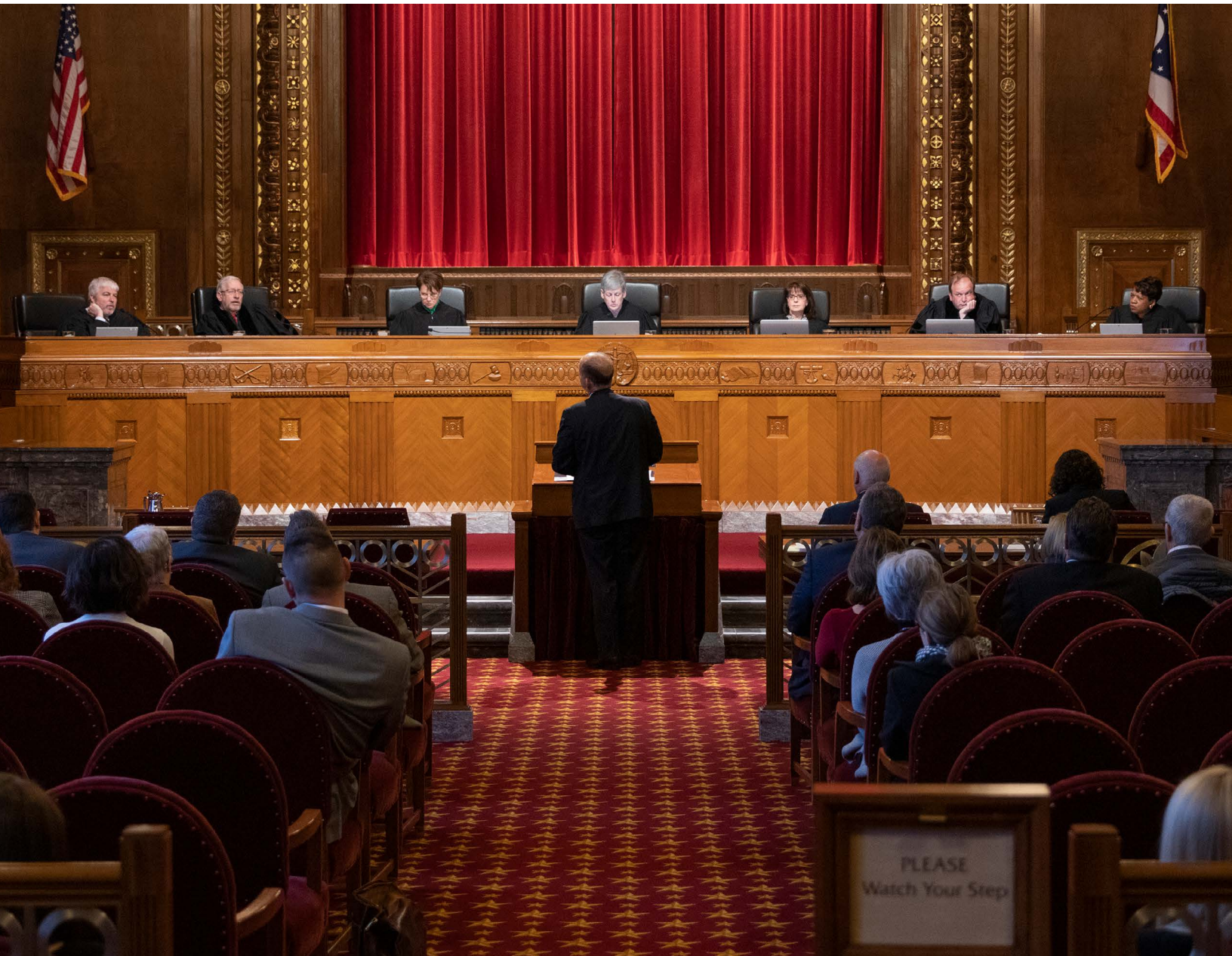
Factors Viewed Together Justify Search

- Courts must look at the totality of circumstances when reviewing whether stopping and searching an individual is legal. In reversing the trial court's decision, the appeals court did not examine all the circumstances together, but instead separated and then considered each factor individually.
- The gunshots occurred in a high-crime area, and the defendant was the only person the officers saw shortly after hearing the gunshots. Given these circumstances, the officers are permitted to draw their weapons to both protect themselves and to find out whether a suspicious person is carrying a weapon.
- Taken together, these factors created a reasonable suspicion to search Hairston, thereby qualifying as an exception to the Fourth Amendment and making the search legal.

- The following groups filed a joint brief supporting Hairston's position:
 - Friedman and Gilbert, a Cleveland law firm
 - Hamilton County Public Defender
 - Montgomery County Public Defender
 - National Lawyers Guild
 - Ohio Justice and Policy Center
 - Ohio Public Defender's Office
- The Fraternal Order of Police Ohio, Capital City Lodge No. 9 filed an amicus brief supporting the prosecutor.

Observing the Oral Argument

State of Ohio v. Jaonte D. Hairston, Case no. 2017-1505



ATTORNEYS WILL REFER TO PREVIOUS FEDERAL AND OHIO COURT DECISIONS

U.S. Supreme Court Decisions:

Terry v. Ohio (1968)

On Oct. 31, 1963, a plainclothes policeman observed what he believed to be three men preparing to rob a store in downtown Cleveland, Ohio. He stopped and searched the three men and found weapons on two of them, John Terry and Richard Chilton. Terry was tried and convicted of carrying a concealed weapon and received a three-year prison term. Terry appealed the decision, claiming that the evidence used to convict him was obtained through an illegal search of his person. The U.S. Supreme Court heard the case in December 1967. In an 8-1 decision in June 1968, the Court held that the search was reasonable under the Fourth Amendment and the evidence could be used in court against Terry.

Listen for references to the following cases as well. Attorneys on both sides will use both the majority and dissenting opinions from these cases as precedent for what makes a search reasonable. Several of these cases apply the precedent set in the Terry v. Ohio ruling.

Reid v. Georgia (1980):

While at an Atlanta airport, a federal narcotics agent observed an individual with a shoulder bag glancing at another man with a shoulder bag and no other luggage. The agent asked each of them for their identification and after they consented to a search of their persons and bags, Reid tried to run away and left his bag, which contained cocaine. Reid was indicted for possession of cocaine, but submitted a motion to suppress the introduction of cocaine as evidence on the grounds that the seizure was a violation of his Fourth Amendment rights. The U.S. Supreme Court agreed with Reid and ruled that the agent could not have reasonably suspected Reid of criminal activity based on the observed circumstances.

Brinegar v. United States (1949):

A federal agent who had previously arrested Brinegar for illegally transporting liquor into Oklahoma saw him in his car, which appeared to be heavily loaded, heading west in Oklahoma. The agent pulled him over and, upon interrogation, Brinegar admitted that he had 12 cases of liquor in his car. He was charged with transporting intoxicating liquor into Oklahoma where it was illegal. He filed a motion to suppress the use of the evidence against him, arguing that his vehicle was searched without a warrant and in violation of the Fourth Amendment. The Supreme Court held that the facts of the case were sufficient to show probable cause for the search and Brinegar was convicted.

Bumper v. North Carolina (1968):

Wayne Bumper was investigated for rape and felonious assault and, during the investigation, police officers searched his grandmother's home. She had given consent to the search only after the officers told her they had a warrant, which they did not actually have. The officers found a rifle in the home that later was introduced as evidence at Bumper's trial. The Supreme Court held that for a search to be lawful under the Fourth Amendment, the consent must be freely and voluntarily given. Therefore, the rifle could not be introduced as evidence.



The Thomas J. Moyer Ohio Judicial Center, home to the Supreme Court, in Columbus, Ohio.

Ohio Supreme Court Decisions:

State v. Bobo (1988):

Officers noticed two men in a car in an area of Cleveland known for drug activity. After circling the block, the officers returned and saw only one man, Marvin T. Bobo, in the vehicle and it appeared he had just hidden something under the passenger seat. The officers searched the vehicle, found a gun, and charged Bobo with carrying a concealed weapon. Bobo filed a motion to suppress the weapon from evidence at trial. The Ohio Supreme Court held that police officers “must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant” the intrusion, and in this case there was reasonable suspicion to warrant the search of the vehicle.

State v. Andrews (1991):

A police officer stopped Christopher A. Andrews, who the officer thought was running away from a police cruiser in a high-drug-activity area of Dayton. After patting Andrews down, the officer found a loaded handgun and arrested him. Andrews filed a motion to suppress the evidence at trial. The Ohio Supreme Court held that the officer had a reasonable suspicion to justify his search of Andrews. In this case, the officer was “able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.”



This is your final reading activity until after observing the case.

Decision Summary

State of Ohio v. Jaonte D. Hairston, Case no. 2017-1505



CONSTITUTIONAL SEARCH OF MAN WALKING NEAR WHERE GUNSHOTS WERE HEARD

The Ohio Supreme Court ruled that the police search of a man walking and talking on his cell phone near where gunshots were recently fired was lawful. The handgun found during the search can be used as evidence in court.

In a 5-2 decision, the Supreme Court denied Hairston's claim that the search was unconstitutional. Writing for the majority, Justice R. Patrick DeWine wrote that the reasonable suspicion standard to stop and search Hairston was met when considering the "cumulative facts" of the situation.

The two justices who dissented agreed with Hairston's position that the police officers did not have reasonable suspicion to justify the search. Both dissenting opinions expressed concern about the lack of specific, particularized information linking Hairston to the crime.

Read the [full opinion](#).



Gunshots Led to Search

In 2015, Columbus police officer Samuel Moore and his partner arrested Hairston for carrying a concealed weapon. The arrest occurred after the officers stopped and searched Hairston because he was the only person in an area where gunshots were heard.

Hairston requested the Franklin County Common Pleas Court suppress the evidence gathered from the search. He argued that the police officers did not have the required reasonable suspicion to stop and search him. Officer Moore was the only witness to testify at the hearing held to determine if the evidence would be allowed in court. He testified that he had patrolled that area of the city for six years and that crimes often took place near Independence High School and Liberty Elementary School in the evenings.

The trial court determined that the police officers had reasonable suspicion to stop Hairston. The court applied the U.S. Supreme Court's 1968 decision in *Terry v. Ohio* dealing with situations when police officers can stop and investigate someone who may have committed a crime. Hairston appealed the trial court's decision allowing the evidence to the Tenth District Court of Appeals. The appellate court reversed the trial court's decision. According to the appellate court, the sound of gunshots only indicates that "someone, somewhere, had shot a gun," and, therefore, the police officers did not have reasonable suspicion to stop Hairston in the first place.

The Franklin County Prosecutor appealed the appellate court's decision to the Ohio Supreme Court, which agreed to hear the case.

Officer Had Good Reason to Make Stop

The Court majority explained that the *Terry v. Ohio* decision allows a police officer to briefly stop someone “when the officer has a reasonable suspicion based on specific and articulable facts that criminal behavior has occurred or is imminent.” Additionally, a police officer may search for concealed weapons if they are “justified in believing” the person is armed and dangerous.

Justice DeWine wrote that reasonable suspicion must be based on the totality of circumstances as “viewed through the eyes of the reasonable and prudent police officers on the scene.” The determination of reasonable suspicion does not deal with “hard certainties, but with probabilities.” The opinion went on to note the importance that:

- Officer Moore was the one who heard the gunshots and they sounded nearby.
- He had personal experience with criminal activity at night in the area where he stopped Hairston.

- He had arrested other people in that area at night for carrying illegal weapons and for other crimes.
- The stop occurred close in time to the gunshots, and Hairston was the only person in the area from which they came.

All of these facts, when considered together, created reasonable suspicion for the search the Court ruled. According to the majority, the police officers “did exactly what one would expect reasonable and prudent police officers to do in their situation.” The majority agreed that the police officers did not have to ignore Hairston’s presence in the area and it was “not necessary for them to attempt to speak to him without taking precautions for their own safety.”

Concurring Opinion Agrees Proximity to Gunshots Important

In his concurring opinion, Justice Michael P. Donnelly agreed that a suspect’s proximity to the crime area at the time of the incident was important. Those factors justified the reasonable suspicion of the police officers. However, he disagreed with the majority’s opinion that the time of night and the fact that it was a high-crime area were relevant to the decision to search Hairston.

Justice Donnelly wrote that this case was a “close call” and that another court could have reasonably come to a different conclusion. He noted that although the Tenth District’s conclusion about the

facts was reasonable, an appellate court cannot take the place of the trial court in determining the facts of the case.

According to his concurrence, Justice Donnelly did not think there was a new standard of law to be determined by the Ohio Supreme Court in a ruling in this case. Although he agreed that the Tenth District’s decision was incorrect, he concluded that the best outcome in the case would have been to dismiss the appeal as not needing to be decided by the Supreme Court in the first place.

Dissent States that Decision Erodes Constitutional Protection

In her dissenting opinion, Chief Justice Maureen O’Connor wrote the majority decision “erodes the constitutional standards established in *Terry*.” She concluded that this decision allows police to stop any person in a high-crime area even without specific facts that point to that person’s involvement in a criminal activity.

The chief justice noted that Officer Moore’s testimony was different than the arrest form he

completed. This difference highlights his lack of specific information about where the gunshots came from. She explained that the decision in *Terry* requires that a search be based on more than a police officer’s hunch that criminal activity was afoot. The dissent also noted that Officer Moore began the search of Hairston before asking him if he had a gun.

The chief justice further stated that in order to stop someone based on the recent sound of gunshots, the shooter must not have time to flee or hide. In other similar cases where searches were justified, the gunshots were fired within a few blocks of where they were heard. In Hairston's case, the gunshots were at least half a mile away and the police officers thought they came from near the high school, not the elementary school where Hairston was walking.

"Officer Moore did not have a specific idea of where the shots came from, and he merely stopped the first person he encountered while driving in that direction," the chief justice wrote. Even in cases where gunshots occurred nearby and a

search was justified, the arresting officers had additional evidence that raised their suspicion about the person they searched. Although Hairston was the first and only person the officers saw, he was walking in a residential part of the city where hundreds of people live. Hairston did not do anything to make him stand out from anyone else in the area at the time.

The chief justice also stated that the shooter easily could have walked inside a house or hidden somewhere nearby. Therefore, the fact that Hairston was the only person walking down the street "does not meet the reasonable-suspicion standard."

Separate Dissent Maintains that the Majority and Trial Court Ignored Key Factor

In her separate dissent, Justice Melody J. Stewart wrote the majority and the trial court did not figure out whether the police officers had a particularized suspicion that Hairston committed a crime. The police officers stopped Hairston while he was walking across the street from an area where they guessed the gunshots came from. These facts did not give the police officers enough reasonable suspicion to stop and search Hairston. She further noted that the majority decision does not follow the U.S. Supreme Court precedent explaining the particularity requirement for search and seizure. In this case, the police officers had a general suspicion that Hairston committed the crime, but that did not justify the search.

Justice Stewart also noted that Officer Moore did not testify that Hairston was the only person he saw.

Instead, he testified that he did not "recall" seeing anyone else in the area. This is important because the inability to confirm that Hairston was the only person in the area takes away from the argument that there was a particularized suspicion of Hairston in this case.

Justice Stewart agreed that courts allow officers to use their experience and training to assess whether they suspect someone of criminal activity. However, Officer Moore's testimony did not explain how his experience and training helped him determine the origin of the gunshots heard nearly half a mile away. He also did not explain why it was particularly suspicious for Hairston to be walking across a street talking on his phone.

Decision News Article

State of Ohio v. Jaonte D. Hairston, Case no. 2017-1505



➤ *The decision news article explains an Ohio Supreme Court opinion in non-legal language. The article is in news story form and intended to inform Ohioans about a ruling of the Court and how it might be relevant to their lives.*

➤ *The decision news article is drafted by public information staff and then edited by the justices and attorneys for the justices to ensure the legal accuracy and that the justices' positions on the case are clear. The article also is helpful to Ohio lawyers by giving them the "highlights" of a Court decision. The article always contains a link to the actual opinion for those who wish to read the opinion in its entirety, which is written in traditional legal form and language.*

Search of Man Walking Near Where Gunshots Heard Was Constitutional



By Dan Trevas | May 2, 2019

A police search of a man walking and talking on his cell phone in an area where gunshots were fired no more than 60 seconds earlier was lawful, and the handgun obtained during the search can be used as [evidence](#), the Ohio Supreme Court ruled today.

The Supreme Court upheld a Franklin County Common Pleas Court's decision denying Jaonte Hairston's claim that the March 2015 search by Columbus police near Liberty Elementary School violated his Fourth Amendment rights against unlawful searches and seizures.

Writing for the Court [majority](#), Justice R. Patrick DeWine wrote that the "cumulative facts" of the situation provided the required reasonable suspicion to stop and search Hairston.

Justices Sharon L. Kennedy, Judith L. French, and Patrick F. Fischer joined Justice DeWine's opinion. Justice Michael P. Donnelly concurred in judgment only with a separate written opinion. Chief Justice Maureen O'Connor dissented with a written opinion. Justice Melody J. Stewart also dissented with a written opinion that the chief justice joined.

Shots Led to Search

Columbus police officer Samuel Moore and his partner were called to investigate a domestic dispute. As they were getting out of their cruiser around 9:20 p.m., they heard the sound of four to five gunshots. The officers drove about 30 to 60 seconds, covering about four-tenths of a mile, to an area where Liberty Elementary School and Independence High School are located.

At the intersection outside of the elementary school, they spotted Hairston crossing the street while talking on his cell phone. The officers got out of their car with weapons drawn and ordered Hairston to stop. They asked if he had heard gunshots. Hairston said yes, he had. Moore asked Hairston if he was carrying any weapons. Hairston said he had a gun and nodded to his jacket pocket. Moore patted down Hairston and retrieved the gun.

Hairston was [charged](#) with carrying a concealed weapon. He filed a [motion to suppress](#) the evidence, arguing the police lacked the required reasonable suspicion to detain him. Moore was the only [witness](#) to [testify](#) at the suppression hearing, and he testified that he had patrolled that zone of

the city for his entire six-year career. He said drug activity, assaults, robberies, and domestic violence frequently occurred in the area around the schools during the evening hours.

Applying the U.S. Supreme Court's 1968 *Terry v. Ohio* decision regarding the standards for police to conduct an investigatory stop of a person suspected of criminal activity, the trial court concluded the officers had reasonable suspicion to stop Hairston. Hairston [appealed](#) to the Tenth District Court of Appeals, which [reversed](#) the lower court decision, noting the sound of gunfire only implied "someone, somewhere, had shot a gun." The Tenth District ruled the police lacked "a particularized and objective basis" for stopping Hairston.

The Franklin County [prosecuting attorney](#) appealed the Tenth District's decision, and the Ohio Supreme Court agreed to hear the case.

Officer Had Grounds to Make Stop

The Court majority explained that *Terry* allows an officer to make a brief investigatory stop "when the officer has a reasonable suspicion based on specific and articulable facts that criminal behavior has occurred or is imminent." And when the officer is "justified in believing" the individual is armed and dangerous, the officer may conduct a limited search for concealed weapons.

Justice DeWine wrote that the determination of reasonable suspicion must be based on the totality of circumstances as "viewed through the eyes of the reasonable and prudent police officer on the scene," and that decision does not deal with "hard certainties, but with probabilities."

The opinion stated that Moore personally heard the shots and they sounded close-by. The officer had personal experience that crime often occurred at night in the area where he stopped Hairston. The officer had made arrests in the school area at night for illegal weapons and other crimes.

"But the most important considerations here are that the stop occurred very close in time to the gunshots and Hairston was the only person in the area from which the shots emanated," the opinion stated. "We conclude that these facts, taken together and viewed in relation to each other, rise to the level of reasonable suspicion."

"Here, the officers did exactly what one would expect reasonable and prudent police officers to do in their situation," the majority said. "Upon hearing gunshots, they proceeded immediately to the location they believed the shots to be coming from to investigate. Finding only Hairston in the area and knowing that criminal activity frequently occurred there, the officers were not required to ignore Hairston's presence, nor was it necessary for them to attempt to speak to him without taking precautions for their own safety."

Decision Erodes Constitutional Protection, Dissent Stated

In her [dissenting opinion](#), Chief Justice O'Connor wrote the majority "erodes the constitutional standard established in *Terry*" and allows police to stop any person in a high-crime area "without any specific and articulable facts pointing more directly to that particular person's being engaged in criminal activity."

The chief justice noted that Moore's testimony differed from the arrest form he completed, which underscores his lack of specific information about where the shots came from. The dissent explained *Terry* requires that a search must be based on something more than an officer's "hunches" about supposed criminal activity. The opinion also noted that Moore began the pat-down of Hairston before asking him whether he had a gun.

The opinion stated that a stop based, in part, on the recent sound of gunshots requires that an officer believed the shots were fired in the immediate vicinity of the person hearing the shots such that the shooter would not have had time to flee. The opinion noted that in other cases where searches based on the sound of gunshots were upheld, the shots were fired within a few blocks from where they were heard. In this case, the shots were nearly a half mile away and the officer believed they were coming from near the high school and not the elementary school where Hairston was walking.

"Officer Moore did not have a specific idea of where the shots came from, and he merely stopped the first person he encountered while driving in that direction," the chief justice wrote.

The dissent added that even in cases where gunshots occurred very close by and a search

was upheld, the arresting officers had additional evidence to implicate the persons they searched. While Hairston was the only person the officers saw, he was walking in a dense residential area where hundreds of people live. Nothing Hairston was doing distinguished him from anyone else present in the area at the time, the opinion stated.

The dissent stated that the shooter could have simply walked inside a house or hidden behind a house or some other obstruction, and the fact that Hairston was the only person walking down the street “does not meet the reasonable-suspicion standard.”

Majority, Trial Court Ignore Key Factor, Dissent Maintained

In her separate dissent, Justice Stewart wrote the majority and the trial court failed to determine the key factor of whether the police had a “particularized, not generalized,” suspicion that Hairston was engaged in criminal activity before he could be stopped.

Police officers stopped Hairston while he was walking across the street in an area “they guessed gunshots had been fired less than a minute earlier,” the dissent noted. The majority’s finding that the those facts gave police enough reasonable suspicion that Hairston fired the shots or was involved in some criminal activity to stop him “cannot plausibly be squared with decades of United States Supreme Court [precedent](#) explaining the particularity requirement,” the opinion stated.

The dissent noted that Moore did not testify that Hairston was the only person he saw, but that he did not “recall” seeing any other people in the area. Justice Stewart wrote it was an important distinction because the failure to find Hairston was the only person in the area “greatly erodes a reasonable basis for particularized suspicion in this case.”

The dissent noted that courts allow officers to draw on their own experiences and personalized training to suspect someone of criminal activity, but Moore “offered no insights into how his training or experience aided him in determining the origin of a sound from a distance of nearly a half mile away,” nor did it explain why “Hairston’s walking across the street talking on his phone should have been seen as particularly suspicious.

Concurrence Finds Proximity to Gunshot Important

In his [concurring opinion](#), Justice Donnelly disagreed with the majority’s position that the time of night and the fact that it was a high-crime area were relevant, but agreed that a suspect’s proximity to the crime area at the time of the incident was relevant.

“Given how close Hairston was to the crime, in both time and place, I would hold that the trial court’s determination of reasonable suspicion was legally justified,” the concurrence stated.

Justice Donnelly wrote that this particular case was a “close call” and that a “perfectly reasonable finder of fact could have come to a different conclusion.” Although the Tenth District’s conclusion about the facts seemed reasonable, he noted that “an appellate court cannot usurp the fact-finding role of the trial court.”

The concurrence noted that the standards for *Terry* and the fact-finding role of the trial court are already well established, and stated that “there is no new standard of law to be determined here.” Although Justice Donnelly agreed that the Tenth District decision was incorrect in this case, he concluded that the Ohio Supreme Court’s ruling today was “quintessential error correction,” and that the better resolution would have been to dismiss the appeal as having been [improvidently allowed](#).

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[2017-1505](#). *State v. Hairston*, [Slip Opinion No. 2019-Ohio-1622](#).

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