No. 98-1993

In the Supreme Court of the United States

STATE OF FLORIDA

v.

J.L.

ON WRIT OF CERTIORARI
TO THE SUPREME COURT OF FLORIDA

BRIEF FOR THE UNITED STATES
AS AMICUS CURIAE SUPPORTING PETITIONER

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QUESTION PRESENTED

Whether police officers may possess reasonable suspicion for a stop and frisk when they receive an anonymous tip that a person of a particular description, at a particular location, is illegally carrying a concealed firearm, and the officers promptly verify the observable details provided by the tip.

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INTEREST OF THE UNITED STATES

This case presents a recurring question of whether police officers may respond to an anonymous tip that a particular person is illegally carrying a concealed firearm by verifying observable details of the tip, and then conducting an investigative stop and frisk. Because that question arises in prosecutions conducted by the United States, the United States has a substantial interest in its resolution.

STATEMENT

1. Florida police received an anonymous tip that several young black males were standing at a bus stop in front of a pawn shop near 183d Street and Northwest 24th Avenue, Miami, Florida, and that one of them was carrying a gun. The anonymous caller gave a descrip-

tion of each person, and said that the person carrying the gun had a plaid-looking shirt. Officer Carmen Anderson and another officer were dispatched to the location specified in the tip and arrived there within approximately six minutes. When Officer Anderson arrived, she saw three young black males standing at the bus stop in front of the pawn shop; one of the three was wearing a plaid shirt. Anderson immediately approached the person wearing the plaid shirt (respondent) and asked him to put his hands up on the bus stop. As she began to frisk respondent, Officer Anderson noticed the butt of a gun protruding from his left pocket. Anderson then removed the gun from respondent's pocket. Pet. App. A39-A43. While officer Anderson frisked respondent, the other officer frisked the two persons who were standing with respondent at the bus stop. *Id.* at A45.

Respondent, who was then 16 years old, was charged in juvenile court with carrying a concealed firearm in violation of Fla. Stat. Ann. § 790.01 (1995), and possession of a firearm by a minor, in violation of Fla. Stat. Ann. § 790.22(3) (1995). Respondent moved to suppress the gun on the ground that it was obtained in violation of the Fourth Amendment to the Constitution. The district court granted the motion to suppress. Pet. App. A35.

2 Third District Court of Appeal reversed. Pet. App. A31-A34. The court held that when police officers verified all the details of the anonymous tip other than the existence of the gun, they had a reasonable suspicion that respondent was committing the crime of carrying a concealed weapon, and therefore had authority to stop and frisk him. *Id.* at A33. The court explained that "where a confirmed tip concerns an individual with a gun, the officer is faced with the choice of stopping

and searching the individual, or waiting until the individual brandishes or uses the gun and the latter choice is unacceptable, thus leaving the stop and frisk as the only reasonable choice." *Ibid.*

3. The Supreme Court of Florida quashed the decision of the Third District Court of Appeal. Pet. App. A1-A28. The court held that an anonymous tip concerning presently occurring criminal activity cannot give rise to reasonable suspicion when police can verify only the innocent details of the tip. Instead, the court held that an anonymous tip could serve as the basis for reasonable suspicion in three narrowly-defined circumstances: (1) when the tip relates suspicious behavior which the police verify as suspicious upon arrival; (2) when the tip contains predictions of future events that the police subsequently verify; and (3) when the tip is coupled with independent police work that uncovers additional suspicious circumstances. *Id.* at A5-A6. Applying that analysis, the court held that, because the tip in this case concerned presently occurring criminal activity and police verified only the innocent details of the tip, the police lacked reasonable suspicion to stop and frisk respondent. *Id.* at A7-A9.

The court acknowledged that other jurisdictions had held that police verification of the innocent details of an anonymous tip can create reasonable suspicion when the tip concerns a concealed firearm. Pet. App. A9-A10. The court rejected the reasoning in those cases, stating that "we determine that there is no firearm or weapons exception to the Fourth Amendment." *Id.* at A11.

Two judges dissented. Pet. App. A15-A28. The dissent observed that "[t]he possession without authority of a concealed firearm by any individual in a public place or at a public event is a prescription for disaster, but the possession of a concealed firearm by a child is

an especially dangerous and explosive situation." *Id.* at A15. Noting that "[t]he unfortunate reality of today's society is that dangerous persons of all ages stand armed and ready to shoot law enforcement officers and citizens," *id.* at A16, the dissenting judges concluded that, "when the police receive an anonymous tip alleging that a person is carrying an illegally concealed weapon and only the innocent details of the tip are verifiable, the police may conduct an investigatory stop and frisk of the suspect," *id.* at A18.

SUMMARY OF ARGUMENT

The Fourth Amendment permits a police officer to conduct a brief investigatory stop of an individual based on reasonable suspicion that criminal activity is afoot, and, when the officer reasonably believes that the suspect may be armed and dangerous, the officer may frisk him for weapons. An officer's reasonable suspicion that an individual may be illegally carrying a concealed firearm justifies both a stop and a frisk. And that reasonable suspicion may be based on an anonymous tip that an individual of a particular description is currently in a particular place and is illegally carrying a concealed weapon, when the officer corroborates the observable facts in the tip and has no reason to find the tip unreliable.

In *Alabama* v. *White*, 496 U.S. 325 (1990), this Court made clear that an anonymous tip may furnish the requisite reasonable suspicion for an investigative stop. In that case, the reasonableness of relying on the tip was strengthened by the tip's accurate prediction of the suspect's movements. But the Court did not establish a bright-line rule in *White* that an anonymous tip must contain predictive details that the police confirm in order to establish reasonable suspicion. Nor would any

such rule accord with this Court's consistent recognition that reasonable suspicion turns on the "totality of the circumstances—the whole picture." *United States* v. *Cortez*, 449 U.S. 411, 417 (1981).

The totality of the circumstances necessarily includes not only the quality of the information in an anonymous tip and its reliability (as revealed through corroboration), but also the nature and immediacy of the threat flowing from the illegal activity described in the tip. Officers who receive an anonymous tip that an individual of a particular description is carrying a bomb outside of a courthouse, or is concealing an automatic pistol outside a school, cannot ignore the potential threat of violence when, upon arriving at the location, they find the described individual at the scene. The same is true when police receive an anonymous tip that a described individual is illegally carrying a concealed weapon in a public place. An anonymous tip that an individual has a gun will not always provide the reasonable suspicion to justify a stop and frisk; the question turns on the particular facts, assessed in a common-sense manner. But the potential for immediate and lethal use of the gun is a highly relevant factor in determining whether the police have reasonable suspicion for a stop and frisk.

All of the federal courts of appeals and the majority of the state courts that have considered the issue have come to that conclusion. In determining that a stop and frisk may be conducted in certain cases when police receive an anonymous tip that a described individual is carrying a weapon, those courts have emphasized the absence of any alternative course for the police to take that is consistent with protection of the officer's and the public's safety. For an officer to approach the individual and seek to engage him in a consensual conversation runs the risk that the officer may be shot. And for the

officer to observe and follow the individual as he moves about the streets may make it impossible for the officer to intervene before the individual uses the weapon in an act of violence, which could be fatal for innocent members of the public. A stop and frisk in that situation may strike the appropriate balance between the individual's privacy interests and the protection of public safety.

The state supreme court erred in rejecting all reliance on an anonymous tip that an individual has a gun where the officer cannot point to observable suspicious behavior or accurate predictions of future behavior. The court believed that to hold otherwise would create a "firearms exception" to reasonable suspicion analysis, but that is incorrect. The totality of the circumstances test accommodates consideration of the possible presence of an illegally concealed weapon in assessing what action officers may take in response to an anonymous tip. Nor does the approach we advocate permit officers to act on anonymous tips regardless of indicia of unreliability. Some tips may warrant no response, or only further investigation. But anonymous tips are often a valuable source of information in law enforcement. A categorical rule that deprives officers of the use of anonymous tips in forming a reasonable suspicion, absent the inclusion of accurate predictions of future behavior, places an unjustified restraint on the ability of the police to prevent violent criminal activity.

ARGUMENT

AN OFFICER CAN HAVE REASONABLE SUSPICION TO CONDUCT A STOP AND FRISK WHEN THE OFFICER CONFIRMS THE INNOCENT DETAILS OF AN ANONYMOUS TIP THAT A PERSON IS ILLEGALLY CARRYING A CONCEALED FIREARM

A. Reasonable Suspicion That A Person Is Illegally Carrying A Concealed Firearm Justifies A Stop And Frisk

1. In *Terry* v. *Ohio*, 392 U.S. 1, 30 (1968), the Court held that police officers may stop and briefly detain a person for questioning when they have reason to conclude that "criminal activity may be afoot." The Court has subsequently made clear that the standard for a *Terry* stop is one of "reasonable suspicion supported by articulable facts." *United States* v. *Sokolow*, 490 U.S. 1, 7 (1989). That standard does not permit an investigative stop based on an officer's subjective hunch. *Ibid.* The level of suspicion for a *Terry* stop, however, "is considerably less than proof of wrongdoing by a preponderance of the evidence," and is "obviously less demanding than that for probable cause." *Ibid.* All that is required is "some minimal level of objective justification to validate the detention or seizure." *INS* v. *Delgado*, 466 U.S. 210, 217 (1984). In evaluating the validity of a stop, a court must consider "the totality of circumstances—the whole picture." *Cortez*, 449 U.S. at 417.

The principle that an officer may conduct an investigative stop based on reasonable suspicion of wrongdoing serves government interests of overwhelming

importance. As explained in *Adams* v. *Williams*, 407 U.S. 143, 145-146 (1972):

> The Fourth Amendment does not require a policeman who lacks the precise level of information necessary for probable cause to arrest to simply shrug his shoulders and allow a crime to occur or a criminal to escape. On the contrary, *Terry* recognizes that it may be the essence of good police work to adopt an intermediate response. A brief stop of a suspicious individual, in order to determine his identity or to maintain the status quo momentarily while obtaining more information, may be most reasonable in light of the facts known to the officer at the time.

2. In *Terry*, the Court also recognized that an officer who makes an investigative stop potentially places himself at great risk. Noting that "every year in this country many law enforcement officers are killed in the line of duty and thousands more are wounded," the Court concluded that police officers who make investigative stops should not be required "to take unnecessary risks in the performance of their duties." 392 U.S. at 23.

The Court therefore held that, when an officer has reason to believe that a suspect "may be armed and presently dangerous," the officer "is entitled for the protection of himself and others in the area to conduct a carefully limited search of the outer clothing of such persons in an attempt to discover weapons which might be used to assault him." 392 U.S. at 30; *id.* at 17 n.13. Such a weapons search, known as a "frisk," is a "reasonable search under the Fourth Amendment, and any weapons seized may properly be introduced in evidence against the person from whom they were taken." *Id.* at

31. As the Court has subsequently explained, "[s]o long as the officer is entitled to make a forcible stop, and has reason to believe that the suspect is armed and dangerous, he may conduct a weapons search limited in scope to this protective purpose." *Adams*, 407 U.S. at 146.

3. Under *Terry*, not every investigative stop automatically justifies a frisk. In some cases, an officer may have reasonable suspicion that a crime is being committed, but the crime is not one that is ordinarily associated with violence, and the officer has no other basis for believing that the person suspected of the offense may be armed and dangerous. In such cases, the officer may conduct a stop, but not a frisk. Where the nature of crime itself supplies a reasonable suspicion that the suspect may be armed and dangerous, however, a reasonable suspicion that the crime is occurring simultaneously furnishes a justification for both a stop and a frisk.

That was the situation in *Terry* itself. The activities of the individuals involved in that case created a reasonable suspicion that they were planning a robbery, and it was "reasonable to assume," that such a crime "would be likely to involve the use of weapons." 392 U.S. at 28. The officer in *Terry* therefore had a justification for both a stop and a frisk. That same analysis is applicable when an officer has a reasonable suspicion that a person is illegally carrying a concealed firearm. Since it is reasonable to believe that a person committing a crime involving the illegal carrying of a concealed weapon may be dangerous, an officer who has a reasonable suspicion that such a crime is occurring may simultaneously stop and frisk the person suspected of the offense.

B. A Sufficiently Verified Anonymous Tip Can Create Reasonable Suspicion

1. In *Terry*, the officer's reasonable suspicion of wrongdoing was based on his own observations. Reasonable suspicion, however, can also be based on information supplied by another person. For example, in *Adams*, the Court held that an officer had a sufficient basis to conduct a stop and a frisk when a person known to the officer approached him and informed him that a man in a nearby vehicle was carrying narcotics and had a gun at his waist. 407 U.S. at 144-147. The Court expressly rejected the argument that a stop and frisk can only be based on an officer's personal observations, explaining that:

> Informants' tips, like all other clues and evidence coming to a policeman on the scene, may vary greatly in their value and reliability. One simple rule will not cover every situation. Some tips, completely lacking in indicia of reliability, would either warrant no police response or require further investigation before a forcible stop of a suspect would be authorized. But in some situations—for example, when the victim of a street crime seeks immediate police aid and gives a description of the assailant, or when a credible informant warns of a specific impending crime—the subtleties of the hearsay rule should not thwart an appropriate police response.

Id. at 147.

In *Adams*, the Court pointed out that information from a known informant presents a "stronger case [for reasonable suspicion] than obtains in the case of an anonymous telephone tip." 407 U.S. at 146. But anonymous tips, if sufficiently detailed and corroborated, may support a finding of even probable cause. In *Illinois* v.

Gates, 462 U.S. 213 (1983), this Court sustained a warrant based on an anonymous letter to the police implicating a husband and wife in narcotics trafficking and predicting a travel itinerary involving a short round trip from Illinois to Florida, which turned out largely to be accurate. Even though the police were able to verify only innocent behavior, *id.* at 243 n.13, the Court held that the totality of the circumstances supported the issuance of the warrant in that case.

In *White*, 496 U.S. at 325, the Court held that a less-detailed anonymous tip that is sufficiently corroborated can establish reasonable suspicion for a *Terry* stop. There, police received an anonymous tip that Venesa White would be leaving 235-C Lynwood Terrace Apartments at a particular time in a brown Plymouth station wagon with the right taillight lens broken, that she would be going to Dobey's Motel, and that she would be in possession of about one ounce of cocaine in a brown attache case. Police proceeded immediately to the apartment building, saw a person leave the 235 building with nothing in her hands, saw that person enter a car that matched the description given by the caller, and observed the person drive the car in the direction of Dobey's Hotel. Officers stopped the car just before it reached the Hotel. The Court held that, while the tip standing alone was insufficient to establish reasonable suspicion of wrongdoing, *id.* at 329, it was sufficiently corroborated to justify the investigative stop, *id.* at 330.

In reaching that conclusion, the Court acknowledged that police had not confirmed some of the significant details of the tip, including the name of the woman and the particular apartment from which she left, and it recognized that police had stopped the car without being certain that it would stop at the Hotel rather

than drive past it. 496 U.S. at 331. The Court concluded, however, that the tip had been sufficiently confirmed to warrant a reasonable suspicion of wrongdoing. *Id.* at 331-332. The Court explained that "it is not unreasonable to conclude in this case that the independent corroboration by the police of significant aspects of the informer's predictions imparted some degree of reliability to the other allegations." *Ibid.* The Court gave particular weight to confirmation of the predictive elements of the tip, reasoning that a caller's ability to predict future behavior tends to demonstrate "inside information." *Id.* at 332. The Court stressed that "[b]ecause only a small number of people are generally privy to an individual's itinerary, it is reasonable for police to believe that a person with access to such information is likely to also have access to reliable information about that individual's illegal activities." *Ibid.*

The lesson of *White* is that confirmation of significant aspects of an anonymous caller's predictions of future behavior can be *sufficient* to establish reasonable suspicion. *White* did not suggest, however, that verifying a prediction of future behavior is a *necessary* precondition for crediting an anonymous tip. Instead, *White* reaffirmed that the question whether a particular tip furnishes reasonable suspicion depends on "the totality-of-the-circumstances." *White*, 496 U.S. at 330. See *United States* v. *Bold*, 19 F.3d 99, 104 (2d Cir. 1994) (*White* does not establish categorical rule that anonymous tips must have predictive information that police confirm in order to establish reasonable suspicion); *United States* v. *Clipper*, 973 F.2d 944, 949 (D.C. Cir. 1992) (same).

2. Because the value of an anonymous tip in establishing reasonable suspicion depends on the totality of

the circumstances, the relevant standards, as with other reasonable suspicion inquiries, "are 'not readily, or even usefully, reduced to a neat set of legal rules.'" *Ornelas* v. *United States*, 517 U.S. 690, 695- 696 (1996) (quoting *Illinois* v. *Gates*, 462 U.S. at 232). As the Court has made clear, both the quantity and detail of the information as well as its reliability, as revealed by corroboration, are critical factors in assessing the worth of an anonymous tip. *White*, 496 U.S. at 330. But the reasonable suspicion calculus also takes into account the nature and immediacy of the criminal threat described in the tip. That factor plays an important role in determining whether a tip provides a sufficient objective basis to justify the investigatory step of a stop and frisk.

a. As for the quality of the tip, a tip that is definite about the occurrence of criminal activity is more likely to help create a reasonable suspicion than a tip that states only that criminal activity *may* be occurring. *In the Interest of H.B.*, 381 A.2d 759, 762-763 (N. J. 1977). A tip that is sufficiently specific and detailed to identify a particular person at a particular place is more likely to help establish a reasonable suspicion than a description that could potentially apply to numerous persons in an area. *Id.* at 761-762; *Speight* v. *United States*, 671 A.2d 442, 447-448 (D.C. 1995). And a tip that appears to be based on personal observation is more likely to help create a reasonable suspicion than one that appears to be based on second or third-hand knowledge. *State* v. *Williams*, 591 N.W.2d 823, 830 (Wis. 1999); see also *State* v. *Pulley*, 863 S.W. 2d 29, 32 (Tenn. 1993) (when an informant reports an incident at or near the time of its occurrence, it is often reasonable for police to adopt a working assumption that the tip is based on first-hand

knowledge); *State* v. *Hasenbank*, 425 A.2d 1330, 1333 (Me. 1980) (same).

b. As for reliability, confirmation of the innocent details of an anonymous tip lends some reliability to the report of wrongdoing. *Bold*, 19 F.3d at 103. Police need not confirm all details of a tip in order to have a reasonable suspicion of wrongdoing.[1] The Fourth Amendment requires neither "perfection" nor "infallibility." *Gates*, 462 U.S. at 245-246 n.14. The extent of corroboration is nonetheless relevant. The failure to confirm at least some significant details of the tip could readily undermine a finding of reasonable suspicion. In contrast, when police confirm all innocent details of a tip, that can lend significant support to a finding of reasonable suspicion. *United States* v. *Gibson*, 64 F.3d 617, 622-623 (11th Cir. 1995). The timing of corroboration is also significant. When police promptly arrive at the place that criminal conduct is allegedly occurring and immediately confirm the innocent details of a tip, it both helps to ensure that the reported information is not stale and reduces the possibility of detaining the wrong person. *Id.* at 623. When police do not arrive promptly, the inference of reasonable suspicion is weakened. *Speight*, 671 A. 2d at 447-448.

c. A critically important factor bearing on the totality of the circumstances is whether the tip concerns conduct that may pose an immediate danger of violence. For example, if an officer receives an anonymous tip that a person meeting a particular description is stand-

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[1] Thus, as noted above, although the police in *White* could not confirm several of the significant details of the tip, reasonable suspicion was nonetheless established. 496 U.S. at 331-332. And in *Gates*, confirmation of significant details of an anonymous letter was sufficient to establish *probable cause*, even though there was one significant mistake in the letter. 462 U.S. at 245-246 & n.14.

ing outside a particular federal building with a bomb, and police immediately verify that a person meeting that description is outside that building, police should be able to conduct a stop and frisk. Similarly, if police receive an anonymous tip that a person meeting a particular description is standing outside a particular elementary school and is carrying a concealed sawed-off shotgun, and police promptly confirm that a man meeting that description is outside that school, police should have authority to conduct a stop and frisk. What those examples have in common is that the reported conduct may pose an immediate danger of violence, and the only alternatives to an immediate stop and frisk—a consensual encounter or further observation—create an unreasonable risk of danger to the police and the public. See Wayne R. LaFave, *Search and Seizure* § 9.4(h), at 229 (3d ed. 1996) ("in some instances the need for immediate action may be so great that substantial doubts about the reliability of the informant or his information cannot be permitted to stand in the way of prompt police action").

Violence resulting from an individual's sudden use of an illegally concealed weapon presents particular dangers to the public. For example, in 1990, the use of firearms resulted in approximately 37,000 gunshot deaths and 259,000 nonfatal injuries. *Bold*, 19 F.3d at 104. Moreover, between 1987 and 1996, the use of firearms resulted in the deaths of 696 law enforcement officers, 92% of the officers killed in the line of duty. Pet. App. A16. An individual who is illegally carrying a concealed weapon thus poses a particular danger to the public.[2]

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[2] Florida law prohibits a person from carrying a concealed firearm unless he is licensed to do so. Fla. Stat. Ann. § 790.01(2) and (3) (West 1999). A person under 21 years of age is not eligible

C. A Stop and A Frisk Are Generally Justified When An Anonymous Caller Reports That A Person Is Illegally Carrying A Concealed Firearm And Police Promptly Confirm The Innocent Details Of The Tip

As the preceding discussion makes clear, there is no categorical rule concerning when the combination of an anonymous tip and police corroboration can establish reasonable suspicion. Anonymous tips and police corroboration come in a variety of forms, and no rule can capture all the relevant permutations and combinations. But at least when (1) an anonymous tip provides a description of a particular person at a particular location illegally carrying a concealed firearm, (2) police promptly verify the pertinent details of the tip except the existence of the firearm, and (3) there are no factors that cast doubt on the reliability of the tip, a stop and frisk should be permitted. In such cases, the totality of circumstances establish a "reasonable suspicion" that a particular person is engaged in criminal activity and may be armed and dangerous.

All of the federal circuits that have addressed the question have come to that conclusion. The leading case is *Clipper*, 973 F.2d at 944. There, the D.C. Circuit held that police officers had reasonable suspicion for a stop and a frisk when they obtained an anonymous tip that a person wearing particular clothing was at a particular location and was armed with a gun, and the officers promptly confirmed all the details except the existence of the gun. The court explained that the totality of the circumstances "must include those in which the anonymous informant makes no predictions, but provides the police with verifiable facts while alerting them to an

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for such a license. *Id.* § 790.06(b). Florida law therefore prohibits any person under 21 from carrying a concealed firearm.

imminent danger that the police cannot ignore except at risk to their personal or the public's safety." *Id.* at 949-950.

The court also emphasized that "an officer who has been able to corroborate every item of information given by an anonymous informant other than actual possession of a weapon is faced with an 'unappealing choice.'" *Clipper*, 973 F.2d at 951. "He must either stop and search the individual or 'at best follow him through the streets . . . hoping he [will] commit a crime, or at least brandish the weapon, out of doors,' where the police can intervene." *Ibid* (quoting *United States* v. *McClinnhan*, 660 F.2d 500, 502 (D.C. Cir. 1981)). The court added that "[t]his element of imminent danger distinguishes a gun tip from one involving possession of drugs. If there is any doubt about reliability of an anonymous tip in the latter case, the police can limit their response to surveillance or engage in 'controlled buys.' Where guns are involved, however, there is the risk that an attempt to 'wait out' the suspect might have fatal consequences." *Ibid.*

Similarly, in *Bold*, 19 F.3d at 99, the Second Circuit held that police had reasonable suspicion to conduct a stop when they promptly confirmed all the innocent details of an anonymous tip that a specifically identified man in a certain location was armed. Like the D.C. Circuit, the Second Circuit reasoned that "[w]here the tip concerns an individual with a gun, the totality-of-the-circumstances test for determining reasonable suspicion should include consideration of the possibility of the possession of a gun, and the government's need for a prompt investigation." *Id.* at 104. The court noted that 200 million handguns and other lethal firearms are in circulation in the United States, that more than 4.2 million are added each year, and that in 1990, those

weapons caused 37,000 gunshot deaths and 259,000 nonfatal injuries. *Ibid.* The court concluded that, given the report that the suspect was armed with a gun, the likelihood that the suspect's possession of the gun was illegal, and the inability of the officer to confirm that the suspect was armed, the officer had reasonable suspicion to conduct a stop. *Ibid.*

In *Gibson*, 64 F.3d at 617, the Eleventh Circuit reached a similar conclusion, upholding a stop and frisk of a man in a bar, based on an anonymous tip, swift confirmation of all the innocent details of the tip, and several other factors. The court emphasized that "the anonymous tip concerned the presence of two potentially armed individuals in a public establishment," and that "[t]his fact raised the stakes for the officers involved because they not only had to worry about their own personal safety, but that of the 20 to 40 innocent bystanders who were also present." *Id.* at 623.

Finally, in *United States* v. *Deberry*, 76 F.3d 884 (1996), the Seventh Circuit held that police had reasonable suspicion to conduct a stop when they confirmed the innocent details of an anonymous tip that a person was illegally carrying a concealed firearm. The court explained that "[a]rmed persons are so dangerous to the peace of the community that the police should not be forbidden to follow up a tip that a person is armed, and as a realistic matter this will require a stop in all cases." *Id.* at 886.

The federal circuits do not stand alone in holding that officers ordinarily have authority to conduct a stop and frisk when they confirm the details of an anonymous tip that a person is illegally armed. The state courts that have addressed the question have generally reached the same conclusion. *In the Interest of H.B.*, 381 A.2d at 763-764 (To deny police the right to conduct a stop and

frisk "in the face of the violent climate of the times and the universal threat of handguns, * * * would seem foolhardy and wrong, and needlessly expose society and the police community to serious risk of death or injury."); *Hasenbank*, 425 A.2d at 1333 ("When police receive detailed and immediately verifiable information that a specifically described individual possesses a concealed weapon, the police are justified in stopping the person and conducting a limited protective search for weapons."); *State* v. *Jernigan*, 377 So.2d 1222, 1225 (La. 1979) (When an anonymous tip is sufficiently specific, police corroborate the details of the tip, and "the information, if correct, presents an immediate and real danger to the public, prompt police action is justified to prevent a possible serious harm."); *United States* v. *Johnson*, 540 A.2d 1090, 1092 (D.C. 1988) (Where tip provided "detailed information about the precise location where the suspect could be found and suggested an on-going crime involving the sale of a gun or guns," and there was "virtually immediate corroboration of all the innocent circumstances," police had reasonable suspicion to conduct an investigative stop.); *State* v. *Kuahuia*, 616 P.2d 1374, 1375 (Haw. 1980) (Where anonymous informant "detail[ed] the time, place, and his personal observation of the firearm," and police "promptly responded to verify and to act upon the information," and "especially because a firearm was allegedly involved, the police were duty-bound to make at least a temporary stop for investigative purposes."); *Pulley*, 863 S.W. 2d at 32-34 (Given the report of a presently occurring firearms offense, the corroboration of many of the details, and the threat of violence, police had a sufficient basis for an investigative stop.); *Speight*, 671 A.2d at 448 ("[T]he report that an individual was armed—potentially implicating the safety of both police

officers and the public—combined with the officers' corroboration of an extremely detailed description minutes after hearing the radio broadcast, justified the intrusion involved in briefly detaining and frisking the [suspect].''). The analysis of those courts is sound and should be followed here.

D. The State Court's Reasons For Precluding A Finding Of Reasonable Suspicion In This Case Are Unsound

The Florida Supreme Court, in finding that the officers lacked reasonable suspicion, raised two objections. First, the court believed that police verification of the innocent details of an anonymous tip that describes a presently occurring crime cannot, absent predictions of future behavior, sufficiently show that a tip is reliable. Pet. App. A3-A9. Second, the court reasoned that to hold otherwise would create a "gun exception" to the reasonable suspicion standard, *id.* at A9-A11. That reasoning is seriously flawed.

1. To take the later objection first, the approach we advocate does not create a "gun exception" to the reasonable suspicion standard. Instead, it simply recognizes that what constitutes "reasonable" suspicion depends in part on whether a tip describes a situation that could pose an immediate danger of violence.

That recognition is fully in keeping with the Court's stop and frisk decisions. In particular, the Court's cases instruct that the reasonable suspicion standard takes into account the "totality of the circumstances." *Cortez*, 449 U.S. at 417, that it is to be examined from the point of view of the "reasonably prudent" officer, *Terry*, 392 U.S. at 27, and that it does not "require that police officers take unnecessary risks in the performance of their duties," *id.* at 23. Given those teachings, the reasonable suspicion standard necessarily takes into

account what any "reasonably prudent" officer would consider: that when an anonymous caller reports that a person is illegally carrying a concealed firearm, and there is no reason to discredit the tip, the reasonably prudent course is to conduct an immediate stop and frisk. Public safety requires that the officer engage in some form of intervention before the weapon is deployed. If the officer must engage in a consensual encounter with the suspect and ask him whether he has a gun, he runs a risk that the response will be a bullet. And if the officer must await the brandishing of the gun, he runs the risk that the gun will be used on someone else before he can prevent it. The requirement that an officer have "some minimal level of objective justification" before conducting a stop or frisk (*Delgado*, 466 U.S. at 217), does not require an officer to run those risks.

The concept of "reasonable suspicion" is a "fluid" one that "take[s] [its] substantive content from the particular contexts in which the standard[] [is] being assessed." *Ornelas*, 517 U.S. at 696. The Fourth Amendment protects against "unreasonable" searches and seizures; it does not prevent officers from taking reasonable measures to prevent individuals from illegally walking the streets with concealed firearms. It is not "unreasonable" for an officer to conduct a stop and frisk when an anonymous caller reports that a particular person in a particular place is carrying an illegally concealed firearm, police officers confirm all the details of the tip besides the existence of the firearm, and there are no specific reasons to discredit the tip. A reasonable suspicion standard that led to a different conclusion would not fulfill its intended purpose of implementing the Fourth Amendment's protection against unreasonable searches and seizures. See *Terry*, 392

U.S. at 19 ("[S]top and frisk theory" should not "divert attention from the central inquiry under the Fourth Amendment—the reasonableness in all the circumstances of the particular governmental invasion of a citizen's personal security.").

In a variety of Fourth Amendment settings, the Court has held that the Fourth Amendment permits police to take reasonable steps to protect their own safety or the safety of others. *Richards* v. *Wisconsin*, 520 U.S. 385, 394 (1997) (police may make an unannounced entry to execute a warrant when they have "reasonable suspicion that knocking and announcing their presence would, under the particular circumstances, be dangerous"); *Maryland* v. *Buie*, 494 U.S. 325, (1990) (police officers executing an arrest warrant in a house may take reasonable steps to ensure their safety including conducting a protective sweep for weapons based on reasonable suspicion); *Tennessee* v. *Garner*, 471 U.S. 1, 11 (1985) (police officer may use deadly force when they have "probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others"); *Michigan* v. *Long*, 463 U.S. 1032, 1052 (1983) (police may search the interior of car during traffic stop based on reasonable suspicion, in part because police officers are "particularly vulnerable" during such investigations). *Pennsylvania* v. *Mimms*, 434 U.S. 106, 106 (1977) (per curiam) (police may order driver out of car during traffic stop in order to protect the safety of the officer); *Warden* v. *Hayden*, 387 U.S. 294, 297-299 (1967) (When there are exigent circumstances, police officers who have probable cause do not need a warrant to continue a hot pursuit into a house and search for a robbery suspect and weapons he might use against them, since "the Fourth Amendment does not require police

officers to delay in the course of an investigation if to do so would gravely endanger their lives or the lives of others."). The principle underlying those cases is also applicable here.

2. The state supreme court's requirement of confirmed predictions before an anonymous tip can form the basis for reasonable suspicion would deprive the police of a source of valuable information that may prevent some violent crime. It bears emphasis that anonymous tips "frequently contribute to the solution of otherwise 'perfect crimes.'" *Gates*, 462 U.S. at 238. The value of anonymous tips would be significantly reduced if there were a categorical rule that only tips containing verifiable predictions of future behavior can create reasonable suspicion. Valuable tips come not only from "insiders" who have the ability to make predictions of future behavior, but also from persons who personally observe presently occurring crime in their own neighborhoods and wish to remain anonymous because of a bona fide fear of retaliation. *Williams*, 591 N.W.2d at 831; *United States* v. *White*, 648 F.2d 29, 43-44 (D.C. Cir. 1981); *United States* v. *Walker*, 294 A.2d 376, 377-378 (D.C. 1972). The Fourth Amendment should not be interpreted to categorically preclude officers from relying on such tips simply because the tips do not contain predictions of future behavior.

There is always a possibility that an anonymous caller who reports a presently occurring offense is someone with a grudge attempting to settle a score through a false claim of criminal conduct. But the same could have been said about the caller in *White*. Indeed, that was the basis for the dissent in that case. 496 U.S. at 333 (Stevens, J., dissenting). The Court's decision in *White* necessarily rejects the view that the mere

possibility that a caller is a dishonest person with a grudge, rather than a person with reliable information, undermines reliance on an anonymous tip.

Moreover, States, including Florida, make it a crime to provide a fraudulent report to the police. Fla. Stat. Ann. § 365.171(16) (West 1999) (false "911" calls); *Id.* § 817.49 (West 1999) (false reports of the commission of crimes to law enforcement officers). When combined with the increasingly common police practice of using caller ID to identify the telephone number and location of the caller, and the increasing public awareness of that practice, those laws can significantly deter the making of false reports. *LaFave*, *supra*, § 9.4, at 45-46 (2000 pocket part).

There remain legitimate concerns about reliance on anonymous tips. But when the tip concerns conduct as potentially dangerous as the illegal concealment of a firearm, police verify the innocent details of the tip, and no circumstances call into question the reliability of the tip, the public interest in preventing violence outweighs those concerns. Because the Florida Supreme Court failed to apply that analysis, and instead adopted the view that verification of the innocent details of an anonymous tip of a presently occurring crime can never provide reasonable suspicion, even when the crime consists of carrying a concealed firearm, its judgment should be reversed.

CONCLUSION

The judgment should be reversed and the case should be remanded for further proceedings.

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