DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

**ALTON DONTABUTTS JOHNSON,**
Appellant,

v.

**STATE OF FLORIDA,**
Appellee.

No. 4D2025-1162

[November 4, 2026]

Appeal from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; Scott Suskauer, Judge; L.T. Case No. 502022CF005549AXXXWB.

Daniel Eisinger, Public Defender, and Christine C. Geraghty, Chief Assistant Public Defender, West Palm Beach, for appellant.

James Uthmeier, Attorney General, Tallahassee, and Zi Jin Peter Chan, Assistant Attorney General, West Palm Beach, for appellee.

FORST, J.

Appellant Alton Dontabutts Johnson appeals his conviction for felon in possession of a firearm and resisting an officer without violence, arguing that the trial court erred in denying his pretrial motion to suppress. This appeal provides us with an opportunity to address the ability of law enforcement to "pat down" or "frisk" a lawfully detained individual based on "officer safety" concerns. As discussed below, we affirm the trial court.

## Background

At approximately 11:00 p.m. on the night of the arrest at issue, "Deputy A" was dispatched to an apartment building with a report that a man named "Kevin" was at a woman's window harassing her and attempting to enter the building. Deputy A later testified that this location in Belle Glade is one of "the most dangerous streets we have" because it is known for "multiple homicides, shootings, shots fired activations, so every time we went to that area we always went with a couple of deputies for our safety." The street has "dim lighting" and can get "very dark." A second deputy,

"Deputy B," similarly testified that he had responded to "several shootings there, a bunch of homicides, people with guns, drive-by shootings." Indeed, about an hour after the incident at issue, there was an unrelated report of "shots fired" in the same location.

Deputy A testified that on the night in question, at least three officers had reported to the location. The deputies searched the front and back of the apartment building. When Deputy A returned to the front of the building, he saw Appellant riding a bicycle and towing a second bicycle. Because Belle Glade had been experiencing "a lot of bicycle thefts," Deputy A was suspicious that one of the bicycles might have been stolen. Further, Deputy A noticed that Appellant did not have a bicycle light on at night, which is a noncriminal infraction. § 316.2065(7), Fla. Stat. (2022). Deputy A used the lack of a light as a reason to "stop [Appellant] and see who that is." Both deputies testified they did not believe that Appellant was "Kevin."

Deputy A got in his car and activated his police lights. Appellant dropped both bicycles and approached Deputy A with his ID in one hand and the other arm "down." Reaching the deputy, Appellant "immediately" pressed the left side of his body against the hood of the police car on the passenger side. At the suppression hearing, Deputy A described Appellant's position as "awkwardly leaning" and "slouched over," and Deputy A left the witness stand to physically demonstrate the position for the trial court. Deputy A testified that he had never seen anyone lean on a car in this "exaggerated" manner before. Deputy B testified that Appellant was in this position when he arrived on scene and provided a second physical demonstration. Deputy B testified that based on his training and experience, he believed Appellant was exposing the entire right side of his body to conceal something on the left side of his body.

Deputy A stepped away to run Appellant's ID to check for warrants. At this point, three other deputies were on scene. Deputy B approached Deputy A and said, "hey, I think he has a gun. He has a bulge. . . . I can see a bulge." Deputy B then walked around the car to get a better view of Appellant's left side and communicated to Deputy A that he could see "the imprint of" a gun with an extended magazine underneath Appellant's shirt, and that the deputies should pat Appellant down for weapons.[1] Deputy B testified he had recognized the extended magazine because he owns "a

[1] Appellant's trial counsel impeached Deputy A with his prior deposition statements about when Deputy B first saw Appellant's gun and communicated this sighting to Deputy A. Appellant's trial counsel similarly highlighted this discrepancy during Deputy B's testimony with a prior police report that Deputy B had authored. The trial court ultimately credited the deputies' trial testimony.

whole bunch of them" personally.

Deputy B told Appellant that Deputy B was going to pat Appellant down for weapons, and that *Terry v. Ohio*[2] allows police to do that if they believe a detainee is armed and dangerous. As Deputy B reached for Appellant, Appellant "tensed up his arms," "twisted his left side away," and stated that the deputies could not search him. The deputies continued trying to pat him down, and Appellant and the deputies ended up struggling on the ground. Deputy B shouted "gun" when the gun became physically exposed, and the deputies successfully wrestled Appellant into submission and handcuffed him.

Thereafter, the deputies completed their database search for Appellant's history and found he had a prior felony conviction. The State charged him with two crimes: felon in possession of a firearm or ammunition (count I) and resisting an officer without violence (count II).

Appellant filed a written motion to suppress all evidence seized as a result of the attempted pat-down, including the gun. The trial court held an evidentiary hearing.

At the hearing, Appellant's trial counsel conceded that it was a high crime area and that *Terry* "requires an officer to see a bulge" before a frisk is permitted. Appellant's trial counsel argued that Deputy B's "testimony regarding seeing a bulge and being concerned for officer safety" had been fabricated for the hearing to give the State a winning legal argument. Counsel based this argument on Deputy B's omissions from his contemporaneous report and contradictions as to when Deputy B had communicated seeing a bulge to Deputy A. When the court rejected this contention, Appellant's trial counsel argued the State had not presented sufficient evidence that Appellant was a danger to officer safety even if armed with a gun, or that the deputies on scene believed Appellant was a danger, because Appellant had provided his name and ID, complied with their commands, made no furtive movements, and was not "Kevin," the subject of the dispatch call.

In response, the State pointed to the deputies' articulated suspicion that Appellant's second bicycle might have been stolen, and their suspicions about how and why Appellant was leaning strangely on the police car, and argued they initially attempted to pat down Appellant to ensure their safety during the encounter.

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[2] *Terry v. Ohio*, 392 U.S. 1 (1968).

The trial court denied Appellant's motion to suppress. The trial court expressly found credible Deputy B's testimony "about seeing a bulge and seeing the portion of the magazine sticking out by the shirt" and "what he observed and what he relayed to [Deputy A] as far as seeing a bulge and acted upon that for officer safety."

Following a jury trial, Appellant was convicted of resisting an officer without violence, but the jury deadlocked on the felon in possession of a firearm charge. Appellant then pled no contest to the felon in possession charge while reserving the right to appeal the trial court's denial of his pretrial motion to suppress. The trial court imposed a 15-year prison sentence with a 10-year mandatory minimum and a habitual felony offender designation with credit for time served. This appeal follows.

## Analysis

"In reviewing a ruling on a motion to suppress, we apply a mixed standard of review. While we defer to the trial court's factual determinations, we review de novo whether the application of the law to the facts establishes a basis for the trial court's findings regarding reasonable suspicion or probable cause." *Bent v. State*, 257 So. 3d 501, 502 (Fla. 4th DCA 2018) (citing *Lee v. State*, 868 So. 2d 577, 579 (Fla. 4th DCA 2004)). A trial court's ruling on a motion to suppress "is clothed with the presumption of correctness." *Marquardt v. State*, 156 So. 3d 464, 479 (Fla. 2015) (citing *Murray v. State*, 692 So. 2d 157, 159 (Fla. 1997)). "A reviewing court must interpret the evidence and reasonable inferences and deductions in the manner most favorable to sustaining the ruling of the trial court." *Id.*

### Appellant was lawfully detained for a reason other than suspected firearm possession at the time of the *Terry* frisk

In *Regalado v. State*, 25 So. 3d 600 (Fla. 4th DCA 2009), police received a tip from an informant that the defendant had shown his friends in a restaurant that he had a gun tucked into his waistband. *Id.* at 601. An officer followed the defendant through a heavy crowd and "observed a bulge in the suspect's waistband, which, from his training and experience, he believed was the butt of a pistol or handgun." *Id.* To protect himself and the crowd, the officer held the defendant at gunpoint, ordered him to the ground, frisked him, and took the gun. *Id.* at 601–02. The defendant pled guilty to carrying a concealed weapon while reserving the right to appeal the denial of his motion to suppress. *Id.* at 602.

On appeal, we reversed the conviction, holding that the stop of the defendant failed to meet the legal requirements for a *Terry* stop. *Id.* We reasoned:

> [T]he only information received by the officer was that the individual had a gun. Possession of a gun is not illegal in Florida. Even if it is concealed, it is not illegal if the carrier has obtained a concealed weapons permit. Although the officer observed a bulge in Regalado's waistband, which in his experience looked like a gun, no facts and circumstances were presented to show that Regalado's carrying of a concealed weapon was without a permit and thus illegal.

*Id.* at 604.

*Regalado* stands for the proposition that an officer may not conduct a *Terry* stop (and frisk) based *solely* on an individual's apparent possession of a concealed gun. Our sister courts have followed *Regalado* and reached the same conclusion. *See Burnett v. State*, 246 So. 3d 516, 518 (Fla. 5th DCA 2018) (agreeing with the appellant's position that "carrying a concealed firearm is not sufficient, without more, to justify a *Terry* stop[.]"); *Slydell v. State*, 240 So. 3d 134, 136 (Fla. 2d DCA 2018) ("As in *Regalado*, the only activity the informant reported to the detective was that [the defendant] was in possession of firearms. . . . the tip did not allege any criminal activity, and in particular it did not reveal [the defendant's] status as a felon nor did it say whether he had a concealed weapons permit."); *Kilburn v. State*, 297 So. 3d 671, 675 (Fla. 1st DCA 2020) ("[A] law enforcement officer may not use the presence of a concealed weapon as the sole basis for seizing an individual."); *Sheppard v. State*, 404 So. 3d 590, 594 (Fla. 3d DCA 2025) ("While the officer observed [the defendant] with a concealed weapon in a high crime area, under the revised statute making non-licensure an element of the crime of concealed carry, [the defendant's] mere possession of the concealed weapon did not constitute criminal activity."); *J.L. v. State*, 727 So. 2d 204, 209 (Fla. 1998), *aff'd* 529 U.S. 266 (2000).

Earlier this year, the United States Eleventh Circuit Court of Appeals addressed the question as to whether "mere possession of a concealed weapon" gave rise to "reasonable suspicion" that the defendant "was involved in criminal activity." *United States v. Joseph*, 189 F.4th 1310, 1314 (11th Cir. 2026). The defendant was observed at a house that police officers were watching due to suspected drug sales. *Id.* They observed the defendant enter and exit the house and "noticed the imprint of a gun in [the defendant's] hoodie's pocket." *Id.* However, as in *Regalado*, the

defendant was stopped and searched "[b]ecause he had a gun," and not incident to a traffic/bicycle light infraction. *Id.* Thus, *Joseph* is not "on point" to the instant case. Nonetheless, the opinion is worthy of further discussion below.

In the instant case, at the time of the search, Appellant was lawfully detained because of the section 316.2065(7) bicycle light infraction. This "lawful detention" element differentiates this case from cases such as *Regalado* and *Joseph* where the impetus for the detention which preceded the search was an officer's belief that the detained individual was carrying a firearm.

**The "totality of the circumstances" justified a *Terry* frisk out of concern for officer safety**

Appellant frames the question presented in this appeal as whether the "[d]eputies lacked a particularized and objective belief that Appellant was both armed and dangerous . . . to justify a pat-down search." Unsurprisingly, Appellant argues the deputies had no "reason to believe that [they were] dealing with an armed and dangerous individual" (quoting *Terry*, 392 U.S. at 27). The genesis of this argument is that, because the United States Constitution's Second Amendment has been construed to create a fundamental right to possess and carry weapons for self-defense, persons armed with guns inherently pose no danger to the safety of police officers as a matter of law unless the armed individuals are engaged in criminal activity. *See, e.g.*, *N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 8–10 (2022) (recognizing the "right of an ordinary, law-abiding citizen to possess a handgun in the home for self-defense" and "carry a handgun for self-defense outside the home") (citing *District of Columbia v. Heller*, 554 U.S. 570 (2008); *McDonald v. Chicago*, 561 U.S. 742 (2010)).

"A search for weapons in the absence of probable cause to arrest . . . must be limited to that which is necessary for the discovery of weapons which might be used to harm the officer or others nearby, and may realistically be characterized as something less than a 'full' search, even though it remains a serious intrusion." *Terry*, 392 U.S. at 25–26. The "protection of the police officer and others nearby" may be sufficient justification of a limited search "reasonably designed to discover guns, knives, clubs, or other hidden instruments for the assault of the police officer." *Id.* at 29.

The U.S. Supreme Court has subsequently opined:

> [I]n a traffic-stop setting, the first *Terry* condition—a lawful investigatory stop—is met whenever it is lawful for police to detain an automobile and its occupants pending inquiry into a vehicular violation. The police need not have, in addition, cause to believe any occupant of the vehicle is involved in criminal activity. To justify a pat[-]down of the driver or a passenger during a traffic stop, however, just as in the case of a pedestrian reasonably suspected of criminal activity, the police must harbor reasonable suspicion that the person subjected to the frisk is armed and dangerous.

*Arizona v. Johnson*, 555 U.S. 323, 327 (2009). *See also Pennsylvania v. Mimms*, 434 U.S. 106, 107, 111 (1977) (holding that the officer's act of ordering the driver out of the car during a traffic stop in which the officer noticed a "large bulge" under the driver's jacket was "at most a mere inconvenience"—a "*de minimis*" intrusion that "cannot prevail when balanced against legitimate concerns for the officer's safety").

Here, in his appeal, Appellant argues that "[t]he mere possession of a firearm, *without more*, cannot provide the reasonable suspicion necessary to believe a person is dangerous or justify a pat-down search for officer safety." (Emphasis added). This argument is consistent with *Joseph*'s statement "that, following the 2015 amendments [to Florida's concealed weapons statute], the mere possession of a concealed weapon does *not* establish reasonable suspicion of a § 790.01(2) violation." *Joseph*, 189 F.4th at 1318. *Joseph* further applied that logic to *Terry* stops—"allowing *Terry* stops based on nothing more than presumptively lawful firearm possession would undercut many Americans' Fourth Amendment rights." *Id.* at 1319.

The State responds that "the totality of the circumstances right up to the moment of [Deputy B's] attempted pat-down presented ample reasonable suspicion that Appellant was armed and dangerous[.]" The "circumstances" noted by the State were: it was a high crime area ("It is so dangerous that—because of firearms-related violence—multiple deputies respond to calls in the area."); the area of the stop was dark and poorly lit; *Deputy B observed a bulge under Appellant's shirt that Deputy B, through his experience with firearms, reasonably believed to be a firearm with an extended magazine; Appellant's behavior which deputies A and B construed to be an attempt to conceal the firearm from the deputies*; and Appellant's close proximity to the deputies.

The factors highlighted in the preceding paragraph are critical to our analysis here. *See State v. Cruse*, 121 So. 3d 91, 99–100 (Fla. 3d DCA

2013) ("[T]he circumstances surrounding the incident at issue [including "the defendant's gesture of manipulating his waistband and hiking up his pants," the time of day, the lighting conditions, the high-crime nature of the area, and the defendant's suspicious behavior] sufficiently supported the officers' belief that the defendant might be concealing a weapon and that a pat-down was warranted in order to ensure the officers' safety."); *State v. Lyles*, 51 Fla. L. Weekly D1609 (Fla. 3d DCA Aug. 5, 2026) (holding the pat-down search was justified because the officer had reasonable suspicion that the detainee was armed and dangerous because the officer observed "a bulge on the right side of [the detainee's] body and that [the detainee's] hand immediately went to that area and began adjusting it"); *Mackey v. State*, 124 So. 3d 176, 184–85 (Fla. 2013) ("When the person blatantly lied to the police officer here about possession of a firearm while he was in a geographic area well known for illegal narcotics and firearms with the weapon in view, we conclude that the officer had a reasonable, articulable suspicion that the person may have been engaged in illegal activity, and this brief detention to further investigate whether a crime was being committed [by "a carefully limited search of the outer clothing of such persons in an attempt to discover weapons which might be used to assault him"] is constitutionally valid [and] it is entirely reasonable for the officer to have concerns for his personal safety and the safety of those around him." (citing *Terry,* 392 U.S. at 23, 30)).

*United States v. McCallister*, 39 F.4th 368 (6th Cir. 2022), involves circumstances quite similar to the instant case. There, the court held that officers had reasonable suspicion that the defendant was "armed and dangerous" and thus justified a *Terry* frisk:

> *The Frisk.* McCallister also challenges the search that led to the seizure of his Glock. [Officer] Elam saw both a "bump out" from McCallister's shirt and a firearm magazine in his waistband, leaving "little question [that] the officer was justified" in frisking McCallister. *Pennsylvania v. Mimms*, 434 U.S. 106, 112, 98 S. Ct. 330, 54 L. Ed. 2d 331 (1977) (per curiam); *see also United States v. Smith*, 594 F.3d 530, 542 (6th Cir. 2010). Cementing that conclusion is the fact that Elam observed McCallister attempt to hide the weapon by turning his body away from the officers and by not disclosing that he was armed when asked. Finally, Elam knew that there were frequent shootings in the park and that, days earlier, several men had brought firearms into the park. *See United States v. Pearce*, 531 F.3d 374, 382 (6th Cir. 2008). Collectively, Elam's observations and inferences amounted to

> reasonable suspicion that McCallister was armed and dangerous. *Terry*, 392 U.S. at 28, 88 S. Ct. 1868.

*McCallister*, 39 F.4th at 376.

The instant case is unlike cases wherein the appellate court concluded that a pat-down search was not justified because the officers who ordered and/or conducted the search did not see bulges in the detainee's clothing or other objectively identifiable facts indicating that the detainee had a weapon. *See, e.g.*, *Dawson v. State,* 58 So. 3d 419, 422 (Fla. 2d DCA 2011); *Goodman v. State*, 280 So. 3d 537, 544 (Fla. 2d DCA 2019) ("[T]here are no specific facts indicating that what [the defendant] might have been attempting to conceal was a weapon, as opposed to some other type of contraband."); *State v. Jones*, 203 So. 3d 972, 974 (Fla. 2d DCA 2016) (holding no reasonable suspicion that defendant was armed and dangerous when there is no indication from the record that "officers could not move towards [defendant] to see what he might pull from his bookbag" and the officers did not observe any threatening behavior or bulges on defendant's person); *L.D. v. State*, 770 So. 2d 164, 165 (Fla. 4th DCA 2000) ("The officer saw no weapon and articulated no reason to believe [the defendant] was carrying a weapon [as the] officer admittedly did not observe any bulge, abnormal behavior, or furtive movement.").

The trial court in the instant case properly denied Appellant's motion to suppress after finding: (1) Appellant was lawfully detained incident to his section 316.2065(7) bicycle light violation; (2) Deputy B credibly testified that he sought to pat down Appellant after the deputy had determined that Appellant likely was armed; (3) Deputy B also credibly testified he had observed Appellant actively endeavoring to conceal a gun from notice by the deputies; and (4) the other factors noted by the State. *Cf. Goodman*, 280 So. 3d at 545 ("[T]he totality of the circumstances was insufficient to justify the pat-down of [the defendant]. Rather than acting aggressively, behaving erratically, or otherwise conducting himself in a threatening manner, [the defendant] was compliant and assumed a position that made him less of a threat to the officers."); *Joseph*, 189 F.4th at 1320 (holding that, although "Joseph's gun possession, combined with his other conduct and the officers' knowledge and inferences about criminal behavior, could provide a basis for reasonable suspicion," "the totality of the circumstances did not give the officers reasonable suspicion that Joseph illegally possessed his firearm or was otherwise engaged in criminal activity").[3]

[3] The trial court in *Joseph* did not find that the defendant was actively attempting to conceal the firearm and, unlike the defendant in the instant case, Joseph was

A citizen can have a right to possess a firearm in general,[4] but still be required to submit to a limited pat-down for weapons for officer safety purposes for the limited duration of a lawful stop, depending on whether the totality of the circumstances justifies such a limited safety measure. *See State v. Creller*, 386 So. 3d 487, 489 (Fla. 2024) ("It is well-settled that once a driver has been lawfully stopped for a traffic violation, police officers may order the driver out of the vehicle for officer safety reasons without violating the Fourth Amendment's prohibition of unreasonable searches and seizures." (citing *Mimms*, 434 U.S. at 110, 111 n.6)).

In a case like the one we consider here, where multiple factual circumstances suggest potential danger to the police and we are required to apply a deferential standard of review, we decline to hold that police officers are required to expose themselves to unnecessary danger by leaving a detainee armed with a gun for the duration of their investigative stop. *See Maryland v. Wilson*, 519 U.S. 408, 414 (1997) ("It would seem that the possibility of a violent encounter stems not from the ordinary reaction of a motorist stopped for a [traffic] violation, but from the fact that evidence of a more serious crime might be uncovered during the stop.").

The pat-down attempt (as noted above, the deputies encountered resistance from Appellant) was based on the officers' reasonable suspicion that Appellant's possession of a concealed firearm that he did not want them to see during his detention posed a danger to their safety; and the trial court did not err in finding that the bases for the officers' suspicion were sufficient under the totality of the circumstances.

**Conclusion**

The police officers in this case were actively investigating a reported crime at night on a particularly dangerous street known for shootings and bicycle theft when they noticed Appellant riding a bicycle without a light while dragging a second bicycle. After the deputies had informed Appellant that they were detaining him for riding a bicycle at night without a bicycle light, one of the deputies saw a gun-shaped bulge in the Appellant's clothing, which the officers' training and experience indicated Appellant was actively trying to hide from them.

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not being detained by the officers due to a traffic or bicycle law violation when the decision was made to pat him down.

[4] Here, Appellant did *not* have a right to possess a firearm due to a prior felony conviction, but the officers did not know that when they patted down Appellant.

Under the totality of these circumstances, the deputies did not violate the Fourth Amendment or any other law when they attempted to perform a limited *Terry* officer-safety pat-down to determine whether Appellant had a dangerous weapon so they could temporarily deprive Appellant of the dangerous weapon for the limited duration of their lawful investigation. Accordingly, we find no error in the trial court's denial of the motion to suppress, and affirm Appellant's conviction and sentence.

*Affirmed*.

CONNER, J., concurs.
CIKLIN, J., dissents with opinion.

CIKLIN, J., dissenting.

I respectfully dissent. I agree with the majority that law enforcement lawfully detained appellant for the bicycle-light violation. I also accept the trial court's factual and credibility determinations, including its finding that Deputy B had observed a bulge and the outline of a firearm with an extended magazine beneath appellant's shirt. Where I part company with the majority is on the separate question of whether, when the frisk was initiated, the circumstances gave the deputies reasonable suspicion that appellant was dangerous. That question is both distinct from whether appellant was armed, and dispositive of this appeal.

*Terry v. Ohio*, 392 U.S. 1 (1968), permits a limited protective search when an officer reasonably believes that the person with whom he is dealing is "armed and presently dangerous." *Id.* at 24. The Supreme Court reiterated that requirement in *Arizona v. Johnson*, 555 U.S. 323 (2009). Even where a person is lawfully detained during a traffic stop, a frisk remains justified only when the officer reasonably suspects that the person is armed and dangerous. *Id.* at 326-27.

The record supported a reasonable conclusion that appellant was armed. After appellant approached the patrol car, he positioned the left side of his body against the vehicle in a manner the deputies considered unusual. Deputy B believed appellant was attempting to conceal something on his left side. After changing his vantage point, Deputy B observed what he believed to be the imprint of a firearm with an extended magazine beneath appellant's shirt. I therefore have no difficulty concluding that the deputies reasonably suspected appellant possessed a firearm.

But the existence of a firearm answers only part of the *Terry* inquiry. The remaining question is whether the circumstances known to the deputies when the frisk was initiated provided an objective and particularized basis for reasonably suspecting that appellant was dangerous.

In my view, the circumstances here did not.

Appellant was not the individual whom the deputies had been dispatched to investigate. Both deputies testified that they did not believe he was "Kevin," the individual reportedly harassing a woman and attempting to enter the apartment building. Thus, the reported disturbance provided no individualized basis to associate appellant with that conduct, much less with violent or weapon-related criminal activity. Appellant instead came to the deputies' attention because he was riding a bicycle without the required light while towing a second bicycle. The bicycle-light violation was a noncriminal traffic infraction. Although a deputy suspected that the second bicycle might have been stolen because bicycle thefts occurred in the area, nothing in the record established that either bicycle had been stolen.

More importantly, appellant's own conduct before the frisk did not objectively indicate that he posed a threat to the deputies. When the patrol lights were activated, he dropped the bicycles and, with his identification in hand, approached Deputy A. Appellant complied with the deputies' instructions. He did not flee. He made no threatening statement. And before the frisk was announced, he did not touch, reach toward, adjust, or otherwise manipulate the suspected firearm. The record reflects that these circumstances—appellant's production of identification, compliance, lack of furtive movements, and the fact that he was not the subject of the original dispatch—were specifically presented in support of suppression.

The state relies upon the totality of the circumstances: the late hour, poor lighting, the area's reported crime conditions, appellant's proximity to the deputies, the suspected firearm, and what the deputies reasonably interpreted as appellant's effort to conceal it. I do not suggest that these circumstances were irrelevant. These circumstances appropriately informed the deputies' assessment of the encounter and justified heightened vigilance. But heightened vigilance and reasonable suspicion that a particular detainee is dangerous are not necessarily the same thing.

The individualized facts on which the majority principally relies reduce to two related considerations: appellant's possession of a firearm and his apparent effort to keep it from the deputies' view.

The latter circumstance gives me greater pause. I recognize the majority's conclusion that appellant was not merely carrying a concealed firearm but was actively positioning his body to prevent the deputies from discovering it. That conduct is properly considered in the totality of the circumstances. But I cannot conclude that, on this record, it supplies the otherwise missing individualized basis to reasonably suspect that appellant was dangerous.

At the time of this encounter, the mere fact that a person carried a concealed firearm did not necessarily establish a violation of Florida law. *See* §§ 790.01(2), 790.06(1), Fla. Stat. (2022). Appellant, of course, was ultimately discovered to be a convicted felon who could not lawfully possess the firearm. But the deputies did not know that when they initiated the frisk. Only afterward did they complete the database search revealing his felony status. That later discovery cannot furnish reasonable suspicion which was absent when the frisk began.

Nor can appellant's subsequent resistance do so. The chronology is important. Deputy B first informed appellant that Deputy B was going to pat down appellant for weapons, and then Deputy B began reaching for appellant. Only then did appellant tense his arms, twist his left side away, state that the deputies could not search him, and ultimately struggle with them. Those events unquestionably transformed the encounter and heightened the danger confronting the deputies. But those events occurred after the deputies had decided to frisk appellant, and therefore cannot retroactively establish the reasonable suspicion necessary to justify that decision.

I do not suggest that a firearm is irrelevant to the officer-safety inquiry, or that an officer must wait until a detainee reaches for a weapon before conducting a protective frisk. *Terry* is preventive, and an officer need not await a threatening act before taking reasonable measures for protection. A firearm is unquestionably a weighty consideration and, in an appropriate setting, a firearms's presence may combine with other circumstances to create reasonable suspicion that a detainee is dangerous. The question remains whether the totality of the facts known to these deputies when they initiated the frisk gave rise to reasonable suspicion that appellant was dangerous.

As illustrated in *State v. Cruse*, 121 So. 3d 91, 99-100 (Fla. 3d DCA 2013), where the circumstances included the defendant's manipulation of his waistband and hiking up of his pants, the inquiry is individualized. I do not read *Pennsylvania v. Mimms*, 434 U.S. 106 (1977), as creating a

categorical rule that the observation of a suspected firearm or firearm-shaped bulge during every lawful detention establishes dangerousness. In *Mimms*, after a lawful traffic stop, an officer observed a large bulge beneath the driver's jacket and reasonably feared that the bulge was a weapon. *Id.* at 107. The Court concluded that, in those circumstances, the bulge permitted the officer to conclude that the driver was armed and "thus posed a serious and present danger to the safety of the officer." *Id.* at 112. But *Mimms* did not address the significance of firearm possession in a legal environment in which such possession may itself be lawful, nor did *Mimms* eliminate *Terry's* requirement that the justification for a frisk rest on the particular circumstances confronting the officer.

Here, appellant's conduct reasonably suggested that he wished to keep the firearm from view. But before the frisk, he made no threatening movement, made no threat, did not flee, complied with the deputies' instructions, and was not connected to the disturbance that prompted the deputies' presence. The remaining considerations—the late hour, darkness, neighborhood conditions, and proximity inherent in a face-to-face detention—described the setting of the encounter. Considering those circumstances together with appellant's possession and apparent concealment of the firearm, I do not believe the deputies possessed the particularized basis which *Terry* requires to reasonably suspect that appellant was dangerous.

The majority understandably emphasizes officer safety and concludes that officers should not be required to "expose themselves to unnecessary danger by leaving a detainee armed with a gun for the duration of their investigative stop." I share the legitimate concern underlying that statement. Indeed, officer safety lies at the heart of *Terry*. But the gravity of the potential consequences cannot itself substitute for the individualized reasonable suspicion which the Fourth Amendment requires.

Otherwise, once a lawful detention is established, reasonable suspicion that the detainee possesses a firearm would effectively complete the inquiry: the detainee would be armed and, by virtue of being armed during a police encounter, sufficiently dangerous to frisk. That substantially diminishes the independent work performed by the second component of the familiar formulation—"armed and dangerous." *Arizona v. Johnson* continues to require both during an otherwise lawful traffic detention.

This does not mean that lawful firearm possession immunizes a detainee from a protective frisk. It plainly does not. Nor does it require an officer confronted with genuine indicators of danger to wait for a detainee

to reach for a weapon. My disagreement is considerably narrower. A firearm's presence is highly relevant to the officer-safety calculus, but that presence does not dispense with *Terry's* requirement for dangerousness to be reasonably and particularly suspected from the totality of the circumstances confronting the officer.

The Fourth Amendment has not changed. *Terry's* dangerousness requirement remains what it has always been. What has changed is the legal environment in which courts must apply that requirement. Where firearm possession may itself be lawful, courts must take care not to permit the fact establishing that a detainee is armed, without more, to perform all the constitutional work necessary to establish that he is also dangerous. This does not require an officer to determine on the street whether the possession is ultimately lawful. It requires only that a protective frisk remain supported by particularized circumstances giving rise to reasonable suspicion that the detainee is dangerous.

The line between being armed and being dangerous may, at times, be difficult to discern. But armed does not mean dangerous. The Fourth Amendment requires courts to honor that distinction and not reason it away.

On this record, I would hold that the deputies had reasonable suspicion that appellant was armed but lacked a sufficient particularized basis to reasonably suspect that he was dangerous when they initiated the frisk. I therefore would reverse the order denying the motion to suppress.

Accordingly, I respectfully dissent.

* * *

***Not final until disposition of timely-filed motion for rehearing.***