GRANTED

No. 98-1993

In The
SUPREME COURT OF THE UNITED STATES
October Term, 1998

The STATE OF FLORIDA

Petitioner,

v.

J.L., a juvenile,

Respondent.

On Writ of Certiorari to the
Supreme Court of State of Florida

BRIEF OF *AMICUS CURIAE* NATIONAL ASSOCIATION OF POLICE ORGANIZATIONS, IN SUPPORT OF THE PETITIONER

Stephen R. McSpadden
General Counsel
National Association of Police Organizations, Inc.
750 First Street, N. E., Suite 920
Washington, D.C. 20002-4241
(202) 842-4420, 842-4396 (fax)

Counsel of Record for *Amicus Curiae*

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Pages**

Constitutional Provisions

Rules

Other Authorities

STATEMENT OF INTEREST OF *AMICUS CURIAE*

Amicus curiae National Association of Police Organizations, Inc. (hereafter "NAPO"), including its 501(c)(3) affiliate, the National Law Enforcement Officers' Rights Center of the Police Research and Education Project, submits this brief in support of the Petitioner State of Florida.[1] NAPO seeks to reverse the decision of the Supreme Court of Florida, which rejected the admissibility into evidence of a concealed handgun seized from the Respondent, a 16-year-old juvenile at the time of the incident.

NAPO is a national non-profit organization, representing state and local law enforcement officers in the United States. It is a coalition of police associations and unions that serves to advance the interests and legal rights of law enforcement officers through education, legislation, and advocacy of fundamental due process and workplace rights of officers. NAPO represents 4,000 law enforcement organizations, with 250,000 sworn law enforcement officers (including police officers, deputy sheriffs, state troopers, and highway patrol officers, among other groups), and 11,000 retired officers. In Florida, NAPO represents the Florida Police Benevolent Association (which is comprised of 175 local units throughout the State), the Dade County Police Benevolent Association, and the Palm Beach County Police Benevolent Association, which altogether have approximately 37,000 sworn law enforcement officers as members.

NAPO's members have a significant interest in the important Fourth Amendment issues of law before this Court, as the Court's decision will affect the safety of law enforcement officers and directly impact their ability to carry out their responsibility to protect the public. This is because the stopping of an individual, whom a reasonable officer believes is armed and

---

[1]Pursuant to Supreme Court Rule 37.6, no counsel for any party in this case authored this *amicus curiae* brief in whole or in part, and no person or entity, other than the *amicus curiae* and its members, made a monetary contribution to the preparation or submission of the brief.

dangerous, constitutes the least predictable and the most dangerous duty of a law enforcement officer. Consequently, the outcome of this case will bear on whether officers are allowed to adequately protect themselves by conducting a brief frisk or pat-down for weapons in such situations. In summary, NAPO seeks to provide insight into the reasonableness of the policy of allowing police officers to seize and disarm those individuals presenting a serious risk of injury or death to the officer and the public.

WRITTEN CONSENT OF THE PARTIES

Counsel of record for both the Petitioner and the Respondent have consented in writing to the filing of this *amicus curiae* brief, pursuant to Supreme Court Rule 37.3(a). These letters of consent have been filed with the Clerk of the Court.

STATEMENT OF THE CASE

The *amicus curiae* adopts the factual statement in the petition for a writ of certiorari. What follows is a shorter narrative of the facts and the proceedings.[2]

At the time of the incident, Respondent, J.L., was a 16-year-old male. Based on the Respondent's possession of the gun, a petition for delinquency was filed, charging the Respondent with unlawfully carrying a concealed firearm and unlawful possession of a firearm by an individual under 18 years of age.[3]

At the evidentiary hearing on the motion to suppress the admissibility of the gun into evidence, Officer Carmen Anderson testified that on October 13, 1995, while on patrol in Miami, she was dispatched to the area of 183rd Street and 24th Avenue in

[2]The facts of the case were established in the evidentiary hearing held by the trial court on the Respondent's motion to suppress.

[3]Because the Respondent was a juvenile at the time of the incident, he remains identified only by his initials.

response to information received from an anonymous source. The source indicated that there were three young black (African-American) males standing at a bus stand near that intersection in front of a pawn shop, one of whom was carrying a concealed firearm. The anonymous informant also described each individual and said that the person carrying the firearm was the black male wearing a plaid shirt. [A-40-41].

Officer Anderson and another police unit arrived at the bus stop approximately six minutes after receiving the dispatch. As Officer Anderson and the other officer approached the bus stop, Officer Anderson saw three black males, one of whom was wearing a plaid shirt. The three males were found at the precise location where the anonymous informant said they would be. [A-41-42]. Officer Anderson immediately approached the Respondent, the male wearing the plaid shirt, because he fit the description of the individual who was allegedly carrying a concealed firearm. Officer Anderson asked the Respondent to place his hands on the bus stop sign, and the officer then began to frisk him, and upon doing so saw the butt of a gun coming out of the Respondent's left pants' pocket. Officer Anderson removed the gun and arrested the Respondent. [A-42]

The trial court found that the information provided by the anonymous source was insufficient to support a reasonable suspicion of criminal activity, and suppressed the gun as the product of an unreasonable search and seizure. [A-35-36]. The State of Florida appealed the suppression order to the District Court of Appeal of Florida, Third District. That court reversed the trial court's suppression of the handgun, concluding that there was reasonable suspicion that Respondent was committing the crime of carrying a concealed firearm and thus, the officer was justified in stopping and frisking him. The Third District held that the police officers found themselves, based on the extent of verification of the anonymous tip, in a situation where they had a reasonable suspicion that the Respondent was carrying a concealed weapon. Consequently, the court felt that the officers had to take some action, but in doing so, they also had to secure their own safety first. *State v. J.L.*, 689 So. 2d 1116 (1997).

The Respondent appealed to the Supreme Court of Florida, which reversed the decision of intermediate appellate court, and excluded the handgun as evidence. The court ruled that the information provided by the anonymous source did not give rise to the "reasonable suspicion" which the Fourth Amendment requires before the police may detain an individual and frisk for weapons. Specifically, the Florida court held that an anonymous informant's detailed description of an armed suspect's clothing and location, even if verified by the police, is not enough to establish reasonable suspicion of criminal activity, including a concealed weapon. The court indicated that the officer should have used a less intrusive means, such as a consensual encounter or questioning about possession of a firearm, to determine if the suspect was armed and dangerous before a frisk would have been justified. *J.L. v. State*, 727 So. 2d 204 et seq. (Fla. 1998). The dissenting justices found the majority's interpretation of *Terry*, *infra*, to be overly restrictive and erroneous. The dissenting opinion concluded that, when confronted with this type of situation, police officers may not be able to verify more than the innocent details of the tip without substantially risking their safety or the safety of the general public. *Id.* at 214-215 (Overton, J. dissenting).

SUMMARY OF THE ARGUMENT

The Fourth Amendment to the U.S. Constitution prohibits "unreasonable searches and seizures". The reasonableness of a search and seizure, including the brief detention and frisk of a suspect for a weapon, depends on a balancing between the suspect's right of privacy and the public interest in effective law enforcement, including officer safety. As this Court reaffirmed during its last term in *Knowles v. Iowa*, *infra*, officer safety in terms of disarming a suspect is "both legitimate and weighty".

Crucial to that balancing is the specific information possessed by law enforcement officers concerning the allegedly armed individual. If an officer holds a reasonable belief that his or her safety or that of others is in danger, based on the circumstances and facts known to the officer, he or she may

conduct a search based on "reasonable suspicion", under this Court's 1968 decision in *Terry v. Ohio*, *infra*. *Terry* authorizes investigatory detentions and searches for weapons whenever there is an articulable suspicion that a suspect is armed and dangerous. The principles of *Terry* apply to and govern the resolution of this case. In 1972, in *Adams v. Williams*, *infra*, this Court reaffirmed Terry and emphasized that the purpose of a protective search, if an officer has reason to believe that a suspect is armed and dangerous, is "to allow the officer to pursue his investigation without fear of violence, ... irrespective of whether carrying a concealed weapon violated any applicable state law." In fact, as the Court stated in *Terry*, it would be "clearly unreasonable to deny" an officer the power to take measures necessary to determine whether a suspect is in fact carrying a weapon and to neutralize that threat. To summarize, Justice Harlan's concurring opinion in *Terry*, an officer should not have to ask one question when confronting a suspect and "take the risk that the answer might be a bullet".

Statistical and other data disclose that concealed firearms and firearm crimes do pose a significant threat to officer and public safety. The data on officers killed or assaulted with firearms, as well as juvenile possession and use of firearms, including juvenile victims of crime, is devastating. For example, in 1995 alone, the year of the incident in this case, there were just over 500,000 murders, robberies, and aggravated assaults in which firearms were used, affecting 192 out of every 100,000 people in the United States. Indeed, firearms are used in approximately one-quarter of the incidents of violent crime committed in the United States, and are the type of weapon most frequently used in the slaying of police officers. For example, during the 10-year period from 1988 through 1997, 92 percent of the 688 police officers who were killed in the line of duty were killed with firearms. In addition, in 1998, the rate of officers killed with firearms rose even higher, to 95 percent, with all but three of the 61 officers dying from gunshot wounds. Moreover, most of these slain officers were shot at close range, in the front of the head or upper torso, within 10 feet of their assailants. Also, many were shot while investigating suspicious circumstances.

In this case, Officer Anderson could have been one of these statistics, if she had not conducted the frisk of the Respondent and removed his weapon. Her well-founded suspicions should not be ignored, as they were by the Florida court in this case.

If this Court should have any continuing doubts that the legitimate concern for officer safety outweighs Respondent's J.L.'s right of privacy in this case, then the Court should consider the important policy interests in protecting the public's safety, in view of the large number of juveniles carrying and killed by firearms each year. Indeed, there has been a startling increase in the number of crimes, especially murders, committed by juveniles using a firearm, during the last 10 years, notwithstanding an overall reduction in the rates of some violent crimes.

Societal expectations are a factor in determining whether an objective expectation of privacy should be recognized under the Fourth Amendment. The governmental interest in this case is much greater than that of routine crime detection. This is because the governmental interest in crime prevention is intensified when an armed and potentially dangerous individual threatens public safety. Therefore, as the governmental interest is greater, the level of corroborated information from an anonymous source necessary to constitute "reasonable suspicion" must be qualitatively different than in other types of cases. Otherwise, the balance between privacy and the governmental and societal interest will severely tilt in the wrong direction, as it did when this case was before the Florida Supreme Court.

Amicus curiae asks this Court to reject the Florida Supreme Court's holding that the corroboration of only the innocent details of an anonymous tip, due to the absence of suspicious details (other than possession of the firearm), does not provide police officers with a reasonable suspicion of criminal activity. The Florida court's majority opinion did not take into account that the great risk of harm to the public and the police in situations, such as this case, substantially outweighs the limited intrusion of the suspect's privacy. As the D.C. Circuit stated in

United States v. McClinnhan, *infra*, "[The] element of danger distinguishes a gun tip from one involving possession of drugs. If there is any doubt about the 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."

Based upon this Court's decisions in *Terry* and *White*, *infra*, the D.C. Circuit's decision in *United States v. Clipper*, *infra*, and the Second Circuit's decision in *United States v. Bold*, *infra*, *amicus curiae* NAPO urges the Court to adopt the following standard as the appropriate one: Whenever an anonymous source alleges the presence of an individual armed with a concealed weapon, the verification by a law enforcement officer of the description of the suspect and the suspect's location is sufficient to establish reasonable suspicion to conduct a seizure of the individual and a quick search for weapons. A law enforcement officer should not be required to wait and endanger his or her life, either by questioning the suspect first or waiting for the suspect to initiate a suspicious act. The need to act is immediate in view of the high risk of injury and death.

Applying this standard to the instant case, the anonymous tip certainly meets the threshold of "reasonable suspicion". Here, the source of information provided the following details: First, there were three African-American juveniles standing at a bus stop near the intersection of 183rd Street and 24th Avenue in Miami; second, the bus stop was in front of a pawn shop; third, the juvenile dressed in a plaid shirt was carrying a concealed firearm, which, if true, would likely constitute a crime; and fourth, the three juveniles at the bus stop were each described. Arriving at the bus stop approximately six minutes after receiving the dispatch, Officer Anderson corroborated the information from the anonymous tip, information similar to or greater than the corroboration which occurred in *Alabama v. White*, *United States v. Clipper*, and *United States v. Bold.*

The danger to law enforcement officers and the general

public will significantly increase were this Court to require that law enforcement officers possessing and then verifying the same level of information, as did Officer Anderson in this case, must then independently observe or otherwise obtain information about an inherently suspicious circumstance before they can conduct a seizure and frisk for weapons. In summary, the Court should not sacrifice officer and public safety for minimal gains in search and seizure protection.

ARGUMENT

I. The safety of law enforcement officers is a crucial "public interest" factor to consider when analyzing the reasonableness of searches and seizures under the Fourth Amendment. Whenever an officer receives information indicating that a specific individual is possessing a concealed firearm in a public place, an immediate and severe threat of violence exists, as confirmed by government and other statistics. Such a situation immediately raises the legitimate and weighty concern for officer and public safety. This concern for safety outweighs any brief personal intrusion of a pat-down and frisk for weapons under the Fourth Amendment balancing test.

I

In the recent past, this Court has recognized that law enforcement officer safety is a crucial "public interest" factor in analyzing the reasonableness of searches and seizures of vehicles and their occupants under the Fourth Amendment. *Maryland v. Wilson*, 519 U.S. 408 (1997). In citing statistics on officer assaults and deaths, the Court stated, "Regrettably, traffic stops may be dangerous encounters." *Id.* at 413. This danger to an officer's life is no less existent when the officer confronts an unlawfully armed suspect on the street. Last term, in *Knowles v. Iowa*, 525 U.S. 113, 119 S.Ct. 484, 487 (1998), this Court reaffirmed that officer safety in terms of disarming a suspect is " 'both legitimate and weighty' " (citing from *Wilson, supra,* which

cited from *Pennsylvania v. Mimms*, 434 U.S. 106, 110, (1977) (per curium)).

The guiding principles for investigatory detentions and searches for weapons were established by this Court in *Terry v. Ohio*, 392 U.S. 1(1968). *Terry* establishes the crucial standards which govern the resolution of this case. Specifically, under *Terry* and its progeny of cases, an officer has authority to seize and search an individual for weapons where he has a "reasonable fear for his own and others' safety" based on an articulable suspicion that the suspect is armed and dangerous. 392 US. at 30. The language in *Terry* is instructive:

> The crux of this case, however, is not the propriety of Officer McFadden's taking steps to investigate petitioner's suspicious behavior, but rather, whether there was justification for McFadden's invasion of Terry's personal security by searching him for weapons in the course of that investigation. We are now concerned with more than the governmental interest in investigating crime; in addition, there is the more immediate interest of the police officer in taking steps to assure himself that the person with whom he is dealing is not armed with a weapon that could unexpectedly and fatally be used against him. Certainly it would be unreasonable to require that police officers take unnecessary risks in the performance of their duties. American criminals have a long tradition of armed violence, and every year in this country many law enforcement officers are killed in the line of duty, and thousands more are wounded. Virtually all of these deaths and a substantial portion of the injuries are inflicted with guns and knives.

392 U.S. at 24. In support of this point, the *Terry* Court referenced FBI statistics, and discussed the number of law enforcement officers killed in the line of duty, and emphasized

that the majority of the officers died from gunshot wounds, stating that "[w]hatever the merits of gun-control proposals, this fact is relevant to an assessment of the need for some form of self-protective search power." *Id.* at 24 n.21. *Terry* then emphasized how unreasonable it would be to apply the Fourth Amendment in a way that would prevent officers from protecting themselves and others, stating:

> In view of these facts, we cannot blind ourselves to the need for law enforcement officers to protect themselves and other prospective victims of violence in situations where they may lack probable cause for an arrest. When an officer is justified in believing that the individual whose suspicious behavior he is investigating at close range is armed and presently dangerous to the officer or to others, it would appear to be clearly unreasonable to deny the officer the power to take necessary measures to determine whether the person is in fact carrying a weapon and to neutralize the threat of physical harm.

Id. at 24. After balancing the individual's interest against the interest of officer safety, the Court came down squarely on the side of officer safety, making it clear that the authority is narrowly drawn "to permit a reasonable search for weapons for the protection of the police officer, ..." *Id.* at 27. Thus, the search is limited to what is appropriate for the discovery of weapons. As the Court further stated:

> The sole justification of the search in the present situation is the protection of the police officer and others nearby, and it must therefore be confined in scope to an intrusion reasonable designed to discover guns, knives, clubs, or other hidden instruments for the assault of the police officer.
>
> ...
>
> We conclude that the revolver seized from Terry was properly admitted in evidence against him. At the time he seized the petitioner and searched him for weapons, Officer McFadden had reasonable grounds to believe that petitioner was armed and dangerous, and it was necessary for the protection of himself and others to take swift measures to discover the true facts and neutralize the threat of harm if it materialized.

392 U.S. at 30. In his concurring opinion in *Terry*, Justice Harlan bluntly stated the risk of not conducting a limited search for weapons, stating:

> Concealed weapons create an immediate and severe danger to the public, ...
>
> ...
>
> There is no reason why an officer, rightfully but forcibly confronting a person suspected of a serious crime, should have to ask one question and take the risk that the answer might be a bullet.

Id. at 32-33.

Four years later, this Court reaffirmed *Terry* in *Adams v. Williams*, 407 U.S. 143 (1972).[4] The unreasonableness of prohibiting such searches and seizures is clear. Indeed, as discussed in a recent law review article:

> Officers on the street confronting potentially armed and dangerous suspects are required to make a "quick decision" as to how to protect themselves. To subject their measurement

[4]In *Adams v. Williams*, the Court emphasized that the purpose of a protective search, if an officer has reason to believe that a suspect is armed and dangerous, is "to allow the officer to pursue his investigation without fear of violence, and thus the frisk for weapons might be equally necessary and reasonable, whether or not carrying a concealed weapon violated any applicable state law." 407 U.S. at 146.

> of what is needed to protect themselves to post hoc second guess to scrutinize whether they engaged in the least intrusive means of effecting the goal of the intrusion places an unrealistic and dangerous burden on police officers. It is unrealistic because it requires them to "exercise superhuman judgment" in always choosing the least intrusive means of accomplishing the goal, and it is dangerous. Because it would "inevitably induce tentativeness by officers, and thus deter police from protecting the public and themselves." It is inconsistent with the view that deference should be given to the experience of police officers in assessing the reasonableness of their actions.[5]

Therefore, with reasonable suspicion a law enforcement officer may appropriately detain and then quickly frisk an individual for weapons, to protect the officer and the public from risk of injury and death.

II

The statistical and anecdotal evidence concerning the unlawful use of firearms used in committing murders of assaults against law enforcement officers and others, intensifies this concern. As the dissenting opinion from the Florida Supreme Court in this case stated:

> The 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

[5]Thomas K. Clancy, *Protective Searches, Pat-Downs, or Frisks?: The Scope of the Permissible Intrusion to Ascertain if a Detained Person is Armed,* 82 Marq.L.Rev. 491, 518, 1999 (footnotes and other citations omitted).

> explosive situation. ... In my view, the majority also makes a poor public policy decision that is dictated neither by law nor by common sense. The majority decision is not only bad public policy--I believe it threatens the physical safety of the law enforcement officers and citizens of this state. ... Under the circumstances of this case, stopping and frisking this child and seizing the concealed weapon is not unreasonable.
>
> The unfortunately reality of today's society is that dangerous persons of all ages stand armed and ready to shoot law enforcement officers and citizens. I am unable to ignore the daily headlines of our nation's newspapers and the statistics compiled by law enforcement agencies that reveal the great risk of harm posed by firearms in this country. ... Recent events have tragically demonstrated that children, such as the petitioner [the Respondent], and guns are an especially explosive mixture. [Footnote omitted.] The violence involving firearms at our nation's schools is a problem of major significance. [Footnote omitted.] Unfortunately, the majority has virtually ignored the great harm caused by firearms and has lost sight of the fact that the rationale of Terry v. Ohio ... is to protect law enforcement officers and the general public from the danger associated with armed suspects.

J.L. v. Florida, 727 So.2d at 211 (Overton, J. dissenting).

Unlawfully concealed firearms and firearm crimes do pose a significant threat to officer and public safety. The data on officers killed or assaulted with firearms, as well as juvenile possession and use of firearms, including juvenile victims of crime, is overwhelming. For example, in 1995 alone, the year of the incident in this case, there were 504,421 murders, robberies, and aggravated assaults in which firearms were used, affecting

192 out of every 100,000 people in the United States.[6] Indeed, firearms are the weapon most frequently used in the slaying of police officers,[7] and are used in approximately one-quarter of the incidents of violent crime perpetrated in the United States.[8]

The poignant words of a senior FBI official, spoken during a law enforcement memorial dedication, convey the extent of the epidemic of violence against officers.

> We must realize that law enforcement officers face danger on a daily basis. Since 1988, nearly 700 law enforcement officers throughout the country have been slain in the line of duty, another 629 have been killed in duty-related accidents, and over 600,000 officers have been assaulted. While progress is being made fighting crime, violence remains a serious threat to those who have sworn to protect society. Yet, even with the challenges facing law enforcement, brave men and women continue to join these ranks and swear to work each day to preserve the peace and improve the safety of towns and cities across America. Whether a seasoned veteran or a rookie just out of training, these heroic men and women, and their fallen colleagues whom we honor today, come from many different backgrounds. However, they are linked by a common ideal — that freedom is worth defending and that justice shall prevail. ...[9]

The rate at which handguns are used to kill or assault officers is dramatic. During the 10-year period from 1988 through 1997, 92 percent of the 688 police officers killed in the line of duty were killed with firearms.[10] In 1998, the rate of officers killed with firearms rose even higher, to 95 percent, with all but three of the 61 officers dying from gunshot wounds.[11]

Other FBI data reporting on the circumstances at the scene of these murders during this 10-year period is particularly informative. First, 469 slain officers, or 74 percent of the total, were shot in the front of the head or upper torso and were within 10 feet of their assailants.[12] Second, 128 officers, or 19.3 percent, of the 633 officers murdered were investigating suspicious circumstances, ranking second only to the 250 officers, or 39.5 percent, killed in arrest situations.[13] Third, the largest percentage of victim officers were assigned to vehicle patrol when they were killed, and specifically 49 percent of these patrol officers were

---

[6]Bureau of Justice Statistics, Office of Justice Programs, U.S. Department of Justice, November 1999 (found at <www.ojp.usdoj.gov/bjs/glance/guncrime.txt>); this information is based on calculations of data from the FBI Uniform Crime Reports.

[7]Federal Bureau of Investigation National Press Office, Press Release, May 10, 1999, Washington DC.

[8]U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, *Characteristics of Crime, Summary Findings: Violent Crime* (found at <www.usdoj.gov/bjs/cvict_c.htm>)last revised September 1999.

[9]Federal Bureau of Investigation, U.S. Department of Justice, *Law Enforcement Officers Killed and Assaulted - 1997,* from "Foreword", by James V. DeSarno, Jr., Assistant Director in Charge, Criminal Justice Information Services Division, (Excerpts from a speech given at Law Enforcement Memorial Ceremony, Clarksburg, West Virginia, May 14, 1998); the FBI's report may be found on the Internet at: <www.fbi.gov.ucr/killassl.htm>.

[10]*Id.* at 4.

[11]FBI National Press Office, *supra,* note 7.

[12]Federal Bureau of Investigation, U.S. Department of Justice, *Law Enforcement Officers Killed and Assaulted - 1997*, at 4 & 15. (See note 9, for the Internet location of this document.)

[13]*Id.* at 27.

alone and unassisted at the time of their deaths.[14] Fourth, of the 950 persons identified in these felonious killings of officers that occurred over the 1988 to 1997 period, 99 (10 percent of those identified) were under 18 years of age.[15]

Turning to data on assaults during the period of 1988 to 1997, we find that over 600,000 officers were assaulted.[16] The FBI's data on law enforcement officers assaulted in 1997, the most currently available data, reveal that 49,151 line-of-duty assaults were reported, an average of 11 of every 100 law enforcement officers in the nation, and that these assaults resulted in personal injury to 13,105 officers. Eleven percent of the assaults, specifically 5,446 incidents, occurred while officers were investigating suspicious persons or circumstances; and 1,844 (or 3.8 percent) of the assaults involved an assailant's use of a firearm. During 1997, four out of every five officers assaulted were on vehicle patrol at the time they were attacked.[17]

What these statistics do not convey, however, is the very personal and tragic loss to the families and communities of law enforcement officers slain in the line of duty. The FBI's 1997 data (referenced in footnote 12) provides summaries of each of the incidents leading to the murder of law enforcement officers.[18] What comes across from reading these summaries is how quickly an officer approaching a suspect can be killed. An officer does not have the luxury of having time to stand back and carefully formulate and ask questions. Indeed, within one or two seconds, a suspect can shoot and kill an officer. Unfortunately, the

[14] *Id.* at 3.

[15] Bureau of Justice Statistics, *supra*, note 6, at 36.

[16] Federal Bureau of Investigation, U.S. Department of Justice, *Law Enforcement Officers Killed and Assaulted - 1997,* at 4.

[17] *Id.* at 69--70.

[18] *Id.* at 41--67.

majority opinion by the Florida Supreme Court did not consider this issue in rendering its decision.

Should there continue to be any doubts within the Court that the legitimate concern for officer safety outweighs Respondent's J.L.'s right of privacy in this case, then *amicus curiae* would ask the Court to consider public safety as well, in view of the number of juveniles carrying concealed firearms and the number of juveniles killed by firearms.

For example, a recent extensive national survey of 138,079 students by a non-profit institute, revealed the following: First, an estimated 2.6 million American youth, ages 11 to 18, carried a gun last year for either "protection" or to serve as a "weapon"--an armed population almost twice the size of the active duty U.S. military. Second, of these 2.6 million, more than one million (4 percent) armed themselves "often" or "a lot". Third, at least 800,000 students (3.3 percent) took a gun to school, and of those more than half (2.1 percent) carried a gun to school on two or more occasions. Fourth, students who carry guns for protection or as a weapon "exhibit high rates of other disturbing behaviors", with almost half using illicit drugs at least monthly and almost a quarter using drugs daily. Fifth, 61 percent of the 2.6 million carrying guns to school have been in trouble with the police.[19]

Moreover, arrests of juveniles comprise an increasing proportion of the violent crime and weapons arrests each year.[20] In 1997, for example, 123,400 juveniles were arrested for violent

[19] National Parents' Resource Institute for Drug Education, *12th Annual PRIDE National Survey of Student Drug Use and Violence,* Washington, DC, September 8, 1999 (summary of survey can be found on the Internet at <www.prideusa.org/press99/9899gun.htm>).

[20] L. Greenfield and M. Zavitz, Office of Justice Programs, U.S. Department of Justice, Bureau of Justice Statistics Selected Findings: *Firearms, crime, and criminal justice--Weapons Offenses and Offenders,* November 1995, 3-4. (This data is available on the Internet.)

crimes,[21] comprising 17 percent of all such arrests,[22] while another 52,200 juveniles were arrested for weapons offenses (carrying, possessing, etc.), 24 percent of all such arrests.[23] This data does not indicate how many of the violent crimes committed by juveniles were carried out with firearms, but experts estimate that it is a large number.[24] It is clear, however, that the growth in murders by juveniles is linked to weapon use.[25] As the 1995 Annual Report of the Office of Justice Programs, U.S. Department of Justice, stated:

> There has been a startling increase in gun-related crime over the past 10 years. ... And an OJJDP [Office of Juvenile Justice and Delinquency Prevention] 1995 report--Juvenile Offenders and Victims: A National Report--shows that guns were used in 8 out of 10 homicides committed by juveniles.[26]

---

[21]OJP defines violent crimes as encompassing specifically murder (and non-negligent manslaughter), forcible rape and robbery, and aggravated assault. In addition, "[f]ewer than half of serious violent crimes by juveniles are reported to law enforcement[.] Many crimes are never reported to police and never become part of official crime statistics." H.N. Snyder and M. Sickmund, *Juvenile Offenders and Victims: 1999 National Report,* U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, National Center for Juvenile Justice, Washington, DC, Sept. 1999, at 63.

[22]*Id.* at 115.

[23]*Id.*

[24]*Id.*

[25]*Id.* at 133.

[26]Office of Justice Programs, U.S. Department of Justice, *1995 Annual Report*, Chapter 2, 1--2. (From the text version obtained over the Internet.)

In its 1999 report, *Juvenile Offenders and Victims: 1999 National Report, supra,* the OJJDP's National Center for Juvenile Justice found evidence showing a link between juvenile murder arrest trends and weapons use, concluding that, "The age-specific arrest trend profile for weapons violations is comparable to that for murder, showing large increases for juveniles and young adults."[27] Indeed, while the murder rate for all persons above the age of 25 declined significantly over the 1980 to 1997 period, substantial increases were posted in rates of murder by juveniles and young adults.[28] Of the 18,200 persons murdered in the U.S. in 1997, about 1,400 were determined by law enforcement agencies to involve a juvenile offender.[29] The actual number, however, is greater because the FBI had no information on the offenders for about 6,900 reported murders (38 percent of the total), which included both unreported data and also homicides where no offender was identified.[30] The 1,400 murders which were known to involve a juvenile offender included about 1,700 juveniles and 900 adults.[31]

Moreover, the use of firearms as the weapon of choice by juveniles has increased: "The increase in homicides is tied to

---

[27]H.N. Snyder and M. Sickmund, *supra,* note 21, at 133.

[28]*Id.*

[29]*Id.* at 53.

[30]*Id.*

[31]*Id.* Overall, the OJJDP estimates that "[i]n the U.S. in 1997, about 1 of every 16,000 youth between the ages of 10 and 17 was identified as a participating in a homicide. This is a rate of 56 known offenders for every 1 million youth in the U.S. population ages 10-17. ... Between 1980 and 1997, 75% of black juvenile homicide offenders used a firearm in their crimes. This proportion was higher than that for Asian/Pacific Islander (67%) white (59%), or American Indian (48%) youth. Youth were most likely to kill persons of their own race. Between 1990 and 1997, 81% of juvenile offenders were involved in murders of persons of their own race. ..." *Id.* at 56-57.

firearm use by nonfamily offenders[.] ... Most significantly, nearly all of the growth in juvenile homicides was in the number of older juveniles killed with firearms."[32]

II. An anonymous tip identifying the precise location and description of an armed suspect, if subsequently corroborated for the most part by a law enforcement officer, establishes sufficient reasonable suspicion and thus justifies a brief detention and an immediate search for the weapon, because to wait for the suspect to engage in suspicious conduct could have fatal consequences for officer and members of the public.

I

Under *Terry*, detentions and frisks for weapons are justifiable under the Fourth Amendment if there is an articulable suspicion that a person has committed or is about to commit a crime or is armed and dangerous. 392 U.S. at 26. This Court has addressed the level of suspicion necessary for a *Terry* stop, compared to that needed for an arrest. *United States v. Sokolow*, 490 U.S. 1, 7 (1989), stated: "[The] 'reasonable suspicion' necessary to justify a brief, investigative detention is a level of suspicion that is 'obviously less demanding than that for probable cause' and can be established by 'considerably less than proof of wrongdoing by a preponderance of the evidence.'" In *Alabama v. White*, 496 U.S. 325, 330 (1990), this Court stated that the "reasonable suspicion" standard is different than the probable cause standard in terms of the quality and content of the information required to establish it; therefore, "reasonable suspicion can arise from information that is less reliable than that required to show probable cause." *Id.*

The constitutionality of each investigative stop by an officer, including the seizure and search in this case, depends on the reasonableness of the officer's conduct, *State v. Jackson*, 434 N.W.2d 386, 389 (Wis. 1989), and hinges on "the facts available to the officer at the moment of the seizure or the search warrant

[32]Snyder, *supra*, note 21 at 19.

a man of reasonable caution in the belief that the action taken was appropriate." *Terry*, 392 U.S. 1 at 21-22. In order to establish the reasonableness of an officer's conduct, the investigative stop must be "justified by some objective manifestation that the person stopped is, or is about to be, engaged in criminal activity." *Brown v. Texas*, 443 U.S. 47, 51(1979).

Great deference is shown to the officer's judgment, provided that the officer acted reasonably under the circumstances. In determining the reasonableness of the investigative stop, due weight must be given to the officer's experience and training, and the evidence (including inferences) must be viewed as it would "be understood by those in law enforcement." *United States v. Cortez*, 449 U.S. 411, 418 (1981). Thus, the facts are viewed "through the eyes of the reasonable and prudent police officer on the scene who must react to events as they unfold." *State v. Andrews*, 565 N.E.2d 1271, 1273 (Ohio 1991). *See State v. White*, 660 So.2d 515, 519, (2nd Cir. 1995). As this Court stated in *Terry:*

> The officer need not be absolutely certain that the individual is armed; the issue is whether a reasonable prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger. [Citations and footnote omitted.] And in determining whether the officer acted reasonably in such circumstances, due weight must be given ... to the specific reasonable inferences which he is entitled to draw from the facts in light of his experience.

392 U.S. at 27.

> We cannot say [Officer McFadden's] decision at that point to seize Terry and pat his clothing for weapons was the product of a volatile or inventive imagination, or was undertaken simply as an act of harassment; the record evidences the

> tempered act of a policeman who in the course of an investigation had to make a quick decision as to how to protect himself and others from possible danger, and took limited steps to do so.

Id. at 28. These statements apply equally to the instant case.

As in *Terry*, Officer Anderson in the instant case had to make a quick decision on how she could protect herself and the other officer on the scene. She immediately approached the male juvenile fitting the description of the individual allegedly carrying the concealed firearm. She asked the Respondent to place his hands on the bus stop. She removed the gun and arrested the Respondent. As discussed below, her decision to do so was in no way the product of a volatile or inventive imagination or taken to harass the Respondent. It was a tempered act that any reasonable police officer would have taken, based on the reasonable suspicion prevailing at that moment in time.

In *Alabama v. White*, *supra*, this Court considered the level of information from an anonymous source necessary create sufficient reasonable suspicion. There, as here, the information provided anonymously was not extensive but was corroborated by the police, and therefore the information exhibited a sufficient "indicia of reliability" to provide reasonable suspicion for an investigative stop. In *White*, the Court recognized that not every detail mentioned by such a source was verified or need be verified, stating:

> Because an informant is shown to be right about some things, he is probably right about other facts that he has alleged, ... [Citation omitted.] Thus, 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 made by the caller.
> ... Because 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. [Reference to citation omitted.] When significant aspects of the caller's predictions were verified, there was reason to believe not only that the caller was honest but also that he was well informed, at least well enough to justify the stop.

496 U.S. at 332-333.

While being able to corroborate an anonymous informant's prediction of a suspect's future behavior is important, it is not determinative on the existence of "reasonable suspicion", especially in gun cases, where the danger of not acting is greater than it is in a drug case. As the D.C. Circuit stated in *United States v. Clipper*, 973 F.2d 944 (1992):

> *Alabama v. White* does not establish a categorical rule conditioning a Terry Stop (when police are acting on an anonymous tip) on the corroboration of predictive information. The Supreme Court in that case dealt with information that a particular individual was in possession of drugs, not of a gun. ...
> ...
> We believe that the totality of the circumstances to which the Court refers in *Alabama v. White* must include those in which the anonymous information makes no predictions, but provides the police with verifiable facts while alerting them to an imminent danger that the police cannot ignore except at risk to their personal or the public's safety. ... This conclusion reflects the Supreme Court's long-standing approach to Fourth Amendment jurisprudence. Any fair reading of Terry and its progeny reveals that those decisions involve a careful balancing of

interests. ...

973 F.2d at 949-950. In *Clipper*, the police received an anonymous call reporting that a black male armed with a gun was in the area of First and U Streets, NW, Washington, DC. The caller said that the individual was wearing a green and blue jacket and a black hat. Proceeding rapidly to the area, two officers observed an individual, the defendant, matching the description of the man. They stopped and frisked him, and during the frisk, one officer pulled out a bulge of money, which felt like a gun, and as he felt a bulge in the defendant's crotch, the defendant tried to run and dropped a bag containing crack cocaine while doing so. The motion to suppress this evidence was denied.

In *United States v. Bold*, 19 F.3d 99 (2d Cir. 1994) the police also relied upon an anonymous tip. There, the police received an anonymous tip that in the parking lot of a restaurant at the corner of Pennsylvania and Wortman Avenues in Brooklyn, there was a four-door gray Cadillac with three black males, one of whom was armed with a gun. The armed man was described as being 21-years old and wearing a hooded sweater. The police found the car, but because of tinted windows, they could not see the occupants and verify this part of the tip. They asked the car's occupants to step out. The police then observed incriminating evidence in the Cadillac. As contrasted with the instant case, where Officer Anderson was able to verify the descriptive details of the anonymous tip, the police in *Bold* were not able to immediately corroborate the details of that anonymous tip. Relying upon *Clipper* and other cases, the Court of Appeals found:

> The anonymous tip in this case did not itself provide information from which to conclude that the caller was honest or his information reliable. However, even before opening the car doors, the observations of the officers corroborated the tipster's report of a particular type of car ... in a particular location ... Verification of this information supports the reliability of the tip. ...

> Also, the location of the car in a remote part of the parking lot, as police officer Lavin testified, "raised my suspicion that they might be having something to hide." ...

19 F.3d at 103. In *Bold*, the Second Circuit concluded,

> Considering the totality of the circumstances in this case, including the limited ability of the officers to confirm all of the anonymous tip information, the report that the occupants of the car possessed a gun, and the statistical likelihood that the gun was illegal [the court discussed the magnitude of licensed and unlicenced guns in New York State], we conclude that the intrusion upon the privacy of the car's occupants was minimal and that the officers had a reasonable suspicion under *Terry* that authorized their opening of the car doors and questioning the occupants.

Id. at 104.

Under the foregoing precedents, the anonymous tip in the instant case certainly would meet the threshold of "reasonable suspicion". Here, the source of information provided the following details: First, there were three African-American juveniles standing at a bus stop near the intersection of 183rd Street and 24th Avenue in Miami. Second, the bus stop was in front of a pawn shop. Third, the juvenile dressed in a plaid shirt was carrying a concealed firearm, which, if true, would likely constitute a crime. And, fourth, the three juveniles at the bus stop were each described.

Arriving at the bus stop approximately six minutes after receiving the dispatch, Miami Police Officer Anderson, with backup of another officer, corroborated the information from the anonymous tip, similar to or greater than the corroboration which occurred in *Alabama v. White*, *United States v. Clipper*, and

United States v. Bold. The three black males, as described, were indeed found at the precise location where the anonymous informant said they would be, and one of the juveniles was indeed wearing a plaid shirt. As Officer Anderson proceeded under the *Terry* doctrine, she ordered the Respondent to place his hands on the bus stop sign and then, as she began to conduct a pat-down for weapons, she saw the butt of a gun coming out of the Respondent's left pants' pocket and she removed it. To not look for the firearm would have been unreasonable and a dereliction of duty. As the D.C. Circuit stated in *Clipper*, the Fourth Amendment does not "require a police officer to ignore his well founded doubts ..." 973 F.2d at 948.[33]

II

Societal expectations are a factor in determining whether an objective expectation of privacy should be recognized under the Fourth Amendment. The key to the resolution of this case is the nature and extent of the governmental interest involved, which, as Chief Justice Warren recognized in *Terry,* involve not only the detection of crime but also its effective prevention, an interest which becomes greater when an armed and potentially dangerous individual threatens public safety. 392 U.S. at 22.

Therefore, as the governmental interest is greater, the level of corroborated information from an anonymous source

[33]*Clipper* also addressed the concern about anonymous sources with grudges who might fabricate tips. The court stated, "[W]e are aware that anyone fabricating information runs a risk. Telephone calls to police stations are generally recorded, and the making of fraudulent reports is punishable by law. [D.C. statutory provision omitted.] Clipper has failed to cite any case or offer any evidence to suggest that the [D.C.] police have reason to discredit anonymous tips. Absent affirmative evidence of abuse, we cannot ignore society's plain interest in protecting its members, and those who serve them, from armed and dangerous persons." 927 F.2d at 951. In addition, *amicus curiae* would suggest that to ignore and not investigate such tips would eventually motivate anonymous sources *not* to provide information, significantly increasing the danger to the police and the public.

necessary to constitute "reasonable suspicion" must be qualitatively different than in other types of cases. Otherwise, the balance between privacy and the governmental and societal interest will severely tilt in the wrong direction, as it did when this case was before the Florida Supreme Court, with severe consequences for public safety.

In ruling that the officer's actions were unreasonable in this case, the Florida Supreme Court's majority opinion mischaracterized the holdings of other appellate courts nationwide, which have addressed and upheld the admissibility of evidence based on what that opinion called the "mere verification of a presently-occurring innocent detail tip" concerning the possession of a gun. The Florida court stated, "We are aware that other jurisdictions appear to recognize a 'firearm exception' to the reasonable suspicion test." 727 So.2d at 208.

This is a misstatement of the law. As Justice Overton's dissent pointed out, the "firearm exception" is not an exception to a "reasonable suspicion" standard, but rather an exception to the *usual* requirement that corroboration of innocent details from an anonymous source also include some finding of a suspicious circumstance. As the dissenting opinion stated,

> I would do what the majority of jurisdictions have done and recognize a "firearm exception" to the general rule that the corroboration of only the innocent details of an anonymous tip does not provide police officers with a reasonable suspicion of criminal activity. In my view, this holding is necessary because the great risk of harm to the public and the police in such a situation substantially outweighs the limited privacy intrusion to the suspect. Such a holding is true to the dictates of Terry ... Clearly, it is reasonable in today's society for law enforcement officers confronted with the circumstance presented in this case to conduct a stop and frisk.

Id. at 214--215.

The crucial U.S. Court of Appeals decision on this issue is *United States v. Clipper*, *supra*. There, what D.C. Circuit stated applies directly to the instant case:

> As we pointed out in [*United States v.*] *McClinnhan*, [660 F.2d 500 (D.C. Cir. 1981)], 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." [Page citation omitted.] He must either stop and search the individual or "at best follow him through the streets ... hope he [will] commit a crime, or at least brandish the weapon, out of doors," where the police can intervene. [Page citation omitted.]
>
> [The] element of danger distinguishes a gun tip from one involving possession of drugs. If there is any doubt about the 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.
>
> Here, as in *McClinnhan*, the police received an anonymous tip providing a detailed description of the appearance, clothing, and location of a man who reportedly possessed a weapon. Officers at the scene were able to corroborate all of the innocent details of the tip. In these circumstances, we conclude that a reasonable trier of the facts could find that the officers had a reasonable suspicion sufficient to justify a Terry stop and search.

937 F.2d at 951.

Based upon *Terry*, *White*, *Clipper*, and *Bold*, the following standard is the appropriate one: Whenever an anonymous source alleges the presence of an individual armed with a concealed weapon, the verification by a law enforcement officer of the description of the suspect and the suspect's location is sufficient to conduct a seizure of the individual and a quick search for weapons, in view of the high risk of injury and death to the officer and the public at large. Because of a need to act immediately, a law enforcement officer should not be required to wait and endanger his or her life waiting for the suspect to initiate a suspicious act.

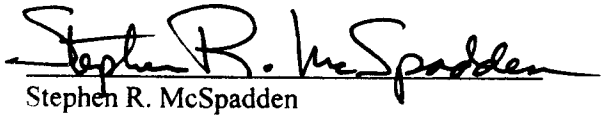
The danger to law enforcement officers and the general public will significantly increase were this Court to require that law enforcement officers possessing and then verifying the same level of information, as did Officer Anderson in this case, must then independently observe or otherwise obtain information about an inherently suspicious circumstance before they can conduct a seizure and frisk for weapons. There will be serious consequences if this Court affirms the Florida court's decision in this case and extends it nationwide. We do not exaggerate by stating that more officers, juveniles, and others will be murdered and assaulted if the Florida Supreme Court's decision in this case is not reversed.

CONCLUSION

For the foregoing reasons, *amicus curiae* NAPO urges this Court, first, to reaffirm the *Terry* doctrine and the important and legitimate public policy concerns about the safety of law enforcement officers and the public, and, second, to rule that the Fourth Amendment does not prohibit searches and seizures for weapons whenever law enforcement receives an anonymous tip of specific descriptive and locational information about suspects possessing firearms, information not otherwise especially suspicious except for the alleged possession of a deadly weapon. In sum, we ask the Court not to sacrifice public safety for minimal gains in search and seizure protection. Therefore, *amicus curiae* respectfully requests that the Court reverse the

judgment in this case of the Supreme Court of the State of Florida.

Respectfully submitted this sixteenth day of December, 1999,



Stephen R. McSpadden
General Counsel
National Association of Police Organizations, Inc.
750 First Street, N. E., Suite 920
Washington, D.C. 20002
(202) 842-4420, fax: (202) 842-4396

Counsel of Record for *Amicus Curiae*