GRANTED

No. 98-1993

IN THE

Supreme Court of the United States

STATE OF FLORIDA,

Petitioner,

v.

J.L.,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

BRIEF OF AMICUS CURIAE THE JUSTICE COALITION IN SUPPORT OF REVERSAL

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QUESTION PRESENTED

Whether an anonymous tip which states that a person is carrying a concealed firearm at a specific location, with a detailed description of the person and his attire, is sufficiently reliable to justify an investigatory detention and frisk where the police immediately verify the accuracy of the tip?

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INTEREST OF AMICUS

This brief is submitted on behalf of the Justice Coalition, which is a private, non-profit organization founded in 1995 whose primary purpose is to promote and protect the rights of innocent victims of violent crime.[1] The organization was founded by Ted Hires, Sr., a Jacksonville, Florida businessman who was a victim of an armed robbery at his barbecue business. The Justice Coalition was created to pull together concerned citizens who work for positive change in the criminal justice system to ensure community safety and justice for innocent victims and other law-abiding citizens.

Beyond providing advocacy and help for innocent victims of crime, the Justice Coalition is active in efforts to enact legislation that promotes public safety. It is one of the most highly visible organizations of its kind in the country by informing and educating the public about issues related to the criminal justice system through its monthly magazine, *Victims' Advocate*, its daily radio show, its affiliations with local media, and its website. Its volunteers daily attend criminal trials in Duval County, Florida that involve crimes of violence. Its volunteers are active in the community by providing direct, meaningful support for those who have lost loved ones or had their lives shattered by violence. In addition, it has joined forces with local television organizations to run "most wanted" segments and other programming that has resulted in the capture of hundreds of dangerous felons.

For its efforts, the Justice Coalition has received local, statewide, and national accolades. It has received the Federal Bureau of Investigation's highest civilian honor, the Director's Community Leadership Award. It has assisted the efforts of the Executive Office of the Governor of the State of Florida to

1. Pursuant to this Court's Rule 37.2(a), letters of consent from both parties to the filing of this brief have been filed with the Clerk. Pursuant to this Court's Rule 37.6, amicus states that this brief was not authored in whole or in part by counsel for either party, and that no person or entity other than amicus, its members or its counsel made a monetary contribution to the preparation or submission of this brief.

promote public awareness of new legislation designed to reduce crime. Sheriff Nat Glover, State Attorney Harry Shorstein, and Mayor John Delaney have each worked with and praised the Justice Coalition for its efforts in making Jacksonville, Florida a safer community. Finally, the Justice Coalition monitors legal developments that affect the criminal justice system and ensures that the community is aware of such developments.

In conclusion, this brief is submitted because of the Justice Coalition's belief that our constitutional system is impaired when the law fails to account for the immense social costs that stem from violent crime. It respectfully suggests that the Florida Supreme Court's decision below interprets the Fourth Amendment in a way that takes too lightly the dramatic social cost of violence and significantly diminishes the ability of police officials to do their jobs.

SUMMARY OF THE ARGUMENT

The Florida Supreme Court's decision should be reversed because it failed to consider and balance the interests of the government in avoiding the devastating social losses arising from the possession of handguns by juveniles. Innocent victims of violent crime shoulder the consequences of a legal rule that prohibits a minimally intrusive "stop and frisk" search under the circumstances presented. By neglecting the potentially devastating consequences of handgun violence, the majority opinion failed to achieve the proper constitutional balance under the Fourth Amendment.

As this Court has recognized, one of the most important factors in determining the reasonableness of a "stop and frisk" search is the safety of police officers as well as the general public. The government's interest in averting potential violence stemming from handguns is an obvious and vital one. The position of the dissenters below, as well as that expressed in the Eleventh Circuit's decision in *United States v. Gibson*, strikes the proper balance. Both take into account, and give greater weight to, the public safety concerns that arise when juveniles possess firearms in a public place. A so-called "anonymous tip"

may form the basis for a limited "stop and frisk" search if the information regards an imminent danger to public safety, is acted upon with immediacy, and is accurate and verifiable.

Tips involving guns are different. They cannot be ignored and are inherently perilous to investigate. As this Court recognized in *Terry*, the danger to police officers and the general public arising from illegal possession of concealed weapons is a critical factor in the balancing of interests under the Fourth Amendment. Here, the Florida Supreme Court failed to accord this interest sufficient weight. Under *Terry*, it is unreasonable for law enforcement officers and the general public to either ignore or be subject to the risks associated with unlawful possession of weapons in public places.

Further, the unique dangers posed by juvenile possession of firearms distinguish this case as well. The harm to society from minors illegally possessing and using firearms is an increasingly substantial social cost that weighs heavily in favor of the type of investigatory search that occurred below. The maintenance of order is a critical factor that justifies the type of minimally intrusive search that occurred in this case. Moreover, the Florida Supreme Court's decision in *J.L.* has spawned decisions among lower Florida appellate courts that have eroded the ability of police to maintain order in society and, at the margin, placed the lives of officers and the general public at greater risk.

In summary, the Justice Coalition respectfully suggests that this Court place great emphasis on the social cost arising from illegal possession of handguns by juveniles. The Fourth Amendment balance adopted below fails to accord this factor sufficient weight and thereby undermines the maintenance of order in society.

ARGUMENT

I. AVOIDANCE OF DANGER TO INNOCENT VICTIMS FROM UNLAWFUL JUVENILE POSSESSION OF FIREARMS TIPS THE BALANCE IN FAVOR OF A *TERRY* STOP IN THIS CASE

The Justice Coalition respectfully suggests that the proper balancing of interests recognized in this Court's *Terry*[2] decision is lacking in the decision below. Specifically, the decision endangers innocent persons by setting a legal standard that precludes police officers from conducting a minimally intrusive "stop and frisk" based upon a detailed yet anonymous tip that a juvenile possesses a handgun in a public place. Members of the Justice Coalition know firsthand the devastating impact a single bullet can wreak on the lives of police officers as well as innocent victims, their families, and their communities. The societal benefit of avoiding this type of harm should be given great weight in determining whether a particular search under the Fourth Amendment is warranted, particularly where a weapon is potentially in the hands of a juvenile.

A close analysis of the costs, benefits, and tradeoffs underlying the Florida Supreme Court's decision in *J.L. v. State*, 727 So. 2d 204 (Fla. 1998), demonstrates the inadequate weight given to public safety and the protection of law-abiding members of the public. While this Court has not adopted a rigid cost-benefit analysis, it has used a similar approach that balances competing interests in its search and seizure decisions, particularly as to the scope of the rule excluding illegally seized evidence.[3] A cost-benefit approach is also evident in the Court's

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

3. *See, e.g., United States v. Leon*, 468 U.S. 897, 906-07 (1984); *United States v. Calandra*, 414 U.S. 338, 348 (1974); *see generally* Christopher Slobogin, *The World Without A Fourth Amendment*, 39 UCLA L. Rev. 1, 7 (1991) ("To use the language often employed by the United States Supreme Court, analysis of any proposed rule involves balancing the 'costs' and 'benefits' of a given approach to the identified state and individual interests.") (footnote omitted).

analysis in other areas, such as the determination of "probable cause"[4] and determining standing issues.[5] In any event, cost-benefit analysis is clearly a tool that assists in clarifying what is at stake in this case.[6]

In this regard, the Court is undoubtedly familiar with the famous Hand Formula, which is used in a number of contexts to frame the costs and benefits associated with legal standards.[7] The Formula seeks to represent mathematically the balancing of social costs and benefits from the establishment of a legal rule. In his influential treatise, *Economic Analysis of Law*, Chief Judge Richard Posner discusses a cost-benefit approach to search and seizure law using the "Hand Formula to frame the inquiry."[8] He identifies three variables. First, the cost of the search in "impaired privacy" is denoted as "B." The more intrusive a search, the greater the magnitude of B. Second, the probability that without the search the target cannot be convicted is denoted as "P." This factor is composed of the probability that the search will "turn up something of value to the police (probable cause)"[9] as well as the probability that the "something" sought is "essential to conviction."[10] The greater the likelihood

4. *See, e.g., Illinois v. Gates*, 462 U.S. 213, 238-39 (1983); Slobogin, *supra* note 3 at 7 n.16.

5. *See, e.g., Rakas v. Illinois*, 439 U.S. 128, 137-38 (1978).

6. Other explanatory models are also useful. *See also* Christopher Slobogin, *Let's Not Bury Terry: A Call For Rejuvenation of the Proportionality Principle*, 72 St. Johns L. Rev. 1053, 1054 (1998) (call for rejuvenating the "proportionality principle" which is based on the premise that "a search or seizure is reasonable if the strength of its justification is roughly proportionate to the level of intrusion of police action.").

7. *See United States v. Carroll Towing Co.*, 159 F.2d 169, 173 (2d Cir. 1947) ("[I]f the probability be called P; the injury, L; and the burden B; liability depends upon whether B is less than L multiplied by P: i.e., whether B < PL.") (Hand, J.).

8. RICHARD A. POSNER, ECONOMIC ANALYSIS OF LAW, 748 (5th Ed. 1998).

9. *Id.*

10. *Id.*

of a successful search for an item that is necessary to prove or prevent a crime, the higher the value of P. Finally, the social loss of not convicting the target for the offense at issue or avoiding the potential harm presented by the situation is denoted as "L." The graver the crime and its consequences to the community, the greater the value of L.

This formulation is useful because it leads to common sense results. First, a search is reasonable (and thereby permissible) if the value of B is less than the value of P multiplied by L (i.e., B<PxL).[11] In other words, a search is reasonable if the cost in terms of lost privacy to the individual is less than the expected loss to society if the search is not conducted. For instance, if a minimally intrusive search (i.e., low B) will avoid a potentially high social loss (i.e., high PxL), the search is reasonable and may be conducted. Likewise, a more intrusive search (i.e. higher B) is justified the graver the crime and its social loss (i.e., higher L). Of course, a highly intrusive search (i.e., high B) without reasonable suspicion (i.e., low P) is unwarranted except for only the most extreme and socially devastating crimes (i.e., very high L).

An important point is that search and seizure analysis should not myopically focus on only one factor, or give one factor dispositive weight. Instead, all factors must be balanced under the circumstances of each case to determine whether the particular search is reasonable under the Fourth Amendment. As Judge Posner has noted, courts appear to apply these factors in their analyses:

> The courts seem generally if imperfectly aware of these factors. A minimally intrusive search (i.e., low B) — a stop-and-frisk or pat-down — is permissible on a lower P than a search of the home or an arrest. If a search is necessary to prevent the imminent repetition of a crime, which is one of the things that can make L large, a lesser showing of probable cause will suffice. The intrusiveness of the search and the

11. *Id.*

> two components of P are routinely considered and the existence of alternatives to searches sometimes. *But the gravity of the crime usually is not considered, although logically it should be. In particular most courts seem unaware that a higher L will justify a lower P, the more serious the crime, the less probable cause the police should be required to demonstrate in order to justify a search of a given intrusiveness (B).*[12]

As the emphasized language indicates, some courts tend to overlook that a minimally invasive search is justified to avoid a sufficiently dangerous crime. That is precisely the situation below.

The majority opinion in *J.L.* focused almost exclusively on factors (B and P) other than the apparent danger and potential peril of disallowing investigatory searches in this context (i.e., the higher L that is associated with violence arising from handguns and juveniles). This interpretation of the Fourth Amendment, which prohibits a "stop and frisk" search of a juvenile who may possess a weapon, places greater value on the juvenile's right to be free from such searches than it does on the avoidance of harm (immediate or future) that might arise if the anonymous tip is indeed accurate.

In contrast, the dissenters (as well as federal appellate courts) place greater value on society's interest in maintaining order and avoiding violent crimes, and lesser importance on the juvenile's individual privacy interest.[13] This view, which

12. *Id.* (emphasis added).

13. For example, Justice Overton, one of two dissenters below, observed:

> [T]he United States Supreme Court, in formulating the "reasonable suspicion" test under *Terry*, balanced the privacy interests of citizens with the safety interests of police officers and the public. . . . I believe that a proper balancing of the interests demonstrates that the government's obligation to protect citizens and law enforcement personnel from violent crime *substantially*

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permits a minimally intrusive "stop and frisk" search under the circumstances at issue, avoids or significantly reduces potential harm to society (including harm to the juveniles themselves). It explicitly recognizes that the escalating social costs of gun violence, particularly among juveniles, justifies granting limited authority to law enforcement officials to undertake investigatory action more readily. In other words, this approach recognizes that the greater L posed by potential danger from the volatile mix of juveniles and guns more than compensates for the lesser showing of suspicion (i.e., the lower P) provided by the anonymous tip.

This type of balancing and cost-benefit analysis is neither novel nor merely conjectural. Instead, as discussed below, this analytical approach finds support in *Terry* itself as well as decisions applying *Terry*. Federal appellate decisions, including controlling precedent of the Eleventh Circuit Court of Appeals (whose jurisdiction includes Florida), have used this approach to uphold "stop and frisk" searches to avoid the presumptive danger arising from illegal handgun possession. As discussed below, each of these decisions recognize the importance of avoiding violent crimes and other social losses that can be averted with minimally intrusive searches.

A. Potential Harm To Society, Particularly To Innocent Victims Of Violent Juvenile Crime, Is The Critical Factor In Upholding The "Reasonableness" Of A *Terry* Search Under The Circumstances Presented

The touchstone of this Court's analysis in *Terry* of the constitutionality of the "frisk" or pat-down search for weapons was the "reasonableness" of the search.[14] Whether a search is

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outweighs an individual citizen's interest against the limited privacy intrusion of a *Terry* stop and frisk.

727 So. 2d at 211-12 (footnote omitted; emphasis added).

14. The Court in *Terry* held, apparently for the first time, that the "probable cause" standard of the Warrant Clause of the Fourth Amendment does not apply to a "frisk" or pat-down search of an individual for weapons:

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reasonable requires a balancing of two competing factors, which are "the governmental interest which allegedly justifies official intrusion upon the constitutionally protected interests of the private citizen," 392 U.S. at 21 (quotation omitted), and "the nature and quality of the intrusion." *Id.* at 24. As this Court acknowledged, there is " 'no ready test for determining reasonableness other than by balancing the need to search [or seize] against the invasion which the search [or seizure] entails.' " *Id.* at 21 (quotation omitted).

In applying the reasonableness standard to the pat-down search in *Terry*, this Court recognized that more was at stake than the government's generalized interest in "effective crime prevention and detection," which is present in virtually every citizen-law enforcement encounter. *Id.* at 22. Although the police officer was justified in investigating what he considered to be suspicious behavior (in an effort to prevent a robbery) when he first approached Terry and his companions, this Court recognized that the limited search was justified by an even greater interest:

> 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

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> We do not retreat from our holdings that the police must, whenever practicable, obtain advance judicial approval of searches and seizures through the warrant procedure, or that in most instances failure to comply with the warrant requirement can only be excused by exigent circumstances. *But we deal here with an entire rubric of police conduct — necessarily swift action predicated upon the on-the-spot observations of the officer on the beat — which historically has not been, and as a practical matter could not be, subjected to the warrant procedure. Instead, the conduct involved in this case must be tested by the Fourth Amendment's general proscription against unreasonable searches and seizures.*

392 U.S. at 20 (citations omitted; emphasis added).

> the person with whom he is dealing is not armed with a weapon that could unexpectedly and fatally be used against him.

Id. at 23. In weighing this substantial governmental interest, this Court took into account the reality of gun crime in twentieth-century America:

> 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.

Id. at 23-24 (footnote omitted). In doing so, this Court explicitly recognized the needs of law enforcement officials to protect themselves and the public from the dangers of handgun violence, risks that escalate when a juvenile is armed.

The Court also cited the Federal Bureau of Investigation's 1966 Uniform Crime Reports for the United States, which reported that fifty-seven law enforcement officers were killed in the line of duty that year (fifty-five by gunshot wounds, two by knives). *Id.* at 24 n.21. Of the fifty-five who died from gunshot wounds, forty-one were killed with handguns. *Id.*[15] In other

15. The figures from 1988 through 1997 are equally alarming. According to Federal Bureau of Investigation statistics, 688 law enforcement officers were killed in the line of duty between 1988 and 1997, of which 633 were killed by firearms, including 492 by handguns. UNIFORM CRIME REPORTS FOR THE UNITED STATES, 17 (1997) (visited December 22, 1999) ("Law Enforcement Officers Killed and Assaulted") <http:www.fbi.gov/ucr/killed/97killed.pdf>. In 1994 alone, seventy-nine law enforcement officers were killed, all but one of which were killed by firearms. *Id.* Equally alarming are the circumstances under which many law enforcement officers were killed by firearms. For instance, of the 633 officers killed by firearms between 1988 and 1997, *more*

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words, 96% of the officers died from firearms of which 72% were handguns. These statistics, of course, did not include non-fatal injuries to officers or fatalities or injuries to persons other than officers arising from firearms.

Weighing the grim statistics of gun violence against police officers versus the "brief, though far from inconsiderable, intrusion upon the sanctity of the person," *id.* at 26, this Court in *Terry* concluded as follows:

> 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 (emphasis added). For this reason, this Court held "there must be a narrowly drawn authority to permit *a reasonable search for weapons for the protection of the police officer*, where he has reason to believe that he is dealing with an armed and dangerous individual, regardless of whether he has probable cause to arrest the individual for a crime." *Id.* at 27.

This Court in *Terry* was as concerned about the safety of innocent bystanders as it was with the safety of law enforcement officers. For instance, it was noted that the "sole justification of

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than half, 337, were five feet or less from the perpetrator at the time they were killed. *Id.* at 18. Moreover, 253 of the 633 officers killed by firearms in the line of duty between 1988 and 1997 were wearing body armor at the time they were killed. *Id.* at 19. These statistics starkly illustrate the risk faced by police officers who approach a potentially armed suspect.

the search in the present situation is the protection of the police officer *and others nearby*" to the area. *Id.* at 29 (emphasis added). In upholding the search, the Court found that the officer reasonably believed "it was necessary for the protection of himself *and others* to take swift measures to discover the facts and neutralize the threat of harm if it materialized." *Id.* at 30 (emphasis added). Moreover, where an officer has a "reasonable fear for his own *or others' safety*, he is entitled for the protection of himself *and others in the area* to conduct a carefully limited search of the outer clothing of such persons in an attempt to discover weapons which might be used to assault him." *Id.* (emphasis added). Subsequent decisions of this Court have reinforced this essential point.[16]

The *Terry* decision also recognized the significant invasion of personal privacy inherent in a pat-down search for weapons. Such a search is not a mere "petty indignity" and is limited to only that degree of intrusiveness necessary to check for weapons.

> A search for weapons in the absence of probable cause to arrest, however, must, like any other search, be strictly circumscribed by the exigencies which justify its initiation. Thus, it 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.

Id. at 25-26 (citation omitted). Restricting the scope of a pat-down search limits the degree of intrusiveness (B) and is a check

16. *See, e.g., Maryland v. Buie*, 494 U.S. 325, 333-34 (1990) (limited protective sweep of house in which arrest occurs is permissible where arresting officers have reasonable suspicion that "the area to be swept harbors an individual posing a danger *to those on the arrest scene*.") (emphasis added); *Michigan v. Long*, 463 U.S. 1032, 1049 (1983) (upholding search of passenger compartment of motor vehicle for weapons during a lawful investigatory stop of the occupant of the vehicle for "the protection of police and others").

on police misuse of their investigatory authority.[17] In doing so, the *Terry* decision struck a reasonable balance between safety concerns and personal privacy. Investigating officers need not turn a blind eye, nor unreasonably subject themselves (or the public), to risks to their personal safety in performing their duties, provided they have reasonable suspicion to conduct the limited searches permitted under *Terry*. As the next section explains, the balance tips in favor of such searches when officers receive sufficiently credible information, albeit obtained from an anonymous source, that a juvenile unlawfully possesses a firearm in a public place.

B. The Unique Dangers Posed By Firearm Possession, Especially By Juveniles, Favor The Use of Investigatory Searches Based On Anonymous Tips

In *Terry*, the justification, or "reasonable suspicion," for the stop and the ensuing pat down for weapons was based solely on the policeman's observations. 392 U.S. at 28. More recently, this Court held in *Alabama v. White*, 496 U.S. 325 (1990), that an anonymous (but substantially corroborated) tip to police concerning an individual alleged to be in possession of cocaine provided an adequate basis to justify the officer's investigatory stop of the individual's vehicle. *Id.* at 332. Importantly, the information corroborated by the officers in *White* was not, in and of itself, incriminating or suspicious. Rather, the officers confirmed merely that a women fitting a certain description left her apartment complex and traveled to a particular hotel as the tipster predicted. Notwithstanding the otherwise innocuous nature of the behavior the police observed in *White*, this Court held that the officers were permitted to make the inference that, if the tipster was sufficiently informed about the suspect's itinerary to be able to predict her travels, the tipster was "likely to also have access to reliable information about the individual's

17. *See, e.g., Minnesota v. Dickerson*, 508 U.S. 366, 378 (1993) (holding that police officer "overstepped the bounds of the 'strictly circumscribed' search for weapons allowed under *Terry*" when he "continued [his] exploration of respondent's pocket after having concluded that it contained no weapon. . . .").

illegal activities." *Id.* The tip, corroborated in its "innocent" details, was deemed sufficiently reliable to justify an investigatory stop and detention of the suspect.

The question squarely presented by the instant case is whether an anonymous tip that a juvenile fitting a particular description is at a specified location and is carrying a firearm, when coupled with police verification of the description and location of the individual, can similarly justify a "stop and frisk" of the juvenile for weapons. Although the tip in question lacks the degree of predictive qualities relied upon in *White*, several United States Courts of Appeals have held that a tipster's ability to predict the suspect's future actions is not essential to establishing the reliability of the tip.[18]

For example, in *United States v. McClinnhan*, 660 F.2d 500 (D.C. Cir. 1981), two police officers approached and frisked a man whose description fit the particulars of an anonymous tip that a black man wearing jeans, a black coat, and a black hat was carrying a sawed-off shotgun concealed in a black briefcase. *Id.* at 501. In upholding the officers' decision to frisk[19] the

18. *See, e.g., United States v. Bold*, 19 F.3d 99, 104 (2d Cir. 1994) ("[t]here is nothing in *White* that precludes police from acting on an anonymous tip when the information to be corroborated refers to present rather than future actions."); *United States v. Clipper*, 973 F.2d 944, 949 (D.C. Cir. 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."); *see also United States v. DeBerry*, 76 F.3d 884, 886 (7th Cir. 1996); *United States v. Gibson*, 64 F.3d 617, 624 (11th Cir. 1995).

19. The court in *McClinnhan* actually went further and upheld not only the frisk but also the warrantless search of the suspect's briefcase (which contained the loaded shotgun) under the "exigent circumstances" doctrine. 660 F.2d at 503. In doing so, the court observed:

> We are aware that, in countenancing a warrantless search incident to an investigative stop, we are near the limits of the exigent circumstances exception. But we think we are well within it. . . . *We are not upholding today a warrantless search for anything other than an immediately-accessible*

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suspect based on nothing more than the tip and the officers' verification of the suspect's description, the D.C. Circuit observed:

> We think that Officers Bryant and Bement were confronted with the same unappealing choice [as in *Terry*]. Either they stopped McClinnhan on the basis of the tip as corroborated by their observation or they could at best follow him through the streets of Washington hoping he would commit a crime, or at least brandish the weapon, out of doors, rather than walking inside a dwelling, and thus beyond police purview, before putting the shotgun to its intended use. Either they ignored their reasonable suspicion or they took some action. We think that where their suspicion has some objective foundation, the Fourth Amendment does not, particularly where the reported contraband is a weapon as lethal as a sawed-off shotgun, require a police officer to ignore his well-founded doubts and accordingly will permit an investigative detention.

Id. at 502-03. Thus, the D.C. Circuit concluded that, when police officers corroborate "every significant detail" of the anonymous tip except the actual possession of a firearm, they should not be subjected to the risk that the suspect may have immediate access to the weapon. *Id.*

Eleven years later, the D.C. Circuit reconfirmed this holding in *United States v. Clipper*, 973 F.2d 944, 949 (D.C. Cir. 1992), which made the common sense distinction between tips involving guns (which are inherently dangerous) and tips involving illegal drugs (which are not necessarily so). In upholding the anonymous tip search, the court noted the intrinsically perilous nature of investigating tips regarding weapons.

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> *dangerous weapon* which, because of its nature as earlier reported to the police, could under no circumstances have a legal existence.

Id. at 505 (emphasis added).

> This element of imminent 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.

Id. at 951. The court also noted that all but one of the state court decisions upon which the defendant relied "were concerned with drugs, not guns." *Id.* at 949. In short, the potential presence of weapons, particularly firearms, transformed the anonymous tip into one that the police authorities could not ignore.

The Eleventh Circuit Court of Appeals reached a similar conclusion. In *Gibson*, two officers acted quickly on an anonymous tip that provided descriptions of two individuals in a bar who were believed to be armed. 64 F.3d at 619. The police searched Gibson, who had an ammunition clip and a firearm and was charged with one count of possession of a firearm by a felon.

In affirming Gibson's conviction, the Eleventh Circuit held the anonymous tip (which turned out to be from the bar's manager) sufficiently reliable to support the officers' actions notwithstanding the absence of any predictive information in the tip. The details of the tip, that the potentially armed men were of a specified race and wore certain clothing (a long black trench coat), were "innocent" in the sense that they were not

themselves indicators of illegal conduct. The court held that once these details "were corroborated they added credibility to the anonymous tip." *Id.* at 623. Moreover, the tip was "hot" and acted upon expeditiously by the police officers.

> The officers also reached the bar no more than two and a half minutes after the call was received. The timing of their arrival ensured that the reported information was still fresh, increasing the chance that the officers would confront the potentially armed individual before any violence broke out, while also reducing the possibility that the officers would mistakenly detain the wrong person. Thus, we agree with both *Clipper* and *Bold* that *White* does not prevent law enforcement officers from relying and acting on anonymous tips when the information to be corroborated does not refer to future actions but instead details present circumstances.

Id. at 622-23. In addition, the Eleventh Circuit emphasized the public safety concerns that justify a pat down search when weapons may be present.

> Law enforcement officers are at greatest risk when dealing with potentially armed individuals because they are the first to confront this perilous and unpredictable situation. *A law enforcement officer "responding to a tip involving guns may take those hazards into consideration when balancing the suspect's interests against the 'need for law enforcement officers to protect themselves and other prospective victims of violence[.]'"*

Id. at 624 (emphasis added; footnote omitted). The effect of *Gibson* was to enable police officers in Florida to conduct limited *Terry* searches based upon anonymous, but verified, tips that included timely and accurate descriptions and public locations of persons believed to be armed.

The effect of *J.L.*, however, has been to create an untenable situation for law enforcement officers in Florida. A *Terry* search

based on an "anonymous tip" of a concealed weapon's violation is permissible under *Gibson* but is unconstitutional under the Florida Supreme Court's decision in *J.L.* A person charged with state and federal crimes arising from the same search would be released by a Florida state court but be subject to prosecution in a Florida federal court. For instance, if Gibson had been charged under Florida law as a felon who illegally possessed a firearm in the Miami bar, the search would have been illegal under *J.L.* and he would be released.

Of note, Chief Judge Richard Posner wrote the decision in *United States v. DeBerry*, 76 F.3d 884 (7th Cir. 1996), which upheld the conviction of a felon who was charged with possessing a handgun. The anonymous tip was that "a black man wearing a tan shirt and tan shorts" had a gun in his waistband at a specified street corner in Decatur, Illinois (possession of a concealed weapon is illegal in Illinois). *Id.* at 885. Judge Posner surveyed the extant cases, including the *Gibson* decision, and concluded that:

> if the tip, though only weakly corroborated in the sense just explained, is that a person is armed, the police are entitled to stop the person and search him for the gun. *Armed persons are so dangerous to the peace of the community that the police should not be forbidden to follow up a tip that a person is armed, and as a realistic matter this will require a stop in all cases.* For suppose DeBerry had made no threatening gesture but had simply denied in answer to the officer's question that he had a gun. Could the officer have left it at that? Or should he have asked for consent to frisk DeBerry and if DeBerry refused, insisted? The answers implicitly given by the cases we have cited are "no" and "yes," respectively. We think these answers strike the proper balance between the right of the people to be let alone and their right to be protected from armed predators.

Id. at 886. Judge Posner's pragmatic approach reflects the sensible point that police officers cannot simply ignore such tips, which are inherently dangerous to investigate.

The essential point in these decisions and others[20] is that, while anonymous "innocent information" tips with lesser predictive qualities may be less reliable (i.e., lower P), the potential danger to society (i.e., the L) is sufficiently grave to warrant a minimally intrusive search (low B) when the police receive specific, believable information that an individual is concealing a weapon illegally. Under these circumstances, the significantly greater L justifies reliance on a lesser showing of P. The likelihood of greater L under the circumstances just described is more than simply intuitive or hypothetical, particularly in the case of armed juveniles. As the next section discusses, statistics show that juvenile violence (particularly with firearms) has been increasing over recent years and is one of the most serious problems confronting the nation. Under these circumstances, this Court could easily conclude that the greater danger associated with juveniles and guns justified the *Terry* search below.

C. Harm To Society From Juvenile Firearm Possession And Use Is Increasingly A Social Cost That Weighs Heavily In Favor Of Limited Investigatory Searches

Statistics and studies support the proposition that guns, youth, and violence are a volatile mix that creates imminent danger. As the dissenting judges pointed out below, statistics show that violent crime committed by juveniles continues to rise. Federal Bureau of Investigations statistics presented to the

20. *See Bold*, 19 F.3d at 104 ("[w]here the tip concerns an individual with a gun, the totality-of-the-circumstances test for determining reasonable suspicion should include consideration of the possibility of the possession of a gun, and the government's need for a prompt investigation."). A number of state supreme courts and state courts of appeal permit searches under these circumstances. *See J.L. v. State*, 727 So. 2d at 212 (Overton, J., dissenting) (collecting numerous cases; noting that only one decision nationwide supported the majority's position).

House of Representatives in 1998 show that from 1970 through 1992, the number of juveniles charged with murder increased 104%.[21] Additionally, the number of juveniles arrested on weapons offenses has more than doubled over the past ten years.[22] Also, from 1965 through 1992, the number of twelve-year-olds arrested for violent crime rose 211%, while the number of thirteen and fourteen-year-olds and the number of fifteen-year-olds arrested for violent crimes rose by 301% and 297% respectively, according to FBI statistics.[23]

Additional scholarly research points to the rise and severity of violent crimes, particularly among youth. For example, one article documents the obvious "explosiveness" that occurs when more juveniles get their hands on guns, particularly when compared to the adult population.[24] Juvenile offenders are now being identified as a "high-risk and high-usage" group for firearms, and "youth homicide cases where guns were the lethal weapon have increased dramatically."[25] All of this data points to the need for a "special policy focus" on preventing juveniles from obtaining the weapons that are used to kill citizens at an ever-increasing rate.[26]

The data is overwhelming. Between 1985 and 1992, the number of homicides involving firearm use doubled, with a 160% increase in gun killings.[27] All of this points not only to an increase in gun possession and use by juveniles, but to a higher likelihood of use once juveniles possess weapons compared to adults.[28] The higher willingness of juveniles to use guns once

21. *J.L.*, 727 So. 2d 212, n.8 (Overton, J., dissenting) (citing 144 Cong. Rec. H226-27 (Feb. 3, 1998)).

22. *Id.*

23. *Id.*

24. Franklin Zimring, *Kids, Guns, and Homicide: Policy Notes on an Age-Specific Epidemic*, 59 LAW & CONTEMP. PROBS. 25, 25 (1996).

25. *Id.*

26. *Id.* at 37.

27. *Id.* at 28-29.

28. *Id.* at 29-30 (noting that 78% of homicides by juveniles in 1992 involved guns, up 32% from 1984, compared to 69% for all other ages, up only 15%).

they possess them leads to the conclusion that "[i]mmaturity justifies restriction of firearms access both because kids need to be protected from the consequences of their own bad judgments and because other people need to be protected from armed and dangerous teens."[29] In other words, a special focus is necessary when guns and youth are at issue.

Confirming the views of the dissenting justices in *J.L.*, scholars have noted that in "recent years, the use and deadly consequences of gun violence among adolescents has reached epidemic proportions."[30] In fact, although overall homicide rates are declining, firearm deaths among teenagers are nonetheless continuing to rise.[31] This statistic is especially alarming because when potentially violent crimes such as robbery take place, adolescents have a tendency to escalate into violence more quickly due to their more limited reasoning ability.[32] Furthermore, studies show that 39% of surveyed youths reported knowing someone who was either shot or killed by a handgun, and over 50% reported being able to get a handgun if so desired.[33] In other words, "guns were a significant part of their everyday social ecology."[34] Moreover, thresholds may have been lowered for the use of weapons to resolve youth disputes, such that gun use has become "a central part of status and identity formation within the 'street-oriented' world of the inner city."[35]

All of these studies are supported by the National Center for Juvenile Justice's recent report, which notes that while juvenile homicides were the lowest in a decade in 1997, they were still 21% above the average in the 1980s, and *all of the increase in homicides by juveniles between the mid-1980s and*

29. *Id.* at 36.

30. Deanna L. Wilkinson & Jeffrey Fagan, *The Role of Firearms in Violence "Scripts": The Dynamics of Gun Events Among Adolescent Males*, 59 LAW & CONTEMP. PROBS. 55 (1996).

31. *Id.*

32. *Id.* at 71.

33. *Id.* at 73.

34. *Id.*

35. *Id.* at 77-78.

mid-1990s was firearm related.[36] By 1994, 82% of all youth homicides involved guns.[37] Even more telling, the Report states that one in five juvenile arrestees reported carrying a gun all or most of the time.[38] This fact is supported by the 1996 report of the Bureau of Alcohol, Tobacco and Firearms, which states that almost half of all "crime guns" recovered (i.e., guns used in crime, illegally possessed, or suspected to have been used in a crime) were from individuals under the age of 25.[39] In short, young people are continuing to possess and use guns at an alarming rate that is much higher than the adult rate.

These studies and statistics provide strong support for the position of the dissenting justices in *J.L.* As Justice Overton stated, the "possession without authority of a concealed firearm by any individual in a public place is a prescription for disaster, but the possession of a firearm by a child is an especially dangerous and explosive situation." 727 So. 2d at 211 (Overton, J., dissenting).[40] Certainly, this potentially "explosive" situation heightens society's interest in public safety and tips the balance in favor of a minimal intrusion on the juvenile's privacy interest.

As Justice Overton cautioned in his dissent in *J.L.*, the "unfortunate reality of today's society is that dangerous persons of all ages stand armed and ready to shoot law enforcement officers and citizens." *Id.* His dissent was issued in late 1998, months before still more tragic incidents that took innocent lives at Columbine High School and elsewhere. He also presciently

36. JUVENILE OFFENDERS AND VICTIMS: 1999 NATIONAL REPORT 53-54 (1999).

37. *Id.* at 54.

38. *Id.* at 69.

39. *Id.*

40. In addition to being inherently dangerous, in Florida the public possession of a firearm by a juvenile under the age of sixteen is illegal. *See* § 790.22, Fla. Stat. (1997). The only exceptions are when the minor is hunting or participating in legitimate marksmanship activities under the supervision of an adult. *See id.* § 790.22(3). Neither of these situations appear to apply to possession of a firearm at a bus stop in front of a pawnshop in South Florida.

noted that "[u]ndoubtedly, by the time this opinion is published, the list of cites where schoolyard homicides have occurred will have grown." *Id.* at 212, n. 9 (Overton, J., dissenting) (listing the many places where school shootings had occurred as of late 1998). This ominous sentiment is grounded in the reality of juvenile arrests, studies of violent crime, and the numerous news reports of incidents involving gun violence from Littleton, Colorado, to Paducah, Kentucky, to Honolulu, Hawaii. The empirical data and the anecdotal evidence both show the need for greater weight on public safety, particularly when juveniles and gun violence are involved.

D. The *J.L.* Decision Has Undermined The Maintenance Of Order And Worked Mischief Among Florida's Appellate Courts

Finally, the impact of the Florida Supreme Court's majority opinion in *J.L.* has been to undermine the maintenance of order in society and to increase the likelihood and magnitude of harm to innocent persons. Since the opinion's release in December 1998, Florida's intermediate appellate courts have applied its holding (at times reluctantly) in six decisions, all of which resulted in the suppression of evidence and release of the defendants.[41] The natural and predictable result of the majority opinion in *J.L.* has been to render law enforcement less effective in its efforts to protect the citizenry of Florida from potentially dangerous situations and has, no doubt, had a demoralizing effect on law enforcement officers charged with following *J.L.*'s dictates. Law enforcement officers must now choose between waiting and hoping a suspect demonstrates "some observable suspicious conduct" that will allow them to act on the tip and putting their lives on the line by initiating a perilous "consensual

41. *Woodson v. State*, 1999 WL 682608 (Fla. 2d DCA 1999); *Maynard v. State*, 742 So. 2d 315 (Fla. 2d DCA 1999); *Johnson v. State*, 741 So. 2d 1223 (Fla. 2d DCA 1999); *Travers v. State*, 739 So. 2d 1262 (Fla. 2d DCA 1999); *Williams v. State*, 738 So. 2d 960 (Fla. 2d DCA 1999); *R.A. v. State*, 725 So. 2d 1240 (Fla. 3d DCA 1999).

encounter" with the potentially armed suspect.[42] Moreover, as discussed below, the decision has created mischief among lower Florida courts that have construed it so broadly to preclude wholly reasonable searches in other contexts.

The recent case of *Maynard v. State*, 742 So. 2d 315 (Fla. 2d DCA 1999) is an excellent example of how the decision in *J.L.* has tipped the balance too far against legitimate law enforcement needs to the detriment of the public. In that case, Florida's Second District Court of Appeal reversed a conviction of the 19-year-old defendant because the officer's justification for conducting a quick *Terry* stop was based on an "anonymous" tip originating from the suspect's own mother.

The tip in question was received by a police dispatcher in the early morning from a woman claiming to be the suspect's mother. She related that her son was carrying a firearm in his backpack, which she described as a "Mac-10 Uzi machine gun." *Id.* at 316. She said that her son had just left a specific address and was walking toward a nearby street. She described her son

42. Justice Harlan's concurrence in *Terry* shows the impractical nature of requiring a consensual encounter between police and persons suspected of having a firearm.

> Where such a stop is reasonable, however, the right to frisk must be immediate and automatic if the reason for the stop is, as here, an articulable suspicion of a crime of violence. Just as a full search incident to a lawful arrest requires no additional justification, a limited frisk incident to a lawful stop must often be rapid and routine. *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.*

392 U.S. at 33 (emphasis added). In contrast, the majority in *J.L.* stated that "there was nothing to prevent the police from engaging in a consensual encounter with the trio or from engaging in questioning them concerning their possession of a weapon as reported in the anonymous tip." 727 So. 2d at 208. It is respectfully suggested that the "Does anyone here have a gun?" approach is unwise and can expose law enforcement officers to the very risks that Justice Harlan and this Court in *Terry* concluded they should not have to face.

as "a white male, nineteen years of age, wearing a black and white shirt and black pants, and carrying a green backpack." *Id.* A BOLO was issued and an officer in the area immediately headed to the intersection that was provided in the tip. The defendant, who fit the description, was stopped and "patted down" as a safety precaution. *Id.* The investigatory search resulted in the recovery of a 9mm machine gun in the son's backpack.

Relying on *J.L.*, the appellate court overturned the son's conviction. *Id.* at 318. Incredibly, the court held that an "anonymous" tip, even from a person who claims to be the suspect's mother, is no more credible than any other "anonymous" tip even if all of the detailed information provided concerning the suspect is verified. *Id.* at 317. The court considered the tip to be anonymous in nature rather than one from a "citizen-informant" because the police failed to confirm the identity of the tipster either through "modern police communications centers" that "immediately know the address of an incoming telephone call" or by driving to the address where the call originated. That left police officers with the option to engage "in a consensual encounter with the suspect" in the hope of gaining additional information to "justify a search." *Id.* at 318.[43] The latter approach, of course, if fraught with obvious peril.

The mischief of *J.L.* is apparent. In *Maynard*, it thwarted police officers in their valid efforts to prevent crimes and placed the rights of a heavily-armed nineteen year-old perpetrator above the legitimate safety concerns of the community. The irony is that the tip was from the suspect's own mother. Thus, the rule of *J.L.* thwarted the legitimate efforts *of a parent* to protect society and her son from the evils stemming from illegal possession of a machine gun. The inability to conduct a minimal

43. The *Maynard* decision suggests that these activities could have been performed simultaneously by separate police officers, but that assumes sufficient available manpower by the law enforcement agency in question at the exact time the anonymous tip is received.

"stop and frisk" search operated to the obvious detriment of society. Barring an instant verification of the mother's identity, the police officer was forced to choose between losing track of the suspect and initiating a risky "consensual" encounter with a teenager accused of packing a machine gun. The unreasonableness of this result is apparent.

Similar to *Maynard* is the Second District's decision in *Woodson v. State*, 1999 WL 682608 (Fla. 2nd DCA 1999). The appellate court reversed a concealed weapons charge despite the police having a detailed description of the suspect and actually seeing a bulge in his pocket. The information was provided by an individual who approached police and identified himself as "Frank." The individual provided a detailed description of the suspect's clothing, his hairstyle, and the location of his handgun. The officers approached the suspect in a public store and confirmed every aspect of the anonymous tip (except the tipster's identity) including personally viewing a bulge in the suspect's pocket (where the tipster said it was located). The Second District, however, reversed the defendant's conviction and directed his release. The court held that the officers' *Terry* stop was unlawful without independent investigation of the tip. The fact that the "anonymous" tipster was an individual who voluntarily approached police officers, identified himself, and provided detailed and verified information about the suspect and the location of the firearm apparently was of no moment.

Yet another low point in the application of *J.L.* is the Second District's holding in *Travers v. State*, 739 So. 2d 1262 (Fla. 2nd DCA 1999). In *Travers*, the court reversed a conviction even though it was the defendant himself who provided the anonymous tip. During the course of a "chatroom" conversation on the Internet, a police detective set up a meeting with another participant for the purpose engaging in illegal activity. *Id.* at 1263. The actual identity of the participant was not known at that time. The meeting was set at 7:45 p.m. that same night at a local church parking lot. The participant identified himself as a 26 year-old male

with brown hair whose vehicle was a black Ford Taurus. That evening, the detective positioned himself across from the church. At 7:45 p.m., he saw a blue Buick Skylark pull into the church parking lot where other vehicles were parked. The vehicle slowly circled the lot and left. It came back five minutes later, entered the lot, and slowly circled again. After the car exited the lot, the detective pulled up behind it and "observed the driver to be a white male with brown hair who appeared to be in his late 20s or early 30s." *Id.* at 1263. The driver of the car pulled into a gas station where he was interviewed and later arrested.

On appeal, the defendant claimed that the police did not have grounds for the investigatory stop based on the substantially corroborated information. The appellate court agreed and held that the "chatroom" conversation was "best analogized to the anonymous tips cases." *Id.* at 1263. In doing so, the court held that the conversation with the then-unidentified individual in the chatroom was not a reliable source of information under the rationale of *J.L.* The court, however, wrongly applied the label "anonymous tip" to a situation that is far afield from other "anonymous tip" cases. Here, the "anonymous tip" did not come from a third party (as is almost universally the case); instead, it came from the very person who sought to meet the police detective to engage in crimes.

In addition, the predictive content of the tip was substantial. An uninformed "anonymous" source would not have "inside information" regarding the suspect's Internet communication with the police detective earlier that day. Theoretically, the communication could have been with an individual who was able to predict that the suspect (who matched the description given) would be driving through the particular church parking lot at precisely 7:45pm in a somewhat suspicious manner (i.e., circling slowly twice). The likelihood of such prescience, however, is remote. Instead, the appellate court should have considered that the "anonymous" communication at issue resulted in the scheduling of a meeting that — later that evening — confirmed the reliability of the earlier communication.

The point of *Travers* is that *J.L.* has spawned decisions that undermine investigatory searches in both traditional "anonymous tip" situations as well as others. The irony of *Travers* is that the defendant was deemed an unreliable source of information regarding his own future whereabouts. Under the circumstances, the officer was justified in making a brief investigatory detention of the suspect who matched the description given and who appeared at the precise place and time that had been pre-arranged with the law enforcement officer. Instead, the court inexplicably ruled that the defendant's own description of himself coupled with the suspicious activity observed by the police officer was insufficient to warrant an investigatory detention and investigation.[44]

Perhaps the most egregious application of *J.L.* occurred in the case of *R.A. v. State*, 725 So. 2d 1240 (Fla. 3rd DCA 1999). In that case, Florida's Third District Court of Appeal reversed the conviction of a juvenile based on *J.L.*, even though it was plainly obvious to the police officer that the anonymous tip was corroborated and a potential crime was in progress. In that case, the officer spotted several teenagers a very short distance from an elementary school that an anonymous tipster reported was being robbed at about 1:30 in the morning. Upon spotting the youngsters at the early hour at a dead-end road very close to the school, the officer proceeded to conduct a *Terry* pat-down, resulting in evidence that the defendant had been involved in the theft and trespass. Nonetheless, the appellate court reversed the juvenile's conviction because the officer did not independently substantiate the anonymous tip, even though he had spotted the youths on a deserted road near the school just minutes after the reported robbery had occurred. The result

44. *See also Johnson v. State*, 741 So. 2d 1223, 1224 (Fla. 2nd DCA 1999) (drug possession conviction reversed because officer did not have reasonable suspicion for *Terry* stop, even though officer had detailed description of suspect that was corroborated). In *Williams v. State*, 738 So. 2d 960 (Fla. 2nd DCA 1999), the only other decision to apply *J.L.*, the State conceded there was no reasonable suspicion as the tip apparently was not corroborated at all.

overlooks common sense and applies the rigid rule laid out in *J.L.* in a way that stymies legitimate law enforcement efforts. *Id.* at 1243 (Schwartz, C.J., dissenting).

These cases demonstrate that the majority opinion in *J.L.* has led to a reduction in the ability of police to maintain order in society and, at the margin, placed the lives of officers and the general public at greater risk. Under *J.L.* and its progeny in Florida, officers must dawdle until they get "additional information" — if any, if ever — to engage in a weapon's check thereby allowing suspects to remain unchecked and to flee. As a result, society is at risk even when all indicators, including a level of common sense, point to a justifiable basis for a brief investigatory detention to avoid harm. Yet, as the foregoing cases demonstrate, the *J.L.* decision has had the perverse effect of actually *raising the bar* above the normal reasonable suspicion standard that traditionally has been applied to investigatory stops. On balance, the Fourth Amendment does not require that the public be subject to the increased danger of potentially violent, gun-toting youths where an immediate and minimally intrusive "stop and frisk" is based on an accurate albeit anonymous tip. This Court should reverse the Florida Supreme Court's decision and restore the balance established in *Terry*.

CONCLUSION

The Justice Coalition respectfully suggests that the Florida Supreme Court's analysis is faulty because it fails to consider the dire social losses that arise from the possession of weapons by juveniles. Under a cost/benefits approach, a "stop and frisk" search was reasonable under the circumstances to prevent potential harm to innocent victims. The minimally intrusive "stop and frisk" search was justified because the tip, albeit anonymous, was accurate and, more importantly, the search averted the potentially devastating social losses that arise (all to frequently) from juvenile possession of handguns. The Justice Coalition values individual freedoms, including the right to be free from unwarranted governmental intrusions. The individual freedom to exercise this liberty, however, is not an absolute trump card and must be tempered by the state's interest that its citizens be free from social disorder and its consequences. Here, a proper balancing of society's interest in public safety against the invasion of the privacy interest of the juvenile suggests that the police officers' decision to conduct a *Terry*-type search of J.L. upon confirmation of the details of the anonymous tip was warranted under the circumstances presented.

Respectfully submitted,

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