GRANTED

CASE NO. 98-1993
IN THE UNITED STATES SUPREME COURT
October Term 1999

THE STATE OF FLORIDA,
Petitioner,

vs.

J.L., a juvenile,
Respondent.

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF FLORIDA

PETITIONER'S BRIEF ON THE MERITS

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

MICHAEL J. NEIMAND
Assistant Attorney General
Counsel of Record
Office of the Attorney General
110 S.E. 6th Street - 9th Floor
Ft. Lauderdale, Florida 33301
(954) 712-4600

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?

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?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES **PAGE**

STATUTES

CASE NO. 98-1993
IN THE UNITED STATES SUPREME COURT
October Term 1999

THE STATE OF FLORIDA,
Petitioner,

vs.

J.L., a juvenile,
Respondent.

OPINIONS BELOW

The decision from which Petitioner seeks to invoke the discretionary review of this Court is reported at *J.L. v. State*, 727 So.2d 204 (Fla. 1998).[A-1].[1] The decision of the District Court of Appeal of Florida, Third District is reported at 689 So.2d 1116. [A-31]. The trial court's order granting the motion of Respondent, J.L., to suppress the evidence is not reported.[A-35].

JURISDICTION

The Supreme Court of Florida's opinion was filed on December 17, 1998 and rehearing was denied on March 9, 1999. This Court has jurisdiction pursuant to 28 U.S.C. § 1257(a).

[1] Petitioner's motion to dispense with the joint appendix was granted by the Court. Thus, the symbol "A" followed by the appropriate number represents a citation to the materials contained in the Appendix to the Petition for Writ of Certiorari.

CONSTITUTIONAL PROVISIONS INVOLVED

Amendment IV, United States Constitution, provides, in pertinent part:

> The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause...

Amendment XIV, §I, United States Constitution, provides, in pertinent part:

> ...nor shall any state deprive any person of life, liberty, or property, without due process of law...

Article I, § 12, Florida Constitution, provides:

> The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, and against the unreasonable interception of private communications by any means, shall not be violated. No warrant shall be issued except upon probable cause, supported by affidavit, particularly describing the place or places to be searched, the communication to be intercepted, and the nature of the evidence to be obtained. This right shall be construed in conformity with the 4th Amendment to the United States Constitution, as interpreted by the United States Supreme Court. Articles or information obtained in violation of this right shall not be admissible in evidence if such articles or information would be inadmissible under decisions of the United States Supreme Court construing the 4th Amendment to the United States Constitution.

STATEMENT OF THE CASE AND FACTS

Respondent, J.L., was the Petitioner in the Supreme Court of Florida. The facts of the case were established in the evidentiary hearing held by the trial court on Respondent's motion to suppress a firearm. Based on Respondent's possession of the gun, a petition for delinquency was filed, charging Respondent with unlawfully carrying a concealed firearm and unlawful possession of a firearm by one under 18 years of age. [A-19].

The sole witness at the evidentiary hearing on the motion to suppress was Officer Carmen Anderson, a fourteen year veteran of the Miami-Dade Police Department. [A-40] The officer's uncontroverted testimony established:

1. On October 13, 1995 she was on routine patrol. [A-40].

2. She received a call from her dispatcher regarding an anonymous tip. [A-40].

3. Based on information received from the anonymous tipster, she was then dispatched to the area of 183rd Street and 24th Avenue in Miami. [A-40].

4. The details of the tip were that there were several young black males standing at a bus stand in front of a pawn shop, one of whom was carrying a concealed firearm. [A-40-41].

5. Each young black male was particularly described. [A-40].

6. The individual carrying the firearm was described as a black male with a plaid shirt. [A-40].

7. Officer Anderson and another unit arrived at the bus stop approximately six minutes after receiving the dispatch. [A.-41].

8. Officer Anderson saw three black males, who were found at the location where the anonymous informant said they would be, each of whom fit the description provided in the tip, including one of whom was wearing a plaid shirt. [A-41].

9. Officer Anderson immediately went to the black male fitting the description of the one who was carrying a concealed firearm and asked the black male with the plaid shirt to place his hands on the bus stop. [A-42].

10. Officer Anderson immediately began to frisk him and she saw the butt of a gun coming out of his left pants pocket. She removed the gun and arrested Respondent. [A-44].

The trial court found the evidence was insufficient to support a reasonable suspicion of criminal activity and suppressed the gun. [A-35-36].

The State of Florida, appealed the suppression order to the District Court of Appeal of Florida, Third District. The court reversed the trial court's granting of the motion to suppress and concluded that there was reasonable suspicion that Respondent committed the crime of carrying a concealed firearm, thus justifying the stop and frisk of the juvenile. The Third District held that the police officers found themselves, based on the extent of verification, in a situation in which they had a reasonable suspicion that Respondent was carrying a concealed weapon. In order to investigate criminal misconduct and to secure their own safety, the police officer carried out a warrantless frisk. Agreeing with the analysis stated by the court in *United States v. Bold*, 19 F.3d 99 (2nd Cir. 1994), the court concluded, where a confirmed tip concerns an individual with a gun, the officer should not be required to make a choice between stopping and searching the individual, or waiting until the individual brandishes or uses the gun. Since the latter choice is almost always unacceptable, the police officer has no choice but to stop and frisk. [A-31-34]. *State v. J.L.*, 689 So.2d 1116 (Fla. 3d DCA 1997).

The Supreme Court of Florida, in *J.L. v. State*, 727 So.2d 204 (Fla. 1998), quashed the decision of the lower court admitting the

gun, based on its determination that reasonable suspicion can never be established by an anonymous tip which provides only innocent details, and upon investigation only the innocent details are verified. The court held that anonymous tips can provide the basis for reasonable suspicion only when it can be established that the tip is reliable. Reliability of an anonymous tip can be established when the tip describes suspicious details concerning conduct that is presently occurring or is about to occur in the future and such conduct is verified by the police. Reliability of an innocent details tip can be established if the tip predicts particular future action which is verified by the police. If an innocent details tip does not concern future action, then reasonable suspicion can be established by verification of a presently occurring innocent details tip coupled with an independent police investigation which would have to uncover something more that just a verification of the innocent details. [A-4-9]. *Id.* at 206-208.

Based on the foregoing facts, the court held that the instant stop and frisk was unreasonable because the police officer's independent investigation only corroborated the innocent details and did not establish that the suspect was engaging in suspicious behavior. The court then suggested that the police officer involved should have used a less intrusive means, such as a consensual encounter, to determine if the suspect was armed and dangerous before a frisk would have been justified. The court also suggested a more reasonable approach was to wait until some observable suspicious conduct took place in order to justify the frisk. The court based its holding on *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968) and held that to approve the instant stop and frisk would create a "firearm exception" to *Terry*, by requiring less than reasonable suspicion for a *Terry* stop in response to an anonymous tip which alleged that an individual is carrying a firearm. The court rejected the so called "firearm exception" because it was unwilling to carve out a new exception from the original exception recognized in *Terry*. [A-9-11]. *Id.* at 208-209.

The dissent found the majority's interpretation of *Terry* was overly restrictive and erroneous because an anonymous tip concerning an individual with an illegally concealed firearm presents a unique situation. When confronted with this 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. If police officers are not allowed to stop and frisk such an individual, they must then wait until the individual brandishes or uses the gun before they can act. The dissent found this was unreasonable because the additional suspicious circumstances that the majority required before the police may act will too often turn out to be the suspect's actual use of the unseen firearm. [A-24]. *Id.* at 214.

The dissent would have joined the majority of jurisdictions that have recognized a "firearm exception" to the general rule that the corroboration of only the innocent details of an anonymous tip do not provide police officers with reasonable suspicion of criminal activity. The necessity of such a holding is self evident: it simply and wisely abates the great risk of harm to the public and police in such a situation and, substantially outweighs the limited privacy intrusion to the suspect. The dissent believed such a holding is true to the dictates of *Terry* which does not require that the officer be absolutely certain that the individual is armed but rather whether a reasonably prudent person in the circumstances would be warranted in the belief that his safety or that of others was in danger. The dissent, in urging affirmance, finally opined that it is clearly reasonable in today's society for law enforcement officers confronted with the circumstances in this case to conduct a stop and frisk. [A- 19]. *Id.* at 215.

SUMMARY OF ARGUMENT

Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968) teaches that a stop and frisk must be supported by reasonable suspicion that the individual stopped is engaged in criminal activity. Reasonable suspicion is established by the totality of the circumstances, taking into account both the content of information possessed by police and its degree of reliability. *Adams v. Williams*, 407 U.S. 143, 146, 92 S.Ct. 1921, 1923, 32 L.Ed.2d 612 (1972).

In this case, the totality of the circumstances includes the officer's confirmation of all the anonymous tip information, the report that one of the individuals possessed a gun and the statistical likelihood that the gun was illegal. As a result, the officer had a reasonable suspicion under *Terry* to stop and frisk the Respondent. To require police, in situations where there is an anonymous tip that a specific individual is unlawfully carrying a firearm not observed by police officers, to wait for the brandishment or use of the firearm before finding reasonable suspicion effectively negates the *Terry* doctrine. Thus, in the instant situation, where innocent details of the anonymous tip are immediately verified, reasonable suspicion exists that the individual is committing a crime. Therefore, *Terry* permits a contemporaneous stop and frisk since the evidence of criminality is the concealed firearm which also supports a reasonable belief that the individual is armed and dangerous.

This holding is in accordance with the Court's prior cases that have recognized that the easy availability of firearms has made police investigations fraught with the possibility of dealing with armed and dangerous suspects. Thus, in order to lessen the impact of such danger, the Court, where there is a possibility that a firearm could be involved, has permitted *Terry* stops and frisks with less corroboration than when a firearm was not involved.

The application of this rule of law to the instant factual situation establishes that there was reasonable suspicion to believe that Respondent was committing the crime of carrying a concealed firearm. The anonymous tip provided the exact location and descriptions of the

three young, black males, including Respondent, and that Respondent descriptively dressed, was carrying a concealed firearm. The police officer immediately verified that the three juveniles were at the described location and appeared as described. At that time, the reliability of the tip was established and the police officer had reasonable suspicion to detain Respondent and concomitant therewith to frisk Respondent because he was armed and dangerous. In accordance with Florida law, Respondent could never be lawfully in possession of a firearm. This fact is undisputed because at the time of the offense Respondent was sixteen years old and he could not lawfully possess a firearm until he was eighteen and he could not get a permit to carry a concealed firearm until he was twenty-one years old.

ARGUMENT

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.

This case provides the Court with the opportunity to answer the question left open in *Alabama v. White*, 496 U.S. 325, 328, 110 S.Ct. 2412, 2415, 110 L.Ed.2d 301 (1990): 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? America today has unlimited access to all kinds of weapons. With the increased access to weapons both the police and the public have a right to be protected from those who would do harm with a weapon. In determining whether a search or seizure is reasonable under the Fourth Amendment, the rights of the citizen's, both the police and the general public, are weighed against the intrusion on the individual's privacy. Thus, when a concealed firearm is the basis of an anonymous tip of criminal activity, the Fourth Amendment requires that the balance be in favor of the safety of the police and the public.

It is well settled that one of the specifically established exceptions to the requirements of both a warrant and probable cause, *Katz v. United States*, 389 U.S. 347, 357, 88 S.Ct. 507, 19 L.Ed.2d 576 (1967), is that a police officer can stop and briefly detain a person for investigative purposes if the officer has a reasonable suspicion supported by articuable facts that criminal activity may be afoot. *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968). The Court recognized that a police officer making a reasonable investigatory stop should not be denied the opportunity to protect himself from attack by a hostile suspect. Thus, when the officer is

justified in believing that the individual whose suspicious behavior he is investigating at close range is armed and dangerous to the officer or others, he may conduct a limited protective search for concealed weapons. 392 U.S. at 24, 88 S.Ct. at 1881. The purpose of this limited search is not to discover evidence of crime, but to allow the officer to pursue his investigation without fear of violence, and thus the frisk for weapons is equally necessary and reasonable, whether or not carrying a concealed weapon violated any applicable state law. *See: Adams v. Williams*, 407 U.S. 143, 146, 92 S.Ct. 1921, 1923, 32 L.Ed.2d 612 (1972).

The Supreme Court of Florida held that the instant stop and frisk, was *per se* unreasonable because the police officer's independent investigation only corroborated the innocent details and did not establish that the suspect was engaging in suspicious behavior. A majority of the court suggested that in this type of situation the police officer involved should have used a less intrusive means, such as a consensual encounter, to determine if the suspect was armed and dangerous before a frisk would be justified. The court's more reasonable approach was to wait until some observable suspicious conduct took place in order to justify the frisk. The court held that to approve the instant stop and frisk would create a "firearm exception" to *Terry*, by requiring less than reasonable suspicion for a *Terry* stop in response to an anonymous tip which alleged that an individual is carrying a firearm. [A-4-11].

The issue squarely fits within the unanswered question in *Alabama v. White*, 496 U.S. 325, 328, 110 S.Ct. 2412, 2415, 110 L.Ed.2d 301 (1990) as to whether an anonymous tip which states that an individual is carrying a concealed firearm may provide the necessary reasonable suspicion to support an investigatory detention and frisk where the innocent details of the tip are immediately verified. The general rule that corroboration of only the innocent details of an anonymous tip does not provide police officers with reasonable suspicion of criminal activity is unrealistic when a weapon is involved. Where, as here, the corroboration of only the innocent details of an anonymous tip are tied directly to the tipster's assertion that a weapon is involved, the requisite reasonable suspicion of criminal activity exists. The quantum of facts necessary to provide

reasonable suspicion where there is an anonymous tip that an individual is unlawfully carrying a concealed firearm does not require further corroboration since the great risk of harm to the public and police in such a situation substantially outweighs the limited privacy intrusion to the suspect.

A. A *Terry* stop and frisk is justified by the totality of the circumstances, where an anonymous tip relates both innocent facts, verified immediately, and the carrying of a concealed firearm.

In *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968), the Court examined the validity of a "stop and frisk" in the absence of probable cause and a warrant. In *Terry*, the police officer, after briefly observing several suspects, formed the conclusion that they were about to engage in criminal activity. The officer then detained the suspects and fearing they were armed, patted down the outside of their clothing and discovered firearms. The reasonableness of the officer's conduct was determined by balancing the need to search or seize against the invasion which the search or seizure entailed. Although the Court found that the conduct of the officer involved a "severe, though brief, intrusion upon cherished personal security," 392 U.S. at 24-25, 88 S.Ct. at 1881-1882, the Court also found that the conduct was reasonable when it weighed the interest of the individual against the legitimate interest in "crime prevention and detection," *Id.* at 22, 88 S.Ct. at 1880, and the "need for law enforcement officers to protect themselves and other prospective victims of violence in situations where probable cause is lacking for an arrest." *Id.* at 24, 88 S.Ct. at 1881. The Court then held that when the officer has a reasonable belief "that the individual whose suspicious behavior he is investigating at close range is armed and dangerous to the officer or others, it would appear 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." *Ibid.* One of the reasons the Court found that made the foregoing reasonable was its recognition of

the easy availability of firearms to potential criminals in this country. *Id*, at 24 n. 21, 88 S.Ct. at 1881 n. 21.[2]

The Court then explained that in approving the reasonableness of the stop and frisk involved, the Court "need not develop at length in this case, however, the limitation which the Fourth Amendment places upon a protective search and seizure for weapons. These limitations will have to be developed in the concrete factual circumstances of individual cases." *Id.* at 29, 88 S.Ct. at 1884.

In *Adams v. Williams*, 407 U.S. 143, 92 S.Ct. 1921, 32 L.Ed.2d 607 (1972), the Court approved a frisk for weapons as a justifiable response to an officer's reasonable belief that he was dealing with a possibly armed and dangerous suspect. In *Adams*, the police officer, who was alone early in the morning on car patrol in a high crime area, received information from a known informant that an individual seated in a nearby vehicle was carrying narcotics and had a gun in his waist. The officer then approached the vehicle and asked Williams to open the door. When Williams rolled down the window instead, the officer reached into the car and removed a fully loaded revolver from Williams' waistband. The gun had not been visible to the officer from outside the car, but it was in precisely the place indicated by the informant.

Before applying *Terry*, the Court succinctly rephrased the applicable legal principles: "A brief stop of a suspicious individual, in order to determine his identity or to maintain the status quo momentarily while obtaining more information, may be most reasonable in light of the facts known to the officer at the time." *Id.* at 146, 92 S.Ct. at 1923.

---

[2] Justice Douglas in his dissenting opinion in *Adams v. Williams*, 407 U.S. 143, 92 S.Ct. 1921, 32 L.Ed.2d 612 (1972), after acknowledging that Connecticut allows its citizens to carry concealed firearms, recognized that the real problem is not with the Fourth Amendment but with the ease with which anyone can acquire a handgun. Justice Douglas advocated strict gun control laws as the method to insure police officer safety when investigating suspicious activity as opposed to granting the police further authority to intrude upon the rights of the people.

The Court then found that the officer acted justifiably in responding to his informant's unverified tip. This holding was based on the fact that the informant was known to the officer and provided reliable information in the past and that the innocent details of the tip were immediately verified. Thus, the Court found that the information carried enough indicia of reliability to justify the officer's forcible stop.[3] The Court recognized that this factual scenario presented a stronger case than an anonymous tip because the tipster exposed himself to criminal liability for making a false complaint. However, the Court did not decide whether under a different factual scenario, an anonymous tip containing the same details as the one therein would be sufficient to justify a forcible stop. *Id.* at 146-147, 92 S.Ct. at 1923-1924.

Williams' contention that reasonable suspicion for a stop and frisk can only be based on the officer's personal observation was rejected. The Court held that "[i]nformant's tips, like all other clues and evidence coming to a policeman on the scene, may vary greatly in their value and reliability. One simple rule will not cover every situation." *Id.* at 147, 92 S.Ct. at 1924.

Since *Terry*, a central theme, in developing any Fourth Amendment limitations on protective searches and seizures for weapons, is the protection of the police officers and protection of the public in general.

In two cases, the Court recognized that investigative detentions involving suspects in vehicles are especially fraught with danger to police officers. In *Pennsylvania v. Mimms*, 434 U.S. 106, 98 S.Ct. 330, 54 L.Ed.2d 331 (1977), the Court held that police may order persons out of an automobile during a stop for a traffic violation, and may frisk those persons if there is a reasonable belief that they are

---

[3] Although it was lawful in Connecticut to carry a concealed firearm, the Court rejected the view that the validity of a *Terry* search depends on whether the weapon is possessed in accordance with state law. *Id.* at 146, 92 S.Ct. at 1923. This position was reaffirmed in *Michigan v. Long*, 463 U.S. 1032, 1052 n. 16, 103 S.Ct. 3469, 3482 n.16, 77 L.Ed.2d 1201 (1983).

armed and dangerous. This decision was based on the fact that establishing a face-to-face confrontation after the stop diminishes the substantial possibility that the driver can make unobserved movements and thus reduces the likelihood that the officer will be the victim of an assault. In *Maryland v. Wilson*, 519 U.S. 408, 117 S.Ct. 882, 137 L.Ed.2d 41 (1997), the Court held that the *Mimms* rule applies to passengers as well as to drivers. Even though a passenger has a greater personal liberty interest than a driver since the passenger is not being stopped for a traffic violation but only because he is a passenger in a vehicle that has been lawfully stopped, *Mimms* was extended to passengers based on officer safety concerns. The Court reasoned that the possibility of a violent encounter stems from the fact that evidence of a more serious crime might be uncovered during a stop and once outside the car, the passengers, who would have same motivation as the driver to use violence to prevent apprehension of such a crime, would be denied access to any possible weapon concealed in the interior of the passenger compartment.

In a number of cases, the Court has expressly recognized that suspects may harm police officers and others by having access to weapons, even though they are not themselves armed. *Chimel v. California*, 395 U.S. 752, 89 S.Ct. 2034, 23 L.Ed.2d 685 (1969), involved the limitations imposed on police authority to conduct a search incident to a valid arrest. Relying explicitly on *Terry*, the Court held that when an arrest is made, it is reasonable for the arresting officer to search "the arrestee's person and the area 'within his immediate control' -- construing that phrase to mean the area from within which he might gain possession of a weapon or destructible evidence." *Id.* at 763, 89 S.Ct. at 2040. The Court reasoned that "[a] gun on a table or in a drawer in front of one who is arrested can be as dangerous to the arresting officer as one concealed in the clothing of the person arrested." *Ibid.* In *New York v. Belton*, 453 U.S. 454, 101 S.Ct. 2860, 69 L.Ed.2d 768 (1981), the Court held that "articles inside the relatively narrow compass of the passenger compartment of a automobile are in fact generally, even if not inevitably, within 'the area into which an arrestee might reach in order to grab a weapon'..." *Id.* at 460, 101 S.Ct. at 2864. The Court also held that the police may examine the contents of any open or closed container found within the passenger compartment, "for if the passenger

compartment is within the reach of the arrestee, so will containers in it be within his reach." *Ibid.* (Footnote omitted).

In *Michigan v. Long*, 463 U.S. 1032, 103 S.Ct. 3469, 77 L.Ed.2d 1201 (1983), the Court extended *Chimel* and *Belton* to a *Terry* stop finding that the same safety concerns that permits area searches incident to an arrest, that the arrestee who may not be armed may be able to gain access to weapons to injure officers or others, is present during an investigatory detention. The Court held that when there is reasonable suspicion to stop a suspect while he is driving, a search of the passenger compartment of the automobile, limited to those areas in which a weapon may be placed or hidden, is permissible if the police officer possesses a reasonable belief based on specific and articulable facts which, taken together with the rational inferences therefrom, reasonably warrants the officer in believing that the suspect is dangerous and the suspect may gain immediate control of weapons. *Id.* at 1049, 103 S.Ct. at 3481.

In *Maryland v. Buie*, 494 U.S. 325, 110 S.Ct. 1093, 108 L.Ed.2d 276 (1990), the Court applied *Terry* and *Long* to protective sweeps made in conjunction with an in-home arrest. In protective sweep situations, the police have an interest in taking steps to assure themselves that the arrestee's house was not harboring other persons who were dangerous and who could unexpectedly launch an attack and thus the police can, without probable cause or a reasonable suspicion, look in closets and other spaces immediately adjoining the place of arrest. The Court found that this would strike the proper balance between officer safety and citizen privacy. *Id.* at 334, 110 S.Ct. at 1098. The protective sweep situation, the Court found, is analogous to *Ybarra v. Illinois*, 444 U.S. 85, 100 S.Ct. 338, 62 L.Ed.2d 238 (1979), which held that, although armed with a warrant to search a bar and bartender, the police could not frisk the bar's patrons absent individualized, reasonable suspicion that the person to be frisked was armed and presently dangerous.

In *Alabama v. White*, 496 U.S. 325, 110 S.Ct. 2412, 110 L.Ed.2d 301 (1990), the Court held that the "totality of the circumstances" test is to be used to determine whether the investigatory stop is supported by the requisite reasonable suspicion.

The anonymous tip in *White* contained innocent details and a prediction of future events concerning the possession of illegal narcotics. The tip was found to be reliable because the future events were observed by the police. The Court recognized that "[t]his is not to say that an anonymous caller could never provide the reasonable suspicion necessary for a *Terry* stop." *Id.* at 329, 110 S.Ct. at 2416. In discussing the concept of reasonable suspicion, the Court stated that "[r]easonable suspicion, like probable cause, is dependent upon both the content of the information possessed by the police and its degree of reliability. Both factors--quantity and quality--are considered in the 'totality of the circumstances--the whole picture,' that must be taken into account when evaluating whether there is reasonable suspicion. Thus, if a tip has a relatively low degree of reliability, more information will be required to establish the requisite quantum of suspicion than would be required if the tip were more reliable." *Id.* at 330, 110 S.Ct. at 2416.

The concern for officer safety based on the easy availability of firearms, regardless of the merits of gun-control proposals, is greater today than when *Terry*[4] was decided in 1968. Today, forty-two (42) states[5] and the District of Columbia[6] allow, through license

---

[4] In *Terry*, the Court found that the easy availability of firearms was relevant to the assessment of the need for some form of self-protective search power once reasonable suspicion existed for the detention. *Terry v Ohio*, 392 U.S. 1, 24 n. 21, 88 S.Ct. 1868, 1881 n. 21, 20 L.Ed.2d 889 (1968).

[5] Ala. Code § 13A-11-75 (1999); Alaska Stat. § 18.65.700-790 (1999); Ariz. Rev. Stat. § 13-3122 (1999); Ark. Code Ann. §5-73-311 (1999); Cal. Penal Code §12050 (1999); Colo. Rev. Stat. §18-12-105.1 (1998); Conn. Gen. Stat. § 29-28 (1999); Del. Code Ann. tit. 11 § 1441 (1998); Fla. Stat. Ch 790.06 (1999); Ga. Code Ann. § 16-11-129 (1999); Haw. Rev. Stat. § 134-9 (1999); Idaho Code §18-3302 (1999); Ind. Code § 35-47-2-3 (1999); Iowa Code § 724.4 (1997); Ky. Rev. Stat. Ann. § 237.110 (1998); La. Rev. Stat. Ann. §40:1379.3 (1999); Me. Rev. Stat. Ann. tit. 25 §2003 (1998); Mass. Gen. Laws ch. 140 § 131 (1999); Mich. Comp. Laws §28.93 (1999); Minn. Stat. §624.714 (1998); Miss. Code Ann. § 45-9-101 (1999); Mo. Rev. Stat. § 571.090 (1998); Mont. Code Ann. §45-8-321 (1999); Nev. Rev. Stat. § 202.3657 (1998); N.H. Rev. Stat. Ann. § 159:6 (1999); N.J. Rev. Stat. §

or permit regulatory schemes which impose age limitations, lack of prior convictions and other personal history requirements, their citizens to carry concealed firearms. Vermont permits its' citizens to carry concealed firearms without any regulation.[7] Only seven (7) states, Illinois, Kansas, Maryland, Nebraska, New Mexico, Ohio, and Wisconsin, totally prohibit their citizens from carrying concealed firearms.[8]

In light of these facts, the answer to the question left unanswered in *White*, is even more relevant today, specifically: 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? *Alabama v. White*, 496 U.S. 325, 328, 110 S.Ct. 2412, 2415, 110 L.Ed.2d 301 (1990)

The State submits that the answer is yes. Such a tip concerning a concealed firearm, can be deemed sufficiently reliable to

---

2C:58-4 (1999); N.Y. Penal Law § 400.00 (Consol. 1999); N.C. Gen. Stat. § 14-415 (1999); N.D. Cent. Code §62.1-04-03 (1999); Okla. Stat. tit. 21 § 1290.3 (1999); Or. Rev. Stat. § 166.291 (1999); 18 Pa. Cons. Stat § 6109 (1999); R.I. Gen. Laws §11-47-11 (1999); S.C. Code Ann. § 23-31-210 (1998); S.D. Codified Laws § 23-7-8 (1999); Tenn. Code Ann. § 39-17-1351 (1999); Tex. Gov't. Code Ann. § 411.172 (1999); Utah Code Ann. § 53-5-704 (1999); Va. Code Ann. § 18.2-308 (1999); Wash. Rev. Code §9.41-070 (1999); W.Va. Code § 61-7-4 (1999), and Wyo. Stat. Ann. § 6-8-104 (1999).

[6] D.C. Code § 22-3206 (1999).

[7] Vt. Stat. Ann. tit. 13 § 4003 (1999).

[8] Maryland, Nebraska, New Mexico and Ohio prohibit the possession of concealed firearms but allow their citizens charged with the offense of carrying a concealed firearm to present the affirmative defense that the possession was necessary for self defense. See Md. Code art. 27 § 36 (1999); Neb. Rev. Stat. §28-1202 (1999); N.M. Stat. §30-7-2 (1999); Oh. Stat. §2923.12 (1999).

justify an investigatory detention and frisk where the police immediately verify the accuracy of the tip. In such a concrete factual situation, the immediate verification of the innocent details of the tip and the safety of the officer and others can provide the reasonable suspicion to support the stop and frisk of the individual. Once the tip's innocent details of location and description have been immediately verified by the police officer, the tip's degree of reliability increases to the point where a reasonable and prudent officer should not have to wait for the predictive future event to occur, to wit: the brandishing and possible discharge of the firearm. This holding would be in accordance with the principle that the Fourth Amendment proscription against unreasonable searches and seizures is not to be read in a vacuum, and thus, a search and seizure reasonable as to one type of material in one setting may be unreasonable in a different setting or with respect to another kind of material. *Roaden v. Kentucky*, 413 U.S. 496, 93 S.Ct. 2796, 37 L.Ed.2d 757 (1973).[9]

The Florida court rejected this rule of law. Instead, the court established a *per se* rule of law that an anonymous tip, when only the innocent details are verified, can never the provide the necessary reasonable suspicion to support a stop and frisk. The court based this holding on the following grounds: (1) the anonymous tip was unreliable because it did not involve suspicious behavior which the police could have verified as suspicious upon arrival at the scene; (2) the innocent details provided in the tip did not involve future action for which the police could verify whether or not such future action would occur: and, (3) the presently occurring innocent detail tip was not corroborated through an independent investigation on the part of the

---

[9] In accordance with this principle of law, Petitioner agrees that if an innocent detail tip, such as the one herein, deals with illegal narcotics or other nonthreatening contraband and not a firearm, then reasonable suspicion would not ordinarily exist until the police officer corroborated the fact that the individual was in possession of narcotics or other nonthreatening contraband. The officer, without placing his safety or that of others in harms way, would have to wait until the individual exposed the illegal narcotics or other nonthreatening contraband.

police which established that the suspect was engaging in suspicious behavior.

This interpretation has crafted an unrealistic rule which requires a bright line test for constitutionally sanctioned conduct under the Fourth Amendment. This interpretation directly contravenes the rule that "[t]he test of the reasonableness of conduct under the Fourth Amendment is not capable of precise definition or mechanical application. In each case it requires a balancing of the need for the particular search against the invasion of personal rights that the search entails. Courts must consider the scope of the particular intrusion, the manner in which it is conducted, the justification for investigating it and the place in which it is conducted." *Bell v. Wolfish*, 441 U.S. 520, 559, 99 S.Ct. 1861, 1884, 60 L.Ed.2d 447 (1979). Logically and constitutionally, objective facts that establish through an anonymous tip that an individual is carrying a concealed firearm constitutes a sufficiently reliable basis for a *Terry* stop and frisk.

The Florida court's holding has, instead of providing police the ability to diffuse a potentially dangerous situation with a minimal intrusion into a citizen's privacy, turned the situation into a game of "chicken" where the police will have to wait until the firearm is brandished or used and the situation poses a risk of safety to the police or others before reasonable suspicion exists for the detention. In fact, an officer will need the functional equivalent of "probable cause" to arrest for openly carrying a weapon, discharging a firearm in public or the use of the firearm in the commission of a felony. Such a result truly eviscerates a *Terry* stop and frisk.

B. The anonymous tip was sufficiently reliable to justify the investigatory detention and frisk.

The facts of this case clearly establish that the anonymous tip was sufficiently reliable to provide the necessary reasonable suspicion to believe that Respondent was carrying a concealed firearm. The following uncontroverted facts established reasonable suspicion:

1. On October 13, 1995 Officer Anderson, a fourteen year veteran of the Miami-Dade Police Department, was on routine patrol. [A-40].

2. She received a call from her dispatcher regarding an anonymous tip. [A-40].

3. Based on information received from the anonymous tipster, she was then dispatched to the area of 183rd Street and 24th Avenue in Miami. [A-40].

4. The details of the tip were that there were several young black males standing at a bus stand in front of a pawn shop, one of whom was carrying a concealed firearm. [A-40-41].

5. Each young black male was particularly described. [A-40].

6. The individual carrying the firearm was described as a black male with a plaid shirt. [A-40].

7. Officer Anderson and another unit arrived at the bus stop approximately six minutes after receiving the dispatch. [A-41].

8. Officer Anderson saw three black males, who were found at the location where the anonymous informant said they would be, one of whom was wearing a plaid shirt. [A-41].

The exact description of the location and of Respondent and the other two males and the fact that Respondent was carrying a concealed firearm was provided by the anonymous tip. Officer Anderson immediately verified that the three juveniles were at the described location. Upon arriving at scene and observing that the three individuals were juveniles, Officer Anderson knew that, under the law in Florida, Respondent could never be lawfully in possession

of a firearm since: (1) at the time of the offense he was a juvenile;[10] (2) he could not lawfully possess a firearm until he was eighteen;[11] and, (3) he could not get a permit to carry a concealed firearm until he was twenty-one years old.[12] Furthermore, a recent national survey revealed that an estimated 2.6 million American youth, ages 11-18, carried a gun last year.[13] Thus, after the innocent details of the tip was verified, it was statistically more likely that Respondent was in possession of a firearm. Therefore, the reliability of the tip was established and the police officer had reasonable suspicion to believe that Respondent was committing the crime of carrying a concealed firearm. Since reasonable suspicion established the crime of carrying a concealed firearm, an immediate frisk of Respondent was authorized because he was armed and dangerous and posed a threat to Officer Anderson and others. Thus, the seizure of the firearm from Respondent was lawful.[14]

---

[10] On page 1 of the state court record, the Petition for Delinquency, the charging document, establishes that at the time of the offense Respondent was ten days shy of his sixteenth birthday.

[11] Fla. Stat. Ch. 790.22(3) (1995).

[12] Fla. Stat. Ch. 790.06(2)(b) (1995).

[13] National Parents' Resource Institute for Drug Education, *12th Annual PRIDE National Survey of Student Drug Use and Violence*, Washington, D.C., September 8, 1999.

[14] The police may, however, seize nonthreatening contraband detected through the sense of touch during such a frisk. *Minnesota v. Dickerson*, 508 U.S. 366, 113 S.Ct. 2130, 124 L.Ed.2d 34 (1993).

CONCLUSION

Based on the foregoing reasons, the decision of the Supreme Court of Florida should be reversed and the cause remanded to the Florida courts for further proceedings.

Respectfully submitted,
ROBERT A. BUTTERWORTH
Attorney General

MICHAEL J. NEIMAND
Assistant Attorney General
Counsel of Record
Office of the Attorney General
110 S.E. 6th Street - 9th Floor
Ft. Lauderdale, Florida 3330
(954) 712-4600