NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2018

Temarco Sartorio Pope, Jr. - Petitioner,

vs.

United States of America - Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Eighth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

(1) Whether law enforcement can presume any concealed carry of a firearm is unlawful and conduct a *Terry* stop when the state statute does not criminalize the concealed carry of a firearm with a permit?

(2) Whether the *Terry* frisk analysis is a two-part test, requiring law enforcement to have reasonable suspicion that an individual is both armed *and* dangerous, and that law enforcement cannot assume anyone who is armed is automatically dangerous?

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The petitioner, Temarco Pope, Jr., through counsel, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Eighth Circuit in case No. 18-1264, entered on December 10, 2018. Mr. Pope filed a petition for rehearing en banc and petition for rehearing by the panel. Mr. Pope's petition for rehearing en banc and petition for rehearing by the panel were denied on January 10, 2019.

OPINION BELOW

On December 10, 2018, a panel of the Court of Appeals entered its ruling affirming the judgment of the United States District Court for the Southern District of Iowa. The decision is published and available at 910 F.3d 413.

JURISDICTION

The Court of Appeals entered its judgment on December 10, 2018, and denied Mr. Pope's petition for rehearing en banc and petition for rehearing by the panel on January 10, 2019. Jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. CONST. AMEND. IV.

> 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, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Iowa Code § 724.4

> 1. Except as otherwise provided in this section, a person who goes armed with a dangerous weapon concealed on or about the person, or who, within the limits of any city, goes armed with a pistol or revolver, or any loaded firearm of any kind, whether concealed or not, or who knowingly carries or transports in a vehicle a pistol or revolver, commits an aggravated misdemeanor.
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> 4. Subsections 1 through 3 do not apply to any of the following:
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> > i. A person who has in the person's possession and who displays to a peace officer on demand a valid permit to carry weapons which has been issued to the person, and whose conduct is within the limits of that permit. A person shall not be convicted of a violation of this section if the person produces at the person's trial a permit to carry weapons which was valid at the time of the alleged offense and which would have brought the person's conduct within this exception if the permit had been produced at the time of the alleged offense.

STATEMENT OF THE CASE

On March 21, 2017, Mr. Pope was indicted in the Southern District of Iowa on one count of being a felon in possession of a firearm, in violation of 18 U.S.C. §§ 922(g)(1), & 924(a)(2). (DCD 2). [1] The basis for this charge was a firearm discovered on Mr. Pope's person after a *Terry* stop and frisk in a hotel room.

Mr. Pope filed a motion to suppress, arguing that the stop and frisk violated the Fourth Amendment. (DCD 26). Mr. Pope argued that law enforcement lacked reasonable, articulable suspicion of criminal activity to justify the seizure. (DCD 26). He also asserted that law enforcement "lacked reasonable suspicion that Mr. Pope was dangerous based merely upon the alleged possession of a firearm." (DCD 26). The government argued that law enforcement had reasonable suspicion that Mr. Pope violated Iowa's carrying weapons statute, Iowa Code § 724.4(1). (DCD 31). While § 724.4 states that the statute does not apply to individuals who have a concealed carry permit, and law enforcement had no reason to believe that Mr. Pope did not have a permit, the government asserted law enforcement could presume Mr. Pope did not have a valid permit. (DCD 31). A hearing was held. The following is a summary of the evidence presented at the hearing.

[1] In this petition, the following abbreviations will be used:
"DCD" - district court clerk's record, followed by docket entry and page number, where noted; and
"Supp. Tr." – Suppression hearing transcript, followed by page number.

On January 22, 2017, in the early hours of the morning, Des Moines Police Officer Luke Eblen received a call for service at a hotel in Des Moines, Iowa. (Supp. Tr. p. 5). The call was a complaint of a loud party. (Supp. Tr. p. 5).

Officer Eblen knocked on the door and someone opened it. (Supp. Tr. pp. 6-7). He had a clear view into the hotel room. (Supp. Tr. p. 7). He recognized some of the occupants as gang members. (Supp. Tr. p. 8). Officer Eblen ordered everyone out. (Supp. Tr. p. 7). He instructed the occupants of the hotel room to raise their arms as they left the hotel room. (Supp. Tr. p. 8). In general, everyone complied with Officer Eblen's order. (Supp. Tr. p. 8).

As people were leaving, Officer Eblen observed one occupant, later identified as Mr. Pope, put a firearm inside of his waistband. (Supp. Tr. p. 7). Mr. Pope then covered the firearm with his white t-shirt. (Supp. Tr. p. 9). Officer Eblen confronted Mr. Pope when he reached the hotel doorway. (Supp. Tr. p. 10).

Officer Eblen ordered Mr. Pope back inside the hotel room. (Supp. Tr. p. 19). At this point, all other former occupants had left. (Supp. Tr. p. 19). Officer Eblen did not know Mr. Pope and did not recognize him as a known gang member. (Supp. Tr. p. 19). Officer Eblen immediately handcuffed Mr. Pope. (Supp. Tr. p. 11). He then searched Mr. Pope's person and retrieved the firearm from his waistband. (Supp. Tr. p. 11).

After Mr. Pope was searched, Officer Eblen asked Mr. Pope if he had a concealed carry permit; Mr. Pope indicated he did not. (Supp. Tr. p. 12, 21). At

some point, Mr. Pope was advised of his *Miranda* rights. (Supp. Tr. p. 14). Mr. Pope made "a general statement along the lines of obtaining the gun from the street." (Supp. Tr. p. 14).

After the hearing, the district court ruled on the record that the motion should be denied. (Supp. Tr. p. 33). A written order followed. (DCD 40). In the written order, the district court found it was a valid stop and frisk. (DCD 40). Mr. Pope entered a conditional guilty plea to the sole count, pursuant to a plea agreement. (DCD 37).

On appeal to the Eighth Circuit, Mr. Pope challenged his motion to suppress on the same grounds. As part of the challenge to the validity of the initial stop, Mr. Pope asked the panel to adopt Judge Loken's concurrence in *United States v. Jones,* 606 F.3d 964, 968-69 (8th Cir. 2010). Judge Loken's concurrence stated that law enforcement cannot presume an individual's concealed carry is unlawful based on a virtually identical Nebraska statute.

The Eighth Circuit Court of Appeals affirmed. *United States v. Pope*, 910 F.3d 413 (8th Cir. 2018). First, the panel held because having a valid permit is an affirmative defense, law enforcement does not have to presume that an individual had a valid permit to carry. *Id.* at 415-16.

Next, the panel rejected Mr. Pope's argument that a *Terry* frisk is a two-part test, and that armed does not automatically mean dangerous. *Id.* at 416-17. The

panel held that law enforcement only need reasonable suspicion that an individual has a firearm to justify a *Terry* frisk. *Id.*

REASONS FOR GRANTING THE WRIT

In recent years, as the carrying of firearms becomes more common, state and federal courts have struggled with how to balance law enforcement's need to investigate crimes against the expanding right to bear arms. Specifically, state and federal courts are split on whether law enforcement can presume any concealed carry of a firearm is unlawful to justify a *Terry* seizure, including in jurisdictions like Iowa where having a concealed carry permit is an affirmative defense to a criminal statute. Additionally, courts are split as to whether a *Terry* frisk is justified whenever an individual is armed, without a separate indication that the individual is dangerous. This Court should grant the petition for writ of certiorari to resolve these splits.

Further, the Eighth Circuit's decision is inconsistent with the changing landscape of concealed carry laws around the country. After this Court's decision in *District of Columbia v. Heller,* 554 U.S. 570 (2008), states are enacting less strict concealed carry laws. Jeffrey Bellin, *The Right to Remain Armed*, 93 Wash. U. L. Rev. 1, 42 (2015). Thirteen states do not even require a permit to lawfully concealed carry. NRA-ILA, *Gun Right to Carry Laws*, https://www.nraila.org/gun-laws (last visited Apr. 4, 2019). This Court should grant the petition to ensure that Fourth Amendment jurisprudence is in line with the changing landscape of our

nation's gun laws, and to ensure that case law on Fourth Amendment rights does not allow law enforcement to infringe on citizen's Second Amendment rights.

I. LAW ENFORCEMENT CANNOT PRESUME THAT ANY CONCEALED CARRY OF A FIREARM IS UNLAWFUL AND CONDUCT A *TERRY* STOP WHEN THE STATE STATUTE DOES NOT CRIMINALIZE THE CONCEALED CARRY OF A FIREARM WITH A VALID PERMIT.

The Eighth Circuit Court of Appeals held that law enforcement can presume that any concealed carry of a firearm in the State of Iowa is unlawful because having a valid permit is an affirmative defense to Iowa's carrying weapons statute. Iowa Code § 724.4 states, in relevant part:

> 1. Except as otherwise provided in this section, a person who goes armed with a dangerous weapon concealed on or about the person, or who, within the limits of any city, goes armed with a pistol or revolver, or any loaded firearm of any kind, whether concealed or not, or who knowingly carries or transports in a vehicle a pistol or revolver, commits an aggravated misdemeanor.
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> 4. Subsections 1 through 3 do not apply to any of the following:
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> i. A person who has in the person's possession and who displays to a peace officer on demand a valid permit to carry weapons which has been issued to the person, and whose conduct is within the limits of that permit. A person shall not be convicted of a violation of this section if the person produces at the person's trial a permit to carry weapons which was valid at the time of the alleged offense and which would have brought the person's conduct within this exception if the permit had been produced at the time of the alleged offense.

This Court should grant the petition and find that law enforcement cannot presume possession is unlawful in states like Iowa where having a concealed carry permit makes the possession lawful.

After this Court's decision in *District of Columbia v. Heller,* 554 U.S. 570 (2008), which recognized that the Second Amendment conferred an individual's right to keep and bear arms, more states are loosening their laws on the concealed possession of a firearm. Jeffrey Bellin, *The Right to Remain Armed*, 93 Wash. U. L. Rev. 1, 42 (2015). In turn, courts are acknowledging that the possession of a firearm cannot be the basis for a *Terry* stop in states that allow individuals to carry a concealed firearm with a permit, because the possession of a firearm is not inherently illegal.

While a split exists, many courts acknowledge that when possession is inherently lawful under state law, police officers cannot assume that any possession is unlawful. [2] For example, the Sixth Circuit found that the possession of a firearm cannot justify a stop and frisk in Ohio, because an individual can lawfully possess a

[2] Several cases have held that information that an individual possesses a firearm, without any indication that the possession is unlawful, cannot provide reasonable suspicion of criminal activity to justify the stop. *Northrup v. City of Toledo Police Dept.*, 785 F.3d 1128 (2015); *United States v. Black,* 707 F.3d 531, 540 (4th Cir. 2013); *United States v. King*, 990 F.2d 1552, 1559 (10th Cir. 1993) ("In a state such as New Mexico, which permits persons to lawfully carry firearms,[allowing a seizure] would effectively eliminate Fourth Amendment protections for lawfully armed persons."); *State v. Williamson,* 368 S.W.3d 468, 480 (Tenn. 2012); *Commonwealth v. Hawkins,* 692 A.2d 1068 (Pa. 1997); *Commonwealth v. Couture,* 552 N.E.2d 538, 540 (Mass. 1990); *Regalado v. State*, 25 So.3d 600, 604 (Fla. Dist. Ct. App. 2009). Other courts have held, or at least hinted, that law enforcement can presume the possession is unlawful. *United States v. Gatlin,* 613 F.3d 374 (3d Cir. 2010); *Schubert v. City of Springfield,* 589 F.3d 496, 501 (1st Cir. 2009); *United States v. Montague*, 437 F. App'x 833, 835-36 (11th Cir. 2011).

firearm with a permit. *Northrup v. City of Toledo Police Dept.*, 785 F.3d 1128, 1131-34 (6th Cir. 2015). The circuit rejected that firearm possession was enough for a stop, noting that "[t]o allow stops in this setting 'would effectively eliminate Fourth Amendment protections for lawfully armed persons.'" *Id.* at 1132 (quoting *United States v. King*, 990 F.2d 1552, 1559 (10th Cir. 1993)). The circuit also rejected the government's argument that law enforcement could presume the possession was unlawful:

> What about the possibility that Northrup was not licensed to carry a gun or that he was a felon prohibited from possessing a gun? Where it is lawful to possess a firearm, unlawful possession "is not the default status." . . . There is no "automatic firearm exception" to the *Terry* rule. *Florida v. J.L.*, 529 U.S. 266, 272 (2000).

Id. The Fourth Circuit has similarly reasoned:

> [W]here a state permits individuals to openly carry firearms, the exercise of this right, without more, cannot justify an investigatory detention. Permitting such a justification would eviscerate Fourth Amendment protections for lawfully armed individuals in those states. ... Here, [the defendant's] lawful display of his lawfully possessed firearm cannot be the justification for [his] detention.

United States v. Black, 707 F.3d 531, 540 (4th Cir. 2013).

Courts apply these principles even when states outlaw the concealed carry of a firearm, but make having a concealed carry permit an affirmative defense. For example, the Supreme Court of Pennsylvania found firearm possession was insufficient to justify a stop, even though Pennsylvania generally prohibits the concealed carry of a firearm, 18 Pa. C.S.A. § 6108, and having a license to carry a concealed weapon is only an affirmative defense to that charge. *Commonwealth v.*

Poindexter, 375 A.2d 384, 386-87 (Pa. Super. Ct. 1977) (reversed on other grounds in 399 A.3d 390). The court stated: "Even if the Constitution of Pennsylvania would permit such invasive police activity as the Commonwealth proposes—which it does not—such activity seems more likely to endanger than to protect the public. Unnecessary police intervention, by definition, produces the possibility of conflict where none need exist." *Commonwealth v. Hawkins*, 692 A.2d 1068, 1071 (Penn. 1997).

Similarly, the Supreme Judicial Court of Massachusetts, which also generally prohibits the concealed carry of a firearm but makes having a permit an affirmative defense, rejected the distinction drawn by the Eighth Circuit. *Commonwealth v. Couture*, 552 N.E.2d 538, 540 (Mass. 1990). The court stated:

> Where the defendant at trial has had every opportunity to respond to the Commonwealth's charge that the defendant was unlawfully carrying a handgun, where the defendant need only produce that slip of paper indicating that he was licensed to carry that gun, and where instead the defendant produces no evidence to that effect, the jury are entitled to presume that the defendant indeed did not have a license to carry the gun, and the Commonwealth need present no additional evidence to prove that point. This scenario is a far cry from a defendant who, having merely been seen in public with a handgun, and without any opportunity to respond as to whether he has a license, is forced out of his vehicle at gunpoint and subjected to an invasive search. Th[at having a permit is an affirmative defense] does not make an open target of every individual who is lawfully carrying a handgun.

Id. at 540-41.

The Eighth Circuit's decision also ignores the reality of concealed-carry laws. Obtaining a concealed-carry permit in Iowa, and in many other states, does not

appear to be difficult. While some states grant authorities discretion when deciding whether to issue a concealed-carry permit, Iowa is considered a "shall-issue" state. *See* NRA-ILA, *Gun Right to Carry Laws*, https://www.nraila.org/gun-laws (last visited Apr. 3, 2019); U.S. Gov't Accountability Office, Gun Control: States' Laws and Requirements for Concealed Carry Permits Vary Across the Nation 76, p. 9 (2012), *available at* https://www.gao.gov/products/GAO-12-717. "Shall issue" means "permitting officials must grant an application for handgun carry permits so long as the applicant satisfies certain objective criteria, such as a background check and completion of a safety course." *Drake v. Filko,* 724 F.3d 426, 440-41 (3d Cir. 2013) (Hardiman, J., dissenting) (describing the landscape of state laws on handgun possession). In total, twenty-eight states are "shall issue" states. NRA-ILA, *Gun Right to Carry Laws*, https://www.nraila.org/gun-laws (last visited Apr. 3, 2019. Thirteen states do not require a permit to concealed carry. *Id.* As one scholar has noted, "the assumption that the mere possession of a firearm constitutes a crime is crumbling." Jeffrey Bellin, *The Right to Remain Armed*, 93 Wash. U. L. Rev. 1, 31 (2015).

Refusing to allow law enforcement to assume those who possess firearms do so unlawfully will not leave law enforcement without any remedy. Nothing prevents officers from attempting to initiate a consensual encounter to ascertain whether an individual is dangerous and/or has a valid concealed carry permit. *Northrup*, 785 F.3d at 1133. Finally, this case presents a proper vehicle for

resolving this court split, as the only basis for the seizure of Mr. Pope was his firearm possession. No other crimes were suspected. Therefore, this Court should grant the petition for writ of certiorari. This Court must reverse the denial of the motion to suppress, and the evidence discovered after the frisk and any subsequent statements must be suppressed under the fruit of the poisonous tree doctrine. *United States v. Wheat,* 278 F.3d 722, 726 (8th Cir. 2001) (citing *Wong Sun v. United States,* 371 U.S. 471, 484 (1963)); *see also United States v. Yousif,* 308 F.3d 820, 832 (8th Cir. 2002) ("Verbal statements obtained as a result of a Fourth Amendment violation are as much subject to the exclusionary rule as are items of physical evidence discovered during an illegal search.").

II. THE *TERRY* FRISK ANALYSIS IS A TWO-PART TEST, REQUIRING LAW ENFORCEMENT TO HAVE REASONABLE SUSPICION THAT AN INVIDUAL IS BOTH ARMED *AND* DANGEROUS AND LAW ENFORCEMENT CANNOT ASSUME ANYONE WHO IS ARMED IS AUTOMATICALLY DANGEROUS.

The Eighth Circuit ruled that if law enforcement has reasonable suspicion that an individual is armed, that this individual is automatically dangerous, and a frisk is justified. An intrusive frisk requires more than information that an individual is armed; law enforcement must have reason to believe an individual is both armed **and dangerous.** Again, federal circuit courts and state appellate courts are split on this issue.[3] This Court should hold that "armed" does not

[3] Several courts have held that being "armed" does not automatically make one dangerous. *Northrup v. City of Toledo Police Dept.*, 785 F.3d 1128 (2015); *United States v. Leo*, 792 F.3d 742, 748 (7th Cir. 2013); *State v. Serna,* 331 P.3d 405, 410 (Ariz. 2014); *State v. Bishop,* 203 P.3d 1203 (Idaho 2009);

automatically mean "dangerous" and that those who possess firearms can always be subjected to an intrusive frisk.

A categorical rule that anyone who is armed is automatically dangerous misreads this Court's precedents. In *Terry v. Ohio,* 392 U.S. 1 (1968), the Court held that when an officer lacks probable cause to arrest a person he has legally stopped, the officer may nonetheless conduct a limited search of that person only if the officer has reason to believe the person is "armed and presently dangerous to the officer or to others." *Id.* at 24; *see Id.* at 30. The Court required lower courts to "focus[] the inquiry squarely on the dangers and demands of the particular situation," *Id*. at 18 n.15, and directed that "each case of this sort" be "decided on its own facts," *Id*. at 30. Dangerousness should not be assumed based on partaking in an inherently lawful, constitutionally protected activity.

The Eighth Circuit relied upon multiple U.S. Supreme Court cases, including *Adams v. Williams,* 407 U.S. 143 (1972) and *Pennsylvania v. Mimms*, 434 U.S. 106 (1977), to find that this Court has already held that an individual who possesses a firearm is dangerous, and law enforcement is justified in frisking the individual. *Pope*, 910 F.3d at 416-17. However, none of these cases explicitly held that armed

State v. Vandenberg, 81 P.3d 19, 25 (N.M. 2003). Other courts have held that armed automatically means dangerous. *United States v. Robinson*, 846 F.3d 694 (4th Cir. 2017), *cert denied*, 2017 WL 2692399 (2017); *United States v. Rodriguez,* 739 F.3d 481, 491 (10th Cir. 2013); *United States v. Orman*, 486 F.3d 1170, 1176 (9th Cir. 2007), *cert denied*, 552 U.S. 1313 (2008); *People v. Colyar,* 996 N.E.2d 575, 587 (Ill. 2013).

always means dangerous. Again, *Terry* makes clear that each situation must be judged on the specific facts.

Regardless, if these cases do so hold, they must be reevaluated under the changing landscape of our nation's gun laws. "[A]s public possession and display of firearms become lawful under more circumstances, Fourth Amendment jurisprudence and police practices must adapt." *United States v. Williams,* 731 F.3d 678, 691 (7th Cir. 2013) (Hamilton, J., concurring).

Finally, the exercise of one constitutional right should not require the waiver of another constitutional right. The adoption of a rule allowing the frisk of a person who is armed—without any indication that the person is dangerous—would mean that "individuals who carry firearms elect to subject themselves to being frisked when lawfully stopped by law enforcement officers." *Robinson*, 846 F.3d at 706 (Wynn, J., concurring). Circuit Judge Pamela Harris explained the consequences of such a broad rule:

> [I]f [those who possess firearms] are necessarily "dangerous," then the police should be free to dispense with Fourth Amendment "knock and announce" protections before entering their homes; and when armed and "therefore dangerous" citizens seek to assemble in public, their First Amendment rights may be restricted based on the risk they are conclusively presumed to pose a risk to public safety. . . . If a police officer reasonably believes that a suspect poses a "threat of serious physical harm," he may use deadly force to protect himself . . . ."

Robinson, 846 F.3d at 711 (Harris, J., dissenting). "When the exercise of one right is made contingent upon the forbearance of another, both rights are corrupted." *United States ex rel. Wilcox v. Johnson*, 555 F.2d 115, 120 (3d. Cir. 1977); *see also*

Miller v. Smith, 115 F.3d 1136, 1150-51 (4th Cir. 1997) ("Forcing an [individual] to choose between two rights guaranteed by the Constitution results in the denial of one right or the other . . . [and] affronts our notions of basic fairness."). Possession of a firearm should not establish "dangerousness" on its own.

Because possession of a firearm alone is insufficient to justify a *Terry* frisk for weapons, other facts must establish that an individual is armed and dangerous. Here, other facts present do not indicate that Mr. Pope was dangerous.

At the hearing, Officer Eblen asserted that the situation was dangerous because: (1) the encounter took place in the early hours of the morning, (2) known gang members were previously at the party, and (3) law enforcement smelled marijuana. These factors are irrelevant. The relevant question is whether law enforcement had a particularized basis for believing *Mr. Pope himself* was dangerous. *United States v. Howard,* 729 F.3d 655, 662 (7th Cir. 2013) ("Such suspicion [of being armed and dangerous] must be specific to the person being searched and may not arise from mere proximity to criminal conduct."); *United States v. Ellis,* 501 F.3d 958, 961 (8th Cir. 2007) ("A protective frisk is only warranted if specific articulable facts taken together with rational inferences support the reasonable suspicion that a party was potentially armed and dangerous." (emphasis added)). Officer Eblen did not testify that he believed Mr. Pope was under the influence. There was no testimony that Mr. Pope himself smelled of marijuana, he had bloodshot eyes, or otherwise appeared intoxicated.

Further, Officer Eblen did not believe Mr. Pope was a known gang member, as he had no prior interactions with Mr. Pope. (Supp. Tr. p. 19). Finally, all of the other occupants were ordered to leave, and did so without issue. (Supp. Tr. p. 8).

At the time that Mr. Pope was frisked, he was handcuffed. It is unclear why Mr. Pope posed a danger for having a firearm when his hands were secured. *See Leo*, 792 F.3d at 749-50 (reversing the search of a backpack after suspect was handcuffed because "it was unconceivable that either [suspect] would have been able to lunge for the bag, unzip it, and grab the gun inside") *but see United States v. Sanders,* 994 F.3d 200 (5th Cir. 1993) (holding that officers may frisk a defendant after handcuffing him if officers have reasonable suspicion that a defendant is armed and dangerous).

Finally, the frisk was unlawful because other less intrusive actions were available to law enforcement. "[T]he investigative methods employed should be the least intrusive means reasonably available to verify or dispel the officer's suspicion in a short period of time." *Florida v. Royer*, 460 U.S. 491, 500 (1983). Here, law enforcement could have simply questioned Mr. Pope about the potential firearm. *Jones,* 606 F.3d at 968. Instead, law enforcement detained, handcuffed, and frisked Mr. Pope.

Because law enforcement lacked reasonable suspicion to justify the frisk, the evidence discovered after the frisk and any subsequent statements must be suppressed under the fruit of the poisonous tree doctrine. *Wheat,* 278 F.3d at 726

(citing *Wong Sun,* 371 U.S. at 484); *see also Yousif,* 308 F.3d at 832 ("Verbal statements obtained as a result of a Fourth Amendment violation are as much subject to the exclusionary rule as are items of physical evidence discovered during an illegal search.").

CONCLUSION

For the foregoing reasons, Mr. Pope respectfully requests that the Petition for Writ of Certiorari be granted.

RESPECTFULLY SUBMITTED,

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