No. _____

IN THE
Supreme Court Of The United States

TAVARES L. FARRINGTON
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

The petitioner asks leave to file the attached petition for a writ of certiorari without prepayment of costs and to proceed *in forma pauperis*.

Petitioner has previously been granted leave to proceed *in forma pauperis* with the benefit of court-appointed counsel in the Western District of Tennessee and the Sixth Circuit Court of Appeals. Counsel was appointed pursuant to the Criminal Justice Act, 18 U.S.C. § 3006A *et seq.* The order appointing Attorney Rapa in the Sixth Circuit is attached in lieu of a declaration or financial affidavit.

Dated: February 28, 2020

Anna R. Rapa
Counsel of Record for Petitioner

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
100 EAST FIFTH STREET, ROOM 540
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Filed: March 29, 2019

Ms. Anna R. Rapa
The Law Office of Anna R. Rapa
P.O. Box 140
Mears, MI 49436

Re: Case No. 19-5096, *USA v. Tavares Farrington*
Originating Case No. : 1:17-cr-10032-1

Dear Counsel,

This confirms your appointment to represent the defendant in the above appeal under the Criminal Justice Act, 18 U.S.C. § 3006A.

You must file your appearance form and order transcript within 14 days of this letter. The appearance form and instructions for the transcript order process can be found on this court's website. Please note that transcript ordering in CJA-eligible cases is a two-part process, requiring that you complete both the financing of the transcript (following the district court's procedures) and ordering the transcript (following the court of appeals' docketing procedures). Additional information regarding the special requirements of financing and ordering transcripts in CJA cases can be found on this court's website at http://www.ca6.uscourts.gov/criminal-justice-act under "Guidelines for Transcripts in CJA Cases."

Following this letter, you will receive a notice of your appointment in the eVoucher system. That will enable you to log into the eVoucher system and track your time and expenses in that system. To receive payment for your services at the close of the case you will submit your voucher electronically via eVoucher. Instructions for using eVoucher can be found on this court's website. Your voucher must be submitted electronically no later than 45 days after the final disposition of the appeal. *No further notice will be provided that a voucher is due*. Questions regarding your voucher may be directed to the Clerk's Office at 513-564-7078.

Finally, if you become aware that your client has financial resources not previously disclosed or is no longer eligible for appointed counsel under the Criminal Justice Act, please contact the Clerk or Chief Deputy for guidance.

Sincerely yours,

s/Ken Loomis
Administrative Deputy
Direct Dial No. 513-564-7067

cc: Mr. Tavares L. Farrington
Mr. Thomas M. Gould
Mr. Charles Anthony Milton
Mr. James W. Powell

No. _____

IN THE
Supreme Court Of The United States

TAVARES L. FARRINGTON
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

On Petition for Writ of Certiorari
To the United States Court of Appeals for the Sixth Circuit

Petition for a Writ of Certiorari

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QUESTION PRESENTED

Under the Fourth Amendment, a *Terry* stop and frisk must be supported by reasonable suspicion that a crime has been or will soon be committed. Here, police received a tip from a second-hand source and did not investigate the accuracy of the tip with the first-hand witness before stopping and frisking Mr. Farrington. Does unverified second-hand information provide adequate foundation for reasonable suspicion of criminal behavior to support a *Terry* stop and frisk?

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PETITION FOR WRIT OF CERTIORARI

Petitioner Tavares Farrington respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit.

OPINION BELOW

The Sixth Circuit panel opinion is unpublished, and it is included as Appendix A. *United States v. Tavares L. Farrington*, ___ Fed. Appx. ___, No. 19-5096, 2019 WL 6698135 (W. D. Tenn. Dec. 9, 2019).

JURISDICTION

The United States District Court for the Western District of Tennessee originally had jurisdiction under 18 U.S.C. § 3231, which provides the federal district court with exclusive jurisdiction over offenses against the United States.

Mr. Farrington timely appealed the district court's Judgment of Sentence on January 29, 2019. The Sixth Circuit affirmed the Judgment of Sentence on December 9, 2019.

This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISION 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.

STATEMENT OF THE CASE

On March 22, 2017, the Martin Tennessee Police Department received a 911 call from Joseph Clark, who was a human resources employee at a manufacturing plant. Order Denying Motion to Suppress, R. 44, Page ID #85. Mr. Clark reported that there was an "individual inside the plant possibly possessing a firearm." *Id.* Mr. Clark explained that he believed the person "may have a beef with somebody inside the plant." *Id.* When asked for a description of the person, Mr. Clark conferred with others and then told the dispatcher that he was a black male, approximately five feet, seven inches tall, late thirties, wearing a dark, long-sleeve shirt. *Id.* at Page ID #86. Mr. Clark further reported that a worker at the plant had come to human resources and reported that the suspect asked the worker "if he thought he could see a firearm on him." *Id.*

Soon after his 911 call, Mr. Clark met police at the main entrance of the plant, and explained that the worker who reported the incident smelled like "he's reeking of weed," but that Mr. Clark otherwise believed the informant's story. *Id.* Police followed Mr. Clark to the human resources office and spoke with another person there. The trial court characterized this as a conversation with the eyewitness whose statements Mr. Clark based his 911 call on, and stated that the witness (Traevon Atkins) confirmed much of the information in the 911 call. *Id.* But it appears that the information confirmed by Mr. Atkins was only "descriptive information concerning Defendant's general appearance and location." Motion to

Reconsider, R. 57, Page ID #141. According to Mr. Farrington's trial counsel, who reviewed the relevant videos,

> The police did not ask Mr. Atkins any questions about his encounter with Defendant. They did not ask him if he saw a gun on Defendant. They also did not ask him what Defendant said that made him think that Mr. Farrington might have a gun. They did not ask him if Defendant had exhibited any threatening behavior, or if he had 'a beef' with anyone in the plant. They did not even ask him to give a short summary of what had occurred during his conversation with Defendant. [*Id.*]

Based on these reports and further confirmation of Mr. Farrington's identity, Mr. Clark led police to Mr. Farrington's work station on the production floor. There, one of the officers asked Mr. Farrington if he had a firearm. Order Denying Motion to Suppress, R. 44, Page ID #86. Mr. Farrington replied, "I don't know what's going on," and otherwise denied carrying a weapon. *Id.* At that time, the officers patted him down and located a pistol. *Id.* Mr. Farrington was arrested and taken into custody and ammunition and illegal drugs were also found on him. *Id.*

In the course of pretrial motions, Mr. Farrington's attorney investigated the facts of the case. Motion to Reconsider, R. 57, Page ID #142, N. 3. He discovered that Mr. Atkins did not initially report his encounter with Mr. Farrington to human resources, but that a female employee overheard their conversation, told her supervisor about it, and the supervisor reported it to human resources. *Id.* Mr. Atkins was then asked to talk to human resources, and it was after this meeting that Mr. Clark called 911. *Id.* In addition, Mr. Atkins reported to Mr. Farrington's investigator that Mr. Farrington actually asked "if it looks like I have anything on

me," not if he "thought I could see a firearm on him," which is what Mr. Clark reported to 911. *Id.* at Page ID #143, N. 4.

A. Legal Background

This Court has long recognized that "'[n]o right is held more sacred, or is more carefully guarded, by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of the law.'" *Terry v. Ohio*, 392 U.S. 1, 9 (1968) (quoting *Union Pac. R. Co. v. Botsford*, 141 U.S. 250, 251 (1891)).

The seminal case is, of course, *Terry v. Ohio*, where this Court held that police officers are permitted to conduct a search for weapons where there is "reason to believe that [they are] dealing with an armed and dangerous individual." *Id.* at 27. That reason must not be a mere hunch, but must be based on specific, reasonable inferences from the facts they know in light of their experience. *Id.*

Later cases have analyzed the sufficiency of information to provide that reason to believe that police officers are dealing with an armed and dangerous individual. For example, in *Adams v. Williams*, 407 U.S. 143 (1972), an officer on patrol was approached by a person he knew, who said that another person sitting in a vehicle nearby was carrying narcotics and had a gun at his waist. *Id.* at 144-45. The Court upheld the search for and seizure of the gun on the strength of the known informant's tip and the fact that the man, when approached, refused to step out of the vehicle. *Id.* at 144-45, 148. The Court reasoned that the tip was more reliable

than an anonymous tip and that the informant came forward personally to give information that was immediately verifiable at the scene. *Id.* at 146-47. If the informant had made a false statement, he would have been subject to arrest. The Court explained that

> Informants' 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. Some tips, completely lacking in indicia of reliability, would either warrant no police response or require further investigation before a forcible stop of a subject would be authorized. But in some situations–for example, when the victim of a street crime seeks immediate police aid and gives a description of his assailant, or when a credible informant warns of a specific impending crime–the subtleties of the hearsay rule should not thwart an appropriate police response. [*Id.* at 147.]

The Court contrasted the known informant situation with anonymous tips in *Florida v. J.L.*, 529 U.S. 266, 271 (2000). In that case, the officer's suspicion to stop and search was based on a tip from an unknown caller made from an unknown location. *Id.* at 270. Specifically, the Court said

> Unlike a tip from a known informant whos reputation can be assessed and who can be held responsible if her allegations turn out to be fabricated, 'an anonymous tip alone seldom demonstrates the informant's basis of knowledge or veracity.' [*Id.* (citing Adams v. Williams, 407 U.S. 143 (1972), and quoting Alabama v. White, 496 U.S. 325, 329 (1990)).

The Court held that the tip, though it provided an "accurate description of a subject's readily observable location and appearance," was reliable only in the sense that it would help police identify the right person. *Id.* at 272. However, it did not show knowledge of any concealed, illegal activity. *Id.* But in order to provide

reasonable suspicion for a search, the tip must be reliable not just in identifying a person, but also in its "assertion of illegality." *Id.*

Navarette v. California, 572 U.S. 393 (2014), provides an example of reliable information related to illegal behavior. In this case, a man was run off the road by another car and called 911 to report it, giving a vehicle description and the license plate number. *Id.* at 395. Upholding the resulting stop and search, the Court compared this report to the anonymous tip in *J.L*, saying

> In *J.L.*, by contrast, we determined that no reasonable suspicion arose from a bare-bones tip that a young black male in a plaid shirt standing at the bus stop was carrying a gun. The tipster did not explain how he knew about the gun, nor did he suggest that he had any special familiarity with the young man's affairs. As a result, police had no basis for believing "that the tipster ha[d] knowledge of concealed criminal activity. Furthermore the tip included no predictions of future behavior that could be corroborated to assess the tipster's credibility. [*Id.* at 398 (internal citations omitted).]

But in *Navarette*, the informant gave an "explicit and detailed description of alleged wrongdoing" and stated that he observed the illegal behavior firsthand. Id. at 399. The Court held that these factors "entitle[d] the tip to greater weight than might otherwise be the case." *Id.* (quoting *Spinelli v. United States*, 393 U.S. 410, 416 (1969)).

In summary, this Court has provided some general parameters for evaluating whether a tip or police report provides a reasonable basis for a *Terry* stop and frisk. Often a distinction is made between tips from known informants and those given by anonymous persons. Anonymous tips that contain adequate subject description and predictive behavior of that subject that can be verified as it happens can be nearly

as reliable as statements from known persons who are subject to consequences for making false statements. *Alabama v. White*, 496 U.S. 325, 329 (1990). Ultimately, courts must look at the totality of the circumstances, considering both the "content of the information possessed by police and its degree of reliability." *Id.* at 330. Both quantity and quality of information are important–so if a tip has "a relatively low degree of reliability, more information will be required to establish the requisite quantum of suspicion that would be required if the tip were more reliable." Id.

B. District Court Proceedings

On April 17, 2017, Tavares L. Farrington was indicted for being a felon in possession of ammunition. Indictment, R. 15, Page ID #19. Mr. Farrington filed a motion to suppress evidence obtained in an unlawful search and seizure. Motion to Suppress, R. 31, Page ID #44. The court denied the motion. Order Denying Motion to Suppress, R. 44, Page ID #85. Mr. Farrington filed a Motion to Reconsider, which the court also denied. Motion to Reconsider, R. 57, Page ID #136; Order Denying Motion to Reconsider, R. 62, Page ID #167.

On July 20, 2018, Mr. Farrington pleaded guilty to this crime before Chief Judge S. Thomas Anderson. Plea Transcript, R. 93, Page ID #301. The plea was a conditional plea, and Mr. Farrington gave notice reserving his right to appeal the trial court's adverse ruling on his pretrial motion to suppress evidence. Notice, R. 67, Page ID #176.

On January 25, 2019, Mr. Farrington was sentenced to 188 months' imprisonment, and three years' supervised release. Judgment, R. 87, Page ID #286.

C. Sixth Circuit Proceedings

Mr. Farrington timely filed his Notice of Appeal on January 29, 2019. Notice of Appeal, R. 88, Page ID #292. The Sixth Circuit denied his appeal, holding that the officers' reliance on the tip from Mr. Clark was reasonable, as was the search of Mr. Farrington. *United States v. Tavares L. Farrington*, ___ Fed. Appx. ___, No. 19-5096, 2019 WL 6698135 (W. D. Tenn. Dec. 9, 2019).

REASONS FOR GRANTING THE WRIT

A. Current case law does not indicate how secondhand information affects a finding of reasonable suspicion for a *Terry* stop and frisk.

Mr. Farrington's case demonstrates the gap in direction from this Court regarding how to evaluate secondhand information that comes to police via an identified informant. In evaluating this case, the Sixth Circuit concluded that because the tip was not given to police by an anonymous informant, it had sufficient reliability to support the *Terry* stop and frisk of Mr. Farrington. But the current dichotomy between known-informant and anonymous tips does not account for the various ways a known informant can come by the information he reports to police.

Where, as here, the known informant makes a report to police of possible criminal activities observed by other people and then reported to the informant, the proper evaluation should include consideration of the veracity of the third-party's report to the police informant. Instead, the Sixth Circuit focused on the veracity of the police informant, who was just repeating what he heard to the police. *United*

States v. Tavares L. Farrington, ___ Fed. Appx. ___, No. 19-5096, 2019 WL 6698135, *7-9 (W. D. Tenn. Dec. 9, 2019). The court also mentioned that the third-party was in the vicinity of officers and was observed by them, and his demeanor gave them no reason to question the informant's report, so it should not be treated as an anonymous tip, which would "require considerably more facts and support from the informant for the officers to develop reasonable suspicion." *Id.* at 7-8.

But there are many concerns with third-party information being given to the police as known-informant tips. First, even if everyone is trying to be as honest and precise as they can be along the line, with every transfer of information from one party to the next, the information becomes less reliable. Current case law does not appear to account for this reality, and the Sixth Circuit certainly did not consider it in its evaluation of this case.

But consider Federal Rule of Evidence 805, related to hearsay within hearsay. In order for Person A's statement, as Person B reports it, to be admitted as evidence at a trial, both Person A's and Person B's statements must be an exception to the hearsay rules. You can't cure A's hearsay statement by merely showing that Person B's hearsay falls under an exclusion.

The same concern exists in this context. The unreliability of the third-party's statements here, including his smell of weed and the lack of reliable reporting about what was said, cannot be cured by the statements Mr. Clark made to police. Mr. Clark's inherent reliability, because of the fact he is reporting in person should not

cure the fact that the report is made by an unreliable third-party who made no statements to police that could be held against him if they are untrue.

It is difficult to tell how far-reaching this problem is. Thousands of cases exist that reference *J.L.* and *Navvaro.* But as long as courts are willing to evaluate these cases based only on the distinctions between anonymous tips versus known-informants, police are violating people's Fourth Amendment right to be free from unreasonable searches and seizures when they search without adequate reliable support.

CONCLUSION

Because the issues in Mr. Farrington's case affect the Fourth Amendment rights of numerous defendants throughout the United States, this Court should grant his petition for certiorari.

Dated: February 28, 2020

Respectfully Submitted,

Anna R. Rapa
Counsel of Record
for Mr. Farrington

Appendix A

Sixth Circuit Unpublished Opinion

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION
File Name: 19a0602n.06

Case No. 19-5096

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff-Appellee,	)	
	)	ON APPEAL FROM THE UNITED
v.	)	STATES DISTRICT COURT FOR
	)	THE WESTERN DISTRICT OF
TAVARES L. FARRINGTON,	)	TENNESSEE
	)	
Defendant-Appellant.	)	

BEFORE: GRIFFIN, STRANCH, and DONALD, Circuit Judges.

BERNICE BOUIE DONALD, Circuit Judge. This case deals with whether firearm evidence discovered during the stop and frisk of Tavares Farrington ("Farrington") at his workplace, MTD Products ("MTD"), should have been suppressed. On the night of March 22, 2017, Joseph Clark ("Clark"), a supervisor in the human resources department at the MTD plant, called the Martin, Tennessee, Police Department and reported that another MTD employee had reported to him that Farrington might be in possession of a firearm on the plant floor. Officers were called to respond and, after briefly speaking with Clark at the human resources office, followed Clark to the plant floor to confront Farrington. Farrington failed to provide a straightforward answer when questioned about whether he possessed a firearm, and the officers conducted a pat-down search of the exterior of Farrington's clothing, finding a pistol in his right-

front pocket. Farrington filed a motion to suppress the evidence obtained from the officers' pat-down, but the district court denied his motion. Farrington now appeals the district court's denial of his motion to suppress. For the reasons below, we **AFFIRM**.

I.

The facts of this case are drawn from Clark's 911 call and body cam footage from the responding officers. Around 9:00 P.M., Clark called the Martin Police Department and identified himself as Joseph, an employee at MTD Products. Clark then asked the dispatcher if they could have an officer come out to the plant to investigate "an individual in the plant possibly possessing a firearm." Clark informed the dispatcher that the individual, later determined to be Farrington, "may have a beef with someone inside the plant." When pressed for more information, Clark told the dispatcher that he was with "a gentleman that had spoken [to Farrington] and that he was trying to find out what [Farrington] looks like." The dispatcher attempted to further clarify whether Farrington had actually "made any threats," to which Clark responded that "[Farrington] thinks some people are talking about him, and there is a guy that works across from him, and [Farrington] asked him if he thinks he could see a firearm on him." Clark explained that the employee whom Farrington had asked, Traevon Atkins ("Atkins"), was currently with him in the human resources office.

Over the course of the call, Clark relayed Atkins' responses as to Farrington's race, height, age, attire, and distinguishing features (Atkins can be heard in the background throughout the call). Neither Clark nor Atkins, however, were able to provide the dispatcher with Farrington's name. The dispatcher confirmed that Farrington was still working "on the line" and informed Clark that officers were on their way to the plant.

Officers Marty McClue, Kerry Workman, and Trae Vaughn (collectively "the officers") arrived at MTD at approximately 9:10 P.M. Clark greeted the officers and informed them that Atkins "smells like he is reeking of weed" and that "[Atkins] is the one who [came] in and let [him] know that there is a guy on the line carrying, supposedly, a pistol on him." He then explained to the officers that he had not "confirmed [Atkin's account] at all" up to that point. Clark informed the officers that the reason Farrington may have a firearm was that "he thinks people are making fun of him on the line . . . and he is getting kind of pissed off."

Clark then escorted the officers into the human resources office where an unnamed MTD employee quickly ascertained Farrington's name and additional identifying details. Although Atkins was seated next to the officers in the office, they did not ask him any questions or attempt to confirm any of the information provided by Clark or the dispatcher. Atkins appeared somewhat startled by the officers' presence, jokingly stating, "I didn't do nothing I promise," but his demeanor throughout the video showed no signs of impairment, and he offered substantial information which aided in identifying Farrington.

After reaching a consensus as to Farrington's location in the plant, Clark suggested potential approaches to confront Farrington. Officer Vaughn proposed that, "[the officers] can just go with and ask and see if [Farrington] has a firearm, we can check a couple guys if you want—it's not a problem."[1] Clark then led the officers to the plant floor. Clark approached Farrington first, but no recording picked up their brief conversation amidst the noise from the plant floor. Officer McClue then asked Farrington, "do you have a firearm on you?" Farrington offered several different responses as the question was repeated to him, each time neglecting to answer and generally pleading ignorance. Having reached an impasse, Officer McClue conducted a pat-down

[1] While this statement is certainly problematic, once on the plant floor, Farrington was quickly identified by Clark, and no other employees were searched by the officers.

of the exterior of Farrington's clothing and recovered a pistol from Farrington's right-front pants pocket. The officers also found a prescription pill bottle in Farrington's possession, later determined to contain crack cocaine. The officers handcuffed Farrington and escorted him out of the MTD plant.

On April 17, 2017, a federal grand jury returned a one-count indictment charging Farrington with knowingly possessing a firearm after having been previously convicted of a felony pursuant to 18 U.S.C. § 922(g)(1). Farrington filed a motion to suppress the firearm evidence, but the district court denied his motion. Farrington's motion for reconsideration was denied as well. On January 25, 2019, Farrington entered a conditional guilty plea, reserving the right to appeal the district court's adverse ruling regarding his motion to suppress. He was sentenced to 188 months' imprisonment. Farrington now appeals the district court's denial of his motion to suppress.

II.

We review a district court's denial of a motion to suppress under a mixed standard of review, analyzing its conclusions of law de novo and its findings of fact for clear error. *United States v. Beauchamp*, 659 F.3d 560, 565 (6th Cir. 2011) (citing *United States v. Henry*, 429 F.3d 603, 607 (6th Cir. 2005)). "In so doing, we consider the evidence in the light most favorable to the government." *Id.* at 565-66 (citing *United States v. Rodriguez-Suazo*, 346 F.3d 637, 643 (6th Cir. 2003)).

The Fourth Amendment guarantees that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . . ." U.S. Const. amend. IV. "The touchstone of the Fourth Amendment is reasonableness." *Florida v. Jimeno*, 500 U.S. 248, 250 (1991). In *Terry v. Ohio*, the Supreme Court determined that it is reasonable for police officers, absent probable cause, to conduct a

limited type of seizure—an investigatory stop. 392 U.S. 1, 30 (1968). An investigatory stop, commonly known as a *Terry* stop, can be conducted

> where a police officer observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot and that the persons with whom he is dealing may be armed and presently dangerous, where in the course of investigating this behavior he identifies himself as a policeman and makes reasonable inquiries, and where nothing in the initial stages of the encounter serves to dispel his 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. Such a search is a reasonable search under the Fourth Amendment . . . .

Id. at 30-31. Officers may reasonably conclude the forthcoming of criminal activity when they observe conduct raising their "reasonable suspicion[s]." *United States v. Arvizu*, 534 U.S. 266, 273 (2002). Reasonable suspicion, not unlike probable cause, remains an abstract concept:

> It requires more than just a mere hunch, but is satisfied by a likelihood of criminal activity less than probable cause, and falls considerably short of satisfying a preponderance of the evidence standard. If an officer possesses a particularized and objective basis for suspecting the particular person of criminal activity based on specific and articulable facts[,] he may conduct a *Terry* stop.

Smoak v. Hall, 460 F.3d 768, 778-79 (6th Cir. 2006) (internal quotations, citations, and ellipsis omitted).

In addition to the reasonableness of an officer's suspicion, "[t]he manner in which the seizure and search were conducted is, of course, as vital a part of the inquiry." *Terry*, 392 U.S. at 28. The level of intrusion into the suspect's privacy must be reasonably related to the scope of the officer's suspicions given all surrounding circumstances. *Smoak*, 460 F.3d at 779. Because Farrington does not challenge the manner of his brief seizure and pat-down, we need only assess whether the officers had a reasonable suspicion to perform a *Terry* stop.

III.

To succeed in having the district court's denial of his motion to suppress overturned, Farrington must show that the officers lacked reasonable suspicion that he was engaging in criminal activity. "The question is whether, at the moment that they initiated the stop, the totality of the circumstances provided the officers with the reasonable suspicion required in order to detain a citizen under *Terry*." *Feathers v. Aey*, 319 F.3d 843, 848-49 (6th Cir. 2003). Officers must consider all the information available to them and are not limited to direct observation; reasonable suspicion can be based on a tip from an informant or information provided to officers by the police dispatcher. *Smoak*, 460 F.3d at 779 (citing *United States v. Erwin*, 155 F.3d 818, 822 (6th Cir. 1998)). We assess the circumstances before the officers using "a common sense approach, as understood by those in the field of law enforcement." *United States v. Richardson*, 385 F.3d 625, 630 (6th Cir. 2004) (citation omitted).

In this case, the district court cited the following reasons in support of its holding that the officers had reasonable suspicion to stop and frisk Farrington: (1) Clark provided information to the police dispatcher through the 911 emergency system, including his name, location, employment position, and details as to why he believed Farrington may have a firearm; (2) the officers met Clark in person and were able to corroborate certain details of Atkins' story, such as Farrington's appearance and location in the plant; and (3) the officers were able to personally observe Atkins demeanor and had no reason to question his credibility. Farrington asserts that the officers never had reasonable suspicion because they failed to question Atkins, essentially relying on an anonymous tip. We disagree.

Before deciding whether the officers possessed reasonable suspicion, we must define the scope of our analysis. First, "reasonable suspicion . . . requires that a tip be reliable in its assertion

of illegality, not just in its tendency to identify a determinate person." *Florida v. J.L.*, 529 U.S. 266, 272 (2000). Therefore, confirmation of Farrington's identifying information (race, height, build, and clothing) from the dispatcher and again at MTD's human resources office does not itself provide reasonable suspicion of illegality.

Second, Farrington does not and cannot dispute that, if the officers indeed had reasonable suspicion that he possessed a firearm, they could stop and frisk him. Carrying a concealed handgun is illegal in Tennessee. *See* Tenn. Code Ann. § 39-17-1307(a)(1) ("A person commits an offense who carries, with the intent to go armed, a firearm . . . ."). Although the statute provides several defenses permitting concealed carry of a handgun, none of these are applicable to Farrington. *Id.* at § 39-17-1308(a).

Third, several of Farrington's arguments are irrelevant to the determination of the officers' suspicions. Farrington claims that he never mentioned having a firearm, but instead asked Atkins, "if it looks like I have anything on me." Farrington further contends that a different employee (not Atkins) initially reported the exchange to human resources. Even if true, neither claim is pertinent to our analysis. The only relevant information is what was known to the officers at the time of the stop. The responding officers had no knowledge that Farrington's statement to Atkins may not have included any word synonymous with "firearm" or that Atkins, himself, had not tipped off human resources. Therefore, they do not enter our review. Moreover, officers are not under a continuing duty to confirm the information provided to them or rule out the possibility of innocent conduct if the circumstances available to them have already raised their reasonable suspicions. *Navarette v. California*, 572 U.S. 393, 403-04 (2014) (citing *Arvizu*, 534 U.S. at 277 (2002)).

Finally, despite Farrington's insistence to the contrary, this case is not an anonymous tip case, which would require considerably more facts and support from the informant for the officers

to develop reasonable suspicion.[2] *See, e.g.*, *J.L.*, 529 U.S. at 270. Clark, a supervisor at the MTD plant, called 911 and identified himself to the dispatcher. He explained that Atkins, who was with him during the call, was the individual to whom Farrington's question was addressed. This information was then relayed to the officers.[3] When the officers arrived at the plant, they met with Clark to discuss the situation, remained in the human resources office to identify Farrington, and although they never asked any questions of Atkins, they were in his presence, thereby confirming his identity as the first-hand source of knowledge regarding Farrington. Neither Clark nor Atkins was anonymous to the officers.

Accordingly, our inquiry is narrowed to the sole question of whether the officers had reasonable suspicion that Farrington possessed a firearm at the time of the pat-down given the totality of the information available to them. In view of these bounds, it is clear the circumstances here reached the necessary cross-section of reliability and quantum of evidence to arouse reasonable suspicion.

As discussed above, the officers acted on reasonably reliable information. They verified Clark's and Atkins' identity in person shortly after the alleged conversation between Atkins and Farrington took place. "[A]n in-person informant's proximity in time and space to the reported criminal activity indicates the reliability of the tip, because it reflects that the informant acquired the information firsthand." *Henness*, 644 F.3d at 318. Although Clark indicated to the officers that Atkins "reeked of weed," Atkins demeanor in the officers' presence failed to show any signs

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[2] "There is a difference . . . between anonymous tips provided over the telephone and those given face-to-face with a police officer. An in-person tip gives the officer an opportunity to observe the informant's demeanor and credibility. The in-person informant risks being held accountable for false information." *Henness v. Bagley*, 644 F.3d 308, 318 (6th Cir. 2011) (internal citations omitted).

[3] For purposes of determining the reasonableness of a *Terry* stop, information relayed from the police dispatcher is imputed to the individual officers. *Feathers*, 319 F.3d at 849; *see also United States v. Hensley*, 469 U.S. 221, 232 (1985) (holding that officers can make a *Terry* stop in objective reliance on a flyer or bulletin if the police who issued the flyer or bulletin had a reasonable suspicion justifying the stop).

of intoxication or provide any reason for the officers to question his story. Clark's and Atkins' accounts were reliable enough for the officers to develop a reasonable suspicion that Farrington possessed a firearm.

Furthermore, the information provided by Clark was substantial and showed a significant likelihood—more than enough to form a reasonable suspicion—that Farrington was armed and dangerous. Clark told the dispatcher that Farrington had asked another employee whether he could see a firearm on him, and that Farrington may be in possession of a firearm because he was having problems with some of his coworkers. When the officers arrived, Clark further explained to them that Farrington thought his coworkers had been making fun of him. Finally, Farrington did nothing to dispel the officers' suspicions; when asked whether he possessed a firearm, he repeatedly declined to answer the officers' or Clark's questions. These circumstances constitute "specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant[ed] th[e] intrusion." *Terry*, 392 U.S. at 21. Because the officers developed a reasonable suspicion that Farrington possessed a firearm and posed a potential threat to the safety of others before they patted him down, Farrington's Fourth Amendment rights were not violated.

For the foregoing reasons, we **AFFIRM** the district court's denial of Farrington's motion to suppress.