

APPENDIX

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APPENDIX A

[DO NOT PUBLISH]

In the
United States Court of Appeals
For the Eleventh Circuit

No. 23-10224

Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

NATHAN COOPER,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 1:22-cr-20286-BB-1

Before JORDAN, NEWSOM, and ANDERSON, Circuit Judges.

PER CURIAM:

Nathan Cooper appeals his conviction for one count of possession of a firearm and ammunition by a convicted felon. Cooper argues that the district court erred when it denied his motion to suppress because there was not reasonable suspicion that he committed a crime or that he was armed and dangerous. Cooper argues that because Officer Ramirez did not have reasonable suspicion, the Officer violated his Fourth Amendment rights when she stopped and frisked him. Cooper argues that because his rights were violated, the firearm found should be suppressed.

We review the denial of a defendant's motion to suppress under a mixed standard, assessing the lower court's factual findings for clear error and its application of law to those facts *de novo*. *United States v. Vargas*, 848 F.3d 971, 973 (11th Cir. 2017). When considering a ruling on a motion to suppress, "all facts are construed in the light most favorable to the prevailing party below." *United States v. Bernaldi*, 226 F.3d 1256, 1262 (11th Cir. 2000). A factual finding is clearly erroneous if, after reviewing all the evidence, we have a definite and firm conviction that the district court made a mistake. *United States v. Villarreal*, 613 F.3d 1344, 1349 (11th Cir. 2010). We accept the district court's credibility determination "unless it is contrary to the laws of nature, or is so inconsistent or improbable on its face that no reasonable factfinder could accept it." *United States v. Holt*, 777 F.3d 1234, 1255 (11th Cir. 2015) (quotation

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marks omitted). Questions of probable cause and reasonable suspicion are reviewed *de novo*. *Ornelas v. United States*, 517 U.S. 690, 699 (1996).

Under the Fourth Amendment, individuals have the right “to be secure in their persons . . . against unreasonable searches and seizures.” U.S. Const. amend. IV. A court must examine the totality of the circumstances to determine reasonableness under the Fourth Amendment. *United States v. Lewis*, 674 F.3d 1298, 1303 (11th Cir. 2012).

The exclusionary rule prohibits the use of evidence seized during, or as a result of, an unlawful search. *Murray v. United States*, 487 U.S. 533, 536 (1988). “[T]he exclusionary rule serves to deter deliberate, reckless, or grossly negligent conduct, or in some circumstances recurring or systemic negligence.” *Herring v. United States*, 555 U.S. 135, 144 (2009).

Officers “may briefly detain a person as part of an investigatory stop if they have a reasonable articulable suspicion based on objective facts that the person has engaged in criminal activity.” *United States v. Bruce*, 977 F.3d 1112, 1116 (11th Cir. 2020) (citing, *inter alia*, *Terry v. Ohio*, 392 U.S. 1 (1968)). Although a mere hunch that criminal activity is afoot is not enough to establish reasonable suspicion, the standard is a less demanding one than probable cause, and requires a showing less than preponderance of the evidence. *Illinois v. Wardlow*, 528 U.S. 119, 123 (2000).

The Supreme Court has held that an officer may frisk a legally stopped individual for weapons if he reasonably believes that

his or others' safety is threatened. *Terry*, 392 U.S. at 27. This belief must be based on a reasonable suspicion that the individual is armed and dangerous. *Arizona v. Johnson*, 555 U.S. 323, 332 (2009). Definitive evidence of a weapon or an absolute certainty that the individual is armed is not required. *United States v. Bishop*, 940 F.3d 1242, 1250 (11th Cir. 2019). Instead, we evaluate the totality of the circumstances to determine whether such suspicion was reasonable. *United States v. Johnson*, 921 F.3d 991, 998 (11th Cir. 2019) (*en banc*). Circumstances considered include "the time of day, the location of the scene, the lighting at the scene, the number of officers, and the nature of the alleged crime." *Id.* A person's nervous, argumentative, or evasive behavior are relevant factors to be considered. *Bishop*, 940 F.3d at 1248-49. The reasonable suspicion inquiry "allows officers to draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them that might well elude an untrained person." *United States v. Arvizu*, 534 U.S. 266, 273 (2002) (quotation marks omitted).

Here, the court did not err when it denied Cooper's motion to suppress because the officers had reasonable suspicion to stop and frisk Cooper. First, the court properly found that Officer Ramirez, based on her training and experience inferred based on the information presented to her that criminal activity was about to or did occur. *Arvizu*, 534 U.S. at 273. As the court properly explained, there was reasonable suspicion based on the dispatch call and Jenema Phillips' statements to Ramirez when Ramirez arrived on scene. The dispatch call informed Ramirez that Phillips (the

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manager of the restaurant) had called 911 and said that her employee, Cooper, had threatened her, that she thought he had a gun, and that she would be waiting for the officer outside the restaurant. Ramirez arrived and talked to Phillips outside the restaurant. Phillips explained the dispute with Cooper, that he was aggressive and was slinging a metal poker around, and that he grabbed the bookbag in which she thought he carried a gun. Based on this information, the court did not err in its finding that there was reasonable suspicion that Cooper had engaged in or was about to engage in criminal activity. Taken as a whole, in light of the officers' experience and knowledge, these circumstances were enough to create reasonable suspicion that criminal activity was afoot. *Bruce*, 977 F.3d at 1116.

Second, the court properly found that Ramirez had reasonable suspicion to stop and frisk Cooper as she had reasonable grounds to believe that Cooper was armed and dangerous. *Terry*, 392 U.S. at 27-29. As the court properly found, Ramirez was informed by the dispatch call and by Phillips when Ramirez arrived on scene that Cooper and Phillips had a dispute which resulted in Cooper cursing, behaving aggressively, and slinging a metal poker around. Ramirez was also informed by Phillips, whom the court found was reliable, that Cooper would carry a gun in his bookbag and that he told her that he had previously sold a gun to another employee. Phillips also conveyed to Ramirez that during the dispute Cooper grabbed his bookbag in which she believed he kept a gun. Ramirez had been informed by the dispatch call that Phillips had reported that Cooper had threatened her, that he had a gun,

and that she would be waiting for the officers outside the restaurant. We agree with the district court that Ramirez's own conversation with Phillips outside the restaurant when Ramirez arrived on the scene did not disabuse the Officer of her reasonable belief that Phillips felt threatened and concerned for her safety and that of her employees.¹ Additionally, Ramirez testified that this call occurred at night in a high crime area. *Johnson*, 921 F.3d at 998. Based on the information presented to Ramirez and on her training and experience, the court properly found that she had reasonable suspicion that Cooper was armed and dangerous.

Additionally, the court found that Phillips was reliable because of her relationship with Cooper and her actions on the day of the incident. This finding is not inconsistent or improbable on

¹ In his brief on appeal, Cooper asserts in conclusory fashion that when Phillips spoke to Ramirez at the scene, she specifically denied that Cooper had threatened her. Cooper argues that the Officer should have realized that the threat mentioned in the dispatch call was in error and therefore that there was not a reasonable suspicion that Cooper was armed and dangerous. On the basis of our careful review of the colloquy between Ramirez and Phillips at the scene (as recorded on the body cam video), we reject Cooper's assertion and argument. Although Phillips did acknowledge that Cooper never threatened her "directly," in the same breath she clearly implied that she felt threatened when he grabbed his bookbag in which she thought he carried a gun. And the totality of the colloquy conveyed to Ramirez that Phillips felt threatened by Cooper's aggressive actions and her knowledge that he kept a gun in his bookbag, and that Phillips was concerned for her safety. The fact that Phillips, the manager of the restaurant, waited outside the restaurant for the officers and did not reenter with them when they went to confront Cooper was also confirmation for Ramirez that Phillips was concerned for her safety.

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its face and is supported in the record. *Holt*, 777 F.3d at 1255. Based on Phillips’s conversation with Ramirez when she arrived on scene as well as her 911 call, there is evidence that a reasonable factfinder could accept that demonstrates that Phillips was credible. *Id.*

Therefore, based on the totality of the circumstances, the court did not err when it found that Ramirez had reasonable suspicion that Cooper was armed and dangerous, and thus, properly stopped and frisked him to search for weapons. *Terry*, 392 U.S. at 27-29. As the court properly noted, it did not matter that Ramirez was not absolutely certain that Cooper had a weapon but only that she had reasonable suspicion. *Bishop*, 940 F.3d at 1250. Therefore, it did not matter that neither Phillips nor Ramirez saw Cooper with a gun on the day of the incident.

For the foregoing reasons, the district court did not err when it denied Cooper’s motion to suppress.²

AFFIRMED.

² We reject Cooper’s argument that *Terry* frisks are unconstitutional because they are contrary to the Fourth Amendment’s original meaning. We are bound by the Supreme Court’s decisions until they overrule them. *United States v. Hatter*, 532 U.S. 557, 567 (2001) (“[I]t is the Supreme Court’s prerogative alone to overrule one of its precedents.”).

APPENDIX B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

UNITED STATES OF AMERICA

v.

NATHAN COOPER

§ **JUDGMENT IN A CRIMINAL CASE**

§

§

§ Case Number: **1:22-CR-20286-BB(1)**§ USM Number: **10067-510**

§

§ Counsel for Defendant: **Ashley Devon Kay**§ Counsel for United States: **Katherine Guthrie****THE DEFENDANT:**

<input type="checkbox"/>	pleaded guilty to count(s)	1 of the indictment.
<input type="checkbox"/>	pleaded guilty to count(s) before a U.S. Magistrate Judge, which was accepted by the court.	
<input type="checkbox"/>	pleaded nolo contendere to count(s) which was accepted by the court	
<input checked="" type="checkbox"/>	was found guilty on count(s) after a plea of not guilty	

The defendant is adjudicated guilty of these offenses:

Title & Section / Nature of Offense

18 U.S.C § 922(G)(1)- Possession Of A Firearm and Ammunition By A Convicted Felon

Offense Ended

01/26/2022

Count

1

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- ☐ The defendant has been found not guilty on count(s)
- ☐ Count(s) ☐ is ☐ are dismissed on the motion of the United States

It is ordered that the defendant must notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States Attorney of material changes in economic circumstances.

January 6, 2023

Date of Imposition of Judgment

BETH BLOOM**UNITED STATES DISTRICT JUDGE**

Name and Title of Judge

January 6, 2023

Date

DEFENDANT: NATHAN COOPER
CASE NUMBER: 1:22-CR-20286-BB(1)

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

51 months as to Count 1. Defendant is to receive credit from time of arrest in state case as of January 26, 2022. Sentence to run concurrent with any sentence in State Court Case Nos.: F22-1563 & F17-2873

☒ The court makes the following recommendations to the Bureau of Prisons: that the defendant be designated to a South Florida facility. Also, that the Defendant be considered to participate in the 500-Hour RDAP Program.

☐ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at ☐ a.m. ☐ p.m. on

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to

at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By
DEPUTY UNITED STATES MARSHAL

DEFENDANT: NATHAN COOPER
CASE NUMBER: 1:22-CR-20286-BB(1)

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of: **three (3) years**.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☒ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

DEFENDANT: NATHAN COOPER
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STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. I understand additional information regarding these conditions is available at www.flsp.uscourts.gov.

Defendant's Signature _____

Date _____

DEFENDANT: NATHAN COOPER
CASE NUMBER: 1:22-CR-20286-BB(1)

SPECIAL CONDITIONS OF SUPERVISION

Anger Control / Domestic Violence: The defendant shall participate in an approved treatment program for anger control/domestic violence. Participation may include inpatient/outpatient treatment. The defendant will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third-party payment.

Mental Health Treatment: The defendant shall participate in an approved inpatient/outpatient mental health treatment program. The defendant will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third-party payment.

Permissible Search: The defendant shall submit to a search of his/her person or property conducted in a reasonable manner and at a reasonable time by the U.S. Probation Officer.

Substance Abuse Treatment: The defendant shall participate in an approved treatment program for drug and/or alcohol abuse and abide by all supplemental conditions of treatment. Participation may include inpatient/outpatient treatment. The defendant will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third-party payment.

Unpaid Restitution, Fines, or Special Assessments: If the defendant has any unpaid amount of restitution, fines, or special assessments, the defendant shall notify the probation officer of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay.

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CASE NUMBER: 1:22-CR-20286-BB(1)

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments page.

	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
TOTALS	\$100.00	\$.00	\$.00		

- ☐ The determination of restitution is deferred until *An Amended Judgment in a Criminal Case (AO245C)* will be entered after such determination.
- ☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

- ☐ Restitution amount ordered pursuant to plea agreement \$
- ☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on the schedule of payments page may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- ☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:
- | | | |
|---|-------------------------------|--|
| <input type="checkbox"/> the interest requirement is waived for the | <input type="checkbox"/> fine | <input type="checkbox"/> restitution |
| <input type="checkbox"/> the interest requirement for the | <input type="checkbox"/> fine | <input type="checkbox"/> restitution is modified as follows: |

Restitution with Imprisonment - It is further ordered that the defendant shall pay restitution in the amount of **\$.00**. During the period of incarceration, payment shall be made as follows: (1) if the defendant earns wages in a Federal Prison Industries (UNICOR) job, then the defendant must pay 50% of wages earned toward the financial obligations imposed by this Judgment in a Criminal Case; (2) if the defendant does not work in a UNICOR job, then the defendant must pay a minimum of \$25.00 per quarter toward the financial obligations imposed in this order. Upon release of incarceration, the defendant shall pay restitution at the rate of 10% of monthly gross earnings, until such time as the court may alter that payment schedule in the interests of justice. The U.S. Bureau of Prisons, U.S. Probation Office and U.S. Attorney's Office shall monitor the payment of restitution and report to the court any material change in the defendant's ability to pay. These payments do not preclude the government from using other assets or income of the defendant to satisfy the restitution obligations.

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, 18 U.S.C. §2259.

** Justice for Victims of Trafficking Act of 2015, 18 U.S.C. §3014.

*** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: NATHAN COOPER
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SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A ☒ Lump sum payments of \$100.00 due immediately, balance due

It is ordered that the Defendant shall pay to the United States a special assessment of \$100.00 for Count 1, which shall be due immediately. Said special assessment shall be paid to the Clerk, U.S. District Court. Payment is to be addressed to:

**U.S. CLERK'S OFFICE
ATTN: FINANCIAL SECTION
400 NORTH MIAMI AVENUE, ROOM 8N09
MIAMI, FLORIDA 33128-7716**

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several
See above for Defendant and Co-Defendant Names and Case Numbers (*including defendant number*), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:
FORFEITURE of the defendant's right, title and interest in certain property is hereby ordered consistent with the plea agreement. The United States shall submit a proposed Order of Forfeiture within three days of this proceeding.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVT A assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs