

COURT OF APPEALS OF VIRGINIA

Record No. 1158-25-1

ELIJAH KERRY GARRISON
v.
COMMONWEALTH OF VIRGINIA

Present: Judges Raphael, Lorish and Frucci

Argued by videoconference

Opinion Issued September 15, 2026

FROM THE CIRCUIT COURT OF THE CITY OF VIRGINIA BEACH

Kevin M. Duffan, Judge¹

Lauren E. Brice, Assistant Public Defender (Virginia Indigent Defense Commission, on briefs),
for appellant.

David A. Stock, Senior Assistant Attorney General (Jay Jones, Attorney General, on brief), for
appellee.

PUBLISHED OPINION BY JUDGE LISA M. LORISH

Elijah Kerry Garrison argues that a firearm found on his person during a *Terry* search should have been suppressed because officers lacked reasonable suspicion that he was armed and dangerous. Under the totality of the circumstances analysis, we conclude that the combination of (1) the timing and location of the traffic stop; (2) Garrison's evasive action of rolling up his tinted windows and putting on a sweatshirt during the traffic stop; (3) his particularized nervous response to the question of whether he had a firearm on his person; and (4) his physical movements that obscured part of his waistband was sufficient to support the officer's reasonable suspicion that he

¹ Judge Duffan became a member of this Court on January 1, 2026. He took no part in the consideration of this matter.

was armed and dangerous. Thus, we affirm the circuit court’s decision to deny the motion to suppress.

BACKGROUND²

Around 10:00 p.m. in October 2024, Officer Leon initiated a traffic stop because Garrison’s car did not have a front license plate and its registration was expired. The stop occurred in the “dark” in a “high crime area” in Virginia Beach, where Officer Leon had previously conducted investigations involving weapons and drugs. When Officer Leon first approached the car, Garrison already had the windows rolled down and was wearing a T-shirt while a sweatshirt was visible on the front passenger seat. When asked by Officer Leon if there were “any firearms in the car [he] should know about,” Garrison said, “no, sir.”

Because the car was not registered, Officer Leon told Garrison that he needed to remove the car’s tags and rear license plate and that the car needed to be towed. Garrison explained that he could not use his phone to call for a ride because it was deactivated. When Officer McCormack arrived to assist Officer Leon, Garrison used Officer McCormack’s phone to call a friend to pick him up.

While Officer McCormack was removing the rear license plate from the car, Garrison, still sitting inside the vehicle, rolled up the car windows. Officer McCormack returned to the front of the car and told Garrison to roll the windows down and to keep his hands on the steering wheel. He explained at trial that the rolled-up windows “posed a safety concern” because the window tint prevented the officers from seeing inside the car. He testified that he asks “everybody” to put their “hands on the steering wheel.” When Garrison complied with the requests and rolled the windows back down, Officer McCormack noticed that he had put on the sweatshirt.

² We review the evidence in the light most favorable to the prevailing party at trial—here, the Commonwealth. *See Commonwealth v. Cady*, 300 Va. 325, 329 (2021).

After Officer McCormack returned to the patrol vehicle, Officer Leon asked if Garrison had rolled up his window and remarked that rolling the windows up and putting on a sweatshirt was “weird behavior.” Officer Leon said they should remove Garrison from the vehicle and check for “imprints” that might indicate a weapon under his clothes. The officers then instructed Garrison to exit the vehicle.

As Garrison exited the car, he rolled his window back up again. Neither officer saw any imprints before, during, or after his exit from the car. After exiting the vehicle, Garrison tugged the back of his sweatshirt down to his waistband and “faced his right side towards” Officer Leon as he walked toward the back of the vehicle. Officer Leon explained that in his experience, the waistband is “a common place that [he has] located firearms on a suspect.”

Officer Leon told Garrison to “hang out” at the back of the car, and then Officer McCormack instructed him to lean on the car. Garrison turned his body sideways so that he was facing traffic on the road and leaned his right hip and right hand on top of the car. He remained there for approximately four minutes while Officer Leon finished writing the ticket. While working on the ticket in the police car, the officers noted that it was “kind of weird how [Garrison was] holding that one posture” and that “it [did not] seem like he [wanted] to move at all.”

When Officer Leon approached Garrison with the ticket, Garrison pivoted slightly away from him. Officer Leon asked, “what’s up,” and Garrison responded, “I was just trying to see what you wanted me to do.” Officer Leon replied, “[O]kay, well you keep moving my way,” before he informed Garrison of his court date. At trial, Officer Leon described Garrison’s position, both at the rear of the car and in their subsequent interaction, as “blading,” or “turning sideways.” He testified that the “lengthy” time during which Garrison held this position, as well as his “concerned” expression, added to his suspicion.

After giving Garrison his ticket, Officer Leon told Garrison that they were “done with the traffic stop” and asked him if there was “anything in the car [he] should know about.” At this time, Officer McCormack was still filling out other paperwork and had possession of Garrison’s license. Garrison said, “no” and shook his head. Officer Leon then asked Garrison if he had a firearm on him. Garrison hesitated and breathed heavily before shaking his head “no” without answering audibly. Before this point, Garrison and the officers communicated easily and without any perceived nervousness. Officer Leon then frisked Garrison and felt a firearm in his waistband on the front, right side of his body.

At trial, Garrison moved to suppress the firearm, arguing that it was discovered during an unconstitutional search of his person because the officer lacked reasonable suspicion to believe he was armed and dangerous.³ The trial court denied the motion, finding that reasonable suspicion justified the frisk. It found that, under the totality of the circumstances, Officer Leon developed a reasonable suspicion that Garrison had a weapon on him because they were in a high crime area and because Garrison rolled the windows up and down, put a sweatshirt on while the windows were rolled up, and based on the other factors presented. Subsequently, Garrison entered a conditional guilty plea to carrying a concealed weapon, as a second offense, allowing him to appeal the court’s ruling on the motion to suppress. The court sentenced him to two years, with one year and four months of that time suspended. Garrison appeals.

³ Garrison did not argue below or on appeal that the mission of the stop had already been completed by the time the officer asked him if he was armed and that, accordingly, the search was impermissible under *Rodriguez v. United States*, 575 U.S. 348 (2015). As a result, the trial court made no factual findings about when the mission of the traffic stop had been completed, and whether the officers improperly extended that stop. To the contrary, at oral argument, Garrison’s counsel pointed out that while Officer Leon said the traffic stop was over, Officer McCormack still had his license and was filling out other paperwork.

ANALYSIS

“[A] defendant’s claim that evidence was seized in violation of the Fourth Amendment presents a mixed question of law and fact that we review [de novo] on appeal.” *King v. Commonwealth*, 49 Va. App. 717, 721 (2007). “Thus, ‘we give deference to the factual findings of the trial court but independently decide whether, under the applicable law, the manner in which the challenged evidence was obtained satisfies constitutional requirements.’” *Shiflett v. Commonwealth*, 47 Va. App. 141, 145-46 (2005) (quoting *Jackson v. Commonwealth*, 267 Va. 666, 672 (2004)). “It is the appellant’s burden to show that . . . the trial court committed reversible error.” *Hairston v. Commonwealth*, 67 Va. App. 552, 560 (2017).

“The Fourth Amendment protects people from unreasonable searches and seizures.” *Williams v. Commonwealth*, 71 Va. App. 462, 476 (2020). “It is not unreasonable,” however, “for a police officer to conduct a limited pat-down search for weapons when the officer can point to ‘specific and articulable facts’ ‘which reasonably lead . . . him to conclude, in light of his experience, that “criminal activity may be afoot” and that the suspect “may be armed and presently dangerous.”’” *Thompson v. Commonwealth*, 54 Va. App. 1, 7 (2009) (quoting *Landsdown v. Commonwealth*, 226 Va. 204, 209 (1983)).

“‘[R]easonable suspicion’ is ‘considerably less than proof of wrongdoing by a preponderance of the evidence,’ and ‘obviously less demanding than that for probable cause.’” *McArthur v. Commonwealth*, 72 Va. App. 352, 360 (2020) (quoting *Perry v. Commonwealth*, 280 Va. 572, 581 (2010)). “[W]hen determining whether an officer had reasonable, articulable suspicion to believe an individual was armed,” a court may consider circumstances such as the “characteristics of the area surrounding the stop, the time of the stop, the specific conduct of the suspect individual, the character of the offense under suspicion, and the unique perspective of a police officer trained and experienced in the detection of crime.” *Roberts v. Commonwealth*, 55

Va. App. 146, 153 (2009) (quoting *McCain v. Commonwealth*, 275 Va. 546, 554 (2008)).

Indeed, an “officer is entitled to view the circumstances confronting him in light of his training and experience, and he may consider any suspicious conduct of the suspected person.”

Thompson, 54 Va. App. at 7 (citation omitted). “[W]hether the conduct of a police officer is reasonable ‘is judged from the perspective of a[n objectively] reasonable officer on the scene allowing for the need of split-second decisions and without regard to the officer’s [subjective] intent or motivation.’” *McArthur*, 72 Va. App. at 360 (second and third alterations in original) (quoting *Thompson*, 54 Va. App. at 7).

The Commonwealth argues that numerous factors supported reasonable suspicion in this case. First, Garrison was present at night in a high crime area. Second, Garrison’s vehicle had tinted windows, which he raised during the stop and before putting a sweatshirt on. Third, Garrison hesitated and breathed heavily when he was asked if he had a firearm. Fourth, Garrison “bladed” his body to obscure the right side of his torso, where the firearm was ultimately found.

In assessing the totality of the circumstances, we “evaluate each factor alleged to support an inference of reasonable suspicion separately,” then “in the aggregate.” *United States v. Gurule*, 935 F.3d 878, 885 (10th Cir. 2019); *see, e.g., Turay v. Commonwealth*, 79 Va. App. 286, 302-05 (2023) (en banc) (taking the same approach). Inherent in the totality of the circumstances analysis is the principle that those factors, though insufficient to support a reasonable particularized suspicion by themselves, may nevertheless support reasonable suspicion when considered together. *See Hill v. Commonwealth*, 297 Va. 804, 814 (2019) (“It did not matter that each act within ‘the series of acts’ by Terry and his companions was ‘perhaps innocent in itself’ because ‘taken together’ the acts ‘warranted further investigation.’” (quoting *Terry v. Ohio*, 392 U.S. 1, 22 (1968))). We therefore discuss each proposed factor in turn before considering whether together they created reasonable suspicion.

1. Garrison's presence in a high crime area at night

Garrison was stopped at night in a high crime area. Presence in a high crime area at night is insufficient, on its own, to establish reasonable suspicion that someone is armed and dangerous. *See, e.g., Illinois v. Wardlow*, 528 U.S. 119, 124 (2000) (affirming that presence in a high crime area on its own is insufficient for reasonable suspicion but that it nevertheless provides relevant context to other factors). Virginia appellate courts have repeatedly affirmed that this fact is not dispositive and must be considered only in conjunction with other factors in an officer's decision to conduct a *Terry* stop. *See, e.g., Whitaker v. Commonwealth*, 279 Va. 268, 276 (2010) (concluding that, while relevant, this factor is insufficient independently).⁴

Officer Leon testified that he had conducted investigations involving weapons and drugs in the area where Garrison was pulled over, leading to his belief that it was a high crime area. Garrison was also pulled over around 10:00 p.m. at night. While these facts are not certainly not dispositive, they are proper considerations when weighed alongside other factors under our caselaw.

2. Garrison's raising his tinted windows mid-stop and putting on a sweatshirt

When Officer Leon originally approached Garrison's vehicle after pulling it over, Garrison already had his front windows down, ready to converse. But after Officer Leon

⁴ As the Fourth Circuit has observed:

In our present society, the demographics of those who reside in high crime neighborhoods often consist of racial minorities and individuals disadvantaged by their social and economic circumstances. To conclude that mere presence in a high crime area at night is sufficient justification for detention by law enforcement is to accept *carte blanche* the implicit assertion that Fourth Amendment protections are reserved only for a certain race or class of people.

United States v. Black, 707 F.3d 531, 542 (4th Cir. 2013).

gathered Garrison's information and returned to his patrol car to run his information, Garrison closed the windows and put on his sweatshirt. Officer McCormack later noticed this and directed Garrison to lower his windows again, and Garrison did so. As reflected by the video footage in this case, Officer Leon immediately characterized this as "weird," and told Officer McCormack that they should remove Garrison from the car and observe him for a bulge indicating a firearm.

Just as presence in a high crime area, on its own, is insufficient to constitute reasonable suspicion, our cases show that a concealing action or furtive gesture also requires corroboration before it can support objective reasonable suspicion that someone is armed and dangerous. For example, we explained in *Asble v. Commonwealth*, 50 Va. App. 643, 649 (2007), that a "furtive gesture" toward the floorboard did not create reasonable suspicion of criminal activity merely because the officer testified that such movement "sometimes" indicates the presence of weapons or narcotics. On its own, "[a]t best, [this was] a mere hunch, not a particularized suspicion flowing reasonably from articulable facts." *Id.* And in *Beasley v. Commonwealth*, 60 Va. App. 381, 397 (2012), we distinguished a series of prior cases by explaining that they stood for the proposition that there was no reasonable suspicion to justify a detention because they each involved only "a quick, furtive gesture in the presence of the police officer that gave the officer no more than a hunch of criminal activity."

Here, by closing his tinted window, Garrison was (temporarily) hiding his actions from the officers. By pulling on a sweatshirt, he was also hiding part of his body from the view of the officers. The combined effect was to conceal his actions, and body, from officers in the middle of a traffic stop. Given that it was approximately 10 p.m. on a fall evening and Garrison's car was about to be towed, the mere act of pulling on a sweatshirt would support no more than a mere hunch that Garrison was hiding a firearm. But the fact that Garrison rolled up the windows

in the middle of the stop, concealing his body and actions from officers, and also pulled on a sweatshirt, is relevant to the overall reasonable suspicion calculus.

3. Garrison's nervous reaction to the question of whether he had a gun

When Officer Leon asked Garrison whether he had a firearm, Garrison looked visibly uncomfortable. He hesitated before he responded, finally shaking his head “no” without saying more. Officer Leon added that his breathing was heavy. This was a particularized nervous reaction that is relevant to reasonable suspicion.

Like a mere furtive gesture or simple presence in a high crime area, general nervousness alone is not enough for a reasonable officer to conclude a suspect is armed and dangerous. Indeed, we have explained that “[a]n officer’s perception of a suspect’s nervousness, without additional articulable facts reasonably suggesting the suspect is armed and presently dangerous, cannot justify a pat-down search.” *Thompson*, 54 Va. App. at 8; *see also Moore v. Commonwealth*, 12 Va. App. 404, 406-07 (1991) (holding that, where the pat-down search was based only on the officer’s “subjective evaluation of the severity of [appellant’s] nervousness,” “the officer lacked sufficient justification to conduct the pat-down search”). With that said, “nervous, evasive behavior is a pertinent factor” for consideration within the totality of the circumstances. *McCain*, 275 Va. at 554 (quoting *Wardlow*, 528 U.S. at 124).

Furthermore, courts have recognized that there are different types of nervousness. “The term ‘nervousness’ at any rate deserves elaboration and context.” *United States v. Urraca*, 123 F.4th 834, 839 (6th Cir. 2024). On the one hand, there is the “kind of baseline anxiety that is inevitable (and hardly suspicious) when the police stop anyone.” *Id.*; *see also Slayton v. Commonwealth*, No. 0641-21-2, slip op. at 8, 2022 Va. App. LEXIS 84, at *13 (Mar. 29, 2022) (“Courts have long recognized that there are many reasons why a person, particularly a Black

man like [Garrison], could behave nervously during an interaction with police.”)⁵ “[I]t is common for most people ‘to exhibit signs of nervousness when confronted by a law enforcement officer’ whether or not the person is currently engaged in criminal activity.” *United States v. Salzano*, 158 F.3d 1107, 1113 (10th Cir. 1998) (quoting *United States v. Wood*, 106 F.3d 942, 948 (10th Cir. 1997)). See also *State v. Reed*, 838 S.E.2d 414, 427 (N.C. 2020) (“This Court has expressly determined that general nervousness is not significant to reasonable suspicion analysis because ‘[m]any people become nervous when stopped by a [law enforcement officer]’” (first alteration in original) (quoting *State v. Pearson*, 498 S.E.2d 599, 601 (N.C. 1998))). Thus, our Supreme Court has concluded that even though a defendant “may have appeared to be nervous,” when pulled over for a traffic infraction in a “high crime area,” that was not enough for reasonable suspicion. *McCain*, 275 Va. at 555.

But a particularized nervous response is different. A “change in demeanor—from candid and calm to nervy and evasive in response to a particular question or line of questions— . . . is more unusual and plays a legitimate role in the reasonable-suspicion assessment.” *Urraca*, 123 F.4th at 839 (considering as part of reasonable suspicion analysis that the defendant’s demeanor shifted from “chatty” to silent just after the officer asked what was inside a box). For example, where a suspect suddenly “became nervous” and had a “strong reaction” only once the investigating officer asked if he was carrying anything, the First Circuit ruled that the nervous response was relevant to the officer’s assessment of reasonable suspicion to stop and frisk. *United States v. Belin*, 868 F.3d 43, 46 (1st Cir. 2017) (describing how the suspect’s “demeanor and facial expression changed, he took a deep breath, and then his breathing became quick and shallow”). Similarly, the Sixth Circuit found that a suspect’s abrupt “nervousness and agitation

⁵ “Unpublished opinions of this Court, while having no precedential value, are nevertheless persuasive authority.” *Samartino v. Fairfax Cnty. Fire and Rescue*, 64 Va. App. 499, 508 n.2 (2015).

upon being asked to sit in the back of the officers' vehicle" was a relevant factor in evaluating reasonable suspicion to search. *United States v. Shank*, 543 F.3d 309, 317 (6th Cir. 2008). That court also recognized that "a certain fundamental level of nervousness may be common in police encounters with citizens" and is therefore insufficient in itself to justify a stop and frisk. *Id.* But it noted the district court's finding that the suspect "was not initially upset, but became 'nervous and argumentative' after being asked to sit in the cruiser." *Id.* The court also affirmed the court's decision to "credit[] the officers' testimony that 'such a change in demeanor indicates that the suspect fears that the officers will discover that he is involved in criminal activity'" as one of many factors to support the officer's finding of reasonable suspicion. *Id.*

Here, when Officer Leon first reapproached Garrison after writing the traffic ticket, Garrison behaved normally and without any obvious signs of nervousness. As the trial court found, "Mr. Garrison was being polite with the officers; the officers were being polite back with him." Instead, "it wasn't until when Officer Leon was talking with Mr. Garrison about what he needs to do regarding the ticket and how his vehicle's going to be towed"—which is when Garrison became visibly and audibly nervous⁶—that the "totality of the circumstances" led Officer Leon to conduct the frisk. This reaction was more than the mere general nervousness to be expected during a police encounter, but it was instead an abrupt shift in behavior seemingly caused by the officer's question. So we agree that it supports reasonable suspicion here.

4. Garrison's body positioning during the stop

The Commonwealth also argues that Garrison's body movements are relevant to reasonable suspicion, relying on testimony from Officer Leon that Garrison was "blading" his body in a way that suggested he had a firearm. After Officer Leon told Garrison to "hang out" at

⁶ The officers testified that when Officer Leon asked Garrison whether he had a firearm, his breathing became heavy and he hesitated before he responded. The trial court cited "all the things that were testified to by the officers" as the basis for its decision.

the back of the car and Officer McCormack directed him to lean on the car, Garrison did so. He leaned his right hip on the car so that he was facing the passing traffic on the road. While the officers finished the administrative aspects of the stop in the patrol car, which took about four more minutes, they noted (as captured by the body-worn cameras) that it was “kind of weird” how Garrison held that posture and did not move. Officer Leon testified that he thought Garrison “could be, you know, blading a firearm given the factors that [he’d] already observed” and that when Garrison later walked towards him to get his ticket he did so “at an angle blading where the firearm would be, away from me.” Officer Leon later confirmed that in describing Garrison as “blading,” he meant that he was “kind of turned sideways.”

The trial court did not rely on the testimony about “blading” to conclude there was reasonable suspicion for the stop, and we agree that this description is not particularly useful.⁷ As other courts have noted, “the word ‘blading’ has become both unwieldy, lacking precision or a single definition, and tinged with loaded connotations.” *Commonwealth v. Karen K.*, 199 N.E.3d 860, 869 (Mass. 2023). Sometimes it means evading police, sometimes concealing a gun, and sometimes posing in an aggressive, oppositional manner.⁸ We agree that “[o]bservations that a person appeared to be concealing one side of his or her body or seemed ready to fight can be relayed more clearly by a straightforward description of the behavior” and that “judges should instruct witnesses simply to describe the behavior they observed in as much detail as possible, rather than merely labeling that behavior ‘blading.’” *Id.*; see also *State v.*

⁷ In response to argument from the Commonwealth that Garrison was blading his body, and otherwise moving, or not moving it, in a suspicious manner, the trial court merely observed that he “stood in the same position for the majority of the time that the officer was dealing with the summons,” without placing any weight on the same.

⁸ A recent law review article collects and catalogues various uses of the term “blading” across cases. Aliza Bloom, *Whack-A-Mole Reasonable Suspicion*, 112 Cal. L. Rev. 1129, 1155-1163 (2024).

Pugh, 826 N.W.2d 418, 424 (Wisc. Ct. App. 2012) (“Calling a movement that would accompany any walking away ‘blading’ adds nothing to the calculus except a false patina of objectivity.”).

Putting the term “blading” aside and simply considering the testimony and video evidence about Garrison’s posture, we find that his physical placement of his right hip against the rear of the car is at least somewhat relevant to the overall reasonable suspicion analysis. While Garrison was ordered to lean on the car, he elected to lean in a particular manner that obscured his waistband, and guns are often concealed in waistbands. Even where a suspect’s conduct is “ambiguous and susceptible of an innocent explanation,” if it suggests that he is committing a crime, officers may conduct a *Terry* stop “to resolve the ambiguity.” *Wardlow*, 528 U.S. at 125. So we agree with the Commonwealth that Garrison’s body position was something officers could at least consider as part of the calculus of whether Garrison was armed and dangerous.

5. The totality of the circumstances supports reasonable suspicion here.

Putting these factors together under our caselaw, we must affirm the trial court’s conclusion that there was reasonable suspicion to justify the search. While neither officer saw any imprints of a weapon in Garrison’s clothing after he was removed from the car, there were nevertheless several other circumstances that contributed to the officer’s conclusion that there was reasonable suspicion to search him. A “common thread” in our cases that affirm the presence of reasonable suspicion and “involve[] high crime areas and nervous behavior is the specific act of a furtive gesture to suggest that the suspect is armed.” *Thompson*, 54 Va. App. at 10 (collecting cases).⁹ The same is true here. The combination of the stop occurring in a high

⁹ We made this observation in *Thompson*, while concluding, that, in that case, there was no reasonable suspicion to justify a pat-down based only on particularized nervousness and presence in a high crime area. 54 Va. App. at 7-12. Particularly, this Court noted that while *Thompson* was located in a high crime area and acted nervous when the investigating officer asked whether he had weapons or contraband on him, the stop occurred during broad daylight at

crime area late at night, Garrison's particularized nervous response to the question of whether he was armed, his concealing behavior of rolling up the car window mid-stop and putting on a sweatshirt, and his pressing his right waistband against the car was enough to generate a reasonable suspicion that he might be armed and dangerous.

CONCLUSION

Under our totality of the circumstances framework, the trial court did not err in concluding that there was reasonable suspicion to support the frisk of Garrison. We therefore affirm Garrison's conviction.

Affirmed.

8:00 a.m and there was "no specific act of a furtive gesture to suggest that the suspect [was] armed." *Id.* at 10. By contrast, this stop happened at night and Garrison concealed his actions from officers both by rolling up his tinted window and putting on a sweatshirt and then later by pressing his right hip against the back of the car in a way that obscured his waistband.