COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

No. DAR-_____
2026-P-0257

COMMONWEALTH OF MASSACHUSETTS,
Appellant

v.

AVERY COKE,
Defendant-Appellee

COMMONWEALTH'S APPLICATION FOR DIRECT APPELLATE REVIEW

SUFFOLK COUNTY

KEVIN R. HAYDEN
District Attorney
For the Suffolk District

Erin Knight
Assistant District Attorney
For the Suffolk District
BBO# 696358
One Bulfinch Place
Boston, MA 02114
(617) 619-4070
erin.knight@mass.gov

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REQUEST FOR DIRECT APPELLATE REVIEW

This case presents an important question regarding the reasonable suspicion standard governing patfrisks in unlawful firearm cases. Specifically, the Court should clarify whether reasonable suspicion that a suspect is unlawfully armed is sufficient to justify a patfrisk, or whether the Commonwealth must separately establish an additional showing that the suspect presents some independent and imminent danger to police officers or the public.

Recent decisions and oral arguments in the lower appellate and trial courts suggest growing confusion regarding whether the "armed and dangerous" standard requires proof of two independent elements. Yet this Court has already made clear that where officers reasonably suspect that a defendant is carrying an illegal firearm, that suspicion itself supports the conclusion that the defendant is armed and dangerous and therefore subject to a lawful patfrisk. *Commonwealth v. Guardado*, 491 Mass. 666, 681 (2023) (emphasis added).

Because this misunderstanding threatens to distort the reasonable suspicion standard governing patfrisks in unlawful firearm cases across the Commonwealth, clarification from this Court is warranted. This case squarely presents that issue. The motion judge expressly found that officers had reasonable suspicion that the defendant was carrying an illegal firearm, yet nevertheless suppressed the firearm be-

cause the officers allegedly lacked separate evidence that the defendant was "dangerous." The judge's ruling therefore directly conflicts with this Court's precedent and provides an appropriate vehicle for clarifying the governing rule.

Direct appellate review is therefore appropriate.

STATEMENT OF PRIOR PROCEEDINGS

On November 7, 2024, a Suffolk County grand jury returned five indictments against the defendant, Avery Coke, charging him with: 1) carrying a firearm without a license, second offense, in violation of G. L. c. 269, § 10(a) & (d); 2) carrying a loaded firearm, in violation of G. L. c. 269, § 10(n); 3) possession of a large capacity feeding device, in violation of G. L. c. 269, § 10(m); 4) possession of ammunition without an FID card, in violation of G. L. c. 269, § 10(h)(1); and 5) possession of a machine gun, in violation of G. L. c. 269, § 10(a) & (c) (Docket No. 2484CR00596)(C.A. 3-5).

On April 10, 2025, the defendant filed a motion to suppress seeking to suppress all evidence seized, including a firearm and ammunition (C.A. 7, 11-20). On July 21, 2025, the Commonwealth filed an opposition (C.A. 8, 21-28). On July 22, 2025, an evidentiary hearing was held before the Honorable Sarah Kim who then took the matter under advisement (C.A. 8).

On August 13, 2025, the defendant filed a supplemental memorandum in support of his motion (C.A. 9, 29-

33). On October 16, 2025, the Court allowed the defendant's motion to suppress in a memorandum of decision and order (C.A. 9, 34-41).

On November 6, 2025, the Commonwealth filed a motion for reconsideration with Judge Kim (C.A. 10, 42-50). On November 7, 2025, the defendant filed an opposition (C.A. 10, 51-58). On December 2, 2025, Judge Kim denied the Commonwealth's motion in a margin endorsement (C.A. 10, 59). The Commonwealth filed a notice of appeal on December 12, 2025 (C.A. 10, 60).

On January 6, 2026, the Commonwealth filed an application for interlocutory review with the Single Justice of this Court (C.A. 63-89). On January 7, 2026, the defendant filed an opposition (C.A. 90-94). On January 12, 2026, Justice Wolohojian took the matter under advisement, and on January 13, 2026, allowed the Commonwealth's application and assigned the case to proceed in the Appeals Court (C.A. 62, 95-96). The case was docketed in the Appeals Court on February 25, 2026.

STATEMENT OF RELEVANT FACTS

A. The Motion Judge's Findings.

On July 22, 2025, Officer Christian Coyne testified at the suppression hearing. In her decision, the motion judge expressly credited the officer's testimony, and adopted his testimony as part of her findings. The following is taken,

verbatim, from the Court's Findings of Fact from the October 16, 2025, memorandum of decision and order, inclusive of footnotes:

> The Court finds the following facts based upon the photographic and documentary exhibits and testimony of Boston Police Officer Christian Coyne[1] ("Officer Coyne"). The Court finds that the officer testified credibly. His testimony is adopted as part of the Court's findings.
>
> The background section centrally concerns events surrounding the 2024 Caribbean Festival and Officer Coyne's knowledge and previous experience with the Defendant.
>
> **I. Prior to 2024 Caribbean Festival**
>
> Officer Coyne testified that the Caribbean Festival is historically a violent festival where there are shootings, homicides, and increased gun recovery. Prior to the festival, Officer Coyne received advisories from the Boston Regional Intelligence Center ("BRIC") regarding the Caribbean Festival. One of the notices advised of a recent trend of gang members using fanny packs to conceal illegal firearms. This advisory also reflected his personal experience on the job, as Officer Coyne and his colleagues have recovered firearms that were concealed in fanny packs.
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>
> [1] Officer Coyne has worked for the Boston Police Department for seven years. For six of those years, he has been assigned to District B-3, which covers the Mattapan and Dorchester neighborhoods. He has been involved with approximately one hundred firearms arrests.

Officer Coyne also testified that the officers had particular concerns for the Caribbean Festival due to recent shootings. Approximately a week earlier, on August 18, 2024, five people were shot at the Dominican Festival.

Officer Coyne testified that he also had heightened concerns of gun violence at the Caribbean Festival based on his personal experience patrolling the festival in the past. He had patrolled the Caribbean Festival for six years. The previous year, in 2023, he was patrolling the Caribbean Festival when there was a mass shooting resulting in nine people were shot. Officers recovered a fully automatic firearm.

II. 2024 Caribbean Festival

On August 24, 2024, the Caribbean Festival was held in the Dorchester neighborhood of Boston. That day, Officer Coyne was on patrol with Boston Police Officers Matthew Turner ("Officer Turner"), Sal Calabrese ("Officer Calabrese"), and Joe McDonough ("Officer McDonough"). The four officers were traveling in an unmarked cruiser, but were wearing their uniforms.

On the day of the Caribbean Festival, the four officers were working together in the morning. At 11:00 a.m., Officers Turner and Calabrese arrested an individual and brought him to the police department to be booked for a firearm charge after he was observed to hand a firearm from his waistband to someone else.

In the early afternoon, Officer Coyne was patrolling near the corner of Michigan Avenue and Co-

lumbia Road in Dorchester and observed Mr. Coke and Antonio Moore ("Mr. Moore") on a set of stairs on a porch. Officer Coyne recognized both Mr. Coke and Mr. Moore. He was aware that Mr. Moore was associated with members of three different gangs. Officer Coyne also knew Mr. Coke from prior arrests and his criminal history, which included a prior guilty plea for a firearms offense and resisting arrest. Officer Coyne also knew Mr. Coke was associated with the Glenway Gang. A few days before the Caribbean Festival, Officer Coyne stopped a car where Mr. Coke was the front seat passenger. The stop also included a patfrisk of the car that did not yield anything. The officer observed that the glove compartment was locked. As Mr. Coke left, he saluted the officers, saying "better luck next time."

Officer Coyne observed that Mr. Coke and Mr. Moore were sitting on the steps of the porch with about ten others. Mr. Coke was wearing a fanny pack.[2] Officer Coyne observed a woman in the group notice the officers. Officer Coyne inferred from the woman's body language that she proceeded to tell Mr. Moore about the officers, who then told Mr. Coke. After observing the officers, Mr. Coke, who had been standing outside a doorway, opened the door and stepped away with his back in the doorway.

Officer Coyne believed that Mr. Coke repositioned himself this way to give himself an exit. The officers were unable make additional observations

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[2] Officer Coyne also described this as a cross-body bag.

of Mr. Coke and the group on the porch, however, because the officers' attentions were diverted when they saw two suspects involved in a shooting a few days before. They proceeded to arrest the suspects and found that they were each carrying firearms.

Around 2:30 p.m., the four officers were together in the cruiser on Ellington Street. They saw the same group of people from the porch, including Mr. Coke. A woman and Mr. Moore approached the cruiser to converse with the officers in an "almost overly friendly way." The woman asked if she could ride in the cruiser and sit in their laps. Based on his training and experience, Officer Coyne suspected that the woman and Mr. Moore were trying to distract the officers from Mr. Coke.

At this time, Mr. Coke broke away from the group and continued walking up the street with another woman. He put his arm across the woman's shoulders, and she put her arm across his. Mr. Coke was still wearing the fanny pack bag toward his back and the large area toward the back part of his waist. Officer Coyne observed Mr. Coke then touch the fanny pack on his back. Officer Coyne admitted while there may be several reasons why someone might touch their bag, based on his training and experience, the officer believed that Mr. Coke was doing a "security check," namely touching firearm to make sure it was still there. Mr. Coke did not continue to hold or touch the bag, touch the front of his waistband, or make any other furtive gestures.

The officers continued driving up Ellington Street, following Mr. Coke, and tried to interact

with him. Mr. Coke did not respond. Instead, he made a 180 degree turn and walked back the way he had come from. At some point early in the interaction, Officer Coyne yelled to Mr. Coke: "no lock box today, Avery," referencing the earlier car stop. Officer Coyne agreed that - at that time - he had no specific information that Mr. Coke was going to participate in a crime or had committed a crime and no other observation that Mr. Coke had committed a crime. Officer Coyne averred, however, that he believed he had reasonable suspicion that Mr. Coke had a firearm inside his fanny pack.

Mr. Coke re-approached the group and continued past them to the gate of a house. Based on Mr. Coke's turning around, the officers wanted to continue observing him, so they backed up their cruiser toward him. At that time, Mr. Coke stepped through the gate of house and walked up the stairs. Earlier, Officer Coyne saw Mr. Coke walk by the house. Officer Coyne did not know who lived at the house and did not know where Mr. Coke lived, but knew he did not live there. He assumed that Mr. Coke had no connection to the house, because Officer Coyne did not see anyone calling or waiving Mr. Coke into the house. Mr. Coke was not on the phone at the time. Officer Coyne believed that Mr. Coke was trying to get away from the officers. Based upon Mr. Coke's conduct and Officer Coyne's familiarity with Mr. Coke, Officer Coyne believed that Mr. Coke had a firearm in the fanny pack. The officers got out of the car to approach Mr. Coke to frisk him for weapons.

Officer Coyne's body worn camera ("BWC") footage showed him approach the house, walking through gate that enclosed the lawn. The BWC shows Mr. Coke standing on the front porch of a house. A few people were standing outside the fence on the sidewalk as the officers approached. As the officer walked up the front porch steps, Mr. Coke is heard to say, “this is my people's crib” and “my family lives here.” A woman can be heard to say that the house was not his house, which the Court infers was a reference to Mr. Coke. Officer Coyne told Mr. Coke that they were going to check him for a weapon as he frisked Mr. Coke's outer clothing. The officers discovered a knife in his shorts.

Officer Coyne is heard to say he was going to check “this” and began removing the fanny pack from Mr. Coke's shoulders. The officer testified that, when pat frisking the fanny pack, he observed that it was full and was made of a tough nylon. Due the fullness and material of the pack, he could not feel the contours of objects inside the pack. Thus, Officer Coyne opened the fanny pack and found the firearm. It had an attachment that made it fully automatic. Mr. Coke resisted being arrested for about five minutes.[3] He did not have a license to carry a firearm. The officers did not ask the people in the house if they knew Mr. Coke.

Mr. Coke was indicted on charges that included violating G.L. c. 269, § l0(a) (possession of a firearm, not present at home or work, and without a

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[3] Officer Coyne’s BWC was knocked off while the officers attempted to handcuff Mr. Coke.

> license); G.L. c. 269, § l0(n) (carrying a loaded firearm); G.L. c. 269, § l0(m) (unlawful possession of a large capacity feeding device); G.L. c. 269, § l0(h) (possession of ammunition without a firearm identification card); and G.L. c. 269, § l0(c) (unlawful possession of a machine gun).

(C.A. 34-37).

B. Rulings of Law.

Based on the above facts, Judge Kim then made the following conclusions of law:

> I. The stop
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> Mr. Coke was stopped at the time the officers approached him at the house and pat frisked him. Mr. Coke contends that Officer Coyne lacked reasonable suspicion at the time of the stop. For the following reasons, the Court disagrees.
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> "The mere carrying of a concealed firearm is not a crime, thus observations suggesting a concealed firearm, with nothing more, do not provide reasonable suspicion for a stop." *Depeiza*, 449 Mass. at 373. "However, when such police when such police [sic] observations are coupled with other factors, there may be reasonable suspicion of a crime." *Id.*
>
> Here, although a close call, Officer Coyne had reasonable suspicion to conduct an investigatory stop of Mr. Coke. At the time of the stop, Officer

Coyne was aware of Mr. Coke's criminal history[4], including a firearms offense and gang affiliation. *See Commonwealth v. Garner*, 490 Mass. 90, 92 (2022) ("Knowledge that a suspect's criminal record includes weapons-related offenses may factor into the reasonable suspicion calculus"); *Commonwealth v. Elysee*, 77 Mass. App. Ct. 833, 841 (2010)(noting that "[w]hile gang membership alone does not provide reasonable suspicion…" it may be considered in the totality of the circumstances). The Court also infers from Mr. Coke's actions that he was attempting to avoid contact with the officers. *See Commonwealth v. Karen K*, 491 Mass. 165, 180 (2023)(officer could consider defendant's repeatedly looking over shoulder and attempts to avoid police officers in considering whether he had a reasonable suspicion of criminal activity). Officer Coyne also reasonably inferred that the other people Mr. Coke was hanging out with that day were attempting to distract the officers from Mr. Coke. *Commonwealth v. Sweeting-Bailey*, 488 Mass. 741, 748 (2021)(passenger's attempt to distract officers from the defendant relevant to reasonable suspi-

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[4] Although Officer Coyne was aware of Mr. Coke's prior conviction for a firearms offense, there is no further information in the record as to when and where this offense took place. The Court notes that this lessens the relevance of this information, as Mr. Coke's criminal record could be stale and therefore of minimal value in the reasonable suspicion analysis. *See Commonwealth v. Garner*, 490 Mass. 90, 92-93 (2022) (noting defendant's criminal record "carrie[d] little weight" as defendant's most recent conviction was six years prior).

cion analysis). From Officer Coyne's training and experience, fanny packs are often used to carry firearms. *See Commonwealth v. Johnson-Rivera*, 104 Mass. App. Ct. 533, 537 (2024)(noting officer's observation that "the type of cross-body bag worn by the defendant" was often used to carry firearms was relevant to reasonable suspicion calculus). Furthermore, Officer Coyne observed Mr. Coke conduct a security check of the fanny pack, a gesture he understood to check whether he was still carrying the firearm. *See DePieza*, 449 Mass. at 372 ("[a]lthough nervous or furtive movements do not supply reasonable suspicion when considered in isolation, they are properly considered together with other details to find reasonable suspicion"). *But see Commonwealth v. Wilmer W.,* 100 Mass. App. Ct. 1109, 2021 WL 4515319 at *3 n.9 (2021) (Rule 23 Decision)(noting that no published decision has discussed a "security check" of tapping bag and in three unpublished decisions a "security check" refers to tapping waistband). To be sure, any single one of these factors may not rise to the level of reasonable suspicion when considered individually. *See Johnson-Rivera*, 104 Mass. App. Ct. at 537, *quoting DePeiza*, 449 Mass. at 373 ("'[t]hat there may be innocent explanations for the [suspect's behavior] does not remove it from consideration in the reasonable suspicion analysis' when the officer provides an adequate basis for its inclusion as a factor"). Taken together, however, these factors establish a reasonable suspicion of illegal conduct justifying an investigatory stop of Mr. Coke. *See Gomes*, 453 Mass. at 511.[5]

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[5] The Commonwealth, citing *Commonwealth v. Stoute*, 422 Mass. 782, 790-791 (1996), also ar-

II. The Patfrisk

Next, even if the investigatory stop was justified, more is needed to justify the patfrisk. Although the question is a close one, here, the Court concludes that Officer Coyne lacked specific and articulable facts from which the officers could infer that Mr. Coke was armed and dangerous.

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gues that Officer Coyne's general concern regarding firearms offenses at the Caribbean Festival indicate a potential ongoing risk to public safety and weigh in favor of reasonable suspicion. The Court disagrees. The Court acknowledges the history of violence at the Caribbean Festival and violence at other recent festivals, however, without more information connecting those instances to specific crimes occurring at the 2024 Caribbean Festival, the Court does not see the connection to the reasonable suspicion analysis beyond pure speculation. *See Gomes*, 453 Mass. at 513 (officer's observation "'[t]here have been shootings downtown,' that '[t]here have been numerous incidents of firearms,' and that he was 'familiar with at least four police officer involved shootings in the area,' without more particular facts relating to this defendant and to when those other shootings had occurred, did not give the police the necessary reasonable suspicion to conduct a protective frisk"); *Commonwealth v. Meneus*, 476 Mass. 231, 239 (2017)(noting that although reasonable suspicion was supported by "the fact that the crime under investigation was a shooting, with implications for public safety" the courts "have not gone so far as to carve out a public safety exception).

The same factors underlying the stop are the same factors supporting the patfrisk, however, they do not rise to reasonable suspicion Mr. Coke was armed and dangerous. What is lacking from the totality of the circumstances is any specific report involving the defendant or any other ongoing specific criminal activity in the area, such as a shooting or other violent crime[6]. *See Commonwealth v. Greenwood*, 78 Mass. App. Ct. 611, 618 (2011)("[t]he officers lacked any concrete knowledge that a crime had been committed. Their observations to that point justified nothing more than the initiation of a threshold inquiry"). The Court notes that at the time of the stop, Officer Coyne was not responding to a particular crime or shooting at the Caribbean Festival. Rather, he was generally patrolling the area. *Compare Commonwealth v. Alvarado*, 423 Mass. 266, 271 (1996)(no information defendant posed "any imminent threat to public safety") with *Commonwealth v. Privette*, 491 Mass. 501, 521 (2023)(defendant only person in vicinity of recently reported robbery); *Commonwealth v. Evelyn*, 485 Mass. 691, 709 (2020)(defendant's temporal proximity to crime carried "significant weight"); *Commonwealth v. Ancrum*, 65 Mass. App. Ct. 647, 655 (2006)(exit order and patfrisk justified where police reasonably believed suspects were involved in recent shooting); *Commonwealth v. Doocey*, 56 Mass. App. Ct. 550, 558 (2002)(patfrisk of defendant justified for officer safety where police responding to reports of shots fired); *Commonwealth v. Stoute*, 422 Mass. 782,

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[6] While the officers had made arrests that day of other individuals carrying firearms, there is no allegation tying Mr. Coke to those individuals.

> 791 (1996)(officers responding to report of armed individual). Furthermore, while Officer Coyne knew Mr. Coke's prior criminal history, he acknowledged having no particular information that Mr. Coke committed or would be committing a particular crime. For these reasons, the Court concludes that there was no reasonable suspicion that Mr. Coke was armed and dangerous at the time of the patfrisk.

(C.A. 38-40). She then allowed the defendant's motion.

STATEMENT OF THE ISSUES OF LAW

Whether the reasonable suspicion standard governing pat frisks requires proof that a suspect is both illegally armed and independently dangerous, even where the officer has reasonable suspicion of unlawful firearm possession.

ARGUMENT

THE MOTION JUDGE MISAPPLIED THE REASONABLE SUSPICION STANDARD BY REQUIRING A SEPARATE SHOWING OF "DANGEROUSNESS" AFTER FINDING REASONABLE SUSPICION THAT THE DEFENDANT WAS UNLAWFULLY ARMED.

Courts at the trial and appellate level across the Commonwealth are misconstruing the reasonable suspicion standard governing when a patfrisk of a potentially armed and dangerous suspect is warranted. While this Court has unequivocally stated that, in order to conduct a lawful patfrisk, "[p]olice must have a reasonable suspicion, based on

specific articulable facts, that the suspect is armed and dangerous," *Commonwealth v. Torres-Pagan*, 484 Mass. 34, 38-39 (2020), some courts have interpreted that standard as imposing an additional requirement that the Commonwealth prove that a suspect is both illegally armed and poses some independent, specific, and imminent danger to a police officer or the public before a patfrisk is warranted. That heightened standard appears nowhere in the case law. Instead, this Court has already answered the question: in *Commonwealth v. Guardado*, this Court held that "[i]f an officer has reasonable suspicion that a person is carrying an illegal firearm . . . that is a sufficient basis upon which to conclude that the person is armed and dangerous so as to justify a pat-frisk." 491 Mass. 666, 681 (2023). Here, the motion judge's ruling cannot be reconciled with that clear directive. Yet this mandate is too often overlooked, leading to the suppression of firearms lawfully seized.

This misconception reflects a misreading of *Torres-Pagan*. That decision did not heighten the patfrisk standard. Rather, it clarified the distinction between the more demanding standard governing patfrisks and the lower standard that permits exit orders during routine traffic stops. As the *Torres-Pagan* Court explained, an exit order may be justified by a generalized concern for officer safety, even where there is no particular reason to suspect that a motorist is armed or possesses a weapon. *Torres-Pagan*, 484 Mass. at 38–39 (emphasis added). A patfrisk, by contrast, requires

more: "reasonable suspicion, based on specific articulable facts, that the suspect is armed and dangerous." *Id.* at 39, citing *Commonwealth v. Martin*, 457 Mass. 14, 19 (2010). The *Torres-Pagan* Court therefore addressed the apparent confusion that had arisen in earlier cases blurring this distinction by suggesting that the same generalized safety concerns sufficient to justify an exit order could also justify a patfrisk. *Torres-Pagan*, 484 Mass. at 38–39. Properly understood, therefore, *Torres-Pagan* clarified that patfrisks require more than exit orders**,** but not more than the traditional *Terry* standard itself (armed and dangerous). It is thus still the law that when police reasonably suspect that a person is unlawfully carrying a firearm, that suspicion supports the conclusion that the person is armed and dangerous and is therefore subject to a lawful patfrisk as stated succinctly by this Court as recently as *Guardado*. *Id.* 491 Mass. at 681.

Importantly, in a street encounter such as the case at bar, the governing inquiry remains the traditional *Terry* question: whether specific, articulable facts support reasonable suspicion that the suspect is armed and dangerous, and therefore whether a patfrisk is lawful. *Torres-Pagan*, which addressed the relationship between exit orders and patfrisks during traffic stops, is therefore not implicated. See *Martin*, 457 Mass. at 19 ("to proceed from a stop to a frisk, the police officer must reasonably suspect that the person stopped is armed and dangerous") (quoting *Arizona v. Johnson*, 555

U.S. 323, 326–327 (2009)); *Commonwealth v. Narcisse*, 457 Mass. 1, 7 (2010). That suspicion may arise from specific facts suggesting that a suspect possesses an illegal firearm, because a reasonable belief that a person is unlawfully armed necessarily implicates officer safety. See *Commonwealth v. Resende*, 474 Mass. 455, 461 (2016).

Applying that principle, the Appeals Court has historically recognized that reasonable suspicion that a defendant is unlawfully armed suffices to justify a patfrisk, *see Commonwealth v. Ramirez*, 92 Mass. App. Ct. 742, 748-749 (2018); *Commonwealth v. Sweeting-Bailey*, 98 Mass. App. Ct. 862, 866-868 (2020), aff'd, 488 Mass. 741 (2021); *Commonwealth v. Monell*, 99 Mass. App. Ct. 487, 492-494 (2021), but a growing confusion appears to be brewing among trial judges and appellate panels alike.

Here, for example, the motion judge erroneously allowed the defendant's motion to suppress despite concluding that police had reasonable suspicion that the defendant was carrying an illegal firearm. The motion judge credited Officer Coyne's testimony in full, adopted it wholesale as fact, and expressly found that the officer had reasonable suspicion to stop the defendant based on a compelling constellation of facts, all of which have been previously identified in appellate decisions as proper factors which police may consider in the reasonable suspicion analysis: 1) the defendant had a previous firearm conviction; 2) was a known gang affiliate; 3) was attempting to evade police; 4) the defendant's compan-

ions were attempting to distract officers from the defendant; 5) the defendant was wearing a fanny pack that the officers knew from their training and experience is often used to carry unlawful firearms; 6) officers believed based on their training and experience that the defendant did a "security check" on the fanny pack to make sure it was still there; 7) the defendant ignored officers when they tried to speak to him; and 8) the defendant walked up the stairs of a stranger's home evade police scrutiny (C.A 34-37).

Yet the motion judge then inexplicably ruled that, considering the very same constellation of factors, the police somehow "lacked specific and articulable facts from which the officers could infer that the defendant was armed and dangerous" (C.A. 40). The judge reasoned that reasonable suspicion that the defendant was illegally armed and dangerous was lacking because officers were not responding to a specific 911 call, recent shooting, or concrete contemporaneous crime involving the defendant (C.A. 40), but that is not the law. The motion judge's reasoning reflects a fundamental misapplication of the reasonable suspicion standard, and the cases cited by the motion judge, such as *Commonwealth v. Privette*, 491 Mass. 501 (2023); *Commonwealth v. Evelyn*, 485 Mass. 691 (2020); *Commonwealth v. Ancrum*, 65 Mass. App. Ct. 647 (2006); *Commonwealth v. Doocey*, 56 Mass. App. Ct. 550 (2002); and *Commonwealth v. Stoute*, 422 Mass. 782 (1996), do not establish a set of prerequisites for a lawful patfrisk. Rather, they illustrate circumstances in

which reasonable suspicion was found to exist and denial of suppression motions were affirmed. Massachusetts law has never required that officers be responding to a reported crime, a recent shooting, or a specific complaint involving the defendant before conducting a patfrisk. Instead, the governing inquiry remains whether, under the totality of the circumstances, specific and articulable facts would lead a reasonably prudent officer to believe the suspect is armed and dangerous. See *Narcisse*, 457 Mass. at 7. By treating the factual circumstances of those cases as necessary conditions rather than illustrative examples, the motion judge effectively imposed a heightened standard that finds no support in this Court's patfrisk jurisprudence.

Moreover, although it is of course an "established rule that the report of the carrying of a firearm is not, standing alone, a basis for having a reasonable suspicion of criminal activity," *Commonwealth v. Alvarado,* 423 Mass. 266, 271 (1996), "because the mere possession and carrying of a gun is not a crime," *Commonwealth v. Grinkley*, 44 Mass. App. Ct. 62, 70 (1997), knowledge that the defendant is legally unable to possess a firearm does make his carrying a firearm a crime. Here, Officer Coyne knew that the defendant had a prior firearm conviction (C.A. 38). The motion judge nevertheless erroneously discounted the information because the record did not specify when the conviction occurred, suggesting that it might be "stale" and therefore of limited value in the reasonable suspicion analysis (C.A. 38, n.4). But the rel-

evance of that conviction was not simply that it reflected a propensity for violence. Rather, it provided Officer Coyne with reason to believe that the defendant could not lawfully possess a firearm at all. Under Massachusetts law, individuals with disqualifying criminal convictions are ineligible to obtain a license to carry a firearm. See G. L. c. 140, § 131(d); see also *Commonwealth v. Rivas*, 466 Mass. 184, 193 (2013) (officer's knowledge of defendant's felony conviction supported inference that defendant could not lawfully possess a firearm). Thus, if Officer Coyne reasonably suspected that the defendant was carrying a firearm, he necessarily had reason to suspect that the firearm was being carried unlawfully. Suspicion that a legally disqualified person is carrying a firearm is suspicion of unlawful firearm possession, which directly supports the inference that the suspect is armed and dangerous. *Guardado*, 491 Mass. at 681 ("[i]f an officer has reasonable suspicion that a person is carrying an illegal firearm . . . that is a sufficient basis upon which to conclude that the person is armed and dangerous so as to justify a pat-frisk").

Thus, the record makes clear that the motion judge construed the application of "armed and dangerous" too strictly, applied the concept of specificity too narrowly, and completely ignored the fact that the factors giving rise to the stop duly showed that the defendant was in fact armed and therefore could be dangerous. Her determination is legally

erroneous, internally inconsistent, and contrary to controlling Massachusetts precedent, and must be reversed.

Recent Appeals Court oral arguments illustrate that the motion judge is not alone in misconstruing the governing patfrisk standard, and highlights the emerging confusion as to what constitutes "armed and dangerous" in this Commonwealth. For example, in *Commonwealth v. Almilkal M. Ruiz*, 25-P-646 (argued Jan. 13, 2026) (Vuono, Neyman, Sacks, JJ.), Justice Sacks asked whether "armed and dangerous" are "two separate inquiries" (14:35 – 14:50).[7] Similarly, in *Commonwealth v. Jorge German*, 2024-P-1428 (argued Jan. 14, 2026) (Henry, Hand, Allen, JJ.), Justice Henry suggested that the Commonwealth must show "both that [the defendant] was armed and that he was dangerous" under *Torres-Pagan* (1:14:53 – 1:15:08).[8] These exchanges re-

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[7] The panel in *Ruiz* ultimately affirmed the allowance of the defendant's motion to suppress based on its finding that the facts of that case "provide[d] evidence of a heightened need for caution and perhaps reasonable suspicion that the defendant may be dangerous, [but] the totality of the facts did not provide reasonable suspicion that the defendant was also armed. 106 Mass. App. Ct. 1123, 2026 Mass. App. Unpub. LEXIS 132, *5 (February 17, 2026) (emphasis added). That is a different case from the case at bar, where the motion judge has found that Officer Coyne had reasonable suspicion the defendant was illegally armed (C.A. 39).

[8] As of the filing of this application, *Commonwealth v. Jorge German* is still pending with the Appeals Court.

flect the same misunderstanding present in the ruling below and the need for clear guidance from this Court.

STATEMENT OF WHY DIRECT APPELLATE REVIEW IS APPROPRIATE

This case presents the recurring question whether the Commonwealth must establish a separate showing of "dangerousness" to justify a patfrisk where officers reasonably suspect unlawful firearm possession. This uncertainty persists despite this Court's directive that reasonable suspicion a person is carrying an illegal firearm supports the conclusion that the person is armed and dangerous and therefore subject to a patfrisk. See *Guardado*, 491 Mass. at 681. This Court should grant direct appellate review to clarify that when officers reasonably suspect unlawful firearm possession, no additional showing of "dangerousness" is required. Because this misunderstanding has resulted in suppression orders excluding firearms lawfully recovered during constitutionally permissible patfrisks, this Court's review is warranted to correct the misapplication of the reasonable suspicion standard and to exercise its supervisory authority over art. 14 jurisprudence.

CONCLUSION

For the foregoing reasons, the Commonwealth respectfully requests that this Honorable Court allow the Commonwealth's application for direct appellate review.

Respectfully submitted
FOR THE COMMONWEALTH,

KEVIN R. HAYDEN
District Attorney
For the Suffolk District

/s/ Erin Knight
Erin Knight
Assistant District Attorney
BBO# 696358
One Bulfinch Place
Boston, MA 02114
(617) 619-4070
erin.knight@mass.gov

/s/ Elisabeth Martino
Elisabeth Martino
Assistant District Attorney
BBO# 673778
One Bulfinch Place
Boston, MA 02114
(617) 619-4122
elisabeth.martino@mass.gov

March 20, 2026

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ADDENDUM

G.L. c. 269, § 10. Weapons — Dangerous Weapons — Unlawfully Carrying.

(a) Whoever, except as provided or exempted by statute, knowingly has in his possession; or knowingly has under his control in a vehicle; a firearm, loaded or unloaded, as defined in section one hundred and twenty-one of chapter one hundred and forty without either:

(1) being present in or on his residence or place of business; or

(2) having in effect a license to carry firearms issued under section one hundred and thirty-one of chapter one hundred and forty; or

(3) having in effect a license to carry firearms issued under section one hundred and thirty-one F of chapter one hundred and forty; or

(4) having complied with the provisions of sections one hundred and twenty-nine C and one hundred and thirty-one G of chapter one hundred and forty; or

(5) having complied as to possession of an air rifle or BB gun with the requirements imposed by section twelve B; and whoever knowingly has in his possession; or knowingly has under control in a vehicle; a rifle or shotgun, loaded or unloaded, without either:

(1) being present in or on his residence or place of business; or

(2) having in effect a license to carry firearms issued under section one hundred and thirty-one of chapter one hundred and forty; or

(3) having in effect a license to carry firearms issued under section one hundred and thirty-one F of chapter one hundred and forty; or

(4) having in effect a firearms identification card issued under section one hundred and twenty-nine B of chapter one hundred and forty; or

(5) having complied with the requirements imposed by section one hundred and twenty-nine C of chapter one hundred and forty upon ownership or possession of rifles and shotguns; or

(6) having complied as to possession of an air rifle or BB gun with the requirements imposed by section twelve B; shall be punished by imprisonment in the state prison for not less than two and one-half years nor more than five years, or for not less than 18 months nor more than two and one-half years in a jail or house of correction. The sentence imposed on such person shall not be reduced to less than 18 months, nor suspended, nor shall any person convicted under this subsection be eligible for probation, parole, work release, or furlough or receive any deduction from his sentence for good conduct until he shall have served 18 months of such sentence; provided, however, that the commissioner of correction may on the recommendation of the warden, superintendent, or other person in charge of a correctional institution, grant to an offender committed under this subsection a temporary release in the custody of an officer of such institution for the following purposes only: to attend the funeral of a relative; to visit a critically ill relative; or to obtain emergency medical or psychiatric service unavailable at said institution. Prosecutions com-

menced under this subsection shall neither be continued without a finding nor placed on file.

No person having in effect a license to carry firearms for any purpose, issued under section one hundred and thirty-one or section one hundred and thirty-one F of chapter one hundred and forty shall be deemed to be in violation of this section.

The provisions of section eighty-seven of chapter two hundred and seventy-six shall not apply to any person 18 years of age or older, charged with a violation of this subsection, or to any child between ages fourteen and 18 so charged, if the court is of the opinion that the interests of the public require that he should be tried as an adult for such offense instead of being dealt with as a child.

The provisions of this subsection shall not affect the licensing requirements of section one hundred and twenty-nine C of chapter one hundred and forty which require every person not otherwise duly licensed or exempted to have been issued a firearms identification card in order to possess a firearm, rifle or shotgun in his residence or place of business.

(c) Whoever, except as provided by law, possesses a machine gun, as defined in section one hundred and twenty-one of chapter one hundred and forty, without permission under section one hundred and thirty-one of said chapter one hundred and forty; or whoever owns, possesses or carries on his person, or carries on his person or under his control in a vehicle, a sawed-off shotgun, automatic part, bump stock, rapid-fire trigger activator or trigger modifier, as those terms are defined in said section one hundred and twenty-one of said chapter one hundred and forty, shall be punished by imprisonment in the state prison for life, or for any term of years provided that any sentence imposed under the provisions of this paragraph shall be subject to the minimum requirements of paragraph (a).

(d) Whoever, after having been convicted of any of the offenses set forth in paragraph (a), (b) or (c) commits a like offense or any other of the said offenses, shall be punished by imprisonment in the state prison for not less than five years nor more than seven years; for a third such offense, by imprisonment in the state prison for not less than seven years nor more than ten years; and for a fourth such offense, by imprisonment in the state prison for not less than ten years nor more than fifteen years. The sentence imposed upon a person, who after a conviction of an offense under paragraph (a), (b) or (c) commits the same or a like offense, shall not be suspended, nor shall any person so sentenced be eligible for probation or receive any deduction from his sentence for good conduct.

(h)(1) Whoever owns, possesses or transfers a firearm or ammunition without complying with the provisions of section 129C of chapter 140 shall be punished by imprisonment in a jail or house of correction for not more than 2 years or by a fine of not more than $500. Whoever commits a second or subsequent violation of this paragraph shall be punished by imprisonment in a house of correction for not more than 2 years or by a fine of not more than $1,000, or both. Any officer authorized to make arrests may arrest without a warrant any person whom the officer has probable cause to believe has violated this paragraph.

(m) Notwithstanding the provisions of paragraph (a) or (h), any person not exempted by statute who knowingly has in his possession, or knowingly has under his control in a vehicle, a large capacity firearm or large capacity feeding device therefor who does not possess a valid license to carry firearms issued under section 131 or 131F of chapter 140, except as permitted or otherwise provided under this section or chapter 140, shall be punished by imprisonment in a state prison for not less than two and one-half years nor more than ten years. The possession of a valid firearm identifica-

tion card issued under section 129B shall not be a defense for a violation of this subsection; provided, however, that any such person charged with violating this paragraph and holding a valid firearm identification card shall not be subject to any mandatory minimum sentence imposed by this paragraph. The sentence imposed upon such person shall not be reduced to less than one year, nor suspended, nor shall any person convicted under this subsection be eligible for probation, parole, furlough, work release or receive any deduction from his sentence for good conduct until he shall have served such minimum term of such sentence; provided, however, that the commissioner of correction may, on the recommendation of the warden, superintendent or other person in charge of a correctional institution or the administrator of a county correctional institution, grant to such offender a temporary release in the custody of an officer of such institution for the following purposes only: (i) to attend the funeral of a spouse or next of kin; (ii) to visit a critically ill close relative or spouse; or (iii) to obtain emergency medical services unavailable at such institution. Prosecutions commenced under this subsection shall neither be continued without a finding nor placed on file. The provisions of section 87 of chapter 276 relative to the power of the court to place certain offenders on probation shall not apply to any person 18 years of age or over charged with a violation of this section.

The provisions of this paragraph shall not apply to the possession of a large capacity firearm or large capacity feeding device by (i) any officer, agent or employee of the commonwealth or any other state or the United States, including any federal, state or local law enforcement personnel; (ii) any member of the military or other service of any state or the United States; (iii) any duly authorized law enforcement officer, agent or employee of any municipality of the commonwealth; (iv) any federal, state or local historical society, museum or institutional collection open to the public; provided, however, that any such person described in clauses (i) to (iii), inclusive, is authorized by a competent authority to acquire, possess or carry a large capacity semiautomatic weapon and

is acting within the scope of his duties; or (v) any gunsmith duly licensed under the applicable federal law.

(n) Whoever violates paragraph (a) or paragraph (c), by means of a loaded firearm, loaded sawed off shotgun or loaded machine gun shall be further punished by imprisonment in the house of correction for not more than 2½ years, which sentence shall begin from and after the expiration of the sentence for the violation of paragraph (a) or paragraph (c).

Commonwealth v. Ruiz

Appeals Court of Massachusetts

February 17, 2026, Entered

25-P-646

Reporter
2026 Mass. App. Unpub. LEXIS 132 *; 106 Mass. App. Ct. 1123; 2026 LX 96438; 2026 WL 445410

COMMONWEALTH *vs*. ALMILKAL M. RUIZ.

Notice: Summary decisions issued by the Appeals Court pursuant to *M.A.C. Rule 23.0*, as appearing in 97 Mass. App. Ct. 1017 (2020) (formerly known as *rule 1:28*, as amended by 73 Mass. App. Ct. 1001 [2009]), are primarily directed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, such decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to *rule 23.0* or *rule 1:28* issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent. See *Chace v. Curran, 71 Mass. App. Ct. 258, 260 n.4, 881 N.E.2d 792 (2008)*.

PUBLISHED IN TABLE FORMAT IN THE MASSACHUSETTS APPEALS COURT REPORTS.

Disposition: Order allowing motion to suppress affirmed.

Core Terms

reasonable suspicion, patfrisk, bag, firearm, exit, gang, motor vehicle, armed

Judges: Vuono, Neyman & Sacks, JJ. **[*1]**

Opinion

MEMORANDUM AND ORDER PURSUANT TO RULE 23.0

The Commonwealth appeals from a District Court judge's order allowing the defendant's motion to suppress evidence obtained from a detention and patfrisk following a traffic stop. The Commonwealth argues that the judge erred in allowing the motion because the patfrisk was justified by reasonable suspicion that the defendant was armed and dangerous. We affirm.

Background. We recite the facts as found by the motion judge, "supplemented by additional undisputed facts where they do not detract from the judge's ultimate findings." *Commonwealth v. Jessup, 471 Mass. 121, 127-128, 27 N.E.3d 1232 (2015)*. On April 5, 2024, Sergeant Gary Hagerty was on patrol around Rockaway Street in Lynn. This is considered a high crime area of Lynn and "an area that police were focused on as a result of an increase in gang activity in the approximately four months prior to April, 2024," which included a "triple shooting" and "double murder" in December 2023. That evening, Sergeant Hagerty was on patrol in an unmarked vehicle when he saw a motor vehicle travel through a stop sign without slowing or stopping. He checked the license plate, which "came back to a Black Infiniti, but the vehicle was a Subaru." The license plate **[*2]** was associated with a vehicle belonging to Brian Khampharasavath (Khampharasavath). Sergeant Hagerty knew Khampharasavath from a prior firearms-related

arrest and his association with gangs in the area. Sergeant Hagerty radioed for marked units to assist in making a motor vehicle stop. Sergeant Hagerty "put the blue lights on" and performed a motor vehicle stop. Of note, the vehicle stopped in the middle of the road and not close to the curb.

As Sergeant Hagerty executed the stop, he saw the passenger door open and the passenger, later identified as the defendant, get out of the Subaru.[1] After the defendant got out of the vehicle, the defendant was ordered to remain at the vehicle by the police, which he did. Sergeant Hagerty noted that the defendant's exit from the vehicle seemed "quicker" than a normal exit. The defendant's quick exit heightened Sergeant Hagerty's concerns because, based on his training and experience, people trying to get out of motor vehicles quickly after being stopped by police do so because of what is in the car or on their person. As the defendant walked back to the vehicle, Sergeant Hagerty "observed a satchel-type bag around his body." The defendant's wearing **[*3]** of this bag, in the present circumstances, heightened Sergeant Hagerty's concerns because "he had made at least [ten] arrests wherein persons were carrying firearms in this type of bag." Accordingly, Sergeant Hagerty patfrisked the defendant's bag but did not find anything therein. Sergeant Hagerty then patfrisked the defendant's waist and felt what turned out to be a black nine millimeter firearm with no serial number.

Upon locating the loaded firearm, Sergeant Hagerty testified that he "demanded" the defendant produce a license to carry a firearm. In response the defendant said that he was in the "process of getting one." The defendant was placed under arrest.

Discussion. "In reviewing a ruling on a motion to suppress, we accept the judge's subsidiary findings of fact absent clear error but conduct an independent review of [the judge's] ultimate findings and conclusions of law" (quotation and citation omitted). *Commonwealth v. Scott, 440 Mass. 642, 646, 801 N.E.2d 233 (2004)*. We "leave to the [motion] judge the responsibility of determining the weight and credibility to be given . . . testimony presented at the motion hearing." *Commonwealth v. Meneus, 476 Mass. 231, 234, 66 N.E.3d 1019 (2017)*, quoting *Commonwealth v. Wilson, 441 Mass. 390, 393, 805 N.E.2d 968 (2004)*. However, we "make an independent determination of the correctness of the judge's application of constitutional **[*4]** principles to the facts as found." *Commonwealth v. Mercado, 422 Mass. 367, 369, 663 N.E.2d 243 (1996)*.

The Commonwealth contends that the totality of the facts found and credited by the motion judge provided the officers with reasonable suspicion that the defendant was armed and dangerous, justifying the detention and patfrisk of the defendant. We disagree.

"A patfrisk is permissible only where an officer has reasonable suspicion that the stopped individual may be armed and dangerous." *Commonwealth v. Sweeting-Bailey, 488 Mass. 741, 744, 178 N.E.3d 356 (2021)*, cert. denied, *143 S. Ct. 135, 214 L. Ed. 2d 40 (2022)*. "In assessing whether an officer has reasonable suspicion to justify a patfrisk, we ask whether a reasonably prudent [person] in the [officer's] position would be warranted in the belief that the safety of the police or that of other persons was in danger" (quotations and citation omitted). *Id.* "An innocent explanation for an individual's actions 'does not remove [those actions] from consideration in the reasonable suspicion analysis.'" *Id.*, quoting *Commonwealth v. DePeiza, 449 Mass. 367, 373, 868 N.E.2d 90 (2007)*.

The Commonwealth urges us to reverse the allowance of the defendant's motion to suppress because the totality of circumstances showed that (1) Sergeant Hagerty was patrolling a high crime area; (2) tensions and gang violence were heightened; (3) the car from which the defendant exited bore a license plate **[*5]** which was registered to a person with known gang associations and a prior firearms-related arrest; (4) the vehicle carrying the defendant and another person stopped in the middle of the road rather than at the curb; (5) the defendant made a "quicker" than normal exit from the vehicle; and (6) Sergeant Hagerty saw the defendant wearing a satchel-type bag from which Sergeant Hagerty had recovered firearms on prior occasions.

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[1] There was no exit order given to the defendant as he had already stepped out of the vehicle after the stop and as the police were approaching.

Although the above factors provide evidence of a heightened need for caution and perhaps reasonable suspicion that the defendant may be dangerous, the totality of the facts did not provide reasonable suspicion that the defendant was also armed. See *Sweeting-Bailey, 488 Mass. at 744*. There was no particular reason to believe that the defendant was carrying a weapon. Indeed, our case law is clear that merely exiting a vehicle during a police stop does not support a finding of reasonable suspicion. *Commonwealth v. Torres, 424 Mass. 153, 159, 674 N.E.2d 638 (1997)* ("It is not unnatural for either the driver or the passenger in an automobile [or both] to get out of the vehicle to meet a police officer who has signalled the vehicle over to the side of the road"). Moreover, Sergeant Hagerty's initial concerns were based on the driver's traffic violation, the record of **[*6]** the driver of the vehicle, and his associations with gangs, not the defendant's identity. See *id. at 157*.

We acknowledge that the police officers were confronted with a potentially dangerous situation in real time and we are loathe to say that Sergeant Hagerty acted unreasonably in light of the factors delineated above and his training and experience.[2] We further note that reasonable suspicion is lower than the standard of probable cause and requires only "the sort of common-sense conclusio[n] about human behavior upon which practical people — including government officials — are entitled to rely" (quotations and citation omitted). *Commonwealth v. Gonzalez, 93 Mass. App. Ct. 6, 11-12, 96 N.E.3d 719 (2018)*. Nevertheless, the Commonwealth did not present adequate evidence to justify the patfrisk. The defendant did get out of his car rapidly but complied with officer instructions to return to the vehicle. The defendant did not make any furtive gestures or movements that were consistent with carrying a firearm. See *Commonwealth v. Powell, 102 Mass. App. Ct. 755, 762-763, 212 N.E.3d 841 (2023)*. The defendant's use of a satchel-type bag is also not enough to provide reasonable suspicion that he was armed; the defendant made no attempt to conceal or hide the bag justifying "reasonable suspicion that the bag contained an illegal firearm or other contraband" **[*7]** (citation omitted). *Commonwealth v. Johnson-Rivera, 104 Mass. App. Ct. 533, 537, 241 N.E.3d 89 (2024)*. Moreover, we only consider that an area is high crime if the "high crime" nature of the area has a "direct connection with the specific location and activity being investigated." *Commonwealth v. Torres-Pagan, 484 Mass. 34, 41, 138 N.E.3d 1012 (2020)*. Here, the police were investigating a civil motor vehicle infraction, and Khampharasavath's associations with gang activity dated years back. Accordingly, we discern no error in the judge's conclusion that there was no reasonable suspicion to conduct a patfrisk of the defendant.

Order allowing motion to suppress affirmed.

By the Court (Vuono, Neyman & Sacks, JJ.[3]),

Entered: February 17, 2026.

End of Document

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[2] We acknowledge the difficult result reached here. Although "[t]he touchstone of search and seizure law is reasonableness," *Commonwealth v. Harris, 93 Mass. App. Ct. 56, 63, 96 N.E.3d 729 (2018)*, and "police officers need not gamble with their personal safety when there are legitimate safety concerns to justify [their actions]" (quotations and citation omitted), *Commonwealth v. Demos D., 497 Mass. 78, 87 (2026)*, our jurisprudence requires reasonable suspicion that a defendant is both dangerous and "armed" in order to justify a patfrisk. *Sweeting-Bailey, 488 Mass. at 744*.

[3] The panelists are listed in order of seniority.

CERTIFICATION

I hereby certify that, to the best of my knowledge, this brief complies with the rules of court that pertain to the filing of petitions for Direct Appellate Review, including those rules specified in Mass. R. App. P. 16(k). This brief complies with the length limit of Mass. R. App. P. 11: it is written in 14-point Century Schoolbook font and contains 1,779 non-excluded words in the argument section, as determined by using Microsoft Word 2010.

/s/ Erin Knight
Erin Knight
Assistant District Attorney

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify under the pains and penalties of perjury that I have today made service on the defendant by email:

Portia Charles, Esq.
portia.charles@charleslawpractice.com

/s/Erin Knight
ERIN KNIGHT
Assistant District Attorney
For The Suffolk District

March 20, 2026

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

No. DAR-_____
2026-P-0257

COMMONWEALTH OF MASSACHUSETTS,
Appellant

v.

AVERY COKE,
Defendant-Appellee

COMMONWEALTH'S APPLICATION FOR DIRECT APPELLATE REVIEW

SUFFOLK COUNTY
