SJC-13170

COMMONWEALTH vs. KAREN K., a juvenile.

Suffolk. February 2, 2022. - January 4, 2023.

Present: Budd, C.J., Gaziano, Lowy, Cypher, Kafker, Wendlandt, & Georges, JJ.

Firearms. Practice, Criminal, Juvenile delinquency proceeding, Motion to suppress, Findings by judge. Threshold Police Inquiry. Constitutional Law, Stop and frisk, Reasonable suspicion, Investigatory stop. Search and Seizure, Protective frisk, Reasonable suspicion, Threshold police inquiry.

Complaint received and sworn to in the Suffolk County Division of the Juvenile Court Department on November 2, 2018.

A pretrial motion to suppress evidence was heard by Joseph F. Johnston, J., and conditional pleas of delinquent were accepted by him.

After review by the Appeals Court, the Supreme Judicial Court granted leave to obtain further appellate review.

Eva G. Jellison for the juvenile.

Kathryn Sherman, Assistant District Attorney, for the Commonwealth.

The following submitted briefs for amici curiae:

William D. Dalsen for Committee for Public Counsel Services & others.

Erik Lampmann & Rachel Stuckey, of the District of Columbia, Daniel Donadio, of New Hampshire, Sara E. Silva, Thomas J. Carey, Jr., & Radha Natarajan for New England Innocence Project.

Katharine Naples-Mitchell for Families for Justice as Healing & another.

GEORGES, J. Following a patfrisk, Boston police officers found a loaded firearm in the waistband of the juvenile defendant, who subsequently was charged with four firearms-related offenses.[1] The juvenile moved to suppress the evidence of the seized firearm on the grounds that police did not have reasonable suspicion to stop her, and did not have reasonable suspicion that she was armed and dangerous so as to permit the patfrisk. After a hearing, a Juvenile Court judge determined that police had had reasonable suspicion that the juvenile had been carrying a firearm in her waistband, which permitted them to undertake a brief investigatory stop, and denied her motion to suppress. The juvenile entered a conditional guilty plea to the four offenses, conditioned on the right to appeal from the denial of her motion to suppress. Concluding that there had been reasonable suspicion to support the stop, an extended panel of the Appeals Court affirmed the denial; two justices dissented

[1] The juvenile was charged with possession of a firearm without a license, G. L. c. 269, § 10 (a); possession of ammunition without a firearm identification card, G. L. c. 269, § 10 (h) (1); carrying a loaded firearm without a license, G. L. c. 269, § 10 (n); and possession of a large-capacity feeding device, G. L. c. 269, § 10 (m).

because they concluded that the circumstances did not give rise to reasonable suspicion. See Commonwealth v. Karen K., 99 Mass. App. Ct. 216 (2021). We allowed the juvenile's application for further appellate review and now affirm the judge's decision.[2]

1. Background. The facts are derived from the motion judge's findings of fact, and from undisputed testimony at the hearing, with certain facts reserved for later discussion. See Commonwealth v. Matta, 483 Mass. 357, 358 (2019) ("For the purposes of the motion to suppress, we present the facts found by the motion judge supplemented by uncontroverted facts from the record"); Commonwealth v. Manha, 479 Mass. 44, 45 (2018) ("In our review of the denial of the defendant's motion to suppress, we accept the motion judge's factual findings unless clearly erroneous, and independently apply the law to those findings to determine whether actions of the police were constitutionally justified").

At roll call at around 4 or 5 P.M. on November 1, 2018, Officer Samora Lopes of the Boston police department's youth violence strike force was informed by his sergeant of a

[2] We acknowledge the amicus briefs submitted by the Committee for Public Counsel Services, the American Civil Liberties Union of Massachusetts, Citizens for Juvenile Justice, Massachusetts Association of Criminal Defense Lawyers, and Lawyers for Civil Rights; by New England Innocence Project; and by Families for Justice as Healing and Charles Hamilton Houston Institute for Race and Justice.

telephone call that the sergeant had received earlier that day. The sergeant told Lopes that a "concerned citizen" who lived in the area of a local housing complex had called the sergeant directly to report that "multiple kids" were "hanging around, displaying a firearm" outside the complex. Lopes also testified that if he was "not mistaken" there had been "shots fire[d]" at the housing complex "a day before," and that police had responded to "multiple shots fired" there that week.

As a result of this call, Lopes and his three partners for the shift, among them Officer Norman Teixeira, were dispatched to the housing complex. When they reached the housing complex at around 8 P.M., Lopes and his partners parked their police vehicle on a side street that runs perpendicular to Heath Street, a street that abuts one side of the multibuilding housing complex. It was dark outside when the officers arrived, but Lopes testified that the area of the housing complex where he and the other officers were located was "[v]ery well" lit with streetlights, and that he had a clear view of the relevant events "[a]t all times" while he was sitting in the vehicle. After receiving a call from other officers regarding a group of juveniles in the area, Lopes began driving toward the housing complex. From inside the vehicle, Lopes could see a group of

seven police officers[3] and, some distance away, the juvenile and a companion. He observed the officers crossing over to Heath Street in the direction of the housing complex, as the juvenile and her companion were walking along Heath Street on the sidewalk abutting the housing complex. The group of officers was further up the street, such that the juvenile and her companion were walking behind the officers.

Lopes testified that, from his position seated in the police vehicle, he noticed that when the juvenile "observed the officers crossing the street, she immediately broke right with the other individual" with whom she had been walking and made an abrupt right turn onto a sidewalk leading into one of the courtyards of the housing complex. Upon noting this rapid change in direction, Lopes parked on Heath Street, directly beside the entrance to one of the courtyards. From this position, Lopes was able to observe the juvenile and her companion as they began to move through the courtyard. He estimated that his cruiser was approximately sixty feet from the juvenile at that point.

Lopes also observed that the juvenile "kept looking back over [her] shoulder" at the other officers, "and adjusting the

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[3] The group of officers apparently was present at the housing complex also in response to the call that had been made to the sergeant. The sergeant was also present at the housing complex at this time.

waistband" of her pants. He testified that this continuous behavior, combined with the juvenile's abrupt turn away from police, considered in the context of the tip from the concerned caller, raised his suspicion that the juvenile was carrying a firearm in her waistband.

Lopes and Teixeira then got out of the vehicle and began to walk through the courtyard in the direction in which the juvenile and her companion were walking. Lopes watched as the juvenile "took a left turn" "towards where the other officers were, and [then] immediately came back around" to where she had been moments earlier, once again turning abruptly away from the group of officers. In turning away from the other officers, the juvenile broke from her companion, turned around entirely, and began to walk, by herself, more quickly than she had been.

Having reversed direction, the juvenile was then headed directly toward Lopes and Teixeira. When the three converged in the courtyard, the juvenile attempted to walk quickly around Lopes, but he obstructed her path and grabbed her arms to prevent her from getting past him. When Lopes stopped her, the juvenile told him that, because she was female, he was not allowed to search her. Lopes found a female colleague to conduct a patfrisk; during the frisk, the officer found a loaded firearm in the juvenile's waistband.

At the hearing on the juvenile's motion to suppress, Lopes testified to his nine years of experience as an officer of the Boston police department, his four years as a member of the youth violence strike force, his multiple ("[o]ver forty") arrests for firearms offenses, his familiarity with the housing complex, and the course on characteristics of individuals carrying illegal firearms, conducted by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), that he had twice attended. Among other things, the course was intended to teach officers the types of "gestures" exhibited by individuals who are carrying illegal firearms in their waistbands. Information Lopes received during that training led him to suspect that certain of the juvenile's actions indicated she was carrying a firearm in her waistband.

2. Discussion. The juvenile argues that two of the motion judge's findings were not supported by the testimony at the hearing and therefore were clearly erroneous and should not have factored into the analysis whether the officer had reasonable suspicion to stop her. The juvenile also maintains that her actions did not establish reasonable suspicion that she was carrying a firearm in her waistband at the time that the officers stopped her and that nothing subsequent to the stop, prior to the patfrisk, gave rise to a reasonable suspicion that she was armed and dangerous. Accordingly, the juvenile argues,

the patfrisk was unconstitutional and the gun seized from her person should have been suppressed.

a. Whether any of the motion judge's findings were clearly erroneous. The juvenile argues that the motion judge "made two clearly erroneous factual findings." She contends that it was clearly erroneous for the motion judge to find that she "adjusted her waistband" and also to find that she "bladed" her body "so as to conceal something on her person." Both of the juvenile's claims pertain to the same portion of the motion judge's decision denying the motion to suppress:

> "As the [j]uvenile was walking, she continuously looked over her shoulder and adjusted her waistband. The [j]uvenile turned her body away, referred to by . . . Lopes as 'bladed' her body, so as to conceal something on her person. She also repeatedly looked back and forth at officers before changing directions."

"A finding is clearly erroneous when there is no evidence to support it, or when, 'although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed'" (citation omitted). Custody of Eleanor, 414 Mass. 795, 799 (1993). The juvenile argues that the motion judge committed clear error when he found that, "[a]s the [j]uvenile was walking, she continuously looked over her shoulder and adjusted her waistband." Specifically, the juvenile contends that Lopes's testimony supports a finding only that the juvenile made

"a hand movement on her waist," not that she "adjusted" her waistband.

We disagree. While Lopes indeed did use a number of other terms to describe the juvenile's actions, among them that the juvenile was "holding" her waistband, he also repeatedly described the juvenile's actions as "adjusting" her waistband. Lopes testified that, while walking, the juvenile "kept looking back over [her] shoulder and adjusting the waistband" of her pants, and, at another point, described the juvenile as "looking [back] at the officers" while "adjusting the waist" of her pants. Lopes also physically demonstrated for the motion judge, in response to the prosecutor's request, what he saw the juvenile do in the area of her waistband. Immediately before the demonstration, Lopes described the action of adjusting the waistband as something that the juvenile had "continued doing." The judge allowed the prosecutor's request that "the record may reflect that the witness . . . has stood and demonstrated for the Court a reaching towards his waistband area motion and looking back over his shoulder as he was walking." When the defendant objected that Lopes could not have seen the motion of reaching toward the waistband, given that he was behind the juvenile and observing from the back, the judge allowed the defendant to examine Lopes on that point, and Lopes reiterated that he had seen those motions from his police vehicle while it

had been parked on Heath Street, approximately sixty feet away from the juvenile.

As the juvenile notes in her challenge to the judge's finding that she "adjusted" her waistband, immediately following Lopes's demonstration, the prosecutor characterized it as "reaching towards" the waistband, and did not use the word "adjust." Lopes also later agreed on cross-examination with the characterization by defense counsel that "[a]ll [Lopes] did was" see the juvenile "from behind making a hand movement on her waist." "Where there are two permissible views of the evidence, [however,] the factfinder's choice between them cannot be clearly erroneous" (citation omitted). Commonwealth v. Carr, 458 Mass. 295, 303 (2010). In this case, given that Lopes testified multiple times that he saw the juvenile "adjusting" her waistband, it was not clearly erroneous for the motion judge to find that the juvenile "adjusted" her waistband.

The juvenile also argues that the motion judge erred in finding that she "bladed" her body "so as to conceal something on her person." We consider this assertion as comprising two distinct but related arguments: that the juvenile never "bladed" her body, and that she did not move "so as to conceal something on her person." Moreover, even if Lopes had seen such behavior, the juvenile contends, it was clear error to label it "blad[ing]," and to treat it as separate and distinct from her

adjustment of her waistband and her repeated looking back at the group of officers. The juvenile argues that, rather than two distinct actions, "[t]here was one sequence of behavior that Lopes observed and described."

We do not agree. Three separate exchanges during the testimony at the suppression hearing support the judge's finding that the juvenile "turned her body away . . . so as to conceal something on her person," in addition to the other findings he made regarding the juvenile's movements. First, during cross-examination, Lopes was asked about his ATF training:

Q.: "They spoke about blading [at the ATF training], didn't they?"

A.: "They did."

Q.: "Okay. And they also spoke about stiff arm running?"

A.: "Yes."

Q.: "Right. None of that occurred with my client?"

A.: "Yeah, if she['s] holding her waist and turn --"

Q.: "I asked you --

A.: "-- that's blading."

Given that reasonable suspicion may be grounded in "reasonable inferences [drawn]" from "specific, articulable facts" (citation omitted), see Commonwealth v. DePeiza, 449 Mass. 367, 371 (2007), it was not clear error for the motion judge to conclude that, during this exchange, Lopes had

described observing the juvenile move her body so as to conceal a firearm on her person. More specifically, Lopes was asked on cross-examination whether "blading" had been discussed at his ATF training. He responded that it had been and said that if someone was "holding her waist and turn[ing]," as the juvenile had been doing, "that's blading." It was not unreasonable for the motion judge to infer from this exchange that Lopes's ATF training had taught him that the series of movements exhibited by the juvenile indicated that she was attempting to conceal a firearm.

On redirect, moreover, the prosecutor asked Lopes to describe the "blading that [the juvenile] was exhibiting." Lopes's response indicated that the juvenile's act of "holding her waist and turn[ing]" was separate and distinct from her repeatedly looking back at the group of officers. Lopes testified that, "[a]s she's walking, she turns to her left side and [is] looking back at the officer[s] several times, back and forth while she's walking on the pathway." He clarified on cross-examination that she did this "back and forth, . . . multiple times, while adjusting the waist." This description aligns roughly with a definition in Commonwealth v. Resende, 474 Mass. 455, 459 n.8 (2016), in which "blading away" was described as "the action of creating a thin profile of oneself with respect to another viewpoint, effectively hiding one side of the

body from the other person's view." Moreover, Lopes then physically demonstrated the movements he had seen. Finally, as discussed infra, Lopes clearly testified that his observations of the juvenile's adjustment of her waistband, in conjunction with his training on methods of attempting to conceal illegal weapons, suggested the attempt to conceal a firearm.

Viewed in its entirety, the record adequately supports the judge's factual findings, and there was no clear error in the judge's determination that the juvenile "adjusted" her waistband and engaged in the separate and distinct actions that Lopes characterized as "blading." Thus, even if, as the juvenile argues, "[t]here was one sequence of behavior that Lopes observed and described," it was not clearly erroneous for the motion judge to have found that this sequence of behavior involved three different actions on the part of the juvenile: "look[ing] over her shoulder and adjust[ing] her waistband," "turn[ing] her body away . . . so as to conceal something on her person," and "repeatedly look[ing] back and forth at officers before changing directions."

Lopes observed a sequence of behavior on the part of the juvenile and suspected, based on that sequence, that the juvenile was concealing a firearm in her waistband. The question is whether it was reasonable for Lopes to suspect that the juvenile was carrying a firearm based on the way she was

manipulating her waistband, given his prior knowledge and specialized training about what the juvenile's sequence of gestures indicated. It is precisely the otherwise innocuous nature of adjusting one's waistband that makes Lopes's testimony concerning this behavior so crucial to the analysis of reasonable suspicion. Lopes testified about the basis for this inference both on direct and cross-examination, and the judge found his testimony credible in its entirety. The juvenile did not challenge Lopes's testimony concerning his prior, repeated Federal trainings on detecting concealed, illegal firearms, either at the suppression hearing or in her brief to this court. She did not question the nature or extent of the training, how long ago it had been undertaken, or how many Boston police officers have had such training. Nor did she challenge the extent to which the judge could consider that training in determining whether Lopes had had a reasonable suspicion that the juvenile was armed and dangerous when he decided to pat frisk her.

While the term "blading" in this case did result in some confusion, the officer's descriptions and demonstration of the juvenile's actions allow us to conclude that none of the motion judge's findings was clearly erroneous, and that the juvenile's described behavior properly could be considered in the analysis of reasonable suspicion. We note, however, that the word

"blading" has become both unwieldy, lacking precision or a single definition, and tinged with loaded connotations. While "blading" has been described as indicative of an attempt to "hid[e] one side of the body," see Resende, 474 Mass. at 459 n.8, we also have accepted a witness's assertion that "a bladed stance" suggested that a physical "attack" potentially was imminent, see, e.g., Commonwealth v. Sweeting-Bailey, 488 Mass. 741, 743–744 (2021), cert. denied, 143 S. Ct. 135 (2022).[4] Observations 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. Henceforth, judges should instruct witnesses simply to describe the behavior they observed in as much detail as possible, rather than merely labeling that behavior "blading."

b. Reasonable suspicion. The juvenile argues that Lopes did not have reasonable suspicion to stop her, and that

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[4] Federal appellate courts increasingly also have used the term to describe a wide range of behavior. See, e.g., Crabbs v. Pitts, 817 Fed. Appx. 208, 210 (6th Cir. 2020) (describing "blading" as "touching or looking at the area where [one's] weapon was on [one's] body to make sure it was there"); Maldonado Pinedo v. United States, 814 Fed. Appx. 338, 341 (10th Cir. 2020) (taking "bladed stance" described as "standing with [one's] feet angled out at [ninety] degrees"); United States v. Quarterman, 877 F.3d 794, 796 (8th Cir. 2017) (describing "blading" as "standing as a boxer does, flat-footed with a shoulder pointed toward an individual"). See also United States v. Braddy, 11 F.4th 1298, 1305 (11th Cir. 2021) (crediting testimony that drug-sniffing dog had "body bladed towards the car, front paws pushed forward").

therefore the seizure was unconstitutional and her motion to suppress the firearm discovered as a result of the stop should have been allowed.[5] The juvenile maintains that Lopes's observations of her actions did not themselves give rise to reasonable suspicion that she was carrying a gun in her waistband. In addition, she argues that the tip was not reliable and should have been given little weight, because it was stale and anonymous and described very general, generic behavior.

While, as discussed, we credit a motion judge's factual findings absent clear error, "[w]e review independently the

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[5] To determine whether reasonable suspicion existed at the time of the stop, we first must determine when, precisely, the stop took place. See Commonwealth v. Franklin, 456 Mass. 818, 820-821 (2010). The juvenile argues that there is some question with respect to when she was seized. She contends that the stop "likely" occurred moments before Lopes grabbed her arms, when he blocked her path with his body to prevent her from moving past him.

In determining whether a seizure has occurred, the "question is whether an officer has, through words or conduct, objectively communicated that the officer would use his or her police power to coerce that person to stay." Commonwealth v. Matta, 483 Mass. 357, 362 (2019). Clearly, the juvenile was seized when Lopes grabbed her arms. The juvenile concedes that Lopes blocked her path and grabbed her arms at essentially the same time, and that, for the purposes of the reasonable suspicion analysis, all of the relevant events occurred before either of these actions. Thus, as the juvenile also concedes, the difference in time between these two actions is "immaterial" for purposes of determining whether Lopes had reasonable suspicion to stop her.

application of constitutional principles to the facts found." Commonwealth v. Wilson, 441 Mass. 390, 393 (2004).

Article 14 of the Massachusetts Declaration of Rights provides that "[e]very subject has a right to be secure from all unreasonable searches, and seizures, of his person, his houses, his papers, and all his possessions." For an investigatory stop to be constitutional under art. 14, officers must have been acting with "reasonable suspicion, based on specific and articulable facts, that the defendant had committed, was committing, or was about to commit a crime" (citation omitted). Commonwealth v. Henley, 488 Mass. 95, 102 (2021).

"Reasonable suspicion is measured by an objective standard, and the totality of the facts on which the seizure is based must establish an individualized suspicion that the person seized by the police is the perpetrator of the crime under investigation" (quotation and citation omitted). Commonwealth v. Meneus, 476 Mass. 231, 235 (2017). Reasonable suspicion "must be grounded in specific, articulable facts and reasonable inferences [drawn] therefrom rather than on a 'hunch'" (quotations and citation omitted). DePeiza, 449 Mass. at 371. "The facts and inferences underlying the officer's suspicion must be viewed as a whole when assessing the reasonableness of [the officer's] acts." Commonwealth v. Sykes, 449 Mass. 308, 314 (2007), quoting Commonwealth v. Thibeau, 384 Mass. 762, 764 (1981). Thus, "a

combination of factors that are each innocent of themselves may, when taken together, amount to the requisite reasonable belief" that a person has, is, or will commit a particular crime. Commonwealth v. Feyenord, 445 Mass. 72, 77 (2005), cert. denied, 546 U.S. 1187 (2006), quoting Commonwealth v. Fraser, 410 Mass. 541, 545 (1991). While conduct that, standing alone, may appear innocent can, considered together with other factors, constitute reasonable suspicion, cf. DePeiza, supra at 372-373, "[a]dding up eight innocuous observations -- eight zeros -- does not produce a sum of" reasonable suspicion. Commonwealth v. Barreto, 483 Mass. 716, 723 (2019), quoting Commonwealth v. Torres, 424 Mass. 153, 161 (1997).

Reasonable suspicion for a stop is not sufficient to permit a patfrisk of a stopped individual; to conduct a patfrisk requires more. In order to frisk a person stopped on grounds of reasonable suspicion, police must have a reasonable suspicion, based on specific, articulable facts, that the individual is "armed and dangerous" (citation omitted). Commonwealth v. Torres-Pagan, 484 Mass. 34, 38 (2020). "Evidence obtained as the result of an unlawful seizure is inadmissible." Commonwealth v. Franklin, 456 Mass. 818, 820 (2010).

Here, Lopes testified to a combination of factors that he believed gave rise to a reasonable suspicion that the juvenile was carrying an illegal firearm in her waistband. He cited,

most significantly, her gestures in the area of her waistband, the movements and angling of her body, her repeatedly looking back over her shoulder toward the officers behind her, and her multiple and sudden changes in direction in an apparent effort to avoid encountering a group of police officers as characteristic of an individual who is carrying an illegal firearm. Certainly, none of the juvenile's actions, taken in isolation, would be enough to establish reasonable suspicion. See, e.g., Matta, 483 Mass. at 366 ("the defendant's adjustment of his waistband alone did not create reasonable suspicion for a seizure. It is not uncommon for anyone to adjust his or her clothing upon getting out of a motor vehicle"); DePeiza, 449 Mass. at 372 ("nervous or furtive movements do not supply reasonable suspicion when considered in isolation"). Taken together, however, and in conjunction with the other factors present here, such as the juvenile's apparently repeated efforts to avoid police, Lopes's specialized training and experience, and, to some minimal extent, the (stale) tip by the concerned caller, the juvenile's actions gave rise to reasonable suspicion that she was carrying a firearm.

i. Suspected concealment of a firearm in the juvenile's waistband. The juvenile contends that Lopes did not sufficiently establish a connection between his training and experience and his suspicion that the juvenile was carrying a

firearm in her waistband, and thus that Lopes's testimony about his training and experience should have been given little weight in the analysis of reasonable suspicion.

Lopes testified that, while sitting in his police vehicle, he saw the juvenile exhibit behavior that, based on his training, appeared consistent with that of someone who was carrying an unholstered firearm in her waistband. He estimated that the distance between himself and the juvenile at that point was approximately sixty feet. Lopes explained that he had been taught to discern this behavior at trainings on the common characteristics of armed gunmen that was conducted by the ATF, and that he had attended such trainings on multiple occasions. Specifically, Lopes observed that the juvenile "kept looking back over [her] shoulder" at the other officers "and adjusting the waistband" of her pants. Lopes testified that this behavior, which was consistent with his training regarding the characteristics of someone who is carrying an illegal firearm, in conjunction with the juvenile's abrupt turn away from police and her repeated looks back at the group of officers, considered in the context of the call from the concerned caller, raised his suspicion that the juvenile was carrying a firearm in her waistband.

"[O]rdinarily, when an officer relies on his or her training and experience to draw an inference or conclusion about

an observation made, the officer must explain the specific training and experience that he or she relied on and how that correlates to the observations made." See Matta, 483 Mass. at 366 n.8. In Matta, we concluded that the officer had acted with reasonable suspicion, even though he "did not testify specifically that, in his training and experience, the adjustment of one's waistband in the way described indicates that the person may be carrying an unlicensed firearm" (emphasis added). Id.

Here, by contrast, Lopes testified that the juvenile's repeated "adjusting [of] the waistband" and turning of her body so as to avoid the officers were consistent with behavior that had been taught in his ATF trainings as exemplifying the carrying of an unholstered firearm in the waistband.[6] See

[6] Federal appellate courts have given weight to testimony about "training and experience" that was less specific than what Lopes provided at the suppression hearing. See, e.g., United States v. Bontemps, 977 F.3d 909, 912, 916–917 (9th Cir. 2020), cert. denied, 141 S. Ct. 2874 (2021) (officer testified that based on "training and experience as a police officer," bulges in clothing were identifiable as "consistent with carrying a firearm in public"); United States v. Briggs, 720 F.3d 1281, 1283 (10th Cir. 2013) (officer testified that "in his training and experience, people who illegally carry weapons often keep them at their waistline and touch or grab at the weapon when they encounter police").

State courts in other jurisdictions have reached similar conclusions. For example, in State v. Murray, 213 A.3d 571, 578–579 (Del. 2019), the Delaware Supreme Court concluded that officers had acted with reasonable suspicion on facts somewhat similar to those presented here. There, the court asserted that

Resende, 474 Mass. at 461 (officer testified that "the defendant [was] holding his hand at his waist in a manner that [the officer] believed from his training and experience was consistent with someone holding a gun in the waistband of his pants"). See also Commonwealth v. Dasilva, 66 Mass. App. Ct. 556, 558 (2006).

As the juvenile points out, people routinely adjust their waistbands for various legitimate reasons. That "there may be innocent explanations for [certain behavior, however,] does not remove it from consideration in the reasonable suspicion analysis." DePeiza, 449 Mass. at 373. As in DePeiza, Lopes's suspicion that the juvenile had a firearm in her waistband was "not a mere hunch, but was the result of the application of [his] experience and [ATF] training . . . to [his] detailed observations of the defendant." Id.

"[i]n determining whether there was reasonable suspicion to justify a detention, the court defers to the experience and training of law enforcement officers." Id. at 579. In that case, as in this one, officers had stopped one of two pedestrians who were walking together, and the court noted favorably that the officer "did not simply stop two people walking late at night in a high crime area indiscriminately" but, "instead . . . focused his attention specifically on one of them who engaged in behavior that was indicative of the possession of a deadly weapon." Id. See People v. Brannon, 16 N.Y.3d 596, 602 (2011) (relying on officer's "experience" regarding how "gravity knives" are "commonly carried in a person's pocket").

In Matta, 483 Mass. at 359, officers were acting on a tip from an "unknown" source that someone had placed a firearm under the seat of a motor vehicle. When officers arrived at the area and parked behind the defendant's vehicle, he got out of the vehicle while "adjust[ing] his waistband" and walked away from the officers, taking an unusual path. Id. After the officers called out to him, the defendant ran away while "[holding] onto his waistband." Id. We concluded that, in those circumstances, the officers had sufficient grounds for reasonable suspicion, notwithstanding that the defendant's vehicle (dark green, with two occupants) did not precisely match the tipster's description of the suspect black vehicle with four occupants, and that, as discussed, the officer's testimony regarding the defendant's manipulation of his waistband and the officer's training concerning that type of gesture apparently was more conclusory than Lopes's testimony concerning the juvenile's similar actions.

Our decision in Resende, 474 Mass. at 460-461, also provides a useful point of comparison. In that case, we concluded that an officer acted with reasonable suspicion prior to initiating a stop based on the following facts: the officer observed the adult defendant in a long jacket, which was noticeable to the officer "because it was not a particularly cold night," see id. at 458; the officer saw the "defendant move

his hand under the jacket and into the waistband area underneath his shirt, and became suspicious that the defendant was carrying a gun," see id.; and the officer, upon engaging the defendant in conversation, "remembered that he had encountered the defendant in connection with a search of a residence pursuant to a warrant -- a search that had resulted in the discovery of two guns." Id. In Resende, there was no tip, no attempt by the defendant to avoid contact with the officer, and less of a nexus between the defendant's behavior and the officer's training regarding concealed weapons.

The fact of carrying a firearm in a waistband of course is not sufficient to establish reasonable suspicion that a suspect is committing or is about to commit a crime. Although "carrying a concealed firearm, by itself, is not a crime," Matta, 483 Mass. at 366, see G. L. c. 140, § 131L (a), possession of a firearm without the requisite license is, and those under twenty-one years of age are not eligible to obtain such a license. See G. L. c. 140, § 131 (d) (iv). In Matta, supra, where the defendant was an adult, we concluded that "the caller's tip, suggesting a concealed firearm, with nothing more, [did] not provide reasonable suspicion for a stop" (quotation and citation omitted). Here, however, the juvenile was five years younger than the age at which she could have obtained a license to carry a firearm.

At the time of the stop in this case, Lopes had been a member of the Boston police department's youth violence strike force for four years and had, in that role, spent significant time interacting with young people. On this particular evening, Lopes and his colleagues were responding to a tip about "multiple kids hanging around, displaying a firearm," in a particular area where Lopes knew young people congregated. Prior to initiating the stop, moreover, Lopes came essentially face to face with the juvenile, who was then sixteen years old. He therefore could have observed that she likely was too young to be licensed to carry a firearm in the Commonwealth. These factors further supported the view that the juvenile did not legally possess the firearm that Lopes suspected her to be carrying. Accordingly, they also contributed significantly to the analysis whether there was reasonable suspicion that the juvenile was armed and dangerous, and thus that a patfrisk would be consistent with constitutional protections against unreasonable searches and seizures.

ii. Efforts to evade police. The juvenile contends that her repeated looking over her shoulder and her attempts to avoid police officers "should not be factored into the reasonable suspicion analysis" because, "[g]iven the 'long history of race-based policing' in Boston, it is reasonable to believe that a

group of seven police officers would have aroused fear of indignity or worse in" a "young Black person" such as herself.

Lopes testified that, in addition to the juvenile's actions with her waistband, and her movements while walking, he viewed the juvenile's repeated evasion of police as a critical factor in his determination that there was reasonable suspicion to conduct an investigatory stop of the juvenile. "Although 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." DePeiza, 449 Mass. at 372. See Sykes, 449 Mass. at 315; Commonwealth v. Grandison, 433 Mass. 135, 139-140 (2001).

We have recognized that, in some instances, the fact that members of certain groups -- such as "[B]lack males in Boston" -- have been "disproportionately and repeatedly targeted for [police] encounters suggests a reason for flight totally unrelated to consciousness of guilt." See Commonwealth v. Warren, 475 Mass. 530, 540 (2016). We also have noted that "evasive conduct," without more, is insufficient to establish reasonable suspicion because, "[w]ere the rule otherwise, the police could turn a hunch into a reasonable suspicion by inducing the [flight] justifying the suspicion" (citation omitted). Id. at 538. Even in such instances, however, we

explicitly did "not eliminate flight as a factor in the reasonable suspicion analysis." Id. at 540.

Here, there is no indication that the juvenile was aware of Lopes's presence until shortly before his path converged with hers in the courtyard of the housing complex. Rather, Lopes observed the juvenile attempting to avoid other officers, who were walking purposefully but were not acting in a manner that indicated they were attempting to approach or apprehend her. Taken in conjunction with the other factors present here, Lopes's observations of the juvenile twice attempting to avoid encountering the other group of officers -- and, the second time, abruptly breaking off from her companion to do so -- were valid factors to consider for purposes of determining whether there was reasonable suspicion to stop the juvenile. Moreover, when Lopes stood in the path in an effort to stop her, the juvenile made a third effort at evading him by attempting to quickly walk around him. Together, these acts of evasion, combined with the other circumstances, supported a determination that there was reasonable suspicion that the juvenile was carrying an illegal firearm.

iii. The anonymous tip. The juvenile argues that the tip, which was stale, anonymous, and lacking in any detail about the individuals observed or their behavior, was not reliable and

should play no role in the analysis whether there was reasonable suspicion for the stop.

As stated, Lopes was at the housing complex because his sergeant had informed him at around 5 P.M. that a woman who lived in the "area of" the complex had called the sergeant earlier that day and reported that there were "multiple kids hanging around, displaying a firearm"; the sergeant explained that the call had been placed directly to his telephone number (and thus it was not through emergency services or a call to the general police station number).

By 8 P.M., when Lopes reached the location where he arrested the juvenile, the tip was at least three hours old.[7] When an officer is acting in response to a tip, the "proximity of the stop to the time and location of the crime is a relevant factor in the reasonable suspicion analysis," and "[p]roximity is accorded greater probative value . . . when the distance is short and the timing is close." Warren, 475 Mass. at 536. "Because of the highly fact-intensive nature of the inquiry, it is not possible to formulate a bright-line test for staleness." Commonwealth v. Guastucci, 486 Mass. 22, 27 (2020). "We typically measure the timeliness of information supporting" a

[7] Lopes testified that his sergeant did not inform him as to the time that the sergeant received the call from the concerned resident, or whether the sergeant had, earlier in the day, dispatched other officers in response to the call.

tip "by considering two factors: (1) the nature of the criminal activity under investigation; and (2) the nature of the item to be seized." Id., citing Commonwealth v. Matias, 440 Mass. 787, 792-793 (2004).

Here, when Lopes saw the two young people together, and the juvenile walking and gesturing in a specific manner that his training and experience informed him likely was an illegal gun, Lopes had had four years of experience working in the area the caller described, was familiar with the locations within the complex where firearms were stored by some residents outside their own apartments, and previously had made numerous arrests for firearms offenses in that area. See Commonwealth v. Costa, 448 Mass. 510, 515-518 (2007), and cases cited. The reported conduct indicated that the individuals who possessed the firearm were "hanging around"; this was not a situation of someone fleeing from the scene of a crime, or of an observation in traffic of a gun on the seat of a moving passenger vehicle. Thus, while the tip undoubtedly was stale, the value of the stale tip was not as greatly diminished as it was, for instance, in Warren, 475 Mass. at 531, 536, where an officer was alerted to suspects "fleeing the scene" after a breaking and entering. Approximately one-half hour after a telephone call from the victim reporting the crime, an officer stopped the defendant roughly one mile from the scene. Id. at 536-537. We concluded

that the facts of that case "weigh[ed] against proximity as a factor." Id. at 536.

The tip from the "concerned citizen" here also differs to some extent from a fully "anonymous" tip. See, e.g., Commonwealth v. Alvarado, 423 Mass. 266, 267 (1996); Commonwealth v. Lyons, 409 Mass. 16, 17 (1990). The concerned caller not only contacted Lopes's sergeant directly, but also was identified by the sergeant as someone who lived in the area of the housing complex. Although the record is silent as to how the caller knew the sergeant's direct telephone number, and how the sergeant knew that the caller lived in or near the housing complex, the information the officers had concerning the caller gave this tip more weight than that of a wholly anonymous caller contacting police through a general emergency number. See, e.g., Costa, 448 Mass. at 515 ("We have . . . suggested that the reliability of citizen informants who are identifiable, but may not have been identified, is deserving of greater consideration than that of truly anonymous sources").[8] Moreover, "[e]ven where a 911 telephone call is anonymous, the Commonwealth can still

[8] In Commonwealth v. Costa, 448 Mass. 510, 516 (2007), we noted that "we agree with Justice Kennedy's observation" in his concurrence in Florida v. J.L., 529 U.S. 266, 275 (2000), that "a tip might be anonymous in some sense yet have certain other features, either supporting reliability or narrowing the likely class of informants, so that the tip does provide the lawful basis for some police action."

establish a caller's reliability 'through independent corroboration by police observation or investigation of the details of the information provided by the caller' prior to the stop being initiated." Manha, 479 Mass. at 47, quoting Commonwealth v. Anderson, 461 Mass. 616, 623, cert. denied, 568 U.S. 946 (2012). See Anderson, supra; Commonwealth v. Mubdi, 456 Mass. 385, 398–399 (2010). In sum, while adding little to the calculus, the tip here was not so stale as to be entirely excluded from the analysis of reasonable suspicion.

3. Conclusion. While certainly a close case, the combination of factors here afforded Lopes reasonable suspicion that the juvenile was carrying an illegal firearm in her waistband such that the stop and patfrisk of the juvenile comported with constitutional requirements.

Order denying motion to suppress affirmed.

BUDD, C.J. (concurring, with whom Wendlandt, J., joins). I agree that affirming the motion judge's decision is appropriate here. I write separately to emphasize that the judge's finding that the juvenile "bladed her body, so as to conceal something" was pivotal to the conclusion that reasonable suspicion for the stop existed. Without that particular finding, Officer Samora Lopes's other observations, including that the juvenile made attempts to avoid contact with the officers walking toward her, glanced over her shoulder multiple times as she walked away, and repeatedly adjusted her waistband as she did so, as well as the tip that brought the officers to the area in the first place, would have been insufficient to provide reasonable suspicion in this very close case.

As we have stated previously, exhibiting nervousness around law enforcement officers is not uncommon for law-abiding persons. See, e.g., Commonwealth v. Martin, 457 Mass. 14, 21 (2010). And Black youth especially may have valid reasons unrelated to consciousness of guilt to avoid contact with the police. See Commonwealth v. Warren, 475 Mass. 530, 540 (2016). Seeking to avoid a large group of officers converging on the scene is not, in itself, suspicious.

Similarly, because the gesture is a fairly typical one, adjusting one's waistband, in and of itself, cannot support a seizure. See Commonwealth v. Matta, 483 Mass. 357, 366 (2019).

See also Maye v. United States, 260 A.3d 638, 645 (D.C. 2021), quoting Duhart v. United States, 589 A.2d 895, 899 (D.C. 1991) ("There is nothing particularly suspicious about adjusting or manipulating one's waistband . . . , an action perfectly consistent with 'too many innocent explanations,'" such as "hiking up [one's] pants, resetting [one's] underwear, or adjusting [one's] belt"). For this reason, I disagree with the court that Lopes's training regarding waistband adjustments is the key to the reasonable suspicion analysis. See ante at . To be sure, an officer's training is an important part of the reasonable suspicion calculus. See Matta, 483 Mass. at 366 & n.8. However, even where an officer has been trained that waistband adjustments may indicate that a suspect is carrying a concealed firearm, more than that observation alone is required for reasonable suspicion.[1]

Even combined, behaviors as common and innocuous as behaving nervously around police and adjusting one's waistband cannot provide reasonable suspicion. See Commonwealth v. Torres, 424 Mass. 153, 161 (1997) ("Adding up eight innocuous

[1] It is a fallacy to assume that because a person carrying an unlicensed firearm is likely to adjust his or her waistband, a person adjusting his or her waistband is likely to be carrying an unlicensed firearm. See, e.g., McDaniel v. Brown, 558 U.S. 120, 127-128 (2010) (discussing prosecutor's fallacy); Meester, Collins, Gill, & van Lambalgen, On the (Ab)Use of Statistics in the Legal Case against the Nurse Lucia de B., 5 L. Probability & Risk 233, 240-241 (2006) (same).

observations -- eight zeros -- does not produce a sum of suspicion that justifies" seizure). See also People v. Moore, 176 A.D.2d 297, 299 (N.Y. 1991) (reasonable suspicion lacking where defendant "look[ed] over his shoulder several times and plac[ed] his hand on his waistband as though he were adjusting something," for such behavior "is readily susceptible of an innocent as well as a guilty interpretation").

Further, as the court acknowledges, the concerned citizen's tip that resulted in the officers responding to the area contributes little to the reasonable suspicion calculus due to its staleness and lack of detail. See ante at . Because the juvenile was considered potentially to have been one of the children mentioned in the tip based only on her apparent age and presence near the housing development, the tip contributed barely anything to a particularized suspicion that she had a firearm. See, e.g., Commonwealth v. Meneus, 476 Mass. 231, 236-237 (2017) (victim's description of alleged shooters as "group of young [B]lack males" who just had run into courtyard of nearby housing complex "added nothing of value" to officer's suspicion that group of young Black males near entrance to complex had been involved in shooting). This especially is so given that the tip here was hours old by the time the officers arrived at the housing complex. That a young person is walking in the general area where nondescript "kids" were seen hours ago

"hanging around" with a gun contributes essentially nothing to a suspicion that the juvenile who was stopped was armed.

Nevertheless, behavior that is otherwise innocuous may provide reasonable suspicion in light of the totality of the circumstances. See Meneus, 476 Mass. at 236-237. For example, in Resende, we affirmed the denial of a motion to suppress where the defendant wore a long jacket that covered his pants pockets despite the fact that "it was not a particularly cold night," at one point held one hand in his pocket "close to his body at the waistband area" and "bladed away" from the officer, and later made multiple gestures at his waistband that appeared to the officer to be "retention check[s]." Commonwealth v. Resende, 474 Mass. 455, 456-461 (2016). Similarly in DePeiza, we concluded that officers had reasonable suspicion to stop a suspect who displayed a distinctive "straight arm" gait and repeatedly shielded the right side of his body from the officers and whose right pocket appeared to hold a heavy object. Commonwealth v. DePeiza, 449 Mass. 367, 368-369, 371-372 (2007). And more recently, in Matta, we upheld a finding of reasonable suspicion where the defendant adjusted the right side of his waistband using both hands and exhibited the unusual conduct of getting out of a vehicle and walking towards bushes away from the sidewalk, and where the officers had received a tip regarding a concealed firearm in a motor vehicle before stopping

the defendant. Matta, 483 Mass. at 365. See Maye, 260 A.3d at 645-646 (more is required to "fill the 'logical gap'" between innocuous behavior and reasonable suspicion of criminal conduct [citation omitted]). Given the innocuous nature of the juvenile's behavior, the circumstances here present a much closer case than those in Resende, DePeiza or Matta. Without the judge's finding that the juvenile turned her body so as to conceal something on her person, the remaining circumstances combined would not have added up to reasonable suspicion.

Importantly, we never have held, and do not hold today, that an individual may be stopped based on commonplace and ordinarily innocuous behavior such as behaving nervously, avoiding police officers, and adjusting one's waistband. In other words, our holding today is in line with our search and seizure jurisprudence and does not lower the constitutional threshold for warrantless stops.