

Circuit Court for Baltimore City  
Case No. C-24-CR-24-000223

UNREPORTED\*

IN THE APPELLATE COURT

OF MARYLAND

No. 2072

September Term, 2024

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NAHEEM BRIGGS

v.

STATE OF MARYLAND

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Wells, C.J.,  
Nazarian,  
Harrell, Glenn T. Jr.,  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Wells, C.J.  
Nazarian, J., dissents.

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Filed: May 20, 2026

\*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Following a conditional guilty plea, the Circuit Court for Baltimore City convicted appellant, Naheem Briggs, of firearm possession in relation to a drug trafficking crime. At a hearing prior to his plea, Briggs filed a motion to suppress the handgun recovered by police, which the court denied. The court sentenced Briggs to 10 years' imprisonment, all but five suspended, followed by three years' supervised probation.

This appeal followed. Briggs presents a single question for review:

I. Did the trial court err in denying the motion to suppress?

For the reasons that follow, we hold the court did not err in denying Briggs' motion to suppress and affirm.

#### **FACTUAL AND PROCEDURAL BACKGROUND**

On April 19, 2024, Detective Polanco and Officer Reed both of the Baltimore City Police Department were driving through Patterson Park and McElderry Park in a marked patrol car. At trial, Detective Polanco testified that his unit was sent to the Southeastern District to conduct “proactive enforcement,” which included “car stops, business checks, [and] things of that nature.” According to Detective Polanco, he observed Briggs “walking with a stiff arm” meaning that Briggs was holding his right arm rigidly to his body while his left arm swung freely, signaling to the officers he was holding an unknown object close to his body. Detective Polanco observed Briggs for approximately thirty seconds and testified that Briggs kept looking back at him.

The officers made a U-turn toward Briggs, and Briggs continued to look back at the officers while pinning his right arm to his body. Detective Polanco continued to drive behind Briggs, pulled the car next to him, and asked, “Hey man, you got a gun on you?”

Briggs paused, looked down, and looked back up before responding, “No.” The officers then exited the patrol car, and Officer Reed asked Briggs to stop. Briggs raised his arms and kept walking.

Officer Reed began following Briggs on foot while Detective Polanco got back into the car, activating the lights and sirens. Briggs continued walking with his arms raised for about 15 seconds, and the officers subsequently caught up to him and handcuffed him to conduct an investigate stop. Detective Polanco conducted a pat-down of Briggs and felt a firearm on the right side of his hip. Officer Reed then frisked Briggs and recovered drugs.

Briggs was arrested and charged with firearm possession during and in relation to a drug trafficking crime; two counts of possession of a controlled substance with the intent to distribute; illegal possession of a regulated firearm; and other firearms offenses. At a December 5, 2024, pre-trial hearing, Briggs moved to suppress the evidence recovered from his encounter with the officers. The court denied his motion to suppress, reasoning:

That this officer has been with the Baltimore City Police Department since 2019. So for at least six years—well, at least five, almost six years. He was first with the Western District but is now with the Eastern District. He is with the District Action Team, a team that is involved in proactive enforcement.

That on April 19th, 2024, he was working in a modified uniform in a marked patrol vehicle . . . . [H]e was working Patterson Park and McElderry, not his district when he observes a person who [he] identified in court as the defendant.

What he observed was the defendant displaying at least one characteristic of an armed person. There are many, but at least one, which is holding his right arm stiff against his body while his left arm was swinging freely. At the time that the officer made the observations, because he says that the defendant was on the driver’s side of his vehicle, I—he had a clear and unobstructed view of the defendant for, admittedly,

a brief period of time where he sees the defendant displaying a characteristic of an armed person.

It might not be a characteristic that you or I would notice on the street, but based on the officer's training in Academy and his years of experience, he observes the behavior. Yes, that behavior might be true for some other object that you don't want to lose, like your expensive cell phone that you haven't paid for yet, it might be some other object, but it is a characteristic of a person holding something valuable against their body.

This officer has been dispatched to work in an area for proactive enforcement, so he is looking for possible crimes. It is a crime in Baltimore City to carry a firearm on the street unless you are permitted. It is a crime in Baltimore City to carry a loaded firearm on the street unless you are permitted.

So this is possibly a crime. No, it's not a shooting or a stabbing that the officer sees in progress. No, it's not a hand-to-hand transaction. But it is possibly a crime.

The officer makes a U-turn to continue to make observations, and in addition to those observations, sees that the defendant is also looking back at him. I don't think that that's unusual. I think whether a person is committing a crime or not committing a crime, when there's police presence in the area, I think lots of people want to know where is that police officer and what are they doing.

Officer Reed gets out of the vehicle, the defendant is asked to stop. He does not stop. Officer Polanco gets back in his vehicle so that one officer's on foot and another officer is in a vehicle. And this defendant is ultimately stopped on a corner, and it happens to be the corner of McElderry and Patterson Park.

What happens next takes place really quickly. But let me make it clear that I believe that at this point, the detective has a reasonable articulable suspicion that this defendant might be armed. Reasonable articulable suspicion is not probable cause. Reasonable articulable suspicion might be wrong. It might be a cell phone, it might be something else. But it is reasonable based on his training, he articulated it, and the suspicion of the crime is that this is a person with a firearm, which is a crime.

The law in Maryland is also that—and I know that it’s controversial and I know that if I were stopped, I would be very concerned, true, but the police get to stop you to investigate. And while they don’t always do it, the police can detain you briefly. The detention might, in fact, include handcuffs. It doesn’t always but it might. It doesn’t mean you’re under arrest yet, but they might be able to use handcuffs.

In this case, what happens really quickly on this video is we see the defendant’s hands moving in an area in front of his body. It is an area where the officer believes the handgun is. So for officer safety, it makes sense to move the defendant’s hands from away from the front of his body, that just makes sense. And in this case, the way they did it was with handcuffs.

The officer in an investigation, in a stop, conducts a pat-down for officer safety and immediately articulates that he feels an object. And he lifts the defendant’s shirt and that object is right there in plain view.

Despite [Briggs’] attempts, I don’t see anything illegal about the stop or the pat-down or the subsequent arrest. So the motion to suppress the recovery of a handgun is respectfully denied.

Prior to trial, Briggs entered a guilty plea to the charge of possession of a firearm with a nexus to a drug trafficking crime, conditioned on reserving his right to appeal the suppression ruling.

### **STANDARD OF REVIEW**

A motion to suppress ruling presents a mixed question of both law and fact, and our review of the denial of such motion is “limited to the record developed at the suppression hearing.” *Richardson v. State*, 481 Md. 423, 444 (2022) (quoting *Pacheco v. State*, 465 Md. 311, 319 (2019)) (internal citations omitted). This Court “assess[es] the record ‘in the light most favorable to the party who prevails on the issue that the defendant raises in the motion to suppress.’” *Pacheco*, 465 Md. at 319 (quoting *Norman v. State*, 452 Md. 373, 386 (2017)). We accept the suppression court’s factual findings unless they are clearly

erroneous, while reviewing the court’s application of the law to the facts *de novo*. See *Pacheco*, 465 Md. at 319. “The ultimate determination of whether there was a constitutional violation, however, is an independent constitutional evaluation that is made by the appellate court alone, applying the law to the facts found in each particular case.” *State v. Carter*, 472 Md. 36, 55 (2021).

## DISCUSSION

### **I. The Trial Court Did Not Err in Denying Briggs’ Motion to Suppress the Firearm Taken During the Investigatory Stop.**

#### **A. Parties’ Contentions**

Briggs contends the circuit court erred in denying his motion to suppress because he claims both the stop and the search were unlawful. Citing primarily *In re Jeremy P.*, 197 Md. App. 1, 7 (2011), Briggs argues his stop was not supported by reasonable articulable suspicion because Detective Polanco did not provide sufficient detail and explanation for finding Briggs’ arm movements were indicative of him carrying a firearm. Briggs further argues that him looking back at the officers while walking away also does not create reasonable suspicion. Finally, he cites *Ames v. State*, 231 Md. App. 662, 671 (2017), principally to argue that where there was no lawful investigatory stop, the subsequent frisk was unlawful.

The State contends Detective Polanco had reasonable articulable suspicion of criminal activity based on the totality of circumstances, including: Briggs’ arm movement; Briggs looking back at the officers while walking away; Briggs looking away before answering the officers; Briggs walking away when asked to stop; and Detective Polanco’s

experience and training as an officer. The State also maintains that the frisk was lawful because Detective Polanco, in addition to having reasonable articulable suspicion of criminal activity, had reasonable suspicion that Briggs was armed and dangerous.

### **B. Legal Framework**

The Fourth Amendment of the United States Constitution protects individuals' right "to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures" by the government. U.S. CONST. amend. IV. Included within Fourth Amendment protections is the exclusion of evidence obtained in violation of the provisions. *Id.*; *Swift v. State*, 393 Md. 139, 149 (2006). A search or seizure conducted without a warrant and that infringes upon an individual's protected interests is presumptively unreasonable. *Katz v. United States*, 389 U.S. 347, 357 (1967). The Supreme Court of Maryland has identified three types of police encounters subject to the Fourth Amendment: (1) an arrest; (2) an investigatory stop ("*Terry* stop"); and (3) a consensual encounter. *Booker v. State*, 267 Md. App. 315, 323 (2025) (citing *Swift*, 393 Md. at 149–51).

One recognized exception to the warrant requirement is the investigatory stop authorized by *Terry v. Ohio*, 392 U.S. 1 (1968). Under *Terry*, an officer may briefly detain a person for investigation if the officer possesses reasonable suspicion supported by articulable facts that criminal activity may be afoot. *Id.* at 30. Additionally, if the articulable facts support an objectively reasonable suspicion that the detained individual is armed and dangerous, the officer may conduct a limited pat-down search of the person's outer clothing to discover weapons. *Derricott v. State*, 327 Md. 582, 587 (1992) (citing *Terry*, 392 U.S. at 30).

The reasonable suspicion inquiry is an objective one, assessed under the totality of the circumstances. *Sellman v. State*, 449 Md. 526, 542 (2016). Courts must consider the whole picture and avoid a “divide-and-conquer” approach that evaluates each factor in isolation. *State v. Johnson*, 458 Md. 519, 534 (2018) (quoting *United States v. Arvizu*, 534 U.S. 266, 274 (2002)); *Freeman v. State*, 249 Md. App. 269, 300 (2021) (urging courts to be wary of “looking at each facet in a vacuum” and to instead “focus exclusively on the totality as a totality”). Reasonable suspicion requires more than a “mere hunch” but “‘considerably less than proof of wrongdoing by a preponderance of the evidence,’ and ‘obviously less’ than is necessary for probable cause.” *Navarette v. California*, 572 U.S. 393, 397 (2014) (quoting *United States v. Sokolow*, 490 U.S. 1, 7 (1989)). The officer must assess all circumstances including facts, reports, experience, and expertise, and the whole picture must yield a particularized suspicion that the stopped individual is engaged in criminal activity. *United States v. Cortez*, 449 U.S. 411, 418 (1981). Officers are entitled to draw on their training and experience to make inferences from cumulative information that “might well elude an untrained person.” *Arvizu*, 534 U.S. at 273 (quoting *Cortez*, 449 U.S. at 418).

Importantly, “[a] determination that reasonable suspicion exists, however, need not rule out the possibility of innocent conduct.” *Arvizu*, 534 U.S. at 277 (citing *Illinois v. Wardlow*, 528 U.S. 119, 125 (2000)). The very function of a brief investigatory stop is to resolve ambiguity. *See Wardlow*, 528 U.S. at 120 (citing *Terry*, 392 U.S. at 30).

A person is “seized” within the meaning of the Fourth Amendment when, through physical force or a show of authority to which the person submits, the police restrain the

person's liberty. *California v. Hodari D.*, 499 U.S. 621, 627 (1991). Thus, a seizure through a show of authority requires both a communication that the individual is not free to leave and the individual's submission to that authority. *Lawson v. State*, 120 Md. App. 610, 616-17 (1998).

Under *Terry*, an officer who “identifies himself as a policeman and makes reasonable inquiries” can also conduct a protective pat-down of an individual's outer clothing if they have reasonable suspicion “that criminal activity may be afoot and that the persons with whom he is dealing may be armed and presently dangerous, [. . .] and where nothing in the initial stages of the encounter serves to dispel his reasonable fear for his own or others' safety” 392 U.S. at 30. Maryland courts have stated that a lawful *Terry* stop will not automatically justify a *Terry* frisk. *Simpler v. State*, 318 Md. 311, 318-19 (1990). See also *Gibbs v. State*, 18 Md. App. 230, 238-39 (1973) (“[A]lthough a reasonable stop is a necessary predecessor to a reasonable frisk, a reasonable frisk does not inevitably follow in the wake of every reasonable stop.”) (cleaned up) (quotations omitted).

To determine if a frisk was justified, Maryland courts examine “whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger.” *Sellman*, 449 Md. at 541 (quoting *Terry*, 392 U.S. at 27). The frisk must also be “‘limited to a pat-down of the outer clothing’ and its purpose is ‘not to discover evidence of a crime, but rather to protect the police officer and bystanders from harm by checking for weapons.’” *Sellman*, 449 Md. at 543 (quoting *Bailey v. State*, 412 Md. 349, 368 (2010)) (cleaned up).

### C. Analysis

As a threshold matter, both parties agree Briggs was seized, at the latest, when he complied with the officers' second command to stop, after Detective Polanco activated his emergency lights and sirens. The record reflects that when the officers initially exited the vehicle and told Briggs to stop, he did not comply and continued walking. Detective Polanco then re-entered the vehicle, activated his lights and sirens, and commanded Briggs to stop a second time, at which point he stopped. Because a seizure through a show of authority requires submission to that authority, *Hodari D.*, 499 U.S. at 627, we agree the seizure occurred when Briggs complied with the second command. The adequacy of the officers' justification must therefore be measured based on the totality of the circumstances known at that time.

#### 1. The stop was supported by reasonable articulable suspicion.

Viewing the totality of the circumstances known to Detective Polanco at the time of the stop, we conclude the officers possessed reasonable articulable suspicion that criminal activity was afoot.

In *Booker v. State*, this Court addressed a motion to suppress evidence where an officer observed Booker pressing his left hand over to the right side of his jacket, which raised the officer's suspicion as an "unnatural" movement. 267 Md. App. at 319–20. The officer observed a distinct shape in Booker's jacket pocket that was thicker than a cellphone causing the pocket to swing. *Id.* at 320. The officer approached Booker and asked if he was permitted to carry a firearm, to which Booker did not provide a direct answer. *Id.* The officer seized and frisked Booker, during which they found an unlawfully carried firearm

and illicit substances. *Id.* This Court affirmed the trial court’s decision to deny Booker’s motion to suppress evidence where the officer’s testimony, “viewed through the lens of his training and experience, provided a particularized and objective basis for suspicion[.]” *Id.* at 330. This Court reasoned that the officer “relied on multiple observations of [Booker’s] behavior and actions[.]” and considered the officer’s training and experience. *Id.* at 329.

Here, similarly, Detective Polanco has five years of training and experience with the Baltimore City Police Department and observed multiple of Briggs’ behaviors and actions that raised suspicion. By the time Briggs was seized, Detective Polanco had observed multiple circumstances that, taken together, gave rise to reasonable articulable suspicion that Briggs was carrying a firearm.

*First*, Detective Polanco observed Briggs walking with his right arm pinned stiffly against his body while his left arm swung freely—a sustained behavior the detective watched for approximately thirty seconds. Critically, Detective Polanco did not simply label this behavior suspicious in a conclusory fashion. He offered a specific, training-based explanation for why the movement was significant: when individuals carry a firearm on their hip without a holster, they will “pin” their arm against the weapon to keep it in place, producing precisely the asymmetric gait he observed—one arm rigid, the other swinging freely. After the officers made a U-turn, Briggs continued “keeping that right arm stiff and just holding an unknown object.” The trial court credited this testimony and found that Briggs was displaying “at least one characteristic of an armed person.”

We acknowledge, as the circuit court did, that a stiff arm could also be consistent with holding an innocent object such as a cell phone. But reasonable suspicion “need not

rule out the possibility of innocent conduct.” *Arvizu*, 534 U.S. at 277. The purpose of an investigative stop is to resolve precisely that kind of ambiguity. *See Wardlow*, 528 U.S. at 120 (“*Terry* recognized that officers can detain individuals to resolve ambiguity in their conduct and thus accepts the risk that officers may stop innocent people.”) (internal citation omitted).

*Second*, when Detective Polanco pulled the patrol car alongside Briggs and directly asked, “Hey, man, you got a gun on you?”, Briggs did not respond immediately. Instead, he paused, looked down, looked back up, and then said “No.” Viewed in the light most favorable to the State, this was an evasive response that further raised Detective Polanco’s suspicion that Briggs “could possibly be carrying a firearm.” An evasive response to a direct question about the presence of a weapon is a meaningful component of the totality-of-the-circumstances analysis.

*Third*, Briggs failed to comply with the officers’ initial command to stop and instead continued walking. While Briggs did not flee, his refusal to comply with a uniformed officer’s directive, viewed in conjunction with the other circumstances, was a permissible consideration in the reasonable suspicion calculus.

Considered collectively, these circumstances—a sustained stiff-arm movement interpreted through specific training-based testimony, an evasive response to a direct inquiry about a weapon, and a failure to comply with an initial command to stop—provided Detective Polanco with a particularized and objective basis for suspecting that Briggs may have been engaged in the criminal activity of carrying a firearm. As in *Booker*, Detective Polanco did not rely on a single ambiguous observation but instead articulated a

constellation of specific, training-informed observations which, taken together, supported a reasonable inference that Briggs was armed. *Booker*, 267 Md. App. at 329–30.

Briggs’ reliance on *In re Jeremy P.*, 197 Md. App. 1 (2011), and *Ransome v. State*, 373 Md. 99 (2003), is unavailing because both cases are factually distinguishable. In *In re Jeremy P.*, the detective merely testified that the juvenile was “playing around with his waistband area[,]” which he also testified is considered a “high risk area,” and this Court found he “provided no descriptive details about the specific movements he observed and failed to articulate why he considered appellant’s movements to be indicative of a concealed weapon.” 197 Md. App. at 4, 20. The detective did not testify that he observed a bulge consisting with the presence of a weapon rather than an innocent object, and did not describe the weight or size of any object. *Id.* at 20–21. Nor was the suspect’s behavior otherwise suspicious—the juvenile was not behaving evasively, was not asked about a weapon, and did not refuse a command to stop. Here, by contrast, Detective Polanco specifically described Briggs’ pinned arm and explained based on his training precisely why that behavior was consistent with carrying an unholstered firearm, and his suspicion was reinforced by Briggs’ evasive answer and initial refusal to stop. None of this support was provided in *In re Jeremy P.*

Likewise, in *Ransome*, the only significant bases for the stop was a bulge in the suspect’s front pants pocket while the suspect stood on a sidewalk in a high-crime area talking with a friend. 373 Md. at 100–01. The officer conceded his decision to frisk was “based solely on his observation of the bulge.” *Id.* at 105–06. This Court determined the suspect “had done nothing to attract police attention other than being on the street with a

bulge in his pocket at the same time [the officer] drove by.” This Court also noted “[h]e had not committed any obvious offense” and “did not take evasive action or attempt to flee.” *Id.* at 109–10. By contrast, Briggs did not simply stand passively on a sidewalk. He displayed a sustained physical behavior consistent with pinning a weapon, gave an evasive response when asked directly whether he had a gun, and failed to comply with the officers’ initial command to stop. These additional facts distinguish this case from the sparse evidentiary record this Court found insufficient in *Ransome*.

We are also mindful that the circuit court found Briggs’ looking back at the officers to be “not unusual.” Because this was a finding of fact by the hearing judge, it takes precedence over the version most favorable to the State unless clearly erroneous. *See Charity v. State*, 132 Md. App. 598, 606 (2000). We do not regard this finding as clearly erroneous, and accordingly we do not rely on Briggs’ attention to the officers as a factor supporting reasonable suspicion. Even without this factor, however, the remaining circumstances are sufficient to support the circuit court’s conclusion that reasonable articulable suspicion existed. Accordingly, we hold the stop was lawful.

**2. The officers conducted a valid *Terry* frisk based on a reasonable, articulable suspicion.**

Similarly, the frisk was also justified by the officer’s reasonable, articulable suspicion that Briggs was armed. Where, as here, the suspected criminal activity underlying the stop is the suspect’s possession of a firearm, the officer necessarily has reasonable suspicion that the suspect is armed and dangerous, and a frisk is justified. *See Derricott v. State*, 327 Md. 582, 587 (1992) (holding that “if the articulable facts also support an

objectively reasonable suspicion that the person with whom the officer is dealing is armed and dangerous, the officer may conduct a carefully limited search of the outer clothing of such person in an attempt to discover weapons which might be used to assault the officer”).

Briggs argues the frisk was unlawful, citing *Ames v. State*, 231 Md. App. 662 (2017). Briggs’ argument, however, flows directly from his contention that the antecedent stop was unlawful. In *Ames*, this Court found that there was no reasonable suspicion to support a lawful stop. *Id.* at 676–78. Here, in contrast and as discussed, Detective Polanco had reasonable articulable suspicion to conduct the investigatory stop based on circumstances suggesting Briggs had a weapon. Since he was justified in conducting the stop, Detective Polanco was justified in conducting a limited *Terry* frisk of Briggs to look for weapons. Accordingly, we hold the subsequent frisk of Briggs was also lawful.

Finding no reversible error, we affirm.

**THE JUDGMENT OF THE CIRCUIT  
COURT FOR BALTIMORE CITY IS  
AFFIRMED. APPELLANT TO PAY THE  
COSTS**

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Dissenting Opinion by Nazarian, J.

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Filed: May 20, 2026

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I have no analytical dispute with my colleagues in this case. I part company at one point on the analytical path: I disagree with the conclusion that on this record, the officers had reasonable articulable suspicion that Naheem Briggs was or might be committing a gun possession crime at the time they stopped him.<sup>1</sup> As a result, the officers lacked authority to subject him to a *Terry* frisk and the circuit court should have granted Mr. Briggs's motion to suppress the fruits of the frisk and ensuing search. With respect, then, I dissent from the decision to affirm Mr. Briggs's conviction.

I agree that the question of whether the officers had reasonable articulable suspicion to stop Mr. Briggs depends on the totality of the circumstances known to the officer at the time of the stop, and I agree as well that when we conduct our independent constitutional analysis in this case, *see Washington v. State*, 482 Md. 395, 420 (2022), we measure as of the second command the officer gave Mr. Briggs to stop. Slip op. at 8-9. In my view, however, the totality of the circumstances known to the officer doesn't add up to individualized suspicion that Mr. Briggs was or might be committing a gun possession crime, the only form of potential criminal activity the officers claimed to suspect.<sup>2</sup>

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<sup>1</sup> Everyone in this case seems to assume that possession of a firearm by Mr. Briggs would be illegal. Maybe so, although there's no suggestion here that he was a prohibited person at the time of the stop or, if he were, that the officers had any knowledge of that status. But since Mr. Briggs hasn't raised any challenge to that premise in this case notwithstanding the evolution of Second Amendment doctrine in the wake of *New York State Rifle & Pistol Association Inc., et al. v. Bruen*, 597 U.S. 1 (2022), I'll leave that issue aside.

<sup>2</sup> There was no suggestion in the officers' testimony at the suppression hearing or in the briefing here that the officers observed anything or any behaviors that, to them, indicated that Mr. Briggs might possess drugs or any contraband other than a weapon.

The majority finds reasonable suspicion in the collective weight of three observations by the officers: *first*, Mr. Briggs’s mode of walking with (only) his right arm pinned against his body; *second*, his “evasive” denial when the officers asked if he possessed a gun; and *third*, his failure to comply with the officers’ initial command to stop. Slip op at 10-11. Importantly, the officers never claimed to see a gun, an imprint of a gun, or any other physical or visible manifestation of a gun—their suspicions arise entirely by inference from other behaviors. Circumstances and inferences can generate reasonable suspicion, to be sure, but in this case the circumstances and inferences fall short, even if weighed as a group.

Going in reverse order, the *second* and *third* circumstances are worth no weight at all, in my view, either individually or collectively. Both circumstances were entirely officer-generated and put Mr. Briggs in a heads-I-win-tails-you-lose position. When the officers asked if he had a gun, he ostensibly had two choices—admit that he had a gun, which would have been generated suspicion on its own, or deny that he had one, as he did here. But the officers, the State, and the majority give his denial the same effective weight in the suspicion analysis as if he had admitted he had the gun, so his actual response doesn’t matter. The same analysis applies to the officers’ command that Mr. Briggs stop. Again, the officers generated this “circumstance” and win either way—either he complies by stopping or they manufacture suspicion from his lawful decision not to stop. The fact that the officers viewed his noncompliance as evasion—both in denying that he had a gun and in not stopping in response to the initial command—ignores Mr. Briggs’s presumption of innocence and inverts the officers’ burden of proof. As a constitutional matter, Mr. Briggs

was never obliged to stop and talk with officers, and to ascribe suspicion to his decision to invoke his constitutional rights turns the Fourth Amendment on its head. The net weight of these two circumstances, then, is zero.

This leaves the *first*, and main, source of suspicion—Mr. Briggs’s manner of walking with his right arm pinned against his body, while his left arm swung freely, for a period of approximately thirty seconds. Again, there was no testimony or suggestion that the officers saw a gun or a bulge or anything indicating a gun directly or what Mr. Briggs might be pinning to his side. Instead, his asymmetric gait led the officers, in light of their training, to suspect that Mr. Briggs was “holding an unknown object” and displaying “at least one characteristic of an armed person.” Slip op. at 10. That observation is, at least, specific to Mr. Briggs. But it’s undercut immediately after the first command to stop, and the officers’ activation of lights and sirens, when Mr. Briggs walked with hands raised for the next fifteen seconds. To the extent Mr. Briggs had engaged in any suspicious pinning behavior, he unpinned everything in the officers’ full view, well in advance of their decision to stop him—indeed, they only stopped him after the pinning had long ended. It’s true that the possibility of an innocent explanation for a particular behavior doesn’t compel officers to ignore a suspicious counter-possibility. But Mr. Briggs literally undid the supposedly suspicious behavior here—perhaps ironically, in response to the officers’ engagement—and yet they stopped him anyway and pinned their suspicion to it all the same.

I acknowledge that on this posture, the circuit court’s finding that the pinning gait qualified as “displaying a characteristic of an armed person” is entitled to some weight in

our independent constitutional analysis. But this is the only weight that emerges from the three circumstances from which my colleagues find “a particularized and subjective basis for suspecting that Briggs may have been engaged in the criminal activity of carrying a firearm.” Slip op. at 11. And in my view it’s not enough, whether viewed on its own or in combination with the other two on which the majority relies.

The result of this analysis, then, is that the officers lacked reasonable suspicion to stop and frisk Mr. Briggs when they stopped him, and the circuit court should have granted his motion to suppress the fruits of the ensuing search. For that reason, and with respect, I dissent from the decision to affirm the judgment of the circuit court.