

22-588-cr

United States v. Hagood

**United States Court of Appeals
for the Second Circuit**

August Term 2022

Argued: April 19, 2023

Decided: August 30, 2023

No. 22-588

UNITED STATES OF AMERICA,

Appellee,

v.

MICHAEL HAGOOD,

Defendant-Appellant.

On Appeal from the United States District Court
for the Southern District of New York

Before: CALABRESI, PARK, and MENASHI, *Circuit Judges.*

Around 1:00 a.m. on October 14, 2020, New York City Police Department (“NYPD”) officers drove by Defendant Michael Hagood near a New York City Housing Authority (“NYCHA”) complex in the Bronx. Hagood was wearing a fanny pack across his chest and standing next to a double-parked car. According to the officers,

Hagood was visibly nervous when he saw them, and one officer noticed that Hagood's fanny pack appeared to contain a bulging object with a straight line on top—the same shape as a handgun. The officers stopped and frisked Hagood and found a loaded semi-automatic pistol in the fanny pack.

Hagood was arrested and charged with a violation of 18 U.S.C. §§ 922(g)(1), 924(a)(2): possessing a firearm after having been convicted of a felony. He moved to suppress the firearm, and after a two-day hearing, the district court (Engelmayer, J.) denied the motion. Hagood now appeals, arguing that the stop violated his Fourth Amendment rights because the officers lacked reasonable suspicion that he was engaged in criminal activity. We disagree. The totality of circumstances in this case—including the officer's observations of the fanny pack (as informed by his experience recovering firearms from fanny packs), Hagood's unusual manner of wearing the fanny pack, his nervous appearance, and the late hour in a high-crime neighborhood—established reasonable suspicion. We thus **AFFIRM**.

Judge Calabresi dissents in a separate opinion.

COLLEEN P. CASSIDY, Federal Defenders of New York, Inc., New York, NY, *for Defendant-Appellant*.

MITZI S. STEINER, Assistant United States Attorney (Alison Moe, Assistant United States Attorney, *on the brief*), *for* Damian Williams, United States Attorney for the Southern District of New York, New York, NY, *for Appellee*.

PARK, *Circuit Judge*:

Around 1:00 a.m. on October 14, 2020, New York City Police Department (“NYPD”) officers drove by Defendant Michael Hagood near a New York City Housing Authority (“NYCHA”) complex in the Bronx. Hagood was wearing a fanny pack across his chest and standing next to a double-parked car. According to the officers, Hagood was visibly nervous when he saw them, and one officer noticed that Hagood’s fanny pack appeared to contain a bulging object with a straight line on top—the same shape as a handgun. The officers stopped and frisked Hagood and found a loaded semi-automatic pistol in the fanny pack.

Hagood was arrested and charged with a violation of 18 U.S.C. §§ 922(g)(1), 924(a)(2): possessing a firearm after having been convicted of a felony. He moved to suppress the firearm, and after a two-day hearing, the district court (Engelmayer, J.) denied the motion. Hagood now appeals, arguing that the stop violated his Fourth Amendment rights because the officers lacked reasonable suspicion that he was engaged in criminal activity. We disagree. The totality of circumstances in this case—including the officer’s observations of the fanny pack (as informed by his experience recovering firearms from fanny packs), Hagood’s unusual manner of wearing the fanny pack, his nervous appearance, and the late hour in a high-crime neighborhood—established reasonable suspicion. We thus affirm.

I. BACKGROUND

A. Hagood's Arrest

On October 14, 2020, NYPD officers John Migliaccio and Nicholas Rios were on patrol in the South Bronx. They drove an unmarked police car, but they were in uniform and Rios's police patch was visible through their rolled-down window. Around 1:00 a.m., they drove past 1230 Webster Avenue, a NYCHA housing project. Based on their professional experience—four years for Migliaccio and eight years for Rios—as well as information from the NYPD's field-intelligence office, they knew that this was a high-crime area with gang-related criminal activity including shootings, homicides, assaults, and robberies.

Both officers saw Hagood and two other men in front of 1230 Webster Avenue. Hagood and one of the other men were standing in the street next to an SUV double-parked in a bus lane, and the third man was inside the SUV. The headlights of the patrol car, the streetlights on Webster Avenue, and the lights from stores across the street illuminated the scene.

Migliaccio and Rios observed Hagood for about two or three seconds as they drove by. Hagood was wearing a blue sweatshirt and had a fanny pack strapped over his shoulder and across his chest. Although both officers had seen other people wear fanny packs across their chest, Migliaccio thought Hagood was wearing his fanny pack "in a manner that was not consistent with everyday wear of it." App'x at A77. Rios similarly thought that the style was unusual.

Migliaccio observed that the fanny pack was "very tight across [Hagood's] chest," "with about a quarter to a third of it under his

armpit.” *Id.* at A79, A77. Migliaccio thought wearing the fanny pack in this way kept it “steady in one spot” so the person wearing it could more easily access its contents. *Id.* at A191. Migliaccio also thought the fanny pack “appeared heavy, like there was a weighted object inside of it.” *Id.* at A79. Rios similarly observed “a bulge in the fanny pack” and thought the fanny pack “looked like it was heavy.” *Id.* at A309. In addition, Migliaccio saw “an elongated, rigid, solid object within the fanny pack” that looked “like it was in a line” and “hard at the top” and appeared “to be potentially the top slide of a handgun.” *Id.* at A79.

Migliaccio thought Hagood “looked really nervous when he saw us”—with a “deer-in-the-headlights” look—and “almost jumped,” “shuttered a little bit,” and looked “visibly agitated.” *Id.* at A80, A185. Rios similarly thought that, as their vehicle approached, Hagood “had a nervous look,” “[a]lmost like a deer in the headlights with a frozen look for a short period of . . . time.” *Id.* at A310. Migliaccio decided to perform a *Terry* stop because, based on the circumstances and his observations, he believed that Hagood’s fanny pack contained a firearm.

Two other officers—Sergeant Steven Counihan and Officer Mike Suarez—had been driving another unmarked patrol car a few car-lengths behind Migliaccio and Rios. Migliaccio notified them by radio that he intended to conduct a stop. Migliaccio turned the vehicle around, parked, and approached Hagood from the north with Rios. Counihan and Suarez also parked and approached Hagood from the south. Counihan reached Hagood first and, according to Counihan, Hagood “turned his body and bent his knees as if he was going to take flight away from” the officers. *Id.* at A213. With the

help of Migliaccio and Rios, Counihan then handcuffed Hagood “to prevent him from fleeing.” *Id.* Rios removed and searched Hagood’s fanny pack. Inside was a loaded Hi-Point semi-automatic 9-mm pistol, along with two packs of cigarettes and a bag of cough drops.

Hagood was arrested, and on December 3, 2020, a grand jury returned an indictment charging him with one count of violating 18 U.S.C. §§ 922(g)(1), 924(a)(2), by possessing a firearm after having been convicted of a felony.¹

B. Suppression Hearing

Hagood moved to suppress the firearm, and the district court held a two-day hearing. The district court received evidence, including the firearm; the fanny pack; bodycam footage from Migliaccio, Rios, and Suarez;² surveillance footage from a dentist’s office across the street; maps and photographs of the area; and photographs of Hagood from the day of the arrest. Judge Engelmayer donned the fanny pack himself, with the seized firearm inside, to observe the purported bulge of the firearm. The district court also considered Hagood’s pretrial affirmation recounting the search and arrest and heard testimony from Migliaccio, Rios, and Counihan.

¹ In 2009, Hagood had been convicted of felony possession of a controlled substance in the third degree under N.Y. Penal Law § 220.16.

² Counihan testified that he tried to activate his body camera before the arrest, but it did not record due to a camera malfunction. He had reported issues with his camera before the night of the arrest and was told to reset his camera. That failed to resolve the issue, so he was issued a new body camera about two weeks after the arrest.

Migliaccio, Rios, and Counihan described their professional experience, their observations of Hagood, and the events leading up to the arrest. In addition, all three testified that they had prior experience involving firearms in fanny packs. Migliaccio had “received intel from the NYPD intel bureau that guns are being kept in fanny packs” and heard about “[d]ozens” of firearms that other officers in his precinct had recovered from fanny packs. *Id.* at A189, A196. Hagood’s fanny pack “looked similar” to those Migliaccio had seen in ten to twenty prior incidents involving firearms retrieved from fanny packs. *Id.* at A79.³ Rios also knew about “a lot of recent arrests involving firearms that were in individuals’ fanny packs strapped across their chests.” *Id.* at A309-10. That year, Rios had responded to around ten incidents in which a defendant was carrying a firearm in a fanny pack. Similarly, Counihan had responded to around eight to ten such incidents that year.

Migliaccio also testified that he later learned that Hagood’s fanny pack contained objects other than the gun, including two packs of cigarettes. Nevertheless, Migliaccio said that he knew he had observed the firearm and not the other objects because “[t]he firearm is bigger than both cigarette packages” and “doesn’t look like cigarette packages.” *Id.* at A95. Also, “the fanny pack was tight against [Hagood’s] chest,” compressing the other objects and making the metal firearm “more pronounced.” *Id.* Migliaccio testified that

³ The record is unclear as to how many of these incidents were in the context of a *Terry* stop. Migliaccio initially indicated he had never recovered a firearm from a fanny pack during a *Terry* stop. But he later said that he misspoke, thinking he was being asked about *Terry* stops on the night of Hagood’s arrest, and he clarified that he had, in fact, previously made *Terry* stops in which firearms were found in fanny packs.

the firearm recovered from Hagood was “a black Hi-Point semiautomatic firearm,” which is “relatively large,” “very heavy,” and “known for having exaggerated features” including “the slide and the handle.” *Id.* at A93. The firearm was also “loaded at that time,” making it “even heavier.” *Id.* at A96.

C. District Court Decision

After the suppression hearing, the district court issued a thorough opinion concluding that there was reasonable suspicion to stop and frisk Hagood. The district court determined that Hagood was seized when the officers approached him because “he was boxed in on all sides” so a “reasonable person in Hagood’s circumstances would not realistically have regarded himself as free to leave.” *Id.* at A507.⁴ The district court further concluded that the officers reasonably suspected that Hagood was engaged in illegal activity, namely, unlawful possession of a firearm.

The district court primarily based this conclusion on Migliaccio’s observations about Hagood’s fanny pack. Specifically, the district court credited Migliaccio’s testimony that he was able to see the outline of an object that “he believed was consistent with ‘the top slide of a handgun,’” particularly because the fanny pack was strapped tightly across Hagood’s chest. *Id.* at A513 (quoting *id.* at A79). Although Rios had testified that he and Migliaccio had 15 to 30 seconds to view Hagood, the district court concluded based on surveillance video that the officers would have seen Hagood for no more than two to three seconds. Nevertheless, the district court

⁴ The government had argued that Hagood was not seized until Counihan restrained him, but it does not appeal the district court’s holding on that issue.

concluded that, “[f]or experienced officers focused on Hagood, . . . a few seconds while driving at a low rate of speed” would be “sufficient to observe a stationary and well-illuminated person wearing a weighted bag across his chest and acting in the manner described.” *Id.* at A496. Moreover, “the area was sparsely populated at the time,” and Migliaccio had prior experience recovering firearms from fanny packs. *Id.* In addition, Migliaccio’s testimony was consistent with the district court’s own observations after donning the fanny pack that “a long horizontal outline consistent with the top slide of the pistol was easily—indeed, dramatically—visible.” *Id.* at A513-14.

The district court noted three other “data points” that reinforced the officer’s reasonable suspicion to stop Hagood. *Id.* at A514. First, Hagood wore his fanny pack in a way that was unusual at the time. Second, both Migliaccio and Rios thought Hagood reacted nervously when he recognized them as NYPD officers. Finally, based on their professional experience and intelligence briefings, Migliaccio and Rios were both well aware of the prevalence of criminal activity, violence, and firearms in the neighborhood. The district court further concluded that “the same facts that suppl[ied] reasonable suspicion that Hagood was committing a crime necessarily suppl[ied] reasonable suspicion to justify a frisk for a weapon.” *Id.* at A518.⁵

⁵ The district court also rejected Hagood’s argument that “the handcuffing transformed the event from a *Terry* stop into a *de facto* arrest,” which Hagood does not challenge on appeal. App’x at A520.

D. Guilty Plea and Sentencing

On November 5, 2021, Hagood entered a conditional guilty plea to the single count in the indictment. The plea agreement expressly reserved Hagood's right to appeal the district court's July 15, 2021 order denying his motion to suppress.⁶ Hagood was subsequently sentenced to 27 months' imprisonment, to be followed by three years of supervised release, and a \$100 mandatory special assessment.

II. DISCUSSION

Hagood argues that the district court erred by denying his motion to suppress because the officers lacked reasonable suspicion to perform a *Terry* stop. We disagree. The arresting officers reasonably suspected that Hagood was armed based on their observations of Hagood's fanny pack, his nervous reaction to seeing them, and his presence in a high-crime area late at night.

A. Legal Standards

The Fourth Amendment protects the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizure." U.S. Const. amend. IV. "Warrantless searches and seizures are per se unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions. The *Terry* investigative stop and frisk is one such exception." *United States v. Weaver*, 9 F.4th 129, 138 (2d Cir. 2021) (en banc) (cleaned up). In *Terry v. Ohio*, 392 U.S. 1

⁶ On December 21, 2021, the district court held a conference and reallocated Hagood regarding his plea because Hagood had been under the influence of a controlled substance during the November 5 plea hearing.

(1968), and its progeny, the Supreme Court made clear that “the police can stop and briefly detain a person for investigative purposes if the officer has a reasonable suspicion supported by articulable facts that criminal activity ‘may be afoot.’” *United States v. Sokolow*, 490 U.S. 1, 7 (1989) (quoting *Terry*, 392 U.S. at 30). Similarly, a *Terry* frisk requires “reasonable suspicion not only that criminal activity is afoot, but also that the person suspected is ‘armed and dangerous.’” *Weaver*, 9 F.4th at 139 (quoting *Terry*, 392 U.S. at 30).

“Reasonable suspicion is less than probable cause and must be established by specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant the intrusion.” *United States v. Hawkins*, 37 F.4th 854, 857 (2d Cir. 2022) (cleaned up). “‘Contextual considerations,’ such as ‘the fact that the stop occurred in a high crime area,’ factor into a reasonable-suspicion analysis, and the officers’ assessment of an individual’s ‘nervous’ or ‘evasive behavior’ is ‘pertinent’ in establishing reasonable suspicion.” *Id.* at 858 (quoting *Illinois v. Wardlow*, 528 U.S. 119, 124 (2000)) (cleaned up). “Although any one of these factors, standing alone, might not support reasonable suspicion, we do not subject factors pertaining to an officer’s reasonable suspicion to . . . a ‘divide-and-conquer analysis.’” *United States v. Santillan*, 902 F.3d 49, 58 (2d Cir. 2018) (quoting *United States v. Arvizu*, 534 U.S. 266, 274 (2002)). “We view the totality of the circumstances through the eyes of a reasonable and cautious officer on the scene, whose insights are necessarily guided by the officer’s experience and training.” *Id.* at 56.

To deter Fourth Amendment violations, the Supreme Court created a “prudential doctrine” known as the exclusionary rule, *Davis v. United States*, 564 U.S. 229, 236 (2011) (internal quotation marks

omitted), which “often requires trial courts to exclude unlawfully seized evidence in a criminal trial,” *Utah v. Strieff*, 579 U.S. 232, 237 (2016). Under the exclusionary rule, a defendant may move to suppress evidence recovered from a *Terry* stop or search that was conducted without reasonable suspicion.⁷

“When considering a ruling on a motion to suppress evidence, we review a district court’s legal conclusions *de novo*, its findings of fact for clear error, and its decisions on mixed questions of law and fact, including whether there was reasonable suspicion to justify a frisk, *de novo*.” *Weaver*, 9 F.4th at 138.⁸ In doing so, we give “due weight to inferences drawn from th[e] facts by resident judges and local law enforcement officers,” *id.*, and “special deference to findings that are based on determinations of witness credibility,” *Hawkins*, 37 F.4th at 857 (citation omitted).

⁷ The dissent critiques the exclusionary rule on policy grounds, *see* Dissent at 11-14, but this argument is beside the point. Our duty is to “apply the applicable precedents regardless of the arguments against maintaining those precedents.” *McKinney v. City of Middletown*, 49 F.4th 730, 746-47 (2d Cir. 2022). In any event, this is not a case involving “dubious justifications of police playing hunches that turn out right.” Dissent at 11. The district court made a careful determination well supported by the evidence before it.

⁸ The parties disagree about whether we not only review for clear error but also view the facts in the light most favorable to the government. *Compare United States v. Pabon*, 871 F.3d 164, 173 (2d Cir. 2017) (“[I]n reviewing the district court’s decision, we apply familiar standards governing clear error review, without viewing the evidence in either party’s favor.”), *with United States v. O’Brien*, 926 F.3d 57, 73 (2d Cir. 2019) (“In reviewing the denial of a defendant’s motion to suppress, we view the record in the light most favorable to the government.”). We do not decide that issue because we would affirm the denial of Hagood’s motion to suppress under either standard.

B. Analysis

The district court correctly concluded that the officers had reasonable suspicion to perform a *Terry* stop based on Officer Migliaccio's observations of Hagood's fanny pack, Hagood's nervous reaction to seeing the officers, and his presence in a high-crime area late at night.

The most compelling evidence of reasonable suspicion was Migliaccio's observations. It is well established that a bulge consistent with the shape of a firearm, and located somewhere a firearm would likely be found, supports reasonable suspicion. See *Pennsylvania v. Mimms*, 434 U.S. 106, 112 (1977) (observing that a "bulge in [a] jacket permitted the officer to conclude that [the defendant] was armed and thus posed a serious and present danger to the safety of the officer," so the "pat-down" was constitutional); *United States v. Padilla*, 548 F.3d 179, 189 (2d Cir. 2008) (observing a defendant "reach underneath his jacket and shirt and adjust a weighty object concealed at the center of his waistline" supported reasonable suspicion to perform a *Terry* stop).⁹ Here, Migliaccio testified that the fanny pack "appeared heavy, like there was a

⁹ See also *United States v. Manuel*, 64 F. App'x 823, 826–27 (2d Cir. 2003) ("[W]e find that Officer Costantino's frisk was justified, because the bulge in Defendant-Appellant's waist area permitted him to conclude that Defendant-Appellant was armed and posed a danger to the officers."); *United States v. Lucas*, 68 F. App'x 265, 267 (2d Cir. 2003) ("The officer's personal observation of an object that appeared to be a gun created adequate 'reasonable suspicion' to believe that appellant was unlawfully possessing a firearm, and justified conducting a limited weapons search to protect the safety of officers and others."); *United States v. Watson*, No. 20-CR-346, 2021 WL 535807, at *7 (S.D.N.Y. Feb. 11, 2021) (finding "reasonable suspicion to frisk" a defendant when "the bulge that the officers observed in [the defendant's] fanny pack was not a generic bulge, but a 'heavy-looking L-shaped object'" (citations omitted)).

weighted object inside of it” and contained “an elongated, rigid, solid object” that “appeared . . . to be potentially the top slide of a handgun.” App’x at A79. Migliaccio also knew that firearms were increasingly concealed in fanny packs based on his “experience and specialized training,” *United States v. Muhammad*, 463 F.3d 115, 121 (2d Cir. 2006), including (1) briefing from the NYPD intelligence bureau about guns being kept in fanny packs, (2) knowledge that other officers in his precinct had recovered dozens of firearms from fanny packs, and (3) personal experience recovering firearms from fanny packs in approximately ten to twenty other incidents.¹⁰ So Migliaccio’s observations of a bulge consistent with the shape and placement of a firearm support a finding of reasonable suspicion that Hagood was engaged in criminal activity—namely, unlawful possession of a firearm.

Migliaccio’s testimony about his observations and experience was also consistent with other evidence introduced at the hearing. First, Rios corroborated Migliaccio’s observations by testifying that he also observed a heavy bulge in Hagood’s fanny pack from the same vantage point as Migliaccio. Second, Migliaccio’s observations were consistent with the district court’s own finding that “a long horizontal

¹⁰ Hagood argues that Migliaccio’s experience “adds no reasonable ground to suspect fanny packs of carrying guns” because Migliaccio’s testimony did not make clear whether his prior experience with fanny packs involved “fanny packs [that] were being worn or just lying in the car.” Appellant’s Br. at 47. The dissent similarly states that Migliaccio’s testimony “tells us nothing about his experience in situations like the one he faced in this case.” Dissent at 8. We disagree. Regardless of the specific context of each case, Migliaccio’s experience informed his suspicions because he knew fanny packs were increasingly used to hide firearms and Hagood’s fanny pack “looked similar” to fanny packs containing firearms that he had observed previously, whether worn on a suspect’s person or lying in a vehicle. App’x at A79.

outline consistent with the top slide of the pistol” was “dramatically” visible when the fanny pack was worn in the manner Migliaccio described. App’x at A513-14.¹¹ Finally, Rios and Counihan testified that, in 2020, they also had recovered firearms from fanny packs in a number of incidents. So we discern no clear error in the district court’s conclusion that Migliaccio was credible.

Furthermore, the district court identified three other factors that bolster a finding of reasonable suspicion. First, “Hagood was wearing the fanny pack in an unusual manner” suggesting that “the contents of the pack might also be unusual (or unusually heavy).” App’x at A514-15. Migliaccio testified that Hagood wore his fanny pack “in a manner that was not consistent with everyday wear” and that would allow Hagood to access its contents more easily. *Id.* at A77. As Hagood puts it, “Migliaccio was not the fashion police.” Appellant’s Br. at 48. But Migliaccio could permissibly consider that Hagood wore an accessory associated with firearm concealment in such a way as to make a firearm easily accessible.

Second, according to Migliaccio, Hagood “looked really nervous” and “visibly agitated” when he saw the officers and “almost jumped.” App’x at A80, A185. Rios similarly testified that Hagood “had a nervous look” after seeing them. *Id.* at A310. Although the dissent claims that a “nervous reaction is not an unusual reaction to

¹¹ The dissent derides the district court’s effort as a “woefully inadequate” “sham ‘experiment’” because it did not account for the other contents of the fanny pack, the distance, the lighting, and other viewing conditions. Dissent at 7. The point of the exercise, however, was not to replicate the scene, but to test the credibility of Migliaccio’s testimony by determining whether the shape of the slide of the pistol could even be discernable through a tightly strapped fanny pack. In its own test, the district court concluded that the slide was in fact visible—“dramatically” so. App’x at A514.

police presence,” Dissent at 9, the Supreme Court has made clear that “nervous, evasive behavior is a pertinent factor in determining reasonable suspicion.” *Wardlow*, 528 U.S. at 124; *see also Weaver*, 9 F.4th at 147–48 (finding that defendant engaged in “[u]nusual, evasive, or furtive behavior” when he “hitched his pants before entering [a] gray sedan” because that conduct was consistent with “hiding something from the police”); *Hawkins*, 37 F.4th at 858 (finding reasonable suspicion based, in part, on the officers’ observations “that both defendants exhibited body movements they perceived to be evasive”).

Third, the context further supported the district court’s finding of reasonable suspicion. Hagood stood outside, late at night, in a high-crime neighborhood. “[O]fficers are not required to ignore the relevant characteristics of a location in determining whether the circumstances are sufficiently suspicious to warrant further investigation.” *Wardlow*, 528 U.S. at 124. To the contrary, “the fact that the stop occurred in a ‘high crime area’ [is] among the relevant contextual considerations in a *Terry* analysis.” *Id.*; *accord Padilla*, 548 F.3d at 188. The district court thus properly noted that “the suspect’s behavior, the context of the stop, and the crime rate in the area” reinforced its finding of reasonable suspicion. *Weaver*, 9 F.4th at 140.

Hagood argues that the officers did not have reasonable suspicion to conduct a stop. First, Hagood argues that Migliaccio’s testimony should not have been credited because Migliaccio (unlike the district court) observed the fanny pack at night, from 30 feet away, and for only two to three seconds. But the district court acknowledged these facts and considered the video of Migliaccio and Rios driving by, which Hagood describes as “prov[ing] the actual

time frame, conditions, and obstacles” present just moments before the arrest. Reply Br. at 10. The district court also recognized that it did not don the fanny pack under “laboratory conditions.” App’x at A442-43. Having fairly considered both evidence supporting and undermining Migliaccio’s observations, the district court reasonably concluded that for “experienced officers focused on Hagood, . . . a few seconds while driving at a low rate of speed were sufficient to observe a stationary and well-illuminated person wearing a weighted bag across his chest.” *Id.* at A496. Although Hagood disagrees with this conclusion, “[w]here there are two permissible views of the evidence, the factfinder’s choice between them cannot be clearly erroneous.” *United States v. Iodice*, 525 F.3d 179, 185 (2d Cir. 2008) (cleaned up). “When, as here, credibility determinations are at issue, we give particularly strong deference to a district court finding.” *Id.* The district court thus did not clearly err by crediting the corroborated testimony of an experienced police officer.¹²

Second, Hagood argues that a generic line visible through the fanny pack could have been consistent with items other than a firearm, such as a phone, wallet, or eyeglass case. But a “determination that reasonable suspicion exists . . . need not rule out the possibility of innocent conduct.” *Arvizu*, 534 U.S. at 277.

¹² The dissent nonetheless challenges the officer’s credibility based on several observations supporting its own view that the officer had a “hunch” that “turned out to be right.” Dissent at 1; *see id.* at 3 n.1 (questioning the absence of body camera footage); *id.* at 4 (calling it “more than dubious” that Migliaccio “saw *any sort of outline* in the fanny pack resembling a gun”); *id.* at 5 (speculating about the amount of room in the fanny pack “for the gun to shift position”); *id.* at 9 n.4 (doubting that “Hagood could see Rios’s uniform”). Not only is the dissent’s reimagination of what happened based largely on speculation, but it flagrantly disregards the deference due to the district court’s credibility determinations and findings of fact.

“Conduct as consistent with innocence as with guilt may form the basis for an investigative stop where there is some indication of possible illicit activity.” *United States v. Villegas*, 928 F.2d 512, 516 (2d Cir. 1991); *see also Weaver*, 9 F.4th at 149 (“A police officer, placed into an uncertain and developing situation, is not tasked with sorting through multiple possible scenarios and conducting a frisk for weapons only if that is the sole, or even the most likely, possibility.”).¹³

Finally, Hagood argues that the “other data points” cited by the district court could add “no increment” of reasonable suspicion. Appellant’s Br. at 28, 48, 55. The dissent similarly proclaims that “[z]ero plus zero plus zero still equals zero. And one plus one plus zero does not equal five!” Dissent at 10. But this “erroneous ‘divide-and-conquer analysis’” misunderstands the totality-of-the-circumstances approach. *United States v. Delossantos*, 536 F.3d 155, 161 (2d Cir. 2008) (quoting *Arvizu*, 534 U.S. at 274); *Santillan*, 902 F.3d at 58. In fact, it is the opposite. Under the totality of the circumstances, something unremarkable on its own may become significant in conjunction with other factors. The district court thus correctly concluded that Hagood’s unusual way of wearing the fanny pack, his nervous demeanor, and the time and location of the encounter “reinforced” its finding of reasonable suspicion, even

¹³ The dissent relies on a photo of the opened fanny pack, which showed the gun positioned with its slide down across the bottom of the bag. *See* Dissent at 4-5. But there is no reason to assume that the photo depicting the contents of the fanny pack reflected the arrangement of the items inside when worn by Hagood. The photo was taken after a “scrum” that involved Hagood and the officers making enough physical contact that two officers were able to detect the firearm. App’x at A499.

though such observations “would fall well short of establishing reasonable suspicion” if made “in isolation.” App’x at A514, A516.

III. CONCLUSION

For the foregoing reasons, we conclude that the district court correctly denied Hagood’s motion to suppress. The judgment of the district court is thus affirmed.