



Texas Police Journal

January - February 2026



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TEXAS POLICE JOURNAL

Vol. 75

January - February 2026

No. 1

Founded March 6, 1895

Texas Police Association offices:
P. O. Box 4247, Austin, Texas 78765
Tel. (512) 458-3140

Editorial/Publication offices:
Same as above.
www.TexasPoliceAssociation.com

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Important Updates for 202645

The Texas Police Association Legacy Series

The 35th Annual Convention - 1933: A Turning Point for Lone Star Law Enforcement

The year 1933 was a pivotal moment for Texas law enforcement. As the Great Depression gripped the nation, police departments faced unprecedented challenges: dwindling budgets, a rise in sophisticated criminal activity, and a desperate need for legislative recognition. These struggles are vividly captured in the archival records of the *Proceedings of the Thirty-Fifth Annual Convention of the City Marshals & Chiefs of Police Union of Texas*, held in Galveston from June 12th to 14th, 1933. The association records provide a rare window into the birth of modern policing in the Lone Star State, detailing the political maneuvering, technological growing pains, and the existential fight for the survival of the Texas State Highway Patrol. Establishing the first successful coordinated effort of all levels of policing toward a unified purpose of law enforcement professionalism.

Law and Order

The convention, led by influential figures such as Secretary-Treasurer George A. Smith and President Carl Kennedy (Beaumont Chief of Police), with a network of leaders supportive of police professionalism. The “Report of the Executive Committee” highlights the Association efforts in Austin. During this period, the Association acted as an influencer for law enforcement interests, attempting to provide insightful information to legislators that were often skeptical of police expansion during an economic crisis.

One of the more fascinating legislative battles mentioned was a bill aimed at prohibiting the use or installation of short-wave radio sets in motor vehicles without a permit from a Chief of Police. Introduced by Senator Frank Rawlings and Representative Kyle, the bill was intended to prevent criminals from monitoring police frequencies. However, it faced stiff opposition from “outsiders” and amateur radio broadcasters who feared it would interfere with their hobby. Despite passing the Senate, the bill died in the House by a vote of 63 to 50 a reminder that even in the 1930s, the tension between public safety and private technology was a major point of contention.

The Association supported a mandatory driver’s license bill. At the time, Texas was a patchwork of regulations, and the police saw a statewide licensing system as a vital tool for public safety. Furthermore, the Association was instrumental in defeating a bill introduced by Representative Pope of Corpus Christi that sought to abolish the State Highway Patrol entirely. The Association successful defense of the States Highway Patrol solidified the alliance between local municipal police, county level and state-level enforcement, therefore, becoming the turning point in Texas Policing History.

The Rise of the State Highway Patrol

Perhaps the most significant portion of the 1933 proceedings is the address by Lewis G. Phares, the Chief of the Texas State Highway Patrol. His report outlines the meteoric rise of an organization that had started only six years prior with the legislature giving the highway department twenty enforcement officers known as license and weight inspectors, whose primary duty was to monitor

overloaded trucks. In 1929 the legislature improved the number to seventy inspectors.

By 1931, the Legislature had increased the force to 120 members and granted them full peace officer authority primary for the enforcement of highway laws. Chief Phares presented a staggering array of statistics for the fiscal year ending August 31, 1932, to justify the department's existence. In that year alone, his 120 men traveled over 2.1 million miles (primarily on motorcycles), issued 209,512 warnings, assisted over 75,000 people in distress, and made 16,959 arrests.

Financially, Phares argued that the Patrol was a "profitable" endeavor for the state. While the department's total expenditure was roughly \$320,000, it generated over \$547,000 in registration fees from overloaded trucks and in arrest fines. A net profit of around \$227,095.27. In an era of scarcity, Phares's emphasis on the "net profit" of law enforcement was a savvy political move to ensure continued funding.

Policing in the Shadows of the Depression

The human cost of the Great Depression is also evident in Phares's report. He noted that the Legislature had recently cut patrolmen's salaries by 25%. "Under the present unsettled conditions," Phares remarked, "I guess that we are quite fortunate in having a job at all." He spoke of the difficulty his men faced supporting families on "meager salaries" while being strictly forbidden from collecting any form of fees or gratuities.

Safety was another major concern. The organization had received criticism for working patrolmen in pairs, but Phares defended the practice vigorously. He painted a grim picture of the dangers faced by a lone officer on a "desolated highway" confronting "three smarty drunks" or hardened criminals.

The report also highlights the transition of the Highway Patrol from traffic enforcement to general criminal investigation. Phares cited the arrest of C.C. Julian, an international fugitive wanted by Oklahoma authorities who was apprehended in a hotel lobby in Laredo, and T.J. Tucker, a bank robber from Kansas who was caught after being pursued across Texas highways for three days. These cases demonstrated that the Highway Patrol was becoming an essential component of the state's fight against high-profile "Public Enemies."

Technology and Tradition

The 1933 convention also showcased the "cutting edge" of police technology: the radio. Edward G. Conroy, a radio operator for the San Antonio Police Department, attempted to give a demonstration of police radio capabilities. He planned to broadcast a message from San Antonio to the delegates in Galveston to show the "dispatch with which police news may be conveyed."

However, the demonstration was plagued by atmospheric interference. Conroy noted that "air conditions at Galveston"—specifically interference from ship-to-shore messages—forced a postponement of the test. This incident underscores the primitive and experimental nature of police communications at the time.

Despite the serious nature of the reports and the legislative battles, the convention was also a social event. The "Report of the Resolution Committee" thanked Chief Tony Messina for his hospitality, which included "shooting contests" at the range and "bathing parties" at Murdock's Bath House,

a legendary Galveston landmark. These activities fostered a sense of brotherhood among officers from different jurisdictions, a camaraderie that the Association believed was essential for effective law enforcement.

Conclusion: A Legacy of “Courtesy, Service and Protection”

The 1933 proceedings conclude with a call to action from Dallas Police Chief C.W. Trammell, Chairman of the Legislative Committee. He warned the members that “if we do not show we have the numbers to be reckoned with, we shall make no impression on our lawmakers.” This sentiment reflected a growing realization that law enforcement needed to be organized and unified to command respect and resources.

Chief Phares ended his presentation by reiterating the Patrol’s motto: “Courtesy, Service and Protection.” He emphasized that “Courtesy alike to all and to the point of human endurance; Service to the travelling public when seeking information or in dire trouble; Protection to people using State Highways and property, were the hallmark of the professional officer.

The documents from the 35th Annual Convention reveal a profession at a crossroads. By fighting for better technology, defending their budgets, and organizing politically, the Texas Police Association in 1933 laid the groundwork for the modern, professionalized law enforcement agencies that Texas relies on today. Their struggles with salary cuts, legislative opposition, and the challenges of new technology resonate nearly a century later, proving that while the tools of the trade change, the core mission of “Service and Protection” remains constant.

**Source: Proceedings of the Thirty-Fifth Annual Convention of the City Marshals & Chiefs of Police Union of Texas.*

Written by:

Paul Thompson, D.M., M.S.C.J., B.S.

Texas Police Association Past President (2018-19)



2026 TPA Annual Training Conference March 4—5, 2026 Hosted by UT System El Paso Police

TPA President Micki Lintz and the UT System El Paso Police Department in El Paso, Texas will host the Texas Police Association's 126th Annual Training Conference, March 4—5, 2026.

The Conference will be held at the Hotel Paso Del Norte located at 10 Henry Trost Court, El Paso, Texas, 79901.

Attendees will receive some of the best training available, focusing on Drones, Leadership, and other training requested in the El Paso area. TCOLE training credit will be given to those who complete the training courses.

The Hotel Paso Del Norte is offering a special rate of \$110.00 Single occupancy. **Reservations must be made by February 13, 2026 to receive the special rate.** Reservations may be made by using the reservation link. [Link for Hotel Reservation.](#)

The registration fee for the Conference is \$50.00. Your registration fee will allow you access to the training, vendors and conference events.

The Conference Schedule is being finalized, so be sure to check your emails, upcoming issues of the *Journal*, and the TPA Website for updated information.

TPA is a non-profit organization open to all law enforcement entities in Texas and dedicated to advancing professionalism in law enforcement through training and ethics.

If you are interested in being a sponsor for the Conference, please contact our office at (512) 458-3140.

Please note, those wishing to use a credit card for making their registration payments will also be charged a 3% credit card fee in addition for making that purchase which are non-refundable. **Invoicing is available upon request.**

Finally, we are soliciting a large group of vendors from the South Texas area and other parts of the state and nation as well, in an effort to showcase products, equipment, and services available to you and your agency.

Register Now!



2026 TPA Annual Training Conference REGISTRATION FORM



Hotel Paso Del Norte
10 Henry Trost Court
El Paso, Texas 79901
March 4 – 5, 2026

[Click here](#) to Register On-Line

Name: 1. _____ Title: _____
(Please Print)

Email Address _____ TCOLE PID# _____

2. _____ Title: _____

Email Address _____ TCOLE PID# _____

Name of Agency/Organization: _____

Address: _____
Street or Box City Zip

Phone: _____ E-Mail _____

Registration\$50.00 per person

Total Amount \$ _____

Invoicing Available Upon Request

____ American Express ____ Discover ____ MasterCard ____ Visa

Name (on card): _____

Card Number: _____ Exp. Date: _____ Sec. Code _____

Signature: _____ Today's Date: _____

Credit Card Fees will be passed along to the Registrant.

Return to: Texas Police Association, P. O. Box 4247, Austin, TX 78765-4247
Phone (512) 458-3140
Email: mona@texaspoliceassociation.com



TEXAS POLICE ASSOCIATION

126th ANNUAL CONFERENCE

March 3 – 5, 2026

El Paso, Texas

TENTATIVE SCHEDULE

Tuesday, March 3, 2026

3:00 pm – 5:00 pm
5:00 pm - 6:00 pm

Vendors Set Up
Executive Committee Meeting

Wednesday, March 4, 2026

8:00am - 9:30am
9:30am - 10:15am

Registration
Opening Ceremony
Welcome
Posting of Colors
National Anthem
Pledge of Allegiance
Invocation
Recognition of Dignitaries
TPA Annual Conference Photo

10:15am – 10:30am
10:30am - 12:00pm
12:00pm – 1:00pm
1:00pm – 2:00pm
2:00pm – 2:15pm
2:15pm – 3:30 pm
3:30 pm – 3:45pm
3:45pm – 5:00 pm
5:00 pm

Vendor Highlight/Break with Vendors
Training Session
Lunch – On Your Own
Training Session
Break with Vendors
Training Session
Break with Vendors
Training Session
Networking Event

Thursday, March 5, 2026 – “TPA’s 131st Birth Day Eve”

8:00am – 9:00am
9:00am – 9:15am
9:15am – 10:30am
10:30am - 10:45am
10:45am – 12:00pm
12:00pm – 1:00pm
1:00pm - 2:30pm
2:30pm – 2:45pm
2:45pm -5:00pm
5:00 pm
5:00 pm

Training Session
Break with Vendors
Training Session
Break with Vendors
Training Session
Lunch on Your Own
Training Session
Break with Vendors
Training
Adjourn/Closing Remarks
Vendors Breakdown

|
TCOLE Credit will be given upon completion.

LOCATION:

Hotel Paso Del Norte
10 Henry Trost Court
El Paso, Texas 79901

(915) 534-3000

Hotel:

Hotel Paso Del Norte
El Paso, Texas 79901
(915) 534-3000
Room Rates: \$110.00 King Suite
Cut-Off Date – February 13, 2026

[Book Your Hotel Reservations](#)



From the 4th Vice President of the Texas Police Association

Sheriff Matthew Lindemann - Williamson County, Texas



To the Members of the Texas Police Association,

It is both a privilege and a profound honor to address you as your newly selected Fourth Vice President of the Texas Police Association. My history with this organization dates back to 1989, but my calling to law enforcement was formed much earlier, shaped by small-town values, strong mentors, and a deep respect for service rooted in my hometown of Bartlett, Texas.

Growing up in a town of just sixteen hundred, I learned early what leadership looked like by watching our local Police Chief engage with the neighborhood kids; firm when he needed to be, fair in every moment, and always invested in who we might one day become. That seed of service was watered during my very first ride-along with a Bell County Deputy. Fifteen minutes into the shift, I was witnessing a high-risk felony stop of shooting suspects. From that moment on, I knew without question that I belonged there.

From the Jail to the Rangers

In 1985, at the “ripe old age” of eighteen, I graduated from the Central Texas Regional Police Academy and began my career where many great lawmen do: the county jail. In the halls of the Williamson County Jail, I guarded notorious figures like Henry Lee Lucas and rubbed elbows with the Texas Rangers who transported him. It was a masterclass in human nature and the mechanics of the justice system.

It was also during this time that I discovered the Texas Police Association. In an era where advanced training opportunities were limited, the TPA-sponsored schools at the DPS Academy in Austin were my lifeline to professional growth. The TPA invested in me when it mattered most, and I have never forgotten that.

My path eventually led me to the Texas Department of Public Safety. I had the rare privilege of serving as a State Trooper in my home county, learning the ropes from a partner with twenty-six years of wisdom. Additional duties as a member of the Department’s S.W.A.T. team sent me crisscrossing the state to handle hostage situations and high-risk warrants.

The Ranger Years and Beyond

In 1997, I achieved a lifelong goal when I was promoted to Texas Ranger. Over the next seventeen years, I served in various capacities that shaped me and defined my career:

- **Specialized Units:** Served on the Tactical Tracking Team and the Crime Scene Working Group.
- **Executive Protection:** Provided security for Governors George W. Bush and Rick Perry during their presidential campaigns.

- **Forensics:** Attended the National Forensic Academy, later returning to teach digital police photography for the TPA and the Rangers.
- **Border Operations:** Spent two years on the Texas Ranger Reconnaissance Team working the Texas/Mexico border.

After retiring as a Lieutenant in 2018, I spent time as a DA Investigator and later as the Williamson County Pct. 3 Constable. These roles offered me a view of the “other side” of the badge, working with prosecutors, victims, and the civil process. This experience further prepared me for leadership at the agency level.

Full Circle: Leading Williamson County

In November 2024, my career came full circle. I was elected Sheriff of Williamson County. On January 1, 2025, forty years after I started as a teenage jailer, I took command of the very agency where I began.

Today, I am honored to lead a professional organization of nearly 600 employees serving more than 750,000 residents. My priorities are clear: **Training, Equipment, and Retention**. We prioritize keeping our deputies safe, so they go home to their families, and we fight to keep their pay competitive so we can keep the best talent. Our deputies must be properly trained, fully equipped, and fairly compensated. Their safety, professionalism, and experience are non-negotiable, and our communities depend on it.

Vision for the TPA

My vision for the TPA is focused on relevance and professionalism. We must continue to provide the highest caliber of training to every corner of Texas that meets the evolving demands of modern policing. By increasing our presence at major conferences such as the Texas Sheriffs’ Association and recruiting the next generation of leaders, we ensure that the TPA remains the gold standard for Texas law enforcement.

My wife, M’Lissa, and I have called Georgetown home since 1993. We’ve raised our children here, and now we enjoy time with our three grandchildren here. This state has given me everything, and my goal as your 4th Vice President is to give back. I am proud to serve you and look forward to meeting each of you while working together to advance our profession.

Respectfully,

Matthew Lindemann

Williamson County Sheriff

4th Vice President, Texas Police Association

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Editor, Joe Tooley
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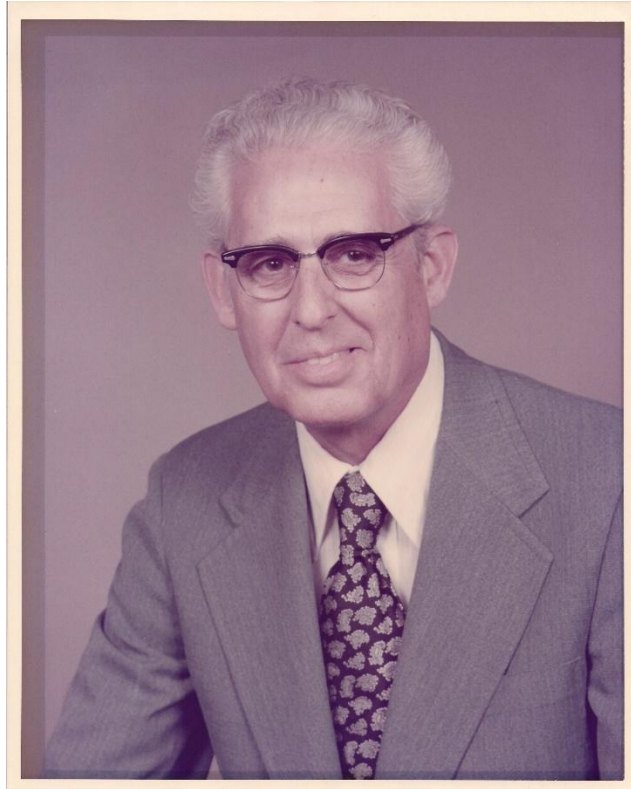
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DEADLINE – April 30, 2026

To All TPA Active Members,

We are pleased to announce the availability of “Glen H. McLaughlin Memorial Scholarship.”

These scholarships are in the amount of up to \$1,100.00 to attend a TPA sponsored training class during the fiscal year 2026/2027 (June 1, 2026-May 31, 2027).

To qualify, applicants must be currently employed as a full-time Texas Peace Officer and be a Texas Police Association Active Member in good standing.

An application form is attached for your convenience. It can also be accessed on the TPA Web Site.

*The Application must be received in the TPA Office by **April 30, 2026.***



Texas Police Association Scholarship Application Glen H. McLaughlin Memorial Foundation

Applicant Must be a Member of TPA

Date: _____

Name of Applicant: _____

Agency: _____ PID #: _____

Time in Service with Current Agency: _____ years _____ months

Certification: (Circle One)

Basic Intermediate Advanced Masters

Current Position at Agency: _____

Request to Attend Training:

Leadership Conference Date: _____

Counter-Terrorism Conference Date: _____

Other TPA Training: _____ Date: _____

How does this training benefit you and your agency? _____

Continue on back if necessary.

Applicant's Signature: _____ Date: _____

Locally Endorsed By: Police Chief Sheriff Department Head (Circle one)

Endorsing Official's Name & Title: _____

Endorsing Official's Signature: _____ Date: _____

TPA Regional Director's Name: _____

TPA Regional Director's Signature: _____ Date: _____

The application form can be accessed on the TexasPoliceAssociation.com website. Fill out the form and sign it. Have your application endorsed by the appropriate individual (Chief, Sheriff, Department Head, or Designee) and forward to:

Texas Police Association
P. O. Box 4247
Austin, TX 78765-4247

The application can also be sent by email to:
mona@texaspoliceassociation.com



Jack L. Ryle

DEADLINE – April 30, 2026

To All TPA Active Members,

We are pleased to announce the availability of “Jack L. Ryle Scholastic Scholarship.”

This Scholastic scholarship will be awarded in the amount of \$500.00 and is available to those planning to attend a college, university, or trade school.

To qualify, applicants’ parent or guardian must be currently employed as a full-time Texas Peace Officer and be a Texas Police Association Active Member in good standing.

An application form is attached for your convenience. It can also be accessed on the TPA Web Site.

*The Application must be received in the TPA Office by **April 30, 2026.***



Texas Police Association Scholarship Application

Jack L. Ryle Scholastic Scholarship

Parent or Guardian of Applicant Must be a Member of TPA Date: _____

Name of Applicant: _____

Name or Parent/guardian: _____

Address: _____

Phone: _____ E-mail: _____

Parent or Guardian's Current Agency: _____

Current Position at Agency: _____

Name and address of College, University, or Trade School planning to Attend: _____

Major Field of Study: _____

Date to begin attending: _____

Describe how this scholarship will benefit you and your family: _____

Continue on back if necessary.

Applicant's Signature: _____ Date: _____

Complete and return to:

Texas Police Association
P. O. Box 4247
Austin, TX 78765-4247

The application can also be sent by email to:
mona@texaspoliceassociation.com

*Please note that all applications must be received by **April 30, 2026**, to be considered.*

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Just complete and return the following form
with a check or money order.

You may also email this information to Mona Krieg at
mona@texaspoliceassociation.com and then give her a
call with your credit card information.

The person receiving this gift will receive their membership
credentials with a letter stating this is a gift from you!

Join us in keeping our communities safe
while helping the Association grow!



GIFT Application for Membership
Texas Police Association

Active (Law Enforcement) - \$30.00 _____ Agency Affiliate - \$25.00 Per Officer _____

Name _____ Date of Birth _____

Agency/Company _____ Title _____

Mailing Address _____

City _____ State _____ Zip _____

Contact Phone Number _____

E-mail Address _____

Name of Beneficiary _____

(Active Membership Includes \$7,500.00 IN THE LINE OF DUTY & Accidental Death Benefit)

I certify that the beneficiary named above is correct according to my wishes.

Signature _____ Date _____

Mail Application and Dues to: Texas Police Association, P. O. Box 4247, Austin, Texas 78765-4247

Special Gift from: _____
Name Email Address



GIFT Application for Membership
Texas Police Association

Student - \$10.00 _____ Citizen - \$150.00 _____ Business - \$500.00 _____ Donation - \$ _____

Name _____

Agency/Company _____ Title _____

Mailing Address _____

City _____ State _____ Zip _____

E-mail Address _____

Contact Phone Number _____

Signature _____ Date _____

Mail Application and Dues to: Texas Police Association, P. O. Box 4247, Austin, Texas 78765-4247

Special Gift from: _____
Name Email Address



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AR Bag



Joe C. Tooley, Legal Digest Editor
Joe C. Tooley, Attorneys & Counselors, Rockwall, Texas
www.TooleyLaw.com 972-722-1058

TEXAS POLICE ASSOCIATION LEGAL DIGEST

January - February 2026

AUTHOR'S NOTE: It is the goal of this submission to extract those portions of relevant appellate opinions or the syllabus of the legal reporter which bear directly upon law enforcement methods and provide guidance for officers on an operational level. Much of the information pertaining to these cases is lifted verbatim from the court opinion or syllabus with independent analysis inserted as appropriate. Due to clarity for training purposes, the distinction between quotes from the opinions and inserted analysis is not always identified and legal citations within the opinion are often omitted. Emphasis is placed upon reported decisions from the Fifth Circuit Court of Appeals and the Texas Court of Criminal Appeals.

SEARCH & SEIZURE, Protective sweep, warrant affidavit.

This is a Fourth Amendment suppression case. In January 2021, San Antonio police officers were dispatched to an apartment building based on two calls reporting a gunshot. Roughly one hour after the gunshot was reported, officers entered Jonte Turner's apartment and conducted a protective sweep. Multiple firearms and loaded magazines were in plain view. Following the sweep, officers arrested Turner and obtained a search warrant. In the subsequent, warranted search, they seized firearms, magazines, and marijuana. Turner moved to suppress the physical evidence, claiming the sweep and warranted search violated the Fourth Amendment. The district court denied those motions, and we AFFIRM.

The underlying events were recorded on body cameras. On January 27, 2021, Officer Brian Bonenberger of the San Antonio Police Department was dispatched to an apartment com-

plex in response to an anonymous caller reporting a gunshot and "a bunch of yelling down the stairs." He was dispatched at 6:47 p.m. and arrived at 6:52 p.m.

Upon arrival, Officer Bonenberger walked the area and did not immediately see anyone needing help. A woman walking her dog told him she lived in apartment #2206 and thought she heard a gunshot from directly above her second-floor apartment or potentially outside. Based on that information, Officer Bonenberger went to #2306, directly above #2206, but no one answered the door, and the officer heard no activity and saw no sign of disturbance. Officer Bonenberger then drove to a parking lot across from the apartment complex, wrote the findings in his incident report, and closed the call.

At 7:18 p.m., another call, by Amanda Zuniga, came through reporting a shooting in progress at the same address noted in the prior anonymous call. The dispatch for that call was sent out as an emergency, making all officers aware the situation was serious. Officer Bonenberger requested that

the dispatcher add him to the call since he had just been at the same building. He was assigned at 7:21 p.m. and arrived at 7:23 p.m.

Once he arrived, Officer Bonenberger and another officer went to #2202, Zuniga's apartment, and confirmed Zuniga made the call reporting a gunshot. There, the officers also confirmed with Zuniga that she heard what she believed to be a gunshot. Zuniga also reported she heard "some commotion and heard people leaving the next door apartment," #2204. Officer Bonenberger knocked on #2204's door, but nobody answered, and he didn't hear anything coming from inside.

Shortly before 7:24 p.m., Officer Bonenberger and the other officer returned and entered Zuniga's apartment, with her consent, to investigate a bullet hole, which Zuniga said was in the wall between her apartment and apartment #2204. One of the officers asked Zuniga if she knew who lived in #2204, and she responded, "[T]here's a black guy, his girlfriend, and a one-year-old." Zuniga reiterated that after she heard the gunshot, she heard someone running or some commotion, and people talking and going down the stairs. Shortly after, Zuniga found the bullet hole in her wall, which had not been there previously.

Officer Bonenberger inspected the bullet hole in the wall and the surrounding area of Zuniga's apartment. He observed there was a long ricochet mark on the carpet and damage where the bullet struck a computer. As a result, he believed the bullet came through the wall from #2204 and into #2202, skipped off the carpet, and struck a computer at a low angle. He added that the mark on the carpet was in line with the path of the bullet, and he found a portion of the bullet lodged in the computer case. At a later suppression hearing, Officer Bonenberger testified he believed the bullet had either come from #2204 or from outside and through #2204. Though he acknowledged that he had no ballistics experience, could only see drywall in the hole, and did not use a pen or flashlight to confirm if the hole went through to the next apartment, he believed the bullet came from #2204, based on his experience as a police officer, reservist, and armor officer. He also testified that

Zuniga told him she believed a child lived in #2204. But he admitted that, at 7:35 p.m., he told another officer "a long time" had already passed, and "there's probably no one there."

After inspecting the bullet hole, Officer Bonenberger left Zuniga's apartment and began coordinating with other officers on the scene to determine who was in #2204 and whether someone could be injured in that apartment. Due to the believed path of the bullet, the officers suspected there was a gun in #2204. The officers then positioned an armed police officer outside the front door of #2204. Officers also tried to determine which window belonged to #2204 to try to detect any movement inside the apartment and to make sure no one attempted to escape through the window.

Another officer, Officer Chad Bendele, was asked to patrol the back of the property to see if anyone was on the balconies or injured. At 7:29 p.m., while walking the perimeter of the apartment complex, Officer Bendele encountered a male individual on the phone, sitting on a bench, who identified himself as Jonte Turner. Turner stated he lived in #2204 but hadn't been inside and allowed officers to search him.

Sergeant William Roberts arrived around 7:37 or 7:38 p.m., approximately 20 minutes after Zuniga's phone call reporting a gunshot. According to protocol, officers at the scene were not permitted to take action until a supervisor (here, Sergeant Roberts) was on the scene. After being briefed, Sergeant Roberts began to clear units adjacent to #2204 at 7:39 p.m. As Zuniga was evacuating, she commented that she hoped everything was okay next door and stated, "They have a baby in there."

At approximately 7:40 p.m., Sergeant Roberts learned Turner had a criminal history and began speaking with Turner one minute later. Turner again stated he lived in #2204, but it was his "Mom's friend's apartment." Turner then stated no one was in the apartment and told Sergeant Roberts that his apartment "was the one with the lights out." Sergeant Roberts asked if officers could search the apartment to make sure no one had broken in and started firing shots. Turner

denied consent to search the apartment. Sergeant Roberts explained officers wanted to make sure no one was in the apartment who was dangerous, and Turner again stated no one was in the apartment. After Sergeant Roberts indicated the officers would get a warrant to search the apartment, Turner offered to go in the apartment to verify no one was inside, but he would not consent for officers to enter with him. Sergeant Roberts explained why that suggestion would not protect the safety of officers and other residents.

Sergeant Roberts then spoke with another sergeant to discuss options, such as a protective sweep and a warrant. They discussed the trajectory of the bullet and reiterated their belief that someone in #2204 had fired through the wall. Sergeant Roberts returned to Turner at 7:47 p.m., who again denied consent to search the apartment. Officers again searched Turner and removed his keys and a stack of money.

Sergeant Roberts and Officer Bonenberger then called Detective Mark Corn from 7:50 p.m. to 7:52 p.m. During this call, Sergeant Roberts and Detective Corn determined a protective sweep was necessary for community safety. Sergeant Roberts did not believe they could wait the estimated one hour to get a search warrant before going into #2204.

At 7:54 p.m.—more than one hour after the first anonymous call reporting a gunshot but only just over fifteen minutes after Sergeant Roberts's arrival on the scene—Sergeant Roberts used Turner's keys, which had been obtained from the officers' prior, consensual search of Turner, to enter #2204. Sergeant Roberts unlocked the door, announced police presence, and pushed the door open. Upon entering the apartment, the officers saw two pistols and loaded magazines in plain view on top of the kitchen counter, and the officers called out the presence of other firearms observed in plain view during the sweep. Officers also saw a bullet hole in the wall adjoining #2202. The officers opened closets, but not drawers or shelves, to ensure the apartment was clear. No one was found inside the apartment during the protective sweep. Officers concluded the sweep and left the apart-

ment by 7:55 p.m. The sweep lasted a total of 99 seconds.

After Sergeant Roberts instructed everyone to leave the apartment, Officer Bendele placed Turner under arrest, and Officer Bonenberger called Detective Corn to get a search warrant. After the apartment had been cleared and before the warrant was returned, officers returned to the apartment multiple times, looking in the same closets as before and additional closets, and at 8:24 p.m., the officers continued to inspect the bullet hole through the wall.

Detective Ronald Soto obtained the search warrant, based on information from Detective Corn, and stated in the affidavit that items constituting evidence of the commission of the offense of deadly conduct, in violation of § 22.05 of the Texas Penal Code, were suspected to be inside #2204. The affidavit included the following factual summary to establish probable cause for the search warrant:

San Antonio Police Officers responded to the listed location for a Deadly Conduct. When officers arrived at the scene, they discovered someone inside apartment #2204 shot a firearm that went through his wall into the adjacent apartment. The bullet went into apartment #2202, where two people reside. When officers arrived, they were given a key to apartment #2204 by one of the occupants. To secure the scene, officers conducted a protective sweep of apartment #2204 and did not find anybody inside. During the protective sweep, officers discovered several firearms inside the apartment that someone potentially used to commit the crime. Officers were unable to obtain written consent to process the crime scene, and this case is under the San Antonio Police Department case number SAPD21017537.

The warrant was signed at 10:01 p.m., roughly two hours after the initial search, and Detective Soto took the warrant to the apartment complex. During the warranted search, officers found marijuana, which they seized along with five or six firearms and other items.

A grand jury indicted Turner on three charges: possession of a firearm in furtherance of a drug trafficking crime, in violation of 18 U.S.C. § 924(c); illegal receipt of a firearm by a person under indictment, in violation of 18 U.S.C. § 922(n); and possession with intent to distribute less than 50 kilograms of marijuana, in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(D).

In May 2022, Turner moved to suppress the physical evidence as fruit of the warrantless search of his apartment. In a separate motion, he further moved to suppress the evidence because the warrant relied on misstatements in the accompanying affidavit. The magistrate judge entered a report and recommendation for the district court to deny both motions to suppress, finding exigent circumstances justified the warrantless entry and protective sweep of Turner's apartment. The magistrate judge also found that Turner had not sufficiently shown the warrant affidavit included any intentional falsehoods that merited suppression under *Franks v. Delaware*.

Turner objected to the report and recommendation, but the district court accepted it and denied Turner's motions without further analysis.

On March 16, 2023, pursuant to a plea agreement, Turner pleaded guilty to possession of a firearm in furtherance of a drug trafficking crime, in violation of 18 U.S.C. § 924(c), and possession with intent to distribute less than 50 kilograms of marijuana, in violation of 21 U.S.C. § 841(a)(1), (b)(1)(D). Under the terms of the plea agreement, Turner reserved the right to appeal the denial of his motions to suppress.

On appeal, Turner argues that the physical evidence of firearms, magazines, and marijuana must be suppressed for two reasons, tracking his motions to suppress. First, he asserts that officers unlawfully entered his apartment in violation of the Fourth Amendment. Second, he argues that

the warrant which was later obtained and used to search the apartment and seize evidence was based on false or misleading information and relied on unlawfully obtained evidence.

“When examining a district court's ruling on a motion to suppress, we review questions of law de novo and factual findings for clear error.” We review the underlying factual findings of a warrantless search and whether an affiant deliberately or recklessly included a false statement in an affidavit for clear error. A factual finding is clearly erroneous if we are left “with a definite and firm conviction that a mistake has been committed.”

We review *de novo* whether facts sufficiently establish probable cause or exigent circumstances to justify a warrantless search and the reasonableness of an officer's reliance on a search warrant.

We view the evidence in the light most favorable to the party that prevailed in the district court, and we uphold a district court's ruling on a motion to suppress “if there is any reasonable view of the evidence to support doing so.” We may also affirm the denial of a suppression motion on any ground supported by the record. The burden is on the proponent of a motion to suppress to prove, “by a preponderance of the evidence, that the evidence in question was obtained in violation of his Fourth Amendment rights.”

We begin with Turner's assertion that the officers violated the Fourth Amendment when they entered and searched his apartment without a warrant. But his argument fails because the officers met an exception to the warrant requirement and limited their search to a protective sweep.

The Fourth Amendment protects “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” This Amendment “was intended to secure the citizen in person and property against unlawful invasion of the sanctity of his home by officers of the law.” At its core, the Fourth Amendment stands for “the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion.”

Accordingly, the Supreme Court has made

clear “that searches and seizures inside a home without a warrant are presumptively unreasonable.” However, “this presumption may be overcome in some circumstances because the ultimate touchstone of the Fourth Amendment is reasonableness.” Indeed, the “warrant requirement is subject to certain exceptions[.]”—as relevant here, for exigent circumstances. Any such warrantless searches, however, must be reasonable and tailored in scope to the justification. The government carries the burden to bring the search within an exception to the warrant requirement.

Turner first contests the district court’s finding that exigent circumstances justified the officers’ warrantless search of his home. Under the exigent-circumstances exception, officers may enter a person’s home without a warrant if they can show both exigent circumstances and probable cause that contraband is inside or a crime is taking place.

To meet the first prong of the exigent-circumstances exception, the government must show that “the exigencies of the situation make the needs of law enforcement so compelling that [a] warrantless search is objectively reasonable under the Fourth Amendment.” “An action is reasonable under the Fourth Amendment, regardless of the individual officer’s state of mind, as long as the circumstances, viewed *objectively*, justify [the] action.”

For example, exigent circumstances may permit officers to enter a home to prevent the imminent destruction of evidence, to pursue a suspect, to protect against “immediate safety risks to officers and others,” or “where firearms are present.”

“There is no set formula for determining when exigent circumstances will justify a warrantless entry[.]” but we consider five factors: the degree of urgency involved and the amount of time necessary to obtain a warrant; (2) the reasonable belief that contraband is about to be removed; (3) the possibility of danger to the police officers guarding the site of contraband while a

search warrant is sought; (4) the information indicating that the possessors of the contraband are aware that the police are on their trail; and (5) the ready destructibility of the contraband and the knowledge that efforts to dispose of it and to escape are characteristics in which those trafficking in contraband generally engage.

The second and fifth factors, “contraband [.] about to be removed” and “ready destructibility of . . . contraband,” weigh against the government’s search of Turner’s apartment, as guns are not the type of contraband that one would expect to be removed or destroyed during the time it takes to obtain a warrant with officers stationed outside the apartment. However, the other three factors—urgency and the time to obtain a warrant, possibility of danger, and suspects’ awareness “that the police are on their trail”—weigh in favor of the search.

Our case law supports this finding. Contrary to Turner’s assertions, the district court correctly relied on *Tamez v. City of San Marcos* to find exigent circumstances existed. In that case, officers responded to a “shots fired” call, “which, if accurate, necessarily involved a firearm of some sort,” and a suspect, who one of the officers recognized as a target of a separate criminal investigation, walked out of the house. The officers knew the suspect did not own the home.

The suspect testified that he told the officers no one was inside the house, and the officers did not attempt to interview the person who made the “shots fired” call. The officers “could not determine, without at least breaking the threshold of the doorway, whether anyone was inside,” and they “had not yet located the gun used to fire the reported shots, nor had they conclusively determined that there were no shooting victims or hostages in the house.” As we found in *Tamez*, “[u]nder these circumstances, [the officer] could reasonably have harbored concern for the lives of innocent people . . . or for the lives of [his] fellow officers.”

Here, officers responded to *two* shots-fired calls, “which, if accurate, necessarily involved a

firearm of some sort,” as in *Tamez*. Officer Bonenberg went a step beyond the *Tamez* officers: He interviewed the individual who made the second call and another individual who heard gunshots; learned that three people, including Turner’s girlfriend and a baby, lived in #2204; and inspected the bullet hole and trajectory of the bullet from the wall shared with #2204. The officers found Turner outside the apartment, and Turner had a criminal history and told them it was his mom’s friend’s apartment—not his—similar to the suspect in *Tamez*.

Turner emphasizes that Officer Bonenberger’s statements that “a long time” had passed and that “there’s probably no one there” show that the officers did not actually believe any person—injured or accomplice—was inside. But those statements alone do not make it objectively unreasonable for the officers (not just Officer Bonenberger) to still “harbor[] concern” that other people were inside the apartment.

In any event, Sergeant Roberts arrived around 7:37 or 7:38 p.m., and only a about a minute later, Sergeant Roberts ordered the clearing of neighboring apartments. And about two minutes later after that, he spoke with Turner. Sergeant Roberts learned at least three facts that heightened the exigency: Turner said he hadn’t been in the apartment (and, if true, Turner couldn’t have known who had been inside or what had occurred to lead to the reported gunshot); Turner didn’t own the apartment; and Turner wanted to check on the apartment without the officers. Accordingly, the officers could reasonably discredit Turner’s assertion that no one was in the apartment.

Furthermore, though Turner told the officers no one was in the apartment, the officers, like those in *Tamez*, “could not determine” “whether anyone was inside” #2204 because they “had not yet located the gun used to fire the reported shots, nor had they conclusively determined that there were no shooting victims . . . in the house.” In fact, when officers struggled to determine which window belonged to #2204, Turner told Sergeant Roberts that “his was the one with the lights out.”

The officers had to take Turner’s word for it—without a reliable way to corroborate that the darkened window did (or did not) belong to #2204. And though Zuniga heard “commotion” and people going down the stairs, there was no way of knowing there weren’t *others*—perhaps Turner’s girlfriend—in the apartment who were still in possession of a firearm.

Turner emphasizes two points. First, he argues that we have “consistently held that the presence of a firearm alone does not create an exigency without reason to believe that a suspect is aware of police surveillance.” True. But this case is not just about “the presence of a firearm alone.” Instead, a firearm was *discharged*—through a neighbor’s wall, no less—when other people were present in neighboring apartments. And with multiple officers stationed around #2204 and the apartment building in the aftermath of the gunshot, the officers had reason to believe a suspect would be aware of police surveillance. Second, Turner points to the fact that officers “did not see or hear someone inside the home.”³⁷ But our precedents do not suggest that the exigent-circumstances exception applies *only* when officers see or hear someone inside. Officers need only reasonably believe that someone is inside who could pose a security risk.

Turner’s reliance on *United States v. Menchaca-Castruita* to make this argument is misplaced. There, after a landlord–tenant dispute in which the landlord found drugs inside and called the police, the tenant-defendant attempted to assault the landlord with a tire-iron and fled the scene. Once the police arrived, they conducted a protective sweep and discovered 700 pounds of marijuana. At the suppression hearing, the officer recounted he was concerned by the potential for firearms being present, the presence of civilians nearby, and his safety. We found no exigent circumstances existed because the officer knew the defendant had left the premises, “the weapon was not a firearm,” “there was nothing to suggest that anyone was inside the residence,” “the officer could have quickly and easily obtained a warrant, as the incident took place in a municipality on a

weekday afternoon,” and no one “ever suggested to the officers that there might be additional accomplices in [the] residence.”

Here, unlike in *Menchaca-Castruita*, two callers reported a gunshot, thus suggesting the presence and use of a firearm. After inspecting a neighboring apartment, the officers here believed a firearm had been shot from that apartment. Although a witness heard people going down the stairs after the gunshot, she repeatedly mentioned three people, including Turner’s girlfriend and a baby, lived in the apartment. Turner offered to go into the apartment, but denied consent for the officers to join him, suggesting to the officers he may have known who was inside. Accordingly, even though the officers did not hear or see anything inside #2204, the officers could “reasonably fear for their safety” as well as the safety of others.

Additionally, unlike the circumstances in *Menchaca-Castruita*, “[t]here was a clear danger to officers and others in the neighborhood that the shooter could have started shooting again, a danger that would have been exacerbated by the extended timing of officers seeking out a warrant after business hours.” Here, officers were investigating after 7 p.m., and Sergeant Roberts expected the process of getting a warrant would take an hour (and, in fact, it took two).

Although about an hour passed between the initial report of the gunshot and the first search of Turner’s apartment, we have previously found a weapon’s use one hour prior to the search did not reduce the exigency of the circumstances. To be clear, we do not draw any bright lines or condone all one-hour-later warrantless searches. Whether exigent circumstances exist is a fact-specific inquiry, and here, the specific combination of facts suggests exigent circumstances. And while we appreciate that “reasonable minds may differ” as to whether exigent circumstances exist, when “reasonable minds may differ,” we defer to the judgment of experienced law enforcement officers as to the danger of a particular situation. We do so

here.

Even under exigent circumstances, law enforcement must also show “probable cause that contraband is inside or that an illegal act is taking place” before entering without a warrant. Probable cause exists when under the “totality of the circumstances . . . there is a fair probability that contraband or evidence of a crime will be found in a particular place.” Importantly, “[p]robable cause does not require certainty.”

The officers here had probable cause. There was ample reason for the officers to believe that there was an unaccounted-for firearm in #2204. Although the officers could not be “certain[,]” they could reasonably believe that a firearm could still be in the apartment, let alone an accomplice. The totality of the circumstances here gave the officers a “fair probability” that evidence of the crime would be found. Accordingly, they had probable cause.

Because both exigent circumstances and probable cause existed, the warrantless entry into Turner’s apartment did not run afoul of the Fourth Amendment.

We next turn to whether the officers conducted a permissible protective sweep of Turner’s apartment. “The protective sweep doctrine allows government agents, without a warrant, to conduct a quick and limited search of premises for the safety of the agents and others present at the scene.”

A protective sweep is justified where: (1) “the police [have not] entered (or remained in) the home illegally and their presence within it [is] for a legitimate law enforcement purpose;” (2) “the protective sweep [is] supported by a reasonable, articulable suspicion . . . that the area to be swept harbors an individual posing a danger to those on the scene;” (3) “the legitimate protective sweep [is not] a full search but [is] no more than a cursory inspection of those spaces where a person may be found;” and (4) the duration of the protective sweep, first, “last[s] no longer than is necessary to

dispel the reasonable suspicion of danger,” and, second, “last[s] no longer than the police are justified in remaining on the premises.” An arrest is not required, so long as officers are otherwise lawfully in the home.

As discussed above, the officers were lawfully in Turner’s apartment due to exigent circumstances and had probable cause to believe that a firearm and a potential shooter was inside. As to the scope of the sweep, the officers looked only in places where a person could be hidden—such as closets but not cupboards or drawers. The firearms and magazines were in plain view, such as on the kitchen counter or in closets that were swept. Additionally, the sweep was no longer than necessary, lasting approximately one and a half minutes.

Turner argues, without explanation or citation to the record, that “[t]he officers also did not limit themselves to a ‘cursory inspection of those spaces where a person may be found,’” then states that “[t]he officers testified that their sweep was initially compliant.” Turner does not argue that any (unidentified) search of spaces where a person could not reasonably be found resulted in physical evidence he now seeks to suppress, nor could he. The only search that Turner could conceivably argue was outside the scope of the protective sweep was the officers’ sweep of the areas beneath the mattresses. But even then, the body camera footage shows that the search beneath the mattress did not result in the discovery of evidence, and we have generally upheld the validity of such sweeps.

As Turner notes, the officers *returned* to the apartment before getting a warrant. In these subsequent searches, officers shined flashlights into additional closets, such as one housing a washing machine and dryer, and returned to closets and rooms they had previously declared “clear” in the initial search. Even if these subsequent searches—which were no longer exigent or protective—violated the Fourth Amendment, Turner makes no argument that they provided any new evidence that Turner seeks to suppress.

Because exigent circumstances permitted entry and the officers’ initial search was limited to a protective sweep, we affirm the district court’s denial of Turner’s motion to suppress based on a warrantless search of his apartment.

We next turn to Turner’s second motion to suppress. Turner asserts that the physical evidence was seized pursuant to an unlawful warrant for two reasons: A) the warrant was not subject to the good-faith exception and did not show probable cause, and B) the warrant was based on unlawfully obtained evidence from the prior warrantless search. But he is incorrect on both points.

“[A] warrant affidavit must set forth particular facts and circumstances underlying the existence of probable cause, so as to allow the magistrate to make an independent evaluation of the matter.” So, when determining whether a search conducted pursuant to a warrant violates the Fourth Amendment, we make a “two-part inquiry.” First, we determine whether the search or seizure falls within the good-faith exception to the exclusionary rule. The good-faith exception “provides that where probable cause for a search warrant is founded on incorrect information, but the officer’s reliance upon the information’s truth was objectively reasonable, the evidence obtained from the search will not be excluded.” “[T]he initial burden . . . is upon the defendant to prove that false information was given intentionally or recklessly.”

If the good-faith exception applies, we affirm the district court’s denial of suppression of the evidence without further analysis. But if the exception does *not* apply, we “proceed to the second step in the analysis and determine whether the magistrate had a substantial basis for finding probable cause.” “If the defendant fails to meet his burden, or if the affidavit would have sufficiently provided probable cause without the false information, the warrant did not violate the Fourth Amendment and the evidence should not [be] excluded.”

The good-faith exception does not protect warrants based on “deliberately or recklessly false” affidavits. Turner asserts the affidavit supporting the search warrant contained three false or misleading statements, without which the magistrate judge could not have found probable cause: (1) “officers knew somebody shot a firearm in apartment [#]2204,” (2) “Turner willingly gave them the keys to search his apartment,” and (3) “firearms had been discovered that were potentially involved in crimes.”

First, Turner argues that the affidavit was false or misleading when it said the officers “discovered someone inside apartment #2204 shot a firearm that went through his wall into the adjacent apartment.” Turner contends that this statement misrepresents the officers’ certainty—they did not “discover” someone in #2204 shot a firearm; they merely suspected it. Regardless of what the officers knew or believed after Officer Bonenberg’s first visit to the apartment complex, the affidavit followed an inspection of #2202—which revealed a bullet hole in the wall shared with #2204, a long ricochet mark on the carpet, and damage to a computer struck by the bullet—and a protective sweep in which, undisputedly, officers found, in plain view, firearms, magazines, and a bullet hole in the wall shared between apartments #2202 and #2204. Even if officers “expressed uncertainty” and “noted their lack of expertise in ballistics,” the evidence before the sweep—which was reaffirmed by the sweep—gave the officers reasonable belief that a firearm had been shot in #2204. Based on this evidence, officers reasonably believed that someone in Turner’s apartment shot a bullet through the wall, so use of the word “discovered” is not “deliberately or recklessly false.”

Second, Turner contests the affidavit’s statement that the officers “were given a key to apartment #2204 by one of the occupants” as “misleading.” The officers obtained Turner’s keys through a search conducted *with Turner’s consent*. Furthermore, the warrant does *not* state Turner gave the key voluntarily or consented to the search

of his apartment. Indeed, the warrant clearly states that Turner did not consent to officers entering his apartment or conducting a protective sweep. And even if the statement was “misleading,” as Turner contends, it is not “deliberately or recklessly false.”

Third, Turner argues the affidavit “simply speculated about the basis for additional search” when it stated that “officers discovered several firearms inside the apartment that someone potentially used to commit the crime.” Nothing about this statement—nor speculation, generally—is “deliberately or recklessly false.” Indeed, the protective sweep revealed multiple firearms and loaded magazines in plain view. Though the affidavit stated that they had only found firearms “*potentially* used to commit the crime,” certainty is not required to establish probable cause.

Even if the officers’ initial entry, protective sweep, and subsequent searches violated the Fourth Amendment, we have been “open to applying the good faith exception where an earlier-in-time constitutional violation exists alongside a search warrant that was sought and executed in good faith.” None of the asserted “false” statements suggest Detective Soto had any reason to doubt the information he received from Detective Corn and used in the affidavit, or that Detective Soto actively misled the magistrate judge.⁸⁰

Because Turner fails to prove any of the statements in the affidavit were “deliberately or recklessly false,” the good-faith exception applies.

Though our analysis could end here, the affidavit would still establish probable cause even if the good-faith exception did not apply. “If an allegation of intentional falsity or a reckless disregard for the truth is established by the defendant by a preponderance of the evidence, . . . we must then excise the offensive language from the affidavit and determine whether the remaining portion would have established the necessary probable cause.”

Without the asserted “false,” “misleading,” or “speculat[ive]” statements, the magistrate judge *still* would have had probable cause to believe evidence of the gunshot, a violation of Texas law proscribing “deadly conduct,” was in the apartment. After all, the officers were investigating an unlawful discharge of a weapon with evidence that a weapon had recently been discharged from that apartment.

Begin with the statement that the officers “were given” a key to #2204 by an occupant. This fact is not material to establishing probable cause. Indeed, whether or not they were given a key has no bearing on the facts that precipitated the warrantless search under the exigent-circumstances exception and why they believed a firearm was present in the apartment.

Next, take the statements about the officers’ “discover[y]” that “someone inside apartment #2204 shot a firearm that went through [its] wall into the adjacent apartment” and of firearms “potentially used to commit the crime.” Even without these statements, the affidavit discusses officers’ arrival at a location listed for “deadly conduct,” a bullet shot into an apartment where at least two people resided, and a protective sweep, in which firearms were found. These facts alone provide probable cause.

Going a step further, and assuming that the entry and protective sweep *did* violate Turner’s Fourth Amendment rights—thus removing the discovery of firearms and magazines from the affidavit—the affidavit would still establish probable cause. After responding to deadly conduct and finding a bullet hole in the wall of #2202, it is reasonable to request a search warrant for weapons.

Accordingly, even if the good-faith exception did not apply, the affidavit alleged sufficient facts to establish probable cause.

Turner finally asserts that because the warrant relied on unlawfully obtained evidence, the firearms and marijuana should be excluded as evidence. But because the warrantless entry into and

sweep of Turner’s apartment were permissible, as we discussed previously, the warrant was based on lawfully obtained evidence.

We have recognized that warrants that rely on unlawfully obtained evidence implicate the seemingly conflicting “good-faith exception” and “fruit of the poisonous tree” doctrine. In such cases, two “separate requirements must be met for evidence to be admissible.” requirements must be met for evidence to be admissible.” First, the prior unlawful conduct that produced the evidence in the affidavit must be “close enough to the line of validity that an objectively reasonable officer preparing the affidavit or executing the warrant would believe that the information supporting the warrant was not tainted by unconstitutional conduct.” Second, the “resulting search warrant must have been sought and executed by a law enforcement officer in good faith as prescribed by *Leon*.”

The entry and search at issue here meet both requirements. First, the protective sweep which revealed the firearms and magazines in “plain view” was lawful. Even if it was not, for all the reasons discussed in this opinion, the entry and subsequent protective sweep were “close enough to the line of validity” of exigent circumstances. Additionally, the protective sweep was limited to spaces where a person could be found and lasted no longer than necessary to dispel any concern of danger. Second, the officers sought and executed the search warrant in good faith, based on the facts leading to the sweep and the discovery of firearms and loaded magazines during their prior protective sweep.

Accordingly, the warrant was based on lawful conduct and was sought and executed in good faith. The district court did not err by denying Turner’s motion to suppress.

Because there were exigent circumstances and the officers had probable cause, the officers’ warrantless search of Turner’s apartment was permissible. Additionally, the subsequent affidavit for the search warrant was not based on deliberately or recklessly false information or unlawfully

obtained evidence. Accordingly, we AFFIRM the district court's denial of Turner's motions to suppress.

U.S. v. Turner, 5th cir. No. 23-50461, Jan. 13, 2025.

SEARCH & SEIZURE, *Terry* pat down.

Andrew Ducksworth appeals the denial of his motions to suppress a firearm and to dismiss an indictment charging him under 18 U.S.C. § 922(g)(1). He also challenges the sufficiency of the evidence. We AFFIRM.

Around 9:00 p.m. on November 29, 2021, a Hattiesburg police officer stopped a car with a defective tag light. After the driver told the officer that he had neither identification nor proof of insurance, the officer asked him to step out of the car. While conducting a protective pat-down of the driver, the officer felt a "hard, solid object in between [the driver's] legs." The driver initially denied that the object was a weapon but eventually admitted that it was a firearm. The officer handcuffed the driver and placed him in his squad car.

The officer then approached the car and asked the passenger, Ducksworth, to step out. Ducksworth replied that he was paralyzed from the waist down. The officer asked Ducksworth to put his hands up, and Ducksworth complied. As he began a pat-down of Ducksworth, the officer stated to Ducksworth that the driver had a firearm. He felt an object between Ducksworth's legs and said, "you've got one too." Ducksworth denied that the object was a firearm. The officer handcuffed Ducksworth and awaited backup. After removing a loaded firearm from his pants and learning that he was a convicted felon, officers arrested Ducksworth.

Ducksworth was charged with being a convicted felon in possession of a firearm in vio-

lation of 18 U.S.C. § 922(g)(1). Ducksworth moved to suppress the firearm, arguing that the officer lacked reasonable suspicion to pat him down. At a hearing, the officer testified about the traffic stop and the pat-downs. Body- and dash-cam footage corroborated his testimony. He also testified that, based on his patrol experience, he knew the area in which he stopped the vehicle was a high-crime area. The district court denied the motion.

Ducksworth subsequently moved to dismiss the indictment, arguing that § 922(g)(1) violates the Second Amendment on its face and as applied to him. The district court also denied that motion.

At a bench trial, Ducksworth stipulated to every element of § 922(g)(1) and presented no evidence. The district court found him guilty and sentenced him to thirty-six months of imprisonment and three years of supervised release. Ducksworth appeals the denial of both motions and, for the first time, challenges the sufficiency of the evidence.

When considering the denial of a motion to suppress, we review factual findings for clear error and legal conclusions *de novo*. "A factual finding is not clearly erroneous if it is plausible in light of the record as a whole."

Review of the denial of a motion to dismiss the indictment and of the constitutionality of a statute is also *de novo*.

Finally, we review unpreserved challenges to the sufficiency of the evidence for plain error.

Ducksworth first argues that the district court erred in denying his motion to suppress because the officer lacked particularized, reasonable suspicion to perform a pat-down of him.

The Fourth Amendment prohibits unreasonable searches and seizures. U.S. CONST. amend. IV. "Generally, the fruits of illegal searches and seizures are inadmissible under the exclu-

sionary rule.” Unless an exception applies, warrantless searches and seizures “are *per se* unreasonable . . .” Terry stops and pat-downs, or Terry “frisks,” are among those exceptions.

Terry stops and pat-downs are evaluated under *Terry*’s two-step framework. The first question is whether the stop was “justified at its inception.” The second is whether the subsequent search or seizure was “reasonably related in scope to the circumstances that justified the stop.”

Under *Terry*, an officer may perform a protective pat-down if he has reasonable suspicion that the subject is armed and dangerous. “The officer need not be absolutely certain that the individual is armed.” Instead, an officer needs only an “objective basis,” that is “specific” and somewhat “individualized” to the subject. The question is “whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger.” Whether reasonable suspicion exists is an objective question that considers the “totality of the circumstances,” and “what the officers knew before” initiating the pat-down.

Here, the district court concluded that the officer had reasonable suspicion because: (1) the driver possessed a weapon and lied about it; (2) the surrounding area was “high crime”; and (3) Ducksworth did not comply with the officer’s instructions.

Ducksworth mainly argues that the officer’s pat-down was unlawful because the driver’s dishonesty about and possession of a firearm cannot be imputed to him.

In *Ybarra*, the Supreme Court held that “a person’s mere propinquity to others independently suspected of criminal activity does not, without more, give rise to probable cause to search that person.” *Ybarra* rejected a “guilt-by-association” theory of reasonable suspicion and probable cause to pat-down a tavern patron about whom officers

“knew nothing in particular” and who was simply on public premises subject to a search warrant. Notably, the patron had no relation to the individual named in the warrant. *Ybarra* did not categorically forbid consideration of one’s companionship with another in deciding whether reasonable suspicion exists, however. The Supreme Court has held that “a car passenger—unlike the unwitting tavern patron in *Ybarra*—will often be engaged in a common enterprise with the driver . . .” Likewise, “a ‘suspect’s companionship with or propinquity to an individual independently suspected of criminal activity is a factor to be considered in assessing the reasonableness’” of an officer’s conduct.

This court has not yet considered whether a driver’s possession of a firearm can create reasonable suspicion to pat-down his passenger. The First Circuit has held, however, that a driver’s possession of a firearm may give rise to reasonable suspicion to pat-down his passenger, at least when coupled with other circumstances. In *Tiru-Plaza*, after officers spotted a firearm in the waistband of the driver of a vehicle, they patted-down the passenger and found a firearm. The passenger argued that under *Ybarra*, the officers lacked particularized reasonable suspicion to perform the pat-down. The First Circuit distinguished *Ybarra* based on the Supreme Court’s observation in *Houghton* that drivers and passengers are often engaged in a “common enterprise.” It concluded that “the situation gave rise to a reasonable concern for officer safety—the officers were outnumbered, in relative darkness, and could reasonably believe that they were dealing with a volatile situation”

We agree with the First Circuit that “it would be beyond folly for our court to ask police officers to ignore the clear relevance of discovering a hidden firearm on the driver”—especially when the driver lied about having a weapon. Unlike the “unwitting tavern patron in *Ybarra*,” Ducksworth shared a connection with the driver, who could not present identification or proof of

insurance, possessed a hidden firearm, and lied about it—at night, in a public, high-crime area. And here, the sole officer was outnumbered. Taken together, these circumstances created a “reasonable, individualized suspicion” that Ducksworth could also be armed and dangerous. “[A] reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger.”

The district court did not err in denying the motion to suppress.

(§ 922 discussion omitted.)

***U. S. v. Ducksworth*, 5th Cir. No. 24-60473, Nov. 26, 2025.**

SEARCH & SEIZURE protective sweep.

Tony Lee Johnson was convicted of possessing a firearm as a convicted felon. Officers had arrested Johnson for violating the conditions of his supervised release, and during a warrantless search of Johnson’s vehicle after his arrest, they found a handgun in the center console. We must decide whether this warrantless search violated the Fourth Amendment. The government asserts that the search was justified under the protective-sweep exception to the Fourth Amendment’s warrant requirement because Johnson’s romantic partner, Beatrice Simmons, was on the scene and poised to regain access to Johnson’s vehicle. Because the officers observed nothing to suggest that Simmons was potentially dangerous, we hold that her presence did not justify the warrantless search of Johnson’s vehicle.

On July 26, 2023, a magistrate judge in the Northern District of Texas issued a warrant for Johnson’s arrest. Johnson had failed a series of drug tests in violation of the terms of his supervised release; he was serving a 2006 sentence for drug and aiding-and-abetting offenses. The United States Marshals Service partnered with the Lubbock Police Department (“LPD”) to carry out

Johnson’s arrest. During a pre-arrest investigation, Officer Todd Pringle—an LPD detective who also served as a task force officer with the U.S. Marshals Service’s North Texas Fugitive Task Force—reviewed Johnson’s criminal history and learned that Johnson was a Bloods gang member and the primary suspect in an ongoing LPD homicide investigation. Officer Pringle also discovered that Johnson lived with his girlfriend, Beatrice Simmons. LPD detectives informed Officer Pringle that Simmons “had expressed [to officers], at one point in time, that she was a felon and either on probation or on parole.” But Officer Pringle was unable to confirm that she had a felony conviction, and he did not ask the detectives for more details. LPD detectives advised Officer Pringle that they wanted to speak with Simmons about the homicide, though they did not suspect Simmons was involved.

Two days later, officers made their move. After conducting surveillance and positively identifying Johnson at his known address, at about two o’clock in the afternoon, officers blocked Johnson’s Chevrolet Malibu as he backed out of his driveway into the public roadway. Simmons was riding in the passenger seat at the time. Johnson began exiting the vehicle before officers ordered him to do so, and he closed the door after exiting. Officers then arrested Johnson and removed Simmons from the vehicle, detaining her nearby in the driveway. Simmons was neither arrested nor placed in handcuffs. Johnson instructed Simmons to pull the vehicle back in the yard and told Officer Pringle that he did not consent to any searches. Officer Pringle responded: “It don’t matter; you’re arrested.” Johnson replied: “It’s not my car; it’s [Simmons’s] car.”

Johnson had now succeeded in arousing Officer Pringle’s suspicions. Believing that Johnson was hiding something in the vehicle, Officer Pringle conducted a cursory sweep of the driver’s seat and middle console because those were the areas “in the immediate reach of the driver.” Officer Pringle discovered a red bandana tied to the steering wheel—a known hallmark of

Bloods gang membership. He also found a handgun loaded with a full magazine in the center console. The district court found that the search lasted approximately twenty-four seconds. In his report, Officer Pringle identified this search as a search incident to arrest. After Officer Pringle discovered the firearm, he handcuffed Simmons. Simmons told Officer Pringle that she did not know about the handgun. She also confirmed that she was on parole for a 2003 drug offense.

Johnson was charged with one count of possessing a firearm as a convicted felon under 18 U.S.C. §§ 922(g)(1) and 924(a)(8). He filed a motion to suppress the loaded handgun, claiming that Officer Pringle violated his Fourth Amendment rights. After holding a hearing on the motion, the district court denied it. The court held that Officer Pringle's warrantless search of Johnson's vehicle was constitutional under the protective-sweep exception articulated in *Michigan v. Long*, because Simmons posed a threat to officer safety. The court determined first that Johnson's behavior and criminal history gave rise to a reasonable suspicion that a weapon was hidden in the vehicle. But Johnson was no longer a threat to the officers at the time of the search because he was arrested and would not be permitted to return to his vehicle. Simmons, on the other hand, "was only temporarily detained[,] would be permitted to return to the vehicle," and "would have been able to access any weapon concealed within." Given Simmons's romantic relationship with Johnson, her criminal history, as well as, according to Officer Pringle, the likelihood that she would "react emotionally and unpredictably to Johnson's arrest," the district court deemed Simmons's presence at the scene a "dangerous situation" that authorized the protected sweep of the vehicle.

After the district court ruled on his motion to suppress, Johnson entered a conditional guilty plea, reserving the right to appeal the denial. The district court accepted the plea and sentenced Johnson to thirty-three months of imprisonment.

Johnson timely appealed. The only issue before us is whether Officer Pringle's limited search of Johnson's vehicle was supported by reasonable suspicion.

"When reviewing a district court's ruling on a motion to suppress, we review factual findings for clear error and legal conclusions *de novo*, viewing the evidence in the light most favorable to the prevailing party." The determination that an officer had reasonable suspicion is a legal conclusion reviewed *de novo*. "The district court's ruling should be upheld 'if there is any reasonable view of the evidence to support it.'"

The Fourth Amendment enshrines "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." Generally, police must obtain a warrant before conducting a search. But the Supreme Court has carved out several exceptions to the warrant requirement, recognizing that some "circumstances may render a warrantless search or seizure reasonable." Still, a warrantless search is presumptively unconstitutional, and the burden to justify it rests with the government. Where the government falls short, the evidence it obtained from a warrantless search "generally must be suppressed."

Here, the government argues that the warrantless search of Johnson's vehicle was justified under the protective-sweep exception. In *Michigan v. Long*, the Supreme Court extended "the protective frisk of a person" authorized in *Terry v. Ohio*, to vehicles. The Court began by highlighting that "investigative detentions involving suspects in vehicles are especially fraught with danger to police officers." It ultimately held that police may search "the passenger compartment of an automobile, limited to those areas in which a weapon may be placed or hidden," if the officers reasonably believe "that the suspect is dangerous and . . . may gain immediate control of weapons." This belief must be objectively reasonable, supported by "specific and articulable facts" and the rational inferences that can be drawn from those

facts. “[I]ndividualized suspicion [is] required for an automobile search.”

Police may not conduct a *Long* search if the suspect has been arrested. After all, once a suspect is in police custody, the risk that he “may gain immediate control of weapons” in his vehicle has subsided. But when a suspect is only temporarily detained by police, that risk persists. He may “break away from police control” or “be permitted to reenter his automobile” and access any weapons that lie within. Accordingly, because Johnson was under arrest at the time of the search, he could not have gained immediate control of any weapons in the vehicle. But because Simmons was not under arrest, the search of Johnson’s vehicle was justifiable if Officer Pringle reasonably believed that Simmons was potentially dangerous and had access to a weapon.

When reviewing an officer’s conduct in this context, the “touchstone of our analysis” is reasonableness. The core question is “whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger.” To answer it, courts look to the totality of the circumstances.

For Officer Pringle’s protective sweep of Johnson’s vehicle to be constitutional, Officer Pringle must have reasonably believed that Simmons was potentially dangerous and could have immediately accessed a weapon.

Reasonable suspicion is a “low threshold.” It requires only a “minimal level of objective justification.” But more than a “mere hunch” is required. “[R]easonable suspicion must be based on commonsense judgments and inferences about human behavior.”

Johnson does not challenge whether it was objectively reasonable for Officer Pringle to believe that a weapon was hidden in the vehicle. Nor could he. Like the district court, we have no trouble arriving at this conclusion, based on

Johnson’s criminal history, gang affiliation, suspected involvement in a murder, and his suspicious behavior after being stopped by officers. Johnson began exiting the vehicle before officers directed him to, closed the door after exiting the vehicle, instructed Simmons to pull the vehicle back in the yard, told Officer Pringle he did not consent to any searches, and claimed Simmons owned the vehicle. On these facts, it was reasonable for Officer Pringle to believe the vehicle harbored a weapon. And because Simmons was not arrested, she could have “gain[ed] immediate control” of any such weapon and used it against the officers.

The parties’ chief disagreement is whether it was objectively reasonable for Officer Pringle to believe that Simmons was potentially dangerous. The district court tethered its dangerousness finding to Simmons’s intimate relationship with Johnson, a convicted felon, and her previous admission of an unspecified felony. In the district court’s view, these facts, together with Simmons’s presence at the scene of her boyfriend’s arrest, indicated that she posed a significant threat to the officers and justified the *Long* search.

Johnson argues that these facts were not enough to support a reasonable belief that Simmons might have been dangerous.

Simmons’s criminal record and her relationship with Johnson are both relevant considerations in the reasonable-suspicion analysis. So too are Officer Pringle’s inferences and deductions based on his “own experience and specialized training.” Simmons was present during and witnessed Johnson’s arrest, and Officer Pringle testified that, based on his seventeen years of experience, a person is more likely to interfere with the arrest of her romantic partner because “emotions run high” in those situations.

Johnson submits that these facts are not inherently suspicious, and the aggregation of non-suspicious facts cannot give rise to reasonable suspicion. A host of our cases contravenes his

argument. We have repeatedly stressed that seemingly innocent facts can produce reasonable suspicion when viewed collectively. These decisions align with *Terry*, which involved “a series of acts, each of them perhaps innocent in itself, but which taken together warranted further investigation.” In any event, whether each fact is independently suspicious is irrelevant to our analysis. The question is, taken together, were they enough to justify the search?

The answer is no. Without more, Simmons’s unspecified felony record, intimate association with a convicted felon, and her presence during Johnson’s arrest did not justify the protective sweep under *Long*. For an officer to reasonably believe that a suspect is potentially dangerous, the officer must point to some fact contemporaneous with or arising out of the police encounter that gives rise to that belief. Here, the government has identified no facts indicating that Simmons might have retrieved a weapon from the vehicle and attacked the officers. She did not, for example, disobey the officer’s instructions, display any hostility toward the officers, or motion toward the vehicle when Johnson encouraged her to return it to the driveway.

A point of clarification. We do not mean to suggest that the officer conducting the protective search must always personally observe some contemporaneous fact. Indeed, “[r]easonable suspicion can be formed by a confidential informant’s tip so long as the information is marked by “‘indicia of reliability.’” Reasonable suspicion “can also arise from the ‘collective knowledge’ of law enforcement entities, so long as that knowledge gives rise to reasonable suspicion and was communicated between those entities at the time of the stop.” But this is merely an epistemic point. Reasonable suspicion is calculated by reviewing the “facts known to the officer at the time” of the search. The officer must simply be aware of some contemporaneous fact that forms part of the totality of the circumstances justifying protective search.

The Supreme Court did not expressly hold in *Terry* or *Long* that contemporaneous facts are necessary for officers to reasonably believe that their safety is threatened, but this requirement is inherent in the very nature of a *Terry* or *Long* search. After all, *Terry*’s scope was clear—the Court was contemplating “necessarily swift action predicated upon the *on-the-spot observations* of the officer on the beat.” The Court’s central holding was that a protective frisk of a suspect’s outer clothing is permissible “where a police officer *observes unusual conduct* which leads him reasonably to conclude in light of his experience that criminal activity may be afoot and that the persons with whom he is dealing may be armed and presently dangerous.” And remaining faithful to “the principles articulated in *Terry*,” *Long* applied the same logic to a new factual situation—vehicular encounters.

The officers in *Terry* and *Long* observed the suspects exhibiting behavior they interpreted as suspicious under the facts available to the officers at the time.

The *Terry* officer witnessed a group of men survey a store and take turns repeatedly peering through a window. The men later convened in front of the store, and the officer intervened because he suspected the men were planning a robbery (and, thus, also believed they might be armed). When one of the men mumbled something to the officer, he commenced pat-down searches and discovered handguns on two of the men. The Court upheld the search as constitutional, explaining that the officer reasonably believed the men were armed and dangerous, and that the search was necessary to protect the officer and neutralize the potential threat.

Long upheld a protective search of a suspect’s vehicle where, shortly after midnight, officers observed the defendant driving erratically at high speed before swerving into a ditch. The defendant struggled to respond to the offi-

cers' requests during questioning, and, as he suddenly started to make his way back to his vehicle, officers noticed a large hunting knife on the driver's side floorboard. The officers immediately stopped the defendant, frisked him, and shined a flashlight into the vehicle to search for other weapons, only to discover an open pouch of marijuana on the front seat.

Following *Terry's* lead, we have observed that reasonable suspicion must be based, at least in part, on facts contemporaneous with the police encounter.

Consider the cases Johnson cites. In *United States v. Baker*, we upheld a protective search of a vehicle where, during a stop, the couple appeared extremely nervous, gave inconsistent accounts of their trip, and the officer observed a box of .9-millimeter bullets on the front floorboard the vehicle. The officer also asked where the gun was, and the wife answered that she did not know. In *United States v. Silva*, we held that an officer had reasonable suspicion to detain the defendant where, in addition to being in the company of an individual upon whom the police were about to execute a felony arrest, the defendant fled the scene as officers approached him. Reasoning that companionship with an arrestee is not independently sufficient to provide reasonable suspicion, we clarified that the totality of the facts—the defendant's presence with a suspected felon combined with his flight from the officers—justified the seizure.

Nervousness, inconsistent answers to officers' questions, fleeing the scene—facts like these are missing here. Indeed, in *Silva*, the contemporaneous fact (i.e., the defendant's flight from the officers) was necessary to the constitutionality of the protective sweep because the court determined that the defendant's association with a suspected felon—the only other fact the government articulated—was not enough on its own. By contrast, as Johnson points out, when asked whether Officer Pringle observed any actions by Simmons that were suspicious or that might indicate she was potentially dangerous, he said no.

This is a unique case. With an arrest warrant in hand, the officers staked out Johnson's residence and executed the planned arrest once Johnson and his girlfriend entered his car and backed out of their driveway. The *Long* searches this court typically reviews begin as investigatory stops. In any event, our analysis is the same. We have already acknowledged—and Johnson has admitted—that Simmons's criminal record and close relationship with Johnson were properly considered by Officer Pringle in determining whether Simmons might have been dangerous. And the fact that Simmons was at the scene, a witness to Johnson's arrest, is an important situational reality. But without some fact contemporaneous to or arising out of Johnson's arrest that suggests Simmons was potentially dangerous, the totality of these circumstances could not have caused Officer Pringle to reasonably fear for his safety. Officer Pringle may have had a hunch that Simmons would act rashly after seeing her lover handcuffed, but this was not supported by individualized, reasonable suspicion. Thus, the protective sweep of Johnson's vehicle was unconstitutional.

Like many Fourth Amendment suppression cases, this is a difficult case, particularly because the defendant here was discovered unlawfully possessing a firearm. But it reaffirms the enduring strength of the Fourth Amendment's safeguard against unreasonable searches. Because we conclude that the warrantless search of Johnson's vehicle was not supported by reasonable suspicion, we REVERSE the district court's denial of Johnson's motion to suppress and VACATE his conviction and sentence.

***U.S. v. Johnson*, 5th Cir., no.24-11115, Jan. 07, 2026**

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