

# Exhibit A

**Representative Cases In Which Courts Determined That Officers Stopped a Defendant With Reasonable Suspicion Based Only on One or More “Conditionally Justified”<sup>1</sup> Circumstances Listed on Page One of NYPD UF-250**

	CASE	Carrying Objects in Plain View Used in Commission of Crime	Fits Description	Actions Indicative of Acting as a Lookout	Suspicious Bulge/Object	Furtive Movements	Clothes/Disguise Commonly Used in Crime
1.	<b><u>People v. Jenkins</u>, 209 A.D.2d 164 (N.Y. App. Div. 1994)</b>  Court affirmed that defendant was stopped based on reasonable suspicion when plainclothes officers on patrol directed defendant to stop and to show his hands after the officers had made eye contact with defendant and in response defendant had turned away, began to behave nervously, reached into his waistband and removed a dark object and tossed it into a pile of trash bags.					X	
2.	<b><u>People v. Pegues</u>, 208 A.D.2d 773 (N.Y. App. Div. 1994)</b>  Court affirmed that officers had reasonable suspicion to stop and frisk defendant when defendant, who was observed driving erratically before pulling into a parking spot, was unwilling to exit the automobile when approached by officers and instead reached under the seat.					X	
3.	<b><u>People v. Hewitt</u>, 247 A.D.2d 552 (N.Y. App. Div. 1998)</b>  Court affirmed officers had reasonable suspicion to stop and frisk defendant when officers responding to a radio transmission regarding a man with a gun at the location stopped a man who did not fit the description of the suspect, but who they observed holding an open bottle in a paper bag and making furtive movements at a bulge in his waistband that was in the shape of the handle of a 9 millimeter handgun.				X	X	
4.	<b><u>People v. Bush</u>, 171 A.D.2d 801 (N.Y. App. Div. 1991)</b>  Court affirmed stop and frisk of defendant when officers stopped a vehicle for running a red light in which defendant was a passenger and the officer who approached the vehicle observed the defendant make hand movements toward the waistband of his pants and after directing defendant out of the vehicle observed a bulge at defendants waistline, which a frisk revealed was a gun.				X	X	

<sup>1</sup> The use of the term “conditionally justified” is drawn directly from Fagan’s classification scheme as described in his Report and Supplemental Report wherein Fagan defined “conditionally justified” circumstances as the following: (1) carrying a suspicious object, (2) fitting a suspect description, (3) acting as a lookout, (4) wearing clothing indicative of a violent crime, (5) furtive movements or (6) suspicious bulge. See Fagan Report at 50.

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5.	<b><u>People v. Benjamin, 51 N.Y.2d 267 (1980)</u></b>  Court reversed and remitted the case to the Appellate Division holding that when officers responded to a radio run advising that there were men with guns at a specified street location and upon arrival observed approximately 30 people outside, including defendant who stepped backwards while simultaneously reaching beneath his jacket with both hands to the rear of his waistband, the radio tip considered in conjunction with other supportive facts, collectively supported reasonable suspicion justifying intrusive police action, including a limited pat-down search which produced a loaded weapon on defendants person.				X	X	
6.	<b><u>People v. Prochilo, 41 N.Y.2d 759 (1977)</u></b>  Court affirmed stop and frisk was justified when an experienced officer, on routine patrol observed that defendant, while standing and watching other officers interviewing passing pedestrians, was making continuing hand motions toward his side, and that defendant had a bulge on his right hip that the officer observed through defendant's tight outer clothing to be the complete outline of a revolver.				X	X	
7.	<b><u>People v. Arps, 293 A.D.2d 260 (N.Y. App. Div. 2002)</u></b>  Court affirmed that an officer had reasonable suspicion to stop defendant when officer observed a bulge in defendant's waistband, as well as what appeared to be the protruding handle of a gun.				X		
8.	<b><u>People v. Goings, 41 N.Y.2d 759 (1977)</u></b>  Court reversed and remanded, finding that officer's observations of defendant with a bulge in his right-hand jacket pocketed which struck the officer as having the configuration and outline of a gun warranted the officer's belief that defendant was carrying a gun and ensuing frisk.				X		

	CASE	Carrying Objects in Plain View Used in Commission of Crime	Fits Description	Actions Indicative of Acting as a Lookout	Suspicious Bulge/Object	Furtive Movements	Clothes/Disguise Commonly Used in Crime
9.	<b><u>United States v. Pierce</u>, 2007 U.S. Dist. LEXIS 28988 (E.D.N.Y. Apr. 19, 2007)</b>  Court held officers had reasonable suspicion to stop defendant when officers received a specific, detailed and contemporaneous tip from a confidential informant about defendant, including where he was standing, his dress, and the fact he had a gun, in addition to other activity occurring on the street where defendant was located and officers verified each of these facts through personal observations and return calls to the confidential informant.		X	X	X	X	
10.	<b><u>People v. Sharrieff</u>, 117 A.D.2d 635 (N.Y. App. Div. 1986)</b>  Court reversed and remitted to the Supreme Court, concluding that there was a sufficient basis to stop and frisk the defendant and a second individual when the officers verified by personal observation all elements of an anonymous radio call for an auto theft in progress, including observing a second individual acting as an apparent lookout and defendant approaching the car described in the radio call and drawing away when other people drove down the street, and thereafter saw one of the men drop a shiny, metallic object and defendant drop an ice pick.		X	X		X	
11.	<b><u>People v. Wright</u>, 8 A.D.3d 304 (N.Y. App. Div. 2004)</b>  Court reversed and remanded, holding that officers had reasonable suspicion to believe an attempted burglary had been committed, and that it was more probable than not that the defendants, seated in a parked car directly in front of the subject residence, were participating in the crime by acting as lookouts in the getaway vehicle, when officers who responded to a radio run at 3:00 a.m. that two men were breaking into a maroon car in a residential neighborhood arrived and found defendants seated inside a vehicle which matched the description and for which they could provide no proof of ownership, and observed two other men, one of whom was wearing identical sweatshirts to defendants, attempting to break into the adjacent residence.		X	X			X

	CASE	Carrying Objects in Plain View Used in Commission of Crime	Fits Description	Actions Indicative of Acting as a Lookout	Suspicious Bulge/Object	Furtive Movements	Clothes/Disguise Commonly Used in Crime
12.	<b><u>People v Fernandez</u>, 16 N.Y.3d 596 (2011)</b>  Court affirmed finding that officer had reasonable suspicion to believe that defendant possessed an illegal weapon, and therefore was authorized to conduct a stop and frisk, when officer observed, in plain view, the “head” of a knife clipped to and sticking out of defendant’s pocket from ten to fifteen feet away, because the officer testified that based on his experience, gravity knives are commonly carried in a person’s pocket, attached with a clip, with the “head” protruding.	X					
13.	<b><u>People v. Lathigee</u>, 84 A.D.2d 918 (N.Y. App. Div. 1981)</b>  Court reversed and remanded, finding that police had reasonable suspicion that the occupants of the car had committed a burglary and acted reasonably in stopping the car and ordering the defendants to get out without conducting any preliminary inquiry when police stopped a car occupied by defendants within 30 minutes of a report of a burglary in progress and within three miles of the crime scene that matched the description of a car from which two burglars reportedly had exited, and when police knew that pry marks had been found at the crime scene and upon approaching the defendants’ car police observed a “prybar” in the back seat.	X	X				
14.	<b><u>People v. Harris</u>, 57 A.D.3d 1427 (N.Y. App. Div. 2008)</b>  Court affirmed that the police had reasonable suspicion to stop defendant when they encountered defendant in proximity to the street where they had observed the suspects abandon their car and flee on foot, there were no other pedestrians in the area, there was minimal vehicular traffic, and defendant was dressed inappropriately for the extremely cold weather.						X
15.	<b><u>People v. Watkins</u>, 40 A.D.3d 290 (N.Y. App. Div. 2007)</b>  Court affirmed that police had reasonable suspicion justifying a stop since defendant was the only person in the area of the burglary, was wearing red, which the perpetrator had worn, attempted to walk away from an officer, and was inappropriately dressed for the weather.		X				X

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16.	<p><b><u>People v. La Daniels</u>, 304 A.D.2d 478 (N.Y. App. Div. 2003)</b></p> <p>Court affirmed that the police had reasonable suspicion upon which to stop the taxicab in which defendant was a passenger when defendant and the codefendant fit the general description of the perpetrators of a recent, nearby robbery, and the police observed them to be acting nervously before and after they entered the taxi, and the circumstances strongly suggested that defendant and the codefendant had switched clothing in an effort to foil identification as the codefendant was wearing ill-fitting clothes that, according to the description, should have been worn by defendant, as one man's jacket was too small while the other's was too big.</p>		X			X	X

**Representative Cases In Which Courts Determined That Officers Stopped a Defendant With Reasonable Suspicion Based Only on One or More “Conditionally Justified” Circumstances Listed on Page One of NYPD UF-250 and “High Crime”**

	CASE	Carrying Objects in Plain View Used in Commission of Crime	Fits Description	Actions Indicative of Acting as a Lookout	Suspicious Bulge/Object	Furtive Movements	Clothes/Disguise Commonly Used in Crime	High Crime Area
1.	<b><u>People v. Rivera</u>, 183 A.D.2d 674 (N.Y. App. Div. 1992)</b>  Court affirmed stop and frisk of defendant was justified when defendant matched the radioed description of a man with a gun, was observed making furtive gestures towards his waist where the officer observed a large bulge, and could not explain to the officers what he was doing in a robbery prone location at 3:00 a.m.		X		X	X		X
2.	<b><u>United States v. Bowden</u>, 45 Fed. Appx. 61 (2d Cir. 2002)</b>  Court affirmed judgment of district court that the stop of defendant was justified by reasonable suspicion when defendant who was at a bar notorious for disturbances warranting a police presence, was observed by officers in an initial altercation in the parking lot and returned shortly displaying aggressive behavior and wearing different clothes, including an unseasonably heavy jacket, and attempted to flee after having been told by the police to stop and made hand movements near his waistband.					X	X	X
3.	<b><u>In re George G.</u>, 73 A.D.3d 624 (App. Div. 2010)</b>  Court affirmed finding of reasonable suspicion justifying a stop and frisk when officers on patrol in a high crime area observed a bulge in defendant’s waistband whose shape was consistent with the grip of a pistol and when defendant walked away and positioned his body in an effort to conceal the side where the bulge was located.				X	X		X

	CASE	Carrying Objects in Plain View Used in Commission of Crime	Fits Description	Actions Indicative of Acting as a Lookout	Suspicious Bulge/Object	Furtive Movements	Clothes/Disguise Commonly Used in Crime	High Crime Area
4.	<b><u>United States v. Herring</u>, 373 F. Appx. 131 (2d Cir. 2010)</b>  Court affirmed finding of the district court that officers stopped defendant based on reasonable suspicion when defendant was in a high crime area, in the driveway of a house known for drug activity and officers observed defendant cradling a ten- to sixteen-inch object underneath his clothing with one hand while keeping the other hand near his waistband, and defendant ignored repeated directives to stop and show his hands, instead partly turned his back to the officers and walked away.				X	X		X
5.	<b><u>People v. Robinson</u>, 279 A.D.2d 323 (N.Y. App. Div. 2001)</b>  Court affirmed finding of reasonable suspicion justifying a stop and frisk when defendant, who was stopped in area with high incidence of taxicab robberies, was observed by officers hailing a cab, engaging in a heated argument with the driver while reaching inside his jacket where officers observed a bulge, and the taxicab immediately drove off at a high rate of speed while defendant remained on the street.				X	X		X
6.	<b><u>People v. Smith</u>, 267 A.D.2d 98 (N.Y. App. Div. 1999)</b>  Court affirmed that officer's observations of defendant's furtive movements in a drug prone location in combination with a large bulge the officers believed had the configuration of a machine pistol or large semiautomatic pistol and defendant's refusal to cooperate gave rise to reasonable suspicion to stop and frisk defendant.				X	X		X



	CASE	Carrying Objects in Plain View Used in Commission of Crime	Fits Description	Actions Indicative of Acting as a Lookout	Suspicious Bulge/Object	Furtive Movements	Clothes/Disguise Commonly Used in Crime	High Crime Area
7.	<b><u>United States v. Monroe</u>, 2009 U.S. Dist. LEXIS 101776 (E.D.N.Y. Nov. 2, 2009)</b>  Court held the stop and frisk of defendant was justified by reasonable suspicion that the defendant was committing a crime when defendant was observed by officers in a high crime neighborhood, walking quickly, as if on a mission, repeatedly pulled up his pants, and engaged in a confrontation with a second group of individuals and the officers also observed the frightened reactions of bystanders.					X		X
8.	<b><u>People v. Vereb</u>, 122 A.D.2d 897 (N.Y. App. Div. 1986)</b>  Court reversed and remitted to the Supreme Court, finding that officers lawfully stopped defendant based on a reasonable suspicion that defendant had engaged in criminal activity when defendant was observed in a parking lot known to have high incidences of crimes involving automobiles and defendant was behaving in an extremely furtive manner.					X		X
9.	<b><u>People v. Donello</u>, 103 A.D.2d 781 (N.Y. App. Div. 1984)</b>  Court held that defendant's initial stop was proper because the officer had a reasonable suspicion that a crime was committed when the officer observed defendant's furtive behavior in an area known for car thefts and vandalism, but reversed defendant's conviction because defendant's responses to questions did not raise the level of suspicion to probable cause to justify the search and seizure.					X		X

	CASE	Carrying Objects in Plain View Used in Commission of Crime	Fits Description	Actions Indicative of Acting as a Lookout	Suspicious Bulge/Object	Furtive Movements	Clothes/Disguise Commonly Used in Crime	High Crime Area
10.	<b><u>People v. Thurman</u>, 81 A.D.2d (N.Y. App. Div. 1981)</b>  Court reversed the dismissal of the indictment and the suppression of certain evidence, finding that furtive behavior of defendants prior to questioning when observed by experienced officers in a neighborhood with a high rate of daytime residential burglaries gave rise to reasonable suspicion.					X		X
11.	<b><u>United States v. McPhatter</u>, 2004 U.S. Dist. LEXIS 2754 (E.D.N.Y. Feb. 24, 2004)</b>  The Court held that officer had a reasonable suspicion that defendant was committing a crime justifying a stop when defendant was in a high-crime neighborhood carrying an open bottle in a paper bag with the label and contents covered, but which the officer recognized as the bottle as a specific brand of beer.					X		X
12.	<b><u>United States v. Padilla</u>, 548 F.3d 179, 189 (2d Cir. 2008)</b>  Court affirmed the stop and frisk of defendant when he was observed in a high-crime neighborhood with another man, surreptitiously following a third man whose appearance suggested drug use, down an otherwise-deserted street and made movements indicating he was adjusting a concealed firearm.					X		X

**Representative Cases In Which Courts Determined That Officers Stopped a Defendant With Reasonable Suspicion Based Only on One or More “Additional Circumstances”<sup>1</sup> Listed on Page Two of NYPD UF-250**

		Report From Victim/Witness	Area has High Incidence of Reported Offense of Type Under Investigation	Time of Day, Day of Week, Season Corresponding to Reports of Criminal Activity	Suspect is Associating with Persons Known for Their Criminal Activity	Proximity to Crime Location	Evasive, False or Inconsistent Responses to Officer’s Questions	Changing Direction at Sight of Officer/ Flight	Ongoing Investigations	Sights and Sounds of Criminal Activity
1.	<p><b><u>People v. Johnson</u>, 22 A.D.3d 371 (N.Y. App. Div. 2005)</b></p> <p><b><u>See also Johnson v. Artus</u>, 2009 U.S. Dist. LEXIS 26534 (S.D.N.Y. Feb. 20, 2009) (report and recommendation of magistrate, denying habeas, adopted by <u>Johnson v. Artus</u>, 2009 U.S. Dist. LEXIS 44839 (SAS) (S.D.N.Y. May 28, 2009), for additional discussion of facts.</b></p> <p>Court affirmed holding that officers had reasonable suspicion upon which to stop and frisk defendant when defendant was in a high crime area and his clothing and physical characteristics fit an armed robber’s description that was sufficiently specific, given the temporal and spatial factors.</p>	X	X	X		X			X	

<sup>1</sup> The use of the term “additional circumstances” is drawn directly from Fagan’s classification scheme as described in his Report and Supplemental Report wherein Fagan defined “additional circumstances” as circumstances listed on the back of the UF-250 form: (1) report from victim/witness, (2) area has high incidence of reported offense of type under investigation, (3) time of day, day of week, season corresponding to reports of criminal activity, (4) suspect is associating with persons known for their criminal activity, (5) proximity to crime location, (6) evasive, false or inconsistent responses to officer’s questions, (7) changing direction at sight of officer/flight, (8) ongoing investigations, (9) sights and sounds of criminal activity, and (10) other. See Fagan Report at 49.

		<b>Report From Victim/Witness</b>	<b>Area has High Incidence of Reported Offense of Type Under Investigation</b>	<b>Time of Day, Day of Week, Season Corresponding to Reports of Criminal Activity</b>	<b>Suspect is Associating with Persons Known for Their Criminal Activity</b>	<b>Proximity to Crime Location</b>	<b>Evasive, False or Inconsistent Responses to Officer's Questions</b>	<b>Changing Direction at Sight of Officer/Flight</b>	<b>Ongoing Investigations</b>	<b>Sights and Sounds of Criminal Activity</b>
2.	<p><b><u>United States v. Simmons,</u></b>  <b>560 F.3d 98 (2d Cir. 2009)</b></p> <p>Court affirmed that officers had reasonable suspicion to stop defendant when responding to an anonymous 911 call of an assault in progress, possibly involving a weapon, and the officers own observations corroborated that defendant matched the description of the suspect and was present at the specified location along with a gathering of people, late night, and in a high-crime area, and when defendant's behavior – walking towards officers with his hands in his pocket and non-compliance with the first order to stop – reinforced the officers' determination that he may have been involved in criminal activity.</p>	X	X	X		X			X	

		<b>Report From Victim/Witness</b>	<b>Area has High Incidence of Reported Offense of Type Under Investigation</b>	<b>Time of Day, Day of Week, Season Corresponding to Reports of Criminal Activity</b>	<b>Suspect is Associating with Persons Known for Their Criminal Activity</b>	<b>Proximity to Crime Location</b>	<b>Evasive, False or Inconsistent Responses to Officer's Questions</b>	<b>Changing Direction at Sight of Officer/Flight</b>	<b>Ongoing Investigations</b>	<b>Sights and Sounds of Criminal Activity</b>
3.	<p><b><u>United States v. Freeman</u>, 2011 U.S. Dist. LEXIS 129257 (S.D.N.Y. Nov. 8, 2011)</b></p> <p>Court held that officers had reasonable suspicion to stop defendant when police received late night anonymous 911 calls that were sufficiently reliable – caller called twice and the physical description provided was accurate, as was the report of defendants movements – of a man with a gun in a high crime area arguing with a woman, and when the defendant was the only person in the area matching the caller's description and his evasive behavior in response to statements by the police corroborated the anonymous tip that the suspect may have a gun.</p>	X	X	X		X		X		

		Report From Victim/Witness	Area has High Incidence of Reported Offense of Type Under Investigation	Time of Day, Day of Week, Season Corresponding to Reports of Criminal Activity	Suspect is Associating with Persons Known for Their Criminal Activity	Proximity to Crime Location	Evasive, False or Inconsistent Responses to Officer's Questions	Changing Direction at Sight of Officer/Flight	Ongoing Investigations	Sights and Sounds of Criminal Activity
4.	<b><u>United States v. McCargo,</u></b> <b>464 F.3d 192 (2d Cir. 2006)</b>  Court affirmed that officers had reasonable suspicion that defendant was involved in criminal activity and therefore the stop of defendant was constitutional when officers responding to a 911 call for an attempted burglary (but that did not provide a suspect description) observed defendant walking alone in a high crime area at approximately 1:00 a.m., 200 feet from the crime scene.	X	X	X		X				
5.	<b><u>United States v. Muhammad,</u></b> <b>463 F.3d 115 (2d Cir. 2006)</b>  Court held that officers had stopped defendant on the basis of reasonable suspicion and properly seized a rifle from defendant when a 911 caller provided a detailed description of the suspect including that the suspect was carrying the gun out in the open, a negligible amount of time elapsed between the call and the officers' response, no one else was in the vicinity, the neighborhood had a high incidence of crime, and the suspect attempted to flee when the officers indicated their desire to speak with him.	X	X			X		X		

		Report From Victim/Witness	Area has High Incidence of Reported Offense of Type Under Investigation	Time of Day, Day of Week, Season Corresponding to Reports of Criminal Activity	Suspect is Associating with Persons Known for Their Criminal Activity	Proximity to Crime Location	Evasive, False or Inconsistent Responses to Officer's Questions	Changing Direction at Sight of Officer/Flight	Ongoing Investigations	Sights and Sounds of Criminal Activity
6.	<b><u>Sutton v. Duguid</u>, 2007 U.S. Dist. LEXIS 35853 (E.D.N.Y. May 16, 2007)</b>		X			X		X		
7.	<b><u>People v. Sierra</u>, 83 N.Y.2d 928 (1994)</b>		X					X		

**Cases Relied on by Fagan for His Analysis of the Constitutional Sufficiency of Stops, Questions and Frisks  
That Have Been Either Inaccurately Interpreted or Are Subject to an Alternative Interpretation**

		Fagan's Interpretation/Analysis	Inaccurate Interpretation or Alternative Interpretation
1.	<b><u>People v. Francis</u>, 847 N.Y.S.2d 398 (N.Y. Sup. Ct. 2007)</b>	“Nevertheless, an officer cannot stop or frisk an individual simply because they possess an object that could either be contraband or be innocently possessed. <i>See People v. Francis</i> , 847 N.Y.S.2d 398, 401-02 (N.Y. Sup. Ct. 2007) (holding that an officer who observed that an object that looked like a knife, which was clipped inside a suspects [sic] pocket, did not have reasonable suspicion to believe that the knife was an illegal gravity knife and not a permissible knife).” <u>See</u> Fagan Report, Appendix D at B.1.	Fagan's reliance on <u>People v. Francis</u> for this assertion is based on an inaccurate interpretation of the court's opinion. The court <b>did not hold</b> that the officer in <u>People v. Francis</u> was not permitted to frisk the defendant because the officer was not 100% certain the object in defendant's pocket was an illegal knife. Rather, the court held that the officer “had a founded suspicion of criminal activity, which would have justified a common-law right of inquiry,” and thus “the officer should have conducted an inquiry to determine whether his suspicions that defendant possessed an illegal knife were accurate.” 847 N.Y.S.2d at 402. The court did not preclude the possibility that had the officer conducted the permitted inquiry the officer would have had reasonable suspicion sufficient to forcibly stop and frisk defendant.
2.	<b><u>People v. Saad</u>, 859 N.Y.S.2d 906 (N.Y. Crim. Ct. 2008)</b>	“Standing alone, the fact that an individual is in possession of objects commonly used in the commission of crimes does not provide an officer with the reasonable suspicion necessary to stop or frisk that individual. <i>See People v. Saad</i> , 859 N.Y.S.2d 906 (N.Y. Crim. Ct. 2008) (holding that officers lacked reasonable suspicion to stop a man seen walking down the street, pushing a shopping cart with a tire iron protruding, and looking into parked cars).” <u>See</u> Fagan Report, Appendix D at B.1.	Fagan's reliance on <u>People v. Saad</u> for this assertion misstates the facts, and the facts set forth in <u>People v. Saad</u> could support an alternative assertion. First, it was not the People's assertion that defendant's possession of a tire iron alone provided the officer with reasonable suspicion to stop defendant; additional factors were defendant's presence in a high crime area and the fact he was looking into parked cars. Second, the court's decision does not preclude the possibility that, on these same facts, officers would have been justified in making a common-law right of inquiry and, depending on the answers provided, that the officer's would have had reasonable suspicion sufficient to forcibly stop and frisk defendant. <u>See Saad</u> , 859 N.Y.S.2d 906 (“The presence of the tire iron, the location of the encounter, the additional information gleaned, including the statement that defendant was going home, when in fact, he was traveling in a different direction, the presence of the utility knife and the open case of possession of burglar's tools, <b>taken together, might very tenuously support a common law right to inquire based upon a founded suspicion that criminal activity is afoot.</b> ”) (emphasis added).



		Fagan's Interpretation/Analysis	Inaccurate Interpretation or Alternative Interpretation
3.	<p><u>People v. Moore</u>, 6 N.Y.3d 496 (2006);</p> <p><u>People v. William II</u> 772 N.E.3d 1150, 1153 (2002);</p> <p><u>Florida v. J.L.</u>, 529 U.S. 266 (2000)</p>	<p>Fagan asserts that “[e]ven if the anonymous information describes a specific person, this factor alone cannot justify a stop and frisk.” See Fagan Report, Appendix D at B.2., citing <u>People v. William II</u>, 772 N.E.3d 1150, 1153 (N.Y. 2002); <u>Florida v. J.L.</u>, 529 U.S. 266 (2000). Fagan further asserts that “[a]n anonymous tip can only provide the basis for a stop if it contains predictive information ‘so that the police can test the reliability of the tip.’” See Fagan Report, Appendix D at B.2., citing <u>People v. Moore</u>, 6 N.Y.3d 496, 499 (2006).</p>	<p>Fagan’s interpretation of when a suspect description provided by an anonymous tipster or witness may provide the basis for a stop or frisk fails to address a significant point – that the Second Circuit has held that the officers’ corroboration of anonymous information identifying a suspect that was insufficient in <u>J.L.</u>, “is entitled to <b>more weighty consideration in the context of an emergency 911 call...[because] a 911 call reporting an ongoing emergency is accorded a higher degree of reliability and requires a lesser showing of corroboration.</b>” See <u>United States v. Simmons</u>, 560 F.3d. 98, 108 (2d Cir. 2009). Further, while Fagan asserts that an anonymous tip alone cannot justify a stop and frisk, the Second Circuit in <u>Simmons</u> declined to address that very issue because there were additional factors that supported the stop in question. See <u>id.</u> Accordingly, it remains to be determined whether an anonymous 911 call that identifies the suspect and reports an ongoing emergency could, alone, justify a stop and frisk.</p>
4.	<p><u>People v. Howard</u>, 542 N.Y.S.2d 536 (N.Y. App. Div. 1989)</p>	<p>Fagan asserts that “[a]bsent additional factors, the simple fact that a person is observing a location and appears to be on the lookout for something is insufficient to justify a stop and frisk.” See Fagan Report, Appendix D at B.4, citing <u>People v. Howard</u>, 542 N.Y.S.2d 536, 538 (N.Y. App. Div. 1989).”</p>	<p>Fagan’s reliance on <u>People v. Howard</u> for this assertion illustrates the fact that alternative interpretations can be arrived at on the same set of facts as the decision contains a lengthy dissent by Justice Smith. See <u>Howard</u>, 542 N.Y.S.2d at 183-185. In dissent, Justice Smith finds the conduct of the police in stopping and frisking defendant was justified.</p>
5.	<p><u>People v. Prochilo</u>, 41 N.Y.2d 759, (N.Y. 1977)</p>	<p>Fagan narrowly allows that “an officer may frisk an individual if he <b>observes a bulge that is plainly shaped like a firearm.</b>” See Fagan Report, Appendix D at B.5, citing <u>People v. Prochilo</u>, 41 N.Y.2d 759, 762 (1977) (emphasis added).</p>	<p>Fagan’s narrow interpretation based on <u>People v. Prochilo</u> is directly contradicted by United States Supreme Court precedent, as in <u>Terry v. Ohio</u>, (392 U.S. 1 [1968]), the Court upheld the right of the police to stop and frisk a person reasonably suspected of criminal activity, notwithstanding the fact that the detective never saw any outline or bulge before he frisked the three individuals. Furthermore, in the dissent of Justice Smith in <u>Howard</u>, as he rejected Fagan’s narrow reading of <u>Prochilo</u> stating it “does not stand for the proposition that no frisk can ever be made unless the police see the outline of a gun.” <u>Howard</u>, 542 N.Y.S.2d at 184.</p>

		Fagan's Interpretation/Analysis	Inaccurate Interpretation or Alternative Interpretation
6.	<b><u>People v. Hudson</u>, 527 N.Y.S.2d 919 (N.Y. App. Div. 1988)</b>	Fagan asserts that “[c]arrying a suspicious object, even if sufficient to justify a stop, does not justify a frisk unless there are other indications of dangerousness.” See Fagan Report, Appendix D at B.5, citing <u>People v. Hudson</u> , 527 N.Y.S.2d 919 (N.Y. App. Div. 1988).	Fagan’s reliance on <u>People v. Hudson</u> for this assertion is misleading as the case is easily distinguishable. In <u>Hudson</u> , the officer first saw defendant carrying a three-foot object wrapped in a sheet down the street and attempted to stop defendant, but he walked away. When the officer saw defendant a second time <b>an hour later</b> he frisked him <b>without making an inquiry</b> , and while the officer testified that the frisk was for safety, the record contained no facts supporting a finding he had a reason to suspect he was in danger. By contrast, see <u>United States v. Herring</u> , 373 F. Appx. 131 (2d Cir. 2010), discussed on page 7, herein, in which the court affirmed a stop and a frisk conducted immediately thereafter was made with reasonable suspicion when defendant was in a high crime area, carrying a suspicious object under his clothes, ignored officer’s directives to stop and walked away.
7.	<b><u>People v. Powell</u>, 667 N.Y.S.2d 725 (N.Y. App. Div. 1998);  <u>United States v. McCrae</u>, 2008 U.S. Dist. LEXIS 2314 (E.D.N.Y. Jan. 11, 2008);  <u>United States v. Doughty</u>, 2008 U.S. Dist. LEXIS 74248 (S.D.N.Y. Sept. 18, 2008)</b>	Fagan asserts that “[w]ithout more, furtive movements potentially indicative of carrying a firearm cannot give rise to reasonable suspicion.” See Fagan Report, Appendix D at B.7, citing <u>People v. Powell</u> , 667 N.Y.S.2d 725,727 (N.Y. App. Div. 1998); <u>United States v. McCrae</u> , 2008 U.S. Dist. LEXIS 2314, *9-10 (E.D.N.Y. Jan. 11, 2008); <u>United States v. Doughty</u> , 2008 U.S. Dist. LEXIS 74248, *18 (S.D.N.Y. Sept. 18, 2008).	Fagan’s assertion is based on an unreasonably narrow reading of the UF-250 form as it excludes the possibility that the “more” that is necessary to combine with an officer’s mark in the “furtive movements” circumstance to justify reasonable suspicion for a stop is included elsewhere on the face of the UF-250. As described on pages 1, 8 and 9, herein, courts have routinely upheld stops as justified and based on reasonable suspicion when officers act based on observed furtive movements in high crime areas. See, e.g., <u>United States v. Padilla</u> , 548 F.3d 179, 189 (2d Cir. 2008); <u>United States v. Monroe</u> , 2009 U.S. Dist. LEXIS 101776 (E.D.N.Y. Nov. 2, 2009); <u>United States v. McPhatter</u> , 2004 U.S. Dist. LEXIS 2754 (E.D.N.Y. Feb. 24, 2004); <u>People v. Jenkins</u> , 209 A.D.2d 164 (N.Y. App. Div. 1994); <u>People v. Pegues</u> , 208 A.D.2d 773 (N.Y. App. Div. 1994); <u>People v. Vereb</u> , 122 A.D.2d 897 (N.Y. App. Div. 1986); <u>People v. Donello</u> , 103 A.D.2d 781 (N.Y. App. Div. 1984); <u>People v. Thurman</u> , 81 A.D.2d (N.Y. App. Div. 1981).
8.	<b><u>People v. Giles</u>, 647 N.Y.S.2d 4 (N.Y. App. Div. 1996)</b>	Fagan asserts that “[s]tanding alone, seasonally inappropriate attire does not justify a stop or frisk because ‘wearing a long winter coat on a hot summer night...is no more than ‘odd’ behavior’ and odd behavior alone cannot justify a stop and frisk.” See Fagan Report, Appendix D at B.7, citing <u>People v. Giles</u> , 647 N.Y.S.2d 4, 6 (N.Y. App. Div. 1996)	Fagan’s reliance on <u>Giles</u> is both misleading and inaccurate because the court did not find that the officer did anything to exceed the first tier of police intrusion under <i>DeBour</i> until defendant’s furtive move, and therefore the court did not address whether the fact defendant was wearing seasonally inappropriate attire justified a stop and frisk. <u>Giles</u> 647 N.Y.S.3d at 8. In fact, when discussing the import of the clothing worn by defendant the court actually stated that the unseasonable winter coat, when taken together with the motion of adjusting an object in the rear of his waistband, assumes another possible meaning – “that the inappropriate garb is worn for the very purpose of hiding something.” <u>Id.</u> at 6.