1 POOLER, *Circuit Judge*, concurring in part and dissenting in part:

2 As this case was described by the Supreme Court in *Bailey v. United States*,
3 "[t]he issue to be resolved is whether the seizure of the person was reasonable
4 when he was stopped and detained at some distance away from the premises to
5 be searched when the *only* justification for the detention was to ensure the safety
6 and efficacy of the search." 133 S. Ct. 1031, 1035 (emphasis added) ("*Bailey III*").
7 Such a justification is not appropriately used for a *Terry* stop, and this case
8 should not be resolved on *Terry* grounds.

9 I believe that the initial stop was not supported by reasonable suspicion
10 under *Terry*. And, while I concur with the majority that the police exceeded the
11 bounds of *Terry* upon handcuffing Bailey and join in Part II.C.3.a. of the majority
12 opinion, I would reverse for a new trial, untainted by the erroneously admitted
13 evidence gathered from the initial stop and subsequent unlawful detention. For
14 that reason, I respectfully dissent.

15 I.

16 *Terry* permits a police officer in "appropriate circumstances and in an
17 appropriate manner [to] approach a person for purposes of investigating possibly

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criminal behavior even though there is no probable cause to make an arrest." *Terry v. Ohio*, 392 U.S. 1, 22 (1968). However, police may only stop someone if there is "reasonable suspicion supported by articulable facts that criminal activity may be afoot." *United States v. Sokolow*, 490 U.S. 1, 7 (1989) (internal quotation marks omitted). Reasonable suspicion must be "based on specific and articulable facts" and not on an "inchoate suspicion or mere hunch." *United States v. Bayless*, 201 F.3d 116, 132-33 (2d Cir. 2000) (internal quotation marks omitted). We consider the "totality of the circumstances of each case to see whether the detaining officer has a *particularized and objective basis* for suspecting legal wrongdoing." *United States v. Arvizu*, 534 U.S. 266, 273 (2002) (emphasis added) (internal quotation marks omitted). "*Terry* explicitly recognized that specificity was essential in part because according the police unfettered discretion to stop and frisk could lead to harassment of minority groups and severely exacerbate police-community tensions." *Bayless*, 201 F.3d at 133 (internal quotation marks and alterations omitted).

1 II.

2 In concluding that the detectives' initial stop of Bailey was supported by
3 reasonable suspicion, the majority lists four "articulable facts" that it concludes
4 warranted the intrusion at issue here: (1) that at the time of the challenged stop,
5 the detectives already had probable cause "to think that the apartment [at 103
6 Lake Drive] was the site of recent drug trafficking and contained a .380 caliber
7 handgun," **Maj. Op. at [21]**; (2) that the detectives watched Bailey leave the
8 premises "through a gate that the police knew was accessible only from the rear
9 basement level of the building," ***id.***; (3) that both men fit the confidential
10 informant's "general description of 'Polo,'" that is, a "short-haired, stocky, black
11 male," ***id.* at [22]**; and (4) the firearm which was the subject of the search warrant
12 was "an easily transportable item of a sort frequently carried by drug dealers,"
13 ***id.* at [24].**

14 With its enumeration of these four facts, the majority concludes that the
15 totality of circumstances "supported a reasonable suspicion to think that the men
16 may have been engaged in criminal activity and were armed," making the stop
17 reasonable under *Terry*. **Maj. Op. at [26].** In the next sections, I examine the

1 majority's facts regarding proximity to the premises and physical similarity to
2 "Polo": first, whether these facts may provide independent justifications for a
3 *Terry* stop, and next, whether they would justify a stop under the "totality of the
4 circumstances." For the reasons discussed below, I cannot agree that this stop
5 was justified under *Terry*.

6 A.

7 As an initial matter, the majority's reliance on the detectives' observation of
8 Bailey and Middleton leaving the subject premises—that is, factors (1), (2) and (4)
9 cited by the majority—is not enough, without more, to justify a stop under *Terry*.
10 The Supreme Court has repeatedly emphasized that "[a]n individual's presence
11 in an area of expected criminal activity, standing alone, is not enough to support
12 a reasonable, particularized suspicion that the person is committing a crime."
13 *Illinois v. Wardlow*, 528 U.S. 119, 124 (2000); *see also United States v. Swindle*, 407
14 F.3d 562, 569 (2d Cir. 2005) ("Swindle's entering a known drug house does not
15 itself suggest that a crime was afoot.").

16 In *Ybarra v. Illinois*, the Court explained that even in the context of a search
17 authorized by search warrant, the "'narrow scope' of the *Terry* exception does not

1 permit a frisk for weapons on less than reasonable belief or suspicion directed at
2 the person to be frisked, *even though that person happens to be on premises where an*
3 *authorized . . . search is taking place*." 444 U.S. 85, 94 (1979) (emphasis added).
4 Although *Ybarra* involved a search warrant authorizing the search of a tavern
5 rather than a private residence, I believe that its holding that *mere* presence at the
6 site of the execution of a search warrant does not create individualized,
7 reasonable suspicion is applicable more broadly, particularly in light of the
8 Court's emphasis on *Terry*'s carefully maintained "narrow scope." *Id.* at 93.
9 A number of other circuits have similarly concluded that presence alone in
10 a suspicious area does not meet the requisite standard for reasonable suspicion
11 under *Terry*. *See, e.g.*, *United States v. Black*, 707 F.3d 531, 542 (4th Cir. 2013) ("The
12 pertinent facts remaining . . . are that the men were in a high crime area at night.
13 These facts, even when coupled with the officers' irrational assumptions based
14 on innocent facts, fail to support the conclusion that Officer Zastrow had
15 reasonable suspicion that Black was engaging in criminal activity."); *United States*
16 *v. Ritter*, 416 F.3d 256, 269 (3d Cir. 2005) ("Under *Ybarra*, [a] 'cursory search for
17 weapons' clearly is not permitted absent a reasonable belief or suspicion that an

individual encountered is armed."); *United States v. Cole*, 628 F.2d 897, 899 (5th Cir. 1980) (evidence gathered via patdown search of an individual who arrived at a private home when the police were preparing to execute a search warrant was inadmissible because the search of the individual was not supported by reasonable suspicion, and "[m]ere presence neither obviates nor satisfies the requirement of *Terry*.").

This conclusion, that the detectives' observation of Bailey merely departing the subject premises is not enough for reasonable suspicion, is further buttressed by the Supreme Court's decision in this case. In rejecting our initial holding that Bailey's detention was justified under *Michigan v. Summers*, 452 U.S. 692 (1981), the Supreme Court acknowledged that:

> Although the danger of alerting occupants who remain inside may be of real concern in some instances, as in the case when a no-knock warrant has been issued, this safety rationale rests on the false premise that a detention must take place. If the officers find that it would be dangerous to detain a departing individual in front of a residence, they are not required to stop him. And, *where there are grounds to believe the departing occupant is dangerous, or involved in criminal activity, police will generally not need* Summers *to detain him at least for brief questioning, as they can rely instead on* Terry.

1 *Bailey III*, 133 S. Ct. 1031, 1039 (2013) (emphasis added). The Court noted that
2 *Terry* is the appropriate doctrine on which to rely for police to detain a
3 "departing occupant" away from the subject premises, and in so writing, the
4 Court also emphasized that there must be "grounds to believe the departing
5 occupant is dangerous, or involved in criminal activity," *id.*, in order to lawfully
6 detain that occupant. It seems clear, based on the reasoning provided in *Bailey*
7 *III*, that simply departing from a premises about to be searched, without more,
8 cannot be enough to justify a *Terry* stop.[1]

9 Though the majority relies on its first, second, and fourth factors to support
10 reasonable suspicion, a closer look at this list leads me to the conclusion that they
11 are all variations on the same theme—i.e., that Bailey and Middleton were seen
12 leaving 103 Lake Drive, and because of this, the police had reasonable suspicion

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[1] The majority opinion seems to acknowledge this portion of *Bailey III* in reasoning that the *Summers* standard is "distinct" from *Terry*, and that *Terry* "requir[es] reasonable suspicion of criminal conduct beyond proximity to a location of suspected crime." **Maj. Op. at [25].** At the same time, however, the majority fails to recognize that most of the "articulable facts" on which it relies here are entirely dependent on spatial proximity to the subject premises about to be searched, and have nothing to do with reasonable suspicion of criminal conduct.

1 to stop them. The cases discussed above are clear that mere presence in a
2 location known for criminal activity is insufficient under *Terry*, and thus, the
3 "articulable facts" linking Bailey to the subject premises and relied on by the
4 majority are similarly insufficient to create reasonable suspicion. Upholding the
5 detectives' stop of Bailey in this case because of Bailey's presence leaving 103
6 Lake Drive would constitute an unwarranted expansion of *Terry*'s scope.

7 B.

8 The remaining "articulable fact"—that both Bailey and Middleton
9 resembled the confidential informant's description of "Polo"—also did not create
10 a reasonable suspicion to stop them. This is because generic descriptions of race,
11 gender, and build, without more, have been held insufficient to justify reasonable
12 suspicion.

13 "[A] description of race and gender alone will rarely provide reasonable
14 suspicion justifying police search or seizure." *Brown v. City of Oneonta*, 221 F.3d
15 329, 334 (2d Cir. 2000); *cf. Goodson v. City of Corpus Christi*, 202 F.3d 730, 733, 737
16 (5th Cir. 2000) (in a Section 1983 action where suspect was described as "white
17 male, approximately six feet tall, heavy-set, and dressed like a cowboy, possibly

1 heading to a cowboy bar," the Fifth Circuit stated that "[s]uch a description
2 would simply be too vague, and fit too many people, to constitute particular,
3 articulable facts on which to base reasonable suspicion," and reversed the district
4 court's grant of summary judgment). As the majority notes, race may properly be
5 considered as one of several elements in identifying potential suspects for
6 investigation, **Maj. Op. at [27]**, however, because I conclude that the factors
7 related to Bailey's proximity to the subject premises were insufficient to create
8 reasonable suspicion of criminal activity, we are left to consider the generic
9 description of Polo's race, gender, and build (and description of his short
10 hairstyle). This is simply insufficient, particularly where none of these
11 descriptors are unique or remarkable, to give rise to the requisite individualized
12 suspicion. *See Swindle*, 407 F.3d at 569-70 ("courts agree that race, when
13 considered by itself and sometimes even in tandem with other factors, does not
14 generate reasonable suspicion for a stop"); *cf. United States v. Jones*, 998 F.2d 883,
15 885 (10th Cir. 1993) (no reasonable suspicion to stop defendants where
16 description was of two black men in a black Mercedes "based solely on the color
17 and manufacturer of the car, and the fact that it contained two black men,"

1 particularly because there was no showing by the government that "the sight of
2 two African-Americans in a black Mercedes was a highly unusual event").
3 Indeed, the facts we are left with apart from physical proximity to 103 Lake
4 Drive—that Bailey and Middleton both shared race, gender, build and short hair
5 styes with "Polo," in a part of Long Island where, as of 2006, approximately 78
6 percent of the population in the relevant neighborhood was black, and
7 approximately two thirds of American adults were overweight—simply do not
8 create a reasonable suspicion of involvement in criminal activity as to these
9 particular two individuals.
10 C.
11 Finally, properly taking all four of the majority's facts together does not
12 change my view that this case does not fit within *Terry*'s narrow scope.
13 Examining the totality of the circumstances, *see Arvizu*, 534 U.S. at 273, we are
14 lacking the essential ingredient for a *Terry* case: that is, some conduct observed
15 by an officer that would lead the officer to reasonably suspect that criminal
16 activity may be afoot, i.e., in the process of development.

1 The majority relies on *United States v. Salazar*, 945 F.2d 47, 50-51 (2d Cir.
2 1991) to suggest that factors like those at issue here—descriptions of a suspect's
3 height, coloring, gender and ethnicity, when combined with a person
4 approaching a particular residence associated with criminal activity—are
5 sufficient to support a *Terry* stop. ***See* Maj. Op. at [23].** However, in *Salazar*, our
6 Court emphasized that the person stopped had appeared nervous in front of the
7 police. 945 F.2d at 51. Understandably, nervousness, odd, or furtive behavior
8 have all been identified by the Supreme Court as an important factor in the
9 reasonable suspicion analysis, because such behavior in the presence of law
10 enforcement is reasonably linked to criminal activity. *See Wardlow*, 528 U.S. at
11 124 ("In this case, . . . it was not merely respondent's presence in an area of heavy
12 narcotics trafficking that aroused the officers' suspicion, but his unprovoked
13 flight upon noticing the police. Our cases have . . . recognized that nervous,
14 evasive behavior is a pertinent factor in determining reasonable suspicion."); *see*
15 *also Arvizu*, 534 U.S. at 270 ("The driver appeared stiff and his posture very rigid.
16 He did not look at [Agent] Stoddard and seemed to be trying to pretend that
17 Stoddard was not there. Stoddard thought this suspicious because in his

1 experience on patrol most persons look over and see what is going on, and in that
2 area most drivers give border patrol agents a friendly wave.") (citation omitted);
3 *Florida v. Royer*, 460 U.S. 491, 502 n.2 (1983) (plurality opinion) (the police noted,
4 among the other facts cited as justifying reasonable suspicion, that Royer
5 "appeared pale and nervous, looking around at other people").
6 In *Bailey III*, considering the specific facts of this case, Justice Kennedy
7 enumerated several factors an officer might look to in order to lawfully detain a
8 departing occupant under *Terry*. These included: "A suspect's particular actions
9 in leaving the scene, including whether he appears to be armed or fleeing with
10 the evidence sought." 133 S. Ct. at 1042. Here, there was no such evidence of
11 suspicious or evasive behavior on Bailey or Middleton's part. For example, there
12 was no testimony that Bailey or Middleton were moving quickly or furtively, or
13 that the detectives suspected that they had just purchased or sold drugs at 103
14 Lake Drive, or that one of them was readjusting something in his waistband that
15 could reasonably be considered a firearm. Further, the "criminal activity" that
16 had been reported at 103 Lake Drive and that provided the basis for the warrant
17 affidavit was several days old. The confidential informant's statement described

1 conduct occurring *days earlier*, and as such, did not describe activity that could
2 provide "a *particularized and objective basis* for suspecting legal wrongdoing" at
3 the time of the stop. *Arvizu*, 534 U.S. at 273 (emphasis added) (internal quotation
4 marks omitted).

5 It is obvious that the detectives suspected that either Bailey or Middleton
6 could be "Polo," the person whom the confidential informant had told them
7 about. *See* App'x at 89-90 ("Q: And why did you follow them?" Officer Gorbecki:
8 "To identify them and see what their purpose was for being at the residence.").
9 While I concede that this testimony evinces the detectives' suspicion that one of
10 these men could have been "Polo," that is not what the law under *Terry* requires
11 to justify a stop. *Terry* requires that the facts giving rise to reasonable suspicion
12 be addressed towards whether Bailey in particular was "engaged in wrongdoing
13 *when they encountered him*." *Sokolow*, 490 U.S. at 7 (emphasis added); *see also*
14 *Bayless*, 201 F.3d at 134 (the factors invoked by the police to justify a *Terry* stop
15 must be salient with respect "to the question [of] whether crime is afoot").

16 The evidence here only showed that the confidential informant had
17 identified someone named "Polo," along with "other persons unknown" as likely

1 occupants of the basement apartment, and that when the officers observed two
2 men leaving the basement apartment—both of whom fit the generic details given
3 by the confidential informant as to "Polo's" appearance—they believed that one
4 of the men could be "Polo." However, instead of obtaining an arrest warrant,
5 they decided to try to "identify them" and learn their "purpose" for being at the
6 residence, all without particularized, articulable details as to why Bailey and/or
7 Middleton were reasonably suspected of engaging in criminal activity at the time
8 of the stop.[2]

9 Permitting a stop based on proximity to premises suspected of past
10 criminal activity, together with mere similarity of gender, race, build and

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[2] The majority's reliance on *United States v. Hensley*, 469 U.S. 221 (1985) for the proposition that a *Terry* stop may be permissible where there are facts giving rise to reasonable suspicion that a particular individual is wanted "in connection with a completed felony," *see id.* at 229, does not change the analysis here, in my opinion. *Hensley* involved the application of *Terry* to a named individual who had a "wanted flyer" issued against him for his participation in a specific armed robbery that had occurred a few days earlier. *Id.* at 223 ("We granted certiorari in this case . . . to determine whether police officers may stop and briefly detain a person who is the subject of a 'wanted flyer' while they attempt to find out whether an arrest warrant had been issued."). The Supreme Court was careful to limit *Hensley*, noting that "[w]e need not and do not decide today whether *Terry* stops to investigate all past crimes, however serious, are permitted." *Id.* at 227.

1 unremarkable hairstyle attributes, and without any perceived suspicious
2 behavior, expands *Terry* beyond what the Supreme Court originally intended.
3 That is to say, in cases "where a police officer observes *unusual conduct* which
4 leads him reasonably to conclude in light of his experience that criminal activity
5 may be afoot," limited investigatory stops and seizures are permissible under the
6 Fourth Amendment. *Terry*, 392 U.S. at 30-31 (emphasis added). The facts here
7 make this a close case, but they are simply not close enough.

8 III.

9 I also find troubling that the detectives' own testimony at the suppression
10 hearing supports the conclusion that, contrary to the majority's position, they did
11 not perceive *any* conduct giving rise to a suspicion of criminal activity. Rather,
12 they wanted to detain Bailey and Middleton in order to bring them back to the
13 premises that was to be searched, i.e., under a *Summers*-type detention. This is
14 made clear by Detective Gorbecki's statement to Bailey, upon handcuffing him,
15 that "[y]ou are not under arrest; you are being detained . . . We're about to
16 execute a search warrant in your apartment." Detective Gorbecki testified that
17 once he brought Bailey back to the residence, he met some of the entry team

officers in the driveway, and they confirmed "that there was a handgun in plain view next to the bed and some crack cocaine on a bookshelf," and it was at that point that Detective Gorbecki's view of why they were holding Middleton and Bailey changed:

> Q: [I]t changed from being a detention while the search warrant was being executed to what?
> A: Now it was an arrest.

When pressed on cross-examination about why the detectives did not stop or detain Bailey and Middleton on the premises, Detective Gorbecki responded that it was a "safety issue," and that "if we stopped them too close to the residence and there are still people in the apartment we'll search the individuals. If one of them finds out we did a search of the individuals, . . . they could prepare themselves with weapons." Detective Sneider described their actions by stating "[t]he procedure we follow is the same every time. . . . [I]f anyone leaves the house, we do not stop them next to the house. We let them leave the area, and then we detain them."

All of this testimony leads to the same conclusion: the detectives were effectuating a detention pursuant to *Summers*, and the district court concluded as

much, *see United States v. Bailey*, 468 F. Supp. 2d 373, 379-82 (E.D.N.Y. 2006) ("*Bailey I*"), as did this panel in our initial 2011 opinion. In fact, although the district court separately held that the stop could also be justified under *Terry*, the district court's reasoning upholding the stop on *Terry* grounds was supported by *Summers* jurisprudence, in that the district court relied on *United States v. Jaramillo*, 25 F.3d 1146 (2d Cir. 1994). In *Jaramillo*, our court allowed "an individual's ownership or occupancy of private premises for which a search warrant has been obtained" to give rise to "sufficiently specific and articulable facts" to warrant a *Terry* stop by relying on *Summers*. *Jaramillo*, 25 F.3d at 1151.[3] We know now that these holdings and rationales are incorrect. In *Bailey III*, the Supreme Court explained that, under *Summers*:

> detention is justified by the interests in executing a safe and efficient search, the decision to detain must be acted upon at the scene of the search and not at a later time in a more remote place. If officers *elect to defer the detention until the suspect or departing occupant leaves the*

[3] The majority opinion attempts to sidestep this analytical flaw in the district court's suppression ruling by noting that "we here clarify that our own *Terry* analysis does not depend on *Jaramillo*." **Maj. Op. at [24]**. However, this does not alter the fact that the district court's specific conclusions underpinning its denial of Bailey's suppression motion were in the context of an incorrect view of the interactions between *Terry* and *Summers*.

> *immediate vicinity*, the lawfulness of detention is controlled by other standards, including . . . a brief stop for questioning based on reasonable suspicion under *Terry* or an arrest based on probable cause. A suspect's particular actions in leaving the scene, including whether he appears to be armed or fleeing with the evidence sought, and any information the officers acquire from those who are conducting the search, including information that incriminating evidence has been discovered, will bear, of course, on the lawfulness of a later stop or detention.

Bailey III, 133 S. Ct. at 1042 (emphasis added); *see also id.* at 1043 (Scalia, *J.*, concurring) ("Bailey was seized a mile away. Ergo, *Summers* cannot sanction Bailey's detention. It really is that simple.").

The detectives in this case believed they were entitled to detain Bailey and Middleton away from the premises pursuant to the execution of the search warrant, i.e., under *Summers*. The Supreme Court has now clearly rejected this particular use of *Summers*-type detention, and our Court should not distort *Terry*'s narrow scope in an attempt to accommodate the detectives' conduct.[4]

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[4] I find this all the more pertinent here, where the detectives clearly had a strong case mounted against the tenant at 103 Lake Drive, based on their work with the confidential informant and their lawfully obtained search warrant. This is not a situation in which the police were struggling to gather evidence, nor where they could not have waited and obtained an actual arrest warrant for the resident of the subject premises upon executing the search warrant.

"Beyond *Summers*' spatial bounds, seizures must comport with ordinary Fourth Amendment principles." *Id.* at 1045 (Scalia, *J.*, concurring). Because the record does not support a conclusion that the detectives had grounds to believe that based on Bailey and Middleton's "particular actions in leaving the scene," *id.* at 1042 (Opinion of Kennedy, *J.*), they were dangerous or involved in criminal activity, I believe the initial stop was not supported by reasonable suspicion, and as such, was not justified under *Terry*.

IV.

While I agree that the police exceeded the bounds of *Terry* upon handcuffing Bailey, I do not share the majority's conclusion that the erroneous admission of the post-arrest statements was harmless error. The admission of Bailey's post-arrest statements, when considered along with the evidence gleaned as a result of the initially unlawful stop, was not harmless.

The evidence obtained as a result of the stop and unlawful handcuffing consisted of Bailey's own statements confirming that 103 Lake Drive was his "house"; that his driver's license confirmed that he used to live at a Bayshore address; that Bailey's keys opened the basement apartment at 103 Lake Drive;

1 and Bailey's contradictory exclamation upon being handcuffed that "I don't live
2 there. Anything you find there ain't mine, and I'm not cooperating with your
3 investigation." Such evidence was clearly the type with which a jury could, and
4 likely did, convict him. As such, the admission of the tainted evidence in this
5 case does not give us any "fair assurance that the jury's judgment was not
6 substantially swayed" by the erroneous admission of this evidence. *See United*
7 *States v. Estrada*, 430 F.3d 606, 622 (2d Cir. 2005) (internal quotation marks
8 omitted).

9 The bulk of the disputed facts at trial centered on whether Bailey was
10 indeed "Polo," and whether it was Bailey who exercised control and possession
11 of the subject premises. Without the evidence described above, the jury would
12 have had on the one hand the identification made by the confidential informant,
13 as well as his testimony at trial, and on the other hand, the testimony of the
14 landlady, Meltona Sykes, that someone other than Bailey was the tenant who
15 lived in and possessed the basement apartment at issue.[5] Certainly, the

[5] At trial, the jury also had the benefit of Middleton's testimony as a hostile witness, which further corroborated that Bailey was known as "Polo." However, Middleton was only seized by the police as a result of the unlawful stop, and as

1 confidential informant's testimony was both damning and highly relevant to
2 Bailey's identification as "Polo." But Bailey was entitled to a jury's consideration
3 of the competing testimonial and identification evidence—and the respective
4 factual inferences to be drawn from such evidence—without the prejudicial and
5 improperly admitted evidence that indubitably and substantially swayed the
6 jury's judgment.[6]

7 "[B]efore a federal constitutional error can be held harmless, the court must
8 be able to declare a belief that it was harmless beyond a reasonable doubt."
9 *Chapman v. California*, 386 U.S. 18, 24 (1967). Considering in particular Bailey's
10 own statements confirming 103 Lake Drive as his home, and that his keys (seized
11 during the stop) opened the locks on the basement apartment, I cannot conclude
12 that the error was harmless, i.e., that this wrongfully admitted evidence was

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such, the police may not have had the benefit of his testimony had the stop properly been deemed illegal.

[6] Juries are generally instructed on witness credibility. Without the benefit of the additional, improperly admitted evidence, the confidential informant's credibility, and his motivations for testifying on behalf of the government, may have been afforded significantly different weight, given that the jury heard testimony that the confidential informant's tip was given in exchange for "get[ting] [his] felony thrown out."

"unimportant in relation to everything else the jury considered on the issue in question." *Yates v. Evatt*, 500 U.S. 391, 403 (1991), *overruled on other grounds by Estelle v. McGuire*, 502 U.S. 62, 72 n.4 (1991). I would hold that all of the evidence as a result of the stop and the unlawful detention should have been suppressed, and thus, I cannot join in the majority's conclusion of harmless error. I would reverse and remand for a new trial.

V.

For all of these reasons, though I join in Part II.C.3.a of the majority opinion, I respectfully dissent from the remainder.