

Circuit Court for Baltimore City
Case No. 116152008

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 55

September Term, 2017

DEAZZ BURNEY

v.

STATE OF MARYLAND

Woodward, C.J.,
Beachley,
Moylan, Charles, E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: March 9, 2018

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

Following a conditional guilty plea in the Circuit Court for Baltimore City, Deazz Burney, appellant, was convicted of possession of a firearm by a disqualified person and wearing, carrying, or transporting a firearm. Burney’s sole contention on appeal is that the trial court erred in denying his motion to suppress the handgun because, he claims, he was searched without probable cause.¹ The State counters that the gun was recovered during a lawful *Terry* frisk. For the reasons that follow, we affirm.

In reviewing the grant or denial of a motion to suppress, this Court views the evidence “in the light most favorable to the prevailing party,” which, in this case, is the State, and the “trial court’s fact findings are accepted unless clearly erroneous.” *Williamson v. State*, 413 Md. 521, 531 (2010). “The ultimate determination of whether there was a constitutional violation, however, is an independent determination that is made by the appellate court alone, applying the law to the facts found in each particular case.” *Belote v. State*, 411 Md. 104, 120 (2009) (citation omitted).

In *Terry v. Ohio*, 392 U.S. 1, 23, 39 (1968), the Supreme Court held that it is reasonable for the police to conduct a “search for weapons for the protection of the police officer, where he has reason to believe that he is dealing with an armed and dangerous individual.” *Id.* at 27. To be entitled to conduct such a frisk for weapons, the officer “must be able to point to specific and articulable facts which, taken together with rational inferences from these facts, reasonably warrant the intrusion.” *Id.* at 21. When determining if reasonable suspicion exists to support an officer’s determination that a suspect is armed,

¹ Burney does not contend that his initial seizure was unlawful.

this Court must consider ““the totality of the circumstances—the whole picture.”” *Harrod v. State*, 192 Md. App. 85, 102 (2010) (citation omitted). In doing so we “assess the evidence through the prism of an experienced law enforcement officer, and ‘give due deference to the training and experience’” of the officer involved in the interaction. *Holt v. State*, 435 Md. 443, 461 (2013) (citation omitted).

At the suppression hearing, John McCoy, an investigative Sergeant for Baltimore City Community College, testified that he had spoken with one of Burney’s teachers and that she had reported seeing “the handle of a black handgun in [Burney’s] front waistband” when Burney was in her classroom. Because handguns were prohibited on campus, Sergeant McCoy and several officers from the Baltimore City Police Department planned to “approach [Burney] and speak to him” the next time that he was scheduled to be in class, which was approximately one week later.

When Burney arrived at the school, Sergeant McCoy followed him into the classroom, identified himself, and asked Burney if would be willing to speak with him outside in the hallway. Burney, who was emanating a “strong odor of [fresh] marijuana” agreed. As soon as they entered the hallway, Burney observed the Baltimore Police Department officers and his “eyes went wide.” He then “brought his right hand around towards his front waistband area,” which was the same place that his teacher had seen the handle of the gun. Sergeant McCoy immediately “grabbed [Burney’s] left hand for [his] safety” and “held it straight to the side of [Burney].” Baltimore Police Department Detective Brian Salmon then went straight to Burney’s waistband area, “put his hands on

[Burney's] outer clothing" to "feel for a gun," "and "felt the pistol grip of a handgun."

After retrieving the gun, Detective Salmon placed Burney under arrest.

Burney first contends that Detective Salmon was conducting a search for marijuana, and not a protective frisk, based on his testimony at the suppression hearing that he "began to *search* Burney" because he "smelled the odor of marijuana." However, when the prosecutor asked Detective Salmon what he meant by the word "search," he clarified that he only "put [his] hands on [Burney's] outer clothing . . . to feel for a gun." Moreover, when Detective Salmon was specifically asked about his reasons for putting his hands on Burney's outer clothing, he responded: "For safety. I mean we're in a school environment and because the information was that he brought a gun before . . . I was concerned he was armed."

We agree that Detective Salmon arguably gave conflicting testimony regarding his subjective reasoning for putting his hands on Burney's outer clothing. However, the trial court ultimately resolved that conflict in favor of the State, finding that Detective Salmon had intended to conduct a protective frisk based on his belief that appellant was reaching for a handgun. And we are convinced that this finding was not clearly erroneous under the circumstances, especially considering that Detective Salmon's objective actions were consistent with, and did not exceed the scope of, a *Terry* frisk. *See In re David S.*, 367 Md. 523, 544 (2002) (noting that a proper *Terry* frisk must be "minimally intrusive" and generally must be limited to a pat down of the outer clothing).

Burney further contends that, even if Detective Salmon was conducting a *Terry* frisk, he lacked a reasonable and articulable suspicion to believe that Burney was armed

and dangerous. We disagree. Here, the officers had received information, from a non-anonymous source, that Burney had been carrying a handgun in the front of his waistband when he was in class the previous week. Then, immediately upon exiting that same classroom and seeing the Baltimore Police Department officers, Burney’s eyes went wide and he reached for the same area of his waistband where the teacher had seen the gun. This caused both Sergeant McCoy and Detective Salmon to believe that Burney was armed and to be concerned for their safety. There are, of course, possible innocent explanations for Burney’s conduct. However, considering the totality of the circumstances, we do not believe that the officers were required to stand by and see if Burney was going to draw a weapon, before acting to protect their own safety.

**JUDGMENT OF THE CIRCUIT
COURT FOR BALTIMORE CITY
AFFIRMED. COSTS TO BE PAID
BY APPELLANT**