Circuit Court for Prince George's County
Case No. CT161556X

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 675

September Term, 2018

MARIO JONELL VICKS

v.

STATE OF MARYLAND

Nazarian,
Arthur,
Thieme, Raymond G., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Thieme, J.

Filed: April 22, 2019

*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.

Mario Vicks, appellant, was arrested and charged, in the Circuit Court for Prince George's County, with two counts of wearing, carrying, or transporting a handgun, after the police found him in possession of a handgun while in a vehicle. Prior to trial, Vicks filed a motion to suppress, which was denied by the circuit court. Vicks thereafter pleaded guilty to one count of transporting a handgun in a vehicle and was sentenced to a term of two years' imprisonment, with all but two days suspended, and one year of supervised probation. In this appeal, Vicks presents a single question:

Did the circuit court err in denying the motion to suppress?

For reasons to follow, we answer Vicks' question in the negative and affirm the judgment of the circuit court.

BACKGROUND

In the evening hours of November 16, 2016, Prince George's County Police officers observed a four-door Chevy Tahoe parked in the parking lot of an apartment building. Inside of the vehicle were two occupants: a driver, later identified as Vicks, and an unidentified passenger. After approaching the vehicle, the officers asked the occupants to exit the vehicle. When Vicks exited the vehicle, one of the officers frisked Vicks and discovered that he had a firearm in the waistband of his pants. Vicks then admitted that "he was carrying the firearm." Vicks was arrested and charged.

Motion to Suppress

Prior to trial, Vicks filed a motion to suppress the handgun and the statement he made to police regarding the handgun. At a hearing on Vicks' motion, Prince George's County Police Officer Chandler Coleman testified that, at approximately 9:40 p.m. on

November 16, 2016, he and another officer, "Officer Russell," were in a police cruiser "patrolling [the] area" near the 1900 block of Rochelle Avenue in Prince George's County when Officer Coleman observed a vehicle parked in the parking lot of a nearby apartment complex. Inside of the vehicle was Vicks, who sat in the vehicle's driver seat, and an unidentified individual, who sat in the vehicle's front passenger seat. At the time, the vehicle's front windows were down and the engine was running. Officer Coleman testified that a third individual was also present and was "standing outside" of the car. Officer Coleman also testified that the parking lot had street lights "everywhere" and that one street light "was basically like right over top" of Vicks' vehicle.

Officer Coleman testified that he and Officer Russell, both of whom were in uniform, pulled up "like, two car lengths before" Vicks' vehicle, at which point Officer Coleman "smelled the odor of marijuana." Officer Coleman then parked the police cruiser a "car length away" from Vicks' vehicle, exited the cruiser, and walked up to the driver's side of Vicks' vehicle while Officer Russell, who had also exited the police cruiser, approached the vehicle's passenger side. As he approached the vehicle, Officer Coleman smelled "a strong odor of marijuana coming out of the vehicle." Officer Coleman described the smell as "fresh marijuana."

In approaching Vicks' vehicle, Officer Coleman also observed Vicks and the passenger make "furtive movements toward the floor board." According to Officer Coleman, he was unable to "see exactly what they were doing" because the vehicle was a "truck" that "sits up high." Officer Coleman testified that he could see that Vicks and the

passenger "both were leaning down in the front of the seats that they were in." When Officer Coleman reached the vehicle, he "peeked [his] head in there" and observed "Saint Ives liquor under [Vicks'] foot" and "a beer bottle under the front passenger's foot."

Officer Coleman testified that Vicks then "exited out [sic] the vehicle" and that Vicks did so "by hisself [sic.]" When Vicks got out of the vehicle, Officer Coleman executed "a pat down" of Vicks. Officer Coleman testified that he conducted the pat down "for officer's safety" because he "couldn't see exactly in the car[.]" According to Officer Coleman, "as soon as [he] grazed [Vicks'] waist band," he felt what he believed to be a firearm. At that point, Vicks "hopped back in the vehicle, set [sic] down in the seat, and put his hands up." Vicks then stated that "he was carrying the firearm." Officer Coleman then "got the firearm out, put it on top of the vehicle away from [Vicks], and then got him out the car" and "placed him in custody."

Officer Coleman testified that he did not ask Vicks any questions prior to Vicks admitting that he was carrying the firearm. Officer Coleman further testified that, in addition to finding the handgun in Vicks' waistband, the officer recovered "a baggy of marijuana" from Vicks' "front left pocket." Officer Coleman testified that the marijuana recovered from Vicks weighed approximately six grams. Officer Coleman also testified that two additional officers arrived on the scene around the time that Officer Coleman was executing the pat down on Vicks.

On cross-examination, Officer Coleman admitted that, prior to Vicks exiting the vehicle, the officer had "opened the driver's door to the car" so he "could see what [Vicks]

was doing." When asked whether Vicks stepped out of the car "voluntarily," Officer Coleman responded that he "asked him to exit, and he didn't give no problem [sic] with that."

Vicks testified that, on the night in question, he was sitting in the driver's seat of a truck after having "dropp[ed] a friend off around that area of Rochelle Avenue" when he saw "a police cruiser" pull "right up in front of the truck," blocking Vicks' vehicle. Vicks testified that Officer Coleman then got out of the cruiser, approached Vicks' vehicle, and "was trying to look in and investigate." At that point, Officer Coleman "got the door open" and "pulled [Vicks] out of the vehicle." Vicks testified that Officer Coleman then patted him down and found something in his waistband. According to Vicks, the officer then "pulled his firearm" and pointed it at Vicks' chest. Vicks then "kind of fell back in [his] seat" and put his hands up, at which point he told the officer that he was "carrying a weapon."

Following Vicks' testimony, Officer Coleman was recalled to the stand for redirect examination. As part of that testimony, Officer Coleman denied pulling Vicks from the vehicle and stated that Vicks had "exited out on his own." Officer Coleman also denied blocking Vicks' vehicle with his cruiser, stating that he was "a car length away from them" and that "[t]hey could have got out." Officer Coleman did admit to pointing his gun at Vicks, but the officer stated that he did that while Vicks was "laid back in the seat with his arms up[.]" During re-cross examination, Officer Coleman testified that he never told Vicks that he was free to leave.

At the conclusion of all evidence, defense counsel argued that the police had committed an "unlawful seizure" because Officer Coleman "did not articulate any reasonable articulable suspicion as to why he was approaching the vehicle with Mr. Vicks in the vehicle." Defense counsel further argued that, once Officer Coleman approached Vicks' vehicle, the officer did "not see any new circumstance or facts" that would "give rise to further delay Mr. Vicks or the other occupants in the car." Finally, defense counsel maintained that Officer Coleman's "pat down" of Vicks was unlawful because the officer did not articulate any facts to show that he had a legal justification for executing the pat down. For those reasons, defense counsel argued, the handgun and Vicks' statement regarding the handgun, both of which were the product of an unlawful seizure and pat down, should be suppressed.

In the end, the circuit court denied Vicks' motion to suppress:

> All right, this [c]ourt has heard the testimony in this case, heard from the officer and from the defendant and whether there was an actual smell of the fresh marijuana.
>
> The testimony of the officer at this time has not been contradicted, and he testified that he did smell six grams or a baggy of – he smelled marijuana. And that marijuana was subsequently in the defendant's pocket in a plastic bag.
>
> And for the motions hearing, the [c]ourt has to review that testimony. And he said once when they were patrolling the area, he had that smell. It was in the air. He sees the vehicle that is running.
>
> He goes up to that vehicle. He walked up to it and smells the marijuana again. And as both of you cited *Robinson*[1] because marijuana,

[1] *Robinson v. State*, 451 Md. 94 (2017).

whether it's six grams or 50 grams, it's not at that juncture for a police officer to make a determination.

But what happens in this case? So then, the officer, prior to even walking up to the car though, he did testify that he observed furtive – which I'm not sure why he [chose] to use the word furtive.

He observed that the passenger and the defendant were reaching down. They were reaching down for whatever reason. Could not see why they were reaching down.

When he went up and smelled the odor of marijuana he then observed one bottle, as he said a bottle of Saint Ives at the defendant's foot. He observed the bottle of alcohol, a beer bottle near the passenger. But it was this basis of them reaching down at that point, you don't know, but that meets the requirements of *Robinson*.

With respect to the defendant exiting the vehicle and then the pat down, while counsel is correct with *Norman*[2] just because there is drugs it [] does not necessarily equate that drugs and handguns go hand in hand. They may. They may not.

But as the State indicated, there was more than that. Because when they may have observed the bottle or a bottle at the defendant's foot, there was no indication that that was it. And at that point the officer was justified and met the requirements of *Norman*. It wasn't just an odor of marijuana that caused the pat down. It was the additional movement.

And once the immediate touch of the defendant's outer clothing or whether he pulled the gun – didn't pull the gun – or pushed back in his seat, the initial touch was reasonable. Once that touch was made, the object of the handgun was found.

Defendant [got] back in the seat and said, I have a weapon. And so, that was not prompt[ed] by any questioning of the officer.

So, the Court will deny the defendant's motion to suppress the handgun and the statement.

[2] *Norman v. State*, 452 Md. 373 (2017).

Following the circuit court's denial of his motion to suppress, Vicks entered a conditional plea of guilty to one count of transporting a handgun in a vehicle.[3] This timely appeal followed.

DISCUSSION

Vicks contends that the circuit court erred in denying his motion to suppress. Vicks maintains that his interaction with Officer Coleman prior to the discovery of the handgun constituted a "seizure" because "a reasonable person in [Vicks'] position would not have felt free to leave[.]" Vicks asserts that, because that "seizure" was "not supported by the requisite reasonable suspicion," the seizure was unlawful and any fruits of that seizure, including the handgun and Vicks' statement regarding the handgun, should have been suppressed. Vicks further contends that, even if the "seizure" was lawful, "the frisk that followed was not." Vicks maintains that, other than "the purported furtive movements toward the floor board," which were "obviously tied to the bottles Officer Coleman observed on the floorboard and nothing more," Officer Coleman did not testify to any facts that would support a reasonable articulable suspicion that Vicks was armed and dangerous at the time of the frisk. Vicks maintains, therefore, that the frisk was unlawful and the fruits of that frisk, namely, the handgun and the statement, should have been suppressed.

The State responds that Vicks was not "seized" when the officers "merely approached his parked car," as that interaction "was a mere accosting, requiring no

[3] Ordinarily, a plea of guilty forecloses a defendant's right to appeal that conviction. Md. Code, Cts. & Jud. Proc. § 12-302(e)(2). Maryland Rule 4-242(d) provides, however, that a defendant may enter a "conditional" plea of guilty and, if certain conditions are met, reserve his right to appeal.

justification." The State contends that, at the time of the interaction, the officers did not give any "signal or command to Vicks as they approached" and did not exhibit "any use of force or show of authority" that would suggest that Vicks was not free to leave. Although the State concedes that Vicks was seized when "Officer Coleman opened Vicks' door, asked him to exit his truck, and conducted a frisk," the State contends that that seizure was lawful because "Officer Coleman had detected the odor of marijuana emanating from the vehicle before Vicks was seized." Regarding the propriety of the frisk, the State asserts that Officer Coleman's detection of the odor of marijuana and his observations of Vicks' and his passenger's "furtive movements toward the floor board," when viewed in their totality, provided reasonable suspicion that Vicks was armed and dangerous and, as a result, justified the frisk. The State asserts that, for those reasons, the circuit court's denial of Vicks' motion to suppress was not erroneous.

"In reviewing the denial of a motion to suppress evidence under the Fourth Amendment, we look only to the record of the suppression hearing and do not consider any evidence adduced at trial." *Daniels v. State*, 172 Md. App. 75, 87 (2006). "[W]e view the evidence presented at the [suppression] hearing, along with any reasonable inferences drawable therefrom, in a light most favorable to the prevailing party." *Davis v. State*, 426 Md. 211, 219 (2012). Moreover, "[w]e extend great deference to the findings of the hearing court with respect to first-level findings of fact and the credibility of witnesses unless it is shown that the court's findings are clearly erroneous." *Daniels*, 172 Md. App. at 87. "We

give no deference, however, to the question of whether, based on the facts, the trial court's decision was in accordance with the law." *Seal v. State*, 447 Md. 64, 70 (2016).

The "Seizure"

"The Fourth Amendment to the United States Constitution protects against unreasonable searches and seizures, including seizures that involve only a brief detention." *Stokes v. State*, 362 Md. 407, 414 (2001) (citation and footnote omitted). It is well established, however, "that the Fourth Amendment guarantees are not implicated in every situation where the police have contact with an individual." *Swift v. State*, 393 Md. 139, 149 (2006). The Court of Appeals has highlighted three tiers of interactions between an individual and the police to determine Fourth Amendment applicability: (1) an arrest; (2) an investigatory stop (known colloquially as a "stop and frisk" or "*Terry* stop");[4] and (3) a consensual encounter. *Id.* at 149-51.

The most intrusive of the three types of encounters, an arrest, allows the police to take an individual into custody but "requires probable cause to believe that [the individual] has committed or is committing a crime." *Id.* at 150. The second type of encounter, an investigatory stop, permits the police to briefly detain an individual, but the stop "must be supported by reasonable suspicion that [the individual] has committed or is about to commit a crime[.]" *Id.* Because both an arrest and an investigatory stop involve some restraint on an individual's liberty, the Fourth Amendment is implicated and the detaining

[4] *Terry v. Ohio*, 392 U.S. 1 (1968).

officer must have the necessary foundation, either probable cause or reasonable suspicion, to justify the stop.

The third type of interaction, a consensual encounter, "involves no restraint of liberty and elicits an individual's voluntary cooperation with non-coercive police contact." *Id.* at 151. For instance, a consensual encounter occurs "where the police merely approach a person in a public place, engage the person in conversation, request information, and the person is free not to answer and walk away." *Mack v. State*, 237 Md. App. 488, 494 (2018) (citations and quotation marks omitted). Because such an encounter is consensual and the person is free to end the encounter at any time, the Fourth Amendment is not implicated. Consensual encounters, therefore, "need not be supported by any suspicion … [as] an individual is not considered to have been 'seized' within the meaning of the Fourth Amendment." *Swift*, 393 Md. at 151 (citation omitted).

To be sure, encounters that begin as consensual can still implicate the Fourth Amendment. "An encounter has been described as a fluid situation, and one which begins as a consensual encounter may lose its consensual nature and become an investigatory detention or an arrest once a person's liberty has been restrained and the person would not feel free to leave." *Id.* at 152. In other words, a consensual encounter becomes a seizure when an officer "by means of physical force or show of authority has in some way restrained the liberty of a citizen[.]" *Id* at 152 (citation and quotation marks omitted).

The Court of Appeals has identified various factors that may be probative of whether a reasonable person would feel free to leave. Those factors include "the activation of a

siren or flashers, commanding a citizen to halt, display of weapons, and operation of a car in an aggressive manner to block a defendant's course or otherwise control the direction or speed of a defendant's movement." *Id.* at 153. Other factors the Court has found noteworthy include: the time and place of the encounter; the number of officers present and whether they were uniformed; whether the police moved or isolated the person; whether the person was told that he was free to leave or suspected of a crime; and, whether the police exhibited threatening behavior or physical contact. *Id.* Those factors notwithstanding, the Court has made clear that "the inquiry is a highly fact-specific one" and requires a "totality-of-the-circumstances approach, with no single factor dictating whether a seizure has occurred." *Ferris v. State*, 355 Md. 356, 376-77 (1999).

Here, there is little question that, when Officer Coleman approached Vicks' vehicle and smelled the odor of fresh marijuana, the officer had a reasonable articulable suspicion of criminal activity. *See Robinson v. State*, 451 Md. 94, 137 (2017) (holding that "a law enforcement officer has probable cause to search a vehicle where the law enforcement officer detects an odor of marijuana emanating from the vehicle" and that "the odor of marijuana gives rise to probable cause to believe that the vehicle contains contraband or evidence of a crime."); *see also Sykes v. State*, 166 Md. App. 206, 217 (2005) (noting that "[t]he reasonable, articulable suspicion standard is less than probable cause[.]"). Moreover, there is little question that, upon detecting the odor of marijuana, Officer Coleman was legally justified in having Vicks and the other occupant step out of the vehicle and then briefly detaining them so that the officer could investigate the suspected criminal

activity. *See Norman v. State*, 452 Md. 373, 425 (2017) ("[U]pon detecting an odor of marijuana emanating from a vehicle with multiple occupants, a law enforcement officer may ask all of the vehicle's occupants to exit the vehicle" and may "detain the vehicle's occupants for a reasonable period of time to accomplish the search of the vehicle[.]"). The issue here, therefore, is whether Vicks had been "seized" at any point prior to Officer Coleman detecting the odor of marijuana emanating from his vehicle.

In that context, we hold that Vicks was not seized within the meaning of the Fourth Amendment. Officer Coleman testified that when he pulled into the parking lot where Vicks' vehicle was parked, the officer parked his vehicle approximately one car length away from Vicks' vehicle.[5] Although Officer Coleman was in uniform and in a marked police cruiser at the time, there is no indication in the record that he had activated his vehicle's siren or flashers. Moreover, as Officer Coleman exited his vehicle and approached Vicks, the officer did not issue any commands, display his weapon, move or isolate Vicks, exhibit any threatening behavior, or make physical contact with Vicks. In short, the totality of the circumstances surrounding Officer Coleman's interaction with Vicks, at least up to the point when the officer detected the odor of marijuana, do not support Vicks' contention that a reasonable person in his position would not have felt free to end the encounter and leave. *See Lawson v. State*, 120 Md. App. 610, 614 (1998)

[5] Although Vicks testified that Officer Coleman's vehicle "kind of blocked" Vicks' vehicle, Officer Coleman insisted that he was "a car length away" and that Vicks "could have got out."

("Ordinarily, approaching a parked vehicle to question occupants about their identity and actions is a mere accosting and not a seizure."). Accordingly, Vicks was not "seized."

The Frisk

As noted, when Officer Coleman detected the odor of marijuana coming from Vicks' vehicle, the officer had reasonable articulable suspicion of criminal activity and thus was legally justified in having Vicks step out of the vehicle. Vicks does not dispute that Officer Coleman had reasonable articulable suspicion to detain him at that point in the encounter; rather, Vicks contends that Officer Coleman did not have legal justification for the subsequent frisk that resulted in the discovery of the handgun in Vicks' waistband.

Again, "a law enforcement officer may conduct a brief investigative 'stop' of an individual if the officer has a reasonable suspicion that criminal activity is afoot." *Norman*, 452 Md. at 388-89 (citation and quotation marks omitted). In addition, "if an officer has reasonable, articulable suspicion that the suspect was armed, the officer could frisk the individual for weapons." *Reid v. State*, 428 Md. 289, 297 (2012). The authority to conduct a frisk is "narrowly drawn" and only permits "a reasonable 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[.]" *Chase v. State*, 449 Md. 283, 296 (2016) (citation and quotation marks omitted). Moreover, the circumstances giving rise to a reasonable articulable suspicion for an investigatory stop do not automatically justify a frisk; "[i]t is only when the circumstances also support the articulable suspicion that the person detained

is armed and dangerous that the frisk of outer garments … may be authorized." *Id.* at 301 (citation and quotation marks omitted).

In determining whether reasonable suspicion exists, we assess the "totality of the circumstances" that existed at the time of the frisk. *Holt v. State*, 435 Md. 443, 460 (2013). "The test is objective: 'the validity of the … frisk is not determined by the subjective or articulated reasons of the officer; rather, the validity of the … frisk is determined by whether the record discloses articulable objective facts to support the … frisk.'" *Goodwin v. State*, 235 Md. App. 263, 280 (2017) (quoting *Sellman v. State*, 449 Md. 526, 542 (2016)). Also, 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 who engaged the stop at issue." *Holt*, 435 Md. at 461 (citations and quotation marks omitted). In short, "[a] law enforcement officer has reasonable articulable suspicion that a person is armed and dangerous where, under the totality of the circumstances, and based on reasonable inferences from particularized facts in light of the law enforcement officer's experience, a reasonably prudent law enforcement officer would have felt that he or she was in danger." *Norman*, 452 Md. at 387.

Against that backdrop, we hold that Officer Coleman had a reasonable articulable suspicion that Vicks was armed and dangerous at the time of the frisk. Officer Coleman testified that, when he approached Vicks' vehicle, he could smell "a strong odor" of fresh marijuana "coming out of the vehicle." In addition, Officer Coleman observed Vicks and the passenger make "furtive movements toward the floor board." Although Officer

Coleman testified that he could not "see exactly what they were doing," the officer did state that Vicks and the passenger "both were leaning down in the front of the seats that they were in." Officer Coleman then asked Vicks to exit the vehicle, at which point the officer executed the frisk, which he testified was done "for officer's safety" based on the "furtive movements" and the fact that he could not "see exactly in the car[.]" Viewing those circumstances in their totality, we conclude that Officer Coleman was legally justified in conducting a frisk of Vicks' person.

Vicks contends that the facts of his case are "essentially" the same as those faced by the Court of Appeals in *Norman, supra*. We disagree. In that case, a police officer initiated a traffic stop of a vehicle in which the defendant, Joseph Norman, was the front seat passenger. 452 Md. at 378. During the stop, the officer "detected what he described as a strong odor of fresh marijuana emanating from the vehicle." *Id.* Based solely on that observation, the officer then ordered the vehicle's occupants, including Norman, to exit the vehicle so that the officer could conduct a search of the vehicle. *Id.* When Norman exited the vehicle, the officer frisked him, at which point the officer discovered marijuana on Norman's person. *Id.* at 380. After he was arrested and charged, Norman moved to suppress the marijuana. *Id.* at 379. That motion was denied, and Norman was convicted of possession of marijuana. *Id.* at 382.

After this Court affirmed Norman's conviction, the Court of Appeals reversed. *Id.* at 383, 428. In so doing, and after thoroughly discussing the relevant case law, the Court held that "where an odor of marijuana emanates from a vehicle with multiple occupants, a

law enforcement officer may frisk an occupant of the vehicle if an additional circumstance or circumstances give rise to reasonable articulable suspicion that the occupant is armed and dangerous." *Id.* at 386-411. In other words, the Court held, "[a]n odor of marijuana alone emanating from a vehicle with multiple occupants does not give rise to reasonable articulable suspicion that the vehicle's occupants are armed and dangerous and subject to frisk." *Id.* at 412. Applying its holding to the facts of the case, the Court concluded that the officer did not have reasonable articulable suspicion that Norman was armed and dangerous:

> [P]rior to the frisk, all that [the officer] knew was that he detected an odor of marijuana emanating from the vehicle. For example, [the officer] did not testify that Norman made furtive movements, moved around inside the vehicle, or otherwise behaved suspiciously; that Norman attempted to flee; that there were any bulges in Norman's pockets; that Norman's clothing was baggy, large, or otherwise easily able to conceal a weapon; that Norman's hands were not visible; that Norman appeared nervous; that Norman provided a fake name or false identification; that Norman said something that was either false or inconsistent with something that another one of the vehicle's occupants had said; that Norman was hostile, argumentative, or otherwise uncooperative; that Norman failed to comply with [the officer's] instructions; that Norman had a criminal record or was known to be violent or carry a gun; or even that the traffic stop took place in a high-crime area and/or an area that was known for drug activity or gun violence. To the contrary, [the officer] testified that he "patted down Norman for weapons for his safety as Norman was standing as he was searching the vehicle." Again, we do not endorse a blanket ability to conduct frisks incident to the search of a vehicle.

Id. at 427.

In the present case, by contrast, Officer Coleman did not conduct the frisk based *solely* on the fact that he detected the odor of fresh marijuana emanating from Vicks' vehicle. Rather, Officer Coleman conducted the frisk based on the odor of marijuana and

other "additional circumstances" observed by the officer, namely, the furtive movements by Vicks and the passenger; the movements by both individuals in the direction of the vehicle's floorboards; and the inability of Officer Coleman to "see exactly what they were doing." Those additional circumstances were missing from the fact pattern in *Norman*. In fact, the Court of Appeals expressly recognized those factors as being germane to its assessment of whether the officer in that case had reasonable articulable suspicion. As such, Vicks' case is distinguishable from *Norman*, as the totality of the circumstances in this case, which went beyond the mere detection of the odor of marijuana, provided a reasonable articulable suspicion that Vicks was armed and dangerous at the time of the frisk. *Cf. Chase*, 449 Md. at 307-08 (holding that police officers possessed reasonable suspicion that the defendant was armed and dangerous where the officers observed behavior "consistent with the hiding of illegal drugs as well as 'furtive' movements that suggested weapons could have been secreted in the vehicle."); *Goodwin*, 235 Md. App. at 283 (holding that police officers had reasonable suspicion to believe that the defendant was armed and dangerous where "the totality of the circumstances include[d], not only evidence suggesting that [the defendant] had been involved in a drug transaction, but also his furtive movements suggesting to the police that he was retrieving or concealing a weapon.").[6]

[6] To be sure, both *Chase* and *Goodwin* involved the added circumstance of "illegal drug activity," a factor that was not present in the instant case. *Chase*, 449 Md. at 289, 307; *Goodwin*, 235 Md. App. at 283. Nevertheless, we included both cases to highlight the import of "furtive movements" on an officer's assessment of whether a defendant was armed and dangerous.

CONCLUSION

In sum, we hold that Vicks was not seized prior to Officer Coleman detecting the odor of marijuana coming out of Vicks' vehicle, at which point the officer had reasonable articulable suspicion to detain Vicks. We also hold that Officer Coleman had reasonable articulable suspicion that Vicks was armed and dangerous prior to the frisk. Accordingly, the circuit court did not err in denying Vicks' motion to suppress the handgun and his statement.[7]

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.

[7] In his argument regarding why his statement should have been suppressed, Vicks suggests that the statement, in addition to being tainted as "fruit of the poisonous tree," was "by no means voluntary." To the extent that Vicks is claiming that the circuit court should have suppressed the statement because it was involuntary, we note that Vicks did not raise that argument in the circuit court. Accordingly, that issue is not preserved for our review. Md. Rule 8-131(a).