

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1233

September Term, 2021

TROY WILLIAMS

v.

STATE OF MARYLAND

Kehoe,
Beachley,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: August 30, 2022

*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, Troy Williams, appellant, was convicted of possession of a regulated firearm by prohibited person. His sole contention on appeal is that the circuit court erred in denying his motion to suppress. For the reasons that follow, we shall affirm.

At the suppression hearing, Detectives Scott Armstrong and Mark Tallmadge testified that they observed appellant standing by the open trunk of a white BMW that was parked on the side of the road. Because they believed he was manipulating the battery in the back of the car and that he might be having car trouble, they stopped and asked if he was okay. Appellant responded, “not unless you’re trying to get me a jump start or help me start it or something.” At some point during the encounter, appellant got into his vehicle and sat down in the driver’s seat. Detective Tallmadge, who was standing near the passenger door, noticed that appellant was “favoring his right side” and appeared to be trying to conceal something in his coat pocket. He then turned on his flashlight, aimed it at appellant, and observed less than one inch of the bottom of a handgun grip protruding from appellant’s pocket.

Upon seeing the butt of the handgun, Detective Tallmadge told Detective Armstrong that he “thought” they should get a “hot lunch” later, which was a code phrase to alert Detective Armstrong that he had seen a firearm. Detective Armstrong then pulled appellant out of the car, searched appellant, and recovered a handgun in his coat pocket. Detective Tallmadge acknowledged that the butt of the handgun was not visible in the video obtained from his body worn camera. However, he testified that was because there was a difference in the angle of what he could see with his eyes and what was being recorded by the camera,

and that he could see below the camera’s frame. After hearing arguments from counsel, the court found Detective Tallmadge’s testimony that he had observed the handgun to be credible and denied the motion to suppress.

As in the circuit court, appellant does not challenge the “legality of the proposition that the sight of one inch of a handgun’s butt extending from a suspect’s pocket [can] give the officer probable cause to seize that weapon[.]” Rather, his sole contention on appeal is that the court’s decision to credit Detective Tallmadge’s testimony was clearly erroneous in light of the fact that: (1) the handgun could not be seen on the video taken from his body worn camera; (2) the center console of the car appeared to be blocking Detective Tallmadge’s view of the area below appellant’s elbow; and (3) Detective Tallmadge told Detective Armstrong that he “thought” they should get a “hot lunch,” which according to appellant shows that Officer Tallmadge “thought” he had seen a gun but was not certain. We disagree.

“In reviewing a trial court’s ruling on a motion to suppress, an appellate court reviews for clear error the trial court’s findings of fact, and reviews without deference the trial court’s application of the law to its findings of fact.” *Hailes v. State*, 442 Md. 488, 499 (2015) (citing *Raynor v. State*, 440 Md. 71, 81 (2014)). “If there is any competent evidence to support the factual findings of the trial court, those findings cannot be held to be clearly erroneous.” *Goff v. State*, 387 Md. 327, 338 (2005) (quotation marks and citations omitted). Moreover, “[t]he credibility of the witnesses and the weight to be given to the evidence fall within the province of the suppression court.” *Barnes v. State*, 437 Md. 375, 389 (2014). (citing *Gonzalez v. State*, 429 Md. 632, 647-48 (2012)).

Here, there is nothing in the record or appellant’s argument that adequately demonstrates that the trial court’s credibility finding with respect to Officer Tallmadge’s testimony was clearly erroneous. As the State notes, there was no evidence from the suppression hearing indicating that Detective Tallmadge’s statement to Detective Armstrong that he “thought” they should get a hot lunch was meant to imply that he was unsure about whether he had seen a handgun. In fact, Detective Tallmadge unequivocally testified that he was “a hundred percent certain” that he had seen a handgun. Moreover, Detective Tallmadge explained that his body worn camera did not capture the handgun because it was mounted on his body 12 to 15 inches lower than his eyes, and therefore he was able to view appellant’s pocket at an angle not captured by the camera. The suppression court, as the finder of fact, had a chance to observe the video and found Detective Tallmadge’s explanation satisfactory. Under the circumstances we cannot say that credibility determination was clearly erroneous. Consequently, we hold that the court did not err in denying appellant’s motion to suppress.

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