Circuit Court for Baltimore City
Case No.: 122046010

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1150

September Term, 2022

RAYMOND THOMPSON

v.

STATE OF MARYLAND

Nazarian,
Tang,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: April 25, 2023

*At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland and the Court of Appeals of Maryland to the Supreme Court of Maryland. The name change took effect on December 14, 2022.

Appellant, Raymond Thompson, entered a conditional plea to illegal possession of a regulated firearm and was sentenced to a mandatory minimum sentence of five years. His sole contention on appeal is that the circuit court erred in denying his motion to suppress a firearm that was seized from his waistband following a traffic stop. Because the seizure was conducted during a lawful frisk, we affirm.

BACKGROUND

On January 21, 2022, at around 7:20 p.m., Baltimore City Police Detective Randolph Perring, II, and his partner, Detective Craig, were on unmarked patrol when they observed another vehicle commit numerous traffic violations in the area around St. George's Avenue. After activating their emergency lights and siren, and before the vehicle came to a complete stop, the police witnessed a lot of movement from inside the vehicle, including from the individual later identified as Appellant.

Once parked, Appellant, the right side passenger, and the unidentified driver immediately exited without any instruction by the police. Observing a "large bulge" on Appellant's right side waistband, the officers approached the vehicle and occupants with caution. As they did so, Appellant motioned for the detective to go ahead and look inside the car. Accepting the invitation, Detective Perring saw an empty holster in the right rear passenger seat. Detective Perring then notified the other officers on the scene by repeating the word, out loud and several times, "Holster."

Recalling that Appellant had a bulge on his right waistband area, Detective Perring and another officer on the scene, Detective Tabong, approached Appellant for a pat down. Noticing that Appellant was "blading" his body away from them in an effort to conceal his

right side from view, Detective Tabong patted down the bulge in Appellant's waist area and immediately called out code "10:30," which is police code for a handgun. A handgun was then retrieved from Appellant's right front pants pocket.[1]

After hearing argument, the motions court found Detective Perring to be credible and qualified as an expert in the characteristics of an armed person. The court then found that: (1) the stop followed the observation of several traffic violations; (2) the vehicle did not stop immediately after the police emergency lights and sirens were activated; (3) the occupants were observed moving about inside the vehicle, prior to the stop; (4) the occupants both got out of the vehicle and "invited" the police to look inside the vehicle in an attempt "to divert everybody's attention[;]" (5) a holster was observed on the rear seat behind where Appellant was seated; (6) the officers observed a bulge in Appellant's waistband; and, (7) Appellant's demeanor changed after Detective Perring announced "holster" and Appellant began to blade his body and hold a drink close to his right side near where the bulge was observed. The court then denied the motion to suppress.

DISCUSSION

Appellant contends there was no reasonable articulable suspicion to believe that he was armed and dangerous and that, therefore, the frisk was unlawful under the Fourth Amendment. We agree with the State that the frisk was lawful under the totality of the circumstances.

[1] The agreed statement of facts provides that the handgun was a loaded Rossi MSB .38 special and that Appellant was prohibited from possessing a handgun.

The review of a motion court's denial of a motion to suppress is limited to evidence from the suppression hearing and is considered in the light most favorable to the prevailing party, in this case, the State. *Washington v. State*, 482 Md. 395, 420 (2022) (citation omitted). Further, we conduct an independent constitutional appraisal of the law and the facts. In doing so, we accept facts found by the motions court, unless clearly erroneous, but our review of the law is *de novo*. *Id*. (citations omitted).

In this case, we consider the lawfulness of the frisk of a passenger during a lawful traffic stop. A traffic stop may be constitutionally permissible under the Fourth Amendment "where the officer has a reasonable belief that 'criminal activity is afoot.'" *Rowe v. State*, 363 Md. 424, 433 (2001) (quoting *Terry v. Ohio*, 392 U.S. 1, 30 (1968)). And, "[t]o justify a patdown of the driver or a passenger during a traffic stop, . . . the police must harbor reasonable suspicion that the person subjected to the frisk is armed and dangerous." *Arizona v. Johnson*, 555 U.S. 323, 327 (2009); *Accord Pacheco v. State*, 465 Md. 311, 329 n.5 (2019). In evaluating the lawfulness of a frisk, we consider the totality of the circumstances, *Stokes v. State*, 362 Md. 407, 416 (2001), and will "give due deference to a law enforcement officer's experience and specialized training, which enable the law enforcement officer to make inferences that might elude a civilian." *Norman v. State*, 452 Md. 373, 387 (2017) (citation omitted).

Here, there is no claim that the initial stop for the traffic violations violated the Fourth Amendment. Indeed, Appellant concedes there was probable cause to search the vehicle, but maintains there was no reasonable articulable suspicion to frisk him. Examining the circumstances preceding the frisk, Appellant was seen moving about in a

furtive manner inside the vehicle, between the moment the police activated their emergency equipment and the stop itself. "Furtive movements" may support a frisk. *Goodwin v. State*, 235 Md. App. 263, 282 (2017), *cert. denied*, 457 Md. 671 (2018); *accord Chase v. State*, 449 Md. 283, 307-08 (2016). Next, the rapid egress from the vehicle upon being stopped, although innocuous on its face, could be considered evasive behavior and is a factor tending to support a limited pat down for weapons. *See In re D.D.*, 479 Md. 206, 244 (2022) (collecting cases).

Once he was outside the vehicle, Detective Perring saw a bulge on Appellant's right side waistband. We recognize that a bulge in an individual's waistband, standing alone, does not provide reasonable articulable suspicion to believe that an individual is armed and dangerous. *See Ransome v. State*, 373 Md. 99, 111 (2003) (holding there was no reasonable, articulable suspicion for police to stop and frisk an individual in a high crime area who appeared nervous "merely because he has a bulge in his pocket"). And yet, "[t]here have been, to be sure, many cases in which a bulge in a man's clothing, along with other circumstances, has justified a frisk, and those cases are entirely consistent with *Terry*." *Id*. at 108 (collecting cases). Indeed, we note that, although Detective Perring did not testify that he believed Appellant was armed based on his initial observation of the bulge, he did come to that conclusion once Detective Tabong touched the bulge during the frisk and alerted the officers with code "10:30" indicating that he believed it was a firearm.

In any event, there were additional factors beyond the bulge in Appellant's waistband. Significantly, once Detective Perring opened the rear passenger side door and saw the empty holster on the seat behind where Appellant was moments earlier, this added to the level of reasonable suspicion that Appellant may have been armed and dangerous.

As one court has stated, "[a]n empty holster cannot reasonably be considered a typical and innocuous item of wearing apparel. Surely it seems that for the officer not to pursue some type of inquiry would make him remiss, if not foolhardy." *People v. Tilden*, 325 N.E.2d 431, 435 (Ill. App. Ct. 1974). *See also People v. Harmon*, 563 N.Y.S.2d 1006, 1009 (N.Y. Sup. Ct. 1990) (recognizing the presence of a holster as a relevant factor and stating, "[i]t would, indeed, be absurd to suggest that a police officer has to await the glint of steel before he can act to preserve his safety" (quotation marks and citation omitted)).

Once Detective Perring saw the holster, announcing that discovery repeatedly for all around to hear, the detective noticed that Appellant bladed his body in an effort to conceal something on his right side. We concur that this behavior is a relevant factor in the total *Terry* analysis. *See, e.g.*, *United States v. White*, 670 F. Supp. 2d 462, 475 (W.D. Va. 2009) (suspect's evasive behavior included blading his body away from the officer, to keep one side out of sight, and supported reasonable articulable suspicion that suspect was armed), *aff'd*, 404 F. App'x 757 (4th Cir. 2010); *State v. Johnson*, 861 S.E.2d 474, 483 (N.C. 2021) (blading was relevant factor to support conclusion there was reasonable suspicion to conduct a *Terry* search of defendant's person); *Interest of T.W.*, 261 A.3d 409, 424 (Pa. 2021) (considering defendant's act of attempting to "shield his body" was a factor supporting officer's assessment that defendant was armed).[2]

[2] We are aware that, in *Reid v. State*, 428 Md. 289 (2012), our Supreme Court discounted blading as a factor, but that case involved whether the blading gave probable cause to support a *de facto* arrest after Reid was shot by a taser, an issue not presented in this appeal. *Reid*, 428 Md. at 306.

Appellant counters that the police officers acted in a manner that was inconsistent with a subjective belief that he was armed and dangerous. However, "'the validity of the stop or the frisk is not determined by the subjective or articulated reasons of the officer; rather, the validity of the stop or frisk is determined by whether the record discloses articulable objective facts to support the stop or frisk.'" *Lockard v. State*, 247 Md. App. 90, 104 (2020) (citation omitted). Accordingly, under the totality of the circumstances, we hold that there was reasonable, articulable suspicion to believe that Appellant was armed and dangerous when the officers frisked his person. The motions court properly denied the motion to suppress.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE ASSESSED TO APPELLANT.