

Circuit Court for Baltimore City
Case No. 118059004

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 968

September Term, 2018

PATRICK HOWELL

v.

STATE OF MARYLAND

Friedman,
Beachley,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: April 1, 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.

Patrick Howell, appellant, was charged in the Circuit Court for Baltimore City with four counts of possession of a firearm following a disqualifying conviction. Before trial, Mr. Howell moved to suppress the firearm from evidence based on his contention that it was obtained in a search that violated his Fourth Amendment rights. The court denied the motion.

Mr. Howell then entered a conditional plea of guilty to one count of illegal possession of a firearm. The court found sufficient factual basis for the plea and convicted Mr. Howell of that offense.¹ On appeal, Mr. Howell contends that the court erred in denying his motion to suppress. We affirm.

BACKGROUND

The evidence at the suppression hearing consisted of the testimony of Sergeant David Colburn of the Baltimore City Police Department, an experienced violent crimes investigator and undercover narcotics enforcement officer who was trained in behavioral characteristics of armed persons. Footage from Sergeant Colburn's body camera, showing the traffic stop that gave rise to the search and seizure in question, was admitted into evidence at the suppression hearing.

On January 29, 2018, at approximately 11:30 p.m., Sergeant Colburn was on uniformed patrol in a marked police cruiser, accompanied by police officer trainee. He observed a vehicle travelling through an intersection with its headlights off. The vehicle's

¹ The remaining three counts of illegal possession of a firearm were dismissed.

entire windshield was tinted, in violation of motor vehicle safety laws. A traffic stop was initiated.

Sergeant Colburn instructed the trainee to enter the vehicle’s license plate number into the mobile data terminal located inside the police cruiser while he approached the vehicle and asked Mr. Howell, the driver and sole occupant of the vehicle, for his driver’s license. Mr. Howell reached, with his left hand, for a Louis Vuitton “man purse” that was on the passenger seat, and put it in his lap.² The purse appeared to contain a “heavy object,” and Sergeant Colburn heard a noise when the bag “banged on the center console” as Mr. Howell picked it up. Sergeant Colburn stated that, in his experience as a police officer in that area of Baltimore City, firearms were sometimes concealed in “man purses,” and Mr. Howell’s purse was large enough to conceal a handgun. Sergeant Colburn asked, “no guns or nothing in there, right?” and Mr. Howell responded, “Absolutely not.”

Mr. Howell became “extremely nervous” and was “acting all fidgety.” He opened and closed the center console, then looked into the purse. Sergeant Colburn “reposition[ed] [him]self for safety,” so that he could see into the bag with the aid of his flashlight, but Mr. Howell “put the bag down,” against his stomach so that Sergeant Colburn could not see into it, then “quickly reached over towards the passenger side floorboard,” in a “furtive” manner with his right hand before putting his hand back into the purse.

² The purse, which was admitted into evidence at the suppression hearing, was described by the court as being made of “supple” leather.

Sergeant Colburn stated that, based on his training and experience, the cumulative “characteristics” that he observed led him to be “concerned” that there was “something that [was] going to hurt [him]” inside the purse. He repeatedly ordered Mr. Howell to “stop reaching” into the purse and to “let go” of it, but Mr. Howell “would not take his hand out of the bag.” Sergeant Colburn leaned into the car and grabbed the purse to stop Mr. Howell from getting anything that was inside of it. Sergeant Colburn felt the handle of a firearm inside the purse. He took the purse away from Mr. Howell and ordered him out of the car to place him under arrest. Sergeant Colburn then opened the bag and confirmed that it contained a handgun. Mr. Howell was placed into handcuffs and into the back of the patrol car.

The court denied the motion to suppress, finding that Sergeant Colburn had a reasonable articulable suspicion that Mr. Howell’s purse contained a weapon, and that he was justified in touching the bag to confirm or dispel that suspicion. The court further found that, upon feeling a handgun in the bag, Sergeant Colburn had probable cause to search the bag.

DISCUSSION

“In reviewing a trial court’s decision to grant or deny a motion to suppress, an appellate court ordinarily limits its review to the record of the motions hearing.” *Sinclair v. State*, 444 Md. 16, 27 (2015). “The evidence is viewed in the light most favorable to the prevailing party, and the trial court’s fact findings are accepted unless clearly erroneous.” *Id.* “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.” *Id.* (citation omitted).

The Fourth Amendment of the United States Constitution guarantees an individual’s right to be free from unreasonable searches and seizures. U.S. Const. amend. IV. A police officer may, however, stop and briefly detain a person for purposes of investigation if the officer has a reasonable articulable suspicion that criminal activity may be afoot, or to conduct a limited search of the individual to discover any weapons that may be used against the officer. *Terry v. Ohio*, 392 U.S. 1, 30 (1968). “Because the justification for the search is solely protection of the officer or others and not by any need to prevent the disappearance or destruction of evidence, ‘it must be confined in scope to an intrusion reasonably designed to discover guns, knives, or other hidden instruments for the assault of the police officer.’” *McDowell v. State*, 407 Md. 327, 334 (2009) (quoting *Terry*, 392 U.S. at 29).

Mr. Howell does not contest the validity of the initial traffic stop, but asserts that the court erred in finding that the search of his purse was “justified by a legitimate apprehension that it contained a weapon.” We disagree.

“There is no standardized test governing what constitutes reasonable suspicion.” *Holt v. State*, 435 Md. 443, 459 (2013) (citation omitted). Rather, it is “a common sense, nontechnical conception that considers factual and practical aspects of daily life and how reasonable and prudent people act.” *Id.* at 460 (citation omitted). “We must examine the totality of the circumstances in each case to determine whether the detaining officer has a ‘particularized and objective basis’ for suspecting legal wrongdoing[.]” and, in doing so,

we “give due deference to the training and experience of the . . . officer who engaged the stop at issue.” *Id.* at 460-61 (citations and some internal quotation marks omitted).

In *Jordan v. State*, 72 Md. App. 528 (1987), we upheld the search and seizure of a bag containing a gun on facts similar to those in the present case. In *Jordan*, police responded to an area of Baltimore City after receiving a report for narcotics activity there, and observed the defendant walking across the street, holding a bag against the side of his body. *Id.* at 529-30. The officer testified that it appeared that the defendant was trying to conceal the bag. *Id.* at 530. When the officer approached, the defendant raised the bag and pointed it at the officer’s torso, while looking down into the bag and manipulating something from the back of the bag. *Id.* The officer grabbed the bag because he “became fearful of the contents of the bag.” *Id.* He “could feel there was a hard object, possibly a gun” inside it. *Id.* The officer then checked the bag, found a gun inside, and arrested the defendant. *Id.* at 531. We held that the seizure of the bag was justified based on reasonable belief that the defendant was armed and dangerous, *id.* at 535, and that “the further act of opening the bag to confirm the bag’s dangerous contents was a reasonable *de minimus* intrusion upon [the defendant’s] rights.” *Id.* at 540.

Here, as in *Jordan*, we conclude from the totality of the circumstances that Sergeant Colburn had reasonable articulable suspicion that Mr. Howell was carrying a concealed weapon in his purse, and was therefore justified in seizing the purse. Then, when Sergeant Colburn felt the handle of a firearm inside the purse, he was authorized to open the bag and remove the weapon. *See also McCracken v. State*, 429 Md. 507, 510-11 (2012) (“[I]f the officer, while conducting a proper *Terry* frisk, comes upon an item that by mere touch is

immediately apparent to the officer to be contraband or of ‘incriminating character,’ then the officer is authorized to seize that item immediately.”); *Smith v. State*, 345 Md. 460, 469 (1997) (“Where the pat-down reveals a hard object that the police officer reasonably believes may be a weapon, the officer may further intrude upon the individual to the extent necessary to seize the suspected weapon.” (citing *Terry*, 392 U.S. at 30-31)).

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