Circuit Court for Prince George's County
Case No. C-16-CR-23-002899

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND

No. 2495

September Term, 2023

JOSE ANTHONY BAKER

v.

STATE OF MARYLAND

Zic,
Ripken,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: September 10, 2024

*This is a per curiam opinion. Consistent with Rule 1-104, the opinion is not precedent within the rule of stare decisis nor may it be cited as persuasive authority.

Following a bench trial in the Circuit Court for Prince George's County, Jose Anthony Baker, appellant, was convicted of unlawful possession of a firearm, wearing a loaded handgun on his person, and wearing a handgun on his person. His sole claim on appeal is that the court erred in denying his motion to suppress the firearm that was found during a *Terry* frisk because the police lacked a reasonable and articulable suspicion that he was armed and dangerous. The State concedes that the court erred in denying the motion to suppress. For the reasons that follow, we shall reverse the judgments of the circuit court.

At the suppression hearing, the evidence demonstrated that appellant was a passenger in a vehicle that was stopped by four officers for a suspected window tinting violation. Officer Brian Groce testified that appellant was sitting "quietly" in the passenger seat, and he did not claim that appellant engaged in any suspicious, furtive, or threatening behavior. Appellant and the driver were ordered to exit and move to the back of the vehicle so that the officers could use a tint meter to check the window tinting. Officer Groce testified that when appellant opened the door, he noticed appellant was wearing a cross-body satchel that was "heavily weighted" and partially covered by appellant's jacket. As appellant attempted to walk to the back of the vehicle, a second officer stated that he saw a "bulge" in the satchel and attempted to "check" appellant. Based on these observations, Officer Groce then grabbed the satchel and immediately felt an "L-shaped" object and a trigger guard, which he knew to be a gun.

Officer Groce acknowledged that, prior to the frisk, he could not see inside the satchel and did not see the outline of a gun or any part of a gun. Officer Groce testified that on other occasions he knew of individuals who had concealed firearms inside cross-

body bags. He also stated that he carried his gun in a similar bag when he was off duty, and that it would often "leave some type of bulge." But he did not specifically indicate why the bulge in appellant's satchel was indicative of a firearm in this case. The court ultimately found Officer Groce's testimony to be credible. Based on the bulge, and apparent weightiness of the object in the satchel, the court further found that Officer Groce had a reasonable and articulable suspicion to frisk appellant, and therefore that "the search [was] not illegal[.]"

Appellant contends that the court should have suppressed the gun that was found during the frisk of his satchel. The State agrees, as do we. The review of a circuit court's denial of a motion to suppress evidence is "limited to the record developed at the suppression hearing." *Richardson v. State*, 481 Md. 423, 444 (2022) (quotation marks and citation omitted). A circuit court's ruling on a motion to suppress evidence presents a mixed question of law and fact. *Id.* Accordingly, we "assess the record in the light most favorable to the party who prevails on the issue that the defendant raises in the motion to suppress[,]" accepting the motions court's factual findings unless clearly erroneous. *Id.* at 445 (internal quotation marks and citation omitted). We review questions of law without deference. *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." *State v. Carter*, 472 Md. 36, 55 (2021) (quotation marks and 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 those facts, reasonably warrant that intrusion." *Id.* at 21. When determining if reasonable suspicion exists to support an officer's determination that a suspect is armed, 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).

Appellant primarily relies on *Ransome v. State*, 373 Md. 99 (2003), to support his claim that the officers lacked a reasonable and articulable suspicion to frisk his satchel. In *Ransome*, three police officers were riding in an unmarked car, late at night, through a Baltimore City neighborhood "that had produced numerous complaints of narcotics activity, discharging of weapons, and loitering." *Id.* at 100-01. Ransome and another man were "either standing or walking on the sidewalk[,]" but neither man was "do[ing] anything unusual[.]" *Id.* at 101. As the police car approached the two men, "it slowed to a stop[,]" and Ransome "turned to look at the car[,]" an act that one of the officers regarded as "suspicious." *Id.* The officer noticed that Ransome "had a large bulge in his left front pants pocket," which he believed was "an indication" that Ransome "might have a gun." *Id.* Because of the bulge, the officer decided that he would "conduct a stop and frisk." *Id.* After getting out of the police car and asking Ransome some perfunctory questions, the

officer performed a patdown and recovered a bag of marijuana from Ransome's waist area, not the pocket with the bulge. *Id.* In a search incident to the arrest, the police recovered "ziplock bags and some cocaine." *Id.* at 102. The bulge in Ransome's pants pocket was a roll of money. *Id.*

On those facts, the Court held that the officer did not have reasonable suspicion to perform a *Terry* frisk. The Court reasoned that, although a "noticeable bulge in a man's waist area may well reasonably indicate that the man is armed[,]" it may also have a number of innocent explanations, as "most men do not carry purses" and, "of necessity, carry innocent personal objects in their pants pockets—wallets, money clips, keys, change, credit cards, cell phones, cigarettes, and the like—objects that, given the immutable law of physics that matter occupies space, will create some sort of bulge." *Id.* at 107-08. The Court held that the mere presence of "any large bulge in any man's pocket," standing alone, does not create the reasonable suspicion necessary for a *Terry* stop, as otherwise, police could lawfully "stop and frisk virtually every man they encounter." *Id.* at 108.

We are persuaded that *Ransome* is dispositive of appellant's claim. As in that case, there was no evidence that appellant was doing anything unusual or engaging in any type of evasive or suspicious activity prior to the frisk. In fact, Officer Groce acknowledged that appellant was sitting quietly in the passenger seat and that he complied with the officers' requests to exit and move to the rear of the vehicle. Moreover, the fact that Officer Groce observed a "heavily weighted" bulge in appellant's satchel rather than in his waistband is inconsequential, as it does not make it any more likely that what he was observing was a firearm. In fact, just as in someone's pants pockets, there are any number

of innocent objects that can be kept in a satchel other than a firearm that would cause it to bulge or appear weighted down. As the Supreme Court of Maryland succinctly stated in *Ransome*, it is an "immutable law of physics[.]" *Id.* at 108. Officer Groce did not provide any specific testimony indicating why he believed the particular bulge in appellant's satchel was indicative of him being armed, as opposed to his possessing some other lawful item. Thus, even considering the totality of the circumstances, we are persuaded that he lacked a reasonable and articulable suspicion that appellant was armed and dangerous. Consequently, there was no justification for the *Terry* frisk and the motions court erred in denying appellant's motion to suppress.

JUDGMENTS OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY REVERSED. COSTS TO BE PAID BY PRINCE GEORGE'S COUNTY.