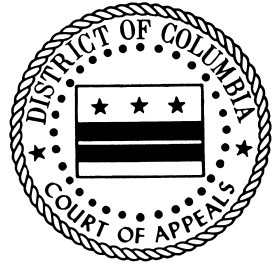


DISTRICT OF COLUMBIA
COURT OF APPEALS

No. 24-CF-340
(Cr. No. 2023-CF-6391)



Clerk of the Court
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JAMES DOBY,

Appellant,

v.

UNITED STATES OF AMERICA,

Appellee.

MOTION FOR SUMMARY AFFIRMANCE

Pursuant to D.C. App. R. 27(c), appellee, the United States of America, respectfully moves for summary affirmance of appellant James Doby's convictions for unlawful possession of a firearm, carrying a pistol without a license, possession of an unregistered firearm, and unlawful possession of ammunition. Doby claims that the trial court erred in denying his motion to suppress physical evidence because the evidence was fruit of an illegal search. Doby's claim is without merit. Summary affirmance is appropriate because "the basic facts are both uncomplicated and undisputed . . . and . . . the trial court's ruling rests on a narrow and clear-cut issue of law." *Oliver T. Carr Mgmt. v. National Delicatessen*,

Inc., 397 A.2d 914, 915 (D.C. 1979); *accord Watson v. United States*, 73 A.3d 130, 131 (D.C. 2013).¹

BACKGROUND

Procedural History

On September 22, 2023, Doby was indicted for unlawful possession of a firearm (prior conviction) in violation of D.C. Code § 23-4503(a)(1), (b)(1) (Count One); carrying a pistol without a license in violation of D.C. Code § 22-4504(a)(2) (Count Two); possession of a unregistered firearm in violation of D.C. Code § 7-2502.01(a) (Count Three); and unlawful possession of ammunition in violation of D.C. Code § 7-2506.01(a)(3) (Count Four) (Record (R.) 75–76 (Indictment)).²

After the denial of Doby’s motion to suppress evidence by the Honorable Sean Staples, the Honorable Robert A. Salerno presided over a stipulated trial on January 19, 2024, and found Doby guilty as charged (1/19/24 Transcript (Tr.) 1–12). On March 22, 2024, Judge Salerno sentenced Doby to concurrent terms of three years’ incarceration and

¹ Pursuant to D.C. App. R. 27(c), if this Court denies summary affirmance, we ask that this motion be treated as our brief on the merits.

² All page references to the record are to the PDF page numbers.

three years of supervised release on Count One; 10 months' incarceration and three years of supervised release on Count Two; and six months' incarceration on each Count Three and Count Four (R. 147 (Judgment and Commitment Order)). An additional year was added to the sentence for both Counts One and Two because they were committed while Doby was on release (*id.*). The enhancements ran concurrently to each other but consecutively to the sentences for the substantive offenses (*id.*). Doby was further ordered to pay \$100 to the VVCA for each Counts One and Two and \$50 for each Counts Three and Four (*id.*).

The Suppression Hearing

The Government's Evidence

On September 7, 2023, at around 8:30 p.m., Metropolitan Police Department (MPD) Officer Marcus Harmon was on duty in the Seventh District (12/14/23 Tr. 6). A call came over the radio stating that someone had shown up at the hospital suffering from gunshot wounds and had told investigators on the scene they had sustained these wounds on Ivanhoe Street, Southwest (*id.* at 6–7). The call did not provide a description of the alleged shooter, however (*id.* at 49). Harmon and two other MPD officers drove to that area to canvass for a potential crime

scene (*id.* at 7). The officers arrived approximately 20–30 minutes after hearing the call go out (*id.*). Harmon testified that the Police Service Area (PSA) where Ivanhoe Street is located is a high-crime area and that within the month prior to this reported incident, there had been one homicide by gun, three assaults with a deadly weapon involving a gun, and five armed robberies (*id.* at 10–12). This is a residential area, and although there was no natural light when the officers arrived, the area was well lit by streetlights (*id.* at 10).

As the officers turned onto Irvington Street, they observed a man — later identified as Doby — walking down the sidewalk (12/14/23 Tr. 15, 17). Doby was wearing a jacket, and Harmon observed what appeared to be a large object in a jacket pocket that was weighing down the right side of the jacket (*id.* at 15, 18–19). Harmon said “left” to alert his colleagues to the presence of the individual (*id.* at 18–19). Officer Zumbrun, the driver of the police vehicle, activated the cruiser’s scene lights (*id.*). Scene lights are white lights which illuminate an area around the police vehicle, but they do not flash and do not activate any sirens when used (*id.* at 20). Zumbrun observed an L-shaped object that he believed was a gun in Doby’s pocket (*id.* at 32–33).

When the lights were activated, Harmon observed that Doby was acting nervous, looking around at the police vehicle, grabbing the right area of the jacket where the heavy object was located, and taking sidesteps away from officers (12/14/23 Tr. 20). From the vehicle, Zumbrun asked Doby if he had a firearm in his jacket pocket (*id.* at 22). Harmon then exited the vehicle and began to walk forward, parallel to Doby (*id.*). Doby did not reply to Zumbrun, and he firmly gripped the object in his jacket and began to walk faster (*id.*). At this time, Doby was on the sidewalk, the cruiser was in the street slightly behind Doby, and Harmon was parallel to the cruiser but had the cruiser between him and Doby (*id.* at 22–23).

Doby continued picking up his pace and then began to run from officers (12/14/23 Tr. 23). Doby ran down Irvington Street and took a left onto Ivanhoe Street (*id.*). Harmon and the other officers pursued Doby (*id.* at 24). The pursuit went around several of the housing complexes and through a nearby parking lot (*id.* at 23). As Harmon ran after Doby, Harmon observed him grabbing at his right jacket pocket, sometimes with both hands, in what Harmon understood to be an attempt to remove a firearm from his pocket (*id.* at 24–25). As Doby ran and grabbed at his

pocket, he repeatedly looked over his shoulder back at Harmon (*id.* at 25). Harmon was approximately 21 feet away from Doby when he made these observations, and the area was well lit (*id.* at 25–27). In response to what he understood to be Doby attempting to draw a firearm, Harmon yelled “Hey drop the gun, I’ll fucking shoot, drop it!” (Gov’t Ex. 21 at 20:29:00–10; 12/14/23 Tr. 39). Eventually, Doby slowed down and stopped, at which point he was detained by officers (12/14/23 Tr. 27). Harmon touched the right jacket pocket with an open hand and immediately felt what he knew to be a firearm (*id.*). Harmon then removed the firearm from Doby’s pocket (*id.* at 28).

The defense presented no evidence.

The Parties’ Arguments on the Suppression Motion

The government argued Doby was not stopped when officers first approached him on Irvington Street and was only later seized when he slowed down and submitted to officers (12/14/23 Tr. 62–64). At that time, the officers had reasonable articulable suspicion to conduct a search of Doby based on the large L-shaped object observed in Doby’s jacket pocket, his repeatedly grabbing and holding the object in his pocket, his walking faster and grabbing the object after being asked if he had a firearm on

him, and the gestures and motions he made as he ran from police, which Harmon interpreted as attempting to draw a firearm (*id.* at 64–65).

Doby argued that there was no reasonable articulable suspicion and the officer’s pat-down of his pocket which uncovered the firearm was an unconstitutional investigatory search (12/14/23 Tr. 73). Doby asserted that “[t]he initial approach, initial interaction, the resulting pat-down w[ere] not supported by reasonable articulable suspicion” (*id.*). He further argued that “[he] was free to leave, so his flight did not add to reasonable articulable suspicion to support a *Terry* stop” and that the “search” after he was stopped “was beyond the scope” (*id.*).

The Trial Court’s Rulings and Findings

In denying the motion to suppress, the trial court credited Harmon’s testimony, finding him to be “a very credible witness” (12/14/23 Tr. 75). The court found the officers arrived at the area 20–30 minutes after receiving a call that someone had been shot in the area around Ivanhoe Street (*id.* at 74). They had no indication Doby was involved in that shooting (*id.*). However, they did have a significant amount of information that this was an area of high gun violence (*id.*).

As officers turned onto Irvington Street, Harmon observed Doby with the right side of his jacket weighed down considerably (12/14/23 Tr. 75). Harmon alerted the other officers, and Zumbrun turned on the scene lights, which generally illuminated the area but were “not direct spotlights on” Doby (*id.* at 75–76). Zumbrun then observed an L-shaped object in the same area of Doby that Harmon had observed the heavy object (*id.* at 76). Zumbrun pulled the car over in the direction of Doby and asked him if he had a gun in his pocket (*id.*). Doby held his right hand on the pocket containing the object and looked back and forth in the direction of police (*id.* at 77). Harmon then exited the vehicle (*id.*). The court noted that Doby’s path was not blocked at this point, and no one had prevented him from going on his own way (*id.*). In fact, the court noted, Doby did not stop but rather quickened his pace and continued to walk away (*id.*).

Then, within five seconds of Harmon exiting the vehicle, Doby began to run and fled from officers (12/14/23 Tr. 77). After the police chased him, Doby eventually slowed down and gave up, at which point the court found that he was seized by police (*id.* at 77–78). Once Doby had been seized, Harmon touched the outside area of Doby’s right pocket

and felt what he immediately recognized to be a firearm (*id.* at 78). Shortly thereafter, Harmon removed the firearm from Doby's pocket (*id.*).

The trial court then noted that officers needed to have reasonable articulable suspicion to conduct a stop of a person (12/14/23 Tr. 78–79). However, for a stop to occur and thus trigger the requirement of reasonable articulable suspicion, a person must submit to a show of authority by the police such that it would constitute a *Terry* stop (*id.* at 79). The court understood that Doby was not arguing that the initial encounter before the flight was a seizure, and it agreed that there was no seizure of Doby before he ran (*id.* at 80). The court also found that Doby's flight was not provoked, as the police did not engage in provocative conduct that would cause a reasonable individual to take flight for reasons other than criminal culpability (*id.*). Based on all the evidence known to the police, including the observation of the L-shaped object, Doby's flight in response to the question about a firearm, and his conduct while fleeing, including his focus on the same pocket where officers suspected a firearm was located, his holding of that pocket, and his continual attempts to reach into that pocket and remove the object, the officers had reasonable articulable suspicion to stop Doby and pat down

his outer clothing, at which time they recognized that Doby in fact possessed a firearm (*id.* at 81–83).

The Stipulated Trial

Following the denial of the motion to suppress, the parties proceeded to a stipulated trial (12/14/23 Tr. 83; 1/19/24 Tr. 2). Doby stipulated to facts which, if the matter proceeded trial, the government would prove beyond a reasonable doubt (1/19/24 Tr. 5, 7; R. 127). Specifically, the government would have established that on September 7, 2023, Doby was on the 100 block of Ivanhoe Street, Southwest, in Washington, D.C., and at that time possessed a PT-92 AF Taurus pistol and ammunition (R. 129–31). The government would have proved Doby unlawfully possessed a firearm because he had a prior felony conviction for attempted second-degree murder in Maryland (R. 130). Additionally, the government would have proved that Doby carried the pistol in a place other than his home, place of business, or land or premise owned and controlled by him, without a license or registration for the firearm (*id.* at 131). Lastly, the government would have proved Doby possessed at the time eight 9mm cartridges and did so without being the holder of a valid registration certificate for a firearm of the same caliber (*id.*).

As part of the stipulated trial agreement, Doby retained his right to appeal the court’s ruling on the motion to suppress (R. 133).

ARGUMENT

The Trial Court Did Not Err When It Denied Doby’s Motion to Suppress.

As before the trial court, Doby does not appear to dispute that he was not seized for Fourth Amendment purposes until he slowed down after fleeing from police and surrendered to them. He claims, however, that the trial court erred when it found the officers had reasonable articulable suspicion to justify the seizure (Appellant’s Brief (Br.) at 1, 28). Doby’s argument is without merit.

A. Standard of Review and Applicable Legal Principles

In reviewing a trial court’s denial of a motion to suppress evidence on Fourth Amendment grounds, this Court “defer[s] to the trial court’s findings of fact ‘unless they are clearly erroneous,’” *Mayo v. United States*, 315 A.3d 606, 616 (D.C. 2024) (en banc) (quoting *Hooks v. United States*, 208 A.3d 741, 745 (D.C. 2019)), and “view[s] those facts, and the reasonable inferences that stem from them, in the light most favorable to

the government.” *Sharp v. United States*, 132 A.3d 161, 166 (D.C. 2016); *Mayo*, 315 A.3d at 617. Legal issues raised by the suppression motion are reviewed de novo. *Mayo*, 315 A.3d at 616.

Under *Terry v. Ohio*, 392 U.S. 1 (1968), police may effectuate an investigatory stop and pat-down if the totality of “the facts available to the officer at the moment of the seizure . . . warrant a [person] of reasonable caution in the belief that the action taken was appropriate.” *Id.* at 21–22 (internal quotation omitted); *see also United States v. Arvizu*, 534 U.S. 266, 273 (2002) (acknowledging that “officers [may] draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them”). “Multiple factors may contribute to the totality of the circumstances”; these “includ[e] the time of day, flight, the . . . nature of the location, furtive hand movements, an informant’s tip, a person’s reaction to questioning, a report of criminal activity or gunshots, and viewing of an object or bulge indicating a weapon.” *Posey v. United States*, 201 A.3d 1198, 1201–02 (D.C. 2019) (internal quotation marks omitted). “*Terry*’s reasonable articulable suspicion standard ‘requires . . . considerably less than proof of wrongdoing by a preponderance of the evidence, and

obviously less than is necessary for probable cause.” *Mayo*, 315 A.3d at 620 (quoting *Kansas v. Glover*, 589 U.S. 376, 380 (2020)).

B. Discussion

The trial court correctly found that the totality of facts gave the police reasonable articulable suspicion that Doby was armed with a gun, and thus they were warranted in seizing him and patting him down. A number of factors supported the trial court’s conclusion.

First, the police saw that Doby had a heavy, L-shaped object weighing down one side of his jacket. Doby’s possession of an object with the shape and weight of a firearm strongly supported the inference that he was carrying a gun. *See Singleton v. United States*, 998 A.2d 295, 301 (D.C. 2010).

Second, Doby appeared extremely nervous upon noticing police: he looked at the officers with wide eyes, grabbed the object in his jacket, and sidestepped away from the officers. *See Posey*, 201 A.3d at 1202 (suspect’s reaction to questioning a relevant factor in reasonable-suspicion analysis). Although Doby tries to downplay his response as simply the actions of someone who did not want to engage with the police (Br. 21–

22), the officers reasonably could infer that his nervousness was connected to the bulge in his pocket.

Third, on simply being asked if he had a gun in his pocket, Doby did not answer but began to walk faster away from police while holding onto the object in his jacket and, moreover, broke into a run. His headlong flight added to the officers' reasonable suspicion. *See Illinois v. Wardlow* 528 U.S. 119, 124 (2000) ("Headlong flight . . . is the consummate act of evasion: It is not necessarily indicative of wrongdoing, but it is certainly suggestive of such."); *District of Columbia v. Wesby*, 583 U.S. 48, 59 (2018) (observing that "deliberately furtive actions and flight at the approach of law officers are *strong* indicia of *mens rea*" which "can be treated as 'suspicious behavior' that factors into the totality of the circumstances"); *Miles v. United States*, 181 A.3d 633, 641 (D.C. 2018) ("[A] defendant's flight [from the police] can be a relevant factor in the reasonable suspicion analysis.").

Fourth, during his flight, Harmon observed Doby repeatedly attempting to pull the object out of his jacket. His furtive actions supported the officers' reasonable belief that he was armed and dangerous. *See Pridgen v. United States*, 134 A.3d 297, 304–05 (D.C.

2016) (finding “appellant’s moving his hand around his left pocket gave the officers a reasonable basis to believe that he was armed and dangerous, and thus a reasonable basis for the investigatory seizure that led to the discovery of the tangible items appellant sought to suppress”). Although Doby claims his actions were simply consistent with moving the gun into a position where he could run more efficiently (Br. 24–25), the pursuing officer reasonably could fear that Doby was trying to pull out the weapon, either to discard it or to use it against the officer. Doby’s suggestion (Br. 26) that the officer could have simply given up the chase does not show that his gesture was not relevant to reasonable suspicion.

And fifth, all these events happened in a specific PSA that the officer knew was the site of several shootings and armed robberies in the previous month. The recent use of firearms in that location supported the reasonable suspicion that the bulge in Doby’s pocket was a firearm. *See Mayo*, 315 A.3d 634 (in assessing general locational crime information, focus should be on “the particular details that make an individual’s actions more or less suspicious when viewed in context”). Although Doby argues (Br. 18–10) that residents in violence-prone areas have reason to carry firearms for self-protection, there was no indication that Doby lived

in the area. In any event, Doby cannot ignore the settled case law that the record of violence in a specific area can be a relevant factor in a *Terry* analysis. *See Posey*, 201 A.3d at 1202. Taken together, all these facts supported the trial court’s conclusion that the police had reasonable suspicion that Doby was engaged in criminal activity.

Doby asserts, however, that officers could not have reasonable articulable suspicion that he was committing a crime merely because they suspected he had a firearm on him (Br. 15–17). However, in D.C. a person licensed to carry a pistol must “carry any pistol in a holster on their person in a firmly secure manner that is reasonably designed to prevent loss, theft, or accidental discharge of the pistol.” D.C. Mun. Regs. § 24-2344.2 (2024). Doby appeared to be carrying the gun not in a holster but in his pocket, as evidenced by the sagging coat. Furthermore, the evidence of consciousness of guilt, including his nervous reaction and flight, suggested he was not possessing the gun legally.

Doby further avers that he had a legitimate reason to flee and thus his actions in response to officers did not provide reasonable suspicion (Br. 20–23). Doby contends the court failed to consider the effect on a black man, walking alone at night, of having “police lights suddenly

shined on him,” that the officers drove the vehicle closer to him before asking him whether he had a gun in his pocket, and that he chose to not interact with police (*id.* at 20). However, the lights were not directly shined on him as he claims. The trial court expressly found the scene lights from the police vehicle were “not direct spotlights on” him, and Doby shows no clear error in that factual finding (12/14/23 Tr. 76). Furthermore, officers did not box Doby in or restrict his movement; instead, they merely pulled their vehicle closer to him and asked him a single question (*id.* at 76–77). The fact that Doby did not simply walk away, but rather ran from officers, also belies his claim that he was simply choosing to just not engage with police (*id.* at 77). Further, officers did not engage in “stalking” as Doby claims (Br. 21). They were engaged in an appropriate encounter as they sought to investigate the L-shaped object and Doby’s increasingly furtive actions in response. Lastly, although it is possible Doby could have fled for innocent reasons, police were still entitled to consider flight along with the other factors when determining whether they reasonable articulable suspicion existed. *Miles*, 181 A.3d at 641; *see Mayo*, 315 A.3d at 624–28.

CONCLUSION

WHEREFORE, the government respectfully submits that the judgment of the Superior Court should be summarily affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have caused a copy of the foregoing to be served by electronic means, through the Court's EFS system, upon counsel for appellant, Thomas G. Burgess, Esq., tgburgess@tgburgesslaw.com, on this 26th day of December, 2024.

/s/

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