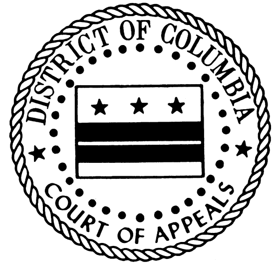

Clerk of the Court
Received 08/13/2025 10:27 AM
Filed 08/13/2025 10:27 AM

Appeal No. 25-CF-0019

DISTRICT OF COLUMBIA COURT OF APPEALS

MARC ANTHONY QUARLES,

Appellant,

v.

UNITED STATES OF AMERICA,

Appellee

Appeal from the Superior Court of the District of Columbia
Criminal Division

REPLY BRIEF OF APPELLANT

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ARGUMENT

A. THE POLICE ARRESTED QUARLES WITHOUT A WARRANT AND WITHOUT PROBABLE CAUSE

Addressing the argument only in a footnote (Appellee Br. at 11 n.5), the government asserts that the police did not arrest Marc Quarles. In fact, the level of force that the police applied when detaining Quarles rendered this seizure an arrest. The Fourth Amendment therefore required the police to have probable cause to support the seizure. But the police lacked probable cause. The stop and ensuing search violated Quarles's Fourth Amendment rights.

The government claims that the detention was brief and therefore did not exceed the scope of a brief, investigatory stop under *Terry v. United States*, 392 U.S. 1 (1968). Quarles, however, does not assert that the length of detention is what transformed the seizure from a *Terry* stop to an arrest. Length is only one factor to consider in assessing whether a stop was an arrest. Courts also consider the restrictions on an individual's movement, the amount of and nature of force that the police used, and the severity of the intrusion into the individual's liberty and dignity. *See United States v. Rasberry*, 882 F.3d 241, 247 (1st Cir. 2018) (listing factors). A *Terry* stop is necessarily less intrusive than an arrest because the police can effectuate it with the lower standard of reasonable suspicion. *Rasberry*, 882 F.3d at 247. Here, by any measure, the stop was not less intrusive.

The nature of the seizure far exceeded a brief, investigatory stop. Tackling Quarles, pinning him to the ground, and kneeling on top of him with such force that he needed medical attention amounted to an arrest, not a "less intrusive" *Terry* stop.

The government does not address the level of force that the police employed to seize and detain Quarles. It only states that suspects may be handcuffed during a *Terry* stop. Handcuffing, however, is a far cry from what happened here.

A reasonable person who had just been tackled and was lying on the cement with a police officer kneeling on top of them, hands pinned above their head, would believe that their liberty had been restrained consistent with being subject to formal arrest. *See Carroll v. Ellington*, 800 F.3d 154, 170 (5th Cir. 2015). Not only would they not feel free to leave, they would in fact not be physically able to leave. Here, the police demonstrated a willingness and present ability to use significant force and violence to effectuate the stop, which would lead Quarles to reasonably believe that the police would use additional violence against him.

Because this was an arrest, to satisfy constitutional standards for making the stop, the police needed probable cause to believe that Quarles was committing a crime. But as discussed below, the police lacked probable cause to support this arrest.

B. THE POLICE LACKED BOTH PROBABLE CAUSE AND REASONABLE, ARTICULABLE SUSPICION TO JUSTIFY AN ARREST OR A *TERRY* STOP

The government argues that the police had reasonable, articulable suspicion to believe that Quarles had a firearm, justifying a *Terry* stop. (Appellee's Br. at 11) The government does not argue that probable cause existed for an arrest. Whether the stop was an arrest or a *Terry* stop, the police lacked sufficient constitutional justification.

As an initial matter, the government argues that the police had reasonable, articulable suspicion that Quarles had a firearm, not that Quarles was armed *and dangerous* and not that he was committing a crime. The government's argument ignores first principles of citizen-police encounters.

Assuming for the moment that the belief that Quarles possessed a gun was reasonable, possessing a firearm—the only conduct that the government relies on—without more, is not illegal. *See District of Columbia v. Heller*, 554 U.S. 570 (2008). More than mere possession is necessary to render the behavior a crime. *See* D.C. Code § 7-2502.01; D.C. Code § 22-4503. *See also* 9/18/2024 Tr. at 71.

Terry does not authorize generalized searches for guns. *Robinson v. United States*, 76 A.3d 329, 336 (D.C. 2013). The police may not stop people on the street to investigate lawful activity. In the absence of an arrest warrant, the police may stop an individual on the street only if they have probable cause that the person is

committing a crime or has committed a felony. *Id.* at 335. *Terry* provides a limited exception to this probable cause requirement, to allow a brief investigatory stop if the police have reasonable, articulable suspicion that the individual is involved in criminal activity. *Id.* at 336; *see also United States v. Cortez*, 449 U.S. 411, 417-18 (1981). And if, during that brief investigatory stop, the police develop reasonable, articulable suspicion that the individual is armed and dangerous, they may conduct a protective frisk. *Robinson*, 76 A.3d at 336.

A *Terry* stop is only justified to investigate criminal activity. Since possessing a firearm is not inherently illegal, an officer's belief that a person possesses a gun, without more, cannot satisfy either the probable cause or *Terry* standard to justify a stop to arrest for a crime or investigate criminal activity. Zelesnick's belief that Quarles possessed a gun therefore does not satisfy the first requirement for a valid *Terry* stop.

Here, it is undisputed that the police had no information about any criminal activity in the vicinity or any information about Quarles himself. 9/18/24 Tr. at 59, 63. The stop occurred at mid-morning on a sunny day on a major thoroughfare with no evidence of criminal activity in the vicinity, either specifically identified in recent reports, or even by reputation of the neighborhood. The police did not observe Quarles doing anything other than walking down the street and going to a carry-out. (9/18/24 Tr. 48, 54-55, 63.) Thus, neither probable cause to arrest for a

crime committed in the presence of the police, nor reasonable suspicion of any criminal wrongdoing existed.

The sole basis for Zelesnick deciding to stop Quarles was that he saw a rectangular shape outlined underneath Quarles's clothes. Zelsnick testified that he perceived it to be the handle of a firearm. Seeing a rectangular shape, however, does not give rise to probable cause or reasonable suspicion.

The government asks this Court to consider several cases for the proposition that seeing a bulge under a suspect's clothing justifies a *Terry* stop. (Appellee Br. at 12-13.) But these cases all include multiple additional factors in the reasonable suspicion calculation. *See Singleton v. United States*, 998 A.2d 295, 301 (D.C. 2010) ("In this case, however, there is more than a bulge to inform the court's examination: appellant's awkward walk and hand movement that seemed to be protective of a firearm secreted in his pocket and appellant's apparent nervousness as he repeatedly looked over his shoulder at Officer Abate."); *United States v. Hagood*, 78 F.4th 570, 576 (2d Cir. 2023) ("officers reasonably suspect that Hagood was armed based on their observations of Hagood's fanny pack, his nervous reaction to seeing them, and his presence in a high-crime area late at night."). These cases are therefore inapposite.[1]

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[1] The government also points the Court to *Pennsylvania v. Mimms*, 434 U.S. 106, 112 (1977), where the Supreme Court concluded that an officer observing a bulge

A bulge under a man's clothing, without more, is susceptible to too many innocent explanations to give rise to reasonable suspicion. *Singleton*, 998 A.2d at 301. Here, Zelesnick admitted that he did not know if the rectangular shape he saw could have been a wallet. (9/18/24 Tr. at 53.) Phones are of course rectangular as well. Quarles was not carrying a bag, which means that anything he carried would have had to be tucked into his clothing. Observing a rectangular shape under a man's clothing alone thus does not justify the stop here.

To be sure, when a factor bearing on reasonable suspicion has an innocent explanation, the police do not need to exclude every possibility consistent with

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in a suspect's pocket during a traffic stop supported a conclusion that the suspect was armed and dangerous and therefore justified a pat down. (Appellee Br. at 12.) But *Mimms* is of limited utility as well. The police had an uncontroverted basis to stop the defendant—he had been driving on expired tags. The initial stop therefore had nothing to do with the bulge. Second, the particular context of a fraught traffic stop involved greater risk to the police, which played a role in the Fourth Amendment calculation. *Mimms* does not carry the blanket justification to search every bulge. Indeed, this Court noted that *Mimms* does not prove instructive in cases where the police did not have an independent basis for a stop other than a bulge. *Singleton*, 998 A.2d 301at n.5; *see also Ransome v. State*, 816 A.2d 901, 906 (Md. 2003) ("To apply *Mimms*, which involved a large bulge in the waist area observed upon the stop of a man who had been driving on an expired tag, uncritically to any large bulge in any man's pocket, would allow the police to stop and frisk virtually every man they encounter. We do not believe that *Mimms,* or any other Supreme Court decision, was intended to authorize that kind of intrusion.").

innocence.[2] But when the only factor is a rectangular shape, which is consistent with too many innocent explanations, more is necessary to support a finding of reasonable suspicion.

Finally, the government asserts that the fact that Quarles ran away from the police sjustifies a finding of reasonable suspicion. (Appellee Br. at 14) It does not.

Zelesnick testified that he saw Quarles walking normally in front of the police car, then go into a carry out and come out with a bag. Based solely on the rectangular shape he had observed under Quarles's clothes, he and his partner pulled their car up near Quarles, got out, started following him and yelling at him.

Quarles's flight therefore did not impact the officers' decision to stop Quarles. The sole factor was the rectangular shape. The police had already decided to stop Quarles before Quarles began to run. They had already targeted him, were following him, and yelling at him. Quarles was not yet seized when the police were yelling at him, but their decision to stop him was already complete. Flight did not impact the assessment of reasonable suspicion.

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[2] The government relies on *Umanzor v. United States*, 803 A.2d 983 (D.C. 2003), to support its assertion that the police need not negate all innocent explanations. Again, this case is distinguishable. In *Umanzor*, the police had specific information that a stabbing homicide had just occurred and a particular type of car was probably involved. Moments after hearing the alert, the police saw a similar car driving slowly. While driving slowly at night has an innocent explanation, the totality of all the circumstances and multiple factors in combination supported reasonable suspicion. Here, no other circumstances exist.

Not only did flight not impact the officer's decision to stop Quarles, but this Court should not grant it weight in its review of the circumstances presented here. "Myriad reasons" exist as to why an innocent person would run from police, including dislike of authority, distaste for police officers based upon past experience, and fear of police brutality or harassment. *Miles v. United States*, 181 A.3d 633, 641 (D.C. 2018); *D.W. v. United States*, __ A.3d __, 2025 D.C. App. Lexis 198 *12 (D.C. July 17, 2025). A police officer's—and reviewing court's—assessment of flight must account for the fact that people in highly policed communities might reasonably fear overly-aggressive policing and thus flee even when innocent. *D.W.*, 2025 D.C. App. Lexis 198 at *12 (quoting *Mayo v. United States*, 315 A.3d 606, 625 (D.C. 2024)). This Court noted that fleeing to avoid interrogation is a plausible, reasonable response to aggressive police presence in a community, and does not automatically manifest consciousness of guilt. *Id.*

Like in *D.W.*, the evidence here show "the concerns expressed in *Mayo* about flight as an innocent response to reasonable fear of aggressive police conduct." *Id.* at *17. The circumstances indicate that the community was highly policed. Zelesnick testified that he and his partner were not responding to any crime, but were told to sit in their car to deter crime and be the visible presence of authority. (9/18/24 Tr. at 14.) Indeed, their unit was to have "high visibility" during "First Amendment activities." *Id.* Quarles had been walking normally down the

street to a carry out restaurant, then two police officers pulled up, got out, and started following him and yelling at him. And the police in fact used aggressive conduct toward Quarles when Griffin tackled, pinned, and kneeled on him. Quarles's response to run away from this aggression does not demonstrate consciousness of guilt. In the context that this case presents, "its value in a reasonable articulable suspicion analysis is significantly reduced." *D.W.*, 2025 Lexis 198 at *3 (quoting *Mayo*, 315 A.3d at 632).

Moreover, people walking down the street to get some food at a carry out are not obliged to stop and talk to the police. Theoretically, at least, they are free to go on about their business. *See Posey v. United States*, 201 A.3d 1198, 1202 (D.C. 2019) (explaining that police may approach someone on the street with minimal information that they are engaged in wrongdoing, but people are free to refuse and avoid the police).With the police following him and yelling at him, Quarles exercised his right to decline to engage with the police by running. Doing so should not be deemed suspicious. When someone is not required to talk to the police, "flight to avoid that contact should be given little, if any, weight as a factor probative of reasonable suspicion. Otherwise, our long-standing jurisprudence establishing the boundary between consensual and obligatory police encounters will be seriously undermined." *Commonwealth v. Warren,* 58 N.E.3d 333, 341-42 (Mass. 2016).

In summary, the only factor supporting the stop here was the officer seeing a rectangular shape underneath Quarles's clothing that he believed was the handle of a firearm. Later, after the police decided to stop Quarles, after they pulled up their car, got out and started to follow him, yelling, Quarles ran. The officers had no information about criminal activity in the area, they did not observe any suspicious activity, and Quarles himself did not behave suspiciously—he did not clutch his waistband, make furtive movements, or walk in an awkward manner. The totality of the circumstances do not support a conclusion that Quarles was engaging in criminal activity. Whether a *Terry* stop or an arrest, the stop, seizure, and search violated the Fourth Amendment.

CONCLUSION

The police lacked probable cause to arrest Marc Quarles. In the alternative, they lacked reasonable, articulable suspicion that he was armed and dangerous. Accordingly, the stop, search, and seizure of his person and tangible evidence violated the Fourth Amendment. For all the foregoing reasons, as well as those raised in the Appellant's Brief, this Court should reverse the trial court's ruling denying Quarles's motion to suppress and vacate his convictions.

Respectfully submitted,

/S/

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CERTIFICATE OF SERVICE

I certify that on August 13, 2025, I caused this Court's e-filing system to send a copy of the foregoing *Brief* in the case of *Marc Anthony Quarles v. United States,* Appeal Nos. 25-CF-0019, to the United States Attorney's email box and/or the email boxes of Chrisellen R. Kolb, Esq., and Jardan K. Hummel, Esq., Chief of Assistant U.S. Attorneys.

/S/

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