

BRIEF FOR APPELLEE

DISTRICT OF COLUMBIA
COURT OF APPEALS

No. 25-CF-0019

MARC A. QUARLES,

Appellant,

v.

UNITED STATES OF AMERICA,

Appellee.

APPEAL FROM THE SUPERIOR COURT
OF THE DISTRICT OF COLUMBIA
CRIMINAL DIVISION

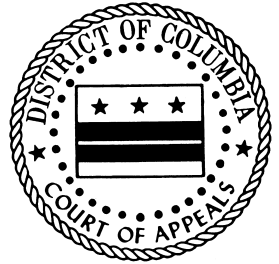
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ISSUE PRESENTED

Whether the trial court erred in denying appellant Marc A. Quarles's motion to suppress on Fourth Amendment grounds where the police conducted an investigatory stop based on an officer's observation of a rectangular shape that he immediately recognized to be a firearm on Quarles's hip and where Quarles broke into headlong flight when the officers attempted to engage him.

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BRIEF FOR APPELLEE

COUNTERSTATEMENT OF THE CASE

On August 2, 2024, a grand jury charged Quarles with unlawful possession of a firearm (prior conviction) (D.C. Code § 22-4503(a)(1)); carrying a pistol without a license (D.C. Code § 22-4504(a)(2)); possession of an unregistered firearm (D.C. Code § 7-2502.01(a)); and unlawful possession of ammunition (D.C. Code § 7-2506.01(a)(3)) (Record on

Appeal (R.) 49-50 (Indictment)).¹ On September 20, 2024, a jury found Quarles guilty of all counts (9/20/24 Tr. 54-55). On December 3, 2024, the Honorable Jason Park sentenced Quarles to a total of 14 months in prison, followed by three years of supervised release (12/3/24 Tr. 13; R. 127 (Judgment)). Quarles timely appealed (R. 130-31 (Notice of Appeal)).

The Suppression Hearing

A. The Parties' Claims

Quarles was arrested near the intersection of Marion Barry Avenue and 14th Street, Southeast, after officers found a loaded firearm in his pants (R.19-20 (affidavit)). Quarles moved to suppress the gun, arguing that he was seized without reasonable articulable suspicion and arrested without probable cause (R. 43-45 (Motion to Suppress)). The government opposed, arguing that the totality of the circumstances, including the officers' observation of "an imprint of what they believed to be a firearm" on Quarles's right hip and his subsequent flight when "the officers . . . tried to get his attention," provided a reasonable articulable suspicion

¹ For the Record on Appeal, the government cites the PDF page number; for Quarles's Brief (Br.), the government cites the document's page number.

justifying a *Terry*² stop (R. 55-57 (Opposition to Motion to Suppress)). Further, when Quarles’s shirt lifted, the officers could see the firearm in plain view and, therefore, had probable cause to arrest (*id.*).

B. The Evidentiary Hearing

On September 18, 2024, the trial court held an evidentiary hearing on Quarles’s motion at which Metropolitan Police Department (MPD) Officer Evan Zelesnick testified (9/18/24 Tr. 10).

On May 25, 2024, Officer Zelesnick was on patrol with his partner, Officer Griffin, in the Seventh District (9/18/24 Tr. 13-14). Wearing “full uniform,” in a marked police vehicle, the officers “were put on the detail by the watch commander as high visibility” to facilitate “more presence” of police officers in the area (*id.* at 14-15). They were assigned to a “fixed post” on Marion Barry Avenue and 14th Street, Southeast, and parked their marked vehicle “at the mouth” of a parking lot (*id.* at 14, 45-46).

At approximately 9:30 a.m., Officer Zelesnick was seated in the front-passenger seat when he saw Quarles “walk in front of the [police] vehicle on the sidewalk closest to” the officers (9/18/24 Tr. 16, 24-25). It

² *Terry v. Ohio*, 392 U.S. 1 (1968).

was daylight and nothing obstructed his view (*id.* at 25). As Quarles passed by, Officer Zelesnick “saw a rectangular shape, which [he] immediately perceived to be the handle and the magazine of [] a firearm . . . pointing out of . . . [Quarles’s] right side of his hip” (*id.* at 23).³ Because Quarles was wearing a “tight” “zip-up sweater,” a t-shirt, and dark-colored pants (*id.* at 51, 65; Gov’t Ex. 205 and 206), Officer Zelesnick could see the rectangular shape that he “immediately perceived to be a magazine . . . through [Quarles’s] clothing” (*id.* at 16).⁴ Officer Zelesnick explained he recognized the firearm based on his four years of training and experience as a police officer, including recovering approximately 100 firearms; he described himself as “a big Second Amendment guy” who

³ On cross-examination, Officer Zelesnick remained firm that he recognized the “rectangular object” as the “handle of a firearm,” while candidly acknowledging that he did not know if it was “metal” or “plastic” (9/18/24 Tr. 53). When asked if he knew if the object was a “wallet or some other type of bag,” Officer Zelesnick replied, “I don’t know if it could have been” (*id.*).

⁴ To elucidate how Quarles’s firearm appeared, Officer Zelesnick stood during his testimony and showed the court that “how [his] firearm is positioned right now, [he] could see the . . . rectangular object protruding out of the right side of [Quarles’s] hip” (9/18/24 Tr. 52-53).

personally owns firearms and keeps “up to date” with how firearms are made and “used for protection purposes” (*id.* at 11-13).

Officer Zelesnick and his partner drove on to Marion Barry Avenue “to make contact” with Quarles, but he entered a carry-out store (9/18/24 Tr. 24, 26). When Quarles left the carry-out, the officers exited their vehicle and Quarles “quickly . . . walked in the opposite direction that he was initially walking” (*id.* at 27). Officer Griffin “tried to speak to” Quarles, saying, “yo, my man,” but Quarles “continued to walk away” (*id.* at 31, 58). Quarles crossed the street outside of the crosswalk, continued to the end of the block, and then ran (*id.* at 55-56). The officers pursued Quarles, and Officer Griffin tackled him to the ground (9/18/24 Tr. 37-38). While Quarles was on the ground with his hands raised, Officer Griffin conducted a pat-down and discovered a firearm on Quarles’s right hip (*id.* at 38-40, 60; Gov’t Ex. 205 and 206).

Video from Officer Zelesnick’s body-worn camera captured his interaction with Quarles (9/18/24 Tr. 34; Govt. Ex. 301). That video shows Officer Zelesnick exit his car at 09:20:01 and begin to follow Quarles about 10 seconds later (*see* Gov’t Ex. 301 at 09:20:01-:12). Officer Zelesnick and his partner followed Quarles on foot, from approximately

two car-lengths behind, walking at a casual pace (*id.* at 09:20:18-:27). At 09:20:27, after Officer Zelesnick activated the audio on his body-worn camera, Officer Griffin said, “yo, my man,” at a normal volume while walking behind Quarles (*id.* at 09:20:27-:33). Quarles then began to run when he reached the other side of the street, prompting the officers to run after him (*id.* at 09:20:34-42). The officers followed Quarles down the street and into the first alleyway; Officer Griffin sprinted ahead of Officer Zelesnick (*id.* at 09:20:48-:57). Officer Zelesnick caught up to Officer Griffin and Quarles, at approximately 09:20:59, as both men were on the ground (*id.* at 09:20:59). The video showed Quarles laying on his back, with his shirt and jacket raised, exposing part of his waist (*id.* at 09:20:59-09:21:03). As still images from Officer Griffin’s body-worn camera confirm, Quarles’s raised shirt and jacket exposed part of a firearm tucked into Quarles’s waistband at his right hip (9/18/24 Tr. 38-40, 60; Gov’t Ex. 205 and 206).

C. The Trial Court’s Findings

The trial court denied Quarles’s motion to suppress (9/18/24 Tr. 84). It concluded that Quarles was not seized until the officers made physical contact with him, at which point Officer Zelesnick already had

“reasonable articulable suspicion . . . to justify that [*Terry*] stop” (*id.* at 81).

In reaching that conclusion, the trial court found Officer Zelesnick’s testimony to be “credible” based on his demeanor and given the corroborating photographs and still images from the body-worn camera (9/18/24 Tr. 81). The court specifically “credit[ed] Officer Zelesnick’s testimony that he saw the outline of what he immediately recognized to be the handle and magazine of a firearm from [Quarles’s] waistband” (*id.*). Further, the trial court found that the officers “would have been able to see the outline of a firearm through that clothing” because when Officer Zelesnick encountered Quarles it was “a clear day” and Quarles was only “a short distance away” (*id.*).

Moreover, Quarles “began to flee” when “the officers made contact with him” (9/18/24 Tr. 82). The court specifically rejected Quarles’s effort to justify his headlong flight; “the notion that [Quarles] did not know that it was police officers . . . is not supported by the evidence” (*id.*). When Quarles exited the carry-out the officers were “right there” “wearing blue uniforms that clearly made them appear to be police officers” and Quarles had “just passed in front of that police vehicle” (*id.*). Thus, when Quarles

“began to run, that is further evidence supporting a reasonable articulable suspicion” (*id.*).

Officer Zelesnick’s “observation . . . of what he believed to be the outline of a firearm pressing against the right hip of [Quarles’s] waistband area, coupled with [Quarles’s] flight, certainly supports reasonable articulable suspicion that he was armed and dangerous and would have justified the *Terry* stop” (9/18/24 Tr. 82). The officers did not exceed their authority to search by reaching into Quarles’s waistband because the body-worn camera video indicates that when Quarles was placed on the ground by Officer Griffin, “his shirt came up and [] the weapon was immediately visible” (*id.* at 84). Indeed, the court found “it would have been *unreasonable* for the officers” “to allow [Quarles] to just continue running . . . through a neighborhood” after they saw “what they believed to be the outline of a firearm” through his clothing (*id.*) (emphasis added).

SUMMARY OF ARGUMENT

Quarles’s motion to suppress was properly denied. The trial court correctly concluded that Officer Zelesnick had reasonable articulable suspicion to investigate whether Quarles had a firearm before any

seizure occurred (9/18/24 Tr. 82). The police had reasonable suspicion to stop Quarles because Officer Zelesnick observed a rectangular shape that he immediately recognized to be a firearm on Quarles’s right hip and Quarles fled from the officers when they tried to engage him. Accordingly, Quarles’s convictions should be affirmed.

ARGUMENT

Police Had a Reasonable Articulable Suspicion Justifying a *Terry* Stop.

A. Standard of Review and Applicable Legal Principles

Under the Fourth Amendment, “[a]n officer may conduct a brief stop ‘for investigatory purposes’ when he has ‘reasonable suspicion supported by specific and articulable facts that the individual is involved in criminal activity.’” *Funderburk v. United States*, 260 A.3d 652, 656 (D.C. 2021) (quoting *Pridgen v. United States*, 134 A.3d 297, 301 (D.C. 2016)). “During the stop, the officer may also conduct a ‘protective frisk for weapons’ if he has a ‘reasonable, articulable suspicion that the person detained is armed and dangerous.’” *Id.* (quoting *Pridgen*, 134 A.3d at 301).

The “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 v. United States*, 315 A.3d 606, 620 (D.C. 2024) (en banc) (quoting *Kansas v. Glover*, 589 U.S. 376, 380 (2020)). A court “must examine whether 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 stop] was appropriate.” *Id.* (quoting *Terry*, 392 U.S. at 21-22). “This process allows officers to draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them that ‘might well elude an untrained person.’” *United States v. Arvizu*, 534 U.S. 266, 273 (2002) (quoting *United States v. Cortez*, 449 U.S. 411, 418 (1981)). “Multiple factors may contribute to the totality of the circumstances, ‘including the time of day, flight, the high crime 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) (quoting *Singleton v. United States*, 998 A.2d 295, 300 (D.C. 2010)).

This Court reviews the “legal issues raised by a suppression motion . . . de novo.” *Mayo*, 315 A.3d at 616. It “defer[s] to the trial court’s findings of fact ‘unless they are clearly erroneous.’” *Id.* (quoting *Hooks v. United States*, 208 A.3d 741, 745 (D.C. 2019)). The Court will consider “other record evidence presented at a suppression hearing . . . in the light most favorable either to the prevailing party . . . or to the court’s ruling.” *Id.* at 617.

B. Discussion

The trial court properly found that Officer Zelesnick had reasonable articulable suspicion to investigate whether Quarles had a firearm based on his observation of a rectangular shape he immediately recognized to be a firearm on Quarles’s hip and Quarles’s unprovoked flight (9/18/24 Tr. 82).⁵

⁵ Quarles argues (at 10-14) that probable cause was required. However, the facts of this case do not approach a custodial arrest. After the officers observed the outline of a firearm on Quarles’s right hip, they decided to investigate. Quarles fled. When Officer Griffin tackled him, Quarles’s shirt lifted and revealed a firearm. This seconds-long detention did not exceed the time “necessary to quickly confirm or dispel [the officers’] suspicions” that Quarles was carrying a firearm. *In re D.M.*, 94 A.3d 760, 765 (D.C. 2014) (citation omitted). Further, the force used—tackling Quarles, holding his hands above his head, and kneeling on his abdomen—was entirely reasonable to complete the officers’ investigation, (continued . . .)

First, and most importantly, Officer Zelesnick “saw a rectangular shape, which [he] immediately perceived to be the handle and the magazine well of a firearm” on the “right side of [Quarles’s] hip” (9/18/24 Tr. 23; *see also id.* at 26, 49, 53). An officer’s observations of a bulge consistent with the shape of a firearm supports a finding of reasonable articulable suspicion. *See Pennsylvania v. Mimms*, 434 U.S. 106, 112 (1977) (“The bulge in the jacket permitted the officer to conclude that Mimms was armed and thus posed a serious and present danger to the safety of the officer.”); *Singleton*, 998 A.2d at 302 (finding *Terry* stop and frisk lawful where officers saw “a bulge ‘consistent’ with a firearm”). Also, the shape Officer Zelesnick observed was in a place consistent with where a person might keep a firearm. Indeed, Officer Zelesnick’s own firearm was positioned in the same place during his testimony (9/18/24 Tr. 52-53). *See United States v. Hagood*, 78 F.4th 570, 577 (2d Cir. 2023) (“It is well established that a bulge consistent with the shape of a firearm, and

protect their safety, and prevent Quarles from continuing to flee. *See Brown v. United States*, 313 A.3d 555, 561–62 (D.C. 2024) (during a *Terry* stop, officers may handcuff a suspect who (1) “pose[s] an objective safety concern” or (2) “a distinct flight risk” (quotation marks and citation omitted)); *In re M.E.B.*, 638 A.2d 1123, 1128 (D.C. 1993) (same).

located somewhere a firearm would likely be found, supports reasonable suspicion.”).

The court reasonably credited Officer Zelesnick’s observations based, in part, on his training and experience as a police officer (9/18/24 Tr. 78). *See Arvizu*, 534 U.S. at 273 (explaining police are permitted to employ their training and experience to inform their observations to meet the objective reasonable articulable suspicion standard). As the trial court noted, Officer Zelesnick had been a police officer “for four years,” “recovered approximately 100 firearms,” received “40 hours of firearms training,” and “personally owns firearms” (*id.*). Thus, Officer Zelesnick was well-qualified to identify the outline of a firearm.

Quarles argues (at 16) that the rectangular shape Officer Zelesnick saw on Quarles’s right hip did not provide reasonable suspicion that a crime had been committed because it “has sufficient innocent explanations.” However, “[t]o have reasonable suspicion, officers ‘need not rule out the possibility of innocent conduct.’” *Parker v. United States*, 333 A.3d 1162, 1175 (D.C. 2025) (quotation marks and citation omitted); *D.C. v. Wesby*, 583 U.S. 48, 61 (2018) (“probable cause does not require officers to rule out a suspect’s innocent explanation for suspicious facts.”).

Indeed, a comprehensive process of elimination is not required because “the principal function of the investigative stop is to quickly resolve th[e] ambiguity” about the suspicious conduct. *Umanzor v. United States*, 803 A.2d 983, 993 (D.C. 2002) (quotation marks and citation omitted).

Further, Officer Zelesnick “specifically describe[d] the shape or size of the bulge” that he saw. *Singleton*, 998 A.2d at 301. He testified that it was “a rectangular shape,” just like “the handle and the magazine well of a firearm” (9/18/24 Tr. 23). Moreover, the rectangular shape was located in a place where Officer Zelesnick carried his own firearm (*id.* at 52-53). “It is well established that a bulge consistent with the shape of a firearm, and located somewhere a firearm would likely be found, supports reasonable suspicion.” *Hagood*, 78 F.4th at 577. Thus, it was not “a generic bulge in a pocket [that] can be explained by too many innocent causes to constitute ‘reasonable’ suspicion.” *Singleton*, 998 A.2d at 302.

Quarles’s flight also supported the court’s finding of reasonable articulable suspicion (9/18/24 Tr. 82-83). “A defendant’s flight from the police can be a relevant factor in the reasonable suspicion analysis” and “headlong flight is the consummate act of evasion: It is not necessarily indicative of wrongdoing, but it is certainly suggestive of such.” *Mayo*,

315 A.3d at 624-25 (cleaned up). Here, upon seeing the police, Quarles changed direction and ran as soon as he crossed the street (9/18/24 Tr. 55-56). This conduct was “the exact opposite of ‘going about one’s business,’” and certainly contributed to Officer Zelesnick’s reasonable articulable suspicion. *Illinois v. Wardlow*, 528 U.S. 119, 120 (2000).

Taken together, these circumstances would “warrant a person of reasonable caution in the belief that the stop was appropriate,” *Mayo*, 315 A.3d at 606 (cleaned up), particularly given Officer Zelesnick’s experience recovering “[a]bout a hundred firearms” (9/18/24 Tr. 12).

Indeed, in similar cases, this Court and other courts have found that an officer’s observation of a shape consistent with a firearm, combined with a suspect’s suspicious behavior, such as flight, established reasonable suspicion. For example, in *Singleton*, this Court found that an officer’s observation of a bulge in the defendant’s pocket, combined with the defendant’s “awkward walk,” protective hand movements, and “apparent nervousness as he repeatedly looked” back at officers, established reasonable suspicion. 998 A.2d at 302. This Court noted that the “officer’s personal experience with carrying a loaded pistol in his pocket gave him a reasonable basis for perceiving that [the defendant],

with these actions, was doing the same.” *Id.* See also *United States v. Wilson*, 963 F.3d 701 (7th Cir. 2020) (officer had reasonable suspicion where defendant had conspicuous bulge in his pants pocket, grabbed the bulge, turned away from officers, and fled; officers had received a dispatch report about armed drug activity nearby); *United States v. Wright*, 582 F.3d 199 (1st Cir. 2009) (officers had reasonable suspicion where defendant fled upon seeing unmarked police car while clutching his side, and refused to stop when ordered to do so); *United States v. Aitoro*, 446 F.3d 246 (1st Cir. 2006) (officers had reasonable suspicion where an officer observed a bulge in defendant’s waistband as he fled); *United States v. Hunter*, 291 F.3d 1302 (11th Cir. 2002) (officer had reasonable suspicion where, in high-crime-area, defendant fled from group engaged in illegal gambling and appeared to have suspicious bulge under his shirt in his waistband).

By contrast, this case differs from others where this Court has found that officers lacked a reasonable articulable suspicion. As the trial court explained, this case is “not even close” to the facts of *Mayo* (9/18/24 Tr. 71; see *id.* at 82). The trial court articulated that the officer’s reasonable suspicion in *Mayo* was based on “some arguably furtive

movements towards the waistband that the defendant made with his back turned towards the officers, [while] here, you have an officer who testified that he saw the outline of a firearm” (9/18/24 Tr. 83). *See Mayo*, 315 A.3d at 622-23. Additionally, before Quarles fled, two officers wearing normal police uniforms were walking behind him at a casual pace “from some distance away” and Officer Griffin said, “in a pretty calm voice,” “yo, my man” (9/18/24 Tr. 78, 80; Gov’t Ex. 301 at 09:20:27-:33). This is a far cry from *Mayo* where the court noted the “coercive nature of the [Gun Retention Unit officers’] approach,” while “wearing tactical gear,” singling Mayo out from a large group, and specifically asking him, “Do you have a gun?” *Mayo*, 315 A.3d at 628-29.

Miles v. United States, 181 A.3d 633 (D.C. 2018), is also distinguishable. As Quarles states, “Miles’s flight from police was not indicative of criminality because it was in response to one officer following him on foot, and another officer pulling ‘his police cruiser in front of Mr. Miles as he was walking, blocking off his path’ and telling him to ‘stop.’” Br. at 19 (quoting *Miles*, 181 A.3d at 643). Unlike in *Miles*, Quarles was not pursued by numerous police officers; he was not “blocked by a police car” that “drove right onto the sidewalk” in front of him; and

he was never told to “stop.” *See Miles*, 181 A.3d at 643-44. Moreover, any argument that Quarles was intimidated by the police pursuit is directly contradicted by his argument that he fled because he did not know that Officers Zelesnick and Griffin were police officers (9/18/24 Tr. 72). Thus, *Miles* is not “dispositive,” as Quarles argues (at 19-20).

Likewise, this case is distinguishable from *D.W. v. United States*, No. 19-CF-0143, 2025 WL 1982226 (D.C. July 17, 2025). In *D.W.*, this Court found the defendant’s presence in a high-crime-area and flight did not meet the reasonable articulable suspicion standard. *Id.* at *6. But, here, the trial court relied on an officer’s observation of the outline of a firearm and flight, not high-crime-area evidence standing alone. *Cf. Id.* at *5. In fact, Quarles’s case is more like *Wardlow*, where the defendant held an opaque bag that could have contained illegal drugs in an area where drug activity was anticipated. *Id.* at * 6 (citing *Mayo*, 315 A.3d at 626 & n.12, 633). Here, Officer Zelesnick’s observation of the outline of a firearm on Quarles’s right hip, combined with Quarles’s headlong flight from police, established reasonable articulable suspicion to justify the investigatory stop.

This case is also distinguishable from *Posey*, where this Court held that a “nondescript individual distinguishing himself from an equally nondescript crowd by running away from officers unprovoked does not, without more,” establish reasonable suspicion. 201 A.3d at 1204. Here, Officer Zelesnick relied on his own observations of the outline of a firearm on Quarles’s right hip, not a generic description of a robbery suspect, to approach Quarles.

While courts must consider the “myriad reasons an innocent person might run away from the police,” including the experiences of “Black and Brown men,” *Mayo*, 315 A.3d at 631 n.16, and individuals in “highly policed communities,” *id.* at 630, Quarles’s concerns (at 17-18) on this score are mitigated by two factors. First, Quarles specifically argued that he did not know that the individuals following him were police officers (9/18/24 Tr. 72 (“Mr. Quarles has no reason to believe that these are officers that he is fleeing from”)). Second, Quarles was not “in an isolated spot or otherwise in an especially vulnerable or dangerous situation when he noticed the police.” *D.W.*, 2025 WL 1982226 at *9 (Glickman, concurring dubitante). Instead, “he was standing outside” on a public street “in broad daylight” at 9:30 a.m. and, as the body-worn-camera

video shows, there were “numerous potential witnesses to how the officers would conduct themselves.” *Id.* This was not the type of overbearing police jump-out encounter about which this Court has expressed concern.

Thus, based on a totality of the circumstance, the court correctly found that the *Terry* stop was supported by a reasonable articulable suspicion.

CONCLUSION

WHEREFORE, the government respectfully submits that the judgment of the Superior Court should be 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, Meghan S. Skelton, Esq., meghan@skelton.law, on this 30th day of July, 2025.

_____/s/_____
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