

COURT OF APPEALS OF MARYLAND

In re D.D.

In re D.D. · No. No. 27, September Term, 2021 · Decided June 21, 2022

SUMMARY

The Maryland Court of Appeals held that the odor of marijuana, standing alone, provided reasonable suspicion to conduct a brief investigatory detention because possession of 10 grams or more remained a criminal offense. The Court further held that the totality of the circumstances, including evasive behavior, baggy clothing, the odor of marijuana, the discovery of a suspected weapon on a companion, and the officers being outnumbered, supported reasonable suspicion that D.D. was armed and dangerous. The Court reversed the Court of Special Appeals and upheld the denial of D.D.'s motion to suppress the firearm.

CASE DETAILS

COURT	Court of Appeals of Maryland
WRITING FOR THE COURT	Biran, J.; Getty, C.J.; McDonald, J.; Watts, J.; Hotten, J.; Booth, J.; Raker, Irma S., Senior Judge, specially assigned
JURISDICTION	Maryland
DECIDED	June 21, 2022
DOCKET	No. 27, September Term, 2021
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The State sought review of the Court of Special Appeals' reversal of the juvenile court's denial of D.D.'s motion to suppress a firearm recovered during a police investigatory detention and frisk. D.D. filed a conditional cross-petition concerning the legality of the frisk.
STANDARD OF REVIEW	The court accepts the trial court's factual findings unless clearly erroneous and independently reviews the ultimate constitutional question de novo, applying the relevant law to the facts. Suppression-related facts and inferences are viewed in the light most favorable to the prevailing party below.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	State v. D.D.

TOPICS

fourth amendment

search and seizure

criminal procedure

suppression of evidence

probable cause

PRACTICE AREAS

constitutional criminal procedure

juvenile law

evidence suppression

QUESTIONS PRESENTED

1. Whether the odor of marijuana, without more, supplies reasonable suspicion to conduct a brief investigatory detention after Maryland decriminalized possession of less than ten grams.
2. Whether the totality of the circumstances supplied reasonable suspicion that D.D. was armed and dangerous, thereby justifying a Terry frisk.
3. Whether the juvenile court properly denied D.D.'s motion to suppress the loaded firearm.

HOLDINGS

1. Because possession of ten grams or more of marijuana remains criminal in Maryland, the odor of marijuana provides reasonable suspicion that criminal activity may be afoot and, standing alone, justifies a brief investigatory detention. The odor does not, however, provide probable cause for an arrest based solely on the odor.
2. The frisk of D.D. was reasonable under the Fourth Amendment because the totality of the circumstances gave the officers reasonable suspicion that he was armed and dangerous.

KEY QUOTATIONS

“Reasonable suspicion is a less stringent standard than probable cause.” (17-18)

“It follows that a brief investigatory detention based solely on the odor of marijuana is reasonable, whereas an arrest (and a search incident to such arrest) is unreasonable if based solely on the odor of marijuana.” (20)

“A police officer is not permitted to frisk a person just because the officer has detained the person to investigate whether criminal activity is afoot.” (30-31)

“Even following partial decriminalization, the odor of marijuana on a person provides reasonable suspicion to conduct a brief investigatory detention to attempt to determine whether the person has committed a criminal offense.” (39-40)

FACTUAL BACKGROUND

Police responded to an apartment building after a complaint about loud music and the smell of marijuana. Officers smelled a strong odor of marijuana coming from five young men, including fifteen-year-old D.D., directed the group to sit, and began investigating. D.D. acted evasively, wore baggy clothing, and would not identify where he lived; officers then found a suspected BB gun on one companion and a loaded handgun in D.D.'s waistband during a pat-down.

PROCEDURAL HISTORY

The Circuit Court for Prince George's County, sitting as the juvenile court, denied D.D.'s suppression motion and found him involved in the charged firearms offenses. The Court of Special Appeals reversed, holding that the odor of marijuana alone did not establish reasonable suspicion for the detention and declining to decide the frisk issue. The Court of Appeals of Maryland granted the State's petition for certiorari and D.D.'s conditional cross-petition, reversed the intermediate appellate court, and remanded with instructions to affirm the juvenile court.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Reverse the judgment of the Court of Special Appeals and remand with instructions to affirm the judgment of the juvenile court. Costs in the Court of Special Appeals and the Court of Appeals are to be paid by the respondent.

CASES CITED

- Lewis v. State, 470 Md. 1 (2020)
- Robinson v. State, 451 Md. 94 (2017)
- Pacheco v. State, 465 Md. 311 (2019)
- Norman v. State, 452 Md. 373 (2017)
- Crosby v. State, 408 Md. 490 (2009)
- Terry v. Ohio, 392 U.S. 1 (1968)
- Sellman v. State, 449 Md. 526 (2016)
- In re David S., 367 Md. 523 (2002)
- In re D.D., 250 Md. App. 284 (2021)
- Grant v. State, 449 Md. 1 (2016)
- Givens v. State, 459 Md. 694 (2018)
- Robinson v. State, 451 Md. 94 (2017)
- United States v. Sharpe, 470 U.S. 675 (1985)
- District of Columbia v. Wesby, 138 S. Ct. 577 (2018)
- United States v. Arvizu, 534 U.S. 266 (2002)
- Illinois v. Wardlow, 528 U.S. 119 (2000)
- United States v. Matías-Maestres, 738 F. Supp. 2d 281 (D.P.R. 2010)
- El-Amin v. Commonwealth, 607 S.E.2d 115 (Va. 2005)