STATE OF LOUISIANA

VERSUS

JESSICA BUTLER

NO. 25-K-176

FIFTH CIRCUIT

COURT OF APPEAL

STATE OF LOUISIANA

April 29, 2025

Linda Wiseman
First Deputy Clerk

IN RE JESSICA BUTLER

APPLYING FOR SUPERVISORY WRIT FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT, PARISH OF JEFFERSON, STATE OF LOUISIANA, DIRECTED TO THE HONORABLE JACQUELINE F. MALONEY, DIVISION "D", NUMBER 24-5495/23-5496

Panel composed of Judges Susan M. Chehardy,
Stephen J. Windhorst, and Scott U. Schlegel

WRIT DENIED

Defendant, Jessica Butler, seeks supervisory review of the trial court's ruling denying her motion to suppress. For the reasons that follow, we deny defendant's writ application.

Defendant was arrested and charged with possession of methamphetamine weighing less than two grams, a felony, in violation of La. R.S. 40:967(C), and possession of a methamphetamine pipe, a misdemeanor, in violation of La. R.S. 40:1023.

At the March 28, 2025 suppression hearing, Danny Rees, an officer with the Westwego Police Department, testified that he saw defendant on Central Avenue in Westwego after 10:00 p.m. on the evening of October 8, 2024. He stated that she was pushing a bicycle and trying to balance a suitcase, a box, and

a bag. He decided to stop to conduct a welfare check to be sure she was not a victim of domestic violence or had been kicked out of her home.

After stopping her, Officer Rees noticed something protruding from underneath her shirt, above her bra line. He testified that he also observed her sweating profusely, and her hands were shaking. He was concerned that the object in her shirt could contain a weapon or drugs, and he requested a female officer to conduct a pat down for officer safety. Officer Rees claimed that a zipper bag fell out from under her shirt, which he suspected was a narcotics kit. Officer Rees testified that at first defendant denied the bag was hers, but when the officers continued asking her what was in the bag, she claimed that it contained "a methamphetamines pipe." Believing the bag contained narcotics material, he then elected to search it. Officer Rees stated that when he opened the bag, he observed a methamphetamine pipe that contained white and brown residue on the inside and black soot residue on the outside, indicating that it had been used to ingest narcotics. The State introduced the bodycam video from Officer Rees's interaction with defendant into evidence and played the first 15 minutes of the video for the court.

On cross examination, Officer Rees confirmed that he did not ask defendant whether she was a victim of domestic violence. He clarified that she stated she lived only two houses away from where she had been stopped. Officer Rees reiterated that defendant was sweating profusely and that she was nervous and shaking. Officer Rees further testified that during the pat down, a wallet was pulled from beneath defendant's shirt. He then handcuffed defendant and Mirandized her.

Defendant argued at the hearing that at the time of the initial stop, there was no reasonable suspicion of any crime being committed. Officer Rees did not

observe any criminal activity and had not received any reports of criminal or suspicious activity in the area. Defendant claims that this was an illegal stop, as there was no reasonable suspicion, and thus, anything found after the illegal stop is the fruit of the poisonous tree.

In response, the State pointed out that Officer Rees initially thought defendant was the victim of a crime. Only after the answers she gave were evasive, and upon considering the unusual circumstances surrounding the stop and his observation of an object under her shirt, did he become suspicious of a possible crime. Officer Rees believed the item under her shirt could be something containing a weapon, or that it could have contained narcotics, which meant that a pat down was prudent.

The State argued that by the time the bag fell from beneath her shirt, she had been Mirandized, and she chose to answer the officers' questions about what was in the bag by confessing that it contained a methamphetamine pipe. At that point, the State argues, the officers were legally justified to search the bag, which contained narcotic materials.

At the conclusion of the suppression hearing, the trial court determined that the stop was proper, the statement was properly taken, and the evidence was properly seized, thereby denying the motion to suppress evidence and statements.

In her timely writ application, defendant now argues the officer had insufficient grounds to detain her or to seize the object under her sweatshirt during the pat-down.[1]

A trial court's denial of a motion to suppress is afforded great weight and will not be set aside unless the preponderance of the evidence clearly favors

[1] Defendant's writ application does not include any briefing on the suppression of her statement; it includes argument only about suppression of the evidence.

suppression. *State v. Bellow*, 07-824 (La. App. 5 Cir. 3/11/08), 982 So.2d 826, 829. The State bears the burden of proving the admissibility of evidence seized without a warrant. *Id.* (citing La. C.Cr.P. art. 703(D)).

The Fourth Amendment to the United States Constitution and Article I, § 5 of the Louisiana Constitution protect individuals from unreasonable searches and seizures. *State v. Nelson*, 02-65 (La. App. 5 Cir. 6/26/02), 822 So.2d 796, 800, *writ denied*, 02-2090 (La. 2/21/03), 837 So.2d 627. Evidence recovered as a result of an unconstitutional search and seizure may not be used in a resulting prosecution against the citizen. *Id.*

A police officer may stop an individual if he reasonably suspects that criminal activity may be afoot. *Terry v Ohio*, 392 U.S. 1, 30, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968). Once an officer legitimately stops an individual, the officer may frisk the individual if "a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger." *Id.* at 27.

Although reasonable suspicion is required for a police officer to stop an individual, it is not required every time an officer approaches a citizen in a public place. *State v. McKnight*, 22-499 (La. App. 5 Cir. 5/24/23), 366 So.3d 798, 805; *State v. Farber*, 18-353 (La. App. 5 Cir. 11/14/18), 263 So.3d 457, 463. Police officers possess the same right as any citizen to approach an individual and ask a few questions. *Id.* (citing *State v. Jackson*, 00-3083 (La. 3/15/02), 824 So.2d 1124, 1126). A police officer's action of merely approaching an individual does not implicate the protections of the Fourth Amendment. *Id.* However, inconsistent or vague responses, or a nervous demeanor, may give an officer reasonable suspicion to enlarge the scope of the investigation. *State v. Simmons*, 22-232 (La. App. 5 Cir. 7/6/22), 346 So.3d 349,

356. An individual's nervous, evasive behavior is a pertinent factor in determining whether an officer had reasonable suspicion. *State v. Morgan*, 09-2352 (La. 3/15/11), 59 So.3d 403, 406.

"Once an officer conducts an investigatory stop of a person pursuant to La. C.Cr.P. art. 215.1(B), the officer may conduct a limited pat-down frisk for weapons if he reasonably believes he is in danger or that the suspect is armed." *State v. Gilbert*, 23-121 (La. App. 5 Cir. 11/8/23), 377 So.3d 378, 387, *writ denied*, 23-1640 (La. 5/29/24), 385 So.3d 704. It is not necessary that an officer establish that it was more probable than not defendant was armed and dangerous; it is sufficient that the officer establishes a "substantial possibility" of "danger." *State v. Gresham*, 97-1158 (La. App. 5 Cir. 4/15/98), 712 So.2d 946, 952, *writ denied*, 98-2259 (La. 1/15/99), 736 So.2d 200.

Defendant acknowledges in her writ application that the officer was acting lawfully when he approached her. *See State v. Martin*, 11-0082 (La. 10/25/11), 79 So.3d 951, 956 ("A law enforcement officer may approach any person and ask simple questions without a requirement of reasonable suspicion of criminal activity."). Defendant argues, however, that there was no basis for detaining her, for conducting the pat-down, or for searching the bag once it was obtained from defendant's person. Defendant contends that because she was detained and not free to leave, she was inexplicably seized under the Fourth Amendment to the U.S. Constitution and La. Const. Art. I, § 5. *See U.S. v. Mendenhall*, 446 U.S. 544, 553, 100 S.Ct. 1870, 64 L.Ed.2d 497 (1980). Defendant further argues that the frisk was unlawful because the officer had no reasonable basis to believe officer safety was at risk, given that another officer was present, and the State presented no evidence for a reasonable person to draw such an inference. Defendant claims that she answered every question the officer asked, and her

hands were visible throughout the encounter. She contends her nervousness was reasonable because she had been stopped by an officer. Under the circumstances, she claims the officer's observations were insufficient to establish the need for a pat-down under *State v. Sims*, 02-2208 (La. 6/7/03), 851 So.2d 1039, 1045.

Finally, defendant contends that even if the officer had reasonable suspicion to conduct a frisk for weapons, the seizure and search of the pouch exceeded the permissible scope of the frisk under *Minnesota v. Dickerson*, 508 U.S. 366, 113 S.Ct. 2130, 124 L.Ed.2d 334 (1993), because once the pouch was obtained, the officer did not manipulate the pouch to determine whether it contained a weapon; he simply opened the bag. Defendant points to *State v. Barney*, 97-777 (La. App. 5 Cir. 2/25/98), 708 So.2d 1205, and *State v. Boyer*, 07-0476 (La. 10/16/07), 967 So.2d 458.

In *Barney*, this Court determined that the officer's stop and the frisk were both lawful under *Terry*, even though the officers did not observe any suspicious behavior between defendant and his companion. During the frisk, the officer found no weapons but instead discovered a matchbox on defendant's person. This Court determined that by opening the matchbox and discovering crack cocaine inside, the officer exceeded the lawful scope of the seizure under *Dickerson*. The Court reasoned that once the matchbox was no longer in Barney's possession, any potential threat of the officer's safety was eliminated, and the justification for the limited privacy invasion authorized by *Terry* and *Dickerson* evaporated. *Barney*, 708 So.2d at 1211. The Court therefore reversed the trial court's ruling denying the motion to suppress.

When Officer Rees initially approached defendant, he testified that he was concerned for *her* safety, given the late hour and the fact that she was walking a

bike with a suitcase, a box, and a bag. At that time, defendant had not been seized for purposes of the Fourth Amendment. *See Farber*, *supra*. After speaking to defendant, however, Officer Rees noticed an unusual protrusion under her shirt. When he asked defendant what was there, she stated that it was her bra, although he observed, and the bodycam video reveals, something else. Officer Rees also testified that defendant was sweating profusely. At this point, Officer Rees had reasonable suspicion of potential criminal activity, warranting a pat-down for officer safety.

Officer Rees's bodycam video, which was introduced into evidence at the hearing, appears to show that the bag fell to defendant's waist area during the pat-down. The female officer who was conducting the frisk caught the bag before it fell to the ground.[2] Officer Rees testified that when defendant was asked what was in the bag, she denied it was hers but admitted that it contained a methamphetamine pipe. After that admission, Officer Rees opened the bag to discover the meth pipe.

In *Boyer*, the Supreme Court determined that the officer's continued search of defendant's person after removing a cell phone, which the officer initially thought could be a weapon, exceeded the scope of the permissible search. Continuing the pat down, the officer discovered two round objects in defendant's pocket. "Because the incriminating character of the charcoal filters/wire mesh was not 'immediately apparent,' the subsequent seizure cannot be justified by the plain feel doctrine." *Boyer*, 967 So.2d at 473. The Court continued: "In order for evidence seized under the plain feel exception to the warrant requirement [to be admissible], the officer must have probable cause to

[2] Defendant contends in her writ application that the female officer "reached under" defendant's sweatshirt to remove the pouch.

believe the item is contraband before seizing it." *Id.* (citing *Dickerson*, 508 U.S. at 376-77, 113 S.Ct. at 2137-38).

We find the present facts distinguishable from *Barney* and *Boyer*, because there is no indication in either of those cases that the defendant admitted to possessing the contents of the matchbox before it was opened (*Barney*), or admitted to having contraband on his person (*Boyer*). Here, however, after she had been Mirandized, defendant admitted that the contents of the bag included contraband, although she denied ownership. Upon her admission, Officer Reese had probable cause to believe the item contained contraband and to seize and search the bag. *Boyer*, 967 So.2d at 473.

Given these facts, we cannot say the trial court abused its discretion in denying defendant's motion to suppress. Accordingly, we deny defendant's writ application.

Gretna, Louisiana, this 29th day of April, 2025.

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SJW
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NOTICE OF DISPOSITION CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE DISPOSITION IN THE FOREGOING MATTER HAS BEEN TRANSMITTED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 4-6** THIS DAY **04/29/2025** TO THE TRIAL JUDGE, THE TRIAL COURT CLERK OF COURT, AND AT LEAST ONE OF THE COUNSEL OF RECORD FOR EACH PARTY, AND TO EACH PARTY NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

Curtis B. Pursell

CURTIS B. PURSELL
CLERK OF COURT

25-K-176

E-NOTIFIED

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