

**Virginia Court of Appeals -**

Anthony v. Commonwealth: September 3, 2024

Newport News: Defendant appeals his convictions for Possession of a Firearm and Drugs on Fourth Amendment grounds.

BRANDON DAJUAN ANTHONY

v. Record No. 1000-23-1

COMMONWEALTH OF VIRGINIA

MEMORANDUM OPINION\* BY JUDGE JUNIUS P. FULTON, III

SEPTEMBER 3, 2024 FROM THE CIRCUIT COURT OF THE CITY OF NEWPORT NEWS Gary A. Mills, Judge Charles E. Haden for appellant. Suzanne Seidel Richmond, Assistant Attorney General (Jason S. Miyares, Attorney General, on brief), for appellee. The trial court convicted Brandon Dajuan Anthony on his conditional guilty pleas of possession of a firearm after being convicted of a violent felony and possession of a Schedule I or II controlled substance. On appeal, he argues the trial court erred by denying his motion to suppress evidence police obtained during a warrantless seizure and search of his person. Finding no reversible error, we affirm the trial court's judgment

*Facts:* The defendant, a convicted violent felon, carried a firearm and drugs on his person. Officers received a tip there were two felons seated in a vehicle in a convenience store parking lot carrying concealed weapons. When officers arrived, they observed a car with only one man inside. Officers entered the store and saw several men inside. The defendant repeatedly "glanced" at them and attempted to avoid them as they approached him. When he was about to encounter one of the officers, the defendant "backpedaled" and walked down a different aisle.

Then, the officers saw the defendant reach toward a shelf with his left arm and heard a "loud clanking noise." An officer saw the firearm on the shelf where the defendant had reached. He then signaled to the other officer, who detained the defendant. The officers searched the defendant and found his firearm and drugs.

*Held:* Affirmed. The Court held that the trial court did not err by denying the defendant's motion to suppress the firearm and drugs that the officers recovered during

their investigation because they lawfully arrested the defendant, and then seized the drugs from him during a valid search incident to arrest.

The Court ruled that the arrest was valid because the officers had probable cause, based on their observations, to believe that the defendant unlawfully carried a concealed handgun. The Court reasoned that the tip regarding a concealed weapon, the defendant's evasive behavior, and his futile attempt to discard and conceal the firearm without attracting attention as the officers approached him, taken together, provided probable cause that the defendant was carrying a firearm "hidden from common observation" about his person in violation of § 18.2-308.

In a footnote, the Court explained that while neither officer had any knowledge at the time as to the defendant's status as a former felon or whether he had a valid concealed carry permit, as the Virginia Supreme Court held in *Whitaker*, previously, that fact was immaterial. In *Whitaker*, the Court had found that when police learned that a suspect had a firearm "in his pocket," they had probable cause to arrest him for carrying a concealed weapon.

In another footnote, the Court explained that the fact that the officers did not know the identity or reliability of the informant, as well as the fact that the tip was relayed via another officer, while "understood as relevant considerations in the totality-of-the-circumstances analysis," were not in and of themselves dispositive on the issue of probable cause. The Court reasoned that, though the officers had only a hunch or suspicion that an individual inside the store may have been concealing a weapon, and further, that the defendant was indeed that individual, the defendant's evasive conduct, as well as the unusual "loud clanking noise" and subsequent discovery of the weapon, functioned to corroborate the veracity of the tip, thereby giving rise to probable cause that the defendant had possessed a concealed weapon on his person, and ultimately discarded it on the shelf in order to further conceal it from the police.

Tags: Fourth Amendment – Probable Cause – Arrest – Concealed Firearms