Circuit Court for Carroll County
Case No. K-13-44839

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2060

September Term, 2015

TARVARIS TIMOTHY SHAMDS,

v.

STATE OF MARYLAND

Graeff,
Kehoe,
Sharer, J. Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Sharer, J.

Filed: December 5, 2017

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Appellant, Tarvaris Shamds, was charged in the Circuit Court for Carroll County with possession with intent to distribute cocaine and related offenses. After his motion to suppress was denied, appellant proceeded on a not guilty plea on an agreed statement of facts, was convicted of possession with intent to distribute, and then sentenced to three years with all but one year suspended, followed by three years supervised probation.

In his timely appeal, Appellant asserts that the circuit court erred in denying his motion to suppress.

For the following reasons, we find no error and shall affirm.

BACKGROUND

The State's sole suppression witness was Deputy Michael Hugel, of the Carroll County Sheriff's Department, the arresting officer. As a prelude to his testimony, the State established that he had been in law enforcement for four years, that he received 40 hours specialized training, including training concerning illegal drugs, and that he had been involved in approximately 80 drug investigations, 20 to 30 of which involved crack cocaine. Hugel also testified that he had felt crack cocaine during drug investigations at traffic stops previously, testifying that crack cocaine felt "like a hard rock like substance." He further testified that he was familiar with the packaging of crack cocaine, that it was normally packaged in "small amounts, less than a gram," and that "[u]sually it's either wrapped in some type of paper or in small plastic baggies." In the course of his duties, Hugel had patted down individuals with crack cocaine in their pockets approximately three times before, and recognized the contraband "by the feel of it." He also had assisted other officers in similar situations approximately 50 times.

On the day in question, November 2, 2013, at approximately 1:51 a.m., Hugel was on patrol in the Sykesville/Eldersburg area of Carroll County, near the intersection of Routes 32 and 26 and Johnsville Road, when he noticed a vehicle approaching him in the opposite direction. The high beam head lights on that vehicle were "on or the aim was out of adjustment," and the "red glaring, dazzling effect took away my night vision for a moment." Hugel then made a u-turn, activated his emergency equipment, and stopped the vehicle. The vehicle pulled into the parking lot of a nearby business, Salerno's Restaurant, which was closed at the time.

Hugel approached the driver of the vehicle, who was appellant, and asked him for license and registration. As appellant complied, producing a Virginia driver's license, the deputy made several observations, including that: appellant was "overly friendly;" there was approximately $100 in cash in the glove compartment but "nothing else in the vehicle;" the presence of a single key in the ignition; there was a dealer tag on the vehicle; and, the high beam indicator was not activated on the vehicle dashboard. Hugel testified that the presence of a single key indicated to him that appellant was using the vehicle on a short-term basis, and that this, as well as the dealer tag, suggested the possible presence of narcotics, based on his training, knowledge and experience.

After Hugel explained the reason for the stop, appellant stated that he had recently had the headlights replaced and that they might be improperly adjusted. Hugel took appellant's license and registration back to his vehicle, ran a warrants check, as well as checking the license and registration. After apparently seeing no alerts, Hugel wrote a warning and returned to appellant's vehicle.

At that point, he asked appellant to step out of the vehicle and explained the warning, including that there was no fine for the equipment violation. He returned appellant's license and registration, gave him the written warning, and then told appellant he was "free to go." Hugel testified that he also asked appellant if he understood he was free to go and appellant replied that "yes, I understand."

As appellant walked back towards the driver's door of his vehicle, Hugel stated, "Mr. Shamds, do you mind if I ask you a question?" Appellant replied, "sure." Hugel testified that "[a]t that time I asked Mr. Shamds for consent to search his person, the vehicle and all contents within which he then replied, 'sure.'" Hugel clarified that he told appellant that "there is [sic] some indicators that I had picked up on that rose [sic] my suspicion," and that appellant's exact response was "sure, no problem."

Hugel began to search appellant by patting down his legs. As he did so, he noticed that appellant would not spread his legs apart, despite being repeatedly instructed to do so. Hugel testified that "each time he would only open about an inch or so" and that appellant's body was "very tense as if he was squeezing his butt cheeks together." Hugel continued:

> I continued my sweep up the leg to the buttocks area between his legs. I could tell Mr. Shamds was starting to tense even more which arose my suspicion even more. At that time I felt a bulge coming from between his butt cheeks which I immediately was able to determine to be a type of plastic bag by the feel of it to the clothing and I could feel a hard rock like substance inside of it and through my training, knowledge and experience, I thought it to be crack cocaine.

When asked to explain why he thought he felt plastic baggies containing crack cocaine, Hugel responded:

> One was the feel of it. You know, I felt it before on traffic stops. I'm familiar with the feel of it. The way he was attempting I guess you could say, conceal it on his person. Every time I have had illegal narcotics between the legs, it has always been way up between the butt crack. So just from experience, I knew it was crack cocaine.

Hugel then placed appellant in handcuffs, observing that appellant tensed up further, and "it took quite a few minutes to get the object loose and remove it. He wasn't giving it up." Hugel admitted that the object was not visible, but "as you felt with your hand up, you could feel it protruding." His testimony continued:

> After quite a few minutes of attempting to shake it loose, I loosened Mr. Shamds' jeans, pulled his jeans down leaving his boxers on him so it wasn't exposed and I was able to get a better grasp of the item and wiggle it loose.

Appellant was searched near the rear of his vehicle, right behind the trunk and in front of the deputy's police vehicle. Hugel testified that neither appellant's private area nor his buttocks were exposed to the public. No other persons were nearby when appellant was searched in the parking lot, and the restaurant had been closed for approximately one hour before the stop. But, Hugel acknowledged that a friend of appellant's walked up to the area after appellant was already placed in the deputy's police vehicle.

Master Deputy Cromwell, was also on the scene during the search. Another deputy, Deputy Best, arrived after appellant was in custody.[1] Although the deputies were armed and in uniform, none of them unholstered their weapons during the encounter.

[1] The record does not disclose the full names for either of the deputies that arrived on the scene to assist Hugel.

Hugel testified that he did not yell at appellant, but confirmed that, although he generally used a calm voice, he did raise his voice when appellant refused to comply with his commands to release the item from between his legs.

Ultimately recovered from appellant's buttocks area was a plastic, clear baggie containing approximately 15 small baggies of suspected crack cocaine. Further searches of appellant's person, both at the scene and at the police station, revealed over $500 in currency and additional contraband, including marijuana.

Finally, on direct examination, Hugel was asked why individuals will conceal items on their person in this manner, and he responded:

> From my training, knowledge and experience, there are a lot of deputies that are not very – or police officers in general that are not very comfortable with doing a full search between a person's legs but from, like I said, my knowledge, training and experience, I know that that's a lot of places that people hide drugs just because they know that it's a lesser chance of it being located.

On cross-examination, Hugel agreed that he unbuckled appellant's pants to search him. He also confirmed that he pulled down appellant's pants, stating "[t]hat's correct. That's not normal procedure but due to the circumstances." Appellant was neither nervous nor sweating. He further agreed that Master Deputy Cromwell was present when he asked appellant for consent to search.

Hugel confirmed that, at the time of this stop, he had only been with the Sheriff's Office for two months, and that his prior employment was with the Maryland Transportation Authority. This case was just his second possession with intent to distribute case as a Sheriff's deputy.

Hugel testified that, when he searched appellant, he was wearing leather gloves, not surgical or sterilized gloves. As for the search itself, he testified on cross-examination:

> [COUNSEL]: Okay. Now, when you first noticed my client holding his butt cheeks together, did you stick your hand down and reach in to feel what was there?
>
> [HUGEL]: No.
>
> [COUNSEL]: Okay. You did it from the back?
>
> [HUGEL]: That's correct.
>
> [COUNSEL]: And you could feel the $60 that was in one pocket?
>
> [HUGEL]: Well, the money was recovered after the fact that the –
>
> [COUNSEL]: But it was back there where you were searching with your hand?
>
> [HUGEL]: Well, I had not went to the pocket yet. I started from the inside of the leg and swept up. That was at the very beginning of the search and that's when I felt the item before I got to the pockets.
>
> [COUNSEL]: Okay. And you felt it with your forefinger?
>
> [HUGEL]: That's – well, with the top of my forefinger, that's correct.
>
> [COUNSEL]: The top of your forefinger?
>
> [HUGEL]: Yeah.
>
> [COUNSEL]: And that forefinger had a glove on it? Is that correct?
>
> [HUGEL]: That's correct.
>
> [COUNSEL]: And when you bumped against the object, what did it feel like? Soft? Hard?

> [HUGEL]: I bumped against it. Once I bumped against it, I then turned my hand over and used my thumb and finger and, you know, squeezed the items, I felt it protruding.
>
> [COUNSEL]: Okay. So at this point in time you were on the side of the road, you had your hands between my client's legs, grabbing or manipulating what was there? Is that correct?
>
> [HUGEL]: Not manipulating but getting a feel of it, that's right.
>
> [COUNSEL]: Okay. With the tips of your fingers?
>
> [HUGEL]: That's right.
>
> [COUNSEL]: Okay. So, it was not immediately apparent what was there. You needed to actually touch it and feel it and move it around?
>
> [HUGEL]: Well, it was immediate. I did one squeeze of the time and I could feel the rock like substance as well as the plastic bag material.
>
> [COUNSEL]: Okay. So you needed to squeeze it in order to feel the rock like substance? Is that correct?
>
> [HUGEL]: That's correct.

Hugel believed, but was not certain, as to the type of pants worn by appellant. He denied pulling down appellant's underwear, but he agreed that he placed handcuffs on appellant after he felt the bulge in appellant's pants and before he loosened appellant's pants and pulled them down.

On redirect examination concerning the search, Hugel testified as follows:

> [STATE]: There are a lot of questions about the full search in the public parking lot on cross about your comment a lot of people are not willing to get up in to people's crotch areas for searches. When you went into Mr. Shamds' crotch area, were your hands on the outside of his pants?
>
> [HUGEL]: That's correct.

> [STATE]: All right. And is that what you are talking about searching a full search, getting up in there or getting up into the crotch area?
>
> [HUGEL]: A full search is, you know, curving his whole body. It's the difference between frisking when you just do around the waist for weapons as to, you know, what I call a full body search not including the cavities but you are patting down the entire body.
>
> [STATE]: And when it is a search versus a pat down or search you are manipulating things to see what they are?
>
> [HUGEL]: That's correct.
>
> [STATE]: And in this case, did you manipulate the bulge to find out what it was?
>
> [HUGEL]: When I initially made contact with it and like I said, I turned my hand over and, you know, given it one squeeze and I was able to by the pressure and feel, you know, the item. So I wouldn't necessarily say manipulate it. I was just pretty quick with identifying it.
>
> [STATE]: You squeezed it?
>
> [HUGEL]: That's right.
>
> [STATE]: This was not a pat down [with] the back of your hand?
>
> [HUGEL]: No. I went up the leg and then once I felt it with the top of my hand is when I turned my hand over.

Appellant testified that the restaurant parking lot where he was pulled over was "very lit" with street lights and that people traveling nearby could see what was going on. He asserted that Hugel had his hand on his gun when he approached appellant's vehicle on foot. He also testified that his vehicle was "kind of" blocked in, with a curb in front of his vehicle, the other officer's vehicle parallel to his, and Hugel's vehicle parked about five to ten feet directly behind his. As for what transpired as the traffic stop was concluding, appellant testified as follows:

> Well, he came back where me and the officer was talking, he came back and he was like, "well, sir, you are free to go but I have to pat you down first." And I was like, well, I was looking at him and I was like you're saying I'm free to go but you have to pat me down first. He instructed, yes. He had his hand on his gun and he was very aggressive when he was saying it though.
>
> Then I was like, well, I didn't feel free at all so I told him yes.

At that point, appellant recalled, the officers grabbed him, pushed his arms up behind his back, and laid him over the car. Appellant asked them, multiple times, to stop, testifying that he told them "[t]his is too aggressive to be a pat down." Appellant was searched from his waist down, and testified that the officer "was trying to feel[] my testicles," shaking his pants, and asking him "what you tightening up for?" The officer then stated "Oh, well, we got to do this the hard way[,]" and put appellant in handcuffs, then unbuckled appellant's pants, pulled his pants down below his knees, and then shook his underwear until the drugs fell out. Appellant maintained that he told the officer that he was grabbing his testicles and that he did not consent to this search, testifying that "I consented to a pat down for any weapons or anything because he told me I was free to go." He maintained that he thought he was just going to be patted down "for any weapons or anything." He also testified that he told them to stop and that he was withdrawing his consent, but the officers continued the search, putting more pressure on his hands while they did so.

On cross-examination, appellant was asked about his reasons for consenting to what he thought was only a pat down. Appellant denied that he consented because he thought the contraband was adequately concealed in his rectum. In fact, he denied that he

concealed the contraband in his rectum at all. When asked to explain why he had the contraband concealed in his buttocks area, appellant replied "[b]ecause I didn't want it in my pocket. Not because nobody to find it because I didn't want it in my pocket." When asked whether he placed the contraband there to prevent a police officer from finding it, appellant replied "[w]ell, that wasn't the initial reason why I did it, you know." He agreed that it was harder to find an item if it was concealed near his buttocks. But, appellant noted that did not stop Hugel because he "unbuckled my pants to get there."

Appellant was also asked about the moment when Hugel pulled down his pants:

> I felt embarrassed. I actually felt humiliated because there were cars passing by, they was coming down towards the Royal Farms because the Royal Farms is a gas station which is on the corner probably not even a good 50 yards away. They had passing vehicles passing by looking at me. It just was like humiliating.
>
> I actually kind of wanted to cry not because I was being arrested but because of the public humiliation. I go to that gas station down the street to get gas a lot of times and it's just like now I haven't been back there since, you know, I haven't been back there at all. Not to get gas, anything, because it's [sic] just scared that somebody might have seen me and I don't want to go through that, you know.

Appellant estimated that approximately 25 people drove by while he was being searched. Although appellant generally testified that his pants were pulled down past his knees, at one point during his cross-examination, appellant testified that his pants were pulled "passed [sic] my knees to my ankle. They was here." He further testified that "my boxers was kind of protruding down passed [sic] my buttocks but it wasn't all the way passed [sic] the lower part." When asked how he was positioned in relation to the road, appellant testified that "my buttocks is facing where as though you can see the building

or you could see the road," and that "if you ride passed [sic], you can see my booty." When asked whether he was saying his buttocks were exposed, appellant clarified "[n]ot all the way but partially, yes, whereas he had been shaking my pants. I mean as he had been shaking by [sic] boxers." Appellant agreed his genitals were not exposed. He also agreed that someone he knew walked up at some undetermined point after the search.

The court heard additional information, including testimony that the Royal Farms store appellant referenced was in a different shopping center, located an unstated distance away, and separate from Salerno's. Appellant agreed there was no nearby foot traffic where he was searched, at least until his friend arrived after the stop, but maintained that there were vehicles passing by and that "people was slowing down for the lights. They seen the flashing lights going on." Appellant also testified that he was wearing "very thick" khaki pants that were "made for hunting." Appellant further agreed that the vehicle he was driving had Pennsylvania tags, which were also car dealer tags.

In rebuttal, Hugel denied that he told appellant that he would just be patted down, testifying that he asked for consent to search. He denied grabbing appellant's testicles and denied that appellant ever asked him to stop the search. He also agreed he pulled appellant's pants down to his knees. Hugel also was asked about the location of the search:

> [STATE]: And what direction – so if you [sic] facing me and I am the road, what direction was the Defendant standing?
>
> [HUGEL]: Well, the vehicles were pulled into the parking lot facing westbound. I had him directly in the back of his vehicle so he was between me and his vehicle which is a safety thing for me.

> [STATE]: Okay.
>
> [HUGEL]: So there was very minimal visibility. It was just about a one foot gap directly off to the side but the vehicle, his vehicle, you know, hiding his person from anyone who drove by from seeing him.
>
> [STATE]: Was the vehicle between Mr. Shamds and the roadway?
>
> [HUGEL]: I guess you would say it was right next to us –
>
> [STATE]: Okay. From your perspective do you know whether or not persons on the roadway could see Mr. Shamds' person or his buttocks?
>
> [HUGEL]: Maybe for a brief second.
>
> [STATE]: Did you ever expose Mr. Shamds' skin to public view?
>
> [HUGEL]: I did not. Other than his legs were exposed when the pants came down.

After hearing testimony, the parties argued concerning: the reasonableness of the stop; whether appellant consented to a search and then revoked it; the scope of the consent, including whether the search violated *Minnesota v. Dickerson*, 508 U.S. 366 (1993); and, whether appellant was subject to an illegal strip search. The motions court took the matter under advisement, then issued a written memorandum and order denying the motion to suppress. In that order, after a thorough restatement of the facts developed at the suppression hearing, the court concluded as follows:

> After a careful review of the testimony adduced at the hearing held on Defendant's Motion to Suppress, the Court finds (1) that the officer had probable cause to believe that a traffic law had been violated by defendant and, therefore, that the initial stop of Defendant was a valid stop, and (2) that Defendant voluntarily consented to the search of his person and his vehicle and its contents and that his consent remained valid during the search of his person.

As necessary, we shall include additional information in the following discussion.

DISCUSSION

Appellant contends the court erred in denying the motion to suppress because: he did not voluntarily consent to the search; assuming that he did consent, the police unreasonably exceeded the scope of that consent; and, he was subjected to an unlawful strip search.

The State responds that: the motions court was not clearly erroneous in concluding there was consent; the search did not exceed the scope of appellant's consent; and, once there was probable cause to believe that appellant was concealing drugs, the lowering of appellant's pants to retrieve that contraband was not an unlawful strip search.[2]

Our standard of review is well-established:

> In reviewing a trial court's ruling on a motion to suppress, we defer to that court's findings of fact unless we determine them to be clearly erroneous, and, in making that determination, we view the evidence in a light most favorable to the party who prevailed on that issue, in this case the State. We review the trial court's conclusions of law, however, and its application of the law to the facts, without deference.

Taylor v. State, 448 Md. 242, 244 (2016) (citations omitted); *see also State v. Andrews*, 227 Md. App. 350, 371 (2016) ("[W]e make an independent, *de novo*, appraisal of

[2] Appellant raises no issue on appeal as to the propriety of the initial traffic stop. Hugel testified that he stopped appellant for a violation of Section 22-219(g) of the Transportation Article, which provides that "[n]o lamp may project a glaring or dazzling light." *See* Md. Code (1977, 2012 Repl. Vol.), § 22-219(g) of the Transportation Article ("TR"); *see also* TR § 22-202.1; *Thanner v. State*, 93 Md. App. 134, 141 (1992) (observing that the officer could stop appellant for operating a motor vehicle on a public highway at night without headlights). The circuit court concluded that, based on all of the testimony, "[Hugel] had probable cause to believe that a traffic law had been violated by [Shamds] and, therefore, that the initial stop of [Shamds] was a valid stop[.]"

whether a constitutional right has been violated by applying the law to facts presented in a particular case").

A. The motions court was not clearly erroneous in finding that appellant consented to a search.

The Fourth Amendment to the Constitution of the United States, made applicable to the States through the Fourteenth Amendment, *see Mapp v. Ohio*, 367 U.S. 643, 655 (1961), guarantees, *inter alia*, "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. CONST. amend. IV. "The Fourth Amendment does not proscribe all state-initiated searches and seizures; it merely proscribes those which are unreasonable." *Florida v. Jimeno*, 500 U.S. 248, 250 (1991). A search committed without a warrant "does not violate the Fourth Amendment if a person consents to it." *Varriale v. State*, 218 Md. App. 47, 53 (2014), *aff'd*, 444 Md. 400 (2015), *cert. denied*, 136 S.Ct. 898 (2016). *See also Schneckloth v. Bustamonte*, 412 U.S. 218, 218 (1973) (explaining that to be valid, consent to search must be voluntary, based on the totality of the circumstances).

Consent may be given expressly, impliedly, or by gesture. *Turner v. State*, 133 Md. App. 192, 207 (2000). The burden of proving that the consent was valid requires the State "to prove that the consent was freely and voluntarily given." *Jones v. State*, 407 Md. 33, 51 (2008) (citing *United States v. Mendenhall*, 446 U.S. 544, 557 (1980)). Further, "[t]he determination of whether consent is valid is a question of fact, to be decided based upon a consideration of the totality of the circumstances." *Jones*, 407 Md. at 52 (citing *Schneckloth*, 412 U.S. at 227).

Hugel testified that he asked for consent to search appellant after he told appellant he was free to go and after appellant started to walk back to his vehicle. Hugel testified that he also told appellant "there is [sic] some indicators that I had picked up on that rose [sic] my suspicion," and that appellant's exact response was "sure, no problem." In contrast, appellant testified that Hugel told him although he was free to go he needed to pat him down first. Appellant also claimed that, as Hugel told him he had to be patted down, his hand rested on his gun. Appellant testified that he "didn't feel free at all so I told him yes."

In its memorandum opinion and order, the motions court noted these discrepancies but did not expressly state it was crediting one version over the other. However, the court did rule in the State's favor on this point, ultimately finding that appellant "voluntarily consented to the search of his person and his vehicle and that his consent remained valid during the search of his person." Therefore, we will review "the evidence and inferences that may be drawn therefrom in the light most favorable to the party who prevails on the motion[,]" *Moats v. State*, 455 Md. 682, 694 (2017) (quoting *Raynor v. State*, 440 Md. 71, 81 (2014)), and must determine "'[i]f there is any competent evidence to support the factual findings of the trial court, [and if there is,] those findings cannot be held to be clearly erroneous." *Grimm v. State*, 232 Md. App. 382, 397 (2017) (quoting *Goff v. State*, 387 Md. 327, 338 (2005)), *cert. granted,* No. 164, Sept. Term, 2017, 2017 WL 4418237 (Md. Sept. 12, 2017). In so doing, "we [also] review legal questions *de novo*, and . . . must make an independent constitutional evaluation by reviewing the relevant

law and applying it to the unique facts and circumstances of the case." Moats, 455 Md. at 694 (quoting *Grant v. State*, 449 Md. 1, 14–15 (2016)).

The Fourth Circuit's analysis of this issue provides guidance for our review:

> [W]hen the lower court "bases a finding of consent on the oral testimony at a suppression hearing, the clearly erroneous standard is particularly strong since the [court] had the opportunity to observe the demeanor of the witnesses." [*United States v. Wilson*, 895 F.2d 168, 172 (4th Cir.1990) (per curiam)], (quoting *United States v. Sutton*, 850 F.2d 1083, 1086 (5th Cir.1988)). Thus, even when an appellate court is convinced that it would have reached an opposite conclusion had it been charged with making the factual determination in the first instance, . . . , a reviewing court may not reverse the decision of the district court that consent was given voluntarily unless it can be said that the view of the evidence taken by the district court is implausible in light of the entire record.

United States v. Lattimore, 87 F.3d 647, 650-51 (4th Cir. 1996).

The court's ruling on the question of consent was not implausible based on the evidence adduced at the suppression hearing. Both parties agree that appellant was told that he was free to go and that, subsequently, Hugel asked for consent to search. Although we shall address the scope of that consent, at this point in our analysis, we are guided by *State v. Green*, 375 Md. 595 (2003). There, at the end of routine traffic stop, and after the officer involved received cautions from dispatch that Green was known for drugs and might be armed and dangerous, the officer gave Green a warning for speeding, returned Green's license and registration, and told him he was free to go. 375 Md. at 601. At that point, the officer asked Green if he would answer a few questions before leaving. *Id.* When Green replied, "Sure," the officer asked Green "if he had any guns, drugs or alcohol in the vehicle." *Id.* Green responded, "No," and the officer continued his line of inquiry by asking Green "if he would consent to a search of his person and

vehicle." Green responded, "Sure. Go ahead." *Id*. After another officer arrived on the scene, Green's car was searched and the police recovered quantities of marijuana and suspected cocaine. *Id*. at 602.

At a suppression hearing, Green testified that he did not receive his license and registration before being asked to consent to a search. 375 Md. at 603-04. Therefore, he claimed, he did not feel free to leave. He also testified that he refused consent. *Id*. at 604. The motions court resolved the conflicting evidence in favor of the State, ruling that Green consented to the search. *Id*. at 604-05. The Court of Appeals ultimately agreed. *Id*. at 606. In its analysis, the Court considered the following factors:

> [T]he time and place of the encounter, the number of officers present and whether they were uniformed, whether the police removed the person to a different location or isolated him or her from others, whether the person was informed that he or she was free to leave, whether the police indicated that the person was suspected of a crime, whether the police retained the person's documents, and whether the police exhibited threatening behavior or physical contact that would suggest to a reasonable person that he or she was not free to leave.

375 Md. at 613 (quoting *Ferris v. State*, 355 Md. 356, 377 (1999)).

The Court concluded that several of these factors weighed in favor of the State's position that Green consented to the search, including: the time of the stop (7:30 p.m.); there were no signs of threatening behavior on the part of the officers; the officer's call for backup was reasonable under the circumstances; and, perhaps primarily, Green's documents were returned and he was told that he was free to go. *Id*. at 615-18. The Court therefore held that, under the totality of the circumstances, "Green voluntarily consented to prolonging the police encounter beyond the lawful traffic stop. In other

words, a reasonable person in Green's position would have felt free to terminate the encounter and decline [the officer's] request to search the car." *Id*. at 620.

Here, and accepting the facts in the light most favorable to the State, the circumstances suggest that appellant's consent was voluntary. After his license and registration were returned, appellant was told that he was free to go and Hugel made sure that appellant understood that he was free to go. The inference is supported by the evidence that appellant started back towards his vehicle before Hugel, like the officer in *Green*, asked him whether he would "mind" if he was asked a question. The subsequent request for consent came after appellant replied, "sure." These facts weigh heavily as we consider the voluntariness of appellant's consent.

Additionally, we note that appellant conceded that the later-arriving officer was "not aggressive" and that he had a "nice conversation" with him while Hugel was in the process of writing the traffic violation warning. And, contrary to appellant's claim that the officers had their hands on their guns, Hugel maintained that he never removed the gun from his holster during the encounter. Ultimately, the court resolved those disparities in favor of the State. Under the circumstances, and given our standard of review, we concur that appellant voluntarily consented to a search of his person.

B. The search of appellant's person did not exceed the scope of consent.

Appellant also suggests that Hugel exceeded the reasonable limits of any consent by conducting a full search and manipulating an item between his buttocks. This assertion raises the issue of the legal scope of the consent to search. "'[T]he standard for measuring the scope of a suspect's consent under the Fourth Amendment is that of

"objective" reasonableness – what would the typical reasonable person have understood by the exchange between the officer and the suspect?'" *Green*, 375 Md. at 621 (quoting *Jimeno*, 500 U.S. at 251); *see also Sifrit v. State*, 383 Md. 77, 115 (2004) ("The scope of a suspect's consent is measured by an objective standard"). This Court has stated that "[t]he objective reasonableness determination is a question of law, but 'factual circumstances are highly relevant when determining what the reasonable person would have believed to be the outer bounds of the consent that was given.'" *Redmond v. State*, 213 Md. App. 163, 186-87 (2013) (quoting *United States v. Mendoza-Gonzalez*, 318 F.3d 663, 667 (5th Cir. 2003)). And, "[t]he scope of a search is generally defined by its expressed object." *Redmond*, 213 Md. App. at 187 (quoting *Jimeno*, 500 U.S. at 251).

Hugel testified that he told appellant that "there is [sic] some indicators that I had picked up on that rose [sic] my suspicion. I explained that to him and that is when I asked, may I search your person, the vehicle and all contents within?" The determinative issue is whether a reasonable person would have understood that by answering this question in the affirmative, that they were agreeing to a search of their person similar in nature to the one conducted in this case.

Appellant directs our attention to *United States v. Blake*, 888 F.2d 795 (11th Cir. 1989). Three sheriff's deputies approached Blake and a companion after they got off a plane in the Fort Lauderdale/Hollywood International Airport. 888 F.2d at 797. Pertinent to this issue, the deputies asked the two for permission to search their baggage and their persons for drugs. *Id.* After being told they could refuse consent, the defendants agreed to the search. *Id.* Immediately thereafter, a deputy "reached into

Blake's groin region where he did a 'frontal touching' of the 'outside of [Blake's] trousers' in 'the area between the legs where the penis would normally be positioned.' Upon reaching into Blake's crotch, [the deputy] felt an object and heard a crinkling sound." *Id.* (footnotes omitted). This procedure was repeated on the second defendant, Eason, and "as with Blake, [the deputy] felt a foreign object in Eason's crotch and heard a crinkling sound." *Id.* The defendants were taken into custody and a further search, inside the airport drug interdiction office, uncovered packages of crack cocaine concealed in each man's crotch area. *Id.*

On appeal, the Eleventh Circuit concluded that the motions court was not clearly erroneous in finding that the defendants' consent was valid. 888 F.2d at 799. The Court then turned to the scope of that consent, explaining "in order to establish that the warrantless search that was conducted was pursuant to the defendants' voluntary consent, it is incumbent upon the government to show not only that the consent was obtained without coercion but also that the search conducted was within the purview of the consent received." *Id.* at 799-800. The Eleventh Circuit then agreed with the District Court that the search in question exceeded the reasonable limits of the defendants' consent:

> We see no error in the district court's conclusion that a general understanding of a request to search one's "person" under the circumstances of this case simply did not lend itself to an interpretation that the officers were requesting to conduct a search as intrusive as the ones conducted here. [The deputy's] request to search Blake and Eason's "persons," without more explanation, need not have been reasonably construed as a request for permission to touch the defendants' genitals.

888 F.2d at 800 (footnotes omitted).

However, the Court continued:

> Our conclusion, of course, does not imply that such an intrusive search may never be consensual; it merely requires that an officer obtain proper consent. Given the circumstances of this case, particularly the setting, the district court concluded that proper consent had not been obtained. It must be remembered that the request for the search took place in a public airport terminal-a setting in which particular care needs to be exercised to ensure that police officers do not intrude upon the privacy interests of individuals. *See* [*United States v. Berry*, 670 F.2d 583, 597-98 (1982)]. Given this public location, it cannot be said that a reasonable individual would understand that a search of one's person would entail an officer touching his or her genitals. One would surely expect a search with a hand-held magnometer, or a general pat-down of one's pockets, sides and shoulders. *See United States v. Albarado*, 495 F.2d 799, 807 (2nd Cir.1974) (characterizing "typical" airport frisk as being in the nature of a "'pat-down', involving only the patting of external clothing in the vicinity of pockets, belts or shoulders"). One might even reasonably expect the traditional frisk search, described in *Terry v. Ohio*, 392 U.S. 1, 17 n. 13 [(1968)], as a "thorough search . . . of . . . arms and armpits, waistline and back, the groin and area about the testicles, and the entire surface of the legs down to the feet." However, the district court was not clearly erroneous in concluding that the consent given in this case, under all the circumstances, did not extend to touching the genitals.

888 F.2d at 800-01 (footnotes omitted).

The State rejects appellant's reliance on *Blake* and refers us to *United States v. Rodney*, 956 F.2d 295 (D.C. Cir. 1992) as more relevant to our inquiry. Rodney was approached by a detective, who asked him if he was carrying drugs on his person. 956 F.2d 295. After Rodney said no, the detective asked whether Rodney would consent to a "body search." *Id*. Rodney replied "sure" and raised his hands over his head. *Id*. According to the Court, the detective "placed his hands on Rodney's ankles and, in one sweeping motion, ran them up the inside of Rodney's legs. As he passed over the crotch area, [the detective] felt small, rock-like objects. Rodney exclaimed: 'That's me!' Detecting otherwise, [the detective] placed Rodney under arrest." *Id*. Rodney was

transported to the police station, where the detective unzipped his pants and recovered a plastic bag containing cocaine base. *Id*. Rodney asserted that he did not voluntarily consent to a search that would extend to his crotch area and that probable cause did not support his arrest. *Id*.

Judge Clarence Thomas, joined by Judge Ruth Bader Ginsburg, writing for the D.C. Circuit, disagreed, and affirmed Rodney's convictions. 956 F.2d at 299. Concluding that Rodney voluntarily consented to the search, the Court observed "[h]ere, Rodney clearly consented to a search of his body for drugs. We conclude that a reasonable person would have understood that consent to encompass the search undertaken here." *Id*. at 297. Recognizing that "[d]ealers frequently hide drugs near their genitals[,]" the Court noted that there was evidence that almost 75 percent of similar drug recoveries were from the crotch area. *Id*. at 297-98.

The Court also recognized that, with body searches:

> At some point, we suspect, a body search would become so intrusive that we would not infer consent to it from a generalized consent, regardless of the stated object of the search. For example, although drugs can be hidden virtually anywhere on or in one's person, a generalized consent to a body search for drugs surely does not validate everything up to and including a search of body cavities.

956 F.2d at 298.

However, the search in *Rodney* was "not unusually intrusive, at least relative to body searches generally. It involved a continuous sweeping motion over Rodney's outer garments, including the trousers covering his crotch area." 956 F.2d at 298 (footnote

omitted). The Court continued that the search was similar to a pat down search recognized in *Terry v. Ohio*, 392 U.S. 1 (1968):

> "[T]he officer must feel with sensitive fingers every portion of the [defendant's] body. A thorough search must be made of the [defendant's] arms and armpits, waistline and back, the groin and area about the testicles, and entire surface of the legs down to the feet." [*Terry v. Ohio*, 392 U.S. 1, 17 n. 13 (1968)] (citation omitted); *see United States v. Clipper*, 758 F.Supp. 756, 761 (D.D.C.1991) (noting that the police had discovered drugs in the defendant's crotch during a "routine pat-down or frisk"). In *Terry*, the Court explained that the typical pat-down frisk, though serious, "may realistically be characterized as something less than a 'full' search." 392 U.S. at 26[.] We conclude that the frisk of Rodney's fully-clothed body involved nothing so intrusive, relative to body searches generally, as to require a separate consent above and beyond the consent to a body search that Rodney had given voluntarily.

Rodney, 956 F.2d at 298.

Neither *Blake* nor *Rodney* fully address the situation presented by the instant case. Comparing the facts to *Blake*, we recall that Hugel maintained that, with his gloved hands, he went up the inside of appellant's leg, from the back, and felt the object protruding from between appellant's butt cheeks. He also denied appellant's claim that he touched appellant's testicles during the search. But, comparing the facts to *Rodney*, Hugel did not tell appellant that he wanted to search him for drugs. Instead, the deputy simply told him that something "rose" his suspicions.

Appellant references the "plain feel" doctrine, suggesting that the fact that Hugel had to squeeze the detected item affects our analysis. The "plain feel" doctrine instructs that if the officer, while conducting a proper frisk, "comes upon an item that by mere touch is immediately apparent to the officer to be contraband or of 'incriminating character,' then the officer is authorized to seize that item immediately." *McCracken v.*

State, 429 Md. 507, 510-11 (2012) (quoting *Dickerson*, 508 U.S. at 375). However, given that we agree with the suppression court that Hugel's search of appellant was a consent search, not a *Terry* frisk, we are constrained to conclude that the limits of the plain feel doctrine do not apply. *See generally United States v. Ponce*, 8 F.3d 989, 999 (5th Cir. 1993) (recognizing that if there had been no consent, the search would have exceeded the scope of *Dickerson* because the incriminating character of paper-wrapped heroin found in defendant's watch pocket was not immediately apparent).

Appellant argues that "[g]eneralized consent is insufficient to authorize a search like the one at issue here: 'a full search between a person's legs' and squeezing an object found there." And yet, as the Court acknowledged in *Rodney*, *see* 956 F.2d at 297, and as Hugel suggested, it is not uncommonly known that drug dealers will conceal contraband in their undergarments. *See Moore v. State*, 195 Md. App. 695, 718 (2010) ("It is well known in the law enforcement community, and probably to the public at large, that drug traffickers often secrete drugs in body cavities to avoid detection"), *cert. denied*, 418 Md. 192 (2011). Nor, in our view, is it unknown to those who do so that the police are well aware of the practice. The motions court concluded that appellant's "consent remained valid during the search of his person." We interpret this both as a finding by the court that appellant did not withdraw consent and a conclusion that the search did not exceed the scope of appellant's consent. Having considered the issue of law *de novo*, we are not persuaded that the court's finding on this point was clearly erroneous.

C. The recovery of the contraband from appellant's person was pursuant to a lawful reach-in search.

Finally, appellant contends that, even if he voluntarily consented and the scope of that consent permitted Hugel to squeeze the detected object concealed between his buttocks, it was not reasonable to conduct a strip search in a public parking lot near a public highway. The State responds that this was a "reach-in" search, not a "strip search," and that that form of search was reasonable in the circumstances.

In evaluating a strip search incident to arrest, Maryland Courts have applied the test set forth in *Bell v. Wolfish*, 441 U.S. 520 (1979). *See Paulino v. State*, 399 Md. 341, 355, *cert. denied*, 552 U.S. 1071 (2007). The *Bell* Court explained that four factors are relevant to the determination of reasonableness:

> The test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application. In each case it requires a balancing of the need for the particular search against the invasion of personal rights that the search entails. Courts must consider the scope of the particular intrusion, the manner in which it is conducted, the justification for initiating it, and the place in which it is conducted.

441 U.S. at 559. *Accord Williams v. State*, 231 Md. App. 156, 177 (2016), *cert. granted*, 452 Md. 3 (2017), *and cert. dismissed as improvidently granted*, 452 Md. 47 (2017).

We must keep in mind, however, that "*Bell* requires a flexible approach, one that takes into account the relative strength of each factor. Further, *Bell* requires that a reviewing court, when assessing the reasonableness of a search under the Fourth Amendment, balance 'the need for a particular search against the invasion of personal rights that the search entails.'" *Paulino*, 399 Md. at 355 (quoting *Bell*, 441 U.S. at 559). *Accord Williams*, 231 Md. App. at 185 (when determining the reasonableness of the strip search, the Court took "into account the relative strength of each factor and balancing the

need to ferret out crime against the invasion of personal rights"). This Court has recognized that there are two distinct considerations, under the *Bell* test, which are relevant to the constitutionality of a strip search incident to arrest: the justification and modality of the search. *See State v. Harding*, 196 Md. App. 384, 397-98 (2010) (observing that *Bell* considers factors beyond traditional search incident to arrest doctrine), *cert. denied*, 418 Md. 398, *cert. denied*, 565 U.S. 826 (2011).

Specifically, Maryland Courts have held that in order to conduct a strip search, or other more intrusive search of an arrestee's person, the police must both (1) have a reasonable, articulable suspicion that drugs or other evidence are hidden on the arrestee's body, and (2) execute the search in a reasonable manner, considering the circumstances. *See Harding*, 196 Md. App. at 397 ("There is first the question of what is a reasonable justification for a more intensive search or examination of the body," and "there is also the distinct question of the modality of conducting such a search. The concern in such a case is not with justification at all, but rather with the manner in which even a fully justified further search or examination is carried out.").

The Court of Appeals considered the limits of such a search in *Paulino v. State*, 399 Md. 341 (2007). There, a confidential informant told police that Paulino would be in possession of a controlled dangerous substance at a certain place and time. 399 Md. at 344. The informant also told police that Paulino typically carried the controlled dangerous substance in his buttocks. *Id.* Police used this information to locate and arrest Paulino while he was a passenger in a vehicle at a car wash. *Id.* at 345. Acting on the tip, police removed Paulino from the vehicle, placed him on the ground, reached down

into his pants, moved Paulino's "cheeks apart a little bit," and removed a quantity of cocaine. *Id*. at 346-47. Specifically, the police "lift[ed] up Paulino's shorts," and "manipulated his buttocks to allow for a better view of his anal cavity." *Id*. at 353. "[T]he drugs were not visible until after the cheeks of Paulino's buttocks were spread apart." *Id*. at 354. Present during the search was a "team" of police officers and the defendant's acquaintances who had been in the vehicle with him. *Id*. at 360 & n.7. Paulino argued that this search exceeded the scope of a permissible search incident to arrest. The Court of Appeals ultimately agreed. *Id*. at 344.

In reaching that conclusion, and after noting the reasons for permitting the search incident exception to the warrant requirement, 399 Md. at 350, the Court stated the following was required in order to justify a strip search:

> By definition a strip search involves a more invasive search of the person as opposed to a routine custodial search. Therefore, the necessity for such an invasive search must turn upon the exigency of the circumstances and reasonableness. Without the constitutional safeguards of exigent circumstances and reasonableness, every search incident could result in a strip search. As we have said, "[t]he meaning of exigent circumstances is that the police are confronted with an emergency – circumstances so imminent that they present an urgent and compelling need for action."

Id. at 351 (citation omitted).

The Court recognized that there were three categories of strip searches:

> A "strip search," though an umbrella term, generally refers to an inspection of a naked individual, without any scrutiny of the subject's body cavities. A "visual body cavity search" extends to a visual inspection of the anal and genital areas. A "manual body cavity search" includes some degree of touching or probing of body cavities.

Id. at 352 (citation omitted).

After recognizing relevant case law in which each of the categories were discussed, the Court determined that the search of Paulino was both a strip search and a visual body cavity search. 399 Md. at 352-53. The Court identified the applicable test utilized to determine the reasonableness of such searches, relying on the Supreme Court's decision in *Bell v. Wolfish* as we have set out, *supra*, and its own prior opinion in *State v. Nieves*, 383 Md. 573 (2004). *Paulino*, 399 Md. at 355.

The Court concluded that "on balance, the location of the search and the lack of exigency made the search of Paulino unreasonable." 399 Md. at 355. With regard to the scope of the search, the Court concluded that it was "highly intrusive and demeaning," particularly given the inspection of his anal area. *Id*. at 356. Although the police were justified in initiating the search of Paulino, *id*. at 357, the place and manner of the search was unreasonable. *Id*. at 358. The Court stated:

> The testimony from the suppression hearing in the case *sub judice*, viewed in the light most favorable to the State, does not indicate that the officers made any attempt to protect Paulino's privacy interests. The search was conducted in the very place in which he was arrested, a car wash. Similarly, there is no indication in the record before us that the police made any attempt to limit the public's access to the car wash or took any similar precaution that would limit the ability of the public or any casual observer from viewing the search of Paulino. In our view, the search as conducted was unreasonable.

Id.

The Court of Appeals contrasted the search in *Paulino* with cases from other jurisdictions. The Court first cited *McGee v. State*, 105 S.W.3d 609 (Tex. Crim. App. 2003). *Paulino*, 399 Md. at 358. In *McGee*, after McGee was arrested on suspicion of selling crack cocaine, he was driven to a nearby fire station and taken to a secluded

location therein. 105 S.W.3d at 613. Once there, the police officers conducted a visual body inspection. *Id.* at 615. The Court of Criminal Appeals of Texas concluded that the search was reasonable under the circumstances. *Id*. at 617-18. The Court noted that the search was conducted in a hygienic environment, and that it was conducted in a secluded location. *Id*. at 617.

The *Paulino* Court also contrasted the facts of that case with the facts in *United States v. Williams*, 477 F.3d 974 (8th Cir. 2007). *Paulino*, 399 Md. at 359. In *Williams*, after obtaining a warrant to search Williams's home and his person, but prior to executing that warrant, the police conducted a traffic stop of Williams's vehicle. 477 F.3d at 975. After a pat-down search led the police to suspecting that there was something inside Williams's pants, the police took him into custody and transported him several blocks to a nearby police station. *Id*. After removing him from the police car, he was searched in the parking lot. *Id*. There, "[t]he officer, who was wearing a latex glove, opened Williams's pants, reached inside Williams's underwear, and retrieved a large amount of crack and powder cocaine near Williams's genitals." *Id*.

The Court determined in *Williams* that the search of his person was not as intrusive as a full strip search and likened it to that of a "reach-in" search. 477 F.3d at 976-77. As stated in *Williams* and recognized by the Court of Appeals in *Paulino*, "a reach-in search of a clothed suspect does not display a suspect's genitals to onlookers, and it may be permissible if police take steps commensurate with the circumstances to diminish the potential invasion of the suspect's privacy." *Williams*, 477 F.3d at 977. *See also Paulino*, 399 Md. at 359 n.6 (quoting *Williams*, 477 F.3d at 977).

Following its discussion of *McGee* and *Williams*, the *Paulino* Court concluded that the State's "failure to prove exigent circumstances and the reasonableness of the search are determinative." 399 Md. at 360. The Court explained:

> There was no testimony at the suppression hearing in the case *sub judice,* that Paulino was attempting to destroy evidence, nor that he possessed a weapon such that an exigency was created that would have required the police officers to search Paulino at that precise moment and under the circumstances, in a "well-lit" public car wash. There is no dispute that members of the public were present, specifically, the other passengers in the Jeep Cherokee. It is their presence, whether their view was obscured or otherwise, that makes the search of Paulino unnecessarily within the public view and thus violative of the Fourth Amendment. The police could have taken any number of steps, including patting Paulino down for weapons at the scene of the arrest and conducting the search inside the Jeep Cherokee vehicle in which Paulino was a passenger, or at the police station, to protect Paulino's privacy interest. Similarly, the police could have conducted the search in the privacy of a police van. During the transportation of Paulino from the scene of the arrest to the station or to a more private location, the police had the ability to secure Paulino to prevent his destruction or disposal of the contraband found on his person. Instead, they chose to search him in a public place in the view of others. Accordingly, we hold that the search of Paulino unreasonably infringed on his personal privacy interests when balanced against the legitimate needs of the police to seize the contraband that Paulino carried on his person.

Id. at 360-61 (footnote and internal citation omitted).

This Court has considered several "strip search" cases since *Paulino*. For instance, in *Allen v. State*, 197 Md. App. 308 (2011), Octavian Allen and Drew W. Smith were searched incident to arrest. The detective who searched Allen inspected his pants, pockets, and the "slits in the waistband area of his pants[.]" 197 Md. App. at 312 (internal quotations omitted). The detective then pulled back Allen's pants and saw a plastic back sticking out of his buttocks. *Id*. Allen thereafter was instructed to "spread his legs and squat." *Id*. at 312-13. During the search, six or seven officers were present

and, according to the detective, nobody could have seen Allen's private parts because he stood right behind him. *Id*. at 313. The detective described the location of the search as near "a series of storage garages on one half of the block, which was divided by a wide alley, and residential homes on the other side of the block." *Id.*

Allen provided a different account of the search. 197 Md. App. at 313-14. He testified that his pants fell to his ankles and his penis and buttocks were exposed when he was instructed to spread his legs and squat. *Id*. at 314. Moreover, he stated that he was searched in a Royal Farms parking lot and customers were able to see him. *Id*.

On appeal, we held there was justification for the searches because Allen and Smith were arrested for drug dealing, 197 Md. App. at 323-24, and then concluded that the scope and manner of the searches were reasonable:

> Here, the police officers merely pulled the appellants' pants and underwear away from their waist, at which point the police observed a plastic bag protruding from the appellants' buttocks. Appellants' clothing was not removed, and the private areas of their bodies were not publicly exposed. The officers took steps to protect appellants' privacy. In each case, the officer involved testified, and the court credited the testimony, that the officer stood directly behind the suspect, and he was the only one who could see appellants' buttocks during the search. The scope and manner of the searches were not unreasonable.

Id. at 324-25 (footnote omitted).

We then distinguished those facts from *Paulino*. 197 Md. App. at 326. We noted that the challenge in *Paulino* concerned only the scope and manner of the search. *Id*. We emphasized: "It was the highly invasive nature of the search in *Paulino*, as well as the lack of evidence that Paulino's privacy was protected in any way, that led the Court to hold that exigent circumstances were required before such a search in a public place was

reasonable." *Id*. at 326-27. We further distinguished *Paulino* on the basis that "the searches were not as highly invasive. As indicated, they were brief and conducted in a manner such that appellants' private areas were not publicly exposed." *Id*. at 327. For those reasons, we concluded that the searches were reasonable under the Fourth Amendment. *Id*.

In *Turkes v. State*, 199 Md. App. 96 (2011), after Officer Anthony Smith conducted a traffic stop for a suspected window tinting violation, Turkes exited the driver's side door of his vehicle and started walking quickly away from the scene. 199 Md. App. at 104. After being instructed to return to the vehicle, Turkes eventually opened the driver's side door, and looked nervously at a black bag located in the door well. *Id.* Smith indicated the bag as approximately a half-gallon bag, about the size of a tissue box, and was concerned that the bag could contain a weapon or drugs. *Id.*

Smith then returned to his vehicle to write the equipment violation and noticed that Turkes was moving around inside his vehicle in a suspicious manner. 199 Md. App. at 104-05. After backup arrived, Smith returned to the vehicle and asked Turkes to exit in order to sign the equipment repair order. *Id.* at 105. The black bag was no longer located in the door well. *Id.* According to the officer, Turkes then consented to a search of the vehicle. *Id.* at 106. Smith searched the passenger compartment and could not find the black bag. *Id.* When asked where that bag was located, Turkes claimed it was trash and was underneath the seat. *Id*. After Smith still was unable to find the bag, Turkes denied knowing what bag the officer was referring to. *Id.*

At this point, Smith believed that the bag was on Turkes's person and that the bag likely contained a weapon or drugs. 199 Md. App. at 106. Smith conducted a pat down and felt "a very hard object" in between Turkes's legs. *Id.* Turkes then resisted arrest, was handcuffed, and subjected to a further search. *Id.* at 106-07. Smith testified that he undid the front of Turkes's pants, lifted up the underwear, and saw the black bag. *Id.* at 107. He then reached in and removed the bag, which contained "[f]our hundred . . . glassine baggies, a razor blade, and 40 grams of crack cocaine, as well as the black bag that was in the door well of the Cadillac." *Id.* Smith agreed that he undid the buttons on Turkes's button fly type jeans, did not pull down Turkes's pants, and denied that he saw Turkes's private parts. *Id.* at 107-08. He also testified that no one else saw Turkes's private area. *Id.* at 108.

Smith also testified that the area where the stop occurred, at 11:45 a.m. on a bright sunny day, was located approximately seven to eight blocks from the police station. 199 Md. App. at 108. Four to five buildings of garden-style apartments were located approximately 40 feet away, and five single-family homes were located across the street. *Id.*

Turkes testified at the motions hearing and contradicted Smith's testimony. 199 Md. App. at 108. Notably, Turkes claimed that Smith pulled both his pants and underwear down, and that his penis and testicles were exposed during the search after the arrest. *Id*. at 109-10. Turkes claimed his private area was exposed to both the apartments and the houses across the street. *Id.* He maintained that Smith did not simply reach in, but pulled his pants down. *Id.* at 110.

In addressing the search, the motions court resolved the credibility issue in Smith's favor, finding that the search was a reach in and that Smith reasonably believed the bag may have contained weapons. 199 Md. App. at 111. The court then found that it was possible that the search could have been viewed by individuals in the nearby apartments or single-family homes, but, considering the possibility that the black bag contained weapons, the reach in was not unreasonable under the circumstances. *Id.* at 111-13. The court therefore denied the motion to suppress. *Id.* at 113.

On appeal, this Court agreed that the search was a "reach-in" search as opposed to a full strip search. We explained the difference:

> "A 'reach-in' search involves a manipulation of the arrestee's clothes such that the police are able to reach in and retrieve the contraband without exposing the arrestee's private areas." [*Paulino*, 399 Md. at 360 n.6.] In a "reach-in" search, "clothing is pulled away from the body but not removed." *Allen*, 197 Md. App. at 322. By contrast, a strip search involves either "the removal of the arrestee's clothing for inspection of the under clothes and/or body," [*State v. Nieves*, 383 Md. 573, 586 (2004)], or "the removal or rearrangement of some or all clothing to permit the visual inspection of the skin surfaces of the genital areas, breasts, and/or buttocks" *Paulino*, 399 Md. at 352-53 (quoting *Nieves*, 383 Md. at 586). A "reach-in" search where no one, including the officers, sees the defendant's private parts is, in some sense, less invasive than a full-blown strip search. *See Allen*, 197 Md. App. at 322-23 ("To be sure, a 'reach-in' search may be less invasive than a search requiring a suspect to remove his or her clothing. To the extent that it *allows an officer to view a person's private areas*, however, it still is intrusive and demeaning.") (emphasis added).

199 Md. App. at 127.

We deferred to the motion court's credibility determination and agreed the search was a reach-in search. *Id*. at 128. We then addressed the location of the search stating: "unlike in *Paulino*, no evidence suggests that members of the public were in fact present

at the scene, residents of the apartments and houses on either side of the search, along with potential passerby, *could* potentially have viewed the scene." *Id.* (emphasis in original). However, we ultimately affirmed the motion court's ruling because we also agreed that there was justification for the search based on the exigencies of the situation. *Id*. We explained:

> In this case, Officer Smith was reasonably concerned that appellant had not only drugs, but a weapon on his person. More specifically, Officer Smith was confronted with the fact that the black bag, which was big enough to contain a weapon, was missing; that appellant had lied to him twice by telling him the bag was under the seat and then by telling him he did not know anything about a black bag; and that appellant resisted the pat down and tried to flee when Officer Smith felt something hard in appellant's crotch area. Because Officer Smith reasonably suspected that appellant was hiding a weapon, an immediate and relatively intrusive search was warranted.

Id. at 128-129.

In *Partlow v. State*, 199 Md. App. 624 (2011), following an alert from a drug sniffing dog, a police officer conducted a search of Partlow. 199 Md. App. at 631. During the search, the officer felt a hard object underneath Partlow's buttocks, but was unable to remove it. *Id*. To remove the object, the officer pulled Partlow's underwear, which was exposed as a result of the manner in which he wore his pants, away from his body, and cut a small piece out of them. *Id*. This Court concluded that the search was justified because there was probable cause to arrest Partlow for possession of a controlled dangerous substance, and the officer had received a tip that Partlow had been selling drugs from his car. *Id*. at 644.

We then held that the scope and manner of the search was not unreasonable because: (1) Partlow's "clothing was not removed from his body;" (2) "his underwear was already exposed to the public by the manner in which he chose to wear his pants;" (3) his underwear was cut because the officer felt a hard object under the buttocks and was unable to remove it; (4) the search was conducted "away from the view of traffic" behind "the passenger side of the police cruiser;" (5) the officer generally stands behind a person when he conducts such a search, thereby suggesting that "the officer made some effort to protect [Partlow's] privacy[;]" and, (6) "[Partlow] was wearing a long coat or shirt that covered his underwear, so the exposure was 'not as bad as it initially sounds.'" 199 Md. App. at 644-45. We concluded that the location of the search was reasonable, and noted:

> Although the search was undertaken on a public thoroughfare, the testimony showed that it was conducted in an area that was "fairly wooded" on one side. The other side of the street did contain houses, but most of the houses were 30 to 40 yards away from the street, and the search did not occur in front of a house. Moreover, it was "fairly dark" at the time, and, as noted above, the suppression court found that [Partlow's] coat or shirt covered the area he alleged was exposed. Only police officers were present during the search; no civilians were in the area, and no cars stopped on the side of the road.

Id. at 645.

More recently, we considered, in *Williams v. State*, 231 Md. App. 156 (2016) a similar search, albeit conducted at a State Police Barrack, not at the side of a public highway. In *Williams*, Sergeant Leonard Nichols, of the Maryland State Police, received a tip from a confidential informant that Williams would be leaving a Narcotics Anonymous meeting and then making drug "drops" or sales in the Easton area. 231 Md.

App. at 167. Nichols, through preliminary investigation, learned that Williams' driver's license was suspended or revoked. *Id*. He drove to the area identified by the informant, where he saw Williams driving. *Id.* When Williams stopped his vehicle in a parking lot, Nichols arrested him for the traffic violations. *Id.*

Nichols conducted a search incident to the traffic arrest and found $1,356 in cash on Williams' person, but nothing more of note. 231 Md. App. at 167. Although Williams was cooperative during the search, Nichols noted that he was nervous and that "his chest was rapidly 'moving up and down,' the muscles in his neck 'were visibly contracting,' and he was sweating, even though the temperature was a mild 75 degrees." *Id.* Believing "'criminal activity was afoot' based on his prior contact with [Williams], the information from [the confidential informant], the large sum of cash, and [Williams'] nervousness[,]" Nichols transported Williams to the Easton State Police Barrack. *Id.*

There, Williams was taken to a secure area, away from public view, where he was asked, in the presence of two or three officers, to remove his clothing, "turn around, bend over, and spread his buttocks apart." 231 Md. App. at 168. Williams followed all instructions, except for the last, and did not spread his buttocks. *Id.* However, Nichols was able to see a plastic baggie protruding from Williams' rectum. *Id*. Nichols' effort to retrieve the baggie was unsuccessful because Williams "clenched his muscles." *Id*. (internal quotation and brackets omitted).[3] Eventually, Nichols obtained a search warrant for Williams' person and medical personnel retrieved a baggie containing heroin and

[3] Williams testified at the suppression hearing that he initially spread his buttocks, "but when asked to so again, he said no." 231 Md. App. at 172-73.

another containing crack cocaine. *Id.* That information and evidence was later applied as a part of the basis for a search warrant of Williams' residence. *Id*. 168-72.

On appeal, Williams argued that, because the strip search was illegal, there was no probable cause to support the search warrant of his residence. 231 Md. App. at 173. After discussing *Paulino*, the law on strip searches, and the distinction between visual and manual body cavity searches, this Court deferred to the motion court's fact finding that "[a]t a point where the officer or trooper asked [Williams] to spread his buttocks, the officer saw what he believed to be a foreign substance." *Id*. at 178 (internal quotation omitted). We continued that "although there were four officers present, the search took place in a secure area of a police barrack, not a public area." *Id.*

Under these circumstances, we determined that the manner and place of the search were reasonable. 231 Md. App. 178. We were further persuaded the search was justified because there was "a particularized reasonable belief that evidence of the crime [would] be found on (or in) the body of the suspect." *Id*. (quoting *Harding*, 196 Md. App. at 421). This conclusion was based on Nichols' credible testimony that he "believed criminal activity was afoot[,]" as well as Williams' nervousness, the large quantity of cash found on his person, the information from the confidential informant, and Nichols' prior contact with Williams. *Id.* at 182. The information contained in the Nichols' search warrant application also provided support, including not only a number of arrests, but information from the confidential informant that Williams was "'the largest source' of heroin supplied in Caroline County[.]" *Id*. at 183-84.

We, therefore, held:

> Weighing the *Bell v. Wolfish*, *supra*, factors, three of the factors weigh in favor of the State – the manner in which the search was conducted, where the search was conducted, and that the search was justified – and only one factor – the intrusiveness of the search – weighs in favor of appellant. Taking into account the relative strength of each factor and balancing the need to ferret out crime against the invasion of personal rights, we are persuaded that the strip search here was reasonable and legal.

231 Md. App. at 185.

In the case before us, we have no difficulty concluding that there was, at minimum, reasonable articulable suspicion, and perhaps even probable cause, to justify a further search of appellant's person. Hugel's testimony that, based on his training, knowledge and experience, the item he felt while conducting the pat-down was likely crack cocaine was sufficient to meet the threshold requirement of justification for the search. Thus, the ultimate issue concerns the modality of the search. *See Harding*, 196 Md. App. at 397 ("Even granting full justification for a more intrusive search of the body, however, there is also the distinct question of the modality of conducting such a search. The concern in such a case is not with justification at all, but rather with the manner in which even a fully justified further search or examination is carried out").

Although the issue of an unlawful strip search was raised by defense counsel, the suppression court made no finding, or a specific ruling, with respect to this issue. The court did recite pertinent facts, ultimately recounting both Hugel's and appellant's disparate version of events. Many, if not most, of those facts are not subject to dispute. Appellant was stopped at around 1:51 a.m. in the well-lit parking lot of Salerno's Restaurant, located on Route 26, or Liberty Road, near the Sykesville/Eldersburg area of Carroll County. The restaurant had been closed for almost an hour at the time of the stop.

Appellant was searched near the rear of his vehicle, right behind the trunk and in front of the deputy's police vehicle. Hugel unbuckled appellant's pants and pulled them down, at least to his knees, with appellant claiming at one point that his pants were down as far as his ankles. There was testimony, from both Hugel and appellant, that a portion of appellant's buttocks and his legs were momentarily potentially visible to passing motorists. But, Hugel and appellant agreed that appellant's genitals were never exposed. Finally, the evidence established that Hugel, using leather gloves, shook appellant's underpants, "grasp[ed]" the contraband and "wiggle[d] it loose."

We recognize the fine line that exists factually in the case before us, and that there was no exigency preventing Hugel from taking appellant to a police station to conduct the search. Nonetheless, we conclude that, in the circumstances, the search was more akin to a lawful reach-in search than to the unlawful strip search that occurred in *Paulino, supra*. Although appellant's pants were pulled down past his knees and his buttocks were momentarily visible, his genitals were never exposed. Moreover, the search took place in the parking lot of a closed restaurant located along Route 26 in Carroll County at 1:51 in the morning. Although some motorists apparently drove by, possibly to visit the nearby convenience store, the evidence suggests that the search took place near the rear of appellant's car in a location that was not nearly as highly visible to public view as was the case in *Paulino*.

In sum, we hold that the search of appellant by Hugel was consensual; that consent was not withdrawn; and that the search was reasonable in both extent and modality. Accordingly, we find no error.

JUDGMENT OF THE CIRCUIT COURT FOR CARROLL COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.