

Circuit Court for Baltimore County  
Case No.: C-03-K-18-005307

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 421

September Term, 2019

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JAVONTE NIGEL YATES SMITH

v.

STATE OF MARYLAND

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Nazarian,  
Shaw Geter,  
Raker, Irma, S.  
(Senior Judge, Specially Assigned),

JJ.

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PER CURIAM

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Filed: November 10, 2020

\*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.

Following a not guilty plea upon an agreed statement of facts entered in the Circuit Court for Baltimore County, the court found Javonte Nigel Yates Smith, appellant, guilty of wearing, carrying, and transporting a handgun. The court sentenced appellant to a fully suspended term of three years' imprisonment in favor of eighteen months of supervised probation. Prior to entering his plea, appellant filed a motion to suppress evidence which the court denied. In this appeal, appellant claims the circuit court erred in denying his motion to suppress evidence. We disagree and shall affirm.

During the hearing on appellant's motion to suppress, the State adduced evidence that, on September 17, 2018, Detective Podgurski, of the Baltimore County Police Department, and his partner, who were both dressed in plain clothes, arrived in the parking lot of a C-Mart convenience store to investigate a reported robbery. The detective said he was familiar with the area around the C-Mart because it "was known to be an open air drug market with numerous calls for service and anonymous complaints."

Upon exiting their vehicle they planned on going into the C-Mart to talk to the shop owners, however their attention became diverted to three people, one of whom would turn out to be appellant, huddled very close together on the side of the C-Mart. The other two people were Jason Rawlett and Jerry Cooper. The detective smelled a very strong pungent odor of raw marijuana emanating from the area where the three were huddled. As the detective drew near to the three people, he saw that appellant and Cooper were paying close attention to Rawlett who had a medium sized bag of marijuana, a digital scale, and small plastic bags. It appeared to the detective that Rawlett was preparing and packaging the

marijuana for individual illegal street sale. It also appeared to Detective Podgurski that all three of them were working as a team.

The three huddled people did not at first notice the detectives coming towards them as they seemed to be very focused on what they were doing. Detective Podgurski testified that when he and his partner were within a few feet of the group, Rawlett looked up and “his eyes got real big” and he tossed the scale and the marijuana over his left shoulder in an attempt to conceal it from the detectives. All three were then placed under arrest and searched incident thereto.<sup>1</sup>

Appellant claims that, while the detective had probable cause to arrest Rawlett, who was in actual physical possession of the marijuana, the detective lacked sufficient justification to arrest him because, in his view, the detective lacked sufficient facts to show that he was in constructive possession of the marijuana. Appellant contends that, for all that the detective knew, he could have been simply purchasing marijuana.

The suppression court denied appellant’s motion to suppress as follows:

I’ve had an opportunity to listen to the testimony and the arguments of counsel, as well as consider the applicable law. And here’s what we have. We have a situation where a police officer, a detective, is investigating another crime altogether, but his attention is drawn to this Defendant, two other young men by virtue of a very strong odor of marijuana emanating from their location in what is known to the detective to be an open air drug market. When he observes these three young men, they’re sitting extremely close together and the gentleman in the middle is holding a, a bag containing marijuana, along with a scale and a stack of Ziploc baggies. The attention of all three individuals is so focused on that marijuana, that they don’t even observe the officer approaching them. As the officer approaches them, obviously, he, he sees the bag and the scale very clearly and places all three

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<sup>1</sup> At trial, the agreed upon statement of facts revealed that the detectives recovered an operable Taurus .45 caliber handgun from appellant’s waistband.

of them under arrest. I am persuaded that he had probable cause to believe that, that these three individuals had possession of this bag of marijuana and that there was a crime occurring. And I believe that that is something that any reasonable officer would have thought under the circumstances. Therefore, the Motion to Suppress is denied.

“In reviewing a trial court’s ruling on a motion to suppress, an appellate court reviews for clear error the trial court’s findings of fact, and reviews without deference the trial court’s application of the law to its findings of fact.” *Hailes v. State*, 442 Md. 488, 499 (2015) (citing *Raynor v. State*, 440 Md. 71, 81 (2014)). If there is any competent evidence to support the factual findings of the trial court, those findings cannot be held to be clearly erroneous. *Goff v. State*, 387 Md. 327, 338 (2005) (internal citation and quotation omitted). “The credibility of the witnesses and the weight to be given to the evidence fall within the province of the suppression court.” *Barnes v. State*, 437 Md. 375, 389 (2014). (citing *Gonzalez v. State*, 429 Md. 632, 647-48 (2012)). We view the evidence and inferences that may be drawn therefrom in the light most favorable to the party that prevailed below, *Raynor v. State*, 440 Md. 71, 81 (2014), here the State.

Probable cause for arrest is “not a high bar.” *State v. Johnson*, 458 Md. 519, 535 (2018). “It is well settled that ‘a finding of probable cause requires less evidence than is necessary to sustain a conviction, but more evidence than would merely arouse suspicion.’” *Williams v. State*, 188 Md. App. 78, 90-91 (2009) (quoting *Haley v. State*, 398 Md. 106, 133 (2007)). It is a “nontechnical, common sense evaluation of the totality of the circumstances in a given situation in light of the facts found to be credible by the trial judge.” *Donaldson v. State*, 416 Md. 467, 481 (2010) (quotation omitted).

Here, in the light most favorable to the State, the police officer had more than just a hunch that appellant was violating the law. After the detective smelled the very strong and pungent odor of raw marijuana emanating from the area around appellant, he approached and saw, in plain view, Rawlett in actual possession of the marijuana, scale, and plastic bags. He also saw appellant within inches of Rawlett, and it appeared to the detective that all three were acting in concert re-packaging the marijuana for street sale.

It is immaterial that there may have been an innocent, or rather, less inculpatory, reason that appellant was huddled so close to Rawlett while he packaged the marijuana, *i.e.* that he was purchasing marijuana. A determination of probable cause does not require eliminating all possible alternative explanations. *Williams*, 188 Md. App. at 96-97.

The detective therefore had probable cause to believe that appellant had violated the law, which rendered the arrest lawful under the Fourth Amendment, the evidence thereby discovered admissible, and the denial of appellant's motion to suppress correct.

Consequently, we shall affirm the judgment of the circuit court.

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