Circuit Court for Allegany County
Case No. C-01-CR-22-000081

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 894

September Term, 2023

SHAUN AARON BROOKS

v.

STATE OF MARYLAND

Graeff,
Friedman,
Beachley,

JJ.

Opinion by Beachley, J.
Dissenting Opinion by Friedman, J.

Filed: October 30, 2024

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

On April 12, 2023, appellant Shaun Aaron Brooks appeared before the Circuit Court for Allegany County and pleaded not guilty pursuant to an agreed statement of facts to one count of possession with intent to distribute cocaine. After the trial court found him guilty, Brooks noted this timely appeal, presenting a single issue for appellate review:

> Did the court err in denying the motion to suppress evidence discovered in the warrantless search of [a]ppellant's person?

Discerning no error, we affirm.

FACTS

On January 4, 2022, officers of the Maryland State Police were engaged in a "wider investigation into drug trafficking" in the City of Cumberland. State troopers saw Shaun Brooks with whom they were "familiar . . . from previous drug investigations and charges," walk to and get into the passenger seat of a Chevrolet Malibu. Sergeant Jeremy Smith followed the car for about a quarter mile. At the intersection of Spring Street and Park Street, Sergeant Smith observed the car fail to make a complete stop before turning right onto Park Street. Smith instituted a traffic stop. When Smith approached the passenger side window, he saw that there were two occupants. Subsequent inquiry revealed the driver to be Travis Brady and the passenger to be Shaun Brooks. According to Sergeant Smith, Brooks avoided eye contact and "seemed more nervous than normal people are on a traffic stop." Smith called for officers to conduct a K-9 scan of the car while other officers ran an MVA check on the occupants. Senior Trooper Deener arrived with the drug sniffing dog within seven minutes of the stop. When the dog arrived, Smith and Deener directed the two occupants out of the car so the dog could conduct its sweep of the car. Smith asked

for and received permission to check Brooks for weapons, while Deener searched Brady. No weapons were found. While he was patting down Brooks's waistband and groin area, Sergeant Smith noted that there was "a lot of extra, like fluffy clothing in there," which he thought was "odd." The dog alerted to the presence of drugs in the car. Thereafter, the officers conducted a search of the car and under the passenger seat, in a bookbag, discovered a glass bottle containing 7.9 grams of marijuana. Subsequently, the troopers searched Brady and Brooks's bodies and found, in the crotch of Brooks's pants, a winter hat in which there was cocaine.

Brooks moved to suppress the cocaine as fruit of an illegal search. The Circuit Court for Allegany County denied the motion on July 1, 2022. Thereafter, on April 12, 2023, Brooks pleaded not guilty based on an agreed statement of facts to one count of possession with intent to distribute cocaine. The trial court found him guilty and sentenced Brooks to five years' imprisonment. This timely appeal followed. Additional facts will be provided as necessary to inform our analysis.

DISCUSSION

Asserting that the police did not have probable cause to arrest him, Brooks argues that the trial court should have suppressed the evidence of the cocaine recovered from his pants as fruit of an illegal search. The State counters that the discovery of marijuana under the passenger seat in the car, in addition to other factors—that Brooks was familiar to law enforcement from prior drug-related contact, that he was abnormally nervous during the traffic stop, and that an "odd" bulge was felt by officers during an initial weapons pat

down—gave the police probable cause to arrest Brooks, which led to them finding the cocaine pursuant to a search incident to arrest. Viewing the evidence in the light most favorable to the State, we conclude that the officers had probable cause to arrest Brooks, rendering the cocaine discovered pursuant to a lawful arrest admissible.

Analysis

The Fourth Amendment protects the people against unreasonable searches and seizures. Warrantless searches "are *per se* unreasonable under the Fourth Amendment—subject only to a few specifically established and well delineated exceptions." *Minnesota v. Dickerson*, 508 U.S. 366, 372 (1993). The relevant exception presented by this case is a search incident to a lawful arrest. *Belote v. State*, 411 Md. 104, 112 (2009). The question, therefore, is whether the police had probable cause to arrest and subsequently search Brooks. In other words, we must determine whether the cocaine found on Brooks, which serves as the basis of his criminal charge, must be suppressed as the fruit of an unconstitutional search.

When we review the denial of a motion to suppress, we limit ourselves to reviewing only the record developed at the suppression hearing, viewing the facts in the light most favorable to the prevailing party, here, the State of Maryland. *Pacheco v. State*, 465 Md. 311, 319 (2019). In this, we give deference to the suppression court's first-level findings of fact—who did what and when—unless those findings appear to be clearly erroneous. *Holt v. State*, 435 Md. 443, 458 (2013); *Charity v. State*, 132 Md. App. 598, 606 (2000); *Ferris v. State*, 355 Md. 356, 368 (1999). Where the suppression court did not make

explicit findings of fact, we consider the evidence presented in the light most favorable to the prevailing party. *Charity*, 132 Md. App. at 606. We do not, however, defer to the suppression court's legal conclusions regarding whether a search was valid. *Ferris*, 355 Md. at 368. Rather, it is our responsibility to apply the law to the specific facts of the case and make our own independent constitutional appraisal. *Holt*, 435 Md. at 458; *Nathan v. State*, 370 Md. 648, 659; *Charity*, 132 Md. App. at 607.

The case law is clear that in determining whether the troopers had probable cause to arrest Brooks, we are to evaluate the totality of the circumstances. *Pacheco*, 465 Md. at 324. *State v. Johnson*, 458 Md. 519, 534 (2019). To do so requires us to consider the totality of the suppression record.

We begin with the K-9 alert to the presence of controlled dangerous substances ("CDS") in the car. At the suppression hearing, Senior Trooper Deener testified that he and his K-9 arrived within two to three minutes of receiving the call from Sergeant Smith. Trooper Deener testified that the dog is trained to alert upon detecting any one of five substances (marijuana, heroin, methamphetamines, cocaine, and MDMA). We note that Brooks did not challenge the qualifications and training of either Trooper Deener or his dog at any time during the suppression hearing.[1]

The Supreme Court established in *Carroll v. United States* that a warrantless search of a vehicle is allowed when, at the time of the search, the police have established "probable

[1] In footnote 3, the Dissent argues that a properly trained dog "would have to be able to distinguish a criminal amount of marijuana from a noncriminal amount of marijuana (continued)

cause for believing that [a vehicle is] carrying contraband or illegal merchandise." *Carroll v. United States*, 267 U.S. 132, 154 (1925). The automobile exception allows the search of "every part of the vehicle and its contents that may conceal the object of the search." *Pacheco*, 465 Md. at 322 (quoting *Wyoming v. Houghton*, 526 U.S. 295, 301 (1999)). The permissible search, however, "extends no further than the automobile itself." *Id*. (quoting *Collins v. Virginia*, 584 U.S. 586, 587 (2018)).

Here, Sergeant Smith pulled Brady's vehicle over for failing to obey a stop sign. Sergeant Smith then called for a K-9 unit to perform an open-air sniff of the vehicle, as he had been informed that Brooks was under surveillance by the Allegany County Narcotics Task Force. After Brady and Brooks were removed from the vehicle, Trooper Deener walked the dog around the car, during which the K-9 alerted to the presence of CDS at the driver's side door. Maryland appellate courts "consistently have held that the detection of the odor of marijuana by a trained drug dog establishes probable cause to conduct a warrantless *Carroll* doctrine search of a vehicle." *Bowling v. State*, 227 Md. App. 460, 469 (2016).[2] Under the evidence presented, the canine's alert was not limited to marijuana—the dog was trained to alert to five types of CDS.

Having probable cause to search the vehicle, the officers found a jar containing

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by smell." We merely note that this issue was not raised in either the circuit court or on appeal.

[2] Effective July 1, 2023, law enforcement may not initiate a stop or search of a person, motor vehicle, or vessel based solely on the odor or burnt or unburnt cannabis. Md. Crim. Proc. § 1-211.

suspected marijuana under the passenger seat where Brooks had been sitting. Thereafter, Brooks advised Sergeant Smith that he possessed a medical marijuana card, although no card was ever produced by Brooks or found by police. Moreover, the jar containing the suspected marijuana did not evidence anything consistent with the packaging of medical marijuana. Nevertheless, Brooks's statement that he had a medical card established at least an inference that he had a possessory interest in the marijuana.

The record is uncontroverted that the marijuana in the jar was later determined to weigh 7.9 grams, less than the threshold amount of ten grams required for a criminal charge under CR § 5-601 and § 5-601.1 as of the date of this offense.[3] The State contends that "[o]fficers could have reasonably believed that the 7.9 grams of marijuana could have been ten or more grams, given how close it was to that quantity and their inability to precisely measure its weight until processed into evidence." Although the suppression court did not make any explicit finding on this point, the law mandates that we consider the evidence in the light most favorable to the State as the prevailing party. Under that lens, we agree that the officers could reasonably conclude that the amount of marijuana in the jar was sufficient to constitute a criminal offense. Moreover, our conclusion is directly supported by our opinion in *Barrett v. State*, 234 Md. App. 653 (2017). In *Barrett*, we expressly held "that a police officer who has reason to believe that an individual is in possession of

[3] Although the 2014 legislation decriminalized the possession of less than ten grams of marijuana, as of January 4, 2022, it remained a civil offense, and was, therefore, still illegal. *Pacheco*, 465 Md. at 327. Beginning July 1, 2023, possession of up to 1.5 ounces of marijuana was legalized as "personal use" under CR § 5-601. In any event, we reiterate that there was probable cause to believe a crime was being committed.

marijuana has probable cause to effectuate an arrest, even if the officer is unable to identify whether the amount possessed is more than 9.99 grams." *Id*. at 671. We further reasoned that

> "[a] requirement that the police need to be absolutely sure that the amount for marijuana involved is more than 9.99 grams before they have probable cause to arrest is inconsistent with the concept of probable cause, which requires only facts 'sufficient to warrant a prudent person in believing' that an individual is committing a crime."

Id. (quoting *Moulden v. State*, 212 Md. App. 331, 344 (2013)).[4]

Accordingly, the police had probable cause to arrest Brooks for possession of marijuana and, concomitantly, proceed to constitutionally search him incident to arrest. The suppression court correctly concluded that the cocaine discovered in Brooks's pants pursuant to the search incident to arrest should not be suppressed.

Although the facts we have recited are sufficient in and of themselves to justify the officers' search of Brooks incident to a lawful arrest, additional evidence presented at the suppression hearing further bolsters our conclusion. We note that the State elicited testimony that Brooks seemed abnormally nervous during the traffic stop,[5] that Brooks was known to Task Force members through previous drug investigations and charges, and that upon the initial frisk for weapons, Sergeant Smith detected a bulge in Brooks's pants which Smith described as "odd." These facts provide additional support in the totality of the

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[4] We note that two judges on this panel endorsed these propositions in *Barrett*.

[5] Sergeant Smith testified that appellant "seemed more nervous than normal people are on a traffic stop."

circumstances analysis that the police had probable cause to arrest Brooks, and that the cocaine recovered from Brooks's pants was a result of a lawful search incident to his arrest.

CONCLUSION

Based on the record of the suppression hearing, we conclude that there was probable cause to arrest Brooks in light of the totality of the circumstances. The recovery of the cocaine from Brooks's pants constituted a valid search incident to arrest. The circuit court, therefore, did not err in denying Brooks's motion to suppress the cocaine.

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

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As the majority correctly reports, the standard of review of the denial of a motion to suppress requires us to limit ourselves to a review of the record developed at the suppression hearing in the light most favorable to the prevailing party. Slip Op. at 3 (citing *Pacheco v. State*, 465 Md. 311, 319 (2019)). We give significant deference to the suppression court's factual findings, but we make our own appraisal of the constitutional significance of those facts. Slip Op. at 3-4 (citing, *inter alia*, *Holt v. State*, 435 Md. 443, 458 (2013)). Because my understanding of the constitutional significance of these facts differs from that of my colleagues, I respectfully dissent.

In determining whether the police had probable cause to arrest, we are required to evaluate the totality of the circumstances. Slip Op. at 4 (citing *Pacheco,* 465 Md. at 324). To do so, I begin with the two factors the majority holds are "sufficient in and of themselves" to provide probable cause, Slip Op. at 7, and then examine each of the additional factors that make up that totality.[1]

- **The Dog's Alert**: I think the big difference between my colleagues' and my understanding of this case is the significance I place on *Pacheco v. State*. In my view, *Pacheco* represented a watershed change in our understanding of the legal significance of the odor of marijuana.[2] Before *Pacheco*, the odor of marijuana was sufficient to establish probable cause to search a car and to search the driver (but not the passenger) of a car. *See, e.g.*, *State v. Wallace*, 372 Md. 137, 158-60 (2002).

[1] My friends in the majority need only collect sufficient factors to put them over their probable cause threshold. In dissenting, I need to show that none of the factors and none of them combined put me over my probable cause threshold. As a result, I must necessarily discuss more factors than they.

[2] In this dissent, I refer to the substance as marijuana because that is what it was called at the time and to match my colleagues in the majority. I note, however, that when the People of Maryland amended our Constitution to make it legal, they also changed its name to cannabis. MD. CONST., art. XX.

In *Pacheco*, however, our highest court recognized that by decriminalizing small amounts of marijuana, the significance of the odor of marijuana had to change. 465 Md. at 320, 332. After *Pacheco*, the mere odor of marijuana was no longer sufficient to alone establish probable cause. *Id.* at 332. *That's because you can't tell the amount by the smell*. And, of course it doesn't matter who is doing the smelling. In *Pacheco*, it was a police officer who smelled the odor of marijuana. *Id.* at 318. In this case, it was a dog. But neither the police officer in *Pacheco*, nor the dog here, could tell how much marijuana they were smelling. As a result, in *Pacheco*, the Supreme Court of Maryland held that the odor of marijuana was insufficient to alone provide probable cause. *Id.* at 332. The same result, in my view, must obtain here.[3] My friends in the majority point out that the dog was trained to alert for the smell of five drugs (marijuana, heroin, methamphetamines, cocaine, and MDMA) and thus, they argue (at least implicitly), the dog could have alerted for either the marijuana or the cocaine. Slip Op. at 5. I don't think that's right. As a legal matter, before *Pacheco*, I might have agreed with them. But after *Pacheco*, there is now a possibility that the dog's alert was for a noncriminal amount of marijuana. That necessarily reduces the likelihood that a crime has been or is being committed, that

[3] Another way of explaining the same problem is that for a drug-sniffing dog's alert to give probable cause, the dog must be properly trained. *State v. Wallace*, 372 Md. at 146 ("[T]he law is settled that when a *properly trained* canine alerts to a vehicle indicating the likelihood of contraband, sufficient probable cause exists to conduct a warrantless '*Carroll'* search of the vehicle.") (emphasis added); *United States v. Diaz*, 25 F.3d 392, 393-94 (6th Cir. 1994). Before *Pacheco*, a trained drug-sniffing dog had to be able to detect and alert for the presence of marijuana in any amount. After *Pacheco*, however, to be properly trained, a dog would have to be able to distinguish a criminal amount of marijuana from a noncriminal amount of marijuana by smell. I don't think that such training is possible. As a result, one might say that the dog was not properly trained. *See Illinois v. Caballes*, 543 U.S. 405, 410 (2005) (holding that a dog sniff during a traffic stop does not infringe on a person's Fourth Amendment rights so long as the dog sniff will only reveal illegal activity); *see generally*, Alex C. Carroll, *Weed, Dogs & Traffic Stops*, 21 WY L. REV. 1, 32-42 (2021) (discussing the need to retrain drug-sniffing dogs to alert only for illegal substances). And, as a further result, that dog's alert could no longer establish probable cause. The majority notes that at the suppression hearing, Brooks did not object to the dog's training. Slip Op. at 4 & n.1. True enough, but I am making a different point. It is not that the dog is a bad example of a drug-sniffing dog. Rather, in my view, the whole concept and significance of drug-sniffing dogs must be reevaluated in light of *Pacheco*. Moreover, since the adoption of the constitutional amendment legalizing marijuana, police departments in Maryland must retrain their drug-sniffing dogs to ensure that they will not alert for marijuana at all. In my view, unless the police are able to prove that their dogs won't erroneously alert for what is now lawful behavior, the dogs' alerts won't generate probable cause at all.

is, it undercuts probable cause. Moreover, as a factual matter, the dog alerted to the vehicle while Brooks was being held away from it. Only marijuana was found in the vehicle. Even if we don't know, it doesn't seem reasonable to presume that the dog's alert was for the cocaine found on Brooks's body, away from the area alerted to.

- **The Marijuana in the Glass Jar**: It is undisputed that the marijuana found in the glass jar in the backpack under the passenger's seat was later weighed and found to weigh 7.9 grams. Slip Op. at 6. There is also no doubt that possession of 7.9 grams of marijuana was, at the time, partially decriminalized, and a possessor of that amount of marijuana was subject only to issuance of a civil citation. Slip Op. at 6 & n.3. And the search incident to arrest exception only applies to felonies, attempted felonies, and misdemeanors: not to civil citations. *Lewis v. State*, 470 Md. 1, 23 (2020). In my view, if we can't discern the amount of marijuana to be a criminal amount, we shouldn't count it towards establishing probable cause. *Id.* (citing *Pacheco*, 465 Md. at 332-33).

  Moreover, *Pacheco* provides an important key to understanding the significance of the marijuana in the glass jar. In *Pacheco*, the police officer didn't just smell the odor of burnt marijuana. 465 Md. at 318. He also saw a joint in the center console. *Id.* As far as I can tell, this small amount of unburnt marijuana—theoretically subject to a civil citation—did not move the *Pacheco* Court's probable cause needle and the marijuana in the glass jar here doesn't move mine.

  My colleagues correctly note that the suppression court didn't make a finding of fact that 7.9 grams looks a lot like 10 grams, but, they say, that in reviewing the evidence in a light most favorable to the State, they find that it was reasonable to conclude that 7.9 grams was enough to constitute probable cause. Slip Op. at 7. This makes me wonder where the line really is for the majority. What if, in the next case, a police officer sees an amount of marijuana that is later determined to be 5 grams? Would 5 grams of marijuana provide probable cause? How about 2 grams? It seems to me that maybe the only limitation offered by the majority here is that it must be more than the joint found in *Pacheco*. I would offer a different mode of analysis. In my view, once the General Assembly authorized the decriminalization of small amounts of marijuana, Slip Op. at 6 (citing CR § 5-601 and § 5-601.1), I think that the onus should have been on law enforcement to develop reasonable methods of distinguishing lawful (or at least decriminalized) amounts of marijuana from illegal amounts. I'm not suggesting that the police should have brought a whole forensics lab out in the patrol car, but a $10 kitchen scale would have been useful. Moreover, such a scale would have been a lot cheaper, for example, than the radar guns that the police often carry to help them distinguish between lawful and unlawful driving speeds.

- **<u>The Illegal Turn</u>:** Sergeant Jeremy Smith of the Maryland State Police followed the vehicle for a quarter mile to the intersection of Spring and Park Streets, where, according to Sergeant Smith, the vehicle failed to make a complete stop before turning right. Sergeant Smith did not write Brady a citation. The suppression court made a factual finding that Brady had failed to stop, Ct. Order at 1, but neither the suppression court nor the majority here counted this traffic violation as part of the probable cause evaluation. Neither do I.[4]

- **<u>Surveillance of the Vehicle</u>:** One of the factors on which the suppression court relied was the fact that "[t]he *vehicle* was being surveilled as part of a narcotics investigation." Ct. Order at 2. Wisely, the majority here do not rely on that flimsy reed. There was nothing offered at the suppression hearing to tie Brooks to the vehicle or the vehicle to Brooks, other than that he got in it and rode as its passenger. The vehicle's prior use or prior involvement in illegal activities, therefore, cannot support probable cause as to Brooks. If the State had more information about the vehicle, the State should have introduced it at the suppression hearing.

- **<u>Familiarity with Brooks</u>:** The majority point out that there was testimony at the suppression hearing that the Allegany Narcotics Task Force was "familiar with Mr. Brooks from previous drug investigations and charges" and counts this in favor of probable cause. Slip Op. at 2, 7. I do not. In fact, the only evidence supporting this point is that "the members of the Task Force were familiar with Mr. Brooks from previous drug investigations and charges." Transcript of Proceedings, vol. II at 19-20. This is just a tautology: in effect, saying we think Brooks is a drug dealer because we think Brooks is a drug dealer. That doesn't convince me of anything.

  Moreover, there *are* cases in which police testimony about prior interactions with a suspect was held to count in support of the probable cause analysis. *See, e.g.*, *State v. Amerman*, 84 Md. App. 461, 479 (1990). In those cases, however, the police testimony about familiarity was far more specific. *Amerman*, 84 Md. App. at 475-76 (describing the specificity of police's knowledge of Amerman's prior criminal activities and the independent verification of this knowledge). Moreover,

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[4] Given the circumstances, I am confident that this traffic stop was a pretext of the kind permitted by *Whren v. United States*, 517 U.S. 806 (1996). Although such a traffic stop is constitutional, in my view it erodes public confidence in police, encourages false testimony, and creates dangerous, potentially violent, and often racially-charged interactions between the police and the citizenry. I have urged the Supreme Court of Maryland to reconsider its adherence to *Whren* and for law enforcement to voluntarily abandon the practice. *Snyder v. State*, No. 1127, Sept. Term 2021 (filed Feb. 3, 2023) (Friedman, J., concurring). As Brooks has not raised a claim on this basis, however, it is waived.

in *Amerman*, his prior interactions with police resulted in, at least, charges, if not convictions. *Id.* At 479. Given the presumption of innocence that all Americans enjoy, I don't give much weight to these vague claims by police. *See, e.g.*, *Silbert v. State*, 10 Md. App. 56, 65 (1970) (prior convictions don't automatically give rise to probable cause). Again, I note that the State could have offered evidence about what gave rise to their "wider investigation" and surveillance into drug trafficking, and what they knew about Brooks, but it chose not to. While I am required to view the evidence in the light most favorable to the State, I won't imagine evidence that the State didn't produce.

- **Nervousness:** The majority opinion gilds the lily a bit in stating that Brooks seemed "*abnormally* nervous." Slip Op. at 2, 7 (emphasis added). The finding of the suppression court was that Brooks "appeared nervous, refused to make eye contact, and shifted continuously in his seat." Ct. Order at 2. There is nothing abnormal about that. Further, case law cautions courts against putting too much weight on a police officer's interpretation of a suspect's nervousness. As we wrote in *Whitehead*: "There is no earthly way that a police officer can distinguish the nervousness of an ordinary citizen under such circumstance from the nervousness of a criminal who traffics in narcotics." *Whitehead v. State*, 116 Md. App. 497, 505 (1997); *see also Sellman v. State*, 449 Md. 526, 553-54 (2016). Even in a light most favorable to the State, ordinary nervousness is all that the evidence supports. And ordinary nervousness just doesn't count in the probable cause analysis.

- **The *Terry* Frisk**[5]**:** The majority mentions, Slip Op. at 2, 7, but evidently doesn't count it for much in its probable cause analysis, that with Brooks's consent, Sergeant Smith patted him down for weapons and reported that Brooks's crotch felt "odd." I note that, according to his testimony, this "odd" feeling was not enough to make Sergeant Smith suspicious at the time and though the State continuously refers to this "bulge" in its briefs, in the end it waives reliance on this factor as supporting probable cause as "the State need not and did not rely on the 'plain feel doctrine' to justify the search and arrest." Appellee Br. at 13. In my view, the Troopers conducted a permissible *Terry* frisk for police safety when they patted down Brooks for weapons. Finding no weapons and nothing further to investigate based on the *Terry* frisk, there was no suspicion to add to the probable cause analysis for the search incident to arrest.

[5] The term "*Terry* frisk" is derived from *Terry v. Ohio*, which authorized the practice of a pat down limited to a feel of the outer clothing solely to discover weapons that may be used against the officer. 392 U.S. 1, 27 (1968).

Having conducted my own independent constitutional appraisal of the totality of these circumstances, I would find that the State Police lacked probable cause to search Brooks's person, other than a pat down for guns for police safety during the dog sniff. After that was complete, I would find any additional search unreasonable. I would, therefore, suppress the cocaine found in Brooks's crotch as the fruit of an illegal search. And, in the absence of the evidence of the cocaine, I would reverse Brooks's conviction.

In the film, The Untouchables, a reporter tells Eliot Ness: "They say they're gonna repeal Prohibition." The reporter asks Ness, "What will you do then?" Ness, who has devoted his entire career to enforcing Prohibition, responds, "I think I'll have a drink." At risk of explaining irony, after Prohibition, law enforcement[6] needed to reevaluate its goals and methods and change to meet the new reality. My friends in the majority chide me that my dissenting opinion today is inconsistent with an opinion I joined in 2017. Slip Op. at 6-7 & n.3 (discussing *Barrett*). Perhaps, given the intervening changes in the law—including both the watershed *Pacheco* decision and now the amendment to the state constitution ending Prohibition—it is they who should be gently chided for not updating their views.

[6] And, presumably, the judiciary.