Circuit Court for Anne Arundel County
Case No. C-02-CR-19-001193

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 925

September Term, 2020

SHARNIEL BAKER

v.

STATE OF MARYLAND

Kehoe,
Shaw Geter,
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Harrell, J.

Filed: August 16, 2021

*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.

Sharniel Baker, appellant, was arrested and charged with various drug-related offenses after the police found cocaine on his person. Prior to trial in the Circuit Court for Anne Arundel County, appellant filed a motion to suppress the cocaine. That motion was denied following a hearing. After appellant filed a motion to reconsider, which the court granted, a second suppression hearing was held. Following that hearing, the suppression court again denied appellant's motion to suppress. Appellant waived his right to a jury trial and proceeded by way of a bench trial pursuant to an agreed statement of facts. The trial court subsequently found appellant guilty of possession of cocaine and possession with intent to distribute cocaine. The court sentenced appellant to a total term of 12 years' imprisonment. In this appeal, appellant presents a single question for our review:

Did the suppression court err in denying the motion to suppress?

For reasons to be elaborated, we hold that the suppression court did not err in denying appellant's motion. Thus, we affirm the judgments of the circuit court.

BACKGROUND

First Suppression Hearing

Anne Arundel County Police Detective Tyler Hickox testified that, at approximately 8:53 p.m. on 18 April 2019, he was on patrol in the area of Green Acres Drive in Glen Burnie. Detective Hickox testified that he was patrolling that area because the police had received "repeated complaints of narcotics trafficking in that area."

Detective Hickox testified that, at some point during his patrol, he observed a four-door Buick "leaving a residence that [had] been a known target of a narcotics search warrant and multiple narcotics complaints." Detective Hickox, who was in an unmarked

vehicle with another officer, began following the Buick. While following the vehicle, Detective Hickox observed that the "front parking light assembly was out." Detective Hickox initiated a traffic stop of the vehicle. Upon approaching the vehicle's driver-side door, Detective Hickox observed two occupants: a driver, later identified as Sherry Beckmeyer, and a front-seat passenger, later identified as appellant. Detective Hickox asked Ms. Beckmeyer to step out of the vehicle. She complied.

As Ms. Beckmeyer was getting out of the vehicle, Detective Hickox looked inside the vehicle and observed "a Chore Boy." Detective Hickox testified that Chore Boy was a "copper wire tool," similar to a "Brillo pad," that is used generally "to clean tough surfaces, pots and pans." Detective Hickox added that, based on his training, knowledge and experience, a Chore Boy was "often ripped into small pieces and used as a filter for smoking crack cocaine out of a pipe." Detective Hickox testified that the Chore Boy he observed in the vehicle was not whole, but rather "was ripped up into small pieces."

Detective Hickox testified that, upon making that observation, he removed appellant from the vehicle and conducted a search of the inside of the vehicle. During that search, Detective Hickox found "more small pieces of Chore Boy on the floor" and "an Arby's receipt that was crumbled up in an open ashtray in the center console." Upon flattening the receipt, Detective Hickox discovered "a white rock-like powdery substance" that he believed to be crack cocaine.

Anne Arundel County Police Detective Kevin King testified that he was with Detective Hickox in the unmarked police vehicle that day. Detective King testified that he

assisted Detective Hickox by approaching the suspect vehicle's passenger side and asking appellant for his identification. After the Chore Boy and suspected crack cocaine were found by Detective Hickox, Detective King removed appellant from the vehicle and "conducted a pat down."

Detective King testified that, while he was conducting the pat down, he observed that appellant's leg muscles were "tensing up." Detective King asked appellant to "spread his legs," but appellant did not cooperate. Detective King then asked a nearby officer to conduct the pat down while Detective King watched. During that pat down, appellant's legs "were still tense." The officer then "shook" appellant's pants, at which point Detective King observed that "a container of plastic had fallen out of [appellant's] pants that had suspected crack cocaine in it." Detective King retrieved the container, and appellant was arrested.

At the conclusion of the testimony, defense counsel argued that the drugs found on appellant's person should be suppressed because the police lacked probable cause to search the vehicle or appellant's person. The State argued that the police's discovery of the Chore Boy, coupled with the fact that appellant's vehicle was leaving a known drug area, provided sufficient probable cause to search the vehicle. The State argued further that the subsequent discovery of the crack cocaine in the vehicle justified appellant's arrest and that, consequently, a search incident to that arrest was also justified.

In the end, the suppression court found that the police had probable cause to conduct the searches. Accordingly, the court denied appellant's motion to suppress.

Second Suppression Hearing

Shortly after the suppression court's ruling, the State provided to the defense pictures that had been taken of the Chore Boy found in the vehicle in which appellant was a passenger. **As a result,** appellant filed a motion for reconsideration of the suppression court's ruling. In that motion, appellant argued that the hearing on his motion to suppress should be reopened because the pictures of the Chore Boy provided by the State were not consistent with the testimony from the first suppression hearing. The circuit court ultimately granted appellant's motion, and a second suppression hearing was held.

At that hearing, Anne Arundel County Police Detective Andrew Rohe testified that, on the night of appellant's arrest, he was called to the scene to assist in the traffic stop. Detective Rohe testified that, when he arrived at the scene, Detective Hickox was already speaking with the driver. While Detective Hickox was speaking with the driver, Detective Rohe approached on the vehicle's driver's side and stood with his flashlight. At some point, Detective Hickox asked the driver to step out of the vehicle. Detective Rohe testified that, when the driver's side door was opened, he illuminated the interior of the vehicle with his flashlight and observed pieces of Chore Boy "on the floorboard kind of scattered in a couple pieces."

The State then showed Detective Rohe the picture of the vehicle's floorboard, which depicted the Chore Boy he had seen. Upon looking at the picture, Detective Rohe testified that there appeared "to be one large piece and a second smaller piece" and that the picture was an accurate depiction of what he observed on the night of the traffic stop. Detective

Rohe then pointed to the picture and indicated that there was "a long piece" and "a small piece." Detective Rohe added that he was able to observe clearly the Chore Boy because it was a "shiny metal" and "when the flashlight hits it, it actually increases its visibility." When asked how quickly he was able to tell that the pieces of Chore Boy were associated with drug paraphernalia, Detective Rohe responded, "Immediately."

As to the Chore Boy itself, Detective Rohe testified that users of crack cocaine sometimes take apart the pad and stuff pieces of it in the end of a crack pipe to create a filter. Detective Rohe stated that, when that happens, oftentimes pieces of the pad will fall off and be "left in places where it typically wouldn't be." Detective Rohe testified that it requires effort to separate the pad into pieces and that the pieces do not typically fall off when the pad is used for normal cleaning purposes. Detective Rohe testified that, when he finds such pieces in the course of his duties, it is "always related directly to crack cocaine usage." Detective Rohe added that, when he finds such pieces inside a vehicle, he oftentimes "will then find the smoking device itself or crack cocaine." Detective Rohe testified that he was trained in the identification of drugs and drug paraphernalia and that he had been involved in "a couple hundred" drug arrests over the course of his career as a police officer.

At the conclusion of the testimony, the State argued that Detective Rohe's observation of the Chore Boy provided probable cause to search the vehicle. Defense counsel countered that the two pieces of Chore Boy did not, by itself, justify the search. In the end, the suppression court denied appellant's motion to suppress, finding as follows:

> I think, with all due respect to Mr. Baker and his counsel, they are misapprehending what probable cause is. Probable cause is a probability in the mind of the officer when he finds Chore Boy on the floor; that there is something else going on. And he testified that every time I see Chore Boy on the floorboard, I find x, y and z also in the car.
>
> So as such, I think the presence of the Chore Boy, even though it is much less in the photograph than I imagined it to be the first time we had this hearing, does create that probability or that probable cause in the mind of the officer to effect the balance of the search.

Bench Trial

Appellant waived his right to a jury trial and proceeded by way of a bench trial pursuant to an agreed statement of facts, which established that approximately 35 grams of cocaine were recovered from appellant's person on the night of his arrest. Appellant was ultimately convicted. This timely appeal followed.

DISCUSSION

Parties' Contentions

Appellant contends that the suppression court erred in denying his motion to suppress. He argues that the police lacked probable cause to search the vehicle or his person. The State counters that the police had probable cause to search the vehicle based on the discovery of the Chore Boy. The State argues further that the subsequent discovery of the cocaine in the vehicle gave the police probable cause to arrest appellant and search him. We agree with the State and hold that the court did not err in denying appellant's motion to suppress.

Standard of Review

"Our review of a circuit court's denial of a motion to suppress evidence is limited to the record developed at the suppression hearing." *Pacheco v. State*, 465 Md. 311, 319 (2019) (citations and quotations omitted). "[W]e view the evidence presented at the [suppression] hearing, along with any reasonable inferences drawable therefrom, in a light most favorable to the prevailing party." *Davis v. State,* 426 Md. 211, 219 (2012). Moreover, "[w]e extend great deference to the findings of the hearing court with respect to first-level findings of fact and the credibility of witnesses unless it is shown that the court's findings are clearly erroneous." *Daniels v. State,* 172 Md. App. 75, 87 (2006). "We give no deference, however, to the question of whether, based on the facts, the trial court's decision was in accordance with the law." *Seal v. State,* 447 Md. 64, 70 (2016). "When a party raises a constitutional challenge to a search or seizure, this Court renders an independent constitutional evaluation by reviewing the relevant law and applying it to the unique facts and circumstances of the case." *Pacheco*, 465 Md. at 319-20 (citations and quotations omitted).

Analysis

A.

As noted, appellant contends that the police lacked probable cause to search the vehicle in which he was a passenger. He argues that the presence of the Chore Boy was a "wholly innocent fact" and that there was "nothing unlawful about having two small scraps of a Brillo pad underneath the driver's seat." He argues further that the other attendant

circumstances, namely, that the vehicle was seen leaving a house known for drug activity in an area also known for drug activity, did not provide the requisite "suspicious context" such that the two pieces of Chore Boy would lead a reasonable officer to believe that contraband or evidence of a crime was present in the vehicle. He concludes, therefore, that the search was illegal.

"The Fourth Amendment to the United States Constitution protects persons and places from unreasonable intrusions by the government." *Wilson v. State*, 409 Md. 415, 427 (2009) (footnote omitted). "Reasonableness within the meaning of the Fourth Amendment generally requires the obtaining of a judicial warrant." *State v. Johnson*, 458 Md. 519, 533 (2018) (citations and quotations omitted).

"Although warrantless searches and seizures are presumptively unreasonable, they may be deemed reasonable if the circumstances fall within a few specifically established and well-delineated exceptions." *Pachecho*, 465 Md. at 320-21 (internal citations and quotations omitted). One such exception is the "automobile exception," which permits "the warrantless search of a vehicle if, at the time of the search, the police have developed probable cause to believe the vehicle contains contraband or evidence of a crime." *Id.* at 321 (citations and quotations omitted).

"'The principal components of a determination of … probable cause will be the events which occurred leading up to the stop or search, and then the decision whether these historical facts, viewed from the standpoint of an objectively reasonable police officer, amount … to probable cause.'" *Coley v. State*, 215 Md. App. 570, 578 (2013) (quoting

Ornelas v. United States, 517 U.S. 690, 696 (1996)). "The probable cause standard is 'a practical, nontechnical conception that deals with the factual and practical considerations of everyday life on which reasonable and prudent [people], not legal technicians, act.'" *Lewis v. State*, 237 Md. App. 661, 676-77 (2018) (quoting *Maryland v. Pringle*, 540 U.S. 366, 370 (2003)). "Probable cause, moreover, is a fluid concept, incapable of precise definition or quantification into percentages because it deals with probabilities and depends on the totality of the circumstances." *Pachecho*, 465 Md. at 324 (citations and quotations omitted). "For that reason, probable cause does not depend on a preponderance of the evidence, but instead depends on a fair probability on which a reasonably prudent person would act." *Id.* (citations and quotations omitted). Although a finding of probable cause requires more than that which would merely arouse suspicion, it nevertheless "is not a 'high bar.'" *Johnson*, 458 Md. at 535 (citations and quotations omitted).

We hold that the police in the present case had probable cause to search the vehicle in which appellant was a passenger. The evidence adduced at the suppression hearings established that the police were on patrol in the area of the traffic stop after receiving repeated complaints of narcotics trafficking in that area. While on patrol, the police observed a vehicle leaving a residence where the police had executed previously a search warrant for drug activity. The residence had been also the subject of repeated narcotics complaints. Later, after initiating the traffic stop of the vehicle, the police observed multiple pieces of Chore Boy, a Brillo-type scouring pad, on the driver's side floorboard. Detective Hickox testified that the Chore Boy "was ripped up into small pieces," which

indicated that they may have been used "as a filter for smoking crack cocaine out of a pipe." Detective Rohe testified that, when Chore Boy is used for that purpose, oftentimes pieces of the pad will fall off and be "left in places where it typically wouldn't be." Detective Rohe stated that he recognized the Chore Boy as paraphernalia "immediately" and that, in his experience, the discovery of Chore Boy in such a manner is "always related directly to crack cocaine usage" and oftentimes leads to the discovery of "the smoking device itself or crack cocaine."

Viewing those facts in a light most favorable to the State, we conclude that an objectively reasonable police officer would have been justified in believing that the vehicle contained contraband or evidence of a crime. We therefore hold that the suppression court did not err in denying appellant's motion to suppress.

We are unpersuaded by appellant's claim that the presence of the Chore Boy on the floorboard of the vehicle was a "wholly innocent activity." To be sure, possession of a Chore Boy scrubbing pad is not illegal and, generally speaking, is not sufficient grounds to justify a warrantless search. *See Bailey v. State*, 412 Md. 349, 382-87 (2010) (holding that the odor of ether or other substance associated with drug activity did not, by itself, constitute probable cause to justify a warrantless seizure). Consequently, had the police observed a whole Chore Boy pad on the floor of the vehicle without any of the other attendant circumstances being present, then perhaps appellant's argument would carry more weight.

But that is not what happened here. The Chore Boy observed on the floor of the vehicle was not whole, but rather was separated into smaller pieces. Detective Rohe testified that separating the Chore Boy into pieces requires effort and does not typically occur when the pad is used for normal cleaning purposes. Detective Rohe testified further that, in his experience, the discovery of pieces of Chore Boy, like the ones in the vehicle, was "always" related to crack cocaine usage and oftentimes led to the discovery of drugs or other paraphernalia. In addition, Detective Hickox testified that, just prior to the discovery of the Chore Boy in the vehicle, he observed the vehicle leaving a house known for drug activity at a time when the police were patrolling the area in direct response to complaints about drug activity. Given those circumstances, we have no problem concluding that the police had a concrete reason to associate the presence of the Chore Boy with criminal activity. *See id.* at 382 ("The odor of ether is an innocent factor without context, but the totality of the circumstances may lead to a conclusion that the lawful substance is associated with a criminal purpose.").

We are likewise unpersuaded by appellant's reliance on *Bailey v. State*, 412 Md. 349 (2010), as that case is readily distinguishable. There, the Court of Appeals held that the police lacked probable cause to seize the defendant under the following circumstances: the defendant was seen standing next to a house in a high crime area; the defendant did not respond to the police when approached; and the defendant smelled of ether, which the arresting officer associated with phencyclidine (PCP). *Id.* at 359, 375. The Court reasoned

that the smell of ether was an "innocent factor" and that the surrounding circumstances did not "strongly suggest" that the odor was associated with criminal activity. *Id.* at 382-87.

Here, appellant was not merely found in a high crime area; he was seen leaving a house that had been "a known target of a narcotics search warrant and multiple narcotics complaints." *Cf. id.* at 384 (noting that the defendant "was not engaged in any particular activity" when stopped). Moreover, the police were in that specific area in direct response to "repeated complaints of narcotics trafficking in that area." *Cf. id.* (noting that "there were no specific complaints about PCP, the [defendant], or about drug activity in the area on the night in question"). Finally, Officer Rohe provided testimony about the specific qualities of the Chore Boy found in the vehicle, including how a Chore Boy pad could be manipulated to create the pieces found in the vehicle and how such pieces were "always" associated with drug activity. *Cf. id.* at 379-80 (noting that the record was devoid of information as to the qualities of PCP odors and their relation to the odor of ether).

Bailey is distinguishable also because it involved a probable cause determination in the context of a warrantless seizure, whereas the instant case involves a probable cause determination in the context of a warrantless search of an automobile. Although both determinations require the same "quantum of evidence," they are nevertheless distinct because "each requires a showing of probabilities as to somewhat different facts and circumstances[,] … [and] there may be probable cause to search without probable cause to arrest, and vice-versa." *Pacheco*, 465 Md. at 324-25 (internal citations and quotations omitted). "The distinction between the two exceptions is at least in part due to the

diminished expectation of privacy that justifies the automobile exception, as compared to the unique, significantly heightened constitutional protections afforded a person to be secure in his or her body." *Id.* at 325-26 (internal citations and quotations omitted). Thus, it would be inappropriate to rely too heavily on the Court's analysis in *Bailey*, as that analysis was made under the "heightened constitutional protections" of a warrantless seizure.[1] *See also State v. Funkhouser*, 140 Md. App. 696, 724 (2001) ("Only places or things enjoying a lesser expectation of privacy, such as automobiles, are vulnerable to probable-cause-based warrantless searches for the purpose of discovering and seizing evidence of crime.").

A more analogous case is *Coley v. State*, 215 Md. App. 570 (2013). There, we held that the police had probable cause to conduct a warrantless search of the defendant's vehicle based on a police officer's observation, in plain view in the defendant's vehicle, "of torn one-inch plastic baggies that he knew from his training and experience to be likely heroin paraphernalia, and [the officer's] prior knowledge that, by her own admission, [the defendant] had been a heroin user in the past and had used heroin as recently as one year before." *Id.* at 583. In so holding, we recognized "that possession of empty plastic bags, by itself, is not necessarily criminal" and that "[i]tems that police officers may recognize from their training and experience as likely drug paraphernalia may also have innocent uses." *Id.* We noted, however, that, in making a probable cause determination, "the relevant inquiry is not whether particular conduct is 'innocent' or 'guilty,' but the degree

[1] For similar reasons, appellant's reliance on *Grandison v. Commonwealth*, 645 S.E.2d 298 (Va. 2007), is misplaced.

of suspicion that attaches to particular types of noncriminal acts." *Id.* at 583-84 (citing *Illinois v. Gates*, 462 U.S. 213, 243 n. 13 (1983)). We explained that, per the testifying officer, it was not the empty bags that aroused his suspicion, but the characteristics of the bags, namely, their size and the manner in which they were torn, that suggested they had been previously used to hold drugs. *Id.* at 584-85. We explained further that the officer's suspicions were bolstered by his existing knowledge that the defendant had been a heroin user in the past. *Id.* at 585-86.

Here, the pieces of Chore Boy found in the vehicle, like the torn bags in *Coley*, were potentially innocent items that had been altered in such a way that Detective Rohe, a trained law enforcement officer, recognized them immediately as being associated with drug use. Moreover, Detective Rohe's observations were bolstered by the fact that, just before the Chore Boy was found, appellant was seen leaving a house known for drug activity on a night when the police were in the area in direct response to numerous complaints regarding drug activity. As such, the police had probable cause to search the vehicle.

B.

Appellant contends next that, even if the police had probable cause to search the vehicle, they did not have probable cause to search his person, which led to the discovery of the drugs which underlay his convictions. Appellant argues that there was an insufficient link between him and the Chore Boy to provide probable cause to arrest him for possession of paraphernalia. He argues further that the discovery of the suspected crack cocaine in the

crumpled Arby's receipt did not justify the warrantless arrest, either, because there was insufficient evidence to show that he possessed the contraband.

As noted, warrantless searches may be deemed reasonable if the circumstances of the search fall within certain recognized exceptions. *Pachecho*, 465 Md. at 320-21. One of those exceptions is the "search incident to arrest exception," which permits an arresting officer to search the person arrested in order to remove weapons or seize evidence. *Pachecho*, 465 Md. at 322-23. For such a search to be reasonable, "the police must be armed with probable cause to believe that the person subject to arrest has committed a felony or is committing a felony or misdemeanor in the presence of the police." *Id.* at 322. "To determine whether an officer had probable cause to arrest an individual, we examine the events leading up to the arrest, and then decide 'whether these historical facts, viewed from the standpoint of an objectively reasonable police officer, amount to' probable cause." *Pringle*, 540 U.S. at 371 (citation omitted).

We hold that the police had probable cause to arrest appellant based on the suspected crack cocaine found in the crumpled Arby's receipt located in an open ashtray in the vehicle's center console.[2] Although the suspected crack cocaine was not found directly on appellant's person, "[c]ontraband need not be on a defendant's person to establish possession." *Handy v. State*, 175 Md. App. 538, 563 (2007) (citations omitted). "Rather, a person may have actual or constructive possession of the [contraband], and the possession may be either exclusive or joint in nature." *Moye v. State,* 369 Md. 2, 14 (2002). When

[2] As such, we need not address whether the police had probable cause to arrest appellant for possession of paraphernalia.

considering whether an individual has joint and/or constructive possession of contraband, we generally look at the following factors: 1) the proximity between the defendant and the contraband; 2) whether the contraband was within the view or knowledge of the defendant; 3) whether the defendant had ownership of or some possessory right in where the contraband was found; 4) whether a reasonable inference may be drawn that the defendant was participating in the mutual use and enjoyment of the contraband; 5) the nature of the premises where the contraband is found; and 6) whether there are circumstances indicating a common criminal enterprise. *Belote v. State*, 199 Md. App. 46, 55-57 (2011).

Here, the suspected crack cocaine was found in a vehicle in which appellant was a passenger at a time when the vehicle had just been observed leaving a home known for drug activity. *See Pringle*, 540 U.S. at 373 ("[A] car passenger … will often be engaged in a common enterprise with the driver, and have the same interest in concealing the fruits or the evidence of their wrongdoing.") (citations and quotations omitted). The suspected cocaine was not "secreted away" in some place to which only the driver had access, but rather was located in an open ashtray in the vehicle's center console directly next to where appellant was sitting. *See id.* at 371-72 (holding that police officer had probable cause to arrest vehicle's three occupants based on the discovery of cocaine in the vehicle, where the cocaine was "behind the back-seat armrest and accessible to all three men"); *see also Belote*, 199 Md. App. at 55-56 (noting that, when assessing the nature of the premises and whether suspects are involved in a common criminal enterprise, "[c]ourts give special

considerations to automobiles" and generally will hold "that a small or exclusive space increases probable cause to suspect criminal association among those present").

Given those factors, we conclude that the police had probable cause to believe that appellant possessed the suspected crack-cocaine. Consequently, the police had probable cause to arrest appellant and conduct a search incident to that arrest.[3] The suppression court did not err in denying appellant's motion to suppress on those grounds.

JUDGMENTS OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.

[3] It is undisputed that possession of the suspected crack cocaine constituted an arrestable offense.