Circuit Court for Prince George's County
Case No. C-16-CR-23-001284

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 2026

September Term, 2023

RAYSHAWN MONTE WALLACE

v.

STATE OF MARYLAND

Graeff,
Berger,
Zic,

JJ.

Opinion by Berger, J.

Filed: March 3, 2025

* 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 with Rule 1-104(a)(2)(B). Md. Rule 1-104.

In February 2023, the State charged Appellant, Rayshawn Monte Wallace ("Wallace"), in the Circuit Court for Prince George's County with several counts related to possession of a gun and ammunition.[1] Wallace moved to suppress the evidence discovered in his vehicle, arguing that it was the fruit of an illegal search, seizure, and interrogation under the Fourth Amendment of the Constitution. Following a suppression hearing, the trial court denied Wallace's motion to suppress. Wallace then entered into a conditional plea agreement, pleading guilty to one count of transporting a loaded handgun in a motor vehicle. As part of the plea agreement, Wallace preserved his right to appeal the denial of his motion to suppress evidence, including a firearm, magazine, and ammunition.

Wallace was sentenced to three years of incarceration, with all but six months suspended, and three years of probation. On appeal, Wallace presents one question for our review, which we rephrase slightly as follows:[2]

> Whether the circuit court erred by denying Wallace's motion to suppress.

For the reasons explained herein, we shall reverse.

---

[1] Wallace was charged with loaded handgun in vehicle, handgun on person, detached magazine over ten rounds, and illegal possession of ammunition.

[2] Wallace phrased his original question presented as follows:

> Did the Circuit Court err by denying the appellant's motion to suppress?

FACTS AND PROCEDURAL HISTORY

While patrolling the area of Oxon Hill and Marlow Heights, Officer Kenneth Meushaw of the Prince George's County Police Department observed Wallace parking his vehicle in an apartment complex parking lot. Just as Wallace exited the vehicle, Officer Meushaw activated the flashing lights on his patrol car because he believed the vehicle's windows were illegally tinted. Wallace began to walk down the sidewalk. Officer Meushaw pulled his patrol car behind Wallace's vehicle, boxing the vehicle into the parking space, and shouted to Wallace, "[y]o, you got your driver's license?" He indicated to a second officer on the scene, "[h]ey, you need to get him." Officer Meushaw then exited his patrol car. At the suppression hearing, Officer Meushaw testified that after he exited the car, Wallace began "fast walking to avoid any interaction with me on this traffic stop." As Wallace turned and began walking toward one of the apartment buildings, a second officer, Officer Davis, pointed a taser toward him and said, "[y]o, man, I said get back in your car."

At that point, Wallace stopped walking and asked the officers what was going on. Officer Meushaw informed him that it was a traffic stop for the tint on his windows and asked if he was carrying any weapons. Wallace responded that he did not have any weapons on him. Officer Meushaw then frisked Wallace and pulled a set of keys out of Wallace's pocket. With the keys in hand, Officer Meushaw approached Wallace's car and attempted to unlock the door several times, noting that the key fob was not working. While Officer Meushaw sorted through the keys and continued his attempts to enter the vehicle,

two additional officers walked around the vehicle and briefly looked into the windows with their flashlights. Neither of these two officers, nor Officer Meushaw, remarked about anything they were able to observe through the windows.

After a minute or two, Officer Meushaw successfully opened the vehicle's front driver's side door with the keys and began searching the interior of the car. A plastic Sprite bottle is visible in the center cupholder in the body-worn camera footage. Officer Meushaw did not examine the bottle or lift it up as he searched. The bottle was later determined to contain promethazine with codeine, a schedule V controlled substance. Officer Meushaw first opened the center console compartment and looked inside with his flashlight. Finding nothing, he opened the glove compartment on the front passenger's side of the vehicle. He then reached under the front passenger seat and the driver's seat. Officer Meushaw located a gun under the driver's seat and yelled, "10-15-7a," to indicate this finding to the other officers on the scene. Wallace was subsequently arrested and charged for possession of the weapon found in his vehicle.

The Suppression Hearing

At the suppression hearing, the State offered several arguments for why the officers conducted a valid stop and search of Wallace's person and vehicle. Because the State has elected not to pursue some of these points on appeal, we limit our factual review to only the relevant arguments related to this appeal. First, the prosecutor argued that the officers were permitted to search Wallace's person and recover his keys because they had probable cause to arrest Wallace for eluding their traffic stop. The record shows that after activating

his patrol car lights, Officer Meushaw and others asked Wallace to stop, but that, instead, he began walking down the sidewalk. The prosecutor argued:

> He should have stopped at that point and handed over his license because it was a valid traffic stop. But he didn't. He continued on. And he was told twice by Officer Davis at least, get back to your car. Get back to your car. But he continued down the path towards . . . the front door.

During the suppression hearing, Officer Meushaw testified that because Wallace was "fast walking" away from the officers, he had probable cause "to believe that [Wallace was] fleeing and eluding on foot."

Next, the State argued that officers had probable cause to search Wallace's vehicle for contraband because they were able to see the bottle of promethazine through the tinted windows. Officer Meushaw testified during the hearing that he had been trained in drug recognition and that he had personally encountered promethazine with codeine several times over his career. Officer Meushaw explained that promethazine with codeine is "a liquid cough suppressant that the youth has been using to mix in their drinks to get high."

The basis of the State's argument that Officer Meushaw had seen the bottle before opening the car door stemmed from testimony elicited during the hearing. While playing Officer Meushaw's body-worn camera footage, the State inquired about a second officer who can be seen shining his flashlight into the windows of Wallace's vehicle. The State asked Officer Meushaw: "The gentleman who is to the front of the car, where is he looking with that flashlight?" The following exchange occurred:

> [WITNESS]: He's looking down towards the center console, where a bottle containing suspected promethazine with codeine --
>
> [DEFENSE]: And again objection to the lack of personal knowledge as he is . . . describing what is in someone else's mind, what someone else is seeing.
>
> [STATE]: He has personal knowledge, Judge. I think if you will reserve on the issue, you will see when he gets the personal knowledge.
>
> [COURT]: Overruled.

After a few more minutes of the footage was played, showing Officer Meushaw successfully entering the vehicle using the keys he had removed from Wallace's pocket, this exchange occurred during direct examination:

> [STATE]: What are you looking at at this point?
>
> [WITNESS]: When they open the door, I could see the bottle of -- which contained suspected promethazine with codeine in a Sprite bottle . . .
>
> [STATE]: Why did you think it contained that?
>
> [WITNESS]: The color of it, and after seeing it for the past 15 or so years where it's become popular and also knowing that that sort of Sprite drink should be clear and not have color to it.

On cross examination, Officer Meushaw testified that when the door was opened, he "looked at the center console where we had seen the bottle of promethazine." He did not need to touch the bottle, he said, because it was clear.

At the close of the suppression hearing, the court denied the motion to suppress and ruled as follows:

> The officer initially testified that he was I guess pulling out, he saw the Defendant attempt to back into a parking space . . . The officer then said as the Defendant got out, he asked him to stop. The Defendant apparently did not stop. The defense would say that the Defendant was not fleeing and eluding because he was not walking at apparently a high speed or running. But apparently the Defendant was not responding to the commands of the officer, either, and in fact did not stop as the officers initially asked him to stop.
>
> And it was because of the apparent tinted window that the officer apparently initially became alerted to the Defendant, and apparently as a result of the Defendant not stopping and leaving the vehicle as the officer was directing and asking him to stop, the officer believed that some criminal activity was afoot.
>
> And as a result of that the officer stopped the Defendant and apparently went back. The State did indicate that the officers did I guess point flashlights through the tinted window, apparently.
>
> And the Court believes the stop was lawful, the Court believes that the frisk was lawful under the circumstances and the Court will deny the Defendant's request to suppress at this time.

DISCUSSION

I. The trial court erred in denying Wallace's motion to supress the weapon.

The Fourth Amendment to the United States Constitution provides that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated[.]" U.S. CONST. amend. IV. This constitutional protection is also applicable to the states through the Fourteenth Amendment. *Corbin v. State*, 428 Md. 488, 499 (2012). "Accordingly, subject only to a few specifically established and well-delineated exceptions, a warrantless search or seizure

that infringes upon the protected interests of an individual is presumptively unreasonable." *Grant v. State*, 449 Md. 1, 17 (2016) (citations omitted). The State has the burden of overcoming this presumption. *Id.*

On appeal, Wallace offers several arguments for why the police violated his Fourth Amendment rights when they frisked him, removed his keys from his pocket, and entered his vehicle. The State has conceded several of these points, narrowing the scope of our review. First, the State agrees with Wallace that the pat-down of his pocket was not a lawful *Terry* frisk because "the record did not show that officers had reasonable suspicion that Wallace was armed and dangerous."[3] The State also declined to argue that the search of Wallace's vehicle was justified by probable cause to believe that it contained a weapon, and does not "defend the car search as a search incident to arrest pursuant to" *Arizona v. Gant*, 556 U.S. 332 (2009).[4]

[3] The police may, under the Fourth Amendment, stop and briefly detain a person for purposes of investigation, if the officer has a reasonable suspicion supported by articulable facts that criminal activity may be afoot. *See Terry v. Ohio*, 392 U.S. 1, 30 (1968); *accord Crosby v. State*, 408 Md. 490, 505 (2009). An officer, however, "must be able to articulate something more than an "inchoate and unparticularized suspicion or 'hunch'" in order to justify making a stop. *Cartnail v. State*, 359 Md. 272, 287 (2000) (quoting *United States v. Sokolow*, 490 U.S. 1, 7 (1989)). Here, the State concurs with Wallace that no such reasonable suspicion existed. We agree.

[4] In *Arizona v. Gant*, the Supreme Court held that "[p]olice may search a vehicle incident to a recent occupant's arrest only if the arrestee is within reaching distance of the passenger compartment at the time of the search." *Gant*, 556 U.S. at 351. Wallace argues on appeal that he was never within reaching distance of the vehicle. The State concurs, as do we.

Instead, the State argues on appeal that (1) police lawfully searched Wallace's person incident to a valid arrest for fleeing and eluding an attempted traffic stop pursuant to section 21-904 of the Transportation Article ("TR § 21-904"), and (2) police had probable cause to search Wallace's vehicle for contraband based on the reasonable inference that Officer Meushaw saw the bottle of promethazine with codeine before the car door was open or, alternatively, that Officer Meushaw was permitted to open the vehicle to check the tint on the window. We are not persuaded.

Standard of Review

On review of a motion to suppress, we apply the following long-held standard:

> When we review a trial court's grant or denial of a motion to suppress evidence alleged to have been seized in contravention of the Fourth Amendment, we view the evidence adduced at the suppression hearing, and the inferences fairly deducible therefrom, in the light most favorable to the party that prevailed on the motion. We defer to the trial court's fact-finding at the suppression hearing, unless the trial court's findings were clearly erroneous. Nevertheless, we review the ultimate question of constitutionality *de novo* and must "make our own independent constitutional appraisal by reviewing the law and applying it to the fats of the case."

Corbin, 428 Md. at 497 (citations omitted). Our review of a trial court's "denial of a motion to suppress evidence under the Fourth Amendment, ordinarily, is limited to the information contained in the record of the suppression hearing and not the record of the trial." *State v. Wallace*, 372 Md. 137, 144 (2002).

On appeal, the State invokes the "supplemental rule of interpretation," arguing that it comes into play in cases in which "there is no fact-finding, or incomplete fact-finding"

by the trial court. *Morris v. State*, 153 Md. App. 480, 489-90 (2003). Under this standard, the Court is directed to "resolve ambiguities and draw inferences in favor of the prevailing party and against the losing party." *Id.* At 490. The Supreme Court of Maryland, however, has declined to adopt this standard, holding in *Grant v. State*, that this Court "was incorrect in applying the supplemental rule of interpretation to resolve the alleged ambiguity," in that record, "and draw inferences unsupported by the evidence." *Grant*, 449 Md. at 33. The Court explained that, if "there is no factual statement or conclusion, there is no reason for the appellate court to examine the record with an evidentiary slant in favor of the [prevailing party] in order to sustain a non-existent presumption." *Id.* (citation omitted).

A. The search of Wallace's person was not a valid search incident to a lawful arrest for eluding or escaping police officers.

Having conceded that the search of Wallace's person was not a valid *Terry* stop, on appeal, the State argues that, instead, it was valid incident to his lawful arrest for fleeing and eluding a traffic stop pursuant to TR § 21-904. A warrantless search of a person, though presumptively unreasonable, may be permitted when conducted incident to a lawful arrest. *See Pacheco v. State*, 465 Md. 311, 322 (2019). This exception to the Fourth Amendment permits a warrantless search of the arrestee to remove weapons he "might seek to use in order to resist arrest or effect his escape." *Chimel v. California*, 395 U.S. 752, 763 (1969). To be valid, such a search must accompany "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." *Maryland v. Pringle*, 540 U.S. 366, 369-70 (2003).

Traffic Article § 21-904(c) provides in relevant part:

> (b) If a police officer gives a visual or audible signal to stop and the police officer, whether or not in uniform, is in a vehicle appropriately marked as an official police vehicle, a driver of a vehicle may not attempt to elude the police officer by:
>
> (1) Willfully failing to stop the driver's vehicle;
>
> (2) Fleeing on foot; or
>
> (3) Any other means.

In support of its argument that police had probable cause to arrest Wallace under this section, the State points to Officer Meushaw's testimony that he "believed [Wallace] was not letting me effectuate my traffic stop by trying to leave the scene," and "fast walking" away after the stop was effectuated. Wallace counters that evidence presented at the suppression hearing merely showed Wallace walking away from his car. In support of his argument, Wallace offers the definition of the word "fleeing," and argues that the facts in this case do not support the conclusion that he was fleeing or eluding arrest.

We agree with Wallace that an arrest pursuant to TR § 21-904 was inapplicable to him. Our holding is based not on the definition of "fleeing" but on the definition of "driver." As the State points out on appeal, in *Washington v. State*, 200 Md. App. 641, 656 (2011), this Court held that the crime of eluding or escaping a police officer "can only be committed by a driver." The State argues that, although Officer Meushaw "turned on his lights just as Wallace exited his car," in that moment he had probable cause to believe that Wallace was still a "driver" for purposes of the statute. We disagree.

The Transportation Article defines "driver" as "any individual who drives a vehicle." TR § 11-115. It defines "drive" to mean "to drive, operate, move, or be in actual physical control of a vehicle[.]" TR § 11-114. Because Wallace was not driving, operating, or moving his vehicle at the time Officer Meushaw effectuated his stop, his status as a "driver" turns on whether he had "actual physical control" of it. In *Atkinson v. State*, 331 Md. 199, 216 (2008), the Supreme Court of Maryland developed a list of factors relevant for deciding whether an individual is in actual physical control of a vehicle. The Court's holding centered on the question of when an intoxicated individual inside a vehicle can be considered a "driver" for purposes of receiving a citation for driving while intoxicated. There, the Court held that the appellant was not in actual physical control of his vehicle when he was found "sitting intoxicated and asleep in the driver's seat of is vehicle, lawfully parked on the shoulder of the road with the keys in the ignition but the engine off." *Atkinson*, 331 Md. at 202.

In so holding, the Court noted "that the term 'actual physical control' was intended to describe a distinct type of behavior," and decried constructions of the term that were "overly broad and excessively rigid." *Id*. at 208, 212. The Court reasoned that by "using the word 'actual,' the legislature implied a current or imminent restraining or directing influence over a vehicle." *Id.* at 215. While conceding that what "constitutes 'actual physical control' will inevitably depend on the facts of the individual case," the Court listed six general factors that should be taken into account in any such inquiry:

1. whether or not the vehicle's engine is running, or the ignition on;

2. where and in what position the person is found in the vehicle;

3. whether the person is awake or asleep;

4. where the vehicle's ignition key is located;

5. whether the vehicle's headlights are on;

6. whether the vehicle is located in the roadway or is legally parked.

Id.

The Court further offered clarity by explaining that, although no "one factor alone will necessarily be dispositive . . . each must be considered with an eye towards whether there is in fact present or imminent exercise of control over the vehicle[.]" *Id.* In *Atkinson*, the Court considered that the appellant "was in the driver's seat and the keys were in the ignition," as strong factors in favor of actual physical control. *Id.* at 217. When balancing these factors with "the circumstances that the vehicle was legally parked, the ignition was off, and [the appellant] was fast asleep," the Court concluded that "there was a reasonable doubt that [appellant] was in 'actual physical control' of his vehicle, an essential element of the crime with which he was charged." *Id.*

Here, Wallace had already exited the vehicle when Officer Meushaw initiated the stop. The State argues that "Officer Meushaw activated his lights within seconds of Wallace parking his car, just as Wallace exited his car, and while Wallace had his keys (he was able to lock his car)." Under these facts, no interpretation of the *Atkinson* factors leads to the conclusion that Wallace had actual physical control of his vehicle at the time the stop

was executed. The Court in *Atkinson* was mindful to note that the word "actual" held a specific meaning. That holding was designed not to stretch the limits of what "driver" could mean, but rather to narrow the meaning to allow for intoxicated drivers to seek refuge in their vehicles to "sleep it off" before driving home. *Id.* at 218.

In this case, the vehicle was not running, Wallace was outside the vehicle, the keys were in his hand, and the vehicle was legally parked in an apartment complex. Although Wallace was very clearly awake, the State stipulated during the suppression hearing that Officer Meushaw had pulled his patrol car behind Wallace's vehicle, effectively boxing him into the parking space and removing the possibility that Wallace could once again gain control of the vehicle. These factors do not support the conclusion that Wallace had "current or imminent restraining or directing influence over [his] vehicle." *Id.* at 215. For this reason, Wallace was not a driver under TR § 11-114 at the time of the stop and could not be lawfully arrested for fleeing or eluding the traffic stop pursuant to TR § 21-904. Therefore, the officers did not have probable cause to arrest Wallace and the search of his person was not permitted as a search incident to a lawful arrest.

B. Police did not have probable cause that Wallace's vehicle contained contraband.

The State next argues that the search of Wallace's vehicle was lawful because the officers had probable cause to believe the car contained illegal drugs. Police may search a lawfully stopped vehicle without a warrant "where there is probable cause to believe the vehicle contains contraband or evidence of a crime." *State v. Johnson*, 458 Md. 519, 533 (2018) (citations omitted). The permitted search extends to "every part of the vehicle and

its contents that may conceal the object of the search." *Id.* at 536. (quoting *United States v. Ross*, 456 U.S. 798 (1982)). The State has the burden of proving such cause exists. *Southern v. State*, 371 Md. 93, 105 (2002). On appeal, Wallace argues that Officer Meushaw did not have probable cause to believe there was contraband or evidence of a crime within Wallace's vehicle prior to opening the door and thereby initiating the search. We agree.

In *Grant v. State*, the Maryland Supreme Court had occasion to review a case with striking similarities to this case. There, officers stopped a vehicle when radar indicated that it was traveling fifteen miles per hour over the posted speed limit. *Grant*, 449 Md. at 8. When the deputy approached the vehicle, the defendant rolled down the passenger side window. *Id.* After smelling the odor of marijuana, the deputy detained the passenger, requested a drug sniffing dog, and ultimately searched the vehicle and recovered marijuana and drug paraphernalia. *Id.* Because the deputy "conducted a search within the meaning of the Fourth Amendment when he inserted his head into the constitutionally-protected area of [the defendant's] vehicle . . . the moment at which he detected the odor of marijuana was dispositive of whether that search was lawful." *Id.* at 15.

During the suppression hearing, the deputy "testified that upon initial contact with [the defendant], he detected the odor of marijuana emanating from the vehicle," but that "he could not recall whether his head crossed the window's threshold while speaking with [the defendant]." *Id.* During cross-examination, the deputy testified that he would not be surprised to find out that his head entered through the window pane. *Id.* at 10. When video

of the traffic stop was played, "the point at which [the deputy] detected the odor of marijuana was not clear," but his "head appeared to cross the window pane into the interior" of the vehicle. *Id.* at 11.

At the close of the suppression hearing, the court denied the motion to suppress stating:

> . . . from the video [the deputy's] head appeared to have intruded somewhat into the window space, into the interior of [the defendant's] car. The testimony . . . was that he didn't recall whether his head went into the vehicle or not. It was very possible [his] head would have broken the [pane] and it was at some point, it was not clear whether it was when his head was inside or when the window was rolled down, he smelled what he believed based on his training and experience smelled like marijuana.

On appeal, we affirmed the trial court's ruling, holding:

> . . . [W]e resolve any ambiguity by looking to the officer's testimony that he smelled the marijuana upon "initial contact." This can be interpreted to mean that Deputy Atkins detected the tell-tale odor of marijuana before he placed his head in the vehicle's window. If this was the case, and we must interpret the evidence in the light most favorable to the State, then there was no warrantless search of appellant's vehicle.

The Supreme Court of Maryland disagreed with this interpretation. The Court held that the trial court's statements at the time of its ruling "reflect the ambiguity of the evidence on the subject" of when the deputy detected this odor. *Id.* at 28. Such ambiguity in factual findings is "paramount," the Court continued, because "where evidence of a lawful warrantless search is inconclusive, the defendant must prevail." *Id.* at 28-29 (citation and internal quotation omitted). Therefore, the Court ruled that "where the

evidence of [the deputy's] detection of marijuana odor was not clear, the State failed to meet its burden of showing that [his] warrantless search was lawful." *Id.* at 29 (citation and internal quotation omitted).

Addressing the standard of review used by this Court, the Supreme Court of Maryland held that this Court's reliance "upon the supplemental rule of interpretation to draw the inference that [the deputy] detected the odor of marijuana before his head crossed the window's threshold" was "incorrect." *Id.* at 30. The Court explained that this Court's "inference that [the deputy] detected the odor of marijuana prior to inserting his head into the passenger window . . . was inconsistent with the evidence of record, specifically, [the deputy's] testimony and the circuit court's 'not clear' statement." *Id.* at 32. Because "Maryland appellate courts generally reverse a lower court's judgment where the factual findings and legal conclusions are inconsistent," the Court held that this Court "was incorrect in applying the supplemental rule of interpretation to resolve the alleged ambiguity and draw inferences unsupported by the evidence." *Id.* at 33. The Court reasoned that if "there is no factual statement or conclusion, there is no reason for the appellate court to examine the record with an evidentiary slant in favor of the [prevailing party] in order to sustain a non-existent presumption." *Id.*

Here, the question of whether Officer Meushaw saw the bottle of promethazine before or after opening the door to Wallace's car is similarly dispositive of whether the search was conducted lawfully. At the suppression hearing, no evidence was offered to prove that Officer Meushaw saw the bottle before opening the car door. On the contrary,

he testified that "*[w]hen they opened the door*, I could see the bottle." (emphasis added). This testimony was used explicitly to show the trial court when Officer Meushaw obtained personal knowledge of the bottle following a defense objection ("I think if you reserve on the issue, you will see when he gets the personal knowledge"). At no point did the State seek to establish through testimony that Officer Meushaw saw the bottle before opening the car door. Body-worn camera and dashboard camara footage played during the hearing offers no help to the State.[5] When the car door is first opened, the bottle is visible, but Officer Meushaw makes no comment regarding its presence, nor does he act in any way to remove it from the vehicle. Finally, in ruling on the motion to suppress, the court merely said, "[t]he State did indicate that the officers did I guess point flashlights through the tinted window, apparently."

The State's argument on appeal is essentially the same as that made in *Grant*, that because there was uncertainty surrounding when Officer Meushaw first saw the bottle of promethazine, under the supplemental rule of interpretation, a reasonable inference can be drawn that he saw it before opening the vehicle's door. As the Court explained in *Grant*, this interpretation is incorrect. We are not persuaded that there is any uncertainty surrounding when Officer Meushaw first saw the bottle of promethazine. Unlike the deputy in *Grant*, who testified that he was not sure when he first detected the smell of

[5] We reviewed each segment of body-worn camera footage and dashboard camera footage that was played during the suppression hearing. No actions or words portrayed through this footage makes mention of the bottle or indicates that the bottle was in any way the impetus for opening the car door and searching Wallace's vehicle.

marijuana, no evidence exists on the record that Officer Meushaw saw the bottle at any point before the door to Wallace's vehicle was first opened.

Assuming that such uncertainty does exist, however, does not validate the search. The inference the State would have us draw -- that Officer Meushaw saw the bottle of promethazine before he opened the door -- is "inconsistent with the evidence of record." *Id.* at 32. Because "there is no factual statement or conclusion," to support an inference that Officer Meushaw saw the bottle before he opened the vehicle's door, there is no reason for this Court "to examine the record with an evidentiary slant in favor of the" State on this matter. *Id.* at 33 (citation omitted). Construing the facts that *are* available on the record in the light most favorable to the State, no reasonable inference can be drawn that Officer Meushaw had probable cause to search Wallace's vehicle before he initiated that search. The search, therefore, was unlawful.

C. The search is not valid because the police could have opened the car door to check the tint on the window.

Alternatively, the State argues on appeal that Officer Meushaw was authorized to open the vehicle's door to check the tint on the windows. At the suppression hearing, the State argued that this justified the search of Wallace's person, removal of his keys, and the opening of the vehicle's door. Opening the door for this reason, the State argued, would have revealed the presence of the Sprite bottle, and provided the requisite probable cause to search the vehicle.

The State presents *U.S. v. Holley*, 709 Fed. Appx. 602 (11th Cir. 2017), an unreported opinion, in support of this contention. In *Holley*, the Eleventh Circuit applied

New York v. Class, 475 U.S. 106 (1986), in which officers were entitled to open a vehicle door during a traffic stop to access the car's VIN number. In *Class*, the driver voluntarily exited the vehicle following the stop. *Class*, 475 U.S. at 108. Therefore, rather than return the driver to the vehicle, police opened the door to reveal the VIN number, which was obscured by papers. *Id.* When the officer moved the papers, he revealed a handgun. *Id.* The Court found that entering the vehicle was proper for three reasons. First, had the driver remained in the car, the officer would have been justified in requesting that he move the papers himself to reveal the VIN number. *Id.* at 115. Because the driver voluntarily exited the vehicle, the interest of officer safety was served by not returning him to the vehicle where he could potentially access a weapon. *Id.* at 119. Second, the intrusion was minimal because the officer did nothing more than what was necessary to reveal the VIN number. *Id.* at 118-19. Finally, because the officer had observed the driver committing a traffic violation, the search stemmed from some probable cause focusing suspicion on the individual affected by the search (the traffic violation). *Id.* at 117-18.

In *Holley*, the Eleventh Circuit held that as a vehicle regulation, window tint was akin to a VIN number. *Holley*, 709 Fed. Appx. At 605. Under this premise, the Court held that an officer was authorized to open the defendant's door to facilitate testing the level of tint. *Holley*, 709 Fed. Appx. at 605. There, the driver had exited the vehicle before the officer initiated the stop for a window tint violation. *Id.* The officer testified that after the driver was detained, she opened his car door to ensure that no one else was inside and because she needed to open the window to check the tint. *Id.* When she did so, she noticed

a firearm and the strong odor of marijuana. *Id.* The officer therefore conducted a full search of the vehicle, locating controlled substances. *Id.* The Court in *Holley* held that this search was permitted under *Class* because it furthered officer safety, it was minimally intrusive, and it related to the observed traffic violation. *Id.* at 605-06. No Maryland court has ever applied *Class* or *Holley*, and we need not do so here because this case is distinguishable in many ways.

In *Holley*, the State presented specific evidence at the suppression hearing that the officer did, in fact, roll the vehicle's window down and test the tint level in the defendant's car at the time of the stop. *U.S. v. Holley*, No. 6:16-cr-80-Orl-40TBS, 2016 WL 10646327 (M.D. Fla. July 12, 2016), *2. The State spoke to the type of tint meter used, how it operated, and what level the tint tested to in violation of the applicable statute. *Id.* Specifically, the State offered evidence that the tint meter used by the police department that initiated the stop required the window to be lowered. *Id.* Under these facts, opening the door was the least intrusive way for police to conduct the test.

Here, on the contrary, Officer Meushaw testified that he "believed" another officer eventually tested the tint of the windows and it was stipulated that Wallace was cited for this violation. Nevertheless, the record below is silent as to when, where, or how such a test was done, and it is undisputed that Officer Meushaw did not complete this test himself. Instead, Officer Meushaw testified that he opened the door because he suspected it would contain a firearm or other contraband. Under these facts, there is no evidence available to suggest that Officer Meushaw opened Wallace's vehicle to test the window tint, nor that

doing so would have been the least intrusive means of conducting that test because it is unknown whether opening the window is required. We, therefore, reject the State's argument that conducting a tint check justified Officer Meushaw's search.

CONCLUSION

For the foregoing reasons, we hold that the officers' search of both Wallace's person and his vehicle were conducted in violation of the Fourth Amendment. The trial court erred in denying Wallace's motion to suppress the evidence discovered as the result of these illegal searches. We, therefore, reverse and vacate the judgment of the circuit court.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY REVERSED AND VACATED. COSTS TO BE PAID BY APPELLEE.