Circuit Court for Anne Arundel County
Case No. C-02-CR-21-001626

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 2310

September Term, 2022

JOHN JENKINS

v.

STATE OF MARYLAND

Graeff,
Nazarian,
Woodward, Patrick L.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Graeff, J.

Filed: July 8, 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 persuasive value only if the citation conforms to Md. Rule 1-104(a)(2)(B).

John Jenkins, appellant, was charged in the Circuit Court for Anne Arundel County with illegal possession of a regulated firearm, as well as other traffic related offenses and several drug offenses. Appellant filed a motion to suppress, which the circuit court denied. On January 26, 2023, appellant entered a conditional plea of guilty on the charge of illegal possession of a regulated firearm, and the State entered a *nolle prosequi* on each of the remaining counts.[1] That same day, the court sentenced appellant to five years, without the possibility of parole.

On appeal, appellant presents one question for this Court's review, which we have rephrased slightly, as follows:

Did the circuit court err by denying appellant's motion to suppress?

For the reasons set forth below, we shall affirm the judgment of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

On November 9, 2022, the circuit court held a suppression hearing. The State's only witness was Officer Simpson, a member of the Anne Arundel County Police Department.

Officer Simpson testified that, on August 14, 2021, he was on routine patrol and observed a vehicle "traveling at a high rate of speed." When Officer Simpson got behind

[1] Maryland Rule 4-242(d)(2) provides, in relevant part, as follows: "a defendant may enter a conditional plea of guilty" and "reserve the right to appeal one or more issues specified in the plea that (A) were raised by and determined adversely to the defendant, and, (B) if determined in the defendant's favor would have been dispositive of the case." Appellant reserved the right to appeal the issue presented here.

the other vehicle, he saw that the vehicle's registration tags were expired. Officer Simpson activated his lights to initiate a traffic stop.

The vehicle stopped in the parking lot of a local hotel. As Officer Simpson exited his patrol vehicle, appellant began to exit the vehicle from the driver's side door. Officer Simpson ordered appellant to remain inside the vehicle and approached the vehicle to speak with appellant. The driver's side door remained opened during their conversation.

While speaking to appellant, Officer Simpson observed what he believed to be a marijuana cigarette in the handle of the driver door. He asked appellant what it was, and appellant replied: "Man, that's a J." Officer Simpson testified that, based on his experience, "J" is a slang term for a marijuana cigarette. He did not detect any odor of marijuana.

After other officers arrived at the scene, Officer Simpson ordered all of the occupants out of the vehicle.[2] He inspected the marijuana cigarette and determined that it contained a substance that he suspected to be marijuana. He testified that his identification of the marijuana cigarette "gave [him] probable cause to search the interior of the vehicle." He then proceeded to search the vehicle.

While searching the vehicle, Officer Simpson found a firearm behind the front passenger seat. He identified the firearm as "a Polymer 80 handgun, with an extended magazine." It was loaded with one round in the chamber, and the extended magazine

[2] There were a total of three occupants in the vehicle. Appellant was seated in the driver's seat. One occupant was seated in the front passenger seat, and another occupant was in the seat behind the front passenger.

contained what he believed to be 23 rounds of ammunition. After Officer Simpson located the firearm, appellant was placed into custody and searched.

On December 16, 2021, appellant filed a motion to suppress evidence, alleging that Officer Simpson did not have probable cause to search his vehicle. Appellant sought to suppress all evidence found during the search. The court denied appellant's motion to suppress.

DISCUSSION

Appellant contends that the circuit court erred in denying his motion to suppress. He argues that, "[t]he mere possession, with nothing more, of less than 10 grams of marijuana in a vehicle which, at the time of [appellant's] trial, was a civil, non-arrestable offense, and which is now legal in Maryland (as of July 1, 2023), should not be a basis for the further search of that vehicle."

The State disagrees. It contends that the court properly denied appellant's motion to suppress because the observation of a marijuana cigarette inside appellant's vehicle gave rise to probable cause to believe that contraband would be found in the vehicle, which authorized the search of the car.

The Supreme Court of Maryland has articulated the applicable standard of review of a circuit court's ruling on a suppression motion as follows:

> Our review of a circuit court's denial of a motion to suppress evidence is "limited to the record developed at the suppression hearing." *Moats v. State*, 455 Md. 682, 694 (2017). We assess the record "in the light most favorable to the party who prevails on the issue that the defendant raises in the motion to suppress." *Norman v. State*, 452 Md. 373, 386, *cert. denied*, [583 U.S. 829] (2017). We accept the trial court's factual findings unless they are

> clearly erroneous, but we review *de novo* the "court's application of the law to its finding of fact." *Id.* 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.'" *Grant v. State*, 449 Md. 1, 15 (2016) (quoting *State v. Wallace*, 372 Md. 137, 144 (2002)).

Pacheco v. State, 465 Md. 311, 319–20 (2019).

"[T]he Fourth Amendment to the United States Constitution prohibits 'unreasonable' searches and seizures." *Id.* at 320 (quoting *State v. Johnson*, 458 Md. 519, 533 (2018)). With limited exceptions, "[w]here a search is undertaken by law enforcement officials to discover evidence of criminal wrongdoing, . . . reasonableness generally requires the obtaining of a judicial warrant." *Riley v. California*, 573 U.S. 373, 382 (2014) (quoting *Vernonia School Dist. 47J v. Acton*, 515 U.S. 646, 653 (1995)) (alteration in original). "One exception to the warrant requirement is the 'automobile exception' or '*Carroll* doctrine,' named after *Carroll v. United States*, 267 U.S. 132 (1925)." *Bowling v. State*, 227 Md. App. 460, 467–68, *cert. denied*, 448 Md. 724 (2016). The *Carroll* doctrine allows an officer to "search an automobile, without a warrant, if he or she has probable cause to believe it contains evidence of a crime or contraband goods." *Id.* at 468.

The standard for establishing probable cause is a "practical, nontechnical conception that deals with the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act." *Id*. at 468 (quoting *Maryland v. Pringle*, 540 U.S. 366, 370 (2003)) (internal quotations omitted). In *Florida v. Harris*, 568 U.S. 237, 243–44, the Supreme Court of the United States explained:

> The test for probable cause is not reduceable to precise definition or quantification. Finely tuned standards such as proof beyond a reasonable doubt or by a preponderance of the evidence . . . have no place in the probable cause decision. All we have required is the kind of fair probability on which reasonable and prudent people, not legal technicians, act.
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> In evaluating whether the State has met this practical and common-sensical standard, we have consistently looked to the totality of the circumstances. We have rejected rigid rules, bright-line tests, and mechanistic inquiries in favor of a more flexible, all-things-considered approach . . . . Probable cause, we emphasized, is a fluid concept—turning on the assessment of probabilities in particular factual contexts—not readily, or even usefully, reduced to a neat set of legal rules.

(Cleaned up). *Accord Bowling*, 227 Md. App. at 468.

We note that the search here occurred on August 14, 2021. At that time, despite changes in the law regarding marijuana,[3] this Court and the Supreme Court repeatedly stated that the presence of marijuana in a vehicle provided probable cause for a search of a vehicle. *See Pacheco*, 465 Md. at 330 ("[M]arijuana in any amount remains contraband and its presence in a vehicle justifies the search of the vehicle."); *Robinson v. State*, 451 Md. at 130–31 (2017) ("[M]arijuana remains contraband, despite the decriminalization of possession of small amounts of marijuana, and . . . the [presence] of marijuana constitutes probable cause for the search of a vehicle."); *Johnson v. State*, 254 Md. App. 353, 394 (2022) ("[T]he Carroll Doctrine authorizes the police to search for contraband."); *Bowling,* 227 Md. App. at 476 ("[A]lthough the Maryland General Assembly made possession of

[3] In 2014, possession of cannabis was a criminal offense. Md. Code. Ann., Crim. Law ("CR") § 5-601 (2014). That year, "the General Assembly decriminalized the possession of less than ten grams of marijuana, making it merely a civil offense." *See Pacheco v. State*, 465 Md. 311, 326–30 (2019) (surveying probable cause in the "*Post-Decriminalization Era"*).

less than 10 grams of marijuana a civil, as opposed to a criminal offense, it is still illegal to possess any quantity of marijuana and marijuana retains its status as contraband," and therefore, a dog alert to the odor of marijuana provides probable cause to search a vehicle.). *Accord Lewis v. State*, 470 Md. 1, 19–20 (2020) (A warrantless search of a vehicle is permitted where police have "probable cause to believe the vehicle contains contraband.") (citation omitted).

In 2022, Maryland voters approved a constitutional amendment that legalized the use and possession of marijuana. *See* Acts of 2022, ch. 45 (ratified Nov. 8 2022). *Accord Kelly v. State*, No. 68, Sept. Term, 2023, 2024 WL 3198922 at *8 (Md. App. June 27, 2024). The General Assembly then revised Maryland's cannabis laws in light of the constitutional amendment. *Id*. We recently summarized these laws, as follows:

> Under the new laws, the use and possession of a certain quantity of cannabis (the "personal use amount") would be legal for individuals who were at least twenty-one years old. Possession of more than the personal use amount but less than a certain quantity (the "civil use amount") would be a civil offense and result in a fine. Possession of more than the civil use amount was a crime punishable by imprisonment and/or a fine. Those changes were to take effect on July 1, 2023.

Id. (citations omitted).

The General Assembly also enacted Md. Code. Ann., Crim. Proc. ("CP") § 1-211, which became effective July 1, 2023. Acts of 2023, ch. 802, § 2. That law states, in relevant part, as follows:

> (a) A law enforcement officer may not initiate a stop or a search of . . . a motor vehicle, . . . based on one or more of the following:
> (1) the odor of burnt or unburnt cannabis;

> (2) the possession or suspicion of possession of cannabis that does not exceed the personal use amount, as defined under § 5-601 of the Criminal Law Article; or
> (3) the presence of cash or currency in proximity to cannabis without other indicia of an intent to distribute.
>
> * * *
>
> (c) Evidence discovered or obtained in violation of this section, including evidence discovered or obtained without consent, is not admissible in a trial, a hearing, or any other proceeding.

CP § 1-211 (2023 Supp.). Among other limitations, personal use amount is defined as "an amount of cannabis that does not exceed 1.5 ounces." Md. Code Ann., Crim. Law § 5-101(u) (2023 Supp.).

Appellant contends that he "should benefit from this change in the law that occurred while his appeal is pending." We recently addressed and rejected a similar argument. In *Kelly*, we held that "the text of CP § 1-211 demonstrates that it was intended to apply prospectively from its effective date of July 1, 2023." 2024 WL 3198922, at *15. Thus, as in *Kelly*, "because the search at issue and [appellant's] subsequent conviction and sentencing all occurred prior to that date, neither the right nor the remedy provided by the statute is available to him." *Id.* The circuit court properly denied the motion to suppress.

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