Circuit Court for Montgomery County
Case No. C-15-CR-22-000245

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 29

September Term, 2023

SHAQUILLE AUSTIN

v.

STATE OF MARYLAND

Berger,
Arthur,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Berger, J.

Filed: January 23, 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 with Rule 1-104(a)(2)(B). Md. Rule 1-104.

Following a jury trial, Shaquille Austin ("Austin"), appellant, was convicted of possession of a firearm by a person convicted of a crime of violence, transport of a handgun in a vehicle, illegal possession of ammunition, possession of cocaine, and making a false statement to a law enforcement officer. Austin was sentenced to an aggregate sentence of twenty years and six months of imprisonment, with all but five years suspended. On appeal, Austin raises the following two issues for our consideration:

> I. Whether the circuit court erred in denying Austin's motion to suppress evidence recovered during a search of Austin's vehicle following a traffic stop.
>
> II. Whether the circuit court abused its discretion in declining to admit a portion of a recording of a jailhouse telephone call that Austin asserts should have been admissible under the doctrine of verbal completeness.

For the reasons explained herein, we shall affirm.

FACTS AND PROCEEDINGS

On July 22, 2021, Montgomery County Police Officer Timothy Serlo initiated a traffic stop of the gray Chevrolet Spark Austin was driving on Wightman Road near Montgomery Village in Montgomery County, Maryland. Austin was stopped for having tinted windows and a suspended driver's license. When Officer Serlo approached the vehicle, he smelled the odor of fresh marijuana emanating from the car. After speaking with Austin, Officer Serlo requested backup and informed Austin that he was being detained. After Officer Ruth Zotti arrived on the scene, the two officers searched the vehicle. Austin did not consent to the search. During the search, the officers first found

marijuana and a digital scale. When they continued to search, they discovered two ammunition magazines, a firearm, and a small bag of crack cocaine.

Motion to Suppress

Prior to trial, Austin moved to suppress the evidence obtained from the search, arguing that the stop was unreasonably prolonged and that the officers lacked probable cause to search the vehicle. A hearing on Austin's motion to suppress was held on December 8, 2022, during which the circuit court heard testimony from Officer Serlo and reviewed video footage recorded by Officer Serlo's bodycam.

Officer Serlo testified that when he saw the Chevrolet Spark driven by Austin on the evening of July 22, 2021, he noticed that the vehicle's windows were "extremely tinted." Officer Serlo testified that "in Maryland the tint can't be any darker than 35 percent," meaning that at least thirty-five percent of light transmittance must be able to pass through the window and that anything less than that amount is illegal. Prior to initiating the traffic stop, Officer Serlo used a tint meter to measure the percentage of tint, which reflected a fourteen percent light transmittance for the front driver's side window and a sixteen percent light transmittance for the back side rear window, both of which fell below the thirty-five percent minimum. Officer Serlo also ran the vehicle's registration through the police computer system and received a notification that the registered owner, Mr. Shaquille Austin, had a suspended license. Officer Serlo confirmed that the photograph of the registered owner from the system was, in fact, the driver of the vehicle.

After Officer Serlo initiated the traffic stop, he approached the vehicle. Austin was the sole occupant. Officer Serlo testified that he "detected a strong odor of fresh marijuana emanating from the vehicle" when he approached. Austin was "extremely agitated and kind of yelling" when Officer Serlo approached. Austin "deflect[ed] the reason for the stop" and "sa[id] [Officer Serlo] pulled him over for the music being loud." Officer Serlo informed Austin that his license was suspended, but Austin continued to argue about the basis for the traffic stop. Officer Serlo ordered Austin to turn the vehicle off. Austin agreed to turn the vehicle off and strongly expressed his objection to a search, saying "you don't have consent to search this car at all. You don't have consent because this is not my car. You don't have consent to search it. So I'm going to get out the car though, and I'm going to turn it off." At this point, Officer Serlo requested backup.

Austin continued to argue with Officer Serlo. While waiting for backup, Officer Serlo asked Austin if he had any weapons on him. Austin responded that he did not. Officer Serlo asked if he could pat Austin down, and Austin consented. No weapons were recovered from the pat down. Austin said "you don't got to lock me up though. I'm not getting detained. You don't have to lock me up." Officer Serlo informed Austin that he was being detained. When Austin asked why, Officer Serlo informed Austin that "the car smells like weed." Austin continued to object to the search, but Officer Serlo explained that there was probable cause in the following exchange that was recorded by his bodycam:

> Officer [Serlo]: . . . We have probable cause.
>
> Mr. Shaquille Austin: So why you unlock my car?
>
> Officer Serlo: Now listen.

> Mr. Shaquille Austin: Why did you unlock my car and open it?
>
> Officer Serlo: Because I already smelled the odor of marijuana. The reason I stopped you, is because the windows are tinted and I couldn't see through them.
>
> Mr. Shaquille Austin: But they're legal.
>
> Officer Serlo: No, they're not.
>
> Mr. Shaquille Austin: Yes they are. They're 20 percent.

The vehicle was subsequently searched, and, as we explained *supra*, officers recovered marijuana, a digital scale, two magazines, a firearm, and a small bag of crack cocaine from Austin's vehicle.

The circuit court denied Austin's motion to suppress, explaining its reasoning as follows:

> The officer's testimony is that he observed from a -- when he was stationary, he observed an excessive tint. And that is challenged because the -- I find Mr. Motley (phonetic sp.) to be a fairly credible witness.[1] As far as he knows, three years ago, when he did this tint, he would do 35 percent. And it's challenged whether it was 35 percent in July of 2021, when this stop took place. It's challenged. The officer might be right, might be wrong about the excessive tint. Apparently there's some additional evidence that has not been produced in discovery. That's not really before me.
>
> Whether the officer was right or wrong on that, he clearly had reason to think that. The officer testified, that he could see the defendant's face as he drove by because the window was partly down and that he checked and came back suspended, which is consistent with State's Exhibit Number 2. Now, if there's some evidence of malfeasance on there, that hasn't been shown to me.

[1] Kaennez Motley, the owner of a window tinting company, testified that he had applied a thirty-five percent window tint to Austin's Chevy Spark vehicle.

So the officer clearly had reasonable, articulable suspicion to stop the defendant, at that point, based on -- what the officer knew at that point was he thought he saw excessive tint, which he may or may not have, but he thought it was excessive. But he clearly had a computer printout saying -- an alert saying that this gentleman was suspended, which gives him the right to stop someone for driving while suspended. And he probably, as you mentioned, would get a warning for the tint issues, but you usually don't even get a ticket for that; you get a warning for that.

But he clearly had grounds to stop the gentleman for driving while suspended, which is a misdemeanor carrying up to one year in jail. So he had grounds to stop him and issue a citation.

At that point, when he approached the vehicle, the first thing the defendant says to him on the tape is, "It's not my car." Well, the officer already has the registration showing it is his car, and the first thing he did, at least in the reasonable inference -- so the first thing he did was lie to him and say, "It's not my car." Well, we've got it registered to you. There may be an explanation for that statement, but the first thing he did -- as far as what the officer knew in that moment -- first thing he did was lie to me.

Then the officer testified he smelled fresh marijuana, which I'm sure they get tons of training on that. And then the defendant says, "Well, my windows are 20 percent". And the defendant was clearly quite agitated. Whether he was nervous, whether he was aggressive, I guess, is a matter of judgment. He could certainly have been both. I suspect he was very nervous in the moment and very agitated. Whether he was aggressive or not, I don't know. You could certainly take it that way, but maybe it wasn't meant that way.

I also find that the smell of marijuana, I believe, is very clear. It gives the officer the right to search the car at that point, whether he should -- I didn't find it to be excessively prolonged. He searched the car. If he had held him there for another 30, 40 minutes waiting for dogs, that sort of thing, that's when you get into the excessive prolonging of the search. But I don't find any excessive action by the officer in holding

> the person there for any unfair reason; he was going to search the car. Once he smelled marijuana, that gave him probable cause to search the car.
>
> Once he searches the car, the next thing he finds is a magazine in the car. At that point, he's got probable cause, certainly, to prolong the search and keep going and search every crevice. Because we know there's a magazine there; we know there's marijuana there. At that point, the officer has probable cause to continue the search.
>
> For that reason, I'm not going to -- I'm going to deny the motion based, not on what they found -- whether they find something or not is not -- you can't use the end to justify the means. But based on what the officer knew at the time. There's what in his judgment was an excessive tint, which is arguable, at this time, whether it really was. But in the officer's judgment, it was excessive.
>
> He clearly had noticed that the defendant was suspended, and the first thing the defendant did was lie to him and say, "It's not my car." And then the saying, "Well, it's only a 20-percent tint." He really wasn't searching because of a tint of the car. That doesn't give you grounds to search the car.
>
> But the smell of marijuana as soon as the defendant opened the -- or as soon as the officer approached -- he smelled the marijuana -- that does give him probable cause to search the car. And I don't find any excessive delays or extending the search, particularly because they found the magazine fairly shortly after that. So I don't find any justification for finding that the stop was excessively long.
>
> For that reason, I will deny the motion to suppress.

Jailhouse Phone Call

In December 2021, when Austin was incarcerated pre-trial, Austin made a telephone call to his family members. The telephone call was approximately fifteen minutes, and the State sought to introduce a portion that was less than one minute. During the call, Austin

spoke with his aunt[2] and admitted to her that he had a firearm in the following exchange, which was admitted at trial:

> [Austin's Aunt]: And she, she said you were charged with a whole lot of stuff.
>
> Mr. Shaquille Austin: Yeah.
>
> [Austin's Aunt]: You had a firearm on you?
>
> Mr. Shaquille Austin: Yeah.
>
> [Austin's Aunt]: Daggone, Shaquille. Mm-mm.

Austin sought to admit a statement to his "grandma" which was captured on the same audio-recorded telephone call "a few minutes later." Specifically, Austin sought to admit the portion of the call containing the following exchange:

> [Austin's Grandmother]: [W]hat kind of weapon you had in the car, that knife?
>
> Mr. Shaquille Austin: [N]o grandma, I didn't have no weapon in the car at all.

Austin asserted that the later exchange with his grandmother should be admitted pursuant to the doctrine of verbal completeness. The circuit court declined to admit the second exchange, explaining that it was "a different conversation with a different person. So I don't think that's part of the doctrine of the rule of completeness."

[2] The identity of the speaker was not disclosed during the call, but the defense identified the speaker as Austin's aunt at trial. The second speaker on the call was identified as "Grandma" in the telephone exchange, and the defense identified her as Austin's grandmother at trial. The State did not dispute these representations.

DISCUSSION

I.

Austin contends that the circuit court erred by denying his motion to suppress evidence recovered from the search of his vehicle. Austin does not challenge the initial stop but instead argues that the traffic stop was unreasonably prolonged and that the evidence did not establish probable cause to search the vehicle. As we shall explain, we are not persuaded by Austin's assertions.

The Supreme Court has described the following standard of review that applies when appellate courts consider a trial court's ruling on a motion to suppress:

> 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 facts of the case.

Corbin v. State, 428 Md. 488, 497-98 (2012) (citation and internal quotation omitted).

Austin asserts that the totality of the circumstances was insufficient to establish probable cause to search his vehicle. We disagree. Officer Serlo testified that "as soon as [he] got close to the vehicle, [he] detected a strong odor of fresh marijuana emanating from the vehicle." The circuit court was entitled to -- and did -- credit this testimony. Furthermore, the bodycam footage confirmed that Officer Serlo told Austin "[t]he car

smells like weed" and "[t]he car smells like marijuana." The circuit court determined that there was probable cause for the search based upon the odor of marijuana alone. We agree that this ruling was a correct application of the law in the context of a July 22, 2021 traffic stop.

In *Robinson v. State*, 451 Md. 94, 99 (2017), the Supreme Court of Maryland held that, despite decriminalization, the odor of marijuana emanating from a vehicle provides probable cause for law enforcement officers to conduct a warrantless search of the vehicle. *See also Pacheco v. State*, 465 Md. 311, 329 (2019) ("The mere odor of marijuana emanating from a vehicle provides probable cause that the vehicle contains additional contraband or evidence of a crime, thereby permitting the search of the vehicle and its contents.") (discussing *Robinson*). As of July 1, 2023, this was no longer the case because the General Assembly enacted legislation providing that "[a] law enforcement officer may not initiate a stop or a search of a person, a motor vehicle, or a vessel based solely on one or more of the following: (1) the odor of burnt or unburnt cannabis . . . ." Md. Code, § 1-11 of the Criminal Procedure Article, 2023 Md. Laws, Ch. 802, Sec. 2, eff. July 1, 2023.

Pre-July 2023, however, the odor of marijuana continued to provide the basis for a search, as we discussed in *Johnson v. State*, 254 Md. App. 353, 371-73 (2022). We explained:

> It is undisputed hornbook law that the smelling of marijuana in or emanating from an automobile – by a trained drug-sniffing dog or by a trained police officer – constitutes probable cause

> to justify a warrantless *Carroll*[3] Doctrine search of the entire automobile.
>
> ***
>
> The appellant seeks, as many defendants do, to capitalize on the fact that the possession of less than 10 grams of marijuana has recently been decriminalized. He makes the point that although an officer may be able to smell marijuana, burnt or unburned, the officer cannot quantify the amount of marijuana that he has smelled. The appellant argues that the marijuana smelled by Detective Clarke might, therefore, have been for only a non-criminal amount. As we shall explore in greater detail infra, that is of absolutely no significance in assessing probable cause for a warrantless *Carroll* Doctrine search.

Id.

The probable cause established by the odor of marijuana permitted the officer to search any part of the vehicle that could have contained marijuana. As we have explained:

> In the context of the *Carroll* Doctrine, it is the object of the phrase "probable cause to believe" that defines the purpose of the permitted search. If there is probable cause to believe that certain "evidence of crime" or a certain type of "contraband" is somewhere in the vehicle, the police are permitted to search anywhere in the vehicle that such "evidence of crime" or such "contraband" might be found including a locked trunk. The ever-present constraint is, "But don't look anywhere else." If looking for a stolen diamond ring, look everywhere. If searching an automobile for stolen truck tires, on the other hand, look everywhere that such truck tires could be, but don't look in the glove compartment. A ready guideline that we commend for general use would be: DON'T LOOK FOR AN ELEPHANT IN A MATCHBOX. Looking in the glove compartment would be, by definition, excessive in scope because it would have been more than was necessary to serve the purpose of that search, to wit, the search for an elephant.

[3] *Carroll v. United States*, 267 U.S. 132 (1925).

> As the appellant here misreads those general guidelines, his self-serving version of the applicable constraints seems to be, "If you have probable cause to search the Malibu for marijuana, once you find some, be satisfied. Terminate the search and do not look for more." There is, however, no such constraint. The purpose of a given search is to find ALL of a sought-after object, not merely SOME of it. If the object of the search is marijuana, the police may continue to search any part of the vehicle, including a locked trunk, where even more marijuana might be hidden. The permitted purpose of the *Carroll* Doctrine search is to recover all of the designated evidence of crime and all of the designated contraband that is probably to be found somewhere in that vehicle.

Id. at 403. Simply put, Officer Serlo's detection of the odor of marijuana was sufficient to provide probable cause for the search of the vehicle under the law in effect in the State of Maryland on the relevant date.

Austin asserts that the traffic stop was unreasonably prolonged, but this is not a "prolonged stop" case. As we have explained, Officer Serlo had probable cause as soon as he approached Austin's vehicle and smelled the odor of marijuana. This is not a scenario in which an officer unreasonably prolonged a stop in order to obtain probable cause, such as through the use of a drug detection dog. In other words, this was not a "detention after the pretextual stop that was for the purpose of determining *whether the trooper could acquire sufficient probable cause* or a waive that would permit him to search the car for illegal narcotics." *Whitehead v. State*, 116 Md. App. 497, 508 (1997) (emphasis supplied). Austin asserts that "the duration and manner of Mr. Austin's detention" supports the grant of his motion to suppress even if "Officer Serlo may have had probable cause to search the car for marijuana," but he cites no authority holding as such. We agree with the State that

the case law regarding prolonging traffic stops is not relevant in this case in light of the probable cause established by Officer Serlo's perception of the odor of marijuana as soon as he approached the vehicle. For these reasons, we hold that the circuit court did not err in denying Austin's motion to suppress.[4]

II.

Austin further contends that the circuit court abused its discretion by declining to admit the portion of the jailhouse telephone call containing the conversation between Austin and his grandmother, which Austin characterizes as the "exculpatory portion" of the phone call. Austin asserts that this portion of the call should have been admitted under the doctrine of verbal completeness. As we discussed *supra*, Austin admitted to having had a firearm in the vehicle when speaking with his aunt, but Austin denied having a weapon in the vehicle when subsequently speaking to his grandmother. The circuit court declined to admit Austin's statement to his grandmother because it was "a different conversation with a different person" as was not admissible pursuant to the doctrine of verbal completeness.

We review the circuit court's decision not to admit the second statement for abuse of discretion. *Otto v. State*, 459 Md. 423, 446 (2018) ("Determining whether separate statements are admissible under the doctrine of verbal completeness is such a discretionary

[4] The State asserts that while no additional evidence was needed for probable cause, additional evidence including the vehicle's tinted windows and Austin's behavior after the traffic stop occurred support the probable cause finding. Because we hold that there was sufficient probable cause to support Officer Serlo's search based upon the odor of marijuana alone, we shall not address this additional argument.

preact, to be reviewed for an abuse of discretion."). "An abuse of discretion exists where no reasonable person would take the view adopted by the [trial] court, or when the court acts without reference to any guiding rules or principles." *Id.* (internal quotation and citation omitted). In order for a decision to be considered an abuse of discretion, "[t]he decision under consideration has to be well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.'' *Id.* (internal quotation and citation omitted).

The doctrine of verbal completeness "finds its roots from two sources: the common law and Maryland Rule 5-106." *Otto*, *supra*, 459 Md. at 447. The Supreme Court has explained:

> The application of the common law doctrine of verbal completeness requires that "[t]he offer in testimony of a part of a statement or conversation, upon a well-established rule of evidence, always gives to the opposite party the right to have the whole." *Smith v. Wood*, 31 Md. 293, 296–97 (1869). At common law, a party seeking to admit evidence pursuant to the common law doctrine of verbal completeness, could admit the remaining conversation or writing during the party's case-in-chief.
>
> Maryland Rule 5-106 partially codifies the common law doctrine of verbal completeness, but allows writings or recorded statements to be admitted earlier in the proceeding than the common law doctrine. Maryland Rule 5-106 states, "[w]hen part or all of a writing or recorded statement is introduced by a party, an adverse party may require the introduction at that time of any other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it." The rule does not allow evidence that is otherwise inadmissible to be admitted, and it does not change the requirements for admissibility under the common law doctrine. However, where the evidence sought to be

> admitted is not otherwise admissible, the evidence may be admitted, in fairness, "as an explanation of previously-admitted evidence and not as substantive proof." *Conyers* [*v. State*], 345 Md. [525,] 541, 693 A.2d [781], 788 [(1997)] (citing Md. Rule 5-106, Committee Note.).

Otto, *supra*, 459 Md. at 447.

The Supreme Court has outlined "three general corollaries" to the doctrine of verbal completeness:

> [1] No utterance irrelevant to the issue is receivable;
>
> [2] No more of the remainder of the utterance than concerns the same subject, and is explanatory of the first part, is receivable; [and,]
>
> [3] The remainder thus received merely aids in the construction of the utterance as a whole, and is not in itself testimony.

Id. (citing *Feigley v. Balt. Transit Co.*, 211 Md. 1, 10 (1956). To be admissible under the doctrine of verbal completeness, "the remainder must not only relate to the same subject matter but must also tend either 'to explain and shed light on the meaning of the part already received,' or to 'correct a prejudicially misleading impression left by the introduction of misleading evidence.'" *Paschall v. State*, 71 Md. App. 234, 240 (1987) (quoting *Newman v. State*, 65 Md. App. 85, 96 (1985)).

Our review of the record in this case leads us to conclude that the circuit court appropriately exercised its discretion when it declined to admit the portion of the jailhouse call in which Austin spoke to his grandmother. Austin's statement to his grandmother denying that he had a weapon in the vehicle in no way provided context for or shed light on the meaning of Austin's earlier statement to his aunt admitting he had a firearm. This

is not a case "where the jury clearly could have been misled by the first statement if not also allowed to consider the second." *Conyers*, *supra*, 345 Md. 525, 544 (1997).

The State directs our attention to a New Hampshire case addressing a somewhat similar situation, *State v. Lopez*, 937 A.2d 905, 908-10 (N.H. 2007). In *Lopez*, the Supreme Court of New Hampshire admitted an "inculpatory" statement the defendant made to his aunt but declined to admit a later "exculpatory" statement he made to his mother. *Id.* The Supreme Court held that the trial court did not abuse its discretion in declining to admit the later statement, observing that the two statements "were not part of the same conversation," the later statement "would not help explain the initial statements," and the later statement was "self-serving." *Id.* at 909-10.

In the present case, the two statements were part of the same telephone call and occurred closer in time to each other than those at issue in *Lopez*, but the analysis remains the same. Austin made two contradictory statements to two different people, one in which he admitted having a firearm and the other in which he denied having a weapon. The later statement did not provide any context or clarification for the first, and, as in *Lopez*, the later statement was self-serving. For these reasons, we hold that the circuit court did not abuse its discretion by declining to admit the portion of the jailhouse call containing Austin's statement to his grandmother.

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