UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0412

September Term, 2015

VERNON HARVEY SPRIGGS, III

v.

STATE OF MARYLAND

Meredith,
Leahy,
Sharer, J. Frederick
(Retired, Specially Assigned),

JJ.

Opinion by Meredith, J.

Filed: June 23, 2016

At the conclusion of a bench trial in the Circuit Court for Dorchester County, Vernon Harvey Spriggs, appellant, was found guilty of possession of cocaine with intent to distribute, possession of marijuana with intent to distribute, simple possession of cocaine, and simple possession of marijuana. The court sentenced appellant to a term of twenty years' imprisonment, with all but three years suspended, for possession with intent to distribute cocaine, and to a concurrent term of five years' imprisonment, with all but one year and one day suspended, for possession with intent to distribute marijuana. The court merged the remaining counts for sentencing. Appellant noted a timely appeal and presents one question for our review: Did the circuit court err in denying appellant's motion to suppress evidence?

For the reasons that follow we answer that question in the negative, and affirm the judgment of the circuit court.

BACKGROUND

A detailed recitation of the facts is not necessary to resolve the question presented in this appeal. Suffice it to say that, on October 18, 2014, police officers observed appellant sitting in a vehicle parked in the parking lot of an abandoned building. It was the only vehicle in the lot. As the police officers approached the vehicle, they saw appellant get out of the vehicle and attempt to walk away. They noticed a strong smell of raw unburnt marijuana emanating from the area, and they began investigating the source of the odor. Eventually, the officers came to believe that the smell emanated from appellant and his vehicle, and they decided to search appellant. After the police searched appellant and found nothing illegal on his person, they searched his vehicle and found on the floor near the

driver's seat a bag of marijuana, a bag of cocaine, a scale, empty plastic bags, and several thousand dollars in cash. In addition, the police recovered several more bags of marijuana from the trunk. In total, the police recovered approximately two and a half pounds of marijuana.

DISCUSSION

In the circuit court, appellant moved to suppress the evidence recovered from his vehicle. He argued that the odor of marijuana did not give the police probable cause to search the vehicle. Appellant contended that the Maryland General Assembly has decriminalized possession of small quantities of marijuana, and therefore, an odor of marijuana no longer supports probable cause for a vehicle search. Appellant argues in his brief:

> Of critical importance to this appeal, on October 1, 2014, possession of less than ten grams of marijuana became a civil infraction punishable only by a fine pursuant to Acts 2014, c. 158, §1. The General Assembly thereby made a significant change to the laws of Maryland: possession of less than ten grams of marijuana is no longer a crime. Previously, the smell of marijuana gave law enforcement probable cause to search. *See, e.g., Ford v. State*, 37 Md. App. 373, 379 (1977). In light of this change, suspicion of the mere presence of marijuana, without more, can no longer justify a warrantless search.

We recently rejected a similar argument in *Bowling v. State*, 227 Md. App. 460 (2016). In *Bowling*, we determined that "it is clear that the Maryland General Assembly intended that marijuana remain classified as 'contraband,' and that the decriminalization of [possession of] small amounts of marijuana would not affect existing case law allowing

officers to search a vehicle based upon a K–9 alert to the smell of marijuana." *Id*. at 476. We further commented in *Bowling*:

> Given this legislative history, we conclude that, although the Maryland General Assembly made possession of 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**. Accordingly, we hold that this legislation does not change the established precedent that a drug dog's alert to the odor of marijuana, without more, provides the police with probable cause to authorize a search of a vehicle pursuant to the *Carroll* doctrine.[1]

Id. (emphasis added).

Although *Bowling* dealt with a drug dog's alert to marijuana, rather than a police officer's detection of the smell of marijuana, we see no reason to treat the odor of marijuana differently when detected by a human. *See, e.g.*, *Pyon v. State*, 222 Md. App. 412, 439 (2015) ("[T]he human smell of raw marijuana has the same evidentiary impact as does the canine smell."); *Jackson v. State*, 190 Md. App. 497, 506 (2010) ("Neither dog nor man needs a judicial permission slip to sniff the air."); *State v. Harding*, 166 Md. App. 230, 240 (2005) ("Any question as to whether the odor of marijuana alone can provide a police officer probable cause to search a vehicle was dispelled by the Supreme Court in *United States v.*

[1] The "*Carroll* doctrine" refers to *Carroll v. United States*, 267 U.S. 132 (1925). Under the *Carroll* doctrine, "[i]f a car is readily mobile and probable cause exists to believe it contains contraband, the Fourth Amendment . . . permits police to search the vehicle without more." *Maryland v. Dyson*, 527 U.S. 465, 467 (1999) (citations omitted). The *Carroll* doctrine is also sometimes referred to as the "automobile exception" to the warrant requirement.

Johns, 469 U.S. 478, 482, 105 S.Ct. 881, 83 L.Ed.2d 890 (1985), ..."); *Ford v. State*, 37 Md. App. 373, 379 (1977) ("We have no doubt . . . that knowledge gained from the sense of smell alone may be of such character as to give rise to probable cause for a belief that a crime is being committed in the presence of the officer.").

The circuit court did not err in denying the motion to suppress.

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