Circuit Court for Worcester County
Sitting as a Juvenile Court
Case No.: 23-J-16-0118

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 385

September Term, 2017

IN RE D.C.

Wright,
Reed,
Eyler, James R.,
Senior Judge, Specially Assigned,

JJ.

Opinion by Reed, J.

Filed: March 20, 2018

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The Circuit Court for Worcester County sitting as a juvenile court found D.C., Appellant, in possession of less than ten grams of marijuana and carrying a concealed dangerous weapon. The juvenile court placed D.C. on supervised probation with special conditions. Appellant noted this appeal and presents two questions for review:

1. Did the juvenile court err in denying Appellant's motion to suppress tangible evidence found on his person?
2. Did the juvenile court err in denying Appellant's motion to suppress his statements?

For the reasons stated below, we answer these questions in the negative and affirm the judgment of the juvenile court.

FACTUAL AND PROCEDURAL BACKGROUND

On August 18, 2016, Patrol Officer Brian Hirshman of the Berlin Police Department was on patrol with his partner when they observed two cars in the parking lot of a gas station. Officer Hirshman testified that he observed a woman quickly exit one car and quickly enter the front passenger seat of the second car, a Mitsubishi Eclipse. Officer Hirshman believed this conduct to be indicative of a drug-related transaction, and proceeded to follow the Eclipse as it exited the gas station parking lot. Upon observing that the Eclipse's driver-side brake light was inoperable, Officer Hirshman initiated a traffic stop and immediately called for a K-9 unit to assist him. There were four occupants in the vehicle, including D.C., who was seated in the back.

Once the K-9 unit arrived, an open-air scan of the vehicle resulted in an alert indicating the presence of drugs. Officer Hirshman then ordered the occupants to exit the

vehicle and proceeded to conduct a search of the vehicle's interior. In the center console, he found three cigar ends containing what he suspected to be marijuana. In a makeup bag, which he found inside of a backpack found in the rear of the vehicle, he found: two bags containing more suspected marijuana, two glass smoking pipes, two additional cigars, a glass jar, a tin, and a digital scale. All of the items contained residue of a substance that Officer Hirshman believed to be marijuana.

Based on his findings from searching the vehicle, Officer Hirshman conducted a search of each of the four occupants. As he was conducting his search of D.C., D.C. stated that he had marijuana on his person. The search of D.C.'s person revealed 1.76 grams of marijuana and a pair of metal knuckles. Following the search of D.C., one of the officers asked the driver of the vehicle if the items found in the vehicle were hers. Though the question was not directed at him, D.C. stated that everything was his. D.C. was placed under arrest and escorted to the Berlin Police Department.

D.C. was charged with possession of less than ten grams of marijuana, possession of drug paraphernalia, and carrying a concealed dangerous weapon. During the adjudicatory hearing, the juvenile court heard arguments on defense counsel's motions to suppress (1) the metal knuckles and 1.76 grams of marijuana found on D.C.'s person; and (2) D.C.'s statement regarding the items that were found in the vehicle. The juvenile court denied both motions. At the conclusion of the adjudicatory hearing, the court granted defense counsel's motion for judgment of acquittal as to the paraphernalia charge, but

found D.C. involved in possession of less than ten grams of marijuana and carrying a concealed dangerous weapon.

D.C. was placed on supervised probation with special conditions. This appeal followed.

STANDARD OF REVIEW

In reviewing the grant or denial of a motion to suppress, we consider the evidence in the light most favorable to the party who prevails on the motion, and we accept the suppression court's factual findings unless they are clearly erroneous. *Bowling v. State*, 227 Md. App. 460, 466-67, 134 A.3d 388, *cert. denied*, 448 Md. 724, 141 A.3d 135 (2016). In determining whether a constitutional right has been violated, however, "we make an independent, de novo, constitutional appraisal by applying the law to facts presented in a particular case." *Johnson v. State*, 232 Md. App 241, 256, 157 A.3d 338 (quoting *Williams v. State*, 372 Md. 386, 401, 813 A.2d 231 (2002), *cert. granted*, 454 Md. 678, 165 A.3d 473 (2017).

DISCUSSION

I. Probable Cause and Motion to Suppress Tangible Evidence

A. Parties' Contentions

Appellant's chief issue on appeal is whether the juvenile court should have suppressed evidence of marijuana and metal knuckles that were on Appellant's person. Appellant contends that, because he was a passenger, the K-9 alert to the vehicle and subsequent discovery of marijuana and other drug-related paraphernalia in the car did not

give rise to probable cause for Officer Hirshman to believe he was involved in criminal activity so as to justify his detention and a search incident to arrest. Moreover, Appellant contends even if a *Terry* frisk were permissible, no additional search or seizure would have been justified based upon Officer Hirshman's findings during the search of the vehicle because none of the items found, namely the less than 10 grams of marijuana, should have given rise to probable cause to arrest or search. *See Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968); *See also* MD. CODE ANN., CRIM. LAW § 5-601 (2017) (making possession of less than 10 grams of marijuana a civil offense punishable by a fine).

The State responds that the K-9 alert to the presence of drugs in the vehicle generated probable cause to search the vehicle. The State contends that the discovery of marijuana and a digital scale in the vehicle, among other drug-related paraphernalia, then provided Officer Hirshman with probable cause to believe that any or all of the car's occupants were involved in a drug-related criminal act. The State further contends that this provided cause to lawfully detain and search the occupants incident to arrest. Alternatively, the State asserts that the K-9 alert generated reasonable, articulable suspicion of criminal activity on the part of all of the occupants of the vehicle. The State argues that this suspicion was sufficient to justify a *Terry* frisk for weapons and therefore, the resulting search was lawful when, during the frisk, Appellant told Officer Hirshman that he had marijuana on his person and that the other items found in the vehicle were his. Moreover, the State argues that marijuana paraphernalia located in the vehicle's center console, as well as the backpack containing marijuana, were both within D.C.'s reach. As such, the State

concludes that the trial court acted appropriately in denying Appellant's motion to suppress the evidence.

B. Analysis

In order to properly address evidence derived from the search of Appellant's person, we must first consider the legality of the sequence of events leading up to the search of Appellant. 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, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." The Fourth Amendment ordinarily requires that a warrant be secured prior to conducting a search. *Maryland v. Dyson*, 527 U.S. 465, 466 (1999). An exception to the warrant requirement is the "automobile exception," known as the "Carroll Doctrine." *State v. Harding*, 166 Md. App. 230, 241, 887 A.2d 1108 (2005). This doctrine states that "[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) (quoting *Pennsylvania v. Labron*, 518 U.S. 938, 940 (1996)). Maryland appellate courts, when dealing with facts concerning the odor of marijuana emanating from a vehicle, have consistently held that a positive alert from a trained dog indicating the presence of odors gives rise to probable cause to conduct a warrantless *Carroll* doctrine search of a vehicle. *Wilkes v. State*, 364 Md. 554, 586-87 (2001); *Pyon v. State*, 222 Md. App. 412, 439 (2015).

This Court recently held in *Bowling v. State* that the decriminalization of possession of less than 10 grams of marijuana in Maryland does not change this established precedent. *Bowling v. State*, 227 Md. App. 460, 476 (2016).

Upon consideration of the above, this Court disagrees with Appellant's argument that probable cause to detain and search Appellant did not exist. The traffic stop effectuated by Officer Hirshman for a broken taillight was valid under Maryland law. MD. TRANSP. CODE ANN. § 22-101(a)(1)(ii) (stating that no person may drive a vehicle that is not equipped with lamps and other equipment in proper condition and adjustment). There is no dispute between the parties that the K-9 unit that subsequently responded validly alerted officers to the presence of drugs in the vehicle. As we noted above, such an alert on its own was enough to conduct a warrantless search of the vehicle under the *Carroll* doctrine. Further, we find that the nature of the items discovered in the car, in particular the marijuana and the digital scale, easily give rise to probable cause for a search incident to an arrest. We will explain.

In *Daniels v. State*, 172 Md. App. 75, 89 (2006), this Court explained probable cause as follows: "probable cause is a flexible, common-sense standard. It merely requires that the facts available to the officer would warrant a man of reasonable caution in the belief, that certain items may be contraband or stolen property or useful as evidence of a crime; it does not demand any showing that such belief be correct or more likely true than false. A practical, non-technical probability that incriminating evidence is involved is all that is required." (Internal citations and quotations omitted.). Further, in a probable cause

analysis, we consider the "totality of the circumstances." *Cox v. State*, 161 Md. App. 654, 669, 871 A.2d 647 (2005).

This Court recently addressed the fact that the Maryland General Assembly decriminalized the possession of less than ten grams of marijuana and made it a civil offense in *Barrett v. State*. *Barrett v. State*, No. 530, slip op. at 15–16 (Md. Ct. Spec. App. Nov. 29, 2017). This Court has held that "a police officer who has reason to believe that an individual is in possession of marijuana has probable cause to effectuate an arrest, even if the officer is unable to identify whether the amount possessed is more than 9.99 grams." *Id.* at 20–21. Both this Court and the Court of Appeals have addressed the issue of probable cause to search a vehicle and in similar contexts to the present case. In *Robinson v. State*, 451 Md. 94, 125 (2017), the Court of Appeals stated that "[d]ecriminalization is not the same as legalization," and "[d]espite the decriminalization of possession of less than ten grams of marijuana, possession of marijuana in any amount remains illegal in Maryland." *Bowling*, 227 Md. App. at 470. The Court of Appeals noted that other jurisdictions addressing the issue have determined that even though possession of a small amount of marijuana had been decriminalized, mere possession suggested criminal activity. *Robinson*, 451 Md. at 122-23. *See, e.g.*, *People v. Zuniga*, 372 P.3d 1052, 1060 (Colo. 2016) (holding that although possessing a small amount of marijuana is legal, the odor of marijuana is suggestive of criminal activity and relevant to the probable cause determination). The Court of Appeals agreed with that analysis and stated:

> Despite the decriminalization of possession of less than ten grams of marijuana, the odor of marijuana remains evidence of a crime. The odor of marijuana emanating from a vehicle may be just as indicative of crimes such as the possession of more than ten grams of marijuana, possession of marijuana with the intent to distribute, or the operation of a vehicle under the influence of a controlled dangerous substance, as it is of possession of less than ten grams of marijuana.

Robinson, 451 Md. at 133-34.

The totality of the circumstances in this case, including the suspicious activity in the gas station parking lot, the K-9 alert, and the discovery of the marijuana and digital scale in the vehicle made prior to the detainment of Appellant, gave rise to Officer Hirshman having probable cause to believe that illegal drug activity could be in progress. It was an entirely reasonable inference on Officer Hirshman's part that any or all four of the occupants of the vehicle, including Appellant, had knowledge of, and exercised dominion and control over, the marijuana in the vehicle. Given that any reasonable officer could have concluded that there was probable cause to believe that Appellant had committed, or was in the process of committing, a drug-related crime, we find that the metal knuckles and marijuana found as a result of the search of Appellant's person were the fruits of a lawful search and were properly admitted into evidence by the juvenile court.

We also briefly address Appellant's argument that a *Terry* frisk was unwarranted because Officer Hirshman could not have had a reasonable suspicion that Appellant was in possession of a weapon. We find that that reasonable suspicion of weapons existed on the part of Officer Hirshman to warrant a *Terry* frisk of Appellant. We will explain.

This Court has long recognized the connection between drug activity and dangerous weapons. We previously stated in *Webster v. State*, 221 Md. App. 100, 114, (2015), that, "[T]here can be no serious dispute that there is an intimate relationship between violence and drugs," and that "[t]he intimate connection between guns and narcotics is notorious[.]" *Burns v. State*, 149 Md. App. 526, 542, (2003). The Court of Appeals held in *Norman v. State* that "to conduct a Terry frisk, police officers must have evidence pointing to weapons, not only marijuana." *Norman v. State*, 452 Md. 373, 431 (2017). In *Norman*, the Court of Appeals articulated that a frisk is proper only if, "in addition to the odor of marijuana, another circumstance or other circumstances are present giving rise to the reasonable articulable suspicion that an occupant is armed and dangerous." *Id.* at 373.

Such circumstances are present here. Appellant was a passenger in a vehicle to which a drug-sniffing dog had alerted. This Court has held that when a certified K-9 alerts to the presence of narcotics in a vehicle in which there is more than one occupant, there is "at least reasonable, articulable suspicion to believe that the occupants of the vehicle are engaged in a joint enterprise and together are in possession of narcotics." *Stokeling v. State*, 189 Md. App. 653, 667 (2009). As already established, the K-9 alert provided sufficient probable cause for Officer Hirshman to conduct a warrantless search of the vehicle. Next, as marijuana and a digital scale were found during the search,[1] a police officer could

[1] A scale is listed under Maryland statute as "evidence of circumstances that reasonably indicate an intent to use controlled paraphernalia to manufacture, administer, distribute, or dispense a controlled dangerous substance unlawfully." Md. Code Ann., Crim. Law § 5-601(b)(1) (2017).

therefore develop the articulable suspicion that the occupants were engaged in a joint enterprise involving narcotics, which would justify a search of the vehicle occupants for weapons. Here, the suspicious activity in the gas station parking lot, the K-9 alert, and the discovery of the marijuana and digital scale in the vehicle made prior to the detainment of Appellant, gave rise to Officer Hirshman's reasonable suspicion that dangerous drug activity could be afoot. Such a belief would warrant a *Terry* frisk for weapons to ensure the safety of officers and others involved. It was during this lawful search of Appellant that the metal knuckles, defined as a dangerous weapon under Maryland law, were found. MD. CODE ANN., CRIM. LAW § 4-101(c)(1) (prohibiting) the wearing or carrying of a concealed dangerous weapon); MD. CODE ANN., CRIM. LAW § 4-101(a)(5)(i) (defining "metal knuckles" as a "concealed dangerous weapon") Therefore, we hold that the trial court properly denied Appellant's Motion to Suppress the tangible evidence found on his person.

II. Motion to Suppress Appellant's Statements

A. Parties' Contentions

Appellant contends that the juvenile court erred in denying his motion to suppress statements he made admitting that he had marijuana on his person and that the marijuana and marijuana paraphernalia were his. Appellant argues that his statements and recovered items should have been suppressed because there was "no justification to search [his person]…because there was no warrant," which ultimately led to Appellant making the statements to Officer Hirshman. Appellant also contends that Appellant was subject to a custodial interrogation and should have been advised of his rights under *Miranda v.*

Arizona, 384 U.S. 436 (1966). Finally, Appellant contends that any statements made to Officer Hirshman should be suppressed based on Appellant's belief that the statements were made in response to an unlawful search of Appellant's person, and thus constitute the fruit of a poisonous tree.

The State responds that the statements made by Appellant were not the result of a custodial interrogation, but rather were made entirely voluntarily by Appellant during a lawful arrest, and therefore were correctly admitted by the trial court. The State did not directly address Appellant's contention regarding Appellant's statements being the "fruit of a poisonous tree," but we will briefly address this below.

B. Analysis

Appellant's main argument on appeal is that Appellant's statements to Officer Hirshman were obtained "through the functional equivalent to interrogation." The Supreme Court in *Miranda* held that:

> …the prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination. By custodial interrogation, we mean questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way.

Miranda, 384 U.S. at 444. It is clear that Appellant had been either "taken into custody or otherwise deprived of his freedom as a result of the traffic stop." *Id.* However, Appellant's argument that Officer Hirshman should have known that his admissions might result from the nature of his conduct and questioning toward the driver is unconvincing. Plainly put,

Officer Hirshman was not directing his questions towards the Appellant. It then follows that based on the evidence, Appellant's admissions were made voluntarily, and therefore are unprotected by *Miranda*. The admissibility of one's statements depends on whether they were made "freely, knowingly, without coercion or inducement." *Hunter v. State*, 110 Md. App. 144, 163 (1996) (quoting *Hof v. State*, 337 Md. 581, 600, 655 A.2d 370 (1995)). Whether Officer Hirshman informed Appellant of his *Miranda* rights before Appellant made the self-incriminating statements is not the determinative factor when discerning the voluntariness of the statements. *Id.* Instead, all of the circumstances under which the statements were made need to be considered. *Id*. In this case, there is no evidence to support that Appellant was provoked or incited to make the statements that he made. Accordingly, we do not find that they warranted suppression by the trial court.

Finally, we do not find Appellant's argument that his statements should be suppressed as fruits of the poisonous tree as persuasive. Having concluded that the search of Appellant was lawful, we also conclude the juvenile court's denial of the motion to suppress Appellant's statements obtained during the lawful search was proper under the Fourth Amendment.

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