

Circuit Court for Anne Arundel County  
Case No. C-02-CR-17-002021

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 450

September Term, 2018

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MICHAEL B. TAGGART

v.

STATE OF MARYLAND

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Fader, C.J.  
Reed,  
Sharer, J. Frederick,  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Reed, J.

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Filed: February 24, 2020

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Michael Taggart (“Appellant”) was charged with (1) possession of cocaine with the intent to distribute; (2) possession of cocaine; (3) possession of drug paraphernalia with the intent to use; and (4) conspiracy to distribute cocaine.

At trial, Appellant’s counsel filed a motion to suppress physical evidence seized by detectives after they searched Appellant’s pants and found multiple baggies, one of which contained a razor blade. The motion claimed that Appellant’s Fourth Amendment right to be free from unreasonable searches and seizures had been violated. Following the suppression hearing, the Honorable William C. Mulford, II, denied Appellant’s motion to suppress.

On May 8, 2018, the parties proceeded by way of a not guilty statement of facts on the conspiracy count, and the Honorable Michael Wachs found Appellant guilty of this count. The State *nolle prossed* the balance of the Indictment. The court subsequently sentenced Appellant to five (5) years’ imprisonment, suspended all but thirty (30) days, and directed Appellant to serve his time on weekends. Appellant was also placed on supervised probation for three (3) years. This appeal followed.

In bringing his appeal, Appellant presents one question for appellate review:

I. Did the circuit court err in denying Appellant’s motion to suppress?

For the following reasons, we answer Appellant’s question in the negative and affirm.

#### **FACTUAL & PROCEDURAL BACKGROUND**

On August 2, 2017, Detectives Giunta, Smith, and Manalansan of the Anne Arundel County Police Department were in an unmarked police vehicle and patrolling an area in Brooklyn, Maryland when they saw a 2002 Chevy Avalanche with a missing registration

sticker on the license plate. Detective Giunta ran the vehicle registration through their motor vehicle database and learned that the registration plate had expired in April of 2017. The database also notified the Detectives that the vehicle was owned by Appellant.

The detectives activated their emergency equipment to stop the vehicle for the expired registration. After the vehicle stopped, all three (3) detectives approached the vehicle. At the time of the stop, Appellant was in the driver's seat, a Mr. Darrel Wilson ("Mr. Wilson") was in the passenger's seat, and a Ms. Nicole Fritsky ("Ms. Fritsky") was in the back seat. Detective Giunta testified that he smelled the strong odor of burnt marijuana coming from inside the vehicle as he approached, which was also smelled by Detective Smith. Because Detective Giunta could not pinpoint where inside the vehicle the odor was coming from, he asked each of the vehicle's occupants for their identification and returned to his patrol car to request warrant checks on each of them. The search eventually revealed no open warrants.

While waiting for the results of the warrant checks, Detective Giunta returned to the vehicle and requested that Appellant exit the vehicle. Detective Giunta informed Appellant that he had smelled marijuana odor coming from inside the vehicle and that he was going to search the vehicle based on that odor. When Appellant exited the vehicle, Detective Giunta conducted a quick pat-down of Appellant, who began acting uneasy according to Detective Giunta's testimony.

I started doing just a quick pat-down real quick and just areas where weapons can be hidden. A real quick search. The whole time he was kind of pulling back, pulling away from me as – kind of just moving. He wouldn't stand still. I had to instruct him several times to stand still. After that quick search I then explained to Detective Smith that [Appellant] was – how he was acting if he

could conduct a more thorough search so I can then proceed to search the vehicle.

Prior to the pat-down, none of the detectives saw Appellant holding any contraband or making any movements as if to hide something on his person or within the vehicle, nor did the detectives notice any bulges in Appellant's pockets when he consensually exited the vehicle. While Appellant consented to a search of the vehicle, Appellant did not consent to the pat-down.

At some point during Detective Giunta's pat-down of Appellant, Detective Smith had Ms. Fritsky exit the vehicle. As she was exiting the vehicle, Detective Smith noticed two small pink Ziploc bags at her feet on the floorboard. Detective Smith asked Ms. Fritsky if she had any marijuana on her person, and she responded in the affirmative and presented Detective Smith with a bag of marijuana and several small, empty baggies similar to those found at her feet.

During the pat-down, Detective Giunta did not detect any weapons or contraband and did not feel any bulges in Appellant's pockets. Detective Giunta testified that while Appellant's uneasy nature during the pat-down was not unlawful, his actions made Detective Giunta worry for his safety, as Appellant was "a big gentleman" who could "very easily turn around and grab [his] weapon so [he] was trying to keep [Appellant] not from turning on [him]." At that point during the pat-down, Detective Smith took over the encounter with Appellant while Detective Giunta began searching the vehicle. Detective Giunta told Detective Smith that Appellant was moving around, thus preventing Detective Giunta from conducting a complete search.

When Detective Smith took over the frisking of Appellant, he allegedly felt baggies near Appellant's groin. Detective Smith then reached his hand into Appellant's pants and removed multiple baggies similar to the baggies recovered on and near Ms. Fritsky. Inside one of the baggies, detectives found a razor blade, which detectives testified could be used to cut up cocaine. Other than the one baggie containing the razor blade, all other baggies found on Appellant were empty. Upon retrieving the baggies, Detective Smith placed Appellant under arrest. Appellant was later charged with (1) possession of cocaine with the intent to distribute; (2) possession of cocaine; (3) possession of drug paraphernalia with the intent to use; and (4) conspiracy to distribute cocaine.

Though the timing of each is unclear, additional searches of the vehicle and of Ms. Fritsky's person were also conducted. A search of the vehicle by Detective Giunta led to the discovery of a purse containing credit cards in Ms. Fritsky's name and a steel metal grinder containing marijuana. A search of Ms. Fritsky's person by Detective Smith led to a discovery of marijuana and crack cocaine.

Prior to trial, Appellant moved to suppress the baggies found in his underwear, as well as the razor blade found within one of the baggies. The State ultimately conceded that the search of Appellant exceeded the permissible scope of a *Terry* frisk. However, the State argued the search was supported by probable cause, arising from the marijuana odor coming from the vehicle and the baggies found at Ms. Fritsky's feet, as well as the inference of knowledge and control based on Appellant's status as the driver of the vehicle.

Agreeing with the State, the circuit court denied Appellant's motion to suppress. In an oral ruling, the court concluded that the evidence provided sufficient probable cause to arrest both Ms. Fritsky and Appellant:

At this point, Detective Smith certainly possesses probable cause to arrest [Fritsky] and with him seeing the same type of baggies in the vehicle as the co-defendant has, he certainly has probable cause to believe that there is drug contraband, that is, items which are used to conceal controlled dangerous substances in the vehicle. Interestingly in the State of Maryland we have two separate contraband charges. One is a citation only but one is arrestable.

Since there is an . . . arrestable charge for paraphernalia and with a passenger having drugs and with the burnt smell of marijuana in the car with there being some case law which indicates that the driver in many ways is responsible for almost anything and everything in the vehicle, at that point [Detective] Smith actually has the probable cause to arrest and search [Appellant].

...

So what [Detective] Smith does at this point, even if [Detective] Giunta made a mistake, is a valid search incident to arrest. . .

On May 8, 2018, the parties proceeded by way of a not guilty statement of facts on the conspiracy count, and the Honorable Michael Wachs found Appellant guilty of this count. The State *nolle prossed* the balance of the Indictment. The court subsequently sentenced Appellant to five (5) years' imprisonment, suspended all by thirty (30) days, and directed Appellant to serve his time on weekends. Appellant was also placed on supervised probation for three (3) years. This appeal followed.

#### **STANDARD OF REVIEW**

In reviewing a circuit court's decision to grant or deny a motion to suppress, this Court limits its review to the record of the motions hearing. *Trusty v. State*, 308 Md. 658, 669–72 (1987). The evidence is viewed in the light most favorable to the prevailing party,

and the circuit court's fact findings are accepted unless clearly erroneous. *Williamson v. State*, 413 Md. 521, 531 (2010). "The ultimate determination of whether there was a constitutional violation, however, is an independent determination that is made by the appellate court alone, applying the law to the facts found in each particular case." *Belote v. State*, 411 Md. 104, 120 (2009) (citations omitted); *see also Carter v. State*, 367 Md. 447, 457 (2002).

## DISCUSSION

### A. Parties' Contentions

Appellant contends that the circuit court erred in denying his motion to suppress the baggies and razor blade found in his pants. Specifically, Appellant argues that while detectives had probable cause to search his vehicle upon smelling marijuana, they lacked the required reasonable suspicion to conduct a *Terry* frisk. Furthermore, Appellant asserts that the search-incident-to-arrest exception applied by the circuit court was applied in error. Appellant disputes the circuit court's reasoning based on the timing of the searches that occurred after the vehicle was stopped. Specifically, Appellant contends that Detective Smith's discovery of the baggies on and near Ms. Fritsky may have occurred after detectives illegally searched Appellant. As such, Appellant contends that the search of his person was done without the probable cause necessary for an arrest.

As it did at trial, the State concedes that the *Terry* frisk was unlawful. However, the State notes that the *Terry* frisk did not lead to the evidence sought to be suppressed by Appellant and therefore argues that the unlawfulness of Detective Giunta's search of Appellant is irrelevant to this Court's review. With regard to Detective Smith's search of

Appellant, which led to the discovery of the baggies and razor blade in Appellant’s pants, the State contends that the search was incident to arrest. The State first asserts that detectives had probable cause to arrest Appellant and subsequently searched him after detectives found baggies within his vehicle and drugs on Ms. Fritsky. The State relies on the circuit court’s factual finding that the search of Ms. Fritsky occurred before the search of Appellant. Furthermore, the State contends that the search occurring prior to Appellant’s arrest does not prevent a court from applying the search-incident-to-arrest exception when the arrest immediately follows the search and the search was conducted with probable cause. As such, the State argues that the circuit court did not err in denying Appellant’s motion to suppress. We agree.

### **B. Analysis**

The Fourth Amendment to the Constitution of the United States protects against “unreasonable searches and seizures.” U.S. Const. amend. IV. It is “made applicable against the States through the Fourteenth Amendment.” *Smith v. State*, 214 Md. App. 195, 201 (2013), *cert. denied*, 436 Md. 330 (2013). Whether a police action is reasonable “is judged by balancing its intrusion on the individual’s Fourth Amendment interests against its promotion of legitimate governmental interests.” *Delaware v. Prouse*, 440 U.S. 648, 654 (1979). *Accord Sellman v. State*, 449 Md. 526, 540 (2016).

The general rule is that “searches conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions.” *Arizona v. Gant*, 556 U.S. 332, 338 (2009) (quoting *Katz v. United States*, 389



U.S. 347, 357 (1967)). Thus, a warrantless search of a person is “reasonable only if it falls within a recognized exception.” *Missouri v. McNeely*, 569 U.S. 141, 148 (2013). The Court of Appeals has listed several exceptions to the warrant requirement, including: (1) hot pursuit; (2) the plain view doctrine; (3) the *Carroll* doctrine; (4) stop and frisk; (5) consent; (6) exigent circumstances; and (7) search incident to arrest. *Grant v. State*, 449 Md. 1, 16 (2016).

In this case, there were two distinct searches: one of the vehicle and one of Appellant’s person. With regard to the search of the vehicle, this Court has previously upheld warrantless searches pursuant to the automobile exception, sometimes referred to as “the *Carroll* doctrine,” *Carroll v. United States*, 267 U.S. 132 (1925), which allows the police to conduct a warrantless search of a vehicle based on probable cause to believe that the vehicle contains contraband or evidence of a crime. *See Bowling v. State*, 227 Md. App. 460.(2016) We noted that the Maryland appellate courts have consistently held that the odor of marijuana emanating from a vehicle provides probable cause for the police to conduct a warrantless *Carroll* doctrine search of a vehicle. *Id.* at 469. As such, there are no issues regarding the detectives’ search of Appellant’s vehicle upon smelling the odor of marijuana coming from the vehicle.

The more contentious search, and the issue at the center of Appellant’s motion to suppress in the circuit court, is Detective Smith’s search of Appellant’s pants in discovering the baggies and razor blade. Instead of relying on the *Carroll* doctrine, this Court must determine if this search was a search incident to arrest.

In *Conboy v. State*, we stated that:

[A] police officer with probable cause to believe that a suspect has or is committing a crime may arrest the suspect without a warrant. *See Brinegar v. United States*, 338 U.S. 160, 176 (1949). Once lawfully arrested, police may search “the person of the arrestee” as well as “the area within the control of the arrestee” to remove any weapons or evidence that could be concealed or destroyed. *United States v. Robinson*, 414 U.S. 218, 224 (1973).

*Conboy v. State*, 155 Md. App. 353, 364 (2004). The State argues that the detectives had probable cause to justify Appellant’s arrest prior to searching his pants. “Probable cause to arrest ‘exists where the facts and circumstances within the knowledge of the officer at the time of the arrest, or of which the officer has reasonably trustworthy information, are sufficient to warrant a prudent person in believing that the suspect had committed or was committing a criminal offense.’” *Barrett v. State*, 234 Md. App. 653, 666 (2017) (quoting *Moulden v. State*, 212 Md. App. 331, 344 (2013)), *cert. denied*, 457 Md. 401, 178 (2018). Probable cause “‘requires less evidence than is necessary to sustain a conviction, but more evidence than would merely arouse suspicion.’” *Id.* (quoting *Moulden*, 212 Md. App. at 344).

Here, the record supports the circuit court’s conclusion that the police had probable cause to stop Appellant’s vehicle, as Appellant was driving with expired registration tags. After activating the unmarked police vehicle’s emergency lights and stopping Appellant’s vehicle, Detective Giunta “detected the strong odor of burnt marijuana coming from inside [the] vehicle.” The smell of burnt marijuana was also detected by Detective Smith.

At this point in time, Detective Giunta initiated a *Terry* frisk, which Appellant claims was unlawful. Appellant relies on *Norman v. State*, 452 Md. 373, 411–412 (2017),

to argue that the mere fact that detectives detected the odor of marijuana did not authorize Detective Giunta to frisk Appellant. In *Norman*, the Court of Appeals stated:

[F]or a law enforcement officer to frisk, *i.e.*, pat down, an individual, there must be reasonable articulable suspicion that the individual is armed and dangerous, even where a law enforcement officer detects the odor of marijuana emanating from a vehicle.

...

Stated otherwise, for a law enforcement officer to have reasonable articulable suspicion to frisk one of multiple occupants of a vehicle from which an odor of marijuana is emanating, the totality of circumstances must indicate that the occupant in question is armed and dangerous. An odor emanating from a vehicle with multiple occupants does not give rise to reasonable articulable suspicion that the vehicle's occupants are armed and dangerous and subject to frisk.

Appellant's reliance on *Norman* is correct, and the State has continually conceded that the *Terry* frisk was unlawful. However, as Detective Giunta testified, the *Terry* frisk revealed neither the empty baggies nor the razor blade later found on Appellant. As neither piece of evidence that are the subject of Appellant's motion were found during the unlawful *Terry* frisk, this Court moves next to determining if the search by Detective Smith was lawful.

Before or while Detective Giunta was conducting the unlawful *Terry* frisk, Detective Smith searched the vehicle. During that search, he found empty baggies on the backseat floorboard of the vehicle and baggies on Ms. Fritsky's person containing marijuana and crack cocaine. Shortly thereafter, Detective Giunta conducted a search of the vehicle and found a purse containing a steel grinder with suspected marijuana inside. Around the same time, Detective Smith searched the pants of Appellant. It was this search

that led to the discovery of empty baggies similar to those found on Ms. Fritsky, as well as a razor blade, which detectives testified is commonly utilized when using crack cocaine.

In appealing the circuit court’s denial of his motion, Appellant questions the circuit court’s finding regarding the timing of the searches in question. Specifically, Appellant argues that “the record of the suppression hearing did not show where Detective Smith’s discovery of the baggies at Ms. Fritsky’s feet and his recovery of marijuana and baggies from her person preceded his search of [Appellant].” Appellant asserts that had Detective Smith searched Appellant prior to the discovery of the baggies on and near Ms. Fritsky and the grinder in her purse, Detective Smith would have lacked the requisite probable cause to conduct the search. As such, Appellant emphasizes that the circuit court lacked the evidence to properly determine when each search was conducted.

Simply put, the evidence is viewed in the light most favorable to the prevailing party, and the circuit court’s fact findings are accepted unless clearly erroneous. *Williamson v. State*, 413 Md. 521, 531 (2010). As the finder of fact, the circuit court must determine the credibility of the witnesses and weigh the evidence presented. Here, the circuit court weighed the evidence and concluded that the search of Appellant occurred after the search of the vehicle and Ms. Fritsky. Furthermore, nothing in the record indicates that this finding was clearly erroneous. As such, we must accept the circuit court’s conclusion absent clear evidence to the contrary; as Appellant himself notes, the record indicates that the timing of each search is difficult to determine.

Accepting the circuit court’s conclusion regarding the timing of the pertinent searches, at the time Appellant was searched by Detective Smith, “the facts and

circumstances within the knowledge of” the detectives were “sufficient to warrant a prudent person in believing that the suspect had committed or was committing a criminal offense.” *Id.* (quoting *Moulden*, 212 Md. App. at 344). As such, the circuit court did not err in finding that the detectives had probable cause to both stop Appellant’s vehicle and to arrest Appellant prior to the search in question.

We also distinguish this case from the Court of Appeals’ fairly recent holding in *Pacheco v. State*, where the Court held that the smell of marijuana accompanied by a small amount of marijuana was insufficient to establish probable cause to arrest. *Pacheco v. State*, 465 Md. 311, 334 (2019). We do not find *Pacheco* to be controlling in this matter because there was more than just the odor of marijuana that provided the detectives in this case with probable cause. Here, the detectives not only detected an odor and small amount, but also found baggies and a razor blade on Appellant, in addition to the marijuana and crack cocaine found on Ms. Fritsky. The record therefore supports the conclusion that the officers had probable cause to arrest Appellant pursuant to a belief that he had or was in the process of committing a crime.

Finally, Appellant argues that the search-incident-to-arrest exception cannot apply when the search occurs prior to the arrest. Once a person is lawfully arrested, the “police may search ‘the person of the arrestee’ as well as ‘the area within the control of the arrestee’ to remove any weapons or evidence that could be concealed or destroyed.” *Conboy v. State*, 155 Md. App. 353, 364 (2004) (quoting *United States v. Robinson*, 414 U.S. 218, 224 (1973)). However, that the search occurs immediately before the formal arrest does not invalidate it because “it is not ‘particularly important that the

search precede the arrest rather than vice versa.” *Id.* (quoting *Rawlings v. Kentucky*, 448 U.S. 98, 111 (1980)). *Accord Barrett*, 234 Md. App. at 672 (“The United States Supreme Court has made clear that a search may qualify as a search incident to arrest even if, sequentially, the search occurs prior to the arrest.”). A search incident to arrest is valid as long as the search is “essentially contemporaneous” with the arrest, regardless of whether the search or arrest occurs first. *Wilson v. State*, 150 Md. App. 658, 673 (2003).

Here, the arrest occurred shortly after the baggies were found in Appellant’s pants. Accordingly, the circuit court properly concluded that the search of Appellant’s person was a valid search incident to arrest. Accordingly, we affirm the judgment of the Circuit Court for Anne Arundel County.

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

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