Circuit Court for Worcester County
Case No. C-23-CR-20-000170

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1046

September Term, 2021

GREGORY TYRONE HOLDEN, JR.

v.

STATE OF MARYLAND

Berger,
Leahy,
Tang,

JJ.

Opinion by Leahy, J.

Filed: August 17, 2022

While on patrol in the afternoon of November 14, 2019, Corporal Dana Orndorff, of the Maryland State Police, observed Gregory Holden, appellant, sitting in the driver's seat of a vehicle parked on the side of Cedar Street in Pocomoke City, Maryland. As he drove down the narrow street and by Mr. Holden's car, Corporal Orndorff detected the odor of marijuana in the vicinity of the car. After he passed the car, Corporal Orndorff observed Cedar Street for approximately one minute before making a second pass down the road, parking approximately 15 to 20 feet in front of Mr. Holden's Ford Fusion. As he approached the vehicle, Corporal Orndorff continued to detect the odor of marijuana. And, after Mr. Holden rolled down his window, Corporal Orndorff detected the "overwhelming odor of burnt marijuana" emanating from the Ford Fusion. Mr. Holden, after being instructed to exit the vehicle, turned his body away from Corporal Orndorff and began digging in the center console. Mr. Holden did not agree to exit the vehicle until sometime after the backup officers arrived. The officers searched the vehicle and found a clear plastic bag with a white powdery substance, a digital scale with white powdery residue, multiple unused clear plastic bags, and 4.887 grams of fentanyl in the center console.

After he was charged in the Circuit Court for Worcester County, Mr. Holden moved to suppress the contraband recovered from his vehicle. After a hearing on August 3, 2021, the circuit court denied Mr. Holden's motion. Mr. Holden then elected to enter a plea of not guilty on an agreed statement of facts to one count of possession with intent to distribute fentanyl. On September 9, 2021, the court found Mr. Holden guilty and sentenced him to a fifteen-year term of incarceration, with five years suspended, and a term of supervised

probation. He appealed and presents two questions for our review, which we have reordered:

> I. "Did the court commit reversible [error] in failing to comply with Maryland Rule 4-215(e)?"
>
> II. "Did the court err in denying [Mr. Holden's] motion to suppress?"

We hold the court did not violate Rule 4-215(e) because Mr. Holden never "requested" to discharge counsel. Consequently, he did not trigger the procedure in Rule 4-215. In accordance with the holding in *Robinson v. State*, 451 Md. 94 (2017), and its progeny, we also hold that the circuit court did not err by denying Mr. Holden's motion to suppress on the ground that the police failed to establish probable cause to search his vehicle. Accordingly, we affirm the judgment of the circuit court.

BACKGROUND

On August 25, 2020, Mr. Holden was indicted by a grand jury on three counts: (1) possession with the intent to distribute fentanyl; (2) possession of fentanyl; and (3) possession of cocaine.

Plea Hearing

The circuit court, on April 14, 2021, held a hearing to determine whether the law enforcement officers lawfully searched Mr. Holden's vehicle. The hearing was brief because defense counsel informed the court that Mr. Holden wished to withdraw all outstanding motions. He explained:

> We're going to withdraw motions at this time. I appreciate the officers. We're here today, I talked to [Mr. Holden] about it again. It's a small amount

> of marijuana issue. And I indicated to [Mr. Holden] my opinion is there was no chance of prevailing, frankly.

Mr. Holden waived his right to a jury trial, and, on July 14, 2021, a plea hearing commenced. At the hearing's outset, however, defense counsel informed the court that on the day prior to the hearing, his assistant had received a call indicating that Mr. Holden wished to discharge counsel. While the caller did not identify himself or herself, defense counsel indicated that his assistant believed that the call was made by "Mr. Holden and/or a friend[.]" Defense counsel explained that he came to the courthouse prior to the hearing "frankly, with a check from my escrow account to give [Mr. Holden] some money back." When he saw Mr. Holden, however, Mr. Holden "indicated . . . that . . . there was another guy in the background saying that – something about ineffective assistance of counsel" and that "he didn't want to discharge" current counsel. Counsel requested additional time and another motions hearing, explaining:

> So I have a trifecta here, Judge. Number one, I didn't prepare my client, nor his family, particularly his mother, to testify on his behalf this morning. That's number one.
>
> * * *
>
> So when I say we have a trifecta, I would not be ready this morning to proceed because I haven't prepared my client, nor his family members, to proceed this morning; number two, Mr. Cabrera and I just cleared up the situation of the officer's report having to do with the smell of marijuana; and, number three, I – as I always say, I always tell – tell you – tell anybody – tell everybody the truth, I believed that, to preserve this case, that there should have been about a half an hour motions hearing in this case asking for the Court to consider that the approaching of the vehicle and the final search may have been unconstitutional. So I'm in the unenvious position of asking the Court to consider, on a motion that I'm going to file today, to set this – set

> this back in for motions and allow me to query the officers about their approach, have my client testify and also his mother.

The court then engaged in the following colloquy with Mr. Holden:

> THE COURT: Okay. Mr. Holden, what do you want to do? Who represents you in this case?
>
> [MR. HOLDEN]: [Defense counsel].
>
> THE COURT: Okay. But there's been discussions about somebody else entering their appearance, there's been a telephone call that was supposedly made, and it's gone so far as our assignment office has received telephone calls from another attorney's office seeking dates.
>
> THE DEFENDANT: I haven't gave any --
>
> THE COURT: Mr. Holden, this is your case. Does [current counsel] represent you in this matter?
>
> [MR. HOLDEN]: [Defense counsel] represents me, Gregory Holden.
>
> THE COURT: Is [Defense counsel] going to continue to represent you in this matter?
>
> [MR. HOLDEN]: Yes, sir.

Defense counsel subsequently informed the court of another issue. He explained that his notes on the police report provided by the State reflected that a small amount of marijuana was found on the carpet of Mr. Holden's vehicle. However, it was now his understanding that no marijuana was found in the vehicle. He therefore requested that the court schedule a motions hearing to address "that the approaching of the vehicle and the final search may have been unconstitutional." The State opposed the request, arguing that a motions hearing was held in April 2021 in which Mr. Holden withdrew all outstanding motions. In the State's view, the police reports had not changed, and, if defense counsel's

recollection of the reports had changed, "that's on him." The court asked that defense counsel file a written motion articulating his requests by the end of the day.

In his written motion, defense counsel argued that it was "improbable" that the officer detected marijuana as he approached Mr. Holden's vehicle because the windows of Mr. Holden's vehicle were closed. The State, he averred, had not previously disclosed that the approaching officer had to tap on Mr. Holden's window and instruct him to roll the window down before making contact with Mr. Holden. He also explained that he had "erroneously believed that a small amount of marijuana was found on the floorboard of [Mr. Holden's] vehicle," which was not accurate. The circuit court granted the motion on July 16, 2021.

The Suppression Hearing

The circuit court held a hearing on Mr. Holden's motion to suppress on August 3, 2021. Corporal Orndorff testified first. He explained that he had been with the Maryland State Police as a police officer for 18 years and that, on the date of Mr. Holden's arrest, he was a member of the MSP Proactive Criminal Enforcement ("PACE") unit. As a member of the PACE unit, Corporal Orndorff was tasked with locating "criminals through aggressive traffic enforcement." He testified that he was familiar with the odor of marijuana and that he had completed specialized training in controlled and dangerous substances, including marijuana, while he was at the police academy.

Corporal Orndorff related that, at approximately 3:00 p.m. on the afternoon of November 14, 2019, he was on patrol in Pocomoke City, Maryland. He recalled that,

although the weather that afternoon was "chilly," he had his driver's side window down. As he was traveling down Cedar Street, which he described as a "very narrow street"[1] in a residential area, he:

> [O]bserved a black Ford Fusion sitting on the road . . . in front of a residence, actually in front of a residence on each side of the street.
>
> When I observed that vehicle, I was traveling in my patrol vehicle traveling slow. As I was passing the Ford Fusion I detected the odor of marijuana and observed that there was someone sitting in the driver's seat of that Ford Fusion.
>
> I continued driving south on Cedar Street for approximately one to two blocks, and I turned around and sat there for approximately a minute and watched the vehicle from that location and observed that the person stayed there and the vehicle stayed there as well.

Corporal Orndorff drove back down Cedar Street and parked his patrol car approximately 15 to 20 feet in front of Mr. Holden's vehicle. As he approached, Corporal Orndorff recalled detecting the odor of marijuana emanating from the vehicle from a "few feet" away. After Mr. Holden rolled down the window, Corporal Orndorff detected "the overwhelming odor of burnt marijuana [] coming out of the vehicle." He testified that, due to the overwhelming odor of marijuana, he requested that "another unit come to [his] location." He then asked Mr. Holden to step out of the vehicle, at which time Mr. Holden "failed to comply and immediately turned his body around and both of his hands disappeared into the center console." Corporal Orndorff related that he drew his firearm and "ordered the driver to comply by showing me his hands in a loud verbal tone for him

[1] Corporal Orndorff testified that on Cedar Street "[t]here's just enough room for a car to park and enough room for a vehicle to drive through."

to hear me." After Trooper Mark Mowbray, also of the Maryland State Police, arrived on scene, Mr. Holden "eventually" showed Corporal Orndorff his hands and exited the vehicle. The officers then conducted a search of Mr. Holden's vehicle, where they recovered contraband in the center console.

On cross-examination, Corporal Orndorff maintained that he detected the odor of marijuana as he drove down Cedar Street but did not see any other individuals or groups in the vicinity of the vehicle. He also explained that "a tin in the console [of Mr. Holden's vehicle] that . . . contained a strong odor of marijuana" was found; however, because the tin did not contain a testable quantity of marijuana, it was not inventoried or collected as evidence.

Trooper Mowbray testified next. He explained that he received specialized training in controlled and dangerous substances, including marijuana, while he was at the police academy. He recalled that, on the afternoon of November 14, 2019, he and his partner were only "a few blocks away" from Cedar Street when Corporal Orndorff requested backup. When he arrived on scene, Trooper Mowbray testified that he "observed Corporal Orndorff at the driver's side of the vehicle . . . with his firearm out." As he approached the vehicle, he could see Mr. Holden "through the back glass . . . reaching down towards the center console of the vehicle." Trooper Mowbray also testified to "the odor of marijuana . . . emitting from the area of the vehicle." Like Corporal Orndorff, Trooper Mowbray did not identify any other individuals in the vicinity of Mr. Holden's vehicle. On cross-

examination, Trooper Mowbray agreed that his initial report did not indicate that any marijuana or marijuana paraphernalia was located in Mr. Holden's vehicle.

Mr. Holden testified on his own behalf. He confirmed that, on the afternoon of November 14, 2019, he was sitting in his car which was parked in front of his parents' house on Cedar Street. He testified that the odor of marijuana was not emanating from his vehicle but was, instead, coming from several houses away:

> On Cedar Street every day, like, it's a marijuana smell. There's a house two houses down from me on the opposite side where guys group together and smoke.
>
> * * *
>
> Just a bunch of young guys. They all get together all day long, just stand around and smoke.

In his view, it was not possible that the officers smelled the odor of marijuana emanating from his car, as he had not smoked marijuana on the day of his arrest. He also testified that the officers would not be able to see into his car with the window's up, as he had tinted windows and had a "dark interior."

On cross-examination, Mr. Holden admitted that he does smoke marijuana and is a "marijuana patient." Mr. Holden explained that he had, in the past, smoked marijuana in his car but had not done so on the day he was arrested. He agreed that someone who does not regularly smoke marijuana may "find the odor more potent or pungent as opposed to someone who smokes regularly."

After hearing closing arguments, the court ruled. It credited Corporal Orndorff's testimony "that he didn't observe anybody" in the vicinity of Mr. Holden's vehicle as he

drove down Cedar Street. In the court's view, the odor of marijuana, which Corporal Orndorff detected as he drove past and approached Mr. Holden's vehicle, was sufficient to establish probable cause. While noting that it was "curious" that no marijuana was found in the vehicle, the court clarified that this omission "doesn't . . . preclude [its] finding . . . that the Corporal's testimony was credible that when he approached the vehicle prior to the window being down, he smelled the odor of marijuana, approached the vehicle, asked the defendant to roll the window down, smelled a greater odor of burnt marijuana and the case proceeds from there." The court noted earlier that the State had argued that the marijuana "could have been freshly smoked. It could have been smoked that morning. It could have been smoked the day before." But the court determined, "[i]rrespective, the credible testimony that the Court has before it is that the Corporal smelled marijuana coming from the vehicle different than coming from the yard, coming from a house." The court determined that after Mr. Holden rolled the window down, "[a]t that point [Corporal Orndorff] has probable cause based on the odor of marijuana coming from the car." After making these findings, the court denied Mr. Holden's motion to suppress.

Not Guilty Agreed Statement of Facts

Mr. Holden elected to proceed with a not guilty agreed statement of facts as to count one—possession with the intent to distribute fentanyl. The circuit court held a hearing on September 9, 2021. After hearing an agreed statement of facts from the State, with several additions from Mr. Holden, the court found Mr. Holden guilty of possession with intent to distribute fentanyl, and the State entered a nolle prosequi on the remaining charges. The

court sentenced Mr. Holden to 15 years of incarceration, with all but ten years suspended, followed by three years of supervised probation. Mr. Holden noted an appeal on September 14, 2021.

DISCUSSION

I.

Discharge of Counsel

Mr. Holden argues that the circuit court committed reversible error by failing to comply with Maryland Rule 4-215(e). In his view, the court was required to further question him about his "desire to discharge counsel" after defense counsel informed the court that his assistant had received a call indicating that Mr. Holden was seeking a discharge. The circuit court's questioning was not sufficient, he avers, as the "judge did not inquire about" the reasons he wanted to discharge counsel and, therefore, could not determine whether they were "meritorious." Alternatively, Mr. Holden posits that, if the court did inquire about his reasons for discharge, a finding that they were not meritorious was clearly erroneous as counsel had, by his own admission, "improperly with[drawn] a dispositive motion."

The State asserts that because Mr. Holden "never suggested that he wished to discharge counsel" he did not trigger Rule 4-215. Therefore, the State maintains that, "the court was not required to inquire further about the issue." The State underscores the holding in *State v. Davis,* that "an inquiry 'is not mandated unless counsel or the defendant indicates that the *defendant has a present intent* to seek a different legal advisor.'" 415

Md. 22, 23 (2010) (emphasis added by the State). Mr. Holden, the State urges, "unequivocally told the court in response to three separate questions that his current counsel was, and would continue to be, representing him."

Mr. Holden replies that the State is ignoring the fact that he "or someone on his behalf had gone so far in the direction of changing counsel as to cause another attorney to seek a postponement to get into the case." In his view, the court was required to resolve this ambiguity through the procedures detailed in Rule 4-215.

A defendant's right to counsel in a criminal case "is guaranteed by the Sixth Amendment to the United States Constitution, made applicable to the States through the Fourteenth Amendment, and by Article 21 of the Maryland Declaration of Rights." *Brye v. State*, 410 Md. 623, 634 (2009). In addition, a defendant has the "corresponding right to proceed without the assistance of counsel." *Id.* Appellate courts conduct their own independent analysis when reviewing a possible violation of a constitutional right. *Davis*, 415 Md. at 29; *State v. Graves*, 447 Md. 230, 240 (2016).

Maryland Rule 4-215 sets out the procedures for discharging counsel in a criminal case. The Rule was promulgated "[a]s part of the implementation and protection of [the] fundamental right to counsel." *Broadwater v. State*, 401 Md. 175, 180 (2007). It seeks to "protect the defendant's fundamental rights involved, to secure simplicity in procedure and promote fairness in administration." *Gonzales v. State*, 408 Md. 515, 532 (2009) (quoting *Parren v. State*, 309 Md. 260, 280 (1987)). Maryland Rule 4-215 states, in relevant part:

> (a) First Appearance in Court Without Counsel. — At the defendant's first appearance in court without counsel, or when the defendant appears in the

> District Court without counsel, demands a jury trial, and the record does not disclose prior compliance with this section by a judge, the court shall: (1) Make certain that the defendant has received a copy of the charging document containing notice as to the right to counsel. (2) Inform the defendant of the right to counsel and of the importance of assistance of counsel. (3) Advise the defendant of the nature of the charges in the charging document, and the allowable penalties, including mandatory penalties, if any. (4) Conduct a waiver inquiry pursuant to section (b) of this Rule if the defendant indicates a desire to waive counsel.
>
> * * *
>
> (e) Discharge of Counsel — Waiver. **— If a defendant requests permission to discharge an attorney whose appearance has been entered, the court shall permit the defendant to explain the reasons for the request**. . . . If the court finds no meritorious reason for the defendant's request, the court may not permit the discharge of counsel without first informing the defendant that the trial will proceed as scheduled with the defendant unrepresented by counsel if the defendant discharges counsel and does not have new counsel. If the court permits the defendant to discharge counsel, it shall comply with subsections (a)(1)-(4) of this Rule if the docket or file does not reflect prior compliance.

(Emphasis added). The Rule is initially triggered when a defendant "requests" "to waive his or her right to counsel by discharging an attorney who has entered an appearance on the defendant's behalf." *Gonzales*, 408 Md. at 530. After a "request" is made, the procedures outlined in subsection (e) begin "with a trial judge inquiring about the reasons underlying a defendant's request to discharge the services of his trial counsel and providing the defendant an opportunity to explain those reasons." *Pinkney v. State*, 427 Md. 77, 93 (2012). Failing to inquire into the reasons for a potential discharge, after a proper request is made, is reversible error. *State v. Davis*, 415 Md. 22, 31 (2010).

Our decisional law establishes "that a request to discharge counsel is 'any statement from which a court could conclude reasonably that the defendant may be inclined to

discharge counsel.'" *Gambrill v. State*, 437 Md. 292, 302 (2005) (quoting *Williams v. State*, 435 Md. 474, 486-87 (2013)). Consequently, a request to discharge counsel "need not be explicit," *Williams*, 435 Md. at 486, nor must it "be made in writing or even formally worded," *Davis*, 415 Md. at 31.

In *Henry v. State*, this Court determined that a statement from the defendant's mother to counsel that she was seeking to acquire private counsel for her son did not trigger the requirements of Rule 4-215(e). 184 Md. App. 146, 174 (2009). At the beginning of trial, counsel made the following representation to the court:

> Court's indulgence, Your Honor. I have one other matter just brought to my attention by [defendant's] mom, who's sitting in the courtroom. She just informs me she's been in contact with Doug Wood with reference to representing [defendant] in this case, and she spoke with this office on Friday. Apparently he was supposed to contact me on Friday. I did not get a message from him. She spoke with his office again this morning. They're requesting that I request this matter be continued to allow him to . . . enter this case so he can represent [defendant].

Id. at 169-70. The circuit court denied the continuance. *Id.* at 170. On appeal, we discerned no error because, among other reasons, the defendant never "himself specifically asked for new counsel." *Id.* at 172. Rather, "defense counsel simply requested a continuance because there was a possibility that [defendant's] mother would retain private counsel." *Id.*

In *Davis*, however, the Court of Appeals determined that defendant's statement to his counsel that he was unhappy and wanted new counsel triggered the process of Rule 4-215(e). 415 Md. at 25-27. There, in a pretrial hearing defense counsel made the following representation to the administrative judge:

> Your honor, [defendant] is being brought up now. I spent a fair amount of time talking to [defendant]. I told him what the guidelines are, which was six (inaudible) twelve. I indicated to him what my evaluation were [sic] of the facts of this case. He told me he didn't like my evaluation. Wanted a jury trial **and new counsel.** I told him it was very unlikely that the Court was going to award him another attorney in this case.

Id. at 27 (footnote omitted) (emphasis added). The judge denied this request, and the defendant was convicted. *Id.* at 28. He appealed to this Court, which reversed, holding that his statement was "sufficient to trigger the Maryland Rule 4-215(e) mandatory inquiry." *Id.* at 29. The Court of Appeals granted certiorari and affirmed, holding that defendant's statement, "quite simply" indicated that he "wanted new counsel." *Id.* at 32-33. The Court reasoned that this request was materially different from the request in *Henry*, as defense counsel reported to the court that defendant was unhappy with his current representation and that, as a result, he was seeking a new attorney. *Id.* at 34-35. Although noting that the request may have been one for a continuance, and not to discharge counsel, the Court explained that "[e]ven if the [trial] court was conflicted as to whether [defendant] was truly dissatisfied with present counsel or merely wanted a continuance, it could have easily eliminated its uncertainty by questioning [defendant] himself about the reasons for his attorney's statement." *Id.* at 35.

Returning to the instant case, we conclude that defense counsel's statements could not lead the trial judge to reasonably conclude that Mr. Holden had a present intent to discharge counsel. As in *Henry*, here, the representations made to the court did not suggest that Mr. Holden wished to discharge counsel. 184 Md. App. at 172. Although defense counsel related that his assistant received a call indicating that Mr. Holden wished to

discharge counsel, she was not able to verify that the call was made by Mr. Holden. And, the following morning, Mr. Holden indicated to defense counsel that he did not make the call. Instead, he informed defense counsel that "there was another guy in the background saying that—something about ineffective assistance of counsel, and he does not want to discharge me." To clear up any ambiguity regarding Mr. Holden's satisfaction with defense counsel, the court asked Mr. Holden directly, several times, whether he wished to have his current counsel continue to represent him. Each time, Mr. Holden responded that his current counsel represented him and acknowledged that it was his intent for current counsel continue to represent him. Accordingly, because the record does not show that Mr. Holden ever "requested" to discharge counsel, and because the circuit court judge confirmed Mr. Holden's desire that counsel continue to represent him, we hold that the circuit court did not violate Rule 4-215(e).

II.

Mr. Holden's Motion to Suppress

A. Standard of Review

Review of the denial of a motion to suppress evidence under the Fourth Amendment, is, ordinarily, "limited to the information contained in the record of the suppression hearing[.]" *Grant v. State*, 449 Md. 1, 14 (2016) (quoting *State v. Wallace*, 372 Md. 137, 144 (2002)). We review the evidence "in the light most favorable to the party that prevailed on the motion," *Scott v. State*, 247 Md. App. 114, 128 (2020) (quoting *Crosby v. State*, 408 Md. 490, 504 (2009)), and "give due regard to the [suppression]

court's opportunity to assess the credibility of witnesses," *Spell v. State*, 239 Md. App. 495, 506 (2018) (quoting *Goodwin v. State*, 235 Md. App. 263, 274 (2017)). In doing so, "we accept the suppression court's factual findings unless they are shown to be clearly erroneous." *Raynor v. State*, 440 Md. 71, 81 (2014). "We review the court's legal conclusions *de novo*, however, making our own independent constitutional evaluation as to whether the officers' encounter with appellant was lawful." *Daniels v. State*, 172 Md. App. 75, 87 (2006).

B. The Circuit Court's Findings

i. The Parties' Contentions

Mr. Holden contends that the circuit court's finding that the officers smelled marijuana emanating from his vehicle was clearly erroneous. Because there was no marijuana found in the vehicle and no testimony as to the "lingering olfactory effects of marijuana," Mr. Holden avers that attributing the smell of marijuana on Cedar Street to his vehicle is "not plausible on [the] record." "[T]he record as a whole," Mr. Holden asserts, "compels the conclusion that [Corporal Orndorff] failed to see the other individuals in the area, either because he was overly focused on [Mr. Holden's] vehicle or because the individuals . . . had left before [Corporal Orndorff] arrived." In his view, there are only two explanations for the odor of marijuana that Corporal Orndorff and Trooper Mowbray detected on Cedar Street: (1) "it came from the other individuals smoking marijuana in the vicinity" or (2) Corporal Orndorff "fabricated the smell of marijuana, which [] [Trooper] Mowbray tepidly reinforced with his generic testimony about 'the odor of marijuana just

emitting from area of the vehicle.'"[2] In support of these theories, Mr. Holden notes that Corporal Orndorff testified that he smelled "the 'overwhelming odor of burnt marijuana'" while Trooper Mowbray testified that he "just smelled marijuana[.]"

The State counters that Mr. Holden's claim that there are "only two plausible explanations" for the odor of marijuana is flawed, and that other possible explanations include: (1)"[Mr.] Holden (or someone else) had finished smoking marijuana shortly before [Mr. Holden] pulled up and Corporal Orndorff drove by"; (2) "[Mr.] Holden (or someone else) had smoked marijuana in the car the day before this incident, and the smell lingered"; or (3) "[Mr.] Holden was smoking marijuana and disposed of the evidence upon seeing Corporal Orndorff[.]" That no marijuana or paraphernalia was found in the car, does not, according to the State, '"preclude' [the suppression judge's] finding that Corporal Orndorff's 'testimony was credible that when he approached the vehicle prior to the window being down he smelled the odor of marijuana, approached the vehicle, asked the defendant to roll the window down, [and] smelled a greater odor of marijuana.'" In the State's view, it was also not necessary for the circuit court to "take judicial notice of testimony in order to find that the officers could have smelled marijuana around, and even in, the car but not found any marijuana in the car."

[2] Mr. Holden also argues that the State's statement of facts at Mr. Holden's plea hearing revealed that Corporal Orndorff was "suspicious of [Mr. Holden's] vehicle *before* purportedly smelling marijuana, a fact which [he] did not include in his suppression testimony." We decline to address this argument as our review of the circuit court's denial of Mr. Holden's motion to suppress is "limited to the record developed at the suppression hearing." *Pacheco v. State*, 465 Md. 311, 319 (2019) (quoting *Moats v. State*, 455 Md. 682, 694 (2017)).

ii. Analysis

The Court of Appeals has established that "[f]indings of fact and credibility determinations are to be made by trial courts, not appellate courts." *Longshore v. State*, 399 Md. 486, 520 (2007); *Barnes v. State*, 437 Md. 375, 389 (2014) ("The credibility of the witnesses and the weight to be given to the evidence fall within the province of the suppression court."). Therefore, "[w]e accept the suppression hearing court's factual findings and determinations regarding the credibility of testimony unless they are clearly erroneous." *Small v. State*, 464 Md. 68, 88 (2019). Factual findings "cannot be held to be clearly erroneous" if there exists "any competent material evidence" in the record in support of those findings. *Spencer v. State*, 450 Md. 530, 548 (2016) (citation omitted).

In *State v. Brooks*, this Court articulated the contours of the "clearly erroneous" test. 148 Md. App. 374, 399 (2002). There, the Court explained that a determination that a factual finding is clearly erroneous is "akin to holding, as a matter of law, that the evidence was not legally sufficient to support a verdict." *Id.* An appellate court's determination that a factual finding was clearly erroneous "should be limited to a situation where, with respect to a proposition or a fact as to which the proponent bears the burden of production, the fact-finding judge has found such a proposition or fact without the evidence's having established a *prima facie* basis for such proposition or fact." *Id.* at 398. In other words, to be "clearly erroneous" the Court reasoned that "the trial judge must be logically wrong, as a matter of law, and not merely probably wrong, as a matter of fact." *Id*. at 399. "When, on the other hand, a judge has some evidentiary basis that legally permits him to consider

the existence of a fact, what he then decides, as a matter of fact, is beyond the challenge of the 'clearly erroneous' test, even if in the minds of many his factual conclusion seems highly questionable." *Id.* at 399-400. Therefore, according to the Court, "[a] finding of fact should never be held to have been clearly erroneous simply because its evidentiary predicate is weak, shaky, improbable, or a '50-to-1 long shot.'" *Id.* at 399.

Returning to Mr. Holden's case, we first conclude that the circuit court's factual finding that "[n]obody else [was] on the street" at the time that the officers detected the odor of marijuana was not clearly erroneous. At the suppression hearing, Corporal Orndorff testified, credibly in the circuit court's view, that he didn't "recall seeing anyone else outside when [he] made contact with [Mr. Holden] or as [he] passed his vehicle." Similarly, Trooper Mowbray testified that he did not see any other individuals at the time that he arrived on Cedar Street. Because the officer's testimony constitutes "competent material evidence," we hold that the circuit court's finding that no one else was on the street when Corporal Orndorff and Trooper Mowbray smelled marijuana was not clearly erroneous. The implausibility of the officers' testimony was for the circuit court, not this Court, to weigh. *See Grimm v. State*, 232 Md. App. 382, 403 (2017), *aff'd*, 458 Md. 602 (2018) ("Such factual determinations are best left to the suppression court judge who hears the evidence[.]").

Similarly, we conclude that the circuit court's factual finding that the officers detected the odor of marijuana emanating from Mr. Holden's vehicle was not clearly erroneous. At the suppression hearing, Corporal Orndorff testified that he "detected the

odor of marijuana and observed someone sitting in the driver's seat of that Ford Fusion" as he was driving down Cedar Street. After circling back around on Cedar Street, Corporal Orndorff explained that he detected "[t]he odor of marijuana emanating from" Mr. Holden's vehicle. He was able to detect the odor, he told the court, from "a few feet" away from the vehicle. And, after Mr. Holden rolled his window down, Corporal Orndorff explained that he detected "the overwhelming odor of burnt marijuana [] coming out of the vehicle." Although Trooper Mowbray did not specify whether he detected burnt or raw marijuana as he approached the vehicle, he testified that "the only thing [he] could really observe other than the individual in the vehicle was just the odor of marijuana just emitting from the area of the vehicle."

Mr. Holden also admitted on cross examination that he regularly smoked marijuana as he was a "marijuana patient" and that he had, in the past, smoked marijuana in his vehicle. Although Mr. Holden testified that he had not smoked marijuana in his vehicle on the day of his arrest and that he "didn't smell an odor in [his] vehicle," he agreed that "someone who may not smoke marijuana regularly may find the odor more pungent. . . as opposed to someone who smokes regularly[.]"

The officers' testimony, in conjunction with Mr. Holden's testimony, constituted a *prima facie* basis for the court to conclude that the officers smelled marijuana emanating from Mr. Holden's vehicle. Because this testimony is "competent material evidence," the circuit court's finding that the smell of marijuana was emanating from Mr. Holden's vehicle is not clearly erroneous. *See Brooks*, 148 Md. App. at 399 ("The concern is not

with the frailty or improbability of the evidentiary base, but with the bedrock non-existence of an evidentiary base."). The Court was also able to make this finding in the absence of marijuana or paraphernalia in the vehicle or testimony as to the "lingering olfactory effects of marijuana" as "[n]o specialized knowledge or experience is required in order to be familiar with the smell of marijuana" and police officers "who [are] capable of identifying marijuana by smell through past experience" may testify that "he or she smelled the odor of marijuana." *In re Ondrel M.*, 173 Md. App. 223, 243-44 (2007). [3]

Similarly, Mr. Holden's argument that the officers testified inconsistently, as Corporal Orndorff testified that he smelled burnt marijuana while Trooper Mowbray testified that he smelled "marijuana," does not render the circuit court's finding that the officers smelled marijuana in the vicinity of Mr. Holden's vehicle clearly erroneous. In his ruling, the trial judge credited the testimony of the officers and found that Corporal Orndorff "smelled the odor or marijuana, approached the vehicle, asked the defendant to roll the window down, smelled the greater odor of marijuana and the case proceeds from there." This testimony does not become a nullity simply because Trooper Mowbray did not specify which type of marijuana he detected as he approached the vehicle. Therefore,

[3] Mr. Holden contends in his brief at page 21 that, "the only reasonable conclusion to draw from the entire record is that the [other] individuals"—who, according to Mr. Holden, were smoking in the front yard two houses away— "had already departed the area in reaction to [Corporal Orndorff]'s presence or that Mowbray, understandably focused on [Mr. Holden's] vehicle in responding to [Corporal Orndorff]'s call for back-up, did not see the individuals." Mr. Holden's contention, however, presumes that there were not only lingering, but also travelling, "olfactory effects'' from the alleged marijuana that these individuals smoked in a front yard two houses away.

because both Corporal Orndorff and Trooper Mowbray testified that they smelled marijuana, whether burnt or raw, we hold that the circuit court's finding that the odor of marijuana was emanating from the vehicle was not clearly erroneous. *See Longshore*, 399 Md. at 520 ("When there is a conflict in the evidence, an appellate court will give great deference to the hearing judge's first-level factual and credibility determinations. . . . Findings of fact and credibility determinations are to be made by trial courts, not appellate courts." (citations omitted)).

C. Probable Cause Determination

i. The Parties' Contentions

Mr. Holden argues that the circuit court erred in denying his motion to suppress as "[t]here was not an 'objectively reasonable' basis for the mistake of fact regarding the presence of marijuana in [his] vehicle." He argues that "the mistaken probable-cause belief that marijuana contraband of some form was in [his] car must be explained by some other basis" and, in his view, there is no sufficient alternate basis. The officers' testimony, he posits, was not sufficient to enable the court to conclude that their "mistaken belief that marijuana or marijuana contraband was in [his] vehicle" was "objectively reasonable." Citing *Pacheco v. State*, 465 Md. 311 (2019), he argues that Corporal Orndorff and Trooper Mowbray's testimony regarding their training and experience with the odor of marijuana was not sufficient to establish probable cause, as they "offered nothing more than the barest assertion that in training they learned about marijuana and that they have detected marijuana on the job." Because "[t]he smell of marijuana as a pretext for a Fourth

Amendment intrusion is too commonplace," Mr. Holden also asserts that the circuit court's finding that the officers testified credibly is not sufficient to establish an "objectively reasonable" basis to search the vehicle.

As a threshold issue, the State argues that Mr. Holden's "claim about a mistake of fact was not preserved and does not apply" because in the circuit court Mr. Holden, "never suggested (as he does now), that officers were *mistaken* in attributing the smell of marijuana to [Mr.] Holden's vehicle[.]" Accordingly, in the State's view, Mr. Holden "has waived the right to raise the argument here." On the merits, the State avers that "the court credited both officers' testimony that they smelled marijuana" and explained "that when police smelled marijuana, they had reason to believe it came from [Mr.] Holden's car, and the fact that none was found in the car did not alter the outcome."

In reply, Mr. Holden asserts that the entire thrust of his argument before the circuit court was that "the police were, in fact, mistaken in their belief that marijuana contraband would be found in his car, as demonstrated by the fact that no marijuana contraband was found there." Before the suppression court, Mr. Holden avers that his counsel "argued essentially the undisputed facts—there was no indicia of marijuana or marijuana use found in the car—proved that the police were mistaken in their belief that marijuana contraband would be found in [Mr. Holden's] car and that . . . there was no probable cause to search his car." Given that he is "essentially" making the same argument on appeal, he argues that the issue is preserved.

The State also argues that the circuit court "properly found that police had probable cause to search [Mr.] Holden's vehicle." Quoting *Robinson v. State*, 451 Md. 94, 125 (2017), it avers that "[a] police officer has probable cause to search a vehicle where he 'detects an odor of marijuana emanating from the vehicle.'" Corporal Orndorff, the State posits, testified at the suppression hearing that he: (1) smelled marijuana as he drove past Mr. Holden's vehicle; (2) "observed the surroundings and did not see anyone else in the area at any time during his drive by [Mr.] Holden's car or as he approached the car"; (3) smelled an "overwhelming odor of burnt marijuana" as soon as Mr. Holden rolled his window down; and (4) found a "tin in the console that smelled of marijuana[.]" And, the State posits that Trooper Mowbray corroborated this testimony, as he also "noticed 'the odor of marijuana just emitting from the area of the vehicle'" and "saw no one else in the area." Based on this testimony, the State asserts that "it was objectively reasonable for Corporal Orndorff to believe that [Mr.] Holden's car was the source of the smell."

ii. Preservation

Maryland Rule 4-252 governs criminal motions "that are deemed waived unless properly raised in the Circuit Court." *Ray v. State*, 435 Md. 1, 14 (2013); *Huggins v. State*, __ Md. __, __, No. 59, September Term 2021, slip op. at 7 (filed July 7, 2022) ("Maryland Rule 4-252 governs motions practice in criminal matters."). Subsection (a) of the Rule requires, among other things, that a challenge asserting "[a]n unlawful search, seizure, interception of wire or oral communication, or pretrial detention" be "raised by motion" in the circuit court. Md. Rule 4-252(a). If an appellant fails to advance a theory "before the

Circuit Court . . . that his unlawful arrest requires suppression of all evidence that was the fruit of an unlawful arrest," the appellant has "waived the right to have that claim litigated on direct appeal." *Ray*, 435 Md. at 19.

An argument need not, however, be identically recited in the circuit court to be "raised," and thus preserved on appeal. This Court has previously concluded that "[p]reservation for appellate review relates to the issue advanced by a party, not to every legal argument supporting a party's position on such issue." *Smith v. State*, 176 Md. App. 64, 70 n.3 (2007). The word "raised," as it is used in Maryland Rule 4-252(a) has been interpreted to mean "[t]o bring up for discussion or consideration; to introduce or put forward." *Ray*, 435 Md. at 14 (quoting Black's Law Dictionary 1373 (9th ed. 2009)).

This Court, in *In re D.D.*, recently examined the effect of modifying a suppression argument on appeal. 250 Md. App. 284, 297, *rev'd on other grounds*, __ Md. __, No. 27, September Term 2021 (filed June 21, 2022). There, the appellant argued at a suppression hearing that the arresting officer did not have "reasonable suspicion to justify the initial investigatory stop" as the officer "could not distinguish between the odor of marijuana and hemp, which is legal." *Id.* On appeal, the appellant altered the argument, choosing instead to assert that "the odor of marijuana does not provide reasonable suspicion because that odor does not indicate possession of a criminal amount of marijuana." *Id.* After acknowledging that it was "clear that appellant's argument that the stop was not supported by reasonable suspicion has shifted on appeal," we determined that the argument was preserved as, "the gist of the argument is the same, i.e., that when an officer smells the odor

of what the officer believes is marijuana, that odor does not provide reasonable suspicion to support a stop because that odor, by itself, does not indicate criminal behavior, as opposed to noncriminal behavior."[4] *Id.* at 297-98.

Before the suppression court, Mr. Holden argued that the officers did not have probable cause to search his vehicle, as the odor of marijuana which Corporal Orndorff and Trooper Mowbray detected on Cedar Street could not be attributed to Mr. Holden. In support of this argument, Mr. Holden asserted that, while he was not smoking marijuana on the day he was arrested, other individuals, several houses away, were. The absence of probable cause was, in Mr. Holden's view, confirmed by the absence of marijuana or paraphernalia discovered in his vehicle. On appeal, he argues that the officers did not have probable cause to search his vehicle as "there was not an 'objectively reasonable' basis for the mistake of fact regarding the presence of marijuana in [his] vehicle."

Although he presents the argument differently on appeal, the thrust of Mr. Holden's argument before the circuit court is the same as the argument that he makes on appeal—that the evidence recovered from his vehicle should be suppressed as the officers did not have probable cause to search. Because the gist of the argument is the same, we hold that the issue was "raised in or decided" below and conclude that Mr. Holden's argument is preserved for our review.

[4] Conversely, we concluded that appellants alternate argument on appeal, that "no evidence tied the smell to" appellant, was not preserved, as it was a different theory, not argued before the suppression court. *In re D.D.*, 250 Md. App. at 298.

iii. Analysis

The Fourth Amendment to the United States Constitution provides, in relevant part: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated[.]" U.S. Const. amend. IV. The Fourth Amendment "does not prohibit all searches—only unreasonable ones." *Robinson* , 451 Md. at 108 (citation omitted). The reasonableness of a search "depends on a balance between the public interest and the individual's right to personal security free from arbitrary interference by law officers." *Sellman v. State*, 449 Md. 526, 540 (2016) (quoting *Pennsylvania v. Mimms*, 434 U.S. 106, 109 (1997)).

Generally, warrantless searches are unreasonable. *Robinson*, 451 Md. at 108-09 ("Generally, for a search to be reasonable, a law enforcement officer must obtain a warrant."); *Grant*, 449 Md. at 16-17 (Subject to "a few specifically established and well-delineated exceptions, a warrantless search or seizure that infringes upon the protected interest of an individual is presumptively unreasonable." (footnote omitted)). One exception to the warrant requirement is the "automobile exception," *Carroll v. United States*, 267 U.S. 132 (1925), which permits "the warrantless search of a vehicle if, at the time of the search, the police have developed 'probable cause to believe the vehicle contains contraband or evidence of a crime,'" *Pacheco*, 465 Md. at 321-22 (quoting *State v. Johnson*, 458 Md. 519, 533 (2018)); *see also California v. Carney*, 471 U.S. 386, 391 (1985) (reasoning that "[b]esides the element of mobility, less rigorous warrant requirements govern [automobile searches] because the expectation of privacy with respect

to one's automobile is significantly less than that relating to one's home or office" (citation omitted)). A search under the automobile exception may extend to "*every part of the vehicle and its contents* that may conceal the object of the search." *Wyoming v. Houghton*, 526 U.S. 295, 301 (1999) (emphasis added) (quoting *United States v. Ross*, 456 U.S. 798, 821 (1982)).

The reasonableness of a search under the automobile exception turns "on whether law enforcement had probable cause to conduct the warrantless search at issue." *Pacheo*, 465 Md. at 323. The probable cause standard '"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.'" *Maryland v. Pringle*, 540 U.S. 366, 370 (2003) (quoting *Illinois v. Gates*, 462 U.S. 213, 231 (1983)). Moreover, probable cause is '"a fluid concept,' 'incapable of precise definition or quantification into percentages because it deals with probabilities and depends on the totality of the circumstances.'" *McCracken v. State*, 429 Md. 507, 519 (2012) (quoting *Pringle*, 540 U.S. at 370-71). A probable cause determination must consider "all the relevant circumstances leading up to the search 'viewed from the standpoint of an objectively reasonable police officer.'" *State v. Johnson*, 458 Md. 519, 533 (2018) (quoting *Ornelas v. United States*, 517 U.S. 690, 696 (1996)); *see also District of Columbia v. Wesby*, 138 S. Ct. 577, 588 (2018) ("[T]he whole is often greater than the sum of its parts[.]"). Thus, "[p]robable cause does not depend on a preponderance of the evidence, but instead depends on a 'fair

probability' on which a reasonably prudent person would act." *Robinson*, 451 Md. at 109 (quoting *Florida v. Harris*, 568 U.S. 237, 244 (2013)).

When evaluating "whether probable cause exists for purposes of the automobile exception, courts ask whether 'there is probable cause to believe the vehicle contains contraband or evidence of a crime.'" *Pacheco*, 465 Md. at 325 (quoting *Johnson*, 458 Md. at 533). In *Robinson*, the Court of Appeals consolidated three appeals in which each Petitioner "contend[ed] that, due to the decriminalization of possession of less than ten grams of marijuana, a law enforcement officer no longer has probable cause to search a vehicle where the law enforcement officer detects an odor of marijuana emanating from the vehicle." 451 Md. at 98.

In each of the three underlying cases, "at a hearing on the motion to suppress, a law enforcement officer testified that either a strong odor or an overwhelming odor of fresh marijuana was emanating from the car that the Petitioner had been using" and, in each case, the "the circuit court denied the motion to suppress." *Id.* After analyzing the legislative intent of Maryland's decriminalized marijuana statute, the Supreme Court's Fourth Amendment jurisprudence, and authority from this Court and other jurisdictions that have addressed decriminalization and legalization, the Court of Appeals held that "a law enforcement officer has probable cause to search a vehicle where the law enforcement officer detects an odor of marijuana emanating from the vehicle." *Id.* at 125. The General Assembly's decriminalization of marijuana, the Court explained, did not equate to legalization. *Id.* And, the Court explained that "it is effectively impossible for law

enforcement officers to identify a quantity of marijuana based on odor alone" because, for example "even a small amount of the most powerful grade of marijuana may have a strong odor." *Id.* at 130. Recognizing that the "possession of marijuana in **any** amount remains illegal in Maryland," the Court reasoned that "the odor of marijuana gives rise to probable cause to believe that the vehicle contains contraband or evidence of a crime." *Id.* at 125, 137 (emphasis in original). The Court of Appeals has, in several subsequent cases, reaffirmed this holding. *See Norman v. State*, 452 Md. 373, 430 (2017) (The smell of marijuana "gives rise to probable cause to search the automobile to recover the illegal substance."); *Pacheco*, 465 Md. at 330 (stating that "the police lawfully searched Mr. Pacheco's car for contraband or evidence of the three crimes identified in *Robinson*"); *see also In re D.D.*, __ Md. __, __, No. 27, September Term 2021, slip op. at 22 (filed June 21, 2022) (observing that "[i]ndeed, in *Pacheco*, we reaffirmed the holding of *Robinson*").

This Court, in *Johnson v. State*, also addressed the weight that the olfactory effect of marijuana is afforded in determining whether an officer had probable cause to search a vehicle. __ Md. App. __, No. 572, September Term 2021 (filed April 4, 2022). There, while patrolling a high crime area, officers saw a man sitting in his parked vehicle. *Id.* at 2. As the officers approached the vehicle, the appellant exited and fled on foot. *Id.* Although the vehicle was locked, officers could see "marijuana crumbs" through the tinted windows and "could also clearly detect the smell of unburned marijuana emanating from the car." *Id.* at 3. A search of the vehicle uncovered, among other contraband, 52 grams of marijuana. *Id.*

At his suppression hearing, appellant argued that the contraband found in his vehicle should be suppressed, "because the warrantless search of his [vehicle] had been an unconstitutional violation of the Fourth Amendment." *Id.* at 3. The circuit court denied the motion to suppress, and we affirmed, concluding, among other things, that the officers had probable cause to search appellant's vehicle. *Id.* at 3-4, 53. In so concluding, the Court explained that "[t]here has never been any question about the efficacy, in a probable cause assessment, of relying on the olfactory observations of the trained officer just as we have always relied upon the olfactory observations of the trained drug-sniffing dog." *Id.* at 6-7. "It is undisputed hornbook law," the Court reasoned, "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 Doctrine search of the entire automobile."[5] *Id.* at 7.

Returning to Mr. Holden's case, we first address his claim that the officers' search was unconstitutional because they "were mistaken in their probable-cause belief that marijuana or marijuana contraband was in [his] vehicle." The Supreme Court has recognized that the Fourth Amendment tolerates objectively reasonable mistakes of law or fact. *See Heien v. North Carolina*, 574 U.S. 54, 66 (2014) ("The Fourth Amendment

[5] Also relevant to Mr. Holden's case, the Court discussed that a vehicle's "tinted windows" may serve as an "investigative clue" in the probable cause determination. *Johnson*, slip op. at 12. Tinted windows, the Court reasoned, "albeit legal, can nonetheless tell a good investigator something about the personality of the person desiring increased privacy." *Id.* While noting that "in a vacuum" tinted windows "may speak with a softly modulated voice," the Court observed that in the totality of the circumstances, tinted windows "may speak volumes." *Id.* at 14.

tolerates only *reasonable* mistakes, and those mistakes—whether or fact or law—must be *objectively* reasonable." (emphasis in original)). Here, however, we do not find Mr. Holden's mistake argument convincing because the alleged mistake—that the officers did not find marijuana contraband in the vehicle—could not have been discovered before the officers made their probable cause determination and searched the vehicle. This Court, in *State v. Cabral*, explained that "[t]he possibility that the contraband may no longer be present in the vehicle does not compel the finding that there is no **probable cause**; for purposes of the **probable cause** analysis, we are concerned with probability, not certainty." 159 Md. App. 354, 380 (2004) (emphasis added); *see also Maryland v. Garrison*, 480 U.S. 79, 89 n.14 (1987) ("[T]he police cannot reasonably know prior to their search that the warrant rests on a mistake in fact."). Therefore, that the officers did not recover marijuana contraband from Mr. Holden's vehicle after smelling marijuana emanating from his vehicle cannot, standing alone, invalidate Corporal Orndorff's determination that he had probable cause to search the vehicle. Accordingly, we move on to determine whether the officers had an objectively reasonable basis to believe that Mr. Holden's vehicle contained marijuana contraband.

When evaluating the officer's actions, we must remember that probable cause is not a "high bar." *Wesby*, 138 S.Ct. at 586 (quoting *Kaley v. United States*, 571 U.S. 320, 338 (2014)). Here, the olfactory observations of the officers established probable cause to search Mr. Holden's vehicle, as they were sufficient for an officer to reasonably believe that "contraband or evidence of a crime may be found in the vehicle." *Robinson*, 451 Md.

at 112. At the suppression hearing, both officers testified that they made olfactory detections of the odor of marijuana emanating from Mr. Holden's vehicle. And Mr. Holden, in his testimony, corroborated many of the observations described by the officers. Corporal Orndorff noted that he was familiar with the odor of marijuana and that he had received special training in controlled substances, including marijuana. Corporal Orndorff testified that he "detected the odor of marijuana" on Cedar Street in the vicinity of Mr. Holden's vehicle. This was not abnormal, Mr. Holden testified, as there is a house "two houses down from" him where "guys group together and smoke." During a subsequent second trip down Cedar Street, Corporal Orndorff detected the "odor of marijuana emanating from the vehicle" from "a few feet" away and, when Mr. Holden rolled down his window, he detected "the overwhelming odor of burnt marijuana [] emanating from the vehicle." This too was not unfeasible, as Mr. Holden, in his testimony, confirmed that he regularly smokes marijuana as he is a "marijuana patient" and had previously "smoked in [his] car." Trooper Mowbray, also trained in the odor of marijuana, similarly testified that he made an olfactory observation, as he detected "the odor of marijuana [] emitting from the area of the vehicle[.]"[6] Under *Robinson* and its progeny, these olfactory observations

[6] In his brief, Mr. Holden cites to *United States v. Hill*, 131 F.3d 1056 (D.C. Cir. 1997), to support his assertion that the credibility of law enforcement officers, without more, does not give rise to probable cause. In *Hill*, a federal district court based its denial of the appellant's motion to suppress "on the testimony of the parties involved in the stop, choosing to credit the officer's testimony that 'he believed that the car did not have a VIN number,' . . . over the testimony of [appellant]." *Id.* at 1060. The federal Court of Appeals reversed, holding that the district court "applied a subjective reasonableness test to the officer's decision to stop [appellant's] car" as opposed to the "objective reasonableness test (Continued)

were sufficient to establish probable cause to search Mr. Holden's vehicle. 451 Md. at 137 ("[A] law enforcement officer has probable cause to search a vehicle where the law enforcement officer detects an odor of marijuana emanating from the vehicle[.]").

Although the olfactory observations of the officers established probable cause to search Mr. Holden's vehicle, their determination was reinforced by several critical visual observations. Mr. Holden testified that it would have been difficult for anyone to see into his vehicle, as his "widows are tinted and [he has] a dark interior." Standing alone, tinted windows are insignificant but, in conjunction with the odor of marijuana, they can lend significant context of the totality of the circumstances unfolding before Corporal Orndorff and Trooper Mowbray. And, although Mr. Holden testified that a group of individuals frequently smoke marijuana nearby on Cedar Street, both officers testified that they did not see anyone else outside when they made contact with Mr. Holden, significantly narrowing the potential sources of the odor. Finally, both officers testified that they witnessed Mr. Holden make what must be categorized as "furtive movements" toward the center console of his vehicle. Although these movements, in isolation, would not be sufficient to establish probable cause, *Reid v. State*, 428 Md. 289, 307 (2012), they serve as another piece of the

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that is required in such situations." *Id.* It remanded only for the district court to determine "whether it was objectively reasonable for the officer that observed [appellant's] car to conclude that a traffic violation had occurred." *Id.* Here, however, there is nothing in the record to suggest that the trial judge applied the incorrect standard when denying Mr. Holden's motion to suppress. To the contrary, beyond the testimony that the officers smelled marijuana, the court considered that Mr. Holden's vehicle had tinted windows and that Mr. Holden reached his hands into center console of the vehicle after being approached by Corporal Orndorff.

investigatory puzzle. Considering, as we must, the totality of the circumstances, we hold that olfactory presence of marijuana and the officers' visual observations provided Corporal Orndorff and Trooper Mowbray with probable cause to search Mr. Holden's vehicle. Consequently, the circuit court properly denied his motion to suppress.

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

The correction notice(s) for this opinion(s) can be found here:

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