Circuit Court for Anne Arundel County
Case No. C-02-CR-21-000793

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1355

September Term, 2021

RYKWON EDWARD HALL

v.

STATE OF MARYLAND

Beachley,
Tang,
Woodward, Patrick L.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: September 15, 2022

Following the denial of his motion to suppress evidence seized during a traffic stop, appellant Rykwon Hall entered a conditional guilty plea to one count of possession of marijuana. The court sentenced appellant to one year of incarceration, suspended, with 18 months of supervised probation and 70 hours of community service. Appellant timely appealed and presents the following question for our review: "Was the search of [appellant's] vehicle based on the odor of marijuana unlawful?"

We answer this question in the negative and affirm.

FACTUAL AND PROCEDURAL BACKGROUND[1]

On the evening of April 23, 2021, police officer Nicholas Conforti was patrolling in an unmarked vehicle on Crain Highway near Crainmont Drive in Glen Burnie, Maryland when he observed a black Acura sedan speed past him. As the Acura passed him, Officer Conforti observed that the vehicle's window tint appeared extremely dark, such that he could not see inside the Acura to discern how many occupants were in the vehicle. Officer Conforti then maneuvered his vehicle behind the Acura, and despite shining his headlights into its back windshield, Officer Conforti still could not see inside the vehicle.

While following the Acura, Officer Conforti observed the vehicle move into a right-turn lane, only to quickly exit the lane before the turn. In doing so, the Acura crossed over a solid white line. Officer Conforti activated his emergency equipment and initiated a traffic stop. After exiting his own vehicle, Officer Conforti approached the driver's side

[1] At the suppression hearing, the State and appellant stipulated to the events that occurred on the evening of April 23, 2021. The only witness to testify at the hearing was Officer Conforti, who simply explained his training and experience regarding marijuana.

of the Acura, and when the driver rolled down the driver's side window, Officer Conforti immediately smelled the odor of marijuana coming from inside the car. Inspecting the driver's license, Officer Conforti confirmed that appellant was the driver of the vehicle. Also inside the vehicle were appellant's friend, and appellant's son.

Two other officers arrived on the scene shortly thereafter, and Officer Conforti instructed appellant to exit the vehicle due to the odor of marijuana. Appellant responded that he only had "roaches, burnt marijuana joints," in an ashtray, but Officer Conforti insisted that appellant exit the vehicle. Appellant eventually relented, and he, his friend, and his son exited the vehicle. The officers then began searching the vehicle, and located a small white trash bag in the center console which contained a green and brown plant material which Officer Conforti suspected to be marijuana. Officer Conforti then noticed a backpack in the rear passenger's seat, and inside discovered a black plastic bag which contained another plastic bag containing a green and brown plant material also suspected to be marijuana, and a box of plastic sandwich bags. To Officer Conforti, this quantity of suspected marijuana appeared to be greater than ten grams.

At that point, the officers placed appellant and the front-seat passenger into handcuffs, and Officer Conforti subsequently searched the vehicle's trunk. There, Officer Conforti discovered yet another plastic bag with a green and brown plant material which he suspected to be marijuana. The search of the vehicle also revealed $684 in cash stuffed inside the driver's side door pocket. The State subsequently charged appellant with possession with intent to distribute marijuana and other related charges.

Prior to trial, appellant moved to suppress the evidence seized from his vehicle, arguing that the odor of marijuana alone did not provide the police officers with probable cause to search his vehicle. The suppression court disagreed and denied appellant's motion. Appellant then tendered a conditional guilty plea wherein he pleaded guilty to possession of more than 10 grams of marijuana in violation of Md. Code (2002, 2021 Repl. Vol.), § 5-602(c) of the Criminal Law Article ("CR"), but preserved for appeal his suppression argument. As noted above, the sentencing court sentenced appellant to a suspended one-year term of incarceration, with 18 months of probation and 70 hours of community service. We shall provide additional facts as necessary.

DISCUSSION

Appellant argues that the suppression court erred when it denied his motion to suppress because the officers' search of his vehicle, based solely on the odor of marijuana, failed to provide the officers with probable cause and was therefore unlawful. In his brief, appellant acknowledges that in *Robinson v. State*, 451 Md. 94, 134 (2017), the Court of Appeals held that "the odor of marijuana emanating from a vehicle provides probable cause to believe that the vehicle contains evidence of a crime, and a law enforcement officer may search the vehicle under such circumstances." Nevertheless, appellant claims that recent changes in the law have rendered *Robinson*'s holding obsolete. Specifically, appellant notes that "all cannabis plants no longer count as marijuana (contraband)—some are classified as hemp, and are now fully legal under state and federal law." Based on the legality of these other plants, appellant argues that "the odor of marijuana is no longer

indicative of contraband per se, and therefore, *Robinson*'s rationale no longer applies." As we shall explain, we reject appellant's argument.

The standard of review for a ruling on a motion to suppress is well-settled in Maryland:

> In reviewing a trial court's ruling on a motion to suppress, an appellate court reviews for clear error the trial court's findings of fact, and reviews without deference the trial court's application of the law to its findings of fact. The appellate court views the trial court's findings of fact, the evidence, and the inferences that may be drawn therefrom in the light most favorable to the party who prevails on the issue that the defendant raises in the motion to suppress.

Varriale v. State, 444 Md. 400, 410 (2015) (quoting *Hailes v. State*, 442 Md. 488, 499 (2015)). When an appellate court reviews a constitutional issue, the court "must make [its] own independent constitutional appraisal by reviewing the law and applying it to the facts of the case." *Reynolds v. State*, 130 Md. App. 304, 313 (1999) (citing *Lawson v. State*, 120 Md. App. 610, 614 (1998)).

We begin with *Robinson*, the case at the heart of this appeal. There, the Court of Appeals consolidated the cases of several petitioners with similar fact patterns, all of whom raised the following issue: "whether, in light of the decriminalization of less than ten grams of marijuana, a law enforcement officer has probable cause to search a vehicle upon detecting an odor of marijuana emanating from the vehicle." *Robinson*, 451 Md. at 98. In answering that question, the Court 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, as marijuana in any amount remains contraband, notwithstanding the decriminalization of possession of less than ten grams of marijuana; and the

> odor of marijuana gives rise to probable cause to believe that the vehicle contains contraband or evidence of a crime. Simply put, decriminalization is not synonymous with legalization, and possession of marijuana remains unlawful.

Id. at 99.

In reaching this holding, the Court explored the interplay between the Fourth Amendment to the United States Constitution, the *Carroll*[2] doctrine, and the definition of "contraband." *Id*. at 108. The Fourth Amendment provides, in relevant part, that "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. "Generally, for a search to be reasonable, a law enforcement officer must obtain a warrant." *Robinson*, 451 Md. at 108-09 (citing *Riley v. California*, 573 U.S. 373, 382 (2014)). One exception to the warrant requirement is the "automobile exception," also known as the *Carroll* doctrine, whereby "a law enforcement officer may conduct a warrantless search of a vehicle based on probable cause." *Id*. at 109 (citing *California v. Acevedo*, 500 U.S. 565, 569 (1991)). Under the *Carroll* doctrine, "less rigorous warrant requirements [apply] because the expectation of privacy with respect to one's automobile is significantly less than that relating to one's home or office." *California v. Carney*, 471 U.S. 386, 391 (1985) (quoting *South Dakota v. Opperman*, 428 U.S. 364, 367 (1976)).

The *Robinson* Court also explained that "probable cause" to search a vehicle exists where, "based on the available facts, a person of reasonable caution would believe 'that

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

contraband or evidence of a crime is present." 451 Md. at 109 (quoting *Florida v. Harris*, 568 U.S. 237, 243 (2013)). "Probable 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." *Id*. (citing *Harris*, 568 U.S. at 243). Thus, under the *Carroll* doctrine, "a law enforcement officer's ability to search a vehicle does not depend on the law enforcement officer's right to make an arrest, but instead depends on probable cause to believe that the vehicle's contents are illegal." *Id*. at 111 (citing *Carroll*, 267 U.S. at. 158-59).

Relying on the fact that in 2014 the Maryland General Assembly decriminalized possession of less than 10 grams of marijuana, the petitioners in *Robinson* argued that the odor of marijuana, standing alone, did not provide a law enforcement officer with probable cause to search a vehicle because although the odor indicates the presence of marijuana, it provides no indication whether the quantity is criminal. *Id*. at 107. The *Robinson* Court rejected this argument, noting that decriminalization was not the same as legalization, and that possession of any quantity of marijuana, though possibly no longer a crime, was still "contraband" and therefore illegal in Maryland. *Id*. at 125-26. Thus, *Robinson* instructs that, despite the decriminalization of possession of less than 10 grams of marijuana, marijuana remains illegal in Maryland, and the odor of marijuana continues to provide law enforcement officers with probable cause to search a vehicle. *Id*. at 130-31.

Naturally, appellant seeks to distinguish his case from *Robinson*. To do so, he relies on the fact that certain cannabis plants are no longer considered "contraband." Specifically, he notes that "hemp" is "fully legal under state and federal law[,]" and asserts that a

reasonably prudent officer cannot distinguish the odor of hemp from the odor of marijuana. Appellant argues that if Officer Conforti could not distinguish between the odor of illegal marijuana and legal hemp, then he lacked probable cause to search appellant's vehicle. Although we agree with appellant that hemp is legal under state and federal law[3], we disagree that this record establishes that marijuana and hemp emit identical odors such that an officer cannot distinguish between them. Absent such evidence, we have no reason to depart from *Robinson*.

There is no evidence on this record to show that hemp and marijuana emit the same or similar odor.[4] In Officer Conforti's brief testimony, he stated that the difference between marijuana and hemp is the concentration of THC[5] in the plant, and that he cannot determine the concentration of THC in a plant based on smell. Officer Conforti also testified that he did not know whether marijuana and hemp are otherwise identical plants, but acknowledged that he was aware that the two plants "are related." He never offered any testimony pertaining to the similarity (or dissimilarity) of marijuana and hemp odors. In his reply brief, appellant asserts that hemp and marijuana smell the same because, according to CR § 5-101(r)(2)(vi), both "come from plants of the genus cannabis." But

[3] 21 U.S.C. § 812(c)(17) expressly excludes hemp from the federal schedule of controlled substances, and CR § 5-101(r)(2)(vi) provides that "hemp as defined in § 14-101 of the Agriculture Article" does not constitute marijuana.

[4] In its ruling, the suppression court noted it had "no evidence . . . as to the differences in odor at various THC levels in marijuana, or hemp, or a combination."

[5] THC, or Tetrahydrocannabinol, is the psychoactive ingredient found in marijuana and hemp plants.

nothing in CR § 5-101(r)(2)(vi) supports appellant's claim that marijuana and hemp emit identical odors; the statute simply articulates whether the plant is legal based on its concentration of THC. Thus, the predicate for appellant's appellate argument—that the odor of hemp and marijuana cannot be distinguished—is unsupported by the record. Accordingly, there are no facts to distinguish appellant's case from *Robinson*, which held that the odor of marijuana, standing alone, provides an officer with probable cause to search a vehicle. 451 Md. at 99; *accord Pacheco v. State*, 465 Md. 311, 330 (2019) ("As we made clear in *Robinson*, marijuana in any amount remains contraband and its presence in a vehicle justifies the search of the vehicle." (citing *Robinson*, 451 Md. at 124-33)).

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