Circuit Court for Allegany County
Case No. C-01-CR-19-000113

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1558

September Term, 2019

ANTONIO MORTON

v.

STATE OF MARYLAND

Graeff,
Berger,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: October 6, 2020

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Convicted by the Circuit Court for Allegany County of possession of marijuana in a quantity indicating an intent to distribute, Antonio Morton, appellant, presents for our review a single question: whether the court erred in denying his motion to suppress. For the reasons that follow, we shall affirm the judgment of the circuit court.

In the motion, Mr. Morton moved to suppress "all evidence illegally seized by law enforcement" on the ground that a "search of [Mr. Morton] and [his] automobile" violated his federal and state constitutional rights. At a subsequent hearing on the motion, the State called Maryland State Police Corporal Trenton Lewis, who testified that on January 17, 2019, he was "assigned to the Allegany County Narcotics Task Force," which "received information that a package was being delivered to 302 Pulaski Street." Cpl. Lewis subsequently observed a red Nissan truck pull onto the street, after which a "black male," whom the corporal identified as Mr. Morton, entered the address and "exit[ed] shortly thereafter, carrying a large box." Mr. Morton placed the box "in the rear passenger seat of the vehicle," "[g]ot into the driver's seat[,] and drove away." Cpl. Lewis "maintained surveillance on the vehicle, then made contact with" Allegany County Sheriff's Deputy Timothy Hodel, "who then began following the vehicle and initiated a traffic stop."

The State then called Deputy Hodel, who testified that Cpl. Lewis "basically just asked if [the deputy] could try to get a traffic stop on [the] vehicle." Deputy Hodel "effectuate[d] a traffic stop" of the vehicle because "it was at a speed of 48 in a 40 m.p.h. zone." When Deputy Hodel approached Mr. Morton and "asked him for his . . . driver's license and registration and insurance," the deputy "smelled a strong odor of marijuana coming from the vehicle." When Deputy Hodel "asked [Mr. Morton] if he had anything

in the vehicle," he "pulled . . . what he called a blunt out of the center consol[e]." The deputy "took it from [Mr. Morton] and . . . said just standby for a second," then "tried to call backup."

When "backup" arrived, Mr. Morton and his female passenger "stood with other deputies while" Deputy Hodel and Allegany County Sheriff's Corporal Jonathan Dowden "continued the investigation." In the center console, Deputy Hodel discovered a second "blunt." The deputy noted that the "odor that was coming from the vehicle was a lot stronger than what could have been coming from the two blunts, and whenever Cpl. Dowden was in the rear of the vehicle[,] he kept saying" that the "odor [was] really strong back [t]here." In the "large box in the rear occupant's [seat] on the driver's side," the officers discovered "a plastic like wrap" containing "a green, leafy substance" that the officers suspected to be marijuana. During cross-examination, Deputy Hodel admitted that "there was no question in [his] mind . . . that [the] two blunts were less than ten grams of marijuana."

Following the close of the evidence, the court concluded that there was "nothing wrong with" the "pretext stop," that "smelling the odor that was described by Deputy Hodel might give you probable cause to search the vehicle," and that "[r]eally the issue here is opening the sealed box." The prosecutor cited "a number of cases" that "say[] it is okay to open containers" if "it is reasonable to believe that the items that you are seeking can be contained within that item." Defense counsel countered that "there are some cases which grossly limit [the prosecutor's] argument," and although "the [c]ourt said it is okay with the stop," there was "no information, credible information, concerning that box," and

hence, "this was a set up." When the court noted that Deputy Hodel testified "that when he stopped [the vehicle], he smelled marijuana," defense counsel replied: "[W]ell, if he does, then that runs it into a Terry stop." When the court asked defense counsel to "[e]xplain . . . why calling this a Terry stop makes it a bad stop," defense counsel replied: "Because then time comes to the essence." Defense counsel further argued:

> [T]his is not a good stop. This is a phony stop. The traffic was never the issue. That was a lie. That was a lie, the traffic stop, and so by going forward and not suppressing this stuff we are saying it is okay for the police to lie. Oh, I pulled him over for a traffic stop. I didn't need a warrant, I didn't need anything. That's a lie.

Following argument, the court denied the motion, stating:

> [M]y own concern was the opening of the box. In Terry that's legit, if there is probable cause to, to search the vehicle, it can be done without a warrant under this circumstance.
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> [H]e testified he smelled the odor. I accept that as accurate. I don't disbelieve that. So . . . we have kind of, kind of evolves my ruling in the course of my colloquy with [d]efense counsel . . . having all of the argument, and it is an interesting argument, interesting factual pattern, I am going to deny the [m]otion to [s]uppress on the basis that there was a . . . lawful stop. A brief interview with the motorist that seemed to be routine, gathering the license and registration. During that process the odor of marijuana was smelled and then you are dealing with a vehicle, you are dealing with Carroll doctrine, you are dealing with probable cause to search and you don't have the necessity for a warrant in that circumstance.

Following the hearing, Mr. Morton submitted a conditional plea of guilty to the aforementioned offense on an agreed statement of facts. The court subsequently convicted Mr. Morton of the offense.

Mr. Morton contends that the court erred in denying the motion because "the mere presence of a single blunt of less than 10 grams of marijuana and the odor [of] marijuana did not justify a search of the entire vehicle for the presence of *more* marijuana." (Emphasis in original.) The State counters that Mr. Morton's contention "is unpreserved because it was not presented below." Alternatively, the State contends that the "odor of marijuana, alone, provided probable cause to search [the] entire vehicle for additional marijuana," and "[o]ther facts contributed to [that] cause."

We agree with the State that the contention is not preserved for our review. We have stated that "the failure to argue a particular theory at a suppression hearing waives the ability to argue that theory on appeal." *Smith v. State*, 182 Md. App. 444, 460 (2008) (citations omitted). Here, Mr. Morton did not specifically argue at the suppression hearing that the mere presence of a single blunt of less than ten grams of marijuana and the odor of marijuana did not justify a search of the entire vehicle for the presence of additional marijuana. Hence, Mr. Morton has waived his ability to argue that theory on appeal.

Even if the contention was preserved for our review, Mr. Morton would not prevail. The Court of Appeals has stated that "marijuana in any amount remains contraband and its presence in a vehicle justifies the search of the vehicle." *Pacheco v. State*, 465 Md. 311, 330 (2019) (citation omitted). Mr. Morton does not cite any authority that would have required Deputy Hodel and his fellow officers to stop searching the vehicle upon discovering the "blunts," and hence, the court did not err in denying the motion to suppress.

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