Circuit Court for Baltimore County
Case No.: C-03-CR-21-000038

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1971

September Term, 2021

BRYANT WASHINGTON

v.

STATE OF MARYLAND

Zic,
Ripken,
Meredith, Timothy E.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Ripken, J.

Filed: February 14, 2023

*At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland and the Court of Appeals of Maryland to the Supreme Court of Maryland. The name change took effect on December 14, 2022.

**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.

Appellant, Bryant Washington ("Washington"), was indicted in the Circuit Court for Baltimore County and charged with possession with intent to distribute cocaine, possession of a regulated firearm, and related counts. After the denial of the motion to suppress evidence seized following a traffic stop, Washington entered a conditional guilty plea to the aforementioned two counts. The court imposed a sentence of 20 years, suspended all but ten, for possession with intent to distribute and a concurrent five years for illegal possession of a regulated firearm, with credit for time served, to be followed by three years supervised probation.[1]

ISSUE PRESENTED FOR REVIEW

Washington presents a single issue for our review:[2] Whether the circuit court erred in denying Washington's motion to suppress evidence seized from his person and his vehicle during a traffic stop. For the reasons to follow, we hold that the court did not err.

FACTUAL AND PROCEDURAL BACKGROUND

A. Motions Hearing

On November 18, 2020, at around 3:00 a.m., Baltimore County Police Officer McNulty was on patrol in the White Marsh precinct when the officer performed a routine

[1] Washington was also sentenced at that time to a concurrent three years on a separate second-degree assault conviction.

[2] Rephrased from: "Did the suppression court err in denying Mr. Washington's motion to suppress without making a factual finding regarding when Officer McNulty smelled the odor of marijuana coming from the car?"

MVA check of a black Infiniti sedan to verify the vehicle's current registration.[3] Officer McNulty, a five-year patrol veteran with training in conducting various types of traffic stops, was notified that the registration was for a Honda, and not an Infiniti. Testifying that, in his experience, such a registration violation could be an indicator of a stolen vehicle, Officer McNulty radioed for police assistance and then activated emergency equipment to stop the Infiniti. Sergeant Pabon, a police officer with 22 years' experience and Officer McNulty's supervisor the night in question, responded to the scene to provide assistance. No issue is raised in this appeal as to the propriety of the initial stop.

Officer McNulty got out of his patrol car and approached the driver's side door where he encountered Washington, the driver and sole occupant of the vehicle. Upon Officer McNulty's request for license and registration, Washington provided a learner's permit and a title for the Infiniti through the open car door window, explaining that he had just purchased the vehicle two to three weeks earlier.

Officer McNulty testified that, during this initial contact, he smelled an odor of marijuana emanating from the vehicle. As this concerns Washington's primary argument, we set forth pertinent testimony here:

[3] The body worn camera footage from both the officers involved, Officer McNulty and Officer Pabon, was played for the court and admitted into evidence. On June 9, 2022, this Court granted Washington's Unopposed Motion to Correct the Record with State's Exhibit 1, the CD containing this body worn camera footage from Officer McNulty and Sergeant Pabon. On July 27, 2022, this Court also granted Washington's Unopposed Motion to Correct the Record with transcripts of that footage. Our recitation of the underlying facts is in accordance with the standard of review and is based on the transcript of the motions hearing as well as the body worn camera footage admitted at the hearing.

Q. While you were speaking with him on this initial encounter, what, if anything, did you observe about the vehicle?

A. Upon initial contact I did notice an odor of marijuana coming from the vehicle.

Q. In your initial training at the academy and in any additional training that you have had, have you received training in marijuana?

A. Yes, ma'am. We're taught thoroughly at the academy to identify the odor of marijuana.

Q. Have you had stops prior to this involving marijuana?

A. Yes, ma'am.

Q. Which resulted in arrest and/or conviction?

A. Yes, ma'am. It depends [] on the amount recovered from the vehicle.

Q. Of course. But you have had prior incidents or experience with marijuana?

A. Yes, ma'am.

Q. In your training were you trained to recognize the difference between fresh and burnt marijuana?

A. Yes, ma'am.

Q. In this case were you able to distinguish what odor you noted?

A. To the best of my remembrance of the case, ma'am, I believe it was the odor of fresh marijuana.

Q. How long do you think your initial contact was with the Defendant when you were trying to obtain this initial information?

A. I spoke with him for a few minutes. Once I gathered the information I needed, I went back to my patrol vehicle to start conducting the rest of my investigation.

Officer McNulty went back to his patrol car to continue his investigation. Sergeant Pabon, who was previously stationed outside the passenger door of the Infiniti while Officer McNulty was speaking with Washington, returned to Officer McNulty's vehicle. Sergeant Pabon informed Officer McNulty that, although he was not sure, and although Sergeant Pabon did not detect any odor from the passenger side of the vehicle, the sergeant believed he saw the butt of a revolver in the driver's side door map pocket. Sergeant Pabon later clarified that the sergeant thought he saw the top part of a revolver, with the hammer forward, in the map pocket.

As to whether Officer McNulty told Sergeant Pabon that the officer had smelled marijuana, Sergeant Pabon testified on cross-examination that he remembered Officer McNulty stating, "I smell weed, do you?" to which Sergeant Pabon replied that he did not. Sergeant Pabon maintained that Officer McNulty "detected [marijuana] on first contact." After Sergeant Pabon's body worn camera footage was replayed, Sergeant Pabon agreed Officer McNulty asked him, "[d]o you have an odor," and that he interpreted to mean Officer McNulty smelled the odor and wanted him to "confirm his observations[.]" Sergeant Pabon continued, "[i]n other words, like if I smell something and I look at you and go, Sir, do you smell that? I'm smelling something and I'm asking you to see if you smell it, too."

After learning, in addition to the invalid registration, that there was no insurance on the vehicle, and that Washington did not have a valid driver's license, apart from the learner's permit, Officer McNulty and Sergeant Pabon returned to the Infiniti and ordered

Washington out of the vehicle.[4] Sergeant Pabon further testified that he told Officer McNulty to "get him out of the car and away from whatever I'm seeing, because I wanted him away from that" apparently referencing the unknown item in the driver's side door map pocket. Officer McNulty then informed Washington that the vehicle would have to be towed.

When Washington stepped out of the vehicle, the driver's side door was left open. Officer McNulty then directed Washington to walk to the back of the Infiniti. Washington was not handcuffed at that time, but the officer agreed on cross-examination that, considering Sergeant Pabon's belief that he saw a gun in the driver's side door, Washington was not free to leave. Meanwhile, as Officer McNulty and Washington discussed the vehicle, including whether it could be removed or had to be towed, Sergeant Pabon proceeded to look at the item in the driver's side door and determined that it was, in fact, a digital scale, not a handgun. Sergeant Pabon also looked back and noticed that Washington appeared to be "blading his body" away from the officers in a manner that suggested he was concealing something on his person.

Shortly thereafter, Officer McNulty went to the driver's side of the Infiniti, looked in the map pocket, and saw a "greenish vegetable residue" on the digital scale. Officer McNulty would later indicate on cross-examination that he moved the scale while it was in the map pocket. However, he did not recall if he "opened" it, or where on the item the

[4] There is no dispute that the officers could order Washington out of the vehicle. *See Pennsylvania v. Mimms*, 434 U.S. 106, 110 (1977). Further, Officer McNulty and Sergeant Pabon both generally testified that, had there been no odor of marijuana, the Infiniti would still have to be towed and subjected to an inventory search based on county policy.

residue was observed.[5] Asked what his intention was at that point, Officer McNulty testified he was going to search the Infiniti due to "the initial odor of marijuana coming from the vehicle and the digital scales found in the driver's door with residue."

Officer McNulty then asked Washington, who by then was seated on the curb, about the digital scale. Washington replied, "I smoke weed. I ain't going to lie. I smoke weed." Asked whether there was any inside the vehicle, Washington replied that there was a bag in the center console.[6]

Sergeant Pabon and Officer McNulty then began searching the interior of the Infiniti. Sergeant Pabon, who was now on the driver's side, stated, "that is strong out here," referring to the odor of marijuana. Officer McNulty then reiterated that he smelled the odor when he first walked up to the vehicle. Sergeant Pabon examined the scale and observed "some powder and like some vegetable matter, like weed." He then found an unspent 9 mm bullet behind the driver's seat, and a spent .380 casing on the passenger's side of the vehicle. Officer McNulty testified that an "unspent" bullet was "[a] live round that has not been fired," and that the "spent" casing had previously been fired.

Sergeant Pabon approached Washington, who was seated on the curb behind the vehicle, and informed him and the other officers at the scene of the spent casing and unspent bullet that he discovered in the Infiniti. Sergeant Pabon testified he was concerned

[5] Sergeant Pabon testified he did not touch the scale until after the search. Neither the digital scale itself nor any accompanying image was identified or admitted at the hearing.

[6] Officer McNulty agreed that Washington was not advised of his rights pursuant to *Miranda v. Arizona*, 384 U.S. 436 (1966), prior to this inquiry. *Miranda* is not an issue on this appeal.

that a gun could be concealed on Washington's person, because he had not yet found a gun to go with the spent casing and the bullet. As a result, Sergeant Pabon secured him "immediately" for purposes of officer safety, testifying, "[i]f he is armed, I don't want him having free hands to grab a gun or to do any harm to anyone there at the scene, including himself."

After Washington declined to permit consent to search his person, Sergeant Pabon informed Washington that he was being detained, but was not under arrest. Another officer then placed Washington in handcuffs. On direct examination, Officer McNulty explained the situation as follows:

> Q. So, it is after these bullets were recovered is when [Washington] was placed in handcuffs?
>
> A. Yes, ma'am.
>
> Q. Can you explain based upon your training and experience why [Washington] was detained at this point or handcuffed rather and detained?
>
> A. He was detained at this point because of the fact that we had an empty shell casing inside the vehicle and no firearm recovered at the time. That is usually a clear indicator that a firearm is somewhere within close proximity.
>
> * * *
>
> Q. Did you have any concerns about your safety?
>
> A. At that point, ma'am, yes, we did feel that there may be a firearm somewhere either on the person of [Washington] or further in the vehicle that we did not locate yet.
>
> Q. And based upon that, what, if anything, did you do?

> A. After we placed [] Washington in handcuffs we conducted a frisk of his person. Upon the frisk, a firearm was recovered from the lower back of his belt line.

Sergeant Pabon testified that he frisked Washington to make sure he was not armed. During the frisk, a bag containing pills and vials of suspected controlled dangerous substances were found in Washington's jacket pocket. Sergeant Pabon also discovered a loaded .380 handgun in Washington's back waistband. After clearing the gun and calling it in to dispatch, Sergeant Pabon declared, "That is why we pat people down guys."

Washington was then placed under arrest for the loaded handgun on his person and searched incident thereto. A small bag containing two pills with a "white powdery substance," and nine glass tubes containing a "white rock substance," were recovered from Washington's person. In addition, two small baggies of marijuana were recovered.[7]

After this evidence was received, the parties argued the motion to suppress. Washington first conceded that there was a valid reason for the initial stop because the license registration was associated with a different vehicle. *See generally*, Md. Code, Transportation Article § 13-411(d) (2020 Repl. Vol.) (Registration plates and validations tabs required to drive vehicle in State). Washington then argued that there was no evidence that Officer McNulty smelled the odor of marijuana when the officer first approached the vehicle. Rather, Washington contends Officer McNulty did not smell the marijuana until

[7] We note that, after he was arrested, and while still restrained in handcuffs behind his back, Washington fled on foot into nearby woods. He was apprehended shortly thereafter without incident.

after the search of the vehicle began. Accordingly, Washington's position was that there was no probable cause to search the Infiniti.

Because there was no probable cause to search the vehicle, Washington contended that Officer McNulty illegally searched the vehicle, including the manipulation of the digital scale in the driver's side door map pocket to better observe the green residue thereon. Washington argued that the scale was not contraband in and of itself and that the manipulation violated the plain view doctrine and, therefore, was an illegal search. *See Sinclair v. State*, 444 Md. 16, 42 (2015) (discussing plain view doctrine).

Washington also contended that, even considering the spent casing and unspent round found in the vehicle, those items alone were not illegal, and the police had no basis to question Washington. Further noted by Washington was that when he was ordered out of the vehicle, there were approximately four to five police officers nearby, and Washington was not free to leave.

Washington concluded that he was arrested when the two officers put his hands behind his back and placed him in handcuffs. Washington concluded that because he was illegally arrested at that point, any search incident to that was illegal and the gun and the drugs recovered thereafter had to be suppressed. *See Pacheco v. State*, 465 Md. 311, 322-23 (2019) (discussing search incident to arrest doctrine).

The State responded by first addressing Washington's primary argument that Officer McNulty did not smell marijuana when he approached the vehicle:

> Officer McNulty conducts his traffic stop. That is not in dispute. He indicates in his report and he indicates in his testimony that he detects the odor of marijuana and there has been no evidence to the contrary. There is

> no reason why this statement that he detected the odor of marijuana should not be believed. His credibility is not in question here today.
>
> He is seen on the body worn camera asking [Sergeant] Pabon, Hey, did you smell it? Why is he going to ask him that if he didn't already detect it himself. Also, in conversation when they are in the car searching it, it is clear that he is saying to [Sergeant] Pabon I think it was, yes, this is what I smelled when I was up here, I just couldn't tell where it was coming from.

Arguing that the odor of marijuana provides probable cause to search a vehicle, not the person, the State reasoned that the officers followed the law. Alternatively, the State suggested that the vehicle was going to be towed and inventoried and that the spent casing and unspent bullet in the vehicle would have been inevitably discovered. *See Williams v. State*, 372 Md. 386, 417-18 (2002) (discussing inevitable discovery). The State also argued that it was lawful to ask Washington to step out of the vehicle, and that, when Washington left the door open, the digital scale was in plain view.

Finally, as to Washington's detention in handcuffs, the State argued that he was restrained for purposes of officer safety after the police found a shell casing and a bullet in the Infiniti but did not find any corresponding handgun. Because there were concerns that Washington was armed, he was lawfully frisked under *Terry v. Ohio*, 392 U.S. 1 (1968), and its progeny. The State concluded:

> So, Your Honor, I think the facts are clear in this case. Just because [Sergeant] Pabon didn't note the odor of marijuana, that doesn't discount the fact that Officer McNulty has testified that he did and has reported that he did and talks about it on the body worn camera.
>
> So, at the end of the day, this is a justified search based upon that and once they searched the vehicle they find these bullets and there is an immediate concern for officer's safety and he is frisked and the gun[] and drugs are recovered. I think this is a fairly straight forward case and the

> officers[’] actions were all justified in how they handled this stop with respect to the Defendant.

Washington’s counsel replied that there was no indication from Officer McNulty that he smelled the odor of marijuana on either his or Sergeant Pabon’s body worn camera footage until after the search of the vehicle began. Because of that omission, and because Sergeant Pabon did not smell marijuana, Washington argued, “[t]here is no indication, no one says on this tape before the search begins, not a single officer said we’re searching this vehicle because we detected an odor of marijuana. No one says that at all. The search is being conducted for reasons other than that.” After reiterating the earlier arguments as noted herein, Washington concluded that the arrest was improper and that which flowed from the improper arrest should be suppressed.

The court denied the motion stating, in entirety, as follows:

> THE COURT: [H]aving heard all of this testimony and having the opportunity to view not one, but two body worn camera sets of footage, the first thing that I want to say to Mr. Washington and to the officers in this case is I am so grateful that there were no shots fired by anyone and that we’re all here today to discuss this matter. So, I’m grateful to everyone for their -- maybe as the officer put it, at least initially chill behavior. So, I’m grateful to all of you for that. I am delighted to have heard this this afternoon.
>
> That having been said, motion respectfully, [Defense Counsel], the [motion] to suppress is denied.

B. Conditional Guilty Plea

Washington entered a conditional guilty plea to count 1 of the indictment, possession with intent to distribute cocaine, and count 6, illegal possession of a regulated firearm. A nolle prosequi was entered as to the remaining counts. After finding that Washington entered his plea knowingly, intelligently and voluntarily, the court heard a

statement of facts in support of that plea, including, but not limited to, a recitation of the circumstances surrounding the stop, as set forth above, and that, after his arrest, Washington complained of trouble breathing and was transported to Franklin Square Hospital. At the hospital, Washington told Officer McNulty that "he should have shot the officers when he had a chance," and that he was "going to kill" the officer who rode in the medic unit with him to the hospital. In addition, it was noted that the police recovered ten vials containing 11.30 grams of cocaine and two capsules containing .49 grams of fentanyl. The State also indicated that if the case had gone to trial, an expert would opine that these quantities and the manner of packaging indicated an intent to distribute. The court was further informed that the firearm recovered from Washington's person was a regulated firearm and that Washington was prohibited from possessing that firearm due to prior convictions for armed robbery and robbery. The court found Washington guilty on the two counts to which the plea was entered.

DISCUSSION

"In reviewing a trial court's ruling concerning the admissibility of evidence allegedly seized in violation of the Fourth Amendment, we accept the trial court's findings of fact unless they are clearly erroneous." *In re D.D.*, 479 Md. 206, 222 (2022) (citing *Grant v. State*, 449 Md. 1, 31 (2016)). "We independently appraise the ultimate question of constitutionality by applying the relevant law to the facts *de novo*." *Id*. Further, "[w]here 'there is any competent evidence to support the factual findings below, those findings cannot be held to be clearly erroneous.'" *Id*. at 222-23 (quoting *Givens v. State*, 459 Md. 694, 705 (2018) (internal quotation marks and citation omitted)). We review "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." *Id.* at 223 (quoting *Robinson v. State*, 451 Md. 94, 108 (2017) (internal quotation marks omitted).

On appeal, Washington contends that we should remand this case because the court hearing the motion did not make any express factual findings, on the record, as to when Officer McNulty smelled the odor of marijuana emanating from the vehicle. Recognizing that the odor of marijuana provides probable cause to search the vehicle, the core of Washington's argument is that the court's omission requires a limited remand for further proceedings. Two of Washington's arguments, under the plain view doctrine and inevitable discovery, are conditioned on further findings on such a proposed limited remand by the court that heard the motion to suppress. Washington's remaining argument is that the discovery of the shell casing and the bullet in the vehicle did not justify the police placing him in handcuffs and frisking him as that amounted to an unlawful arrest. The State disagrees, as do we.

The primary issue is whether there were sufficient facts for the court hearing the motion to find that Officer McNulty smelled the odor of marijuana when he first approached Washington's open driver's side window and whether that odor gave probable cause under the Fourth Amendment to search the Infiniti. As the Supreme Court of

Maryland (at the time named the Court of Appeals of Maryland)[8] has explained, "[t]he touchstone of whether a warrantless search or seizure withstands Fourth Amendment scrutiny is reasonableness." *Lewis v. State*, 470 Md. 1, 18 (2020) (citations omitted). "What is reasonable depends upon all of the circumstances surrounding the search or seizure and the nature of the search or seizure itself." *Id*. (citation omitted). This will depend "on a balance between the public interest and the individual's right to personal security free from arbitrary interference by law officers." *Id*. (citations omitted).

A. The Search

Our analysis begins with the warrantless search of Washington's vehicle. Warrantless searches generally are "presumptively unreasonable," subject to exception. *Grant*, 449 Md. at 16-17. One of those exceptions is the *Carroll* doctrine, also known as the automobile exception. *Id*. at 16 n.3 (citing *Carroll v. United States*, 267 U.S. 132 (1925)). Under this exception, a warrantless search is reasonable "if, at the time of the search, the police have developed 'probable cause to believe the vehicle contains contraband or the evidence of a crime.'" *Pacheco*, 465 Md. at 321 (quoting *State v. Johnson*, 458 Md. 519, 533 (2018)). "Probable cause" means "a reasonable ground for belief of guilt . . . and that the belief of guilt must be particularized with respect to the

[8] At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Appeals of Maryland to the Supreme Court of Maryland. The name change took effect on December 14, 2022. *See also*, Md. Rule 1-101.1(a) ("From and after December 14, 2022, any reference in these Rules or, in any proceedings before any court of the Maryland Judiciary, any reference in any statute, ordinance, or regulation applicable in Maryland to the Court of Appeals of Maryland shall be deemed to refer to the Supreme Court of Maryland. . .").

person to be searched or seized[.]" *Maryland v. Pringle*, 540 U.S. 366, 371 (2003) (cleaned up).

As of the date of the offense, the use or possession of marijuana, *a.k.a.*, cannabis, of less than 10 grams was a "civil offense," punishable by fine, and the use or possession in amounts greater than 10 grams was a criminal misdemeanor. *See* Md. Code, Criminal Law Article ("Crim. Law") § 5-601(c)(2) (2002, 2021 Repl. Vol. 2022 Supp.); *In re: D.D.*, 479 Md. at 225 (discussing then current cannabis statutory law).[9] In *Robinson*, *supra*, the Supreme Court of Maryland held that, despite decriminalization, the odor of marijuana emanating from a vehicle provides probable cause for law enforcement officers to conduct a warrantless search of the vehicle. 451 Md. at 99; *see also Pacheco*, 465 Md. at 329 ("The mere odor of marijuana emanating from a vehicle provides probable cause that the vehicle contains additional contraband or evidence of a crime, thereby permitting the search of the vehicle and its contents.") (discussing *Robinson*); *see also Johnson v. State*, 254 Md. App. 353, 371 (2022) ("It is undisputed hornbook law 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."). "[I]f probable cause justifies the search of a lawfully stopped vehicle,

[9] In November of 2022, the voters of Maryland approved a constitutional amendment to permit individuals at least 21 years old to use and possess cannabis on or after July 1, 2023, subject to further law. Md. Const., Art. XX, § 1; *see also* Crim. Law §§ 5-101, 5-601 to 5-601.2 (effective dates July 1, 2023). From January 1, 2023 up to July 1, 2023, possession of amounts greater than that designated by statute for personal or civil use remain a misdemeanor, with lesser amounts being civil offenses subject to fine. *See* Crim. Law §§ 5-101, 5-601 to 5-601.2 (effective dates January 1, 2023).

it justifies the search of every part of the vehicle and its contents that may conceal the object of the search." *United States v. Ross*, 456 U.S. 798, 825 (1982); *Accord Pacheco*, 465 Md. at 321-22.

Here, the court which heard the motion did not make any express findings on this issue. Pursuant to Maryland Rule 4-252 (g)(1), "[i]f factual issues are involved in determining [a motion to suppress], the court shall state its findings on the record." A limited remand may be required when, for instance, "the trial court failed to make findings of fact and effectively failed to rule on the suppression motion prior to trial." *Portillo Funes v. State*, 469 Md. 438, 475 (2020); *see, e.g. Lodowski v. State*, 307 Md. 233, 258 (1986) (remanding for a new trial because further proceedings were necessary to resolve issues concerning *Miranda* and voluntariness of a statement). Where the evidence is undisputed, however, there is no need for articulated factual conclusions. *See Gilliam v. State*, 320 Md. 637, 648 (1990) (holding that, unlike *Lodowski, supra*, it was unnecessary for the motions court to make "articulated factual determinations" on the voluntariness of Gilliam's statements because the appellate court could make an independent constitutional appraisal based on the undisputed facts presented).

Here, we are unable to conclude that there was any dispute in the evidence concerning when Officer McNulty smelled the odor of marijuana. There were only two witnesses at the motions hearing: Officer McNulty and Sergeant Pabon. Despite comprehensive cross-examination by defense counsel, Officer McNulty maintained, and Sergeant Pabon indicated he understood, that Officer McNulty smelled the odor when he first approached the driver's side door and spoke to Washington. Washington admitted that

he smoked marijuana and that a quantity was present in the center console of the vehicle. Although Officer McNulty may not have stated, on his body camera footage, that he specifically smelled the odor when he first encountered Washington at the open window of the driver's side door, we are not persuaded that created a conflict in the evidence sufficient to warrant a remand under Maryland Rule 8-604(d).[10]

In support of the argument that an ambiguity exists that requires remand, Washington directs our attention to *Grant*, *supra*. As does the present case, *Grant* involved a traffic stop, a subsequent warrantless search of an automobile that revealed contraband, and the denial of a motion to suppress. 449 Md. at 7-13. There, Deputy Atkins stopped Grant for speeding. *Id*. at 7-8. At the suppression hearing, Deputy Atkins testified that he smelled the odor of marijuana emanating from the vehicle, but he also testified that he was unable to recall whether his head crossed the threshold of the vehicle's window before smelling the marijuana. *Id*. at 8-10. The parties also played a DVD of the traffic stop for the court at the suppression hearing, and the Supreme Court of Maryland described the effect of the DVD in the following manner: "[a]lthough the point at which Deputy Atkins detected the odor of marijuana was not clear from the video, the [circuit] court acknowledged that Deputy Atkins' head appeared to cross the window pane into the interior of [Grant]'s vehicle." *Id*. at 11. In denying the motion to suppress, the circuit court found, in pertinent part, that

[10] Maryland Rule 8-604(d)(1) provides, "[i]f the Court concludes that the substantial merits of a case will not be determined by affirming, reversing, or modifying the judgment, or that justice will be served by permitting further proceedings, the Court may remand the case to a lower court."

> The testimony of Deputy Atkins was that he didn't recall whether his head went in the vehicle or not. *It was very possible [Deputy Atkins'] head would have broken the [pane] and it was at some point, it was not clear whether it was when his head was inside or when the window was rolled down, he[]smelled what he believed based on his training and experience smelled like marijuana.* But he also testified that it dissipated rather quickly.

Id. at 12 (emphasis in original).

The circuit court then denied the motion to suppress, finding that there was probable cause for the search. *Id*. at 11-13. This Court affirmed based on the "supplemental rules of appellate review[,]" drawing inferences in favor of the State to conclude that there was probable cause for the search. *Id*. at 13-14.

The Supreme Court of Maryland reversed, holding "that the circuit court erred in denying [Grant]'s suppression motion where the evidence was unclear regarding the timing of Deputy Atkins' detection of the odor of marijuana." *Id.* at 15. The Court continued, "[i]n the absence of a finding that Deputy Atkins detected the odor of marijuana before he inserted his head into the passenger window, the State did not satisfy its burden regarding the lawfulness of the search." *Id*. The Court explained that a search occurred, for Fourth Amendment purposes, when Deputy Atkins inserted his head into Grant's vehicle; therefore, Deputy Atkins must have had probable cause before doing so. *Id*. at 15, 19, 23-29.

In reversing, the Court observed that the record reflected no suspicious activity or exigent circumstances. *Id.* at 27. The Court noted, further, that the circuit court acknowledged that Deputy Atkins did not recall whether he placed his head inside the

vehicle. *Id*. at 28. The Court emphasized that the case's resolution "hinged" on this "critical" factual determination:

> the record before [the Court] only reveals that [Grant] was stopped for a routine traffic violation. Therefore, in the absence of a factual finding that Deputy Atkins detected the odor *before* his head crossed the passenger window, Deputy Atkins did not have probable cause or reasonable articulable suspicion that Petitioner was in possession of a controlled dangerous substance.

Id. at 15, 27 (emphasis added).

The Supreme Court then discussed this Court's application of the "supplemental rule of interpretation," which it characterized as "generally employed by the [Appellate Court of Maryland] to resolve fact-finding ambiguities and fill fact-finding gaps in cases where a trial-level judge's fact-finding was either ambiguous, incomplete, or non-existent." *Grant*, 449 Md. at 31 n.8 (citing *Morris v. State*, 153 Md. App. 480 (2003), *cert. denied*, 380 Md. 618 (2004)). That rule instructs that "the appellate court will defer to the fact-findings of trial judge or jury whenever there is some competent evidence which, if believed and given maximum weight, could support such findings of fact. That is the prime directive." *Morris*, 153 Md. App. at 489; *see also State v. Brooks*, 148 Md. App. 374, 396-97 (2002) (explaining that the standard of review under the supplemental rule "takes that version of the evidence most favorable to the prevailing party. That standard is not concerned with the judge's actual findings of fact as such. That standard is concerned with evidentiary supply rather than decisional execution.").

The *Grant* Court explained that it had not formally adopted the supplemental rule and declined to do so. 449 Md. at 31 n.8. The Court then held that this Court's application

of its supplemental rule, concluding that Deputy Atkins detected the smell of marijuana before placing his head inside the window, was inconsistent with the evidence and the motion court's finding that it was "not clear" when the deputy detected the odor. *Id.* at 31-32. Thus, in *Grant*, this Court's holding necessarily relied on inferred facts that the record itself did not support. *Id.*

We conclude *Grant* is distinguishable because there, the deputy testified that he did not know whether his head entered the vehicle's threshold before or after smelling the marijuana—or even whether his head crossed the threshold at all—and the DVD was also unclear on that point. 449 Md. at 9-11. Here, Officer McNulty's testimony was unequivocal. Further, unlike in *Grant* where there were no indicia of probable cause other than the smell of marijuana, *id*. at 27, here Washington conceded he smoked marijuana and there was some located in the center console. Because we hold that the odor of marijuana gave the police probable cause to search the vehicle under the *Carroll* doctrine, we decline to remand for further proceedings and need not address Washington's arguments that the search violated the plain view doctrine or was not a proper inventory search. *See Garner v. Archers Glen Partners, Inc*., 405 Md. 43, 46 (2008) ("[A]n appellate court should use great caution in exercising its discretion to comment gratuitously on issues beyond those necessary to be decided.").

B. The Frisk

We next address Washington's argument that he was illegally arrested and searched following the *Carroll* search of the Infiniti and the recovery of the shell casing and the

bullet. It is the State's position that Washington was not arrested, but instead, properly detained and restrained for purposes of officer safety. We agree.

Generally, there are only two types of seizures under the Fourth Amendment: 1) a physical touching of a suspect by a police officer combined with an intent by that officer to seize the person; or 2) a show of authority by the police *and* submission to that show of authority by the suspect. *California v. Hodari D.*, 499 U.S. 621, 626-28 (1991). Additionally, courts have looked at three tiers of interaction between the police and individuals under Fourth Amendment analysis, *i.e.*, an arrest, an investigatory stop, and a consensual encounter. *Swift v. State*, 393 Md. 139, 149-51 (2006).[11] An arrest requires probable cause to believe the person has committed or is committing or is about to commit a crime. *Florida v. Royer*, 460 U.S. 491, 499 (1983) (observing that the general rule is that "seizures of the person require probable cause to arrest"); *see also Canela v. State*, 193 Md. App. 259, 293 n. 3 (2010) ("While all persons who are arrested have also been 'seized,' not all persons who have been 'seized' by the police have been arrested.") (citation omitted), *rev'd on other grounds, Perez v. State*, 420 Md. 57 (2011).

An investigatory stop or detention, known as a *Terry* stop, requires reasonable suspicion that criminal activity is afoot and permits an officer to stop and briefly detain an individual. *Terry v. Ohio*, 392 U.S. 1, 30-31 (1968) (noting that "[e]ach case of this sort will, of course, have to be decided on its own facts"). A *Terry* stop is limited in duration and purpose and can only last as long as it takes a police officer to confirm or to dispel his

[11] Here, there is no claim that Washington's interactions with the police officers were a consensual encounter, so we need not discuss that issue further.

suspicions. *See Ferris v. State*, 355 Md. 356, 372-73 (1999). In certain circumstances, namely when an officer has a reasonable suspicion that an individual is armed and dangerous, the officer may pat down, or frisk, that individual. *See Terry*, 392 U.S. at 27 (holding that pat down frisks are proper when the officer has "reason to believe that he is dealing with an armed and dangerous individual, regardless of whether he has probable cause to arrest the individual for a crime"); *see also In re D.D.*, 479 Md. at 242 ("The purpose of this 'limited search, known in common parlance as a frisk, is not to discover evidence, but rather to protect the police officer and bystanders from harm.'") (quoting *Sellman v. State*, 449 Md. 526, 542 (2016)).

In evaluating whether a police officer has reasonable articulable suspicion that an individual is armed and dangerous, we consider the totality of the circumstances under an objective standard. *In re D.D.*, 479 Md. at 242-43 (citations omitted). Our determination is "based on reasonable inferences from particularized facts in light of the law enforcement officer's experience," and considers whether "a reasonably prudent law enforcement officer would have felt that he or she was in danger." *Id.* at 242-43 (quoting *Norman v. State*, 452 Md. 373, 387 (2017), *cert. denied*, 138 S. Ct. 174 (2017)). The Supreme Court of Maryland has explained that, although such a feeling "must be based on more than an inchoate and unparticularized suspicion or hunch," *Chase v. State*, 449 Md. 283, 296 (2016) (internal quotation marks omitted) (quoting *Terry*, 392 U.S. at 27), the reasonable suspicion standard "does not require an officer to be absolutely certain that an individual is armed and dangerous." *Thornton v. State*, 465 Md. 122, 142 (2019) (citation omitted). The standard is a "'common sense, nontechnical conception that considers factual and

practical aspects of daily life and how reasonable and prudent people act.'" *Holt v. State*, 435 Md. 443, 460 (2013) (quoting *Crosby v. State*, 408 Md. 490, 507 (2009)).

"[T]here are no *per se* rules or bright lines to determine when an investigatory stop and frisk becomes an arrest and is elevated to the point that probable cause is required." *In re David S.*, 367 Md. 523, 534 (2002); *United States v. Sharpe*, 470 U.S. 675, 685 (1985) ("Much as a 'bright line' rule would be desirable, in evaluating whether an investigative detention is unreasonable, common sense and ordinary human experience must govern over rigid criteria."). Although a relevant factor, the degree of force used to detain a suspect is not necessarily dispositive of whether a suspect was subjected to a *de facto* arrest. *See Chase*, 449 Md. 283, 311 (2016) ("[T]he use of handcuffs per se does not ordinarily transform a *Terry* stop into an arrest.") (citation omitted); *Bailey v. State*, 412 Md. 349, 372 n.8 (2010) ("[E]ven if the officers' physical actions are equivalent to an arrest, the show of force is not considered to be an arrest if the actions were justified by officer safety or permissible to prevent the flight of a suspect."); *In re David S.*, 367 Md. at 539-40 (holding that a "hard take down" of the defendant was not tantamount to an arrest where several officers, with weapons drawn, "forced respondent to the ground and placed him in handcuffs," as the officers' conduct "was not unreasonable because [they] reasonably could have suspected that respondent posed a threat to their safety") (citation omitted); *see also Elliott v. State*, 417 Md. 413, 429 (2010) (recognizing that "[t]he burden is on the State to prove that such special circumstances existed in order to justify the officer's use of force in an investigative detention"). This applies equally to traffic stops that ripen into *Terry* stops supported by reasonable articulable suspicion that other criminal activity is afoot. *See*

Arizona v. Johnson, 555 U.S. 323, 330-31 (2009) (recognizing that traffic stops are "especially fraught with danger to police officers" and that the risk of harm, to police and the occupants, is "minimized" if the police exercise "unquestioned command of the situation") (quoting, *inter alia, Michigan v. Long*, 463 U.S. 1032, 1047 (1983); *Maryland v. Wilson*, 519 U.S. 408, 414 (1997)).

Chase, *supra*, is instructive. There, two Baltimore County detectives, upon observing an apparent drug transaction between individuals parked in a car in a motel parking lot, placed the individuals in handcuffs and subjected them to a pat down for weapons. 449 Md. at 290-93. Our Supreme Court affirmed this Court's decision upholding the use of handcuffs as part of a valid *Terry* stop. *Id*. at 312. Although not specifically adopted by our Supreme Court, we set forth several factors in our opinion bearing on whether an investigatory stop ripened into a *de facto* arrest, which are helpful to our analysis here. Under the totality of the circumstances, those factors include: (1) the length of the detention; (2) the investigative activities that occur during the detention; and (3) whether the suspect is removed from the place of the stop to another location. *Chase v. State*, 224 Md. App. 631, 643-44 (2015) (cleaned up), *aff'd*, 449 Md. 283 (2016).

Here, with respect to the first factor, the length of the detention was not long. First, looking simply to the officers' body camera footage, the stop was brief. Although the footage does not appear to contain real time information, the stop began 30 seconds after the video began, when Officer McNulty activated his emergency equipment and stopped the Infiniti. Washington was physically restrained and placed in handcuffs approximately

fourteen minutes later. Sergeant Pabon then found the gun roughly fifteen and a half minutes after the initial stop.

Moving to the third *Chase* factor, although Washington was handcuffed while he sat on the curb between his vehicle and Officer McNulty's patrol car, he was not removed from the scene of the stop when he was restrained in handcuffs. We conclude the first and third factors weigh in the State's favor. *See generally, Adams v. Williams*, 407 U.S. 143, 146 (1972) ("A brief stop of a suspicious individual, in order to determine his identity or to maintain the status quo momentarily while obtaining more information, may be most reasonable in light of the facts known to the officer at the time.") (citing *Terry*, 392 U.S. at 21-22); *Carter v. State*, 143 Md. App. 670, 692 (2022) ("The permitted duration of a *Terry*-stop cannot be measured by the clock alone. Only that delay is permitted which is reasonably in the service of the purpose of the stop."), *cert. denied*, 369 Md. 571 (2002); *cf. Jackson v. State*, 190 Md. App. 497, 518-19 (2010) (citing cases where various minutes of delay during a *Terry* stop, in excess of the delay in this case, were deemed reasonable to await the arrival of drug detection dog).

With respect to the second *Chase* factor, the investigative activities during the detention, when Officer McNulty initially approached the Infiniti, he smelled the odor of fresh marijuana. In addition, the vehicle did not have insurance; Washington did not have a valid driver's license; and the registration tags were for a Honda, not an Infiniti. After Washington exited the vehicle, a digital scale with green, vegetable residue was visible in the driver's side door. During the *Carroll* search that followed, notably preceding the frisk, the police recovered a bag of suspected marijuana in the center console, an unspent 9 mm

bullet behind the driver's seat, and a spent .380 casing on the passenger's side of the vehicle. No gun was found in the vehicle.

We are persuaded that these facts, when considered objectively and under the totality of the circumstances, warranted a reasonable belief that Washington may be armed and dangerous. Discovery of a spent shell casing and a live bullet within the vehicle compartment reasonably suggests that a gun could be nearby. *See People v. Colyar*, 996 N.E.2d 575, 585 (Ill. 2013) ("Common sense and logic dictate that a bullet is often associated with a gun."). Out-of-state cases are in accord. *See id.* at 585-86 (holding that the observation of a round of ammunition in plain view inside the defendant's vehicle justified a reasonable concern for officer safety and that the warrantless *Terry* search of the vehicle's compartment and defendant's person were lawful); *People v. Ragland*, 549 N.Y.S.2d 249, 249 (N.Y. App. Div. 1989) ("The police stopped defendant's car for a suspected traffic violation and noticed a box of bullets in plain view. Under these circumstances the police had the right to order defendant out of the car and frisk him for weapons."); *see also United States v. Richards*, 967 F.2d 1189, 1193 (8th Cir. 1992) (recognizing that a limited search of the passenger compartment of a vehicle was lawful after, *inter alia*, police observed rifle cartridges in plain view in the passenger compartment). Ultimately, as *Terry* instructs, "[t]he officer need not be absolutely certain that the individual is armed; the issue is whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger." 392 U.S. at 27.

Thus, we hold that, whereas there was sufficient evidence admitted at the motions hearing for the court to find that Officer McNulty smelled the odor of fresh marijuana upon his initial contact with Washington, a *Carroll* search of the vehicle was lawful under the Fourth Amendment. This search was further supported by Washington's admission that he smoked "weed" and that marijuana was in the center console. Upon the discovery of an unspent live 9 mm bullet behind the driver's seat, and a spent .380 casing on the passenger's side of the vehicle, it was objectively reasonable for the officers to suspect that Washington was presently armed and dangerous and that a limited frisk for weapons was justified. The motions court properly denied the motion to suppress.

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