UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 638

September Term, 2016

JOSEPH SCOTT BRYANT

v.

STATE OF MARYLAND

Leahy,
Beachley,
Shaw Geter,

JJ.

Opinion by Leahy, J.

Filed: June 26, 2017

Late one morning in October 2015, Officer Dan Grimes of the Frederick City Police Department ("FCPD") stopped Joseph Scott Bryant ("Appellant" "Bryant"), who was driving a car with a broken tail light and appeared nervous at the sight of two police cars. After Officer Grimes pulled Bryant over, Corporal Kevin Meyer arrived on the scene and recognized Bryant as someone he had arrested previously for possession with intent to distribute. Corporal Meyer twice asked Bryant whether he had any drugs in the car. The parties dispute Bryant's response. He either admitted to having drugs in the car or responded that there "might" be drugs in the car. A search of the car revealed heroin underneath the driver's seat.

Bryant moved to suppress this evidence. During the suppression hearing in the Circuit Court for Frederick County, Bryant's responses to Corporal Meyer's questions and whether those responses provided Corporal Meyer probable cause to search the vehicle were at issue. The circuit court ruled in favor of the State and denied Bryant's motion to suppress. Over Bryant's objection at trial, the court admitted the evidence obtained during the search of the car.

The court also admitted, over Bryant's objection, pictures of two text message conversations concerning drug deals which the police discovered on a phone in Bryant's possession after Bryant consented to the search. Bryant argued that the State had not properly authenticated these text conversations because they had not proven that Bryant actually authored the messages.

Bryant was convicted and received a sentence of 40 years' imprisonment, with all but 15 years suspended. He appealed to this Court, presenting the following questions:

1. "Did the Trial Court Err in Denying Mr. Bryant's Motion to Suppress Because Corporal Meyer Lacked Probable Cause to Search the Car for Drugs?"

2. "Did the Trial Court Abuse its Discretion by Admitting Text Messages Purportedly [A]uthored by Mr. Bryant Where the State Failed to Provide Sufficient Evidence for a Reasonable Juror to Find that Mr. Bryant Authored the Messages?

We affirm. We conclude that the circuit court did not err in finding that Corporal Meyer had probable cause to search the vehicle after speaking with Bryant. We also conclude that, in these circumstances, the circuit court did not abuse its discretion by admitting the photographs of the text messages because "a reasonable juror could find that the evidence is what the proponent claims it to be." *Sublet v. State*, 442 Md. 632, 638 (2015).

BACKGROUND

Bryant was arrested after the search of his vehicle on October 26, 2015, in Frederick City by members of the FCPD. On December 30, 2015, he was charged by criminal information with: (1) possession of heroin with intent to distribute; (2) possession of heroin; (3) possession of hydrocodone; (4) driving a vehicle on a highway without required minimum equipment; (5) failure to display license on demand; and (6) two counts of driving with a suspended license.[1]

[1] Before trial, the State *nolle prossed* the suspended license charges.

A.

The Motion to Suppress

Before his trial in the Circuit Court for Frederick County, Bryant moved to suppress certain evidence, namely: (1) statements made to the police when they stopped the car he was driving when arrested[2] and (2) the heroin and the hydrocodone pill the police found when they searched the car. The circuit court held the suppression hearing on April 26, 2016, directly before *voir dire* of the jury.

Bryant's counsel acknowledged that the traffic stop was legal, but he contended that the subsequent search of the car was illegal. He argued that Bryant did not actually make the statements that Corporal Kevin Meyer had attributed to Bryant in his report of the incident.

The State called Corporal Meyer as a witness. Corporal Meyer testified that he was on duty in a patrol car on October 26, 2015, at 11:49 a.m. Officer Grimes had initiated a traffic stop on Bryant's vehicle based on a broken taillight.[3] When Corporal Meyer arrived at the scene and pulled up next to a car, he noticed the driver "seemed really nervous" and "was looking all over the place[,]" particularly at Corporal Meyer and at Officer Grimes's

[2] Bryant presents no argument on appeal related to his argument seeking to suppress these statements pursuant to *Miranda v. Arizona*, 384 U.S. 436 (1966) made before the suppression court. As such, our factual recount omits details relating to this issue except to the extent necessary to convey the overall story.

[3] Corporal Meyer did not actually testify at the suppression hearing that Bryant was driving a vehicle with a broken brake light, which served as the basis for the traffic stop. This, however, was an undisputed fact during the suppression hearing and on appeal.

vehicle that was behind him. As Corporal Meyer walked to the driver's door, he recognized Bryant from a previous interaction. Corporal Meyer testified that, in 2014 or 2015, when he was a member of the drug enforcement unit, the unit arrested Bryant for possession of heroin with intent to distribute.

Corporal Meyer addressed Bryant as "Jo-Jo," the name by which he knew Bryant. At that point, Corporal Meyer noticed that Bryant "stiffened up immediately" and "his whole body start[ed] to shake." Bryant "stared forward" and "didn't make eye contact" with Corporal Meyer.

The transcript from the suppression hearing contains the following dialogue between the State's counsel and Corporal Meyer:

> Q Okay [] what, if any, [] questions did you ask Mr. Bryant at that time?[4]
>
> A [] I then asked Mr. Bryant if there was any dope in the vehicle.
>
> Q And why did you do that?
>
> A [] because I knew Mr. Bryant to frequently have heroin on him. [] so I asked if there was any dope in the vehicle, which is asking you, "Is there any heroin in the vehicle?"
>
> Q Okay, and what, if any, reaction did Mr. Bryant have [to] your question?
>
> A [] at that point Mr. Bryant looked straight down, like he was looking at the floorboards. And he said, "I don't have anything on me, but this isn't my car."

[4] The transcripts in this record contain more marks of extemporaneous speech and pregnant pauses, such as "uh"s and "um"s, than are typically included in a transcript. In our reproduction, we have removed most of these marks and replaced them with brackets.

Q And then what, if anything, [] did you ask him after that?

A Well, I told him that that was not the question that I had. I asked him if there was any dope in the vehicle. [] and I can get my exact words here.

Q Yeah, what, if anything, was his response?

A . . . I said, "That wasn't my question." And I said, "How much dope is in the vehicle?" Because, to me, he had just told me there was something in the vehicle, especially when he was looking at the floorboard. So I said, "How much dope is in the vehicle?" And at that point, he said, "I got a couple bags down there,"[5] and he looked down at the floorboard, and told me there is a couple of bags down there.

Bryant's counsel then called Bryant to testify. According to Bryant's testimony, he was driving a car—that was not his—down Market Street in Frederick, at 11:50 on October 26, when he noticed a police car behind him. At that point, the police lights turned on, and he pulled into a parking lot and turned off the car. Officer Grimes then approached and requested his license and registration, whereupon he informed Officer Grimes that he did not have a license. Officer Grimes then left, saying he would return in a moment.

Bryant then described his encounter with Corporal Meyer, which occurred after Officer Grimes departed:

Q Okay, and what happened next?

A [] I was approached by Officer Meyer[].

Q And did he speak to you?

A [] he sounded very sarcastic[], and said, "Hey, Jo-Jo []." And then immediately I seen him, he was like, "Do you remember me?" I was like,

[5] On cross examination, Corporal Meyer looked at his report of the incident and saw that he had written that Bryant said "A couple of bags down there," a slight variance from what he said on direct.

"Not at all." And then he was like, "Do you remember that, that, that one time?" And I was like, "Okay, yes I do remember." It [] hit me. And then he says, "So where is the dope, dope at, Jo-Jo? []"

Q Did you remember him?

A Um, after he explained -- after he explained --

Q A certain circumstance?

A A certain circumstance.

Q Okay, and, so, he asked you a question. What did you -- what was your response?

A Excuse me? Say that one more time?

Q He asked you a question. What was the question?

A He said, "Where is the dope at, Jo-Jo []?"

Q And what was your response?

A . . . I said, "This is not my vehicle. I don't know."

Q Okay, did he ask you any other questions?

A . . . he asked me [] another question, [] which was [] basically, [] along the lines like, "Where, where, where are the drugs?"

Q And what did you say?

A I said, "This isn't my car man. It might -- a possibility. But this isn't my [] vehicle. I don't know."

Q Okay, did he ask you again?

A No.

Q He only asked you twice.

A Yes.

Q And did you tell him that there were drugs in the vehicle?

A No, I never said there was drugs inside the vehicle. I said there might be a possibility there was drugs in the vehicle, but as far as saying that, "There was drugs," that -- those words never came out of my mouth.

Q You said there might be.

A There might be.

Q And why would you think that?

A Just because I know whose vehicle it is.

Q And why is that important?

A Uh, just know who they are (unclear) --

Q But, I mean, why is -- why would that matter? Why does it matter whose vehicle it is?

A . . . it is because . . . it wasn't my car. . . .

Q Again, [] why is the owner of the vehicle relevant to why there would be drugs in the car?

A [] because I know . . . them, and . . . know what they do inside of the vehicle.

Q . . . when you say "them," who do you mean?

A [] well, I guess they were friends of mine.

Q So they were friends of yours. And their ownership of the car is relevant. But [] tell the judge why it is relevant.

A Because I know they are [] drug users.

On cross examination, Bryant admitted that he borrowed the car from a woman who

he named and explained that he knew that she was a drug user, and that he had done drugs with her before. He denied, however, borrowing her car in exchange for procuring heroin for her.

Bryant's counsel argued that Bryant did not have knowledge that drugs were in the car because it was not his car, and that saying "[t]here might be" drugs in the car would not give a police officer probable cause to search the car. The Court probed counsel on this point:

> THE COURT: So let me get this straight. So a police officer approaches a vehicle, recognizes the guy driving as somebody he has arrested for drugs. He asks him if there are drugs in the car. And according to your client, if I accept his testimony, there might be. And he is supposed to walk away?
>
> [BRYANT'S COUNSEL]: **That's not absolute proof that there are.**
>
> THE COURT: **It doesn't have to be absolute proof that there are. It has to be probable cause.**
>
> [BRYANT'S COUNSEL]: . . . I would [] argue that that's not even probable cause, because he doesn't know.
>
> THE COURT: Got you.
>
> [BRYANT'S COUNSEL]: He has indicated he doesn't know.
>
> THE COURT: And I respect every -- I do. You know that. But [] that's not probable cause?
>
> [BRYANT'S COUNSEL]: No.
>
> THE COURT: [] **that's [] textbook probable cause.**

(Emphasis added). The court then expressed the viewpoint that it would be difficult to do

any police work if Bryant's arguments were accepted.

The court denied the motion to suppress on both grounds and delivered his ruling:

> The testimony in this case is that the [] car, the vehicle was pulled over properly for a taillight being out. Corporal Meyer[] recognized the Defendant from a previous arrest. He went up to the car, [] asked the Defendant -- and it's either, "Where is the drugs?", "Where is the dope?", something those lines. He [] called the Defendant by his nickname, which the Defendant indicates it was. He noticed the Defendant was nervous, [] and asked him where the drugs were.
>
> **Either he said, "There's a couple of bags on the floor," meaning the Defendant, or he says, "There might be drugs in the car," after stating that the car was not his. In either scenario, the Court believes that at that point the officer had the right, [] under color of law, and under the law, to search the Defendant's vehicle for what he said either might be there, or what he said would be there, depending on which you believe.**
>
> In fact, though, I don't find Corporal Meyer's testimony to be suspect in this case. He was very concise about what he said. [] his report may -- while it may not have been perfect -- they never are -- in fact, the [c]ourt finds a[n] absolutely dead set, perfect report, with dead set testimony more suspect, perhaps, than something normal, which means there is always going to be some lack of memory or a conflict, because that's how human beings' minds work. They don't remember every specific thing that happened.
>
> **But the main things that he does remember is asking the Defendant if there were drugs in the car, and the Defendant either saying, "Yes, there may be -- there is a couple bags on the floor," after first saying, "There is nothing on me." Or that there might be drugs in the car. . . .**
>
> * * *
>
> And for those reasons, the Motion to Suppress is denied. That State can [] proceed to introduce the evidence and the statements, [] provided there is no other reason to object to them when the trial begins.

(Emphasis added).

B.

The Trial

The two-day trial started later that day. The State's first witness was Officer Daniel Grimes. Officer Grimes testified that, on October 26, 2015, he and Corporal Meyer were on duty, driving in two marked patrol vehicles. Grimes was traveling behind a white Ford Focus that had a broken brake light, and the driver of this car kept looking in the rearview mirror at Officer Grimes's car. Officer Grimes turned on his emergency equipment and initiated a traffic stop, at which point Bryant turned onto West Fourth Street and into a parking lot, and turned off the vehicle. Officer Grimes then approached the vehicle, told Bryant of the broken brake light, and asked for Bryant's license and registration, which Bryant did not have. Officer Grimes observed that Bryant "kept his [] fist and arms clenched [] tight on the [] steering wheel" and avoided eye contact. Officer Grimes then returned to his vehicle to perform the standard database searches for Bryant as Corporal Meyer arrived at the scene.

Corporal Meyer walked past Officer Grimes to speak to Bryant, and, shortly thereafter, Officer Grimes observed Bryant exiting the vehicle and being placed in handcuffs. Officer Grimes testified that he took custody of small black bindles[6] of heroin that were found underneath the driver's seat and a hydrocodone pill that was found in the

[6] At trial, Officer Peter Genovese, the State's street-level drug enforcement expert, testified as to what a bindle is. He testified that a "bindle" is created when a person takes a magazine page and cuts it into smaller pieces to make an envelope, which he or she then stuffs with drugs.

center console beneath the radio.[7]

The State's next witness was Corporal Meyer. Corporal Meyer repeated the testimony he gave during the suppression hearing concerning his exchange with Bryant about whether there were drugs in the car. He further related that, after the aforementioned exchange with Bryant, Officer Grimes took Bryant into custody. Corporal Meyer then searched underneath the driver's seat and found a plastic bag containing four bindles of heroin. He also recovered a pill underneath the radio.

Corporal Meyer also testified that, after the police arrested Bryant, he interviewed Bryant at the police station. During the interview, Corporal Meyer asked Bryant whether he could search his cell phone for evidence of drug distribution. Bryant consented to this search in a written form. Corporal Meyer found texts that he deemed relevant, and photographed them using another phone. Corporal Meyer explained that he took those photographs "so that [they] could give Mr. Bryant his phone back."

The State sought to introduce these text messages as Exhibits 6 and 7. Bryant objected, claiming that the State had not properly authenticated whether the messages originated from Bryant's phone. The court overruled Bryant's objection, and admitted Exhibits 6 and 7 into evidence after Officer Meyer testified that they were fair and accurate representations of the text messages he photographed on October 26, 2015. Both exhibits

[7] Specifically, Officer Grimes testified that Corporal Meyer moved the drugs from their original location "and put them back, so that [he (Officer Grimes)] could properly collect them and [] write in [his] report exactly where they were located."

were published for the jury.[8]

Officer Raymond Bednar of the FCPD, who was with Corporal Meyer during the interview at the police station, testified that he was there when Bryant signed the consent form, which was admitted as Exhibit 5. The consent form was published for the jury. He testified that he made no promises to Bryant in exchange for signing the consent form, nor did he threaten Bryant.

Melissa Clark was admitted as an expert in the field of chemistry and analysis of controlled dangerous substances. She testified that the substance in the bindles found in Bryant's car, which she had analyzed, was heroin, and that the pill was hydrocodone. Both substances were admitted into evidence.

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[8] Exhibit 6 was an October 24, 2015 text conversation with someone having the name "Angela New." We reproduce the exhibit now, showing the origin phone—the phone in Bryant's possession—on the right hand side, and Angela New on the left hand side:

Yea

Yea what!

Haha. Yea I will trade and pick hers up

Here

We didn't hardly feel it :(

Getting some new I'll let u know how it is

Exhibit 7, an October 25 text conversation with a person named "Lindsay," reads as follows, in the same format:

Hey do u still have the same stuff as Friday

Its different its good tho ppl say its not as good but it's good

Ill call u in the am after I drop lou off at school

Its hard to come by that allll the time

Thts understandable

But it's not cut and ppl still like it.

The woman who was the owner of the car that Bryant was driving when he was arrested testified next. She testified that she had bought drugs from Bryant multiple times over a span of six months, from April to October 2015, and that she would let him borrow her car on occasion to purchase heroin in exchange for a small portion of what he bought. She further testified that on the day in question, she let him borrow her car to purchase heroin, and that there were no drugs in the car at the time she gave it to Bryant. She stated that Bryant borrowed her car around three times a month for three months during that six-month span of time in which she purchased heroin from him, and that she knew he was using her car for purchasing drugs. On cross examination, she admitted that she and her boyfriend had carried drugs in the car in the past, but that she knew none were in the car that day because she had used all the heroin in her possession before lending the car to Bryant.

Finally, Officer Peter Genovese, of the FCPD's special operations division's drug enforcement unit and canine unit, testified as an expert on street-level drug enforcement. The State asked Officer Genovese to examine Exhibits 6 and 7 (the text message photos), and Bryant objected, once again, based on a lack of authentication, which the court overruled. Officer Genovese testified that the statements in Exhibits 6 and 7 were consistent with drug use and distribution and that it was "common drug talk." Based on his review of the evidence, he testified that it was his opinion that the drugs in this case "w[ere] possessed with the intention to distribute[.]"

The State rested, and Bryant did not put on any evidence. The jury convicted Bryant

of (1) possession of heroin with intent to distribute; (2) possession of heroin; (3) driving a vehicle without required minimum equipment; and (4) failure to display license on demand. He was found not guilty of possession of hydrocodone. The circuit court sentenced Bryant to 40 years, with all but 15 years suspended, for the possession with intent to distribute conviction. The possession conviction merged for sentencing purposes, and the court imposed no sentence for the two traffic convictions. Bryant filed a timely notice of appeal on May 27, 2016.

DISCUSSION

I.

Probable Cause to Search the Car

Bryant argues that "the trial court erred when it ruled that probable cause existed regardless of whether [he] stated, 'there is' or 'there might be' drugs in the car, after first stating that he didn't know [whether] there were drugs." Bryant contends that, if he merely said "[t]here might be," rather than a purely affirmative response, the police lacked probable cause to search the car for contraband. Because the court did not make a finding as to "exactly what Mr. Bryant said to Corporal Meyer," Bryant posits that this ambiguity means the police lacked probable cause to search the car.

The State contends we must give great deference to the fact finding of the circuit court. It argues that the suppression court's decision that there was sufficient probable cause for the police to search the car was supported by evidence of (1) Bryant's nervous behavior; (2) Corporal Meyers's past interaction with Bryant and knowledge that he was a

drug dealer; and (3) Bryant's response to Corporal Meyer's questions.

When the police stop a motor vehicle and detain those inside, that "detention is a seizure that implicates the Fourth Amendment." *Johnson v. State*, ___ Md. App. ___, ___, No. 2465, September Term 2015, slip op. at 15 (filed Mar. 29, 2017) (citations omitted). Such a detention is "subject to the constitutional imperative that it not be 'unreasonable' under the circumstances. As a general matter, the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred." *Whren v. United States*, 517 U.S. 806, 810 (1996).

In the present case, Bryant does not contest the validity of the traffic stop. Thus, we turn to whether Corporal Meyer had probable cause to search the vehicle after the valid traffic stop. *See Grant v. State*, 449 Md. 1, 15-16 (2016).

In reviewing a circuit court's denial of a motion to suppress pursuant to the Fourth Amendment, we are "limited to the information contained in the record of the suppression hearing," and generally do not consider evidence adduced at the subsequent trial. *State v. Wallace*, 372 Md. 137, 144 (2002) (citations omitted). When the circuit court denies the motion to suppress, "we are further limited to considering facts in the light most favorable to the State as the prevailing party on the motion." *Id.*; *see also Norman v. State*, ___ Md. ___, ___, No. 56, September Term 2016, slip op. at 10 (filed Mar. 27, 2017) (quoting *Varriale v. State*, 444 Md. 400, 410 (2015)). We will only disturb the circuit court's factual findings if they are clearly erroneous, but we review questions of law *de novo* and "make an independent constitutional evaluation by reviewing the relevant law and applying it to

the unique facts and circumstances of the case." *Wallace*, 372 Md. at 144 (citations omitted); *see also Brown v. State*, ___ Md. ___, ___, No. 64, September Term 2015, slip op. at 10 (filed Mar. 27, 2017) (citing *State v. Luckett*, 413 Md. 360, 375 n.3 (2010)).

Judge Moylan, writing for this Court in *State v. Brooks*, described the standard of review in the following manner:

> [The] standard [of review] 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 appellate court looks to the judge's ruling itself, *even in the absence of any supportive fact-finding*, and it then looks to the entire body of the evidence and searches for any scenario that could have supported the trial court's ruling in favor of the prevailing party. In the absence of actual findings and nothing but an unadorned ruling, the standard is concerned with what **could** have been found.

148 Md. App. 374, 396-97 (2002) (italics emphasis added; bold emphasis in original). This is so even though the State originally bore the burden of justifying the search at the suppression hearing (in light of the lack of a warrant). *Johnson*, slip op. at 16-17 (citing *Epps v. State*, 193 Md. App. 687, 703 (2010).

The Reasonableness Clause of the Fourth Amendment states that "[t]he 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. Recently, this Court explained that the Fourth Amendment does not protect one

> against all intrusions as such, 'but **against intrusions which are not justified in the circumstances, or which are made in an improper manner**.'" "Although the underlying command of the Fourth Amendment is always that searches and seizures be reasonable, *what is reasonable depends on the context within which a search takes place*." Subject to a few well-delineated exceptions, "warrantless searches 'are per se unreasonable

under the Fourth Amendment.'"

State v. Andrews, 227 Md. App. 350, 373-74 (2016) (emphasis in *Andrews*, internal citations omitted).

One of those "specifically established and well-delineated exceptions" to the warrant requirement, *Katz*, 389 U.S. at 357 (footnote omitted), is the automobile exception, first articulated by the Supreme Court of the United States in *Carroll v. United States*, 267 U.S. 132, 136 (1925). In that case, the Supreme Court ruled:

> [I]f the search and seizure without a warrant are made upon probable cause, that is, upon a belief, reasonably arising out of circumstances known to the seizing officer, that an automobile or other vehicle contains that which by law is subject to seizure and destruction, the search and seizure are valid.

Carroll, 267 U.S. at 149. Thus, in the case *sub judice*, the search was valid only if the police had probable cause. *See California v. Acevedo*, 500 U.S. 565, 579 (1991). Probable cause is "'a practical, nontechnical conception. In dealing with probable cause, as the very name implies, we deal with probabilities. These are not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent [people], not legal technicians, act.'" *Robinson v. State*, 451 Md. 94, 110 (2017) (some internal quotation marks omitted) (quoting *Illinois v. Gates*, 462 U.S. 213, 231 (1983)). It does not require "a preponderance of the evidence, but instead depends on a 'fair probability' on which a reasonably prudent person would act." *Id.* (quoting *Florida v. Harris*, 568 U.S. 237, ___, 133 S. Ct. 1050, 1055 (2013)).

Bryant relies heavily on a recent Court of Appeals case, *Grant*, 449 Md. at 1, for the

proposition that "[a] determination of probable cause cannot rest upon uncertainty." 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. *Id.* at 7-13. In that case, 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. Deputy Atkins testified that he "'wouldn't be surprised'" if his head crossed the window's threshold. *Id.* at 10. The parties also played a DVD of the traffic stop for the court at the suppression hearing, and the Court of Appeals 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. The circuit court 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 Court of Appeals reversed, "hold[ing] 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, stating that, "[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 Court of Appeals then discussed this Court's application of the "supplemental rule of interpretation," which it characterized as "generally employed by the Court of Special Appeals 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." *Id.* at 31 & n.8 (citing *Morris v. State*, 153 Md. App. 480 (2003)). The Court explained that it had not formally adopted this rule and declined to do so. *Id.* The Court stated that

this Court applied the supplemental rule of interpretation to conclude that Deputy Atkins detected the smell of marijuana before placing his head inside the window. *Id.* at 31. The Court reasoned that this Court's

> inference that Deputy Atkins detected the odor of marijuana prior to inserting his head into the passenger window of [Grant]'s vehicle, was inconsistent with the evidence of record, specifically, Deputy Atkins' testimony and the circuit court's "not clear" statement. Deputy Atkins testified that he could not recall the exact moment he detected the odor of marijuana upon his initial contact.

Id. at 32. The Court then reiterated that "whether Deputy Atkins detected the odor prior to inserting his head into the passenger window *was critical*." *Id.* (emphasis added). Thus, in *Grant*, this Court's holding necessarily relied on inferred facts that the record itself did not support. *Id.*

We find *Grant* distinguishable from the case before us and conclude that Officer Corporal Meyer had probable cause to search the car. In *Grant*, Deputy Atkins 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. *Id.* at 9-11. Here, Corporal Meyer's testimony was unequivocal that Bryant told him he had a "couple bags" beneath the seat.[9] Further, in *Grant*, there were no indicia of probable cause other than the smell of marijuana. *Id.* at 27. In the present case, Corporal Meyer also had witnessed Bryant's nervous behavior.

[9] Bryant finds great significance in the fact that, on cross examination, Corporal Meyer examined his report of the encounter and stated that Bryant said "A couple bags down there," rather than "I got a couple of bags down there," as he originally testified to on direct. We fail to discern the significance of this linguistic distinction.

Additionally, the circuit court found Corporal Meyer to be credible in his testimony.

Further, unlike in *Grant*, Bryant would not prevail even if the suppression court resolved the conflicting testimony over exactly what Bryant said in Bryant's favor. As the court pointed out, even if Bryant only said, "there might be" drugs in the car, we would still conclude, as the suppression court did and without employing the "supplemental rule of interpretation," that probable cause existed for Corporal Meyer to search Bryant's car.

As stated previously, probable cause is "'a practical, nontechnical conception. In dealing with probable cause, as the very name implies, we deal with probabilities. These are not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent [people], not legal technicians, act.'" *Robinson*, 451 Md. at 110 (some internal quotation marks omitted) (quoting *Gates*, 462 U.S. at 231). "A finding of probable cause requires less evidence than is necessary to sustain a conviction, but more evidence than would merely arouse suspicion." *Collins v. State*, 322 Md. 675, 679 (1991) (citations omitted). Webster's New World College Dictionary defines "probable" as "likely to occur or be; that can reasonably but not certainly be expected." Webster's New World College Dictionary 1159 (5th ed. 2016).

Bryant contends that "[a] determination of probable cause cannot rest upon uncertainty[,]" and, during the suppression hearing, Bryant's counsel argued that Bryant's "might" response was "not absolute proof" that there were drugs in the car. But the Fourth Amendment does not require that police officers have absolute proof before conducting a search. *See Collins*, 322 Md. at 679. As the suppression court observed, "it would be

tough to do any police work" if we required that police officers be certain that a warrantless search of a vehicle will reveal contraband. *See also Robinson*, 451 Md. at 109-110.

In the present case, Bryant admitted, at the very least, that there "might" be drugs in the car. Corporal Meyer testified that Bryant was acting very nervously before the traffic stop and that Bryant's whole body started shaking when he recognized Corporal Meyer as an officer involved in his previous arrest. We conclude that these combined facts established that it was at least "likely" drugs were in the car, providing sufficient probable cause for Corporal Meyer to search the car.

II.

Authentication of the Text Messages

Bryant next argues that the circuit court abused its discretion by admitting text messages because he claims that the State failed to lay a proper foundation for authentication. Bryant maintains that the State proved only that he possessed the phone in question, not that he authored the text messages on which the messages were found and that there must be additional circumstantial evidence showing ownership. Bryant cites multiple extra-jurisdictional cases for the proposition that more is required to authenticate these text messages.

The State responds that the text messages were taken from Bryant's phone when Bryant was in custody. The State further maintains that it may authenticate evidence through circumstantial evidence and that the burden of doing so is slight, and that there was enough evidence in the present case to authenticate the text messages.

We recently summarized the standard of review for most evidentiary decisions made by a trial court:

> Determinations regarding the admissibility of evidence are generally left to the sound discretion of the trial court. This Court reviews a trial court's evidentiary rulings for abuse of discretion. A trial court abuses its discretion only when "'no reasonable person would take the view adopted by the [trial] court,'" or "when the court acts 'without reference to any guiding rules or principles.'"

Donati v. State, 215 Md. App. 686, 708–09 (2014) (alteration in *Donati*, internal citations omitted).

Maryland Rule 5-901 governs methods for authentication of documents, and it provides, in pertinent part:

> (a) **General Provision.** *The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.*
> (b) Illustrations. *By way of illustration only, and not by way of limitation*, the following are examples of authentication or identification conforming with the requirements of this Rule:
>
> > (1) Testimony of witness with knowledge. Testimony of a witness with knowledge that the offered evidence is what it is claimed to be.
> >
> > * * *
> >
> > (4) Circumstantial evidence. *Circumstantial evidence, such as appearance, contents, substance, internal patterns, location, or other distinctive characteristics, that the offered evidence is what it is claimed to be.*

(Italics emphasis added; bold emphasis in original). Thus, evidence is authenticated when there is "evidence sufficient to support a finding that the matter in question is what its proponent claims." *Id.*

This Court's decision in *Dickens v. State*, 175 Md. App. 231 (2007), is controlling. In *Dickens*, we stated that the standard for authenticating text messages, consistent with Maryland Rule 5-901, is whether "a jury could infer, legitimately, that appellant sent the message." 175 Md. App. at 239 (citing *Massimo v. State*, 144 S.W.3d 210, 216 (Tex. App. 2004)). We decline to disregard *Dickens* in favor of the contrary standards of other jurisdictions that appellant suggests.

Dickens was tried and found guilty of the murder of his estranged wife. 175 Md. App. at 234. At trial, the prosecution presented five violent text messages that Dickens allegedly sent to the victim's phone. *Id.* at 236-37. The victim's mother testified that she gave her daughter a cell phone a few months before her murder. *Id.* at 237. After her daughter's murder, the mother inspected the cell phone, found the threatening text messages, and brought them to the police, who took pictures of the threatening messages. *Id.*

One of the threatening text messages was sent by "the number for a cell phone that initially belonged to the victim but had been given to appellant by the victim." *Id.* at 238. The victim's mother testified that Dickens had possession of that cell phone during the relevant time period. *Id.* This cell phone was recovered near the home of Dickens's neighbor the day after the murder, but the State presented evidence demonstrating that the threatening text was sent while Dickens was following the victim to a motel and attempting to force his way into her room. *Id.* at 236-38. As for the other texts, which came from an unidentified number, the prosecution presented circumstantial evidence (such as a

statement about their son) tending to corroborate that Dickens sent those texts as well. *Id.* at 239-40. On appeal, this Court stated that the trial court did not err in ruling that the State had properly authenticated the text messages and that "a jury could infer, legitimately, that appellant sent the message[s]." *See id.* at 239-40 (citing *Massimo*, 144 S.W.2d at 216) (quoted text referring specifically only to the first text message, but applicable to all, given disposition of case).

In the related context of evidence retrieved from social networking websites, the Court of Appeals recently held that "in order to authenticate evidence derived from a social networking website, the trial judge must determine that there is proof from which a reasonable juror could find that the evidence is what the proponent claims it to be." *Sublet*, *supra*, 442 Md. at 638. This is not a high burden. *See Dickens*, 175 Md. App. at 239 (citing *United States v. Safavian*, 435 F. Supp. 2d 36, 38 (D. D.C. 2006) (recognizing that "the burden of proof for authentication is slight" under related Federal Rule 901)); *see also Johnson v. State*, 228 Md. App. 27, 62-63 (citation omitted) (referring to authentication as a "'low bar'"), *cert. denied*, 450 Md. 120 (2016).

In *Sublet*, the Court of Appeals described the process of authenticating electronically stored information in the following manner:

> "In essence, determining whether [electronically stored information] is authentic, and therefore relevant, is a two step process. First, **'[b]efore admitting evidence for consideration by the jury, the [] court must determine whether its proponent has offered a satisfactory foundation from which the jury could reasonably find that the evidence is authentic.'** Then, 'because authentication is essentially a question of conditional relevancy, the jury ultimately resolves whether evidence

admitted for its consideration is that which the proponent claims.'"

442 Md. at 668 n.40 (emphasis added) (quoting *Lorraine v. Markel Am. Ins. Co.*, 241 F.R.D. 534, 539-40 (D. Md. 2007)).

Returning to the case before us on appeal, as in *Dickens*, we conclude that the circuit court did not abuse its discretion in admitting the text messages. A reasonable juror could certainly find that these were text messages sent by Bryant. *See Sublet*, 442 Md. at 638. Here, the phone was in Bryant's possession when Corporal Meyer asked Bryant for permission to search the phone for evidence of controlled dangerous substance possession. Bryant signed a written consent to the search, which was admitted into evidence as Exhibit 5 and published for the jury. Corporal Meyer testified that he took photos of the text message conversations with a phone, and that Exhibits 6 and 7 were fair and accurate representations of the photos he took of the text message conversations. Additionally, Officer Genovese, the State's expert, interpreted the text messages for the jury, testifying that they were "common drug talk[,]" consistent with drug use, and Bryant had been charged with a drug crime.

Bryant nonetheless contends that the State should have been required to put on testimony from Angela New and Lindsay, the purported recipients of the texts to verify that Bryant was the one sending the messages. Bryant points to *Dickens*, in which the State put on testimony demonstrating that the number sending the text messages was from a phone in the appellant's possession, as we discussed *supra*. But, in *Dickens*, the appellant had abandoned his phone, *see Dickens*, 175 Md. App. at 238, therefore such testimony may

have been necessary to prove that the appellant sent those messages. In the present case, the phone in question was in Bryant's possession when recovered. *Dickens* did not set a per se rule, holding that the quantum of direct and circumstantial evidence the State presented in that case would be required in every future case. *See* 175 Md. App. at 240 ("*Under all these circumstances*, the trial judge did not err in ruling that the text messages were properly authenticated." (emphasis added)).

We conclude that the circuit court did not abuse its discretion in admitting Exhibits 6 and 7 because "a reasonable juror could [have] f[ou]nd that the evidence is what the proponent claims it" was. *Sublet*, 442 Md. at 638.

JUDGMENTS AFFIRMED.

COSTS TO BE PAID BY APPELLANT.