UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 717

September Term, 2016

DARRICK MAURICE JONES

v.

STATE OF MARYLAND

Arthur,
Shaw Geter,
Battaglia, (Senior Judge, Specially Assigned),

JJ.

Opinion by Battaglia, J.

Filed: June 30, 2017

*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.

We are called upon in this case to consider whether the *Carroll* doctrine[1] was exceeded, after marijuana cigarettes were found in a car driven by Darrick Maurice Jones, Appellant, by a police search of its glove compartment, as well as of Jones, after he was removed from the car, and concomitant seizure of baggies of cocaine found on Jones and on the ground nearby. Jones presents one question for review:

> Did the search of Mr. Jones after he was removed from his vehicle, and the search of his vehicle's glove compartment, exceed the permissible scope of a *Carroll* doctrine search?

Jones had been indicted in the Circuit Court for Dorchester County for possession with intent to distribute a controlled dangerous substance, possession of a controlled dangerous substance that was not marijuana, possession of marijuana, two counts of use of drug paraphernalia, failure to obey a reasonable and lawful order, disorderly conduct, operating a motor vehicle without utilizing a seatbelt, failing to display a license on demand, driving or attempting to drive a motor vehicle without a driver's license, and failing to display a registration card on demand. Prior to trial, Jones filed a motion titled "Omnibus Pre-Trial Defense Motions," by which he sought suppression of evidence pursuant to Maryland Rule 4-252[2] in the following language:

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[1] In *Carroll v. United States*, 267 U.S. 132 (1925), the United States Supreme Court permitted a warrantless search of an automobile under the Fourth Amendment when the police officer had probable cause to believe that it contained either contraband or evidence of a crime.

[2] Maryland Rule 4-252, in relevant part, provides:

Rule 4-252. Motions in circuit court.

> That evidence taken from Defendant was obtained as the result of an illegal search and seizure and/or arrest in violation of Defendant's constitutional rights.
>
> *WHEREFORE*, Defendant respectfully prays that this Honorable Court suppress all evidence obtained by police authorities as the result of an illegal search and seizure and/or arrest.

Judge Brett W. Wilson, thereafter, issued a "Scheduling Order," which required that "[a]ll omnibus motions filed by defense counsel shall be particularized no later than fifteen (15) days prior to the motions hearing." Jones responded by filing a "Response to Court Order for Case Specific Motions Pursuant to Maryland Rule 4-252," in which he alleged:

> That the stop of the Defendant was no [sic] supported by probable cause and therefore the stop and subsequent search are illegal. That if the stop is found to be justified, the subsequent search of Defendant exceed [sic] the authority of Law Enforcement.

At the beginning of the hearing on the motion to suppress evidence, Jones' attorney stated that the issue before the Court regarded a "Carroll search . . . going beyond what is permitted" in Jones' case, when he stated, "Your Honor, there was a case specific motion

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> (a) **Mandatory motions.** In the circuit court, the following matters shall be raised by motion in conformity with this Rule and if not so raised are waived unless the court, for good cause shown, orders otherwise: . . . (3) An unlawful search, seizure, interception of wire or oral communication, or pretrial identification . . . .
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> (e) **Content.** A motion filed pursuant to this Rule shall be in writing unless the court otherwise directs, shall state the grounds upon which it is made, and shall set forth the relief sought. A motion alleging an illegal source of information as the basis for probable cause must be supported by precise and specific factual averments. Every motion shall contain or be accompanied by a statement of points and citation of authorities.

filed. There is a stop and then a subsequent I guess Carroll search that the Defense is arguing is going beyond what is permitted under these facts."

During the hearing, the State called Officer Beans of the Cambridge City Police Department to testify regarding the stop of Jones and the seizure of the drugs. Officer Beans described the stop for a seatbelt violation and the odor of marijuana that he noticed:

> Q. Okay. And what led you to the contact of Mr. Jones?
> A. It was a traffic stop.
> Q. For what?
> A. Seatbelt violation.
> Q. Okay. Where did you see him?
> A. I was on High Street travelling north and he was travelling south on High Street and I saw the seatbelt violation as he passed my vehicle.
> Q. Did you turn around?
> A. I did.
> Q. Initiate a traffic stop?
> A. I did.
>
> * * *
>
> Q. Okay. And when you made contact with Mr. Jones could you describe to the Judge what happened?
> A. Made contact with Mr. Jones at which time he was advised to stop and then I detected an odor of marijuana emanating from his vehicle.
> Q. Okay. Was he in the vehicle, outside his vehicle?
> A. I mean as soon as I made contact he was out. I ordered him back in. He got back in.
> Q. Okay. And then where were you when [sic] noticed the odor of marijuana?
> A. On the driver's side.
> Q. Okay. Right at that vehicle?
> A. That's correct.

Officer Beans further related that, after informing Jones that he had smelled marijuana, Jones pointed to marijuana cigarettes in the car's ashtray, after which Officer Beans conducted a search of the "entire vehicle":

> Q. Okay. Did you notify Mr. Jones that you noticed an odor of marijuana?

A. That's correct.
Q. And what did he advise you?
A. He pointed to the ashtray at which time there was marijuana cigarettes located there.
Q. Okay. And subsequently did you do a search of the entire vehicle?
A. That's correct.
Q. Did you give any other reason for searching the vehicle besides the marijuana?
A. No.

No further testimony regarding the seizure of the drugs was elicited on direct.

During cross examination, Officer Beans testified that marijuana was found in the glove box after the car had been "seized" and the marijuana cigarettes found in the ashtray:

Q. Did you take those marijuana cigarettes?
A. I did seize them.
Q. Okay.
A. Actually -- I take that back. I did not seize them because the car seized. I believe they were seized during that time.
Q. You didn't take them?
A. Right.
Q. But you subsequently made a search of the rest of the car?
A. That's correct.
Q. Okay. What did you find in the car?
A. In the glove box was a small baggy of marijuana.

Jones' attorney continued to question Officer Beans about additional seizures of drugs, to which the State objected as being "beyond the scope of the motions issue"; the objection was overruled. Officer Beans then related more information about how the officers on the scene "detained" an "agitated" Jones whereupon Officer Beans completed his search of the car and found the marijuana:

Q. Did you issue a ticket for the violation of the seatbelt?
A. I did. I do belive [sic] I did.
Q. And in the sequence of events can you tell me how that worked? It was the initial stop and you ordered Mr. Jones to get back in his vehicle; correct?

A. Correct.
Q. And then you went up and you saw the marijuana cigarettes in the ashtray?
A. Correct.
Q. Was it at that point you searched the car?
A. It was not. We got him out of the car due to -- we knew we were going to search it. He was agitated so we detained him.
Q. Okay.
A. Upon that detainment I guess he was acting in a -- his manner was unpleasant which [sic] some other officers were on the scene.
Q. Okay.
A. A short struggle ensued and then I went back and started, you know, finishing searching the vehicle and some of the marijuana was located.
Q. Okay. And then it was after that you issued the ticket for the seatbelt violation?
A. I do believe. I know there was video footage of it. I mean I don't have it in my report as stated whether it was given to him or after the fact.

Officer Beans, upon further questioning, testified that another officer, PFC Johnson of the Cambridge City Police Department, seized cocaine from Jones' pant pocket and on the ground near Jones:

Q. Okay. The charges included a charge of possession of cocaine. Where was the cocaine seized from?
A. That was done by PFC Johnson. If I can refer again? Im [sic] sorry.
Q. Sure. Were you present [sic] that search was done?
A. I was. PFC Johnson observed a clear bag sticking out of Mr. Jones [sic] right rear pocket. This is what he observed. As he was moving Mr. Jones he observed another baggy located approximately six inches from Mr. Jones. These two baggies contained one was rock substance of crack cocaine. The other was powder.
Q. Also a charge of paraphernalia?
A. That's correct. There was a scale that PFC Johnson located.

The State initially argued the lawfulness of Jones' traffic stop and the search of Jones based upon the *Carroll* doctrine:

[The State]: Your Honor, I think it's a lawful stop. He's driving in the opposite direction and he sees a seatbelt violation and initiates a traffic stop. The Defendant is leaving the vehicle as the traffic stop occurs. He's two to three feet from the vehicle. He's directed back to the vehicle. He gets back in. He's directed to the marijuana.

> Although there is new case law and there is new legislature about the -- legislation about marijuana the newest case Bowling v. State, I don't have the --
> The Court: Court of Special Appeals case?
> [The State]: Yes, sir. Where the detection of marijuana is still good for a Carroll search. And that case does -- it's a canine search it's not a human detection, but what the Court of Special Appeals said is that if there is evidence of contraband then that -- if there is going to be further evidence of contraband and contraband is defined as anything illegally possessed. Marijuana is still not legal to possess.
> The Court: Still illegal.
> [The State]: So therefore the search of the vehicle was lawful. With that I'll submit, Your Honor.

In response, Jones' attorney argued that the police officers should have ended their search of the car upon the discovery of the marijuana cigarettes in the ashtray:

> [Jones' Attorney]: Your Honor, I think there is a couple of levels of -- that I ask the Court to analyze.
>
> He's stopped by the police officer. And he's out of his vehicle. He's then ordered back into the vehicle which places him back in proximity to what the Police Officer testified where [sic] the two marijuana cigarettes.
>
> He walks up. He smells the odor of marijuana cigarettes. He sees marijuana cigarettes in the ashtray. But what Bell talks about [sic] the Police Officer's initial permissible warrantless Carroll search of the automobile was complete when they seized the single vial containing cocaine that had been observed lying on the floor of the front passenger seat. Did not extend to a further search of an (inaudible) bag inside the automobile.
>
> So the Officer has knowledge that there is a smell of marijuana. He is directed by Mr. Jones to marijuana. The marijuana is sitting in the ashtray. I don't necessarily know that that series of events particularly in the light of Bell gives that Officer permission to then search the entire car. So I don't know it's police induced exigency, but I think the analysis is similar. The Officer is placing him back into the vehicle. Once he's back into the vehicle he has seized marijuana cigarettes and he has the odor of marijuana cigarettes. I don't believe that that opens the door for an entire search of the car and all compartments.

Jones' attorney further argued that the officer had also impermissibly seized cocaine from Jones' person:

> So whatever is done after the Officer could have seized those marijuana cigarettes which is pulling Mr. Jones from the vehicle, the subsequent reaching into his pockets to get whatever bag the Officer testified there was another object,

> pulled out a bag of cocaine. I would submit all of that from that point forward is from the poisonous tree. I don't know that the facts leading up to that give those Officers permission to go into his pockets and into the remainder of his vehicle.

Judge Wilson, thereafter, made the following factual findings regarding the circumstances surrounding Jones' traffic stop and the discovery of marijuana cigarettes in the ashtray:

> The Court: Okay. All right. Well, the Court has considered the testimony of the Police Officer, the arguments of the Attorneys in this case.
>
> What I'm understanding is there was a traffic stop. Officer Beans observed that Mr. Jones did -- was not wearing a seatbelt. He made a stop which was almost immediately after the observation. Mr. Jones exited the vehicle. He was ordered back in the vehicle. When he approached the vehicle he smelled the odor of marijuana. Mr. Jones pointed to marijuana cigarettes in the ashtray. At that point Mr. Jones was removed from the vehicle. According to the Police Officer he was somewhat agitated. I'm not sure about the exact order all this happened.

Judge Wilson then concluded that the "search was appropriate" because there was "enough probable cause or at least suspicion for the Police Officer to continue to investigate the source of the smell":

> But given the case from the Court of Special Appeals, and this argument had been one that's come up since the Legislature has decriminalized certain marijuana possession. But this Court in cases before the Court of Special Appeals cases has always taken a position that that is enough probable cause or at least suspicion for the Police Officer to continue to investigate the source of the smell. The Court of Special Appeals essentially bolstered that by indicating that even a dog alert would allow continued investigation because we can't tell what the weight of a particular substance is until there is further investigation.
>
> So I believe given the state of the Law currently and the facts of this case that the search was appropriate. And the Court will deny the motion to suppress the evidence.

Following a request for clarification from Jones' attorney, Judge Wilson responded that his denial of the motion to suppress included the baggies of cocaine found on Jones' person and on the ground:

> [Jones]: And, Your Honor, for purposes of clarification is the Court saying that extends to the baggies on his person?
>
> The Court: Yeah. And that essentially was we have a Police officer seeing a quarter of something sticking out of his pocket and then a baggy on the ground within six inches of the Defendant.

Jones was ultimately convicted after trial of all of the charges, less the two charges of possession of paraphernalia and the charge of possession with intent to distribute, which were nolle prossed. He was sentenced to five years' incarceration for the possession of a controlled dangerous substance that was not marijuana, as well as one year for possession of marijuana, sixty days for driving without a license, and sixty days for disorderly conduct,[3] which were to all run concurrently with the five-year sentence for possession of a controlled dangerous substance that was not marijuana. Jones timely appealed.

With respect to appellate review of a trial court's denial of a motion to suppress, the Court of Appeals has observed:

> Our review of a circuit court's denial of a motion to suppress evidence under the Fourth Amendment, ordinarily, is limited to the information contained in the record of the suppression hearing and not the record of the trial. When there is a denial of a 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. Even so, we review legal questions *de novo*, and where, as here, a party has raised a constitutional challenge to a search or seizure, we must make an independent constitutional evaluation by reviewing the relevant law and applying it to the unique facts and circumstances of the case. We will not disturb the [circuit] court's factual findings unless they are clearly erroneous.

[3] Jones' sentence for failure to obey a reasonable and lawful order was merged with the sentence for disorderly conduct.

Grant v. State, 449 Md. 1, 14–15 (2016) (quoting *State v. Wallace*, 372 Md. 137, 144 (2002)).

Jones, at the outset, argues that Judge Wilson wrongfully denied his motion to suppress, because any further searches of his vehicle or person were unnecessary after the initial discovery of marijuana cigarettes in the ashtray. The State avers that the discovery of the marijuana cigarettes failed to limit the police from further searching the vehicle and that Jones waived any arguments regarding the seizure of cocaine because he failed to specifically raise the issue in his pleadings and only raised the issue at the end of the suppression hearing at best.

Maryland Rule 4-252 provides that a motion to suppress "must be supported by precise and specific factual averments":

> **Rule 4-252. Motions in circuit court.**
>
> (a) **Mandatory motions.** In the circuit court, the following matters shall be raised by motion in conformity with this Rule and if not so raised are waived unless the court, for good cause shown, orders otherwise: . . . (3) An unlawful search, seizure, interception of wire or oral communication, or pretrial identification . . . .
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> (e) **Content.** A motion filed pursuant to this Rule shall be in writing unless the court otherwise directs, shall state the grounds upon which it is made, and shall set forth the relief sought. A motion alleging an illegal source of information as the basis for probable cause must be supported by precise and specific factual averments. Every motion shall contain or be accompanied by a statement of points and citation of authorities.

The omnibus motion in the present case, as well as in many other cases, is not compliant with Rule 4-252 and its subsequent specification was not helpful. It was not until the hearing that the argument regarding the seizure of the cocaine was queued up. Although the State, rightfully, was relying only on the allegations with respect to the marijuana

seizure to fashion its position at the hearing, Jones' counsel did elicit testimony about the cocaine and argued the illegality of its seizure at the hearing, such that Jones cannot be seen to have waived his arguments about the cocaine, under *Ray v. State*, 435 Md. 1 (2013).

In *Ray*, the Court of Appeals considered Ray's omnibus motion seeking "suppression of unidentified evidence" that "contained no supporting factual allegations, legal arguments, or citations to authority." *Id.* at 15. He had also failed to raise the issue of unlawful arrest and, thus, had waived the issue that he only raised on appeal. In determining that Ray had waived his argument, the Court emphasized the fact that Ray had not only failed to specify his arguments in an omnibus motion but also failed to argue in the circuit court with any specificity:

> [I]n the present case, Petitioner filed, and later supplemented, a suppression motion, and argued zealously for suppression at the hearing before the motions court. But his arguments in support of suppression concerned only the legality of the stop of the vehicle and the detention of him and the other passengers after the citations were issued to the driver. Petitioner did not set forth, before or during the motions hearing, the specific grounds, facts, and arguments he now asserts on appeal, i.e., that the officers lacked probable cause to arrest him.
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> In sum, Maryland Rule 4–252 dictates that Petitioner, by failing to advance before the Circuit Court the theory that his unlawful arrest requires suppression of all evidence that was the fruit of that unlawful arrest, waived the right to have that claim litigated on direct appeal.

Id. at 19. Although the omnibus motion in the present case and its supplement lacked specificity, Jones' attorney did argue that the seizure of the cocaine was illegal, thereby distinguishing this case from *Ray*.

Turning now to the merits of the case, the Fourth Amendment to the United States Constitution guarantees that an individual has the right "to be secure in their persons,

houses, papers, and effects, against unreasonable searches and seizures . . . ." U.S. Const. amend. IV. A reasonable search under the Fourth Amendment "generally requires the obtaining of a judicial warrant," unless the search "falls within a specific exception to the warrant requirement." *Riley v. California*, 134 S. Ct. 2473, 2482 (2014). Three such exceptions implicated in the present case include the scope of a search under the *Carroll* doctrine, which permits warrantless searches of vehicles, *Carroll v. United States*, 267 U.S. 132, 149 (1925); warrantless searches incident to a lawful custodial arrest, *United States v. Robinson*, 414 U.S. 218, 224 (1973); and seizures of evidence found in "plain view." *Wengert v. State*, 364 Md. 76, 87–90 (2001); *Coolidge v. New Hampshire*, 403 U.S. 443, 466 (1971).

Jones first contends that the seizure of marijuana from the car's glove compartment exceeded the scope of the *Carroll* doctrine. Specifically, Jones argues once Officer Beans discovered the marijuana cigarettes in the ashtray after detecting an odor of marijuana from Jones' car, that he did not have the probable cause necessary to continue searching the car, thus barring the warrantless search of the glove compartment.

In *State v. James*, 87 Md. App. 39 (1991), in circumstances akin to the present, police officers had stopped James for a traffic violation and, after approaching James' car, detected the smell of marijuana. The officers' initial cursory search of the vehicle revealed marijuana "roaches" in the ashtray; after a further search, a police officer found a bag containing crack cocaine behind a panel on the passenger's side of the vehicle. The trial court granted James' motion to suppress this cocaine. Supporting a per curiam order reversing the grant, we, in an opinion written by Judge Rosalyn Bell, concluded that the

discovery of marijuana "roaches" during the initial search of the car, in combination with the detection of the odor of marijuana at the outset of the traffic stop, created probable cause to believe that more contraband existed in the car:

> The officers in the instant case had probable cause based on their ability to detect the odor of a controlled dangerous substance emanating from the car and based on the discovery of marijuana "roaches" during their initial cursory inspection. The combination of these factors was the justification for a more extensive automobile search without a warrant. We hold that the police officers had probable cause to believe that more contraband existed in the automobile.
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> * * *
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> The scope of the search in this case is not limited solely to a visual inspection, but also includes inspection of compartments and containers where the object of the search, *i.e.*, controlled dangerous substances, may be found.

Id. at 46–47. Therefore, application of the *James* principles effects the conclusion that the discovery of marijuana cigarettes in the open ashtray did not limit the police from further searching the car but, rather, created the opportunity, along with the odor of marijuana initially detected by Officer Beans, to conduct further searches of the vehicle.

With respect to the cocaine, the issue is queued up by the State as to whether the warrantless search and seizure of cocaine on Jones' person was justified as a lawful search conducted incident to an arrest. Jones, however, avers that he had not been arrested, as shown by the lack of testimony to that effect, which was necessary to have allowed the police officers to conduct the search that led to the discovery of the baggy of cocaine on his person.

"[T]he Supreme Court has made it clear that the fact of a custodial arrest alone is sufficient to permit the police to search the arrestee." *Belote v. State*, 411 Md. 104, 113 (2009) (citing *Robinson*, 414 U.S. at 235). A "working definition of arrest" is that "the

detention of a known or suspected offender for the purpose of prosecuting him for a crime." *Id.* at 114 (quoting *Cornish v. State*, 215 Md. 64, 67–68) (1957)). An arrest is effectuated by "the taking, seizing, or detaining of another (1) by touching or putting hands on him; (2) or by any act that indicates an intention to take him into custody and that subjects him to the actual control and will of the person making the arrest; or (3) by the consent of the person to be arrested." *Id.* (quoting *Bouldin v. State*, 276 Md. 511, 515–16 (1976)). The Court of Appeals has further observed "that four elements must ordinarily coalesce to constitute a legal arrest: (1) an intent to arrest; (2) under a real or pretended authority; (3) accompanied by a seizure or detention of the person; and (4) which is understood by the person arrested." *Id.* Words of arrest do not need to be spoken in a de facto arrest as "[a]n officer's objective conduct frequently is the sole indicia from which courts can determine whether, for purposes of search incident analysis, an individual has been arrested." *Id.* at 118 (citing *Dixon v. State*, 133 Md. App. 654, 673 (2000)).

In *Bailey v. State*, 412 Md. 349, 373 (2010), the conduct of an officer was scrutinized to determine whether an arrest had occurred, when the officer characterized his encounter with Bailey as a "'pat-down' to 'check . . . around the waistband where you're able to conceal . . . weapons.'" In determining a de facto arrest had occurred, the Court of Appeals acknowledged:

> In this case, Officer Lewis's conduct constituted an unambiguous show of force. He approached the petitioner while in uniform, physically restrained the petitioner, conducted a search of the petitioner's person, and ultimately took the petitioner into physical police custody. *Belote*, 411 Md. at 117, 981 A.2d at 1254, instructs us that, although Officer Lewis testified at the suppression hearing that he

> was checking the petitioner for weapons, this statement is given less weight than his objective conduct on the night in question.[] Officer Lewis's conduct demonstrates that he intended to take the petitioner into physical custody, he acted with actual authority and physically seized the petitioner, and the petitioner had a clear understanding that he was not free to leave.
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> * * *
>
> Grabbing the petitioner's wrists when he was not suspected of being armed and dangerous, then conducting a search and removing the vial from his pocket, and, finally, taking him into custody as the initial action leading up to a criminal prosecution, constituted a de facto arrest. Thus, we hold that Officer Lewis's seizure, in which he physically restrained the petitioner and ultimately took him into custody, constituted an arrest.

Id. at 373–74 (footnote omitted).

Utilizing the factors articulated by the Court of Appeals in *Bailey* in the case at bar yields the conclusion that the police officers had detained Jones after finding the marijuana cigarettes and after Jones had scuffled with them, such that a de facto arrest had occurred based upon the discovery of the marijuana cigarettes and Jones' resistance, which provided probable cause to arrest. *See Ford v. State*, 37 Md. App. 373, 379 (1977). Jones also understood that he could not leave. The seizure of the baggy on Jones' person was, thus, incident to arrest.

Jones finally argues that the seizure of the baggy of cocaine found on the ground was not lawfully seized under the plain view exception to the warrant requirement, as it was not immediately apparent from the record that the baggy contained any contraband.

This argument is largely specious because Officer Beans' testimony of "another baggy," after having spoken of a "clear bag," indicates similarity between the bags.[4] Moreover, the concept of the plain view exception does not require that the officer "must be nearly certain as to the criminal nature of the item," but have probable cause to associate the object with criminal activity:

> The requirement that an object's incriminating nature be "immediately apparent" ensures that the "plain view" doctrine is not used to engage in "a general exploratory search from one object to another until something incriminating at last emerges." *Coolidge*, 403 U.S. at 466, 91 S. Ct. at 2038, 29 L.Ed.2d 564. "Immediately apparent," however, does not mean that the officer must be nearly certain as to the criminal nature of the item. *See* [*Texas v.*] *Brown*, 460 U.S. [730,] 741–42, 103 S. Ct. [1535,] 1543, 75 L.Ed.2d 502 [(1983)]. Instead, "immediately apparent" means that an officer must have probable cause to associate the object with criminal activity. *See* [*Arizona v.*] *Hicks*, 480 U.S. [321,] 326, 107 S. Ct. [1149,] 1153, 94 L.Ed.2d 347 [(1987)]; *Riddick* [*v. State*], 319 Md. [180,] 193–95, 571 A.2d [1239,] 1245–46 [(1990)]; *State v. Wilson*, 279 Md. 189, 195, 367 A.2d 1223 (1977).

Wengert, 364 Md. at 89. In the present case, when the baggy on the ground was observed, the officers had lawfully detained Jones after making a traffic stop and observing marijuana cigarettes in his car. The testimony was sufficient that "another baggy" was found on the ground near Jones, after marijuana had been seized, as well as a clear baggy on his person.

[4] Jones cites to *In re David S.*, 367 Md. 523, 546 (2002), for that proposition that where "[t]he record . . . is devoid of any evidence to support a finding that it was immediately apparent to the officer" that a plastic bag contains drugs, the plain view doctrine cannot be invoked. *In re David S.* is inapposite, however, because the record in that case reveals no other evidence of drugs had been observed prior to the seizure and explicitly mentions that the plastic bag seized was black, and its contents could not be verified by observation alone. *Id.* at 542–46.

As a result, we affirm.

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