

Circuit Court for Frederick County
Case No.: C-10-CR-23-000693

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND*

No. 2208

September Term, 2024

TULLY WASHINGTON

v.

STATE OF MARYLAND

Nazarian,
Arthur,
Shaw,

JJ.

Opinion by Nazarian, J.

Filed: July 21, 2026

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

Tully Washington was indicted in the Circuit Court for Frederick County and charged with thirteen narcotics-related offenses, including possession of cocaine and possession with intent to distribute cocaine. After his motion to suppress the evidence seized during a traffic stop on July 6, 2023 was heard and denied, Mr. Washington was tried and convicted by a jury of possession of cocaine and possession with intent to distribute cocaine. He appeals the denial of his motion to suppress and we affirm.

I. BACKGROUND

On the evening of July 6, 2023, Detective Thomas Edwards of the Frederick Police Department’s Tactical Investigations Unit was monitoring real-time data from a GPS tracking device installed on a red 1995 Pontiac Firebird. The device had been installed pursuant to a warrant obtained as part of an ongoing narcotics investigation of Mr. Washington.

At approximately 10:41 p.m., Detective Edwards saw the Pontiac traveling westbound on Interstate 70 toward Hagerstown. He watched the car exit the interstate, stop briefly at an apartment complex, then return eastbound toward Frederick. Detective Edwards drove to Hagerstown while the vehicle was there and saw (and recognized) Mr. Washington in the front passenger seat. He couldn’t identify the driver. Detective Edwards then contacted Deputy Charles Jenkins of the Frederick County Sheriff’s Office, advised him that the vehicle was returning to Frederick from Hagerstown, and asked him to attempt a traffic stop. Deputy Jenkins, then in the Thurmont area, contacted Corporal Christopher Tyeryar, who was on patrol on Interstate 70.

While on routine patrol in the area of Interstate 70 eastbound at Ridge Road, Corporal Tyeryar saw the red Pontiac Firebird following the vehicle ahead of it at approximately four car lengths, short of the seven-car-length minimum that, he testified, is required for safe following at interstate speeds. He also saw that the vehicle's brake lamps and tag lamps were inoperative. Corporal Tyeryar initiated a traffic stop at the intersection of Route 40 and McCain Drive at approximately 11:54 p.m. The driver was identified as Trent Williams; the front-seat passenger was Mr. Washington.

Corporal Tyeryar approached the car on the passenger side while Deputy Jenkins approached on the driver's side. Deputy Jenkins made general conversation with both men and asked where they were coming from; both stated they were returning from Hagerstown and identified themselves as unemployed. Deputy Jenkins saw that Mr. Williams's chest was shaking, which he associated with nervousness, and that both occupants lit cigarettes, which he said, based on training and experience, that he associated with efforts to lower anxiety or conceal the odor of narcotics. Deputy Jenkins testified that he recognized both Mr. Washington and Mr. Williams from earlier narcotics investigations and said that he knew that both men had been involved in many such investigations. He also testified that he was aware at the time of the stop that other officers had conducted a traffic stop involving Mr. Washington about a month earlier.

After returning to his patrol vehicle, running license and warrant checks, and observing both occupants smoking, Corporal Tyeryar requested a K-9 unit. Deputy Shriver, a K-9 handler, arrived within about five minutes of the initial stop. It was only after her arrival that the officers returned to the vehicle and directed both occupants to exit. Deputy

Jenkins acknowledged on cross-examination that at the point the K-9 unit was requested, he did not believe there was probable cause to search the vehicle. He conceded further that from his position at the driver's-side window, he was unable to see any contraband inside the vehicle and couldn't see into the driver's-side door pocket.

Neither Mr. Williams nor Mr. Washington complied with the exit order immediately. Both asked why they were being ordered out and questioned the basis for the K-9's presence. The exchange continued for several minutes. Corporal Tyeryar remained on the passenger side with Mr. Washington and Deputy Jenkins remained on the driver's side with Mr. Williams.

After the extended exchange, Deputy Jenkins placed his hand on Mr. Williams's wrist and Mr. Williams stepped out of the vehicle. Deputy Jenkins testified that he and Deputy Shriver may both have had their hands on the driver's-side door when it was opened. Mr. Williams didn't open the door himself. Deputy Jenkins then walked Mr. Williams toward the front of the patrol vehicle. He didn't close the driver's-side door after Mr. Williams exited and made no effort to do so. Mr. Washington exited the passenger side approximately one minute later and was cooperative once outside the vehicle.

As Deputy Jenkins walked Mr. Williams away, Deputy Shriver remained near the open driver's-side door. Within less than a minute, she approached Deputy Jenkins and reported that she had seen a small glass jar containing a white substance in the driver's-side door pocket. Deputy Jenkins testified that at the time of the door opening, Deputy Shriver had been positioned at roughly his seven or eight o'clock—back and to his left. He acknowledged that his back was to her as he walked Mr. Williams away and that he

couldn't say where she was positioned when she made her observation. Deputy Jenkins testified that "[t]he door was open so far she could probably see it off my shoulder possibly. I'm not—I can't say where she—where she was positioned to see in—at that point." Deputy Shriver didn't testify.

Deputy Jenkins returned to the vehicle, which still had the driver's-side door open, and saw the jar in the door pocket himself using a flashlight. He testified that he hadn't started a search of the vehicle before that discovery and didn't manipulate any object to make the observation. Both men were placed under arrest.¹ A later search of the vehicle revealed a black bag on top of the rear passenger seat that contained four clear baggies of a white rocky substance, each of which weighed approximately one ounce. Laboratory analysis confirmed the substance to be cocaine.

At the end of the hearing, the parties argued about whether the evidence seized from Mr. Washington's vehicle should be suppressed. There was no argument about the lawfulness of the stop itself, the length of the stop, or the presence or timing of the K-9 unit. Mr. Washington argued that Deputy Shriver shone her flashlight into the interior door pocket rather than closing the driver's door that Deputy Jenkins had left open after removing Mr. Washington from the vehicle. Mr. Washington contended that he had a reasonable expectation of privacy in the interior of his vehicle and that the door pocket was exposed to view only because of the open door. The State responded that Deputy Shriver

¹ Body camera footage of the encounter, which is part of the record, captures the driver of the vehicle, Mr. Williams, responding to Deputy Jenkins's statement that crack cocaine had been found in the door pocket by saying, "Oh, yes. That's mine. Yes."

would have seen the jar whether she looked before or in the act of closing the door and that nothing she saw using the flashlight was itself the basis for the search. Relying on *Grant v. State*, 449 Md. 1 (2016), counsel argued that Deputy Jenkins had looked inside the car and didn't see the jar in plain view:

[N]ormally, the car door is on the inside, and there's testimony that from the vantage point of Dep. Jenkins, when he's outside, he couldn't see in the pocket. And when he took Mr. Williams out, he didn't see what was in the pocket. It was when Detective -- Dep. Shriver went over there and shined the light in is when she saw it.²

The court denied the motion in a written opinion and order. The court found that on July 6, 2023, Detective Edwards notified the deputies that the GPS-tracked red Pontiac Firebird was moving; the deputies located and stopped the vehicle for multiple traffic and equipment violations; and upon making contact with the occupants, both Mr. Williams and Mr. Washington were uncooperative and questioned the deputies' authority to order them out of the vehicle. The court also found that the Deputy saw the jar in the driver's side door pocket in plain view:

² The parties also argued the questions of whether the deputies had probable cause to arrest Mr. Williams for obstruction and hindering and whether probable cause to search the vehicle existed independently of the plain view observation. The suppression hearing also addressed a separate motion relating to a traffic stop on June 19, 2023 and the placement of a GPS tracking device on the vehicle on June 28, 2023. Deputy Jenkins testified that he was aware of Messrs. Washington's and Williams's criminal histories and that Mr. Washington had been stopped several weeks earlier for narcotics-related activity. We note as well that at the suppression hearing, Detective Edwards testified that on June 19, 2023, Deputy Bowne conducted a traffic stop on the Pontiac Firebird during which crack cocaine and United States currency were seized, and that he thereafter obtained a warrant authorizing placement of a GPS tracking device on the vehicle, which was installed on June 28, 2023. Mr. Washington raises none of these issues on appeal.

After several minutes of argument with the deputies, Detective Jenkins placed his hand on Mr. Williams’s wrist and opens [sic] Mr. Williams’s driver’s door. Mr. Williams then steps out of the vehicle. That deputy leaves the driver’s door open. A few minutes later, another deputy opens the Defendant’s door and the Defendant steps out of the vehicle. While the driver’s door is open, a third, female deputy looks into the passenger compartment of the vehicle, including the open-door pocket of the driver’s side door, with a flashlight. Inside the pocket, the female deputy sees in plain view a small glass jar filled with a white substance. The detectives seize the contraband and arrest Mr. Williams and the Defendant. A subsequent search incident to that arrest revealed a Nike bag on the rear passenger-side seat. Inside the Nike bag was a grocery bag, which contained \$119.00 and four clear bags, each filled with a large amount of a rocky white substance. Laboratory testing later confirmed the substance to be cocaine. A digital scale was also recovered from underneath where the cocaine was located.³

The court recognized that there was evidence that Mr. Washington was the subject of an ongoing drug investigation and concluded that there was a valid basis for the initial stop and that ordering Mr. Washington and Mr. Williams out of the vehicle was constitutional under the Fourth Amendment. The court then framed the dispositive question on the motion, the same question at issue on appeal, as whether leaving the driver’s door open, which had been opened for the limited purpose of removing Mr. Williams from the vehicle, created a sufficient basis for Deputy Shriver’s flashlight search of the vehicle’s interior, including the driver’s side door pocket. Noting that the issue concerned the “plain view” doctrine, the court found the use of the flashlight permissible and that the officers had a lawful right of access to the vehicle:

³ The items recovered from the vehicle on July 6, 2023, as summarized by the circuit court, were confirmed by a sworn affidavit in support of a search warrant that is contained in the record.

As discussed *supra*, the officer's initial intrusion into Mr. Williams's vehicle was lawful. Additionally, although the white powder in the jar was not immediately ascertainable as cocaine, the Defendant was the subject of an ongoing drug investigation. This, coupled with the deputies' training and experience, the location of the jar, as well as the Defendant's conduct during the stop (being uncooperative with law enforcement requests to get out of the vehicle, etc.), is sufficient foundation to support that the incriminating nature of the seized evidence was immediately apparent. Although the search involved using a flashlight to better illuminate the various compartments of the vehicle, it is well-settled that the use of a flashlight to observe into the interior of a vehicle is permissible. Third, the officer had a lawful right of access to the seized evidence by virtue of the lawful stop and the pending drug investigation into the Defendant, who was occupying the vehicle.

Therefore, the Court finds that the search of the [sic] Mr. Williams's vehicle was constitutional.

(citations omitted).

Mr. Washington appealed. We include additional detail in the discussion.

II. DISCUSSION

Mr. Washington raises one question on appeal: Did the circuit court err in denying the motion to suppress the evidence obtained at the July 6, 2023, traffic stop? He concedes that the police could order him and Mr. Williams out of the car after the stop for the traffic violation, but he argues that it was unreasonable for the officers to leave the door open under the circumstances and that the court erred by applying the plain view doctrine. By leaving the driver's-side door open, he contends, the deputies "were the cause of the plain view" situation and that their action "unreasonably exposed the door to a search." For that

reason, Mr. Washington argues that there was no probable cause to search the vehicle. The State disagrees, as do we.

Our review of a circuit court’s denial of a motion to suppress evidence under the Fourth Amendment is limited to the record of the suppression hearing. *Singh v. State*, __ Md. __, No. 36, Sept. Term, 2025 (filed May 26, 2026) (slip op. at 13) (citing *State v. Stone*, 493 Md. 78, 96 (2026)); accord *Hicks v. State*, __ Md. App. __, No. 634, Sept. Term, 2024 (filed June 4, 2026) (slip op. at 9-10). We view the evidence and all reasonable inferences “in the light most favorable to the party who prevails on the motion.” *Barnes v. State*, 437 Md. 375, 389 (2014) (citation omitted). We defer to the suppression court’s factual findings unless they are clearly erroneous, recognizing that credibility determinations and the weight of the evidence lie within the suppression court’s province. *Id.* (citations omitted). We review legal conclusions *de novo* and make an independent constitutional evaluation of whether law enforcement’s encounter with the defendant was lawful under a totality of the circumstances. *Singh*, __ Md. at __, slip op. at 13 (quoting *Stone*, 493 Md. at 96).

The Fourth Amendment to the Constitution of the United States prohibits unreasonable searches and seizures. *See, e.g., Pacheco v. State*, 465 Md. 311, 320 (2019). A warrantless search or seizure is presumed unreasonable for purposes of the Fourth Amendment unless “the circumstances fall within ‘a few specifically established and well-delineated exceptions.’” *Id.* at 321 (quoting *Katz v. U.S.*, 389 U.S. 347, 357 (1967)). Evidence obtained by government officials in violation of the Fourth Amendment is subject to the “‘exclusionary rule—a judicially imposed sanction,’ which serves to ‘deter lawless

and unwarranted searches and seizures by law enforcement officers.” *Cox v. State*, 194 Md. App. 629, 653 (2010), *aff’d* 421 Md. 630 (2011) (*quoting Myers v. State*, 395 Md. 261, 282 (2006)). One exception to the warrant requirement is the “automobile exception” which “authorize[s] the warrantless search of a vehicle if, at the time of the search, the police have developed ‘probable cause to believe the vehicle contains contraband or evidence of a crime.’” *Pacheco*, 465 Md. at 321 (*quoting State v. Johnson*, 458 Md. 519, 533 (2018)).

In assessing Mr. Washington’s threshold argument that the officer’s act of leaving the door open after ordering the occupants to exit was unreasonable, we recognize that as an incident to a lawful stop of a vehicle, an officer may always order the driver out of the car. *See Pennsylvania v. Mimms*, 434 U.S. 106, 110 (1977). This rule was extended to passengers in *Maryland v. Wilson*, 519 U.S. 408, 410-11 (1997); *accord State v. Wallace*, 372 Md. 137, 146 (2002); *see also Wyoming v. Houghton*, 526 U.S. 295, 307 (1999) (passenger’s property, left inside a vehicle, falls within the scope of a “*Carroll*” search). Mr. Washington doesn’t dispute that the police could open the car door for this purpose. He argues that leaving the door open was unreasonable under the Fourth Amendment. We are not persuaded. Opening the door for an occupant to exit a vehicle is not the same as entering it:

Indeed, the actual invasion of privacy entailed in an officer’s opening of the vehicle door is indistinguishable from, if not precisely the same as, that which occurs when an occupant is required to open a door to exit a vehicle pursuant to an order given under the authority of *Mimms* or *Wilson*.

United States v. Stanfield, 109 F.3d 976, 983 (4th Cir. 1997); *see also United States v. Glover*, 851 A.2d 473, 476 (D.C. 2004) (“[W]e attach no significance to the fact that Sergeant Sledge opened the car door for Glover; ‘there is little practical difference between ordering a person to open his door and get out of his car, on the one hand, and opening the door for the driver and telling him to get out, on the other’” (citation omitted)).

Mr. Washington was known to the police as being the subject of prior narcotics investigations. In light of that history, the lawfulness of the stop, and his and Mr. Williams’s initial reluctance to exit the car, it was reasonable for the police to open the door. Nor does Mr. Washington cite, nor have we been able to find, any case that supports the argument that leaving the door open during the lawful stop was unreasonable under the Fourth Amendment. The record reveals no testimony or other evidence connecting the open door to oncoming traffic, danger to the deputies, or danger to anyone else on the roadway. The defense’s specific argument on this point was that the deputies should have closed the door before Deputy Shriver approached because the deputies’ own K-9 protocol calls for vehicle doors to be shut before a K-9 scan is conducted. The State responded that closing the door first would not have changed the outcome since the deputy would have observed the jar in the course of closing it. The court didn’t make any findings on this point and, absent any authority to the contrary, we are not persuaded that leaving the door open under the circumstances was unreasonable under the Fourth Amendment.

Ultimately, Mr. Washington’s reasonableness argument is tied to whether the warrantless search of the car and the seizure of the contraband were supported by probable cause. The exception to the warrant requirement at issue is the plain view doctrine. “The

plain view doctrine of the Fourth Amendment requires that: (1) the police officer’s initial intrusion must be lawful . . . (2) the incriminating character of the evidence must be ‘immediately apparent’; and (3) the officer must have a lawful right of access to the object itself.” *Sinclair v. State*, 444 Md. 16, 42 (2015) (quoting *In re David S.*, 367 Md. 523, 545 (2002) (citing *Wengert v. State*, 364 Md. 76, 88-89 (2001))). “[L]aw enforcement officers may seize evidence in plain view, provided that they have not violated the Fourth Amendment in arriving at the spot from which the observation of the evidence is made.” *Kentucky v. King*, 563 U.S. 452, 462-63 (2011) (citation omitted). And “once police are lawfully in a position to observe an item first-hand, its owner’s privacy interest in that item is lost; the owner may retain the incidents of title and possession but not privacy.” *Wengert*, 364 Md. at 87-88 (citation omitted).

There is no real dispute about the incriminating nature of the item Deputy Shriver viewed and reported to Deputy Jenkins. Mr. Washington isn’t challenging the fact that the jar in the driver’s side door contained suspected crack cocaine, and officers had reason to think drugs might be present given the police investigation into suspected drug activity over the preceding weeks. The question for us is whether Deputy Shriver’s “intrusion” with a flashlight was proper under the first factor of the plain view analysis.

In *Livingston v. State*, 317 Md. 408 (1989), our Supreme Court confirmed that a police officer’s use of a flashlight to illuminate the interior of a lawfully stopped vehicle isn’t a search within the meaning of the Fourth Amendment. *Id.* at 412-13. There, a state trooper used a high-powered flashlight to observe two marijuana seeds on the front

floorboard of a vehicle he had stopped for speeding. *Id.* at 409. The Court stated that an officer’s use of a flashlight to look into a parked vehicle doesn’t constitute a search:

[T]he use of a flashlight or similar artificial illumination has been most readily upheld when it has permitted an officer to see objects inside a vehicle. When the vehicle was parked or was lawfully stopped on the public way, the courts have consistently held that the officer’s conduct in illuminating the interior of the automobile does not constitute a search.

Livingston, 317 Md. at 412-13 (footnote and citations omitted) (*quoting* 1 W.R. LaFave, *Search and Seizure* § 2.2(b), at 329 (2d. ed. 1987)); *accord Johnson v. State*, 142 Md. App. 172, 186-87, *cert. denied*, 369 Md. 180 (2002); *Pryor v. State*, 122 Md. App. 671, 681 (1998); *see also State v. Hawkins*, 969 S.W.2d 936, 938 n.2 (Tenn. Crim. App. 1997) (“The plain view doctrine does not disappear when the sun goes down”), *abrogated on other grounds, State v. McCormick*, 494 S.W.3d 673, 685-86 (Tenn. 2016); *Onofre v. State*, 474 S.W.2d 699, 701 (Tex. Crim. App. 1972) (“The plain view rule does not go into hibernation at sunset” (citations omitted)).

Out-of-jurisdiction cases bolster the point. For instance, in *United States v. Willis*, 37 F.3d 313 (7th Cir. 1994), the defendant had left the driver’s-side door of his car open before he exited the vehicle, and police confronted him. 37 F.3d at 315. The officer approached the car, observed a metallic glint through the open door, crouched near the ground, and shone his flashlight into the interior to confirm that the glint came from a handgun. *Id.* The Seventh Circuit held that the officer’s approach was lawful because the car was already parked in a public lot subject to observation by anyone, and that the use of a flashlight and crouching to obtain a better view through the open door were likewise

permissible. *Id.* at 316-17 (citing *Texas v. Brown*, 460 U.S. 730, 739-40 (1983) (“There is no legitimate expectation of privacy shielding that portion of the interior of an automobile which may be viewed from outside the vehicle by either inquisitive passersby or diligent police officers”).

United States v. McCoy, 824 F. Supp. 467 (D. Del. 1993) reached a similar conclusion. There, a police officer stopped a flatbed tow truck hauling a Mercedes Benz with no license plates and ordered the occupants out of the vehicle under *Pennsylvania v. Mimms*. *U.S. v. McCoy*, 824 F.Supp. at 470. The doors were left open by the exiting occupants. *Id.* Without entering the vehicle, the officer scanned the interior through the open doors with a flashlight and observed a handgun in a bag on the floor behind the driver’s seat. *Id.* at 471. The court held that the officer had not violated the defendant’s Fourth Amendment rights in arriving at the vantage point from which the handgun could be observed, reasoning that the occupants’ removal was lawful under *Mimms*, that the doors were opened by the occupants themselves rather than by any investigative intrusion, and that scanning the interior with a flashlight from outside the vehicle did not constitute a search. *Id.* at 473-475 (citing *Texas v. Brown*, 460 U.S. at 739-40). The plain view seizure was upheld. *Id.* at 476-77.

The court in this case found specifically that Deputy Shriver “look[ed] into the passenger compartment of the vehicle, including the open-door pocket of the driver’s side door, with a flashlight. Inside the pocket, the female deputy s[aw] in plain view a small glass filled with a white substance.” Mr. Washington counters that the deputy’s actions mirrored the actions of the officer in *Grant v. State*, 449 Md. 1 (2016). In that case, a police

officer stopped the car Mr. Grant was driving for speeding, a warrantless search ensued, and marijuana and contraband were discovered. *Grant* 449 Md. at 7-9. At the ensuing suppression hearing, the officer testified that he smelled the odor of marijuana upon “initial contact,” but he also testified that he “wouldn’t be surprised” if he smelled marijuana after his head crossed the threshold of the vehicle’s window. *Id.* at 9-10. A DVD of the traffic stop was played and although it wasn’t clear from the video when the officer detected the odor of marijuana, the suppression court acknowledged that the officer’s head appeared to cross the windowpane into the interior of the 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. In its ruling, however, the court didn’t resolve when the officer smelled marijuana:

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 omitted).

On appeal in *Grant*, both parties argued that the suppression court’s ruling about when the officer detected the odor of marijuana was ambiguous but disagreed about the result. *Grant*, 449 Md. at 13-15. Mr. Grant argued that the suppression court erred because the ambiguous ruling meant the State had failed to satisfy its burden of justifying the warrantless search. *Id.* The State explained that the ambiguity could be resolved in its favor, as the prevailing party, based on the supplemental rule of interpretation, meaning that we

could draw inferences in favor of the State to conclude that the officer detected the smell of marijuana before placing his head inside the window, and therefore, there was probable cause for the search. *Id.* at 14. We agreed with the State and affirmed.

The Supreme Court reversed, holding that the suppression court erred in denying Mr. Grant’s motion to suppress because the evidence was unclear about the timing of the officer’s detection of the odor of marijuana. *Grant*, 449 Md. at 15. In reaching that conclusion, the Court recognized that “Fourth Amendment protection extends to the interior of a vehicle.” *Grant*, 449 Md. at 17 (*first citing New York v. Class*, 475 U.S. 106, 108 (1986), *and then citing Arizona v. Gant*, 556 U.S. 332, 345 (2009)). The Court stated specifically that “[c]ourts generally hold that an officer’s physical intrusion into the interior of a vehicle through an open window or door constitutes a search under the Fourth Amendment.” *Grant*, 449 Md. at 17 (citations omitted). The Court noted as well that “an officer’s detection of odors *by virtue of a physical intrusion* into a vehicle’s interior, is also considered a ‘search.’” *Grant*, 449 Md. at 18 (emphasis added) (*citing LaFave, Search And Seizure: A Treatise On The Fourth Amendment*, § 2.5(c) (5th ed. 2015)). *Grant* emphasized that the case “hinged” on the “critical” factual determination of when the officer smelled marijuana. *Id.* at 15. And what mattered ultimately was that the search would have been unlawful if the officer entered the vehicle and the ambiguous state of the record left the State unable to meet its burden of proof:

The warrantless search in the case at bar was only lawful if Deputy Atkins detected the odor of marijuana before inserting his head into the vehicle, and the aforementioned statements accurately reflect the ambiguity of the evidence on this subject. This ambiguity was paramount at the suppression hearing

because, where evidence of a lawful warrantless search is “inconclusive[,]” the defendant must prevail.[] Therefore, where the evidence of Deputy Atkins’ detection of marijuana odor was “not clear[,]” the State failed to meet its burden of showing that Deputy Atkins’ warrantless search was lawful.

Grant, 449 Md. at 28-29 (footnote and citations omitted).

Grant is distinguishable: there, unlike here, there was a dispute over whether the officer crossed the threshold into Grant’s vehicle, an issue the motions court acknowledged but never resolved. *Grant*, 449 Md. at 9-10, 12, 29 n. 7. In this case, there was no evidence or argument about whether Deputy Shriver crossed physically into the interior of the vehicle. At most, Deputy Jenkins was positioned at roughly seven or eight o’clock, behind and to his left, when he opened the door. His back was to her as he walked Mr. Williams away, and he couldn’t say where she was when she made that observation. He testified that both he and Deputy Shriver “may have had” their hands on the door to open it, but that was the extent of it. Defense counsel argued from body camera footage that Deputy Shriver “shine[d her flashlight] first in the interior of the car” and then down into the door pocket. But that argument was made by counsel, not established by testimony, and the court didn’t make such a finding. Even if we were to assume for the sake of argument that the space between the door and the frame of the car counted as the “interior” of the car, there was no evidence and no finding by the court that officers had entered the car, nor does Mr. Washington argue that the motions court’s factual findings were clearly erroneous.

The sole question before us is whether Deputy Shriver’s observation of the jar in the driver’s-side door pocket served as a lawful predicate for the warrantless search of the vehicle. There was no evidence that the deputy crossed the threshold of the vehicle or

intruded physically into the space between the open door and the frame. On this record, there is no evidence that Deputy Shriver intruded physically into the interior of the vehicle, and the use of a flashlight to illuminate the door of a lawfully stopped vehicle didn't itself constitute a search. The incriminating nature of the jar's contents was apparent immediately and the deputy had a lawful right of access by virtue of the lawful stop. On this record, all three elements of the plain view doctrine were satisfied, the State met its burden to establish probable cause to search the vehicle, and the circuit court didn't err in denying the motion to suppress.

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