

Circuit Court for Baltimore City
Case No. 118010034

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2401

September Term, 2018

ROBERT DAVIS, JR.

v.

STATE OF MARYLAND

Arthur,
Beachley,
Woodward, Patrick L.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: September 4, 2020

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

Robert Davis, Jr., appellant, was convicted of possession of a firearm after having been convicted of a disqualifying crime following a not guilty plea upon an agreed statement of facts in the Circuit Court for Baltimore City. His sole claim on appeal is that the court erred in denying his motion to suppress the gun and other evidence that was seized during a search of his person. The State concedes that the court erred in denying the suppression motion. We agree and shall reverse the judgment of the circuit court.

At the suppression hearing, the State presented evidence that Detective Jordan Distance was responding to a call for a shooting when he observed Mr. Davis walking down the sidewalk at a “pretty high rate of speed” and smoking a “hand-rolled cigar.” Based on his training and experience, Detective Distance believed that the cigar contained marijuana. After arriving at the location of the reported shooting and observing that the scene had been secured, Detective Distance turned his vehicle around, located Mr. Davis, and then approached him on foot. Mr. Davis was no longer carrying the cigar at this point, but Detective Distance testified that he could smell the odor of marijuana emanating from Mr. Davis’s person. He asked if Mr. Davis had been smoking marijuana, and Mr. Davis stated that he had. Detective Distance and another officer then searched Mr. Davis and recovered two vials of suspected crack-cocaine in his pants pocket and a loaded firearm in his backpack. Based on this evidence, the State contended, and the suppression court found, that Detective Distance had probable cause to arrest Mr. Davis for possession of more than 10 grams of marijuana and therefore, that the search of his person was a lawful search incident to arrest.

When reviewing a ruling on a motion to suppress evidence, we defer to the suppression court’s findings of fact unless they are clearly erroneous. *Grant v. State*, 236 Md. App. 456,

467 (2018). We “only consider the facts presented at the motions hearing,” *id.*, and “view the evidence and all reasonable inferences” from it “in the light most favorable to the prevailing party.” *Sizer v. State*, 456 Md. 350, 362 (2017) (citation omitted). We review the suppression court’s legal conclusions de novo, and “mak[e] our own independent constitutional evaluation as to whether the officer’s encounter with the defendant was lawful.” *Id.*

The police may search a person incident to a lawful arrest that is supported by probable cause. *See Chimel v. California*, 395 U.S. 752, 762-63 (1969). “Probable cause to arrest exists where the facts and circumstances within the knowledge of the officer at the time of the arrest, or of which the officer has reasonably trustworthy information, are sufficient to warrant a prudent person in believing that the suspect had committed or was committing a criminal offense.” *Barrett v. State*, 234 Md. App. 653, 666 (2017) (citation omitted). “In assessing ‘whether an officer had probable cause to arrest an individual, we examine the events leading up to the arrest, and then decide whether these historical facts, viewed from the standpoint of an objectively reasonable police officer, amount to probable cause.’” *Id.* (quoting *Maryland v. Pringle*, 540 U.S. 366, 371(2003)).

Relying on *Pacheco v. State*, 465 Md. 311 (2019),¹ Mr. Davis contends that his possession of a hand-rolled cigar, the odor of marijuana coming from his person, and his admission to having recently smoked marijuana was insufficient, without more, to provide the officers with probable cause that he possessed more than 10 grams of marijuana, which would have been a criminal rather than a civil offense. The State concedes, and we agree, that

¹ *Pacheco* was decided after the court denied the motion to suppress.

Pacheco is controlling. In *Pacheco*, the Court of Appeals held that the police lacked probable cause to believe that the petitioner was in possession of more than 10 grams of marijuana where he was the driver and sole occupant of a vehicle that smelled of freshly burnt marijuana and contained a joint in the center console. In so holding, the court noted that there was no evidence “presented that addressed why [the petitioner’s possession of] this minimal amount of marijuana, which is not a misdemeanor, but rather a civil offense, gave rise to a fair probability that [he] possessed a criminal amount of marijuana on his person.” *Id.* at 333.² As in *Pacheco*, the State presented evidence at the suppression hearing indicating that Mr. Davis had been in possession of a small amount of marijuana just prior to the stop. However, there was no evidence indicating that he had possessed, or was currently in possession of, a criminal amount of marijuana. Because the police lacked probable cause to arrest Mr. Davis for any criminal offense, the search of his person was not justified as a search incident to arrest.

The State does not contend, and we are not persuaded, that search of Mr. Davis was justified under another exception to the warrant requirement. Consequently, the court erred in denying his motion to suppress. Because the evidence seized from Mr. Davis was a vital component of the State’s case and was necessary to subsequently convict Mr. Davis, we shall reverse Mr. Davis’s conviction.

**JUDGMENT OF THE CIRCUIT
COURT FOR BALTIMORE CITY
REVERSED. COSTS TO BE PAID
BY THE MAYOR AND CITY
COUNCIL OF BALTIMORE.**

² We note that in *Lewis v. State*, ___ Md. ___ No. 44 Sept. Term 2019 (filed July 27, 2020), the Court of Appeals reiterated that the odor of marijuana emanating from a person is insufficient to establish probable cause to arrest and search that person.