Circuit Court for Baltimore County
Case No. 03-K-19-000082

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2428

September Term, 2019

JEFFREY ALAN SCHECK

v.

STATE OF MARYLAND

Kehoe,
Nazarian,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Eyler, J.

Filed: February 17, 2021

Appellant, Jeffrey Alan Scheck, was indicted in the Circuit Court for Baltimore County, and charged with possession with intent to distribute cocaine, possession of cocaine, and failure to equip a vehicle with a functioning rear stop lamp. Following the denial of appellant's motion to suppress evidence, he was convicted by the court (Finifter, J.) of possession with intent to distribute cocaine and possession of cocaine. The court sentenced appellant to four years' imprisonment with all but nine months suspended, to be followed by three years of supervised probation. On appeal from his convictions, appellant contends that the suppression court erred in failing to suppress evidence discovered in his vehicle during a traffic stop.

Finding no error, we affirm.

BACKGROUND

On December 18, 2018, Officer Musa Hammett of the Maryland Transportation Authority initiated a traffic stop of a 2002 Mitsubishi Mirage with a Virginia license plate, which he observed traveling north on Interstate 95 in Baltimore County with an inoperative rear stop lamp. As Officer Hammett approached the driver's side window, he detected the smell of marijuana and cigarette smoke. Officer Hammett asked the driver, identified as appellant, for his driver's license and registration, which appellant provided. Officer Hammett then instructed appellant to exit the vehicle and asked appellant "if there was anything else in the vehicle that [he] needed to be aware of." Appellant responded that there was marijuana in the vehicle and "that he did smoke."

Officer Hammett searched appellant's vehicle, beginning with "the front passenger seat area," where he "smelled the marijuana." In the ashtray, he observed a single marijuana "roach," consisting of less than ten grams of marijuana. In the "pocket" area next to the passenger side door handle, he observed a "replica bullet," which he recognized, based on his experience, as an item used to store marijuana. Officer Hammett unscrewed the top of the replica bullet and observed a white, powdery substance, which he believed to be a controlled dangerous substance.

On the backseat of the vehicle, Officer Hammett found a black rolling bag, which contained a scale with a white, powdery residue on it. In the trunk of the vehicle, Officer Hammett discovered a second scale with a white, powdery residue, as well as a briefcase containing a plastic bag of suspected cocaine. Inside the car, he also found an unlocked safe containing a white, powdery substance.

Once the search of the vehicle was completed, Officer Hammett read appellant his *Miranda*[1] rights. Officer Hammett asked appellant if the cocaine belonged to him and appellant responded, "yes." Appellant was placed under arrest and taken into custody.

Before the circuit court, defense counsel argued that Officer Hammett did not have probable cause to continue searching appellant's vehicle after the officer discovered a "roach" in the ashtray, which contained a non-criminal amount of marijuana. Appellant argued that the "roach" was consistent with appellant's admission that there was marijuana in the car and that he had "smoked." According to the defense, once Officer Hammett

[1] *Miranda v. Arizona*, 384 U.S. 436 (1966).

observed a non-criminal amount of marijuana in the vehicle, he no longer had "probable cause to search for an illegal amount of marijuana[,]" absent some additional evidence that would lead him to believe that there was more than 10 grams of marijuana in the vehicle.

The suppression court ruled that, under *Pacheco v. State*, 465 Md. 311 (2019), the search of the vehicle was permissible based on the odor of marijuana and appellant's statement that there was marijuana in the vehicle. The court rejected appellant's contention that a "roach" containing a non-criminal amount of marijuana was not contraband. Quoting *Pacheco*, 465 Md. at 330, the court stated:

> As we made clear in *Robinson* [451 Md. 94 (2017)], marijuana in any amount remains contraband and its presence in a vehicle justifies the search of a vehicle. Therefore the eventual search of Mr. Pacheco's vehicle was permissible by application of the automobile doctrine. This case seems to be on all fours with that.

Accordingly, the court denied appellant's motion to suppress evidence seized from the vehicle.

DISCUSSION

In *Pacheco*, the Court of Appeals summarized the standard of review of a circuit court's denial of a motion to suppress:

> Our review of a circuit court's denial of a motion to suppress evidence is limited to the record developed at the suppression hearing. We assess the record in the light most favorable to the party who prevails on the issue that the defendant raises in the motion to suppress. We accept the trial court's factual findings unless they are clearly erroneous, but we review *de novo* the court's application of the law to its findings of fact. When a party raises a constitutional challenge to a search or seizure, this Court renders an independent constitutional evaluation by reviewing the relevant law and applying it to the unique facts and circumstances of the case.

Pacheco, 465 Md. at 319-20 (citations and internal quotation marks omitted).

On appeal, appellant contends that the suppression court erred in finding that the search of his vehicle was permissible pursuant to the automobile exception to the warrant requirement. He argues that though Officer Hammett had probable cause to search his vehicle based on the odor of marijuana, once Officer Hammett observed a non-criminal amount of marijuana in the ashtray, he was required "to articulate a basis for believing that there was additional marijuana or other contraband elsewhere in the vehicle in order to justify a continued search."

The State counters that appellant affirmatively waived his challenge to the scope of the search because he failed to raise that argument before the suppression court. The State argues that appellant's challenge to the justification for the search is the only issue properly before us. As to that issue, the State argues that Officer Hammett had probable cause to search the entire vehicle and his discovery of less than ten grams of marijuana in no way undermined his existing reasonable suspicion of criminal activity.

We do not agree with the State's assertion that appellant affirmatively waived his challenge to the scope of the search of his vehicle. At the suppression hearing, appellant argued that Officer Hammett lacked probable cause to do a "full blown search" of his vehicle beyond the center console area, where the officer had detected an odor of marijuana and discovered the remnant of a marijuana cigarette. We view appellant's argument, both at the suppression hearing and before us, as challenging the justification and the scope of the search of the vehicle. Accordingly, we will conclude that his arguments were preserved.

The Fourth Amendment to the United States Constitution, applicable to States through the Fourteenth Amendment, protects individuals against unreasonable searches and seizures. U.S. Const. amend. IV.; *Thornton v. State*, 465 Md. 122, 139 (2019). Warrantless searches are presumptively unreasonable, subject to a few well-defined exceptions. *Lewis v. State*, 470 Md. 1, 18 (2020) (citation omitted). The automobile exception, set forth by the Supreme Court of the United States in *Carroll v. United States*, 267 U.S. 132 (1925), is one such exception. *California v. Acevedo*, 500 U.S. 565, 580 (1991) (citations omitted). "'*Carroll* and its progeny authorize 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)).

The scope of a warrantless search of a vehicle "is defined by the object of the search and the places in which there is probable cause to believe that it may be found." *United States v. Ross*, 456 U.S. 798, 824 (1982). "If probable cause justifies the search of a lawfully stopped vehicle, it justifies the search of *every part of the vehicle and its contents that may conceal the object of the search*." *Id.* at 825 (emphasis added).

This Court has previously held that the odor of marijuana coming from a vehicle, combined with the discovery of marijuana "roaches" in a vehicle's ashtray, justified a "more extensive" warrantless search of the vehicle. *State v. James*, 87 Md. App. 39, 46-47 (1991). In *James*, police officers stopped the defendant for a traffic violation and detected the smell of marijuana as they approached the driver's window. *Id*. at 42. During a "cursory search," officers observed marijuana "roaches" in an open ashtray. *Id*. A more

thorough search of the vehicle revealed a piece of paper sticking out of the right front kick panel. *Id.* An officer pulled the paper out of the kick panel and discovered that the paper was actually a bag containing crack cocaine. *Id*. In the same kick panel, officers discovered a loaded handgun. *Id*.

We explained that the search "[was] not limited solely to a visual inspection, but also include[d] inspection of compartments and containers where the object of the search, *i.e.*, controlled dangerous substances, may be found." *Id*. at 47. We concluded that the combination of the odor of a controlled dangerous substance and the discovery of marijuana "roaches" provided probable cause for the officers "to believe that more contraband existed in the automobile[,]" justifying a continuation of their search. *Id*. at 46-47.

We have also held that the odor of marijuana coming from the passenger compartment of a vehicle provided "probable cause to believe that additional marijuana [was] present elsewhere in the vehicle." *Wilson v. State*, 174 Md. App. 434, 454 (2007). In *Wilson*, the defendant argued that probable cause did not extend to the trunk of the vehicle, after a search of the interior of the vehicle failed to reveal the source of the odor of burnt marijuana observed by police during a traffic stop. *Id*. at 442. A search of the trunk of the vehicle revealed six and one-half pounds of marijuana. *Id*. at 438.

We explained "[t]he reality is that marijuana and other illegal drugs, by their very nature, can be stored almost anywhere within a vehicle," and "it may very well be true in a lot of cases that one who smokes openly in his or her vehicle might also store marijuana in the trunk." *Id*. at 454, 455 (internal quotation marks omitted). Therefore, we concluded

that "[i]t is not unreasonable for an officer to believe that the odor of burnt marijuana indicates current possession of unsmoked marijuana somewhere inside of the vehicle, including the trunk." *Id*. at 455 (footnote omitted).

The Court of Appeals has made clear that the decriminalization of small amounts of marijuana was not intended to affect the authority of law enforcement officers to search a vehicle for marijuana. *Robinson*, 451 Md. at 127-28. In terms of establishing probable cause, "there is no distinction between the significance of a criminal amount of marijuana versus the significance of a noncriminal – but still illegal – amount of marijuana." *Id*. at 130. In *Robinson*, police searched Mr. Robinson's vehicle based on an "overwhelming smell of fresh marijuana" emanating from his vehicle, resulting in the seizure of sixteen small bags of marijuana and one oxycodone pill. *Id*. at 100. Mr. Robinson moved to suppress the evidence, arguing that the officers lacked probable cause to search the vehicle unless the officers had reasonable suspicion that the vehicle contains more than ten grams of marijuana. *Id*. at 100-01. The circuit court denied the motion to suppress and this court affirmed. *Id*. at 98. The Court of Appeals held that the odor of marijuana emanating from a vehicle constitutes probable cause to search the vehicle "as marijuana in any amount remains contraband, notwithstanding the decriminalization of possession of less than ten grams of marijuana." *Id*. at 137.

In *Pacheco*, *supra*, the Court of Appeals reiterated that "marijuana in any amount remains contraband and its presence in a vehicle justifies the search of the vehicle." 465 Md. at 330. In *Pacheco*, the police officers detected an odor of "fresh burnt" marijuana as they approached Mr. Pacheco's vehicle and observed a marijuana "joint" cigarette,

containing a non-criminal amount of marijuana, in the vehicle's center console. *Id*. at 318. The officers instructed Mr. Pacheco to exit the vehicle, searched him, and discovered cocaine in his shirt pocket. *Id*. A search of defendant's vehicle revealed marijuana and paraphernalia. *Id*. The Court of Appeals reaffirmed that the search of Mr. Pacheco's vehicle was permissible by application of the automobile doctrine, though the Court determined that police lacked probable cause to search his person. *Id*. at 333.

In the present case, the odor of marijuana, combined with appellant's statements that there was marijuana in the vehicle and that he had smoked, provided Officer Hammett with probable cause to search the vehicle. The discovery of the marijuana "roach" in the ashtray justified a "more extensive" search of the vehicle. *James*, 87 Md. App. at 47. It was not unreasonable for Officer Hammett to believe that the marijuana "roach" in appellant's vehicle "indicate[d] current possession of unsmoked marijuana somewhere inside of the vehicle, including the trunk." *Wilson*, 174 Md. App. at 455. Moreover, evidence of smoked marijuana can be just as indicative of more serious crimes, "such as the possession of more than ten grams of marijuana, possession of marijuana with the intent to distribute, or the operation of a vehicle under the influence of a controlled dangerous substance[.]" *Robinson*, 451 Md. at 133.

Officer Hammett's statement that he had smelled the odor of marijuana in the front passenger area of the vehicle did not amount to a "location-specific" limitation on the scope of the search. The "location-specific principle that 'probable cause must be tailored to specific compartments and containers within an automobile … does not apply when officers have only probable cause to believe that contraband is located somewhere within

the vehicle, rather than in a specific compartment or container within the vehicle." *Id*. at 454 (internal citations and quotation marks omitted). This was not a situation where police had reason to believe that a particular item was located inside the vehicle or that contraband was stored in a particular location. *Cf. Bell v. State*, 96 Md. App. 46 (1993), *aff'd*, 334 Md. 178 (1994) (limiting the scope of the search of a vehicle, where police had observed the defendant drop a vial through the window of the vehicle, and once that vial was seized, "the entire purpose that justified the warrantless entry in the first place had been fulfilled.").

Officer Hammett's search of the vehicle was not limited to locating the source of the smoked marijuana, but rather, extended to the locations where additional contraband was being stored. Because Officer Hammett did not know precisely where the contraband was stored, his search of the entire vehicle was justified.[2] *See United States v. Seals*, 987 F.2d 1102, 1107 n.8 (5th Cir. 1993) ("If … officers have probable cause to believe that contraband is located somewhere in a car, but they don't know exactly where, then they can search the entire vehicle.") (citing *Ross*, 456 U.S. at 824); *see also United States v. Turner*, 119 F.3d 18, 23 (D.C. Cir. 1997) (holding that where a police officer's "'suspicion was not directed at a specific container' … whether by drug dog, informant, or police surveillance … police had probable cause to search 'every part of the vehicle and its

[2] Because we affirm on this basis, we need not address the State's argument that the evidence recovered from appellant's vehicle also would be admissible under the plain view discovery doctrine.

contents … [.]’”) (citing *Ross*, 456 U.S. at 814). Accordingly, the circuit court did not err in denying appellant’s motion to suppress.

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