

Circuit Court for Montgomery County
Case No. C-15-CR-23-001161

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 510

September Term, 2024

BRANDON MANNING

v.

STATE OF MARYLAND

Friedman,
Ripken,
Kehoe, S.,

JJ.

Opinion by Kehoe, J.

Filed: July 9, 2025

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

The appeal before this Court arises from the denial of Appellant's motion to suppress evidence by the Circuit Court for Montgomery County. Appellant, Brandon Manning ("Manning"), entered a conditional guilty plea,¹ preserving his right to appeal the suppression ruling, to transporting a loaded handgun in a vehicle. Manning was sentenced to ten days of imprisonment with all but one day suspended, given credit for one day time served, and three years of unsupervised probation.

The question presented to this Court is whether the circuit court erred in denying Manning's motion to suppress evidence seized from the vehicle he was driving where an officer searched it: (a) without Manning's consent; (b) where, assuming *arguendo* he consented, his consent was coerced; or (c) where any consent he may have given was limited to a search of only the area underneath the car seats? Manning argues that the circuit court erred, and the State concedes such error. We agree and thus reverse the judgment of the circuit court.

¹ Pursuant to Maryland Rule 4-242(d), which reads, in pertinent part:

With the consent of the court and the State, a defendant may enter a conditional plea of guilty. The plea shall be in writing and, as part of it, the defendant may reserve the right to appeal one or more issues specified in the plea that (A) were raised by and determined adversely to the defendant, and, (B) if determined in the defendant's favor would have been dispositive of the case. The right to appeal under this subsection is limited to those pretrial issues litigated in the circuit court and set forth in writing in the plea.

Md. Rule 4-242(d)(2).

I. FACTUAL BACKGROUND

While on patrol, Montgomery County Police Officer Antonio Ruiz observed a vehicle that appeared to have “extremely” dark tinted windows and began to follow it. Officer Ruiz further observed the vehicle make “sporadic” lane changes and cross a solid white lane to make a left turn, pulling into a Wendy’s fast food drive-through. When the vehicle exited the drive-through, Officer Ruiz conducted a traffic stop and made contact with the driver, identified as Manning, and a female passenger.

Officer Kevin Martinez arrived on scene for backup and Officer Ruiz requested that he attempt to gain consent to search Manning’s vehicle, stating, “try to see if you can get consent to search the car [. . .] but don’t [] say it right off the get-go [] you know what I mean?” The following interaction, which was captured by Officer Martinez’s body worn camera and played during the suppressing hearing, occurred:

[Ofc. Martinez:] I -- I can double check on it, but -- but I know if my partner asked, do you have any weapons here or nothing at all? Any -- any contraband? We -- we just need to know.

Mr. Manning: No. I got weed on me.

Ofc. Martinez: Weed, I'm not worried about it. Is there anything else that (unintelligible).

Mr. Manning: (Unintelligible.)

Ofc. Martinez: Just to get a quick look, just to make sure?

Mr. Manning: (Unintelligible.)

Ofc. Martinez: If I can just search underneath the seats, is that okay? Yeah. Yeah. If you can just get out and I can search. We try to be thorough, and you all get back on your way. [. . .]

[. . .]

Ofc. Martinez: Just getting a quick look, all right?

Mr. Manning: (No audible response.)

Officer Martinez testified that Manning did not give a response to his requests to search the vehicle, but rather Manning continued with the conversation they were having. Manning testified that he did not remember his exact response, but that his “scope was, no,” and he “made a gesture like why would you need to[.]” Manning was confident that his response to the first request was, “no.”

Officer Martinez testified that after the second request to search just underneath the seats, Manning lifted his shoulders “like a shrug.” At that same time, Officer Ruiz began asking Manning questions about the status of his driver’s license. Officer Martinez interpreted Manning’s gesture as consent to search the vehicle and asked Manning to get out of the vehicle, to which he complied. Manning testified that from what he recalled, his response to the second request to search under the seats was still along the lines of a “no” but that he was distracted and more focused on the questions from Officer Ruiz.

Manning joined Officer Ruiz at his patrol vehicle, which was parked behind Manning’s vehicle, and continued the conversation about his license. Meanwhile, Officer Martinez began a search of the vehicle, starting under the seats. Officer Martinez then searched the passenger compartment of the vehicle, including a bag that was sitting on top of the front passenger seat and a gym bag that was sitting on

top of the back seat. Inside of a shoe in the gym bag, Officer Martinez found a handgun. Officer Martinez indicated to Officer Ruiz that he found a firearm and Manning was placed under arrest.

II. DISCUSSION

Primarily, Manning argues that he never consented, neither explicitly nor implicitly, to a search of the vehicle. Even if Manning consented to a search, he argues that his consent was coerced and non-voluntary. Alternatively, Manning argues that his consent was limited to a search underneath the seats and therefore the search inside the bag in the back seat exceeded the scope of his consent. The State concedes that the search of Manning's vehicle exceeded the scope of his consent. We agree that the scope of the search exceeded the consent. This conclusion is dispositive of the case and as a result, we need not address the remaining issues.

The Fourth Amendment of the United States Constitution protects individuals from unreasonable searches and seizures.² U.S. Const. amend. IV. Searches conducted without a warrant are presumptively unreasonable, but for "a few specifically established and well-delineated exceptions." *Thornton v. State*, 465 Md. 122, 141 (2019) (quoting *Katz v. U.S.*, 389 U.S. 347, 357 (1967)). One exception to

² The Fourth Amendment reads, in pertinent part, "[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, and no Warrants shall issue, but upon probable cause. . ." U.S. Const. amend. IV.

the warrant requirement is a “search that is conducted pursuant to consent.” *Schneckloth v. Bustamonte*, 412 U.S. 218, 219 (1973); *see also Gamble v. State*, 318 Md. 120, 123 (1989). The State must prove by a preponderance of the evidence that consent was “freely and voluntarily given[,]” rather than coerced. *Jones v. State*, 407 Md. 33, 51–52 (2008).

“[W]hether a consent to a search was in fact ‘voluntary’ or was the product of duress or coercion, express or implied, is a question of fact to be determined from the totality of all the circumstances.” *Schneckloth*, 412 U.S. at 227. We review the factual findings of the trial court for clear error, such as “what the officer did, what the officer asked, what the appellant responded,” however, “the voluntariness of the ostensible consent and [] the actual scope of that consent are second-level, conclusory, constitutional facts with respect to which we must make our own de novo determinations.” *Graham v. State*, 146 Md. App. 327, 350 (2002). We consider only the record of the suppression hearing, assessed in the light most favorable to the prevailing party. *State v. McDonnell*, 484 Md. 56, 78 (2023).

A “consensual search may be limited in scope.” *Varriale v. State*, 444 Md. 400, 412 (2015). The “search may go no further than the limits defined by the consent” given. *Gamble*, 318 Md. at 129 (quoting *State v. Jensen*, 44 Wash. App. 485, 723 (1986) (internal quotation marks omitted)). The “objective” reasonableness standard is used to determine the scope of a suspect’s consent, *i.e.* “what would the

typical reasonable person have understood by the exchange between the officer and the suspect?” *Florida v. Jimeno*, 500 U.S. 248, 251 (1991). However, “what the parties knew to be the object of the search at the time” must also be considered. *Sifrit v. State*, 383 Md. 77, 115 (2004).

In the case before us, Officer Martinez asked Manning if he could search the vehicle. Manning’s response was indiscernible from the body worn camera footage, but Manning testified confidently that he said “no.” Officer Martinez asked to search the vehicle a second time, however, this time he only requested to search underneath the seats. Again, Manning’s response was indiscernible from the camera footage, but this time Manning shrugged his shoulders and got out of the vehicle when requested by Officer Martinez. Officer Martinez interpreted this gesture as consent and began to search the vehicle.

We must determine what a reasonable person would have understood by the exchange between Officer Martinez and Manning as to the scope of the search. The fact that Officer Martinez asked to search the vehicle a second time and limited the request to underneath the seats is indicative that consent was denied after the first request to search the vehicle. A shrug of the shoulders followed by exiting the vehicle in response to the second request suggests that consent was given to search only underneath the seats. After this interaction, a reasonable person would have understood the scope of the search to be underneath the seats, not the entire vehicle.

As such, when Officer Martinez proceeded to search the entire vehicle, including the gym bag where the handgun was located, he exceeded the scope of the consent. Therefore, the search violated of the Fourth Amendment and the evidence seized, the handgun, should be suppressed.

III. CONCLUSION

Manning moved for this Court to issue its mandate forthwith pursuant to Md. Rule 8-606(b)(1). The State did not oppose this request. By Order of March 5, 2025, disposition of that motion was deferred to the panel. In light of the decision of this Court, we will issue the mandate forthwith. The judgment of the Circuit Court for Montgomery County is reversed and this case remanded with instructions to grant the motion to suppress. The Mandate in this case shall be issued forthwith.

**JUDGMENT OF THE CIRCUIT COURT
FOR MONTGOMERY COUNTY IS
REVERSED. CASE REMANDED FOR
FURTHER PROCEEDINGS
CONSISTENT WITH THIS OPINION.
MONTGOMERY COUNTY TO PAY
COSTS. THE MANDATE SHALL BE
ISSUED IMMEDIATELY FOLLOWING
ENTRY OF THIS OPINION.**