Circuit Court for Baltimore City
Case No. 117354030

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 885

September Term, 2018

PAUL HUNTER

v.

STATE OF MARYLAND

Meredith,
Shaw Geter,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Raker, J.

Filed: May 29, 2019

Appellant Paul Hunter was convicted in the Circuit Court for Baltimore City of possession of marijuana with the intent to distribute and possession of a firearm by a prohibited person. He presents the following question for our review:

> "Did the circuit court err in concluding, based on a clearly erroneous factual finding, that the officers had probable cause to search Mr. Hunter's vehicle?"

We shall affirm.

I.

Appellant was indicted by the Grand Jury for the Circuit Court for Baltimore City. He was charged with various counts related to possession of marijuana and possession of a firearm by a prohibited person. He filed a motion to suppress the handgun and marijuana seized from his automobile during a traffic stop, alleging that the police officer who searched the vehicle did not have constitutional grounds to do so. Following the denial of his motion to suppress the evidence, he proceeded to trial before the court on a plea of not guilty on an agreed statement of facts. The court found him guilty of possession of marijuana with the intent to distribute and possession of a firearm by a prohibited person. The court imposed a term of incarceration of five years for firearm possession and an additional five years, concurrent, for marijuana possession. The sole issue in this appeal concerns the pre-trial ruling on appellant's motion to suppress the evidence the police seized from appellant's automobile following a traffic stop.

We set out the facts from the evidence presented at the motion to suppress. On November 19, 2017, Officer James Brown[1] initiated a traffic stop after noticing that appellant was driving without a license plate affixed to the front of his car.[2] When Officer Brown returned to his car to check appellant's driving record, the dispatcher informed him that appellant was on a police "be on the lookout" ("BOLO") list as a "trigger puller." The dispatcher called for another unit to respond to the location.

Officer Brian Beaver[3] responded to assist Officer Brown. Officer Beaver's body camera shows him explaining to his ride-along that the stop was "pretextual"[4] and that vehicles are often pulled over for minor traffic violations to "get something like this." At the suppression hearing, Officer Beaver testified that the sole reason for the stop was appellant's missing license plate.

[1] Although Officer James Brown did not testify at the motion hearing, his body camera captured the stop. The State played relevant selections of the footage at the hearing.

[2] Maryland Code, Transportation Article § 13-411(a) states that "on a vehicle for which two registration plates are required, one plate shall be attached on the front and the other on the rear of the vehicle." § 13-411(c)(2) further states that at all times, registration plates must be "securely fastened to the vehicle for which it is issued: (i) In a horizontal position; (ii) In a manner that prevents the plate from swinging; and (iii) In a place and position to be clearly visible."

[3] In addition to his testimony, Officer Brian Beaver's body camera footage was admitted into evidence and played at the hearing.

[4] In *Whren v. United States*, 517 U.S. 806, 801 (1996), the United States Supreme Court held that the Fourth Amendment allows a law enforcement officer who observes a traffic violation to stop the driver under the pretext of the traffic violation and investigate his involvement in other suspected criminal activity.

Upon Officer Beaver's arrival at the scene, as reflected in the transcript of Officer Brown's body camera, Officer Brown told Officer Beaver that he "*saw* some weed in [the] car." Based on appellant's BOLO status, Officer Beaver expressed concern that appellant might have a gun and suggested that the car be searched for firearms as well. Officer Beaver told his ride-along that Officer Brown *smelled* some marijuana in the car and was going to perform a search. Officer Beaver then informed appellant that the car smelled like marijuana. At the hearing, Officer Beaver testified that there was a "strong odor of marijuana" emanating from the car.

Independent of Officer Beaver, Officer Brown also approached appellant and explained that the car smelled like marijuana. Officer Beaver's body camera recorded the following conversation between Officer Brown and appellant:

> OFFICER BROWN: Hey man.
>
> UNKNOWN MALE: I don't see nothing—
>
> OFFICER BROWN: I smelled some weed in your car.
>
> [APPELLANT]: Okay.
>
> OFFICER BROWN: Do you have any in your car?
>
> [APPELLANT]: I smoke weed from here and there, you know, man. I don't—
>
> OFFICER BROWN: You have anything in the car?
>
> [APPELLANT]: No.

The officers removed appellant from the vehicle and searched the car. They found a handgun and, inside a dark plastic bag on the floor below the back seat, a bag of

marijuana. During the hearing, the prosecutor acknowledged that, based on its location, it was "pretty much physically impossible" for Officer Brown to have *seen* the marijuana.

At the suppression hearing, appellant argued that the search of his automobile was illegal because there was no probable cause. He highlighted Officer Beaver's admission that the search was "pretextual" and that Officer Brown did not mention any marijuana smell before the dispatcher reported that appellant was on the BOLO list. He argued that the evidence obtained from the search was therefore the fruit of an illegal search in violation of appellant's Fourth Amendment Rights that must be suppressed.

The suppression court denied the motion to suppress, finding that a traffic violation is a legitimate basis for a traffic stop. The court ruled as follows:

> "Having had the opportunity *to consider the testimony, as well as the video*, I will say that . . . the initial stop—I double-checked the statute. There was legitimate basis to make the initial stop. [Maryland Code, Transportation Article § 13-411(a) and (c)] requires the front and rear license plate to be affixed horizontally to the vehicle, the front and rear. It was not so affixed. So that was justified.
>
> And then, regardless of whether Officer Brown chose to search immediately or wait for back-up, or as the State theorized, perhaps he didn't intend to search initially, the smell of the odor did provide him a justification for searching the vehicle. The statements from Officer Brown on the video to Officer Beaver, it was clear to me he said I smelled weed in the car and then Officer Beaver twice states, he, meaning Officer Brown, he smelled weed in the car.
>
> So, Officer Beaver then approaches the car and says your car smells like weed and the smell of marijuana in the car provides the probable cause to justify the search. . . . So for those reasons, the Court does find that there was sufficient legal basis for both the initial stop and search of the vehicle and the motion to suppress is denied."

The court found that the relevant statute requires that two registration plates be attached to a vehicle, one to the front and one to the rear, and that Officer Brown was justified in stopping appellant's vehicle. The court found also that Officer Brown initially told Officer Beaver that he had "smelled" marijuana in the car, demonstrating probable cause for the search of a vehicle.[5]

After the motion was denied, appellant pled not guilty on an agreed statement of facts to possession with intent to distribute marijuana and possession of a handgun by a prohibited person. As indicated, the court convicted him and imposed sentence, and appellant noted this timely appeal.

II.

Before this court, appellant argues that the circuit court erred in denying his motion to suppress because the officers lacked probable cause to search his vehicle. Appellant does not contest Officer Brown's initial stop of his vehicle. He concedes that the officer stopped the vehicle lawfully based on appellant's failure to display a front license plate. Appellant argues, however, that the trial court based its probable cause determination on an erroneous factual finding, *i.e.*, that Officer Brown told Officer Beaver that he "smelled" marijuana in the vehicle. In fact, Officer Brown told Officer Beaver that he "saw" marijuana in the car. Appellant argues that, absent this factual finding, the State did not

[5] This finding by the court, that Officer Brown told Officer Beaver he "smelled" marijuana, is at the heart of this appeal. Appellant and the State agree that the body camera video establishes that Officer Brown initially said he had "seen" marijuana.

meet its burden of proving that the search of appellant's vehicle was constitutional. Appellant contends that, independently, Officer Brown's statement that he "saw some weed" in the car during the traffic stop cannot establish a lawful search on the facts. He argues that the suppression court made no findings that Officer Brown saw marijuana in the car and that any such findings would have been difficult to sustain based on the prosecutor's admission that, given its location, it would have been nearly impossible for Officer Brown to have seen the marijuana. Thus, appellant contends, the State cannot rely on this statement to establish probable cause.

Additionally, appellant argues that Officer Beaver's statement to appellant that his car "smelled" like weed does not support the search because the court made no findings about Officer Beaver's credibility or the veracity of his statements. Appellant argues that the court's finding of probable cause was based upon the judge's erroneous finding that Officer Beaver saw marijuana as well as Officer Beaver's repetition of Officer Brown's statement. Appellant argues that the court made no finding that Officer *Beaver* smelled the marijuana. He contends that Officer Beaver's testimony must be subjected to an independent credibility determination and that without any findings to this effect, Officer Beaver's observations do not provide a basis to affirm the circuit court's ruling.

Finally, appellant argues that his placement on the BOLO list as a "trigger puller" cannot furnish probable cause to search his vehicle. Appellant argues that the record does not contain sufficient information to indicate the meaning of his inclusion on the list. Without this information, appellant contends, his inclusion on the BOLO list furnished no more than "bare suspicion" that appellant's vehicle contained evidence of a crime or

contraband. Appellant contends that, as a result, the BOLO notification also cannot support a lawful search.

Appellant argues that, taken together, the circumstances in this case do not meet the standard of probable cause. Appellant requests alternative relief: that we reverse his conviction, holding that the search was unlawful, or that we remand for a new suppression hearing to enable the court to make a credibility finding as to Officer Beaver.

The State argues that there was sufficient evidence to find that Officer Brown smelled marijuana odor coming from appellant's vehicle, even if the suppression court made a mistake in finding that Officer Brown told Officer Beaver that he "smelled" marijuana in the car. The body camera confirms that he smelled the odor of marijuana coming from appellant's car, justifying the search. Probable cause to search exists, the State contends, when a police officer detects the odor of marijuana emanating from a car. The bottom line, according to the State, is that even if the court erred in one of its factual findings (that the Officer said he "smelled" marijuana when he said he "saw" it), the court was correct in concluding that the search was justified by the odor of marijuana.

The State addresses also our standard of review. The State recognizes that, ordinarily, we defer to the factual findings of the suppression court unless clearly erroneous. Here, because the court made a clearly erroneous finding, and appellant claims that the suppression court failed to make necessary findings, the State points to the "supplemental rule of fact-finding," discussed in *State v. Ofori,* 170 Md. App. 211, 217 (2006). Under that concept, the appellate court "will perform the familiar function of

deciding whether, as a matter of law, a *prima facie* case was established that could have supported the ruling." *Id*. at 217.

Applying those standards, the State maintains that each officer told appellant that he detected an odor of marijuana coming from the car, and Officer Beaver testified to that effect at the suppression hearing. Therefore, although the suppression court did not rely on Officer Beaver's observations in denying the motion to suppress, the State argues that we should nevertheless affirm the suppression court based on his testimony. The State argues further that, by applying the supplemental rule of fact-finding, Officer Beaver's testimony can be credited fully, with ambiguities resolved in favor of the State. The State concludes that even if the court was mistaken in one of its factual findings, it was correct in its conclusion that there was probable cause for the search based on the officers' smell of marijuana.

III.

Our review of the suppression court's denial of a motion to suppress is ordinarily "limited to the evidence presented at the suppression hearing." *Carter v. State*, 367 Md. 447, 457 (2002). When the court denies a motion to suppress, we view the evidence in the light most favorable to the prevailing party, *i.e*., the State. *Belote v. State*, 411 Md. 104, 120 (2009). We defer to the suppression court with respect to factual findings "unless they are clearly erroneous." *State v. Wallace*, 372 Md. 137, 144 (2002).

As noted by the State, when an appellate court is faced with findings of fact that are ambiguous, incomplete or non-existent, the "supplemental rule of fact-finding review

comes into play." *Ofori*, 170 Md. App. at 217. In *Ofori*, Judge Charles E. Moylan, Jr., writing for the Court, explained this "rule" as follows:

> "In determining whether the evidence was sufficient, as a matter of law, to support the ruling, *the appellate court will accept that version of the evidence most favorable to the prevailing party*. It will fully credit the prevailing party's witnesses and discredit the losing party's witnesses. It will give maximum weight to the prevailing party's evidence and little or no weight to the losing party's evidence. *It will resolve ambiguities and draw inferences in favor of the prevailing party* and against the losing party. It will perform the familiar function of deciding whether, as a matter of law, a *prima facie* case was established that could have supported the ruling."

Id. We review the suppression court's legal conclusions *de novo* by performing our own "independent constitutional appraisal" of the search. *Longshore v. State*, 399 Md. 486, 499 (2007).

IV.

The Fourth Amendment to the United States Constitution protects the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures" and provides that "no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." The "automobile exception" to the warrant requirement authorizes "the warrantless search of a lawfully-stopped vehicle where there is probable cause to believe the vehicle contains contraband or evidence of a crime." *State v. Johnson*, 458 Md. 519, 533 (2018); *Carroll v. United States*, 267 U.S. 132, 153 (1925). A finding of probable cause is a "practical, common-sense decision whether, given all the

circumstances . . . there is a fair probability that contraband or evidence of a crime will be found in a particular place." *Illinois v. Gates*, 462 U.S. 213, 238 (1983). A "law enforcement officer has probable cause to search a vehicle where the law enforcement officer detects an odor of marijuana emanating from the vehicle." *Robinson v. State*, 451 Md. 94, 125 (2017).

We turn to appellant's argument that the suppression court's finding of probable cause for the search of his car was based on an erroneous finding of fact. A factual finding relied on by a court is clearly erroneous when "although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." *Goodwin v. Lumbermens Mut. Cas. Co*., 199 Md. 121, 130 (1952). A factual finding is likely erroneous when a document in evidence "belies the judge's finding." *Attorney Grievance Com'n v. Maignan,* 390 Md. 287, 349 (2005).

The suppression court found that Officer Brown told Officer Beaver initially that he "smelled" marijuana coming from appellant's vehicle. In fact, both the body camera footage and the supplemental transcript reflect Officer Brown telling Officer Beaver that he "saw" marijuana in the car. Thus, the court's finding of fact that Officer Brown reported the smell of marijuana to Officer Beaver was clearly erroneous.

The suppression court's factual error does not mean, however, that appellant is entitled necessarily to reversal or remand.

> "Where the record in a case adequately demonstrates that the decision of the trial court was correct, although on a ground not relied upon by the trial court and perhaps not even raised by the parties, an appellate court will affirm. In other words, a

> trial court's decision may be correct although for a different reason than relied on by that court."

Robeson v. State 285 Md. 498, 502 (1979). Regardless of the suppression court's mistaken finding, if the record shows grounds which substantiate the finding of probable cause, we may affirm.

In this case, we hold that the suppression court did not abuse its discretion in denying appellant's motion to suppress because the record shows clearly that the officers had probable cause to search the vehicle. Setting aside the court's erroneous finding that Officer Brown told Officer Beaver that he "smelled" marijuana, ample evidence exists to support the court's conclusion that Officer Brown smelled marijuana in appellant's car. The court reviewed body camera footage of Officer Brown stating to appellant that he smelled marijuana in the vehicle. Similarly, there was sufficient evidence for a reasonable court to find that Officer *Beaver* smelled marijuana wafting from appellant's vehicle. The body camera footage showed Officers Brown and Beaver explaining to appellant that his vehicle had a strong odor of marijuana. Officer Beaver's testimony at the suppression hearing confirmed the video's accuracy and that he had considerable experience with stopping vehicles based on the odor of marijuana. The judge noted that he considered the *testimony* as well as the video. From the video and testimony, the record contains evidence sufficient to affirm the suppression court's finding that there was probable cause to search appellant's vehicle.

Appellant's argument that this Court should not credit Officer Beaver's testimony absent an independent credibility determination is meritless. Although the suppression

court made no explicit factual finding about Officer Beaver's credibility, it is clear from the court's ruling that the court found the officer to be a credible witness.[6] Additionally, because Officer Beaver is a witness for the prevailing party, we may "fully credit" and "give maximum weight" to his testimony under the normal principles of review. *Ofori*, 170 Md. App. at 217.

The body camera footage and testimony presented at the suppression hearing supported the suppression court's finding of probable cause based upon the odor of marijuana. The suppression court did not abuse its discretion in denying the motion to suppress.

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY APPELLANT.

[6] We agree with the State's characterization of *Grant v. State*, 449 Md. 1 (2016), as inapplicable to this case. In *Grant*, the evidence was inconclusive regarding whether a police officer was in a position from which he could detect lawfully the odor of marijuana. *Id.* at 28. The suppression court made an express factual finding that the evidence was unclear on that issue. *Id.* On appeal, the Court of Appeals found that this Court should not have applied the supplemental rule of fact finding to resolve the ambiguity and hold that the officer detected the odor of marijuana from a lawful position because this finding was inconsistent with the evidence on the record. *Id.* at 32.

In the instant case, Officer Beaver's testimony is neither inconclusive nor unclear. In fact, the court implicitly found him credible—it stated that its finding of probable cause was based on Officer Beaver's testimony as well as the videos. To the extent that the suppression court left any ambiguity regarding Officer Beaver's credibility, this Court may apply the supplemental rule of fact-finding to credit his testimony and will not contradict the record by doing so.