Circuit Court for Washington County
Case No.: C-21-CR-20-256

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1451

September Term, 2020

ANTHONY BOWARD

v.

STATE OF MARYLAND

Reed,
Wells,
Zic,

JJ.

Opinion by Wells, J.

Filed: January 10, 2022

Appellant, Anthony Boward, was charged by criminal information in the Circuit Court for Washington County, Maryland, with possession with intent to distribute fentanyl and related counts.[1] After his motion to suppress was denied, Boward entered a not guilty plea on an agreed statement of facts and was found guilty of possession with intent to distribute fentanyl. The court sentenced him to ten years' incarceration, with credit for time served and the balance of his sentence suspended, to be followed by five-years' supervised probation.[2] Boward timely appealed and presents the following question for our review:

> Did the trial court err in denying Appellant's motion to suppress evidence recovered from his vehicle after its warrantless seizure?

For the following reasons, we shall affirm.

BACKGROUND

On February 27, 2020, Agent Ronald Isaacs, assigned to the Washington County Narcotics Task Force ("NTF") with the Hagerstown Police Department, conducted a controlled buy investigation involving the purchase of narcotics by a confidential informant ("CNI") from Boward and Jonathan Warren Carroll at the Walmart Supercenter, located at 17850 Garland Groh Boulevard in Hagerstown, Maryland. At around 5:15 p.m. on that date, after the CNI purchased suspected narcotics from Carroll inside the Walmart

[1] Although the original criminal information indicated one of the substances recovered was heroin, the counts were amended once the lab results indicated that the substance was, in fact, fentanyl.

[2] Boward was also found guilty, in the same hearing but in a different case, of involuntary manslaughter due to the death of Paul Eugene Boppe, caused by an overdose of fentanyl. He was sentenced for that conviction to three-years' incarceration, with credit for time served.

bathroom, Carroll left the store and got into the passenger side of a black Honda Accord bearing Pennsylvania registration plates that was waiting in the parking lot. Boward was the driver of the Honda. Both Boward and Carroll were then taken into custody by members of the NTF. A search incident to that arrest returned the money used in the controlled buy. Meanwhile, the suspected narcotics purchased by the CNI from Carroll field-tested positive for heroin.[3]

Pertinent to the issues raised on appeal, the Honda was moved by other agents to a marked parking spot in the Walmart parking lot, where it remained unattended for several hours. Agent Isaacs explained:

> We, we were -- because both Defendants were taken into custody, instead of towing the vehicle, we were just going to let it remain at the property so if they got out they would have their vehicle, or somebody could come pick up the vehicle instead of getting towed.

Agent Isaacs agreed that they did not notify anyone on Boward's behalf to come retrieve the Honda. He further agreed that the vehicle was locked and that an unidentified police agent retained the car keys. As explained on cross-examination, the Honda was registered to Heather Baker.[4]

[3] The case against Boward involving the recovery of this suspected heroin from the controlled buy was nol prossed at the not guilty plea hearing. As will be explained, the charges in this case relate to the fentanyl found inside a caulking gun tube in the Honda after it was impounded and pursuant to a search warrant.

[4] There is no further information in the motion hearing concerning the identity of Baker or her relationship to Boward. The State did not argue standing at the motions hearing and thus, may not pursue that argument on appeal. *See generally, Upshur v. State*, 208 Md. App. 383, 395-96 (2012) ("A failure of the State to raise a challenge to a defendant's standing at the suppression hearing operates as a waiver of the challenge") (continued)

Agent Isaacs further testified "[w]e were just going to let the vehicle be until either Mr. Boward got released that night or he could make arrangements to pick up the -- have the vehicle picked up." He explained this was standard NTF protocol. And, he testified, also on cross-examination, that "[i]t was just going to remain because I wasn't going to seize the vehicle because the vehicle didn't, you know, come back -- or owned by Mr. Boward. So that's why we -- I left it at the parking lot."

When Carroll was subsequently interviewed at the police station, he informed Agent Isaacs that additional narcotics were secreted inside a caulking gun tube located inside the Honda. After speaking with Carroll, Agent Isaacs decided to impound the Honda. He went back to the Walmart parking lot at around 10 p.m. that evening and parked behind the vehicle, where he waited for approximately one-half hour for the tow truck to arrive.[5] Agent Isaacs agreed that the Honda had been parked in the Walmart parking lot for approximately four hours at that point. He further testified that it was his intention to have the vehicle towed to the Washington County Sheriff's Office impound lot and then search the vehicle after obtaining a search warrant. He explained that he was waiting for Deputy

(citations omitted), *cert. denied*, 430 Md. 646 (2013). The Honda was eventually released to Baker after the search warrant was executed.

[5] The State does not dispute that Agent Isaac's act of parking behind the vehicle under the circumstances amounted to a seizure. *See generally, Swift v. State*, 393 Md. 139, 150 (2006) (delineating some factors to consider when assessing whether an encounter is a seizure). *But cf. State v. Dick*, 181 Md. App. 693, 709 (2008) ("[A] blocking vehicle is not the motorized equivalent of handcuffing.").

Bryan Teets of the Washington County Sheriff's Office to arrive with the towed motor vehicle report and tow the vehicle because he, Agent Isaacs, was not a county employee.

After the Honda was towed to the county impound lot, at approximately 10:37 p.m., Agent Isaacs obtained and executed a search warrant on the vehicle.[6] Suspected heroin was recovered from within the seized caulking tube. That tube was found in the rear passenger area of the Honda.

On direct examination, Agent Isaacs was asked why he did not return the keys to the Honda to Boward. He explained that "once we found out there was additional CDS inside of the vehicle, it was my determined [sic] to take the vehicle and, and have a search warrant for the vehicle." Agent Isaacs confirmed that this was standard NTF protocol when the police learn "that there's another crime, uh, is in play[.]"

Agent Isaacs agreed that the Honda was seized and inventoried prior to execution of the search warrant. Asked by defense counsel to further explain the NTF protocol for parked cars, Agent Isaacs testified as follows:

> A. It just depends. Maybe if we're going to seize it for forfeiture, or for a search warrant, or somebody-- or back to the Sheriff's lot waiting for somebody to pick it up, or just leave it on private property.
>
> Q. Is it typical practice to seize the vehicle absent a warrant?

[6] The search warrant and return was admitted into evidence at the motions hearing and is included with the record on appeal.

A. It's – like I say, it just depends on the scenario.[7]

Agent Isaacs agreed that the vehicle was searched incident to Boward's arrest, and prior to the being towed to the impound lot. He also testified that, when he returned later, after receiving the additional information from Carroll, he parked behind the Honda and illuminated it with his lights until the tow truck arrived. He did not check to see if it remained locked and did not attempt to enter the vehicle at that time.

Following the reception of evidence, Boward conceded that the arrest and initial seizure of the Honda was lawful but argued that, after it was parked and left in the Walmart parking lot, it was no longer under police control. Boward argued that the subsequent search could not be justified as a search incident to arrest.[8] Boward's contention was that the vehicle was illegally seized without probable cause when Agent Isaacs returned several

[7] A portion of the pertinent inventory procedures were admitted into evidence and are included with the record on appeal. Agent Isaacs agreed that this policy did not provide any guidance on when police are supposed to obtain a warrant on a vehicle.

As for the search warrant itself, in addition to specifically identifying the vehicle in question, the application further provided details of the controlled buy between the CNI and Carroll and Boward. The application also included details of Agent Isaac's conversation with Carroll at the police station, where Carroll informed him that Boward "hid the suspected Crack Cocaine and Suspected Heroin inside of a caulking gun that's in the toolbox in the back seat of the black in color 2003 Honda Accord." The application indicates that the Honda was towed to the Washington County Sheriff's Office Impound Lot. Based on this, the affiant, Agent Isaacs, averred that there was probable cause to believe that the Honda contained controlled dangerous substances and other items relating to the commission of violations of the narcotics laws of Maryland.

[8] The motions court did not rely on the search incident rationale and, as the parties do not pursue it on appeal, we shall not consider it further.

hours after the arrest and parked behind it in the Walmart parking lot. Defense counsel argued:

> I understand that Agent Isaacs had obtained information. And I understand that the police have to process their information and they can't necessarily do everything at, at once. What [the Prosecutor] said is that it's common practice to seize vehicles. Well then the vehicle should have been seized at 17:17, not parked in a parking lot.
>
> If it's common practice to seize the vehicle contemporaneous with an arrest pursuant to NTF policies, seize the vehicle. If you made a mistake, then you return the vehicle. What we have is a break in what was the original -- it would have been the original probable cause to take that vehicle, to seize that vehicle, moving up forward to a separate incident for which there was no judicial authority, no warrant to seize that vehicle. That's our proposition where it becomes that it was a warrantless seizure of the vehicle, whereby the police then later got a lawful search warrant and then searched the vehicle and found the items that they found.
>
> We believe, Your Honor, that that delay with new probable cause does not, does not allow the State or the agent to piggyback off of the original arrest at 17:17.

The court subsequently denied the motion in a written Opinion and Order of Court, setting forth the following chronology in its findings of fact:

> The following is a timeline of relevant events, which are not disputed, and are adopted as findings by this Court.
>
> 5:06 p.m.: CNI makes contact with Co-Defendant and Defendant.
>
> 5:07 p.m.: CNI and Co-Defendant enter Wal-Mart to complete controlled transaction.
>
> 5:16 p.m.: CNI and Co-Defendant exit Wal-Mart.
>
> 5:17 p.m.: Officers make contact with vehicle and arrest the passenger, Co-Defendant and driver, Defendant Anthony Obryan Boward.
>
> 5:18 p.m.: Agent Issacs recovers Task Force funds and two cell phones from the vehicle during search incident to arrest.

5:21 p.m.: Agent Issacs makes contact with CNI outside of Wal-Mart.

5:23 p.m.: Agent Issacs removes surveillance equipment from CNI.

5:23 p.m.: Vehicle parked in parking space by Agents.

5:35 p.m.: Agent Issacs leaves Wal-Mart.

5:44 p.m.: Agent Issacs arrives at the 600 block of W. Washington Street, Hagerstown, Maryland with the CNI.

5:47 p.m.: Agent Issacs conducts post search of CNI.

Unknown timeframe: Agent Issacs debriefs the CNI in reference to the present investigation.

Unknown timeframe: Agent Issacs interrogates the Co-Defendant.

Between 9:00 p.m. - 10:00 p.m.: Agent Issacs arrives at Wal-Mart and parks behind the vehicle.

Unknown timeframe: Agent Issacs waits "maybe a half an hour or so" for the tow truck to arrive.

Unknown timeframe: Agent Issacs waits "no more than 20 minutes for them to load up and get to impound" as the vehicle was loaded onto the tow truck and impounded.

10:37 p.m.: The vehicle is placed in impound.

The court then relied on *Chambers v. Maroney*, 399 U.S. 42 (1970) and *Carroll v. United States*, 267 U.S. 132 (1925), and held as follows:

> The Court finds the actions of Agent Issacs to be proper under the circumstances. Agent Issacs did not search the vehicle upon his arrival at Wal-Mart and further testified that he did not even exit his vehicle. The vehicle was not searched for a second time, other than the standard inventory search at the time of impound, before the search warrant was lawfully obtained.

The court then concluded:

> Agent Issacs had probable cause to believe, through information gained during the post-arrest interview with the Co-Defendant that the

> vehicle contained further evidence of the crime for which the Defendant was arrested. The Court finds it significant that the information received about additional evidence in the vehicle was not just information about a crime, but about the crime currently and continuously under investigation by the NTF Agents. Under those circumstances the time delay between the arrest and the seizure of the vehicle was not unreasonable, especially in light of the fact that the keys to the vehicle were still in the possession of the Agents.
>
> Given the aforementioned facts and circumstances, the February 27, 2020 seizure of the vehicle did not violate Defendant's rights under the Fourth Amendment.

DISCUSSION

In his brief to this Court, Boward concedes that the initial seizure of his vehicle, ending when it was left parked in the Walmart parking lot, was lawful, but argues that his vehicle was illegally seized when "Agent Isaacs went back to the scene of the initial arrest an estimated 4 to 5 hours later and seized the vehicle by parking behind it." The State responds that the seizure of the Honda, after the police learned additional information about its contents and prior to issuance and execution of the search warrant, was reasonable under the Fourth Amendment. The State continues that the exclusionary rule does not apply to suppress the narcotics eventually recovered from the Honda during execution of the search warrant because, under the independent source exception, "[n]othing in the application for the search warrant came from Agent Isaac's seizure of the car." In reply, Boward maintains that the seizure of the vehicle was unlawful and that the independent source doctrine is inapplicable.

Standard of Review of Fourth Amendment Cases

Our review of a circuit court's denial of a motion to suppress evidence is "limited to the record developed at the suppression hearing." *Trott v. State*, 473 Md. 245, 253-54

(2021) (citing *Pacheco v. State*, 465 Md. 311, 319 (2019), in turn quoting *Moats v. State*, 455 Md. 682, 694 (2017)), *cert. denied*, __ S.Ct.__, No. 21-287, 2021 WL 4508671 (October 4, 2021). And the record is examined "in the light most favorable to the party who prevails on the issue that the defendant raises in the motion to suppress." *Norman v. State*, 452 Md. 373, 386, *cert. denied*, 138 S. Ct. 174 (2017). The trial court's factual findings are accepted unless they are clearly erroneous, however, when there is a constitutional challenge to a search or seizure under the Fourth Amendment, this Court performs an "'independent constitutional evaluation by reviewing the relevant law and applying it to the unique facts and circumstances of the case.'" *Grant v. State*, 449 Md. 1, 15 (2016) (quoting *State v. Wallace*, 372 Md. 137, 144 (2002)). *Accord Trott*, 473 Md. at 254; *Pacheco*, 465 Md. at 319-20.

Pertinent to our discussion, the Court of Appeals has stated the following about encounters under the Fourth Amendment:

> The Fourth Amendment to the United States Constitution protects "against unreasonable searches and seizures[.]" U.S. Const. amend. IV "The exclusion of evidence obtained in violation of these provisions is an essential part of the Fourth Amendment protections." *Swift v. State*, 393 Md. 139, 149, 899 A.2d 867 (2006); *see also Mapp v. Ohio*, 367 U.S. 643, 655–56, 81 S.Ct. 1684, 6 L.Ed.2d 1081 (1961). In determining whether a search or seizure is lawful, "[t]he touchstone of our analysis under the Fourth Amendment is always the 'reasonableness in all the circumstances of the particular governmental invasion of a citizen's personal security.'" *Pennsylvania v. Mimms*, 434 U.S. 106, 108–09, 98 S.Ct. 330, 54 L.Ed.2d 331 (1977) (quoting *Terry v. Ohio*, 392 U.S. 1, 19, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968)). Recognizing that the constitutional gauge for purposes of Fourth Amendment analysis is "reasonableness," we have explained that "'[w]hat is reasonable depends upon all of the circumstances surrounding the search or seizure and the nature of the search or seizure itself.'" *Lewis v. State*, 470 Md. 1, 18, 233 A.3d 86 (2020) (quoting *United States v. Montoya de Hernandez*, 473 U.S. 531, 537, 105 S.Ct. 3304, 87 L.Ed.2d 381 (1985)). "Whether a particular

> warrantless action on the part of the police is reasonable under the Fourth Amendment depends on a balance between the public interest and the individual's right to personal security free from arbitrary interference by law officers." *Pacheco*, 465 Md. at 321, 214 A.3d 505 (internal quotations omitted).

Trott, 473 Md. at 254–55 (footnotes omitted).

As indicated, there is no dispute that Boward was lawfully stopped while driving the Honda and then arrested based on the circumstances surrounding the controlled buy between the CNI and Boward's co-defendant, Carroll, inside the Walmart. Further, there is no dispute with respect to the search warrant, per se, except under the fruit of the poisonous tree doctrine. *See generally, Wong Sun v. United States*, 371 U.S. 471, 488 (1963). Instead, the sole issue presented concerns the reasonableness of Agent Isaacs' action of returning to the Walmart parking lot and parking behind the legally parked Honda, after he received additional information from Boward's co-defendant and prior to the arrival of the tow truck.

Carroll Doctrine

Generally, a warrantless search or seizure is presumed to be unreasonable for purposes of the Fourth Amendment unless "the circumstances fall within 'a few specifically established and well-delineated exceptions.'" *Pacheco*, 465 Md. at 320-21 (quoting *Katz v. U.S.*, 389 U.S. 347, 357 (1967)). One exception to the warrant requirement is the "automobile exception" which was first recognized in the Prohibition era case, *Carroll v. United States*, 267 U.S. 132 (1925), where the United States Supreme Court held that as long as an officer had "probable cause for believing that [a vehicle was] carrying

contraband or illegal merchandise," the police could perform a lawful search of the automobile without a warrant. *Id*. at 153-54. *Accord Pacheco*, 465 Md. at 321.

In explaining this exception, the *Carroll* Court noted there was a "necessary difference" between fixed structures, such as a store or a home, and an automobile, which "can be quickly moved out of the locality or jurisdiction in which the warrant must be sought." *Carroll*, 267 U.S. at 153. There is a reduced "expectation of privacy" in automobiles, which "derive[s] not from the fact that the area to be searched is in plain view, but from the pervasive regulation of vehicles capable of traveling on the public roads." *California v. Carney*, 471 U.S. 386, 392 (1985) (citing *Cady v. Dombroski*, 413 U.S. 433, 440-41 (1973)). Moreover, the rationale for the "*Carroll* Doctrine" does not depend on a "separate exigency requirement." *Maryland v. Dyson*, 527 U.S. 465, 466 (1999) ("If a car is readily mobile and probable cause exists to believe it contains contraband, the Fourth Amendment . . . permits police to search the vehicle without more") (quoting *Pennsylvania v. Labron*, 518 U.S. 938, 940 (1996)).

The parties direct our attention to two Supreme Court cases: *Chambers v. Maroney*, 399 U.S. 42 (1970), and *Coolidge v. New Hampshire*, 403 U.S. 443 (1971). In *Chambers*, the Supreme Court examined whether the automobile exception applied when police officers searched a station wagon after moving the station wagon from the scene of arrest to the police station. There, police officers pulled over and arrested four men who were suspected of robbing a service station. *Id*. at 44. The officers then drove the station wagon to the police station, searched the vehicle and found evidence of the robbery. *Id*. The Supreme Court held that, because the police officers had probable cause to search the

station wagon where it had been stopped, the warrantless seizure and subsequent search at the police station did not violate the defendant's right to be free from unreasonable searches and seizures. *Id*. at 52. In its analysis, the Court debated whether the temporary seizure of the car was less intrusive than a warrantless search of the vehicle. *Id*. at 51-52. The Court ultimately concluded:

> For constitutional purposes, we see no difference between on the one hand seizing and holding a car before presenting the probable cause issue to a magistrate and on the other hand carrying out an immediate search without a warrant. Given probable cause to search, either course is reasonable under the Fourth Amendment.

Id. at 52. Justice Harlan, concurring in part and dissenting in part, advocated that police officers temporarily seize the vehicle and then obtain a search warrant. Justice Harlan reasoned:

> The [majority] concedes that the police could prevent removal of the evidence by temporarily seizing the car for the time necessary to obtain a warrant. It does not dispute that such a course would fully protect the interests of effective law enforcement; rather it states that whether temporary seizure is a lesser intrusion than warrantless search is itself a debatable question and the answer may depend on a variety of circumstances. I believe it clear that a warrantless search involves the greater sacrifice of Fourth Amendment values.
>
> The Fourth Amendment proscribes, to be sure, unreasonable seizures as well as searches. However, in the circumstances in which this problem is likely to occur, the lesser intrusion will almost always be the simple seizure of the car for the period - perhaps a day - necessary to enable the officers to obtain a search warrant.

Id. at 63 (Harlan, J., dissenting in part and concurring in part) (cleaned up).

The Supreme Court later reaffirmed the *Chambers* decision in *Cardwell v. Lewis*, 417 U.S. 583 (1974). In *Cardwell*, a couple of months after a murder, law enforcement

agents requested that the defendant come to the police station for questioning. *Id*. at 586. Cardwell complied and left his car at a public parking lot nearby while agents interviewed him. *Id*. at 587. He was arrested later that afternoon. *Id*. As there was evidence suggesting that Cardwell's vehicle was used in the murder, the police towed Cardwell's car to a police impound lot and conducted a warrantless examination of the outside of the car. *Id*. at 587-88.

Relying in part on *Chambers*, the Court held that the agents did not violate Cardwell's right to be free from unreasonable searches and seizures. 417 U.S. at 594-95. The Court reasoned that it made no difference that Cardwell's car was seized from a parking lot and that he was not in the car immediately before police seized it, even though in *Chambers* the police seized the station wagon shortly after the robbery while the suspects were still inside of the car. *Id*. The Court reasoned that "[t]he same arguments and considerations of exigency, immobilization on the spot, and posting a guard obtain." *Id*. Therefore, the Court concluded: "We do not think that, because the police impounded the car prior to the examination, which they could have made on the spot, there is a constitutional barrier to the use of the evidence obtained thereby. Under the circumstances of this case, the seizure itself was not unreasonable." *Id*. at 593.

In Maryland, this Court held in *McDonald v. State*, 61 Md. App. 461 (1985), that the automobile exception applied when police officers towed and then searched a vehicle. Relying on *Chambers* and *Cardwell*, we explained:

> The appellant's attack upon the seizure and ultimate search of his car is without merit. After his arrest, the officers visually inspected the exterior of the appellant's car. This visual inspection did not offend the appellant's

> Fourth Amendment privacy interest. Following that inspection the officers determined that it would be necessary to impound the car. Inasmuch as there was probable cause to arrest the appellant and probable cause to believe that his car contained evidence of the crime, the police officers' decision to impound the automobile was valid. The police then obtained a proper search warrant before searching the interior of the vehicle. We see no illegality in either the seizure or the search of the appellant's car. Therefore, the fruits of that search were properly admissible at trial.

McDonald, 61 Md. App. at 469-70 (internal citations omitted).

This Court also addressed the issue of whether the police violated a defendant's Fourth Amendment rights when they impounded a vehicle, received a search warrant, and then searched the vehicle. *Skinner v. State*, 16 Md. App. 116, *cert. denied*, 267 Md. 744 (1972). In *Skinner*, a law enforcement officer heard a police broadcast that gave a description of Skinner, who was a person he knew, a description of another man seen with Skinner, and the car in which the two men were traveling. *Id*. at 119. The police were looking for the men because they had just tried to cash stolen checks at a bank, and witnesses saw the men jump into the car. *Id*. at 118. The officer spotted Skinner and the other man in a car matching the description provided in the broadcast and apprehended them in a parking lot. *Id*. at 119. After that officer transported Skinner and the other man to the police station, other officers did not search the car; instead, they monitored the vehicle to ensure that no one tampered with its contents, called a tow truck to tow the vehicle to police headquarters, applied for a search warrant, and then searched the vehicle after the application was granted. *Id*. at 120.

On appeal, Skinner did not contest that police officers had probable cause to search and seize his vehicle. 16 Md. App. at 120. Rather, Skinner challenged the process that the

officers used prior to searching the vehicle. *Id*. Writing for this Court, Judge Charles Moylan, Jr. stated:

> Even the most conscientious police find it difficult to please convicted defendants. The almost universal plaint, following a successful warrantless search of an automobile, is that the police should have immobilized the car and then obtained a warrant for its search. In the case at bar, they did just that. Unpropitiated, the [defendant], Michael Thomas Skinner, still manages to complain.

Id. at 117-18. This Court noted that by obtaining the search warrant, law enforcement officers demonstrated "scrupulous regard for their suspect's 4th Amendment protections" and "did more than they were required to do." *Id*. at 118. Citing *Carroll* and *Chambers*, we concluded that law enforcement agents did not violate Skinner's constitutional rights. *Id*. at 121. *See also United States v. Respress*, 9 F.3d 483, 486 (6th Cir. 1993) (observing that the Supreme Court has upheld temporary seizures of containers pending issuance of a search warrant "if the exigencies of the circumstances demand it or some other recognized exception to the warrant requirement is present") (citing, *inter alia*, *United States v. Place*, 462 U.S. 696 (1983)).

We are persuaded that this same reasoning applies here, primarily because there was ample probable cause to believe that Boward's vehicle contained evidence of a crime. *See generally, Brinegar v. United States*, 338 U.S. 160, 175-76 (1949) ("Probable cause exists where 'the facts and circumstances within their (the officers') knowledge and of which they had reasonably trustworthy information (are) sufficient in themselves to warrant a man of reasonable caution in the belief that' an offense has been or is being committed.") (quoting *Carroll*, 267 U.S. at 162); *Accord Pacheco*, 465 Md. at 324. After the controlled

buy with the CNI inside the Walmart, where the CNI bought suspected heroin from Boward's co-defendant, Carroll, Carroll returned to the Honda where Boward was waiting in the driver's seat. Suspected heroin was recovered from the CNI and, upon their arrest, the money used in the controlled buy was found in Boward's and Carroll's possession. Although no drugs were found in the vehicle or on Boward or Carroll, during Carroll's interview, he revealed that the suspected heroin was located inside a caulking gun tube in the Honda, which remained in the Walmart parking lot. Considering the totality of the circumstances, we agree with the State's assertion that, "[a]rmed with this probable cause, Agent Isaacs had two constitutionally valid choices: he could either search the car immediately or he could seize the car and apply for a warrant. He chose the latter."

Boward relies on *Coolidge v. New Hampshire*, 403 U.S. 443 (1971). There, police investigating the murder of a fourteen-year-old suspected Coolidge, spoke to him in the presence of his wife at his home, and asked him to agree to come to the police station for a lie detector test. *Coolidge*, 403 U.S. at 445-46. Over the ensuing days, Coolidge remained cooperative and ultimately agreed to go to the station as requested. As Coolidge was being interviewed, other police officers went to his home and interviewed his wife and obtained additional information pertinent to the murder investigation. *Id*. at 446.

Over the course of the next two and a half weeks, the police continued their investigation, and ultimately decided to arrest Coolidge and obtain search warrants for his home and his two cars. 403 U.S. at 447. One of the warrants was for Coolidge's 1951 two door Pontiac sedan. *Id*. When Coolidge was arrested, his wife was told that both of their cars had been "impounded." *Id*. Two and a half hours after the arrest, the cars were towed

to the police station and ultimately searched, albeit two days later and again over the ensuing weeks and months before Coolidge's jury trial. *Id*. at 448, 456.

Coolidge first claimed that the search warrant authorizing the search and seizure of the Pontiac was invalid because it was not issued by a "neutral and detached magistrate." *Coolidge*, 403 U.S. at 449. The Supreme Court agreed and analyzed the remaining issues as if the vehicle had been seized without a warrant. After agreeing that the search incident to arrest doctrine did not apply, *id*. at 456-57, the Court considered whether the warrantless search and seizure of the Pontiac was supported by probable cause and therefore lawful under the *Carroll* doctrine. *Coolidge*, 403 U.S. at 458. The Court held that it was not:

> In this case, the police had known for some time of the probable role of the Pontiac car in the crime. Coolidge was aware that he was a suspect in the Mason murder, but he had been extremely cooperative throughout the investigation, and there was no indication that he meant to flee. He had already had ample opportunity to destroy any evidence he thought incriminating. There is no suggestion that, on the night in question, the car was being used for any illegal purpose, and it was regularly parked in the driveway of his house. The opportunity for search was thus hardly 'fleeting.' The objects that the police are assumed to have had probable cause to search for in the car were neither stolen nor contraband nor dangerous.

Coolidge, 403 U.S. at 460.

The Court explained:

> The word 'automobile' is not a talisman in whose presence the Fourth Amendment fades away and disappears. And surely there is nothing in this case to invoke the meaning and purpose of the rule of *Carroll v. United States* - no alerted criminal bent on flight, no fleeting opportunity on an open highway after a hazardous chase, no contraband or stolen goods or weapons, no confederates waiting to move the evidence, not even the inconvenience of a special police detail to guard the immobilized automobile. In short, by no possible stretch of the legal imagination can this be made into a case where 'it is not practicable to secure a warrant,' *Carroll, supra*, at 153, 45 S.Ct., at 285, and the 'automobile exception,' despite its label, is simply irrelevant.

> Since *Carroll* would not have justified a warrantless search of the Pontiac at the time Coolidge was arrested, the later search at the station house was plainly illegal, at least so far as the automobile exception is concerned. . . .

Coolidge, 403 U.S. at 461-62 (footnote omitted).[9]

We conclude that *Coolidge* is distinguishable, primarily because there was probable cause in this case to suspect that the vehicle Boward was driving at the time of the controlled buy contained evidence of crime. And, for that reason, we disagree with Boward's suggestion that application of the *Carroll* doctrine would mean that "where a vehicle has been immobilized by the police and the police literally hold the key," that "any vehicle could be seized by virtue of being a vehicle, and the *Carroll* doctrine would swallow any Fourth Amendment protections afforded to vehicles." This slippery slope assessment ignores the threshold requirement of probable cause. We conclude that the motions court properly denied the motion to suppress on this ground.

Independent Source

Although our analysis could end there, we also agree with the State's alternative argument based on the independent source doctrine. "Generally, evidence obtained as a result of a search in violation of the Fourth Amendment is inadmissible. The primary reason for excluding such evidence is to 'curb improper police conduct, which it accomplishes by disallowing the use of the evidence illegally obtained.'" *State v. Lee*, 374 Md. 275, 297

[9] The Supreme Court concluded this portion of its opinion as follows: "[h]ere there was probable cause, but no exigent circumstances justified the police in proceeding without a warrant.… [T]he later search at the station house was therefore illegal." *Coolidge*, 403 U.S. at 464. The Supreme Court subsequently made clear that exigency is not a requirement under the automobile exception. *Maryland v. Dyson*, 527 U.S. at 466.

(2003) (citations and footnote omitted); *see also Wong Sun v. United States*, 371 U.S. 471, 484 (1963) ("[E]vidence seized during an unlawful search could not constitute proof against the victim of the search. The exclusionary prohibition extends as well to the indirect as the direct products of such invasions.") (internal citation omitted).

However, the Supreme Court has also explained that "[w]hether the exclusionary sanction is appropriately imposed in a particular case . . . is 'an issue separate from the question whether the Fourth Amendment rights of the party seeking to invoke the rule were violated by police conduct.'" *Hudson v. Michigan*, 547 U.S. 586, 591-92 (2006) (quoting *United States v. Leon*, 468 U.S. 897, 906 (1984)). Further, the Court has "never held that evidence is 'fruit of the poisonous tree' simply because 'it would not have come to light but for the illegal actions of the police.'" *Hudson v. Michigan*, 547 U.S. at 592 (quoting *Segura v. United States*, 468 U.S. 796, 815 (1984)). And this Court has stated:

> The independent source doctrine permits the admission of evidence "initially discovered unlawfully but subsequently lawfully obtained as a result of an independent source untainted by the initial illegality." *Williams v. State*, 372 Md. 386, 412-13, 813 A.2d 231 (2002) (citing *Murray v. United States*, 487 U.S. 533, 542, 108 S.Ct. 2529, 101 L.Ed.2d 472 (1988)).

Redmond v. State, 213 Md. App. 163, 191 (2013).

The *Williams* Court described the test of the independent source doctrine as follows:

> A threshold question, apart from deciding whether the warrant was valid and provided a genuinely independent source for the evidence, is whether the State seized or "reseized" any evidence pursuant to an independent source, *i.e.*, the warrant. The analysis of whether the independent source doctrine applies begins by assessing what evidence actually was seized under a warrant and then whether that warrant was genuinely independent of the initial illegality.

Williams, 372 Md. at 413-14.

In this case, the application for the search warrant provides the following:

> Agent Isaacs read Jonathan Warren Carroll his *Miranda* Rights and he agreed to speak to Agent Isaacs concerning this investigation.
>
> Jonathan Warren Carroll stated that Anthony Obryan Boward hid the suspected Crack Cocaine and Suspected Heroin inside of a caulking gun that's in the toolbox in the back seat of the black in color 2003 Honda Accord. Jonathan Warren Carroll stated that he received both the suspected Heroin and suspected Crack Cocaine from Anthony Obryan Boward to distribute to the CNI.
>
> Agent Isaacs left the Washington County Central Booking and went to the Wal-Mart parking lot located at 17850 Garland Groh Blvd., Hagerstown, Washington County, Maryland to secure the vehicle. Agent Isaacs had the described vehicle towed to the Washington County Sheriff's Office Impound Lot so he could prepare a search warrant.
>
> * * *
>
> Your Affiant believes probable cause to search the black in color 2003 Honda Accord is based on the distribution that occurred on February 27, 2020 along with the information that was provided by Jonathan Warren Carroll. Through Agent Isaacs' training, knowledge, and experience as a police officer, he knows CDS dealers often conceal CDS in various compartments and/or property to prevent detection from law enforcement personnel.
>
> The black in color 2003 Honda Accord was towed by Wrenches and Wreckers to the Washington County Sheriff's Office Impound Lot that is located at 500 Western Maryland Parkway, Hagerstown, Washington County, Maryland.

Even assuming for argument's sake that Agent Isaacs' act of parking behind the Honda after he spoke with Carroll and while waiting for the vehicle to be towed to the impound lot amounted to an illegal seizure, we are persuaded that the seizure did not influence or affect the search warrant in this case. We also conclude that Boward's reliance on *State v. Lee*, *supra*, is misplaced because that case concerned a knock and announce search warrant of a home, which historically requires considerations under the Fourth

Amendment that are arguably different than the seizure and search of an automobile. *See, e. g. State v. Lee*, 374 Md. at 286 ("Given the longstanding common-law endorsement of the practice of announcement, we have little doubt that the Framers of the Fourth Amendment thought that the method of an officer's entry into a dwelling was among the factors to be considered in assessing the reasonableness of a search or seizure.") (quoting *Wilson v. Arkansas*, 514 U.S. 927, 934 (1995)).

JUDGMENT OF THE CIRCUIT COURT FOR WASHINGTON COUNTY AFFIRMED. APPELLANT TO PAY THE COSTS.

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