Circuit Court for St. Mary's County
Case No. C-18-CR-23-000212

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1511

September Term, 2024

DECOREY MALIEK-TAJEE GRAY

v.

STATE OF MARYLAND

Tang,
Albright,
Raker, Irma S.,
(Senior Judge, Specially Assigned)

JJ.

Opinion by Albright, J.

Filed: March 25, 2026

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

In March of 2023, Decorey Maliek-Tajee Gray, Appellant, got into a single-vehicle car accident, which resulted in his being arrested for driving under the influence (DUI). Incident to that arrest, the arresting officer searched the vehicle and found a plastic bag of pills on the front passenger seat. After Mr. Gray was indicted for drug distribution and four related charges,[1] he moved to suppress the pills from evidence. The circuit court declined to do so. Mr. Gray was then convicted and sentenced to a total of ten years of incarceration.[2] Here, Mr. Gray contends that the search of the vehicle was unconstitutional and that the pills should have been suppressed.[3] We agree, vacate his

[1] In full, Mr. Gray was indicted for possession of a narcotic in an amount indicating an intent to distribute, possession of a large amount of a controlled dangerous substance, possession of a controlled dangerous substance in an amount indicating an intent to distribute, possession of a counterfeit narcotic with intent to distribute, possession of a controlled dangerous substance, driving under the influence of alcohol, driving under the influence of alcohol *per se*, driving a vehicle while impaired by alcohol, driving with a suspended license, driving a vehicle with a suspended registration, failure to obey traffic control devices, failure to display registration, and making an improper turn at an intersection. Before Mr. Gray's trial, the State nolle prossed the traffic charges and proceeded only on the five drug related charges.

[2] Specifically, Mr. Gray was sentenced to fifteen years of incarceration, with all but five suspended on Count 1 (possession of a narcotic in an amount indicating an intent to distribute); ten years of incarceration with all but five suspended on Count 3 (possession of a controlled dangerous substance in an amount indicating an intent to distribute), to run consecutive with Count 1; fifteen years of incarceration, with all but five suspended on Count 2 (possession of a large amount of a controlled dangerous substance), to run concurrently with Count 1; fifteen years of incarceration, with all but five suspended on Count 4 (possession of a counterfeit narcotic with intent to distribute), to run concurrently with Count 1; and Count 5 (possession of a counterfeit narcotic with intent to distribute) merged.

[3] Mr. Gray presented two other questions for our review:

convictions, and remand for further proceedings consistent with this opinion.

BACKGROUND

On September 26, 2023, the circuit court held a hearing on Mr. Gray's suppression motion. At the outset, the State justified the arresting officer's search of Mr. Gray's vehicle as being incident to Mr. Gray's arrest: "There is no inventory search here. It is a simple, straightforward search incident to arrest of a vehicle for evidence of the crime for which the individual was arrested and, that is, absolutely permissible under the Fourth Amendment."

St. Mary's County Sherriff's Deputy Preston Dixon, the arresting officer, then testified. Also in evidence was footage from the body worn camera Deputy Dixon wore and used during his encounter with Mr. Gray.[4] While Deputy Dixon was on the stand, the court viewed his body worn camera footage. The following is based on Deputy Dixon's testimony and his body worn camera footage.

During his night shift patrol on March 26, 2023, Deputy Dixon happened across a

I. Is evidence that counterfeit pills contain an unknown quantity of fentanyl sufficient to support the jury's required findings that Mr. Gray (A) possessed 5 grams or more of fentanyl, rather than a mixture containing fentanyl, and (B) intended to distribute it?

II. Did a seasoned narcotics detective, relying on five-plus years of specialized experience to discuss the importance of drug quantity and street value, improperly testify without being qualified as an expert?

However, because we vacate the judgments based upon Mr. Gray's first question, we do not reach his second question.

[4] The defense admitted into evidence the tow inventory log completed by Deputy Dixon and another officer after Mr. Gray's vehicle was impounded.

single-vehicle car accident in the area of Mechanicsville Road and Old Village Road. Deputy Dixon testified, and his body worn camera footage from that evening showed, that when he came upon the accident, four people were gathered around the scene, apparently attempting to push the damaged vehicle out of the road. Deputy Dixon determined that the driver of the vehicle was Mr. Gray, who reported that he had hit the curb. After conducting a preliminary investigation of the scene, Deputy Dixon began to suspect that Mr. Gray may have been under the influence of alcohol. He noticed the smell of alcohol on Mr. Gray's breath, his glassy bloodshot eyes, and slurred speech.[5] When asked, Mr. Gray stated that he had "drunk a little liquor . . . a couple hours ago."

Deputy Dixon then began to engage Mr. Gray in a series of field sobriety tests. First, Deputy Dixon performed a Horizontal Gaze Nystagmus test, which tests for involuntary jerking of the eyes. Deputy Dixon noted "indicators or factors that led [him] to believe that [he] needed to continue field sobriety [testing] because the test given was not successfully passed." Next, Deputy Dixon performed a walk-and-turn test, in which Mr. Gray was asked to take nine heel-toe steps in a straight line in each direction.[6] Mr. Gray did not successfully perform that test. Finally, Mr. Gray was asked to perform a

[5] After noticing the slurred speech, Deputy Dixon asked Mr. Gray if he had a lisp, and Mr. Gray responded that he "had that all my life."

[6] Before beginning this test, Deputy Dixon asked if there were any medical conditions that would prevent Mr. Gray from walking or standing. Mr. Gray stated that he had a previous injury causing nerve damage to his left side that could cause "imbalance on legs." Deputy Dixon noted that Mr. Gray had "been walking around all right this whole time" and proceeded with the test.

"one-leg stand." The body camera footage showed that Mr. Gray struggled to perform that test as well. The results of these tests, combined with his initial observations, led Deputy Dixon to determine that Mr. Gray had been driving under the influence of alcohol.

As a result of the investigation, Deputy Dixon placed Mr. Gray under arrest for DUI. Deputy Dixon then performed a search incident to arrest of Mr. Gray's vehicle. When asked on what basis he had engaged in the search, Deputy Dixon responded,

> Search incident to arrest, obviously. And then also there's a lot of times on circumstances like these, there's fruits of the crime or there's additional evidence in the vehicle, such as, alcohol containers, and things of that nature. And then we do do an inventory check for a tow card as a policy to make sure there's nothing of value and we notate it on our tow record or tow cards as well.

The search turned up more than just evidence of a DUI. Under a bag on the front passenger seat of Mr. Gray's vehicle, Deputy Dixon found what appeared at the time to be "Oxycodone pills tied in a clear plastic bag." After collecting the drugs and placing them in his police vehicle, Deputy Dixon transported the evidence and Mr. Gray to the station for processing. Deputy Dixon testified that an inventory search of Mr. Gray's vehicle had been conducted by himself or another officer following the arrest.

At the suppression hearing and in his written motion, Mr. Gray argued that there was no valid probable cause for his arrest because Deputy Dixon had failed to perform the field sobriety tests in compliance with standardized procedure. Throughout Deputy Dixon's time on the stand, Mr. Gray attempted to elicit testimony to that end. Mr. Gray also argued that, even if there had been valid probable cause, the search of his vehicle

was unlawful because there was no reasonable suspicion that evidence of DUI could be found in the vehicle.

The State agreed that the validity of the search turned on its reasonableness. "There is no inventory search here. It is a simple, straightforward search incident to arrest of a vehicle for evidence of the crime for which the individual was arrested and, that is, absolutely permissible under the Fourth Amendment." The State argued that under Maryland case law, an officer "may search a vehicle incident to arrest for a DUI for evidence of that crime" regardless of the facts of the case.

The court ultimately denied Mr. Gray's Motion to Suppress. In doing so, it made factual findings relative to the State's singular theory that the search was valid as incident to an arrest. First, the suppression court found that Mr. Gray's arrest was valid as having been supported by probable cause.

> The evidence as I heard it today in this hearing is as follows: Deputy Dixon came up on a motor vehicle accident. There was a disabled vehicle in the middle of the road. He testified that there -- and I wrote these words down, I believe verbatim at the very beginning of his testimony, and that was that there was a clear odor of alcoholic beverage emitting from Mr. Gray's breath.
>
> Other observations that he made were that of slurred speech and glassy, bloodshot eyes. I heard further testimony from Deputy Dixon that when he approached the driver's side door and Mr. Gray was there retrieving his license and registration, that he could smell the odor of alcohol and I heard the argument with regards the words odor of alcohol alone. I also heard the testimony, or actually saw on the video the defendant's statement that I drunk a little liquor.
>
> I noted that during the HGN, Mr. Gray had to be instructed to look with his eyes several times and Deputy Dixon's testimony that the test was not successfully passed. I noted on the video with regards to the heel toe, walk-and-turn test that Mr. Gray did not perform that test as demonstrated and that was Deputy Dixon's testimony again.
>
> Now, I appreciate your argument, [defense counsel], to the fact that

> no one walks heel to toe. But that in and of itself is not before the Court today. I have to look at all of these facts -- make sure I didn't miss anything that I've highlighted here -- and the test before me today. The issue that's before me today is one of probable cause, not reasonable doubt for conviction. I need to look at the totality of the circumstances.
>
> As we know, the Supreme Court has said that the totality of the circumstances approach is consistent with probable cause and it permits a balanced assessment of the relative weights of all the various indicia of reliability – it's getting late -- and unreliability for that matter. But when I look at all of those facts, even if some of the tests were deficient, it doesn't mean that there was not probable cause that existed at that time for arrest. Based on all of the facts that I've heard, I do believe there was probable cause for the arrest.

As to the search of Mr. Gray's vehicle, the Court then found that it was reasonable for Deputy Dixon to believe that there could have been evidence of DUI in the vehicle.

> I then move to the search of the vehicle. I've taken a look at *Taylor v*[]. *State*. I note that the standard can be that a search incident to a lawful arrest when it's reasonable to believe that evidence relevant to the crime of arrest might be found in the vehicle and whether a belief is reasonable depends upon the totality of the circumstances, again, rather than any categoric rule.
>
> In determining what might establish a reasonable belief, that case says: You can consider multiple things including a police officer's training and experience, the lack of innocent explanation for a driver's seemingly illicit behavior, the nature of the crime of arrest. The court in *Taylor v*[]. *Taylor* [sic] goes on to evaluate findings from many states with regards to what might be a reasonable belief and, ultimately, concludes that they may not be able to reconcile the diversion holdings of all the courts. But it's clear that an officer's training and experience is an important, though not dispositive factor. The lack of any instant explanation for apparent intoxication in a vehicle may be grounds for reasonable suspicion and unless there are contrary indications, it is not unreasonable to think that an intoxicated driver became intoxicated in the vehicle.
>
> They went on to say, officers may also search for evidence of alcoholic containers to establish that the arrestee was under the influence because in Maryland, a DUI offense may be proved by circumstantial evidence, namely, the presence of alcoholic beverages in the vehicle the arrestee had driven and in which he was found to be intoxicated.
>
> Based on all of that, I do find that the search incident to arrest, there

> was a reasonable basis for the search -- reasonable belief that there could have been evidence related to the crime of driving under the intoxicated -- driving under the influence, driving while intoxicated that officer -- Deputy Dixon may have found in the vehicle. And so I find that that search is also lawful. So I will deny the Motion to Suppress at this time.

Mr. Gray was eventually found guilty on all five drug charges.[7] This appeal followed.

DISCUSSION

I. The Circuit Court Erred in Denying the Motion to Suppress

Mr. Gray contends that the circuit court erred in denying his Motion to Suppress the evidence obtained from the search of his vehicle—i.e., the drugs. Mr. Gray makes two arguments to that end: (1) that because Deputy Dixon lacked probable cause to arrest Mr. Gray for DUI, there was no basis to conduct a search incident to that arrest; and (2) that even if the arrest was valid, the vehicle search incident to arrest was improper. The State disagrees, arguing that the arrest was supported by valid probable cause and that the search was supported by a reasonable belief that evidence of DUI could have been found in the vehicle. In the alternative, the State argues, for the first time on appeal, that even if there was no reasonable basis for the search, the denial of Mr. Gray's suppression motion was proper because the drugs would have inevitably been discovered in an inventory search.

On appeal, we review the denial of a motion to suppress based on the record created at the suppression hearing. *Swift v. State*, 393 Md. 139, 154 (2006). "We review

[7] Mr. Gray's first trial resulted in a hung jury. He was retried by a second jury in May 2024.

the evidence and the inferences drawn therefrom in the light most favorable to the prevailing party." *Brown v. State*, 261 Md. App. 83, 92 (2024). "As a mixed question of law and fact, we accept the hearing court's finding of fact unless they are clearly erroneous but review the hearing judge's legal conclusions *de novo*." *Id.* (cleaned up). "Thus, we independently evaluate without deference to the circuit court whether a police officer's conduct violated the constitutional rights of the defendant." *Id.*

A. Probable Cause for DUI Arrest

With regards to probable cause, Mr. Gray argues that none existed to support the DUI arrest because "[t]he few potential signs of impairment he observed were accompanied by rational, innocent explanations." Specifically, Mr. Gray attributes his bloodshot eyes to the airbags from the crash and his slurred speech to the lisp he had "all his life." Mr. Gray further contends that the odor of alcohol "do[es] not move the needle" because Mr. Gray admitted he had been drinking "a couple *hours* ago" rather than some time more immediately. Mr. Gray also argues that the field sobriety tests conducted by Deputy Dixon cannot sustain a finding of probable cause because they were not administered in accordance with national standards.

The State disagrees, arguing that the crash, bloodshot eyes, slurred speech, odor of alcohol, and Mr. Gray's admission that he had consumed liquor created reasonable suspicion to allow Deputy Dixon to perform the field sobriety tests—which it argues were administered properly and therefore resulted in valid probable cause. Further, the State contends that even without the results of the field tests, the other factors alone were

sufficient to create probable cause for DUI arrest, because officers are not required to rule out innocent explanations for suspicious facts.

The Fourth Amendment to the United States Constitution guarantees "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. "A warrantless arrest of an individual in a public place for a felony, or a misdemeanor committed in the officer's presence, is consistent with the Fourth Amendment if the arrest is supported by probable cause." *Bailey v. State*, 412 Md. 349, 374 (2010) (cleaned up).

"To determine 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 stand-point of an objectively reasonable police officer, amount to probable cause." *Brown*, 261 Md. App. at 94 (cleaned up). In addressing probable cause, we look to the totality of the circumstances. *State v. Johnson*, 458 Md. 519, 534–35 (2018).

We agree with the State that, under the totality of the circumstances, there was probable cause to arrest Mr. Gray for DUI. The evidence presented at the suppression hearing showed that Deputy Dixon came upon a single-vehicle accident resulting in a disabled vehicle. Upon speaking with Mr. Gray, Deputy Dixon noticed a "clear odor of alcoholic beverage emitting from his breath," along with slurred speech and glassy, bloodshot eyes. When asked if he had had anything to drink that night, Mr. Gray responded that he had "drunk a little liquor . . . a couple hours ago." Mr. Gray then failed

all three field sobriety tests administered by Deputy Dixon before ultimately being placed under arrest. Together, these facts suffice for probable cause to arrest Mr. Gray for driving under the influence.

In an attempt to overcome this conclusion, Mr. Gray makes two arguments challenging the validity of the facts supporting probable cause. He first points to various potential "innocent" explanations for the facts creating probable cause—that his bloodshot eyes were caused by the airbags deploying, that the slurred speech Deputy Dixon heard was actually a lisp, and that the odor of alcohol and admission that he had been drinking did not mean he was presently intoxicated. Mr. Gray also claims that Deputy Dixon failed to perform the field tests in alignment with standardized procedure, invalidating a finding of probable cause based upon the tests. We remain unconvinced.

"The probable cause standard does not require an officer to rule out a suspect's innocent explanation for suspicious facts." *State v. Stone*, ___ Md. ___ No. 16, Sept. Term, 2025 (filed Jan. 27, 2026), 2026 WL 202095, at *22 (quoting *In re D.D.*, 479 Md. 206, 231 (2022)). Moreover, "it is impossible for a combination of wholly innocent factors to combine into a suspicious conglomeration [creating probable cause] unless there are concrete reasons for such an interpretation." *Id.* (quoting *Cartnail v. State*, 359 Md. 272, 294 (2000)) (holding that an officer lacked reasonable suspicion to stop a driver based solely on observing him touch a mounted cell phone while driving, because the conduct was equally consistent with lawful uses of a phone and did not necessarily indicate illegal texting).

Here, while it's true that there could have been innocent explanations for Mr. Gray's slurred speech, bloodshot eyes, and the odor of alcohol on his breath, we cannot say that his behavior is *equally* consistent with innocent behavior as it was with having driven under the influence. Here, the possibility of an innocent explanation does not undermine the fact that these characteristics, when viewed in combination with the totality of the other circumstances, tend to indicate that Mr. Gray had been driving under the influence. Even if the field sobriety tests were administered imperfectly, when viewed from the perspective of a reasonable officer, all the facts still end in probable cause.

B. Reasonableness of the Search of Mr. Gray's Vehicle Incident to Arrest

Mr. Gray next argues that, even if valid probable cause did exist, the vehicle search incident to the arrest was unreasonable because there existed no basis in fact to suggest that evidence of DUI would be found in Mr. Gray's car. The State argues that the vehicle search incident to arrest was reasonable because, according to Deputy Dixon, "there is often additional evidence in the vehicle, such as[] alcohol containers."

One exception to the Fourth Amendment's prohibition on warrantless searches and seizures is a "search incident to arrest," which "derives from interests in officer safety and evidence preservation that are typically implicated in arrest situations." *Taylor v. State*, 448 Md. 242, 242 (2016). There are two scenarios in which an officer may search an automobile incident to the arrest of its driver or passengers. First, officers may "search a vehicle incident to a recent occupant's arrest only when the arrestee is unsecured and within reaching distance of the passenger compartment at the time of the search." *Arizona*

v. Gant, 556 U.S. 332, 343 (2009). Second, officers may search a vehicle incident to a lawful arrest when it is "*reasonable to believe* evidence relevant to the crime of arrest might be found in the vehicle." *Id.* (emphasis added).

Whether it is "reasonable to believe" that relevant evidence might be found in a vehicle is comparable to reasonable articulable suspicion. *Taylor*, 448 Md. at 250. In other words, we "look[] at the totality of the circumstances to determine whether it was reasonable to conclude that evidence of the crime of the arrest might be found within the vehicle" in that particular case. *Brown v. State*, 261 Md. App. at 101 (cleaned up).

In *Taylor v. State*, we concluded that the vehicle search was reasonable because there was a basis in the facts of that particular case to suggest that it was. 448 Md. at 250. There, the defendant was stopped for speeding and failing to stop at a stop sign. *Id.* at 245. When speaking with the driver through his window, officers noticed the odor of alcohol, slurred speech, and bloodshot eyes. *Id.* Mr. Taylor was placed under arrest after failing to successfully perform field sobriety tests. *Id.* The arresting officer then performed a vehicle search incident to arrest because in "several DUI arrests [that he had made] there's plenty of open containers left in the vehicle." *Id.* The Supreme Court upheld the search as reasonable because

> there was, and, we suspect, in most cases of an arrest for driving under the influence, there is likely to be, a basis in fact—*the arresting officer's own prior experiences or his or her knowledge of the experience of fellow officers, which can be articulated, of finding open containers or other evidence related to the offense inside the passenger compartment.*

Id. at 250 (emphasis added).

But "the reasonableness of a search . . . does not depend on the officer's subjective motivations." *Brown v. State*, 261 Md. App. at 104 (cleaned up). Instead, "the inquiry is objective, and we look to the record as a whole to determine what facts were known to the officer and then consider whether a reasonable officer in those circumstances would have been suspicious." *Id*. In *Brown,* the appellant was pulled over after an officer noticed that his vehicle did not have its registration plate illuminated. *Id.* at 89. When the officer approached the vehicle, Mr. Brown got out of his vehicle, continuously walked towards the officer, and ultimately fled on foot. *Id.* at 89–90. After stumbling and being apprehended, Mr. Brown admitted that he had consumed a half pint of liquor. *Id.* at 90. We found that all of this evidence provided a sufficient basis in fact to support the reasonableness of the search. Because Mr. Brown's flight indicated a desire to distance himself from his vehicle, and because half a pint of liquor was a quantity unlikely to have been ordered at a bar or restaurant, it was reasonable to believe that the rest of the pint may have been in the car. *Id.* at 103–04.

Here, in contrast to *Taylor* and *Brown,* there is nothing, nor does the State identify anything, in Deputy Dixon's own experience, or in his encounter with Mr. Gray, to suggest that it was objectively reasonable for Deputy Dixon to suspect that further evidence of DUI would be found in Mr. Gray's vehicle. In other words, Deputy Dixon did not testify that in his prior experience, he had found open containers in vehicles, or that he knew other officers who had done so, or that Mr. Gray had said or done anything

to suggest that further evidence of DUI might have been found in Mr. Gray's vehicle.[8]

Nor is the search justified by Deputy Dixon's statement "there's a lot of times on circumstances like these, there's fruits of the crime or there's additional evidence in the vehicle, such as, alcohol containers and things of that nature."[9] In *Taylor*, our Supreme Court rejected this kind of "categorical approach" to determining when it is "reasonable to believe evidence relevant to the crime of arrest might be found in [a] vehicle." *Brown*, 261 Md. App. at 101–02 (citing *Taylor*, 448 Md. at 250–51). In other words, we don't justify searches incident to arrest on the basis of "an almost categorical link between the nature of the crime of arrest and the right to search." *Taylor*, 448 Md. at 250. Grounded merely "on circumstances like these," Deputy Dixon's search was just such a categorical approach. It was based on an assumption about the nature of a DUI charge. To be sure, Deputy Dixon had probable cause to arrest Mr. Gray, but there is nothing in the suppression court's factual findings that would have justified Deputy Dixon's going

[8] Unlike in *Brown*, 261 Md. App. at 103–04, where the appellant's continuous movement away from his vehicle indicated an attempt to distance himself from potential incriminating evidence inside it, Mr. Gray made no attempt to flee; instead, he returned to his disabled vehicle with Deputy Dixon shortly behind him when asked to retrieve his license and registration. Further, unlike in *Brown*, 261 Md. App. at 104, where Mr. Brown's admission that he had consumed a quantity of alcohol unlikely to have been served in a sit-down establishment indicated that the liquor referenced may have been found in the car, Mr. Gray's admission that he had "a little liquor" a few hours before does not lead to the same conclusion that further evidence of DUI would have been found in Mr. Gray's car.

[9] Following this question, the State asked Deputy Dixon whether "[i]n those other arrests, have you had the occasion to find alcoholic beverage containers in the vehicles of individuals you had arrested for DUI?" The defense objected, the objection was sustained, and Deputy Dixon did not answer the question.

further search of Mr. Gray's vehicle for evidence of DUI.

C. Inevitable Discovery Doctrine

The State contends that the drugs were admissible based on the inevitable discovery doctrine. Specifically, the State argues that because Mr. Gray's car was disabled in the road, "it was inevitable that [Mr.] Gray's vehicle would have been impounded and towed away by the St. Mary's County Police Department." The State further argues that a standard inventory search typically completed by the police for towed vehicles would have uncovered the pills. Mr. Gray disagrees, pointing out that the State disclaimed this argument at the suppression hearing, where the prosecutor stated that "[t]here is no inventory search here."

"The warrantless seizure of an object may be permissible if the State can show, by a preponderance of the evidence, that the evidence *inevitably would have been* discovered through lawful means[.]" *Martin v. State*, 267 Md. App. 556, 595 (2025) (cleaned up). However,

> courts may not, under the guise of inevitable discovery, admit tainted evidence after launching a speculative inquiry into what might or could have occurred. . . .
>
> The significance of the word "would" cannot be overemphasized. It is not enough to show that evidence "might" or "could" have been otherwise obtained.

Stokes v. State, 289 Md. 155, 164 (1980) (cleaned up). Therefore, the "[a]pplicability of the inevitable discovery doctrine is a highly fact-based determination and involves review by a trial court whether the evidence in question would have been found." *Williams v. State*, 372 Md. 386, 417–18 (2002).

As stated above, our review of a motion to suppress is limited to the facts and information contained in the record of the suppression hearing, and we are required to defer to the factual findings of the suppression court. *Elliott v. State*, 417 Md. 413, 434 (2010). Further, "[o]rdinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court[.]" Md. Rule 8-131. However, exceptions to that rule do exist.

> One exception is that 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) (cleaned up). For this exception to apply, "there must be an adequate record below in order to justify an appellate court's departure from the general rule against raising issues *sua sponte*." *Elliott*, 417 Md. at 435. Ultimately, "[a]ppellate review of issues not previously raised is therefore discretionary, but[] this discretion should be exercised only when it is clear that it will not work an unfair prejudice to the parties or the court." *Id.* (cleaned up).

In determining whether the appellate court may rely upon an alternative basis for suppression not raised before the motion court, *Elliott v. State* is instructive. 417 Md. 413. In *Elliott*, after the police stopped Mr. Elliott's vehicle for a traffic violation, they detained him roadside while investigating. Based on observations made during the stop that officers believed amounted to probable cause to arrest Mr. Elliott, they conducted a search incident to that arrest that uncovered drugs on Mr. Elliott's person. The trial court

denied Mr. Elliott's motion to suppress the drugs. It found that the detention was legal, that it matured into probable cause to arrest Mr. Elliott, and that the search of Mr. Elliott was incident to that valid arrest. *Id.* at 425. On appeal, this Court, though finding that the search was unlawful because no valid probable cause existed, affirmed the denial of suppression in reliance upon the inevitable discovery doctrine, despite the State's failure to raise inevitable discovery at the suppression hearing. *Id.* at 426–27.

The Supreme Court then reversed this Court's decision, concluding that, because the State had not raised inevitable discovery below, the record was not sufficiently developed to rely on the inevitable discovery doctrine, the application of which would require speculation rather than be properly based on "historical facts capable of easy verification." *Id.* at 440–41. Further, our Supreme Court held that our reliance on a doctrine not raised below was prejudicial to the defense, which had been given no opportunity to challenge the factual basis for inevitable discovery because it had not been raised. *Id.* at 443. Later cases have reiterated the logic from *Elliott. See Martin*, 267 Md. App. at 492–93 (declining to apply the inevitable discovery doctrine on appeal, because the theory had not been raised by the State below and because the record did not contain enough evidence to support such a theory).

The Supreme Court further clarified its holding in *Elliott* in a later case, *Reid v. State*, 428 Md. 289 (2012). In *Reid*, the Court found that, where the State had not raised inevitable discovery as a basis for suppression below, although there was potentially *some* evidence to that end, it would be improper to rely upon that theory on appeal

because the trial court made no finding regarding inevitable discovery. *Id.* at 310 ("Were we to rely on our own fact-finding in this record, however, we would be running afoul of our own jurisprudence, especially that which was articulated recently in *Elliott v. State*, 417 Md. 413, 10 A.3d 761 (2010).").

Here, the State did not raise the theory of inevitable discovery via inventory search at the suppression hearing, instead explicitly disclaiming it. As noted by Mr. Gray, in the State's opening statement in the suppression hearing, the prosecutor specifically said, "There is no inventory search here. It is a simple, straightforward search incident to arrest of a vehicle for evidence of the crime for which the individual was arrested and, that is[] absolutely permissible under the Fourth Amendment." Although this does not prevent us entirely from relying upon inevitable discovery as an alternative ground, *Robeson*, 285 Md. at 502, it would require us to raise the issue *sua sponte* on appeal.

Further, although there was some evidence below that tended to suggest that an inventory search was inevitable, the suppression court never found, one way or the other, that an inventory search had occurred or that the drugs would have been discovered during such a search. During Officer Dixon's testimony at the suppression hearing, there was some discussion about the standard operating procedure of conducting an inventory search, as well as the admission of the "tow card" from Mr. Gray's vehicle into evidence. However, in its factual findings, the suppression court made no reference to inventory searches or inevitable discovery. Therefore, in order to "avoid running afoul of our own jurisprudence," particularly *Martin*, *Elliott*, and *Reid*, we decline to engage in our own

factfinding to apply the inevitable discovery doctrine. We find no permissible basis for the search in the record.

Because the drugs seized from Mr. Gray's vehicle were the product of an unlawful search, we conclude that Mr. Gray's Motion to Suppress should have been granted. Therefore, we vacate the judgments against him without reaching the other issues.[10]

JUDGMENTS OF THE CIRCUIT COURT FOR ST. MARY'S COUNTY VACATED. CASE REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY ST. MARY'S COUNTY.

[10] Although we do not reach this issue, we agree with Mr. Gray that there was insufficient evidence to find, beyond a reasonable doubt, that he possessed five or more grams of fentanyl pursuant to CR § 6-612(a)(7). Given that the State's forensic chemist, Mr. Ikpeama, was unable to make any attestations as to the quantity of fentanyl in the drugs seized, either in weight or in proportion, no rational juror could have found beyond a reasonable doubt that there were five or more grams of fentanyl without impermissibly speculating.