UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

CONSOLIDATED

No. 1112
September Term, 2014

STATE OF MARYLAND
v.
BRANDON CARTER

No. 1111
September Term, 2014

STATE OF MARYLAND
v.
JAMES MAJOR

Krauser, C.J.,
Woodward,
Kenney, James A., III
(Retired, Specially Assigned),

JJ.

Opinion by Krauser, C.J.

Filed: December 23, 2014

Charged with possession of heroin with intent to distribute and other offenses arising from the search of a vehicle they occupied,[1] Brandon Carter and James Major, appellees, filed respective motions to suppress the evidence seized by police during a warrantless search of that vehicle. A suppression hearing was held in the Circuit Court for Caroline County on both motions. At the conclusion of that hearing, the circuit court granted their motions,[2] holding that appellees had a legitimate expectation of privacy in that vehicle, though it was owned by neither of them, but, although there was probable cause to search the vehicle, the search was unlawful because the police should have obtained a warrant before doing so, as they had "immobilized" the car prior to the search. Although the State then noted an interlocutory appeal from the grant of each of the two motions, we have consolidated the two appeals for consideration by this Court.

Because we conclude that neither appellee had a legitimate expectation of privacy in the searched vehicle and because we further conclude that the circuit court erred in holding that, although the police had probable cause, a warrant was required, we reverse and remand for further proceedings.

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[1]The other offenses referred to the above-included possession of heroin, possession of drug paraphernalia, possession of a firearm during and in relation to a drug-trafficking crime, and theft under $1,000.

[2]Appellee Major further sought to suppress evidence of $800 in cash found on his person, but the circuit court determined that that evidence was uncovered as the result of a lawful *Terry* frisk.

SUPPRESSION HEARING

Only two witnesses testified at the suppression hearing, both for the State: Chief Gary Manos, of the Ridgely Police Department, and Patrolman First Class ("PFC") Kenneth Carroll, also of the Ridgely Police Department. Viewed in the light most favorable to appellees, their testimony established the following:

In the evening of October 31, 2013, Chief Manos was notified of an anonymous 911 call, alleging that there had been "two black males sitting in a gold Chrysler," selling drugs in the parking lot of an apartment complex in Caroline County. Responding to that communication, the officer drove to the apartment complex, arriving there "moments" later. Upon entering the parking lot, he observed a car matching the caller's description. Upon driving past the car, he observed appellees sitting in the vehicle.

Chief Manos recognized Major. He "knew" him from, in the officer's words, "past dealings." He testified that he had previously responded to "several calls" alleging that Major "was dealing drugs out of" the same apartment complex but that there was not sufficient evidence to charge Major with any crimes. The officer specifically recalled that, a little more than a month earlier, he was informed by the family of a victim of a heroin overdose that that victim, prior to his overdose, had been at an apartment Major shared with his girlfriend, Melissa Maxwell.

After passing the appellees' car, Chief Manos made a U-turn to return to that vehicle. Appellees then climbed out of their car. As Major walked towards "the edge of the curb,"

Carter "leaned into a van,"[3] which was parked in a space immediately adjacent to the Chrysler.

When Chief Manos approached Major and asked "what he was doing in the vehicle," Major, while "trying to walk away," denied ever having been in the Chrysler or even knowing who owned it. Manos then ordered him to stop. When Major complied with that order, the officer performed a *Terry*[4] frisk, which yielded a wad of cash totaling $800, "mostly" in twenty-dollar bills, which the officer placed back into Major's pocket.

In the meantime, PFC Carroll had arrived at the scene and approached appellee Carter, with whom he was "familiar."[5] After asking Carter for identification and subjecting him to a frisk, PFC Carroll asked Carter "what he was doing there." Carter replied that "he didn't know what was going on."[6] Moments later, Carter was permitted to leave the scene.

Chief Manos then attempted to open the doors of the Chrysler and discovered that they were locked. When he asked Major to unlock the car, Major denied having keys to the vehicle or even knowing to whom the vehicle belonged. Major, who, as the officer observed, was "sweating profusely," then said that he needed to urinate. Chief Manos then escorted

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[3]The officers later determined that the van belonged to a relative of Carter's.

[4]*Terry v. Ohio*, 392 U.S. 1 (1968).

[5]Chief Manos was familiar with Major, whereas PFC Carroll was familiar with Carter.

[6]Although Chief Manos testified that PFC Carroll had asked Carter about his connection, if any, to the Chrysler and that, in response, Carter denied having been in the Chrysler or knowing who owned it, insisting that he did not have "anything to do with" it, PFC Carroll testified that he did not discuss the Chrysler with Carter.

Major to Major's nearby apartment, where he used the restroom and then escorted him "back out to the vehicle."

When Chief Manos resumed questioning Major as to who owned the Chrysler, Major stated that the vehicle belonged to a Brenda Maxwell, the mother of his girlfriend, Melissa Maxwell, who lived with him. The officers then asked Melissa Maxwell, who was now present at the scene, if she would consent to a search of the Chrysler. When she refused, the officers ran a check on the vehicle identification number ("VIN") and confirmed that the Chrysler was registered to her mother, Brenda Maxwell, whereupon they called her mother. But they were unable to reach her. The officers learned, however, after checking the vehicle's temporary license tag number, that a number of "e-tickets" had been issued to Major during the preceding month.

After both Major and Carter were permitted to leave the scene, the police officers called a tow truck to impound the Chrysler, "because nobody had claimed ownership" of it and because of the officers' suspicion, based upon both their knowledge of Major's illegal drug activity, as well as the 911 call, that the vehicle had been used to distribute drugs.

While they were waiting for the tow truck to arrive, Chief Manos "tried the door handles again" but could not gain entry. With their flashlights on, the officers then looked through the windows of the vehicle to observe what was inside. At that time, PFC Carroll observed "a clear plastic baggy under the driver's seat." It appeared to contain items "rectangular in shape" and made of "some type of paper material, which appeared to the

officer to be "heroin[] folds," that is, small packages of heroin intended for sale. Then, peering inside through the passenger's window, Chief Manos observed "what [he] thought to be a sack of ah, powdery substance, drugs stuffed in the handle of" the passenger's side door handle.

When the tow truck arrived at the scene, the driver of the truck used a "slim jim" to unlock a door of the Chrysler and gain entry. An ensuing search uncovered bags of drugs, which were later found to contain heroin, as well as a loaded handgun.

At the conclusion of the suppression hearing, the court held that appellees "had an expectation of privacy in" the Chrysler and that the police officers, upon looking inside the Chrysler and observing suspected drugs, had probable cause to search the vehicle. Nonetheless, it granted appellees' suppression requests, reasoning that because the car was "immobilized," the police officers were required to obtain a search warrant before commencing their search of the inside of the vehicle.

Thereafter, the State noted the instant appeals, which were thereafter consolidated by this Court for review. As the records were filed in this Court on September 2, 2014, a decision in this matter must be rendered by no later than December 31, 2014. Md. Code (1974, 2013 Repl. Vol.), Courts and Judicial Proceedings Article, § 12-302(c)(3)(iii).

DISCUSSION

I.

The State contends that the circuit court erred in holding that appellees had a legitimate expectation of privacy in the vehicle at issue and could therefore raise a Fourth Amendment challenge to the search of it. We agree.

Among other things, the Fourth Amendment provides that the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated[.]" But the rights that that amendment protects "are personal rights which . . . may not be vicariously asserted." *Rakas v. Illinois*, 439 U.S. 128, 133-34 (1978) (citation and quotation omitted). Consequently, a "person who is aggrieved by an illegal search and seizure only through the introduction of damaging evidence secured by a search of a third person's premises or property has not had any of his Fourth Amendment rights infringed" and thus may not invoke the exclusionary rule as to such evidence. *Id.* at 134. Ordinarily, the test used to determine whether a person aggrieved by a purportedly illegal search or seizure may assert a Fourth Amendment challenge is that he demonstrate "a legitimate expectation of privacy in the invaded place." *Id.* at 143.

In determining whether a defendant has met his burden to prove a legitimate expectation of privacy in the thing searched or its location, we apply a two-prong test: he "must manifest a subjective expectation of privacy," *Whiting v. State*, 389 Md. 334, 349

(2005); and he must show that "society accepts" that subjective expectation "as objectively reasonable." *California v. Greenwood*, 486 U.S. 35, 39 (1988).

Even if Major and Carter initially had a legitimate expectation of privacy in the Chrysler (a question we need not decide), they abandoned that interest, when Major, in Carter's presence, denied ever having been in the Chrysler or even knowing who owned it. As the Court of Appeals has noted, "[b]y abandoning property, the owner relinquishes the legitimate expectation of privacy that triggers Fourth Amendment protection." *Stanberry v. State*, 343 Md. 720, 731 (1996), *cert. denied*, 520 U.S. 1210 (1997). An "owner's affirmative disclaimer of ownership, if voluntary, ordinarily constitutes abandonment." *Id.* at 737. And that is precisely what occurred here. *See*, *e.g.*, *Duncan v. State*, 281 Md. 247, 264-65 (1977) (holding that defendants' "unequivocal disclaimer of the automobile," which had been found parked along the side of a road, constituted abandonment). We therefore conclude that appellees abandoned any possessory interest they may have had in the Chrysler and thereby relinquished any legitimate expectation of privacy in that vehicle.

II.

Even if we were to assume, *arguendo*, that appellees had a legitimate expectation of privacy in the Chrysler and that they therefore had a Fourth Amendment interest in the search of that vehicle, the warrantless search of that vehicle was nonetheless lawful under the *Carroll*[7] doctrine.

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[7] *Carroll v. United States*, 267 U.S. 132 (1925).

The Fourth Amendment "generally requires police to secure a warrant before conducting a search." *Maryland v. Dyson*, 527 U.S. 465, 466 (1999) (per curiam). In fact, a warrantless search is presumed to be unreasonable, "subject only to a few specifically established and well-delineated exceptions." *Schneckloth v. Bustamonte*, 412 U.S. 218, 219 (1973). The "automobile exception," otherwise known as the "*Carroll* doctrine," is such an exception. *Carroll v. United States*, 267 U.S. 132 (1925). Under that doctrine, "[i]f 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." *Pennsylvania v. Labron*, 518 U.S. 938, 940 (1996) (per curiam). Thus, "the 'automobile exception' has no separate exigency requirement." *Dyson*, 527 U.S. at 466.

Moreover, probable cause "is a flexible, common-sense standard." *Daniels v. State*, 172 Md. App. 75, 89 (2006). It merely requires that the facts available to the officer would lead "a man of reasonable caution" to believe "that certain items may be contraband or stolen property or useful as evidence of a crime[.]" *Id.* (quoting *Carroll*, 267 U.S. at 162). It does not require "any showing that such belief be correct or more likely true than false." *Id.*

In reviewing a circuit court's ruling on a motion to suppress evidence, we accept the its factual findings unless clearly erroneous, but, as to its ultimate legal conclusions, "we 'make our own independent constitutional appraisal by reviewing the law and applying it to the facts of the case.'" *Crosby v. State*, 408 Md. 490, 505 (2009) (quoting *State v. Williams*, 401 Md. 676, 678 (2007)). Finally, we "view the evidence adduced at the suppression

hearing, and the inferences fairly deductible therefrom, in the light most favorable to the party that prevailed on the motion," in this case, appellees. *Id.* at 504.

In the case at bar, the court found that Chief Manos and PFC Carroll had both peered through the car windows and observed what, according to their knowledge, training, and experience as police officers involved in drug enforcement, appeared to be controlled dangerous substances, some of which were packaged for sale. The court below correctly found that their observations provided probable cause to believe that the car contained controlled dangerous substances. *Daniels*, 172 Md. App. at 89.

But the circuit court then concluded that, because the officers had called a tow truck to remove the vehicle, they had, in effect, "immobilized" it and therefore could not enter and search it for further evidence of drug distribution, without a warrant. This conclusion does not withstand scrutiny.

To begin with, there was utterly no evidence that the Chrysler was inoperable, while they were waiting for the tow truck. Moreover, and as the Supreme Court has repeatedly instructed, "[i]f 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." *Pennsylvania v. Labron*, *supra*, 518 U.S. at 940. And, in any event, even if the search had taken place after the car was "immobilized," it would have made no difference.[8] In *Michigan*

[8] Appellees contend that in calling the tow truck the officers "seized" the Chrysler and that, as that purported "seizure" took place before they looked inside, discovered suspected (continued...)

v. Thomas, 458 U.S. 259, 261 (per curiam), the Supreme Court observed that "when police officers have probable cause to believe there is contraband inside an automobile that has been stopped on the road, the officers may conduct a warrantless search of the vehicle, even after it has been impounded and is in police custody," despite its immobilization. Thus, the circuit court clearly erred in concluding that a warrant was required before the search at issue could be performed. We therefore reverse its decision to grant appellees' motions to suppress and remand for further proceedings.

ORDER SUPPRESSING EVIDENCE REVERSED. CASE REMANDED TO THE CIRCUIT COURT FOR CAROLINE COUNTY FOR FURTHER PROCEEDINGS NOT INCONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY APPELLEES.

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[8](...continued)
drugs, and thereby established probable cause to search inside the car, the ensuing search was illegal. But a "'seizure' of property occurs when there is some meaningful interference with an individual's possessory interests in that property." *United States v. Jacobsen*, 466 U.S. 109, 113 (1984). Merely calling for a tow truck, where appellees had already left the scene and thus could not have suffered a "meaningful interference" with their ability to drive the car, is not a "seizure," and thus appellees' contention has no merit.