



Roll Call Reporter

LEGAL UPDATES FOR MARYLAND LAW ENFORCEMENT OFFICERS

April 2016

QUESTION: Has Maryland's decriminalization of small amounts of marijuana changed existing case law allowing officers to search a vehicle based upon a K-9 alert to the smell of marijuana?

ANSWER: No. Despite its decriminalization in small amounts, marijuana, in any amount, is still contraband. As a result, the odor of marijuana provides probable cause to search a vehicle under the *Carroll* doctrine.

CASE: *JOSHUA PAUL BOWLING v. STATE*
Court of Special Appeals of Maryland
Decided March 31, 2016

The Traffic Stop

On January 2, 2015, at approximately noon, Officer Brian Barr, a member of the Salisbury Police Department, was patrolling in his vehicle in Salisbury. Officer Barr saw Joshua Paul Bowling driving a vehicle. Officer Barr knew Bowling from previous drug related encounters and believed that his driver's license was suspended. Officer Barr decided to follow Bowling's vehicle and observed him fail to signal during two turns. After the second illegal turn,

Officer Barr activated his lights and initiated a traffic stop.

Officer Barr approached on the driver's side and saw that Bowling's hands were shaking. Bowling avoided eye contact and appeared very nervous. Bowling gave Officer Barr a "Maryland ID card" and the vehicle's registration. Officer Barr walked back to his vehicle and, because of Bowling's suspicious behavior and lengthy history of drug related offenses, he called for a K-9 unit. As Officer Barr entered his vehicle, Bowling got out of his. Officer Barr ordered Bowling to get back in the vehicle. He issued the order because Officer Barr was concerned for his safety and he knew that Bowling had at least one prior weapons offense. Officer Barr also called for another officer to stand by Bowling while he continued the traffic stop. Officer Barr stayed with Bowling until the second officer arrived.

The Canine Sniff

At 12:20 p.m., Wicomico County Deputy Sheriff J.C. Richardson arrived at the scene with his drug dog. The dog was certified and licensed to detect odors of marijuana, cocaine, heroin, methamphetamines, and MDMA (ecstasy). The dog's behavioral signals that alert his handler that he has detected the presence of CDS were

the same for all five drugs. The dog's sense of smell was sensitive enough to pick up extremely small amounts of a substance, and the dog could not communicate the amount of a substance detected.

Deputy Richardson had his dog sniff the exterior of Bowling's vehicle. The dog alerted when passing the rear driver's side door.

The Vehicle Search

After the alert, the second officer arrived to watch Bowling, and Officer Barr continued with the traffic stop. He confirmed that Bowling's driver's license was suspended. He arrested Bowling for driving with a suspended license.

Because Bowling's vehicle was locked with the keys inside, Officer Barr intended to have the vehicle towed to the police station, where an inventory search could be performed. However, when the tow truck driver arrived, he said that it was his company's policy to open a vehicle and retrieve the keys if they could be observed inside the vehicle. The keys were visible and the tow truck driver opened the vehicle. Officer Barr then searched the vehicle at the scene. The search revealed 198.2 grams of marijuana, a smoking device, a scale, a large sum of cash, and a single OxyContin tablet (5 milligrams) inside a cigarette carton.

The Charges and Conviction

Bowling was charged with possession of marijuana with the intent to distribute, as well as other drug related offenses and several traffic offenses. Bowling's motion to suppress was denied. He entered a conditional plea of guilty to the most serious drug charge and the remaining charges were dismissed. Bowling appealed his conviction.

The Appeal and the Outcome

On appeal, Bowling argued that Officer Barr lacked legal authority to search his vehicle. Bowling relied on the law passed by the Maryland General Assembly in 2014, which decriminalized possession of less than 10 grams of marijuana. Bowling urged that because the canine could not distinguish between the quantity of marijuana that constituted a criminal offense and the quantity that constituted a civil offense, the dog's alert did not provide probable cause to believe a crime had occurred, and therefore, the search violated the Fourth Amendment.

The State's counter-argument was that, since the dog could detect multiple drugs, there was a fair probability that the dog was alerting to the presence of other drugs, and that was enough to give Officer Barr probable cause to search the car under the *Carroll* doctrine. In this regard, the State contended that since marijuana is still considered "contraband," regardless of the amount, an officer properly could search a vehicle for it if he or she had probable cause to believe that it was present in the vehicle.

The Court of Special Appeals agreed with the State. The court first noted that past cases had repeatedly held that the detection of the odor of marijuana by a trained drug dog establishes probable cause to conduct a warrantless *Carroll* doctrine search of the vehicle. The question was whether the recent Maryland law, which decriminalized the possession of less than 10 grams of marijuana and made it a civil offense, changed the court's analysis. The court's answer was "no," finding that "decriminalization" is not the same as "legalization." In other words, though possession of less than 10 grams is now only a civil offense, it is still *illegal*.



And, since marijuana in any amount is still “contraband” (meaning something illegal to possess), and because Maryland courts allow *Carroll* doctrine searches if there is probable cause to believe the vehicle contains *evidence of a crime or contraband*, the search of Bowling’s vehicle was valid under the Fourth Amendment.

NOTE:

This area of the law will be further complicated by the passage of “medical marijuana” laws, providing that there is an affirmative defense to a prosecution in certain circumstances when possession of marijuana is for medical use, and a licensed dispensary of products containing cannabis may not be penalized or arrested under State law for possessing or distributing these products. The impact of these laws was not part of this case but will certainly be an issue in future cases.

*By John F. Breads, Jr., Director of Legal Services,
Local Government Insurance Trust*

This publication is designed to provide general information on the topic presented. It is distributed with the understanding that the publisher is not engaged in rendering legal or professional services. Although this publication is prepared by professionals, it should not be used as a substitute for professional services. If legal or other professional advice is required, the services of a professional should be sought.

