



2017

# Recent Development: Robinson v. State: Decriminalization of Possession of Less than Ten Grams of Marijuana Does Not Eliminate a Police Officer's Probable Cause to Search Vehicles From Which the Odor of Marijuana Emanates

Virginia J. Yeoman

Follow this and additional works at: <http://scholarworks.law.ubalt.edu/lf>

 Part of the [State and Local Government Law Commons](#)

## Recommended Citation

Yeoman, Virginia J. (2017) "Recent Development: Robinson v. State: Decriminalization of Possession of Less than Ten Grams of Marijuana Does Not Eliminate a Police Officer's Probable Cause to Search Vehicles From Which the Odor of Marijuana Emanates," *University of Baltimore Law Forum*: Vol. 47 : No. 2 , Article 10.

Available at: <http://scholarworks.law.ubalt.edu/lf/vol47/iss2/10>

This Article is brought to you for free and open access by ScholarWorks@University of Baltimore School of Law. It has been accepted for inclusion in University of Baltimore Law Forum by an authorized editor of ScholarWorks@University of Baltimore School of Law. For more information, please contact [snolan@ubalt.edu](mailto:snolan@ubalt.edu).

## RECENT DEVELOPMENT

---

### **ROBINSON V. STATE: DECRIMINALIZATION OF POSSESSION OF LESS THAN TEN GRAMS OF MARIJUANA DOES NOT ELIMINATE A POLICE OFFICER'S PROBABLE CAUSE TO SEARCH VEHICLES FROM WHICH THE ODOR OF MARIJUANA EMANATES.**

**By: Virginia J. Yeoman**

The Court of Appeals of Maryland held that decriminalization does not equate to legalization of marijuana; therefore, a law enforcement officer has probable cause to search a vehicle if the officer detects the odor of marijuana coming from the vehicle. *Robinson v. State*, 451 Md. 94, 99, 152 A.3d 661, 664-65 (2017). The court explained that the odor of marijuana establishes probable cause to believe the vehicle contains contraband or evidence of a crime. *Id.* at 99, 152 A.3d at 665. Thus, there was probable cause to search the vehicles in each of the combined cases. *Id.* at 137, 152 A.3d at 687.

The Court of Appeals of Maryland consolidated three cases in which police officers smelled marijuana emanating from a vehicle. In the first case, Jermaul Rondell Robinson (“Robinson”) was leaning against a vehicle in Baltimore when two police officers approached him after noticing a strong odor of marijuana. The officers searched Robinson’s vehicle and seized sixteen small bags of marijuana. Similarly, in the second case, Dexter Williams (“Williams”) was sitting in a vehicle in Baltimore when a police officer walked towards him and smelled marijuana emanating from his car. The officer searched Williams’ car and seized a backpack, which contained a scale and 170 grams of marijuana.

In the third case, a police officer driving with the windows down in Dorchester County noticed the strong scent of marijuana and saw Vernon Harvey Spriggs, III (“Spriggs”) sitting in a parked vehicle in front of an abandoned building. After observing the first officer on foot, a second officer parked and exited his vehicle to approach Spriggs. One of the officers asked Spriggs for his car key and Spriggs gave it to him. The officers searched Spriggs’ car and found 142 grams of marijuana, 143 grams of cocaine, and \$3,056 in U.S. currency.

The defendants in all three cases were charged with possession of marijuana, among various other counts. Each defendant filed a motion to suppress all evidence taken from the vehicles, alleging that law enforcement had seized it illegally. In Robinson’s and Williams’ cases, the Circuit Court for Baltimore City conducted separate hearings on the suppression motions, but declined to grant either motion. In Spriggs’ case, the Circuit Court for Dorchester County also conducted a suppression hearing, subsequently denying his motion.

Thereafter, Robinson was found guilty of possession of at least ten grams of marijuana. Williams was likewise found guilty of possession of at least ten grams of marijuana, while Spriggs was found guilty of possession of marijuana with the intent to distribute and possession of marijuana. All three appealed, and the Court of Special Appeals of Maryland affirmed the respective lower courts' rulings for each defendant. The Court of Appeals of Maryland then granted *certiorari* to Robinson, Williams, and Spriggs (collectively, "Petitioners"), answering the question of whether an officer has probable cause to search a vehicle from which he smells marijuana, even though possession of less than ten grams of marijuana is now only a civil offense.

The Court of Appeals of Maryland reviewed each trial courts' rulings on the motions to suppress for clear error, in the light most favorable to the State. *Robinson*, 451 Md. at 108, 152 A.3d at 670. The Petitioners argued that the odor of marijuana no longer constitutes probable cause given the recent decriminalization of possession of less than ten grams of marijuana, because the odor indicates only the presence of marijuana and not the amount. *Id.* at 107, 152 A.3d at 669. Therefore, an officer cannot search their vehicles because a search warrant cannot be issued for civil offenses, and warrantless searches can only be conducted where the search is reasonable. *Id.* The Petitioners questioned the reasonableness of an officer searching for marijuana when the possession of less than ten grams is no longer criminal. *Id.*

The court addressed these arguments by first analyzing the rule for determining whether a search is reasonable or not. *Robinson*, 451 Md. at 108-09, 152 A.3d at 670. The court explained that the exception to the requirement that an officer have a warrant is known as the "Carroll Doctrine" (more commonly known as the "automobile exception") and applies when an officer has probable cause to search a vehicle. *Id.* at 109, 152 A.3d at 670 (citing *Carroll v. United States*, 267 U.S. 132 (1925)). For an officer to have probable cause, he must reasonably believe that "contraband or evidence of a crime is present" inside the vehicle. *Id.* at 109, 152 A.3d at 670 (quoting *Florida v. Harris*, 568 U.S. 237 (2013)).

The court next looked to case law from both Maryland and other jurisdictions for guidance. *Robinson*, 451 Md. at 116-24, 152 A.3d at 674-79. The Court of Special Appeals of Maryland addressed this issue in *Bowling v. State* when it held that "a search is permitted when there is probable cause to believe that the car contains evidence of a crime or contraband." *Id.* at 117, 152 A.3d at 675 (quoting *Bowling v. State*, 227 Md. App. 460, 472, 134 A.3d 388, 396 (2016)). Furthermore, four other states that have also decriminalized possession of small amounts of marijuana have ruled that possession of a non-criminal amount of marijuana does not negate probable cause to search a vehicle after detecting an odor of marijuana. *Robinson*, 451 Md. at 118, 152 A.3d at 676. Courts in Maine, Oregon, California, and Minnesota held that marijuana is contraband even if it is

under the criminal amount. *Id.* at 118-22, 152 A.3d at 676-78. As such, it remains subject to seizure. *Id.* at 118, 152 A.3d at 676.

The Maryland General Assembly's legislative intent likewise supported the conclusions reached by other jurisdictions. *Robinson*, 451 Md. at 125-28, 152 A.3d at 680-81. The court noted that when the General Assembly decriminalized possession of less than ten grams of marijuana, they added a provision to the code "which states that the decriminalization 'may not be construed to affect the laws relating to . . . seizure and forfeiture.'" *Id.* at 126, 152 A.3d at 680 (quoting MD. CODE ANN., CRIM. LAW § 5-601(d)(2)). The laws relating to seizure and forfeiture say that Schedule I drugs shall be seized. *Robinson*, 451 Md. at 126, 152 A.3d at 680. Therefore, since marijuana is still a Schedule I drug, the court concluded that the General Assembly did not intend for officers to stop seizing marijuana when it decriminalized possession of under ten grams. *Id.* Following this logic, the court explained that if officers can still seize marijuana, they can still search for marijuana with probable cause. *Id.* at 126, 152 A.3d at 681.

Finally, the court discussed the meaning of "contraband" to cement its conclusion that probable cause to search a vehicle exists when the odor of marijuana is present. *Robinson*, 451 Md. at 128-30, 152 A.3d at 682-83. Contraband is defined as "goods that are unlawful to import, export, produce, or possess." *Id.* at 128-29, 152 A.3d at 682 (quoting *Black's Law Dictionary* (10<sup>th</sup> ed. 2014)). The court noted that the words "crime" and "criminal" are not included in the definition. *Robinson*, 451 Md. at 128, 152 A.3d at 682. Thus, the court dispelled the Petitioners' argument that the word contraband exclusively refers to things that are criminal to possess. *Id.* at 129-30, 152 A.3d at 682-83. Upon concluding the definition of contraband may encompass items that are unlawful but not criminal, the court had no trouble categorizing marijuana as contraband given that marijuana in any amount is still illegal. *Id.* at 130, 152 A.3d at 683.

In *Robinson*, the Court of Appeals of Maryland held that the decriminalization of possession of less than ten grams of marijuana does not preclude a law enforcement officer from establishing probable cause to search a vehicle if the officer smells marijuana emanating from the vehicle. Maryland practitioners and law enforcement officers should be aware that the court's stance towards marijuana, aside from medical uses, has not changed since the decriminalization law was enacted in 2014. This suggests that courts will continue to treat marijuana as contraband unless the legislature decides to remove marijuana from its Schedule I classification in the Maryland Code.