RECEIVED by MSC 12/18/2024 6:30:47 PM

STATE OF MICHIGAN
IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v.

FREDDIE WILKINS, III,

Defendant-Appellant.

Supreme Court No. 167737

Court of Appeals No. 367209
Circuit Court No. 23-02112-FH

Attorneys for Plaintiff-Appellee:
CHRISTOPHER R. BECKER (P53752)
KIMBERLY M. MANNS (P67127)
Kent County Prosecutor's Office
82 Ionia Ave. NW, Ste. 450
Grand Rapids, MI 49503
(616) 632-6710

Attorneys for Defendant-Appellant:
LAURA M. JOYCE (P76649)
ZACHARY J. HOUGHTON (P83067)
Kent County Office of the Public Defender
250 Monroe Ave. NW, Ste. 800
Grand Rapids, MI 49503
(616) 632-7434 / (616) 632-7436

REPLY IN SUPPORT OF APPLICATION FOR LEAVE TO APPEAL

RECEIVED by MSC 12/18/2024 6:30:47 PM

REBUTTAL ARGUMENT

In its Opinion, the Court of Appeals made two ***radical*** holdings. First, the Court of Appeals held that although Trooper Tompkins exceeded the permissible scope of *Terry* when he searched Mr. Wilkins for marijuana during a traffic stop, the pistol subsequently found in the vehicle – i.e., the pistol found after the *Terry* investigation had been unconstitutionally prolonged – should not be suppressed because it was not a "fruit" of an unlawful seizure.[1] Second, the Court of Appeals held for what appears to be the first time in Michigan history that the automobile exception authorizes the warrantless search of a vehicle even if an officer only has probable cause to believe the vehicle contains evidence of a civil infraction – not a crime.[2]

Both holdings are not just radical but incorrect. As explained in the Application for Leave to Appeal, the pistol in this case was clearly a "fruit" of an unlawful seizure, because: (1) the search of the vehicle occurred after the *Terry* investigation had been unconstitutionally prolonged (i.e., during the unlawful seizure); and (2) Trooper Tompkins based his decision to search the vehicle on an admission secured from the passenger after the *Terry* investigation had been unconstitutionally prolonged (i.e., during the unlawful seizure). And, as also explained in the Application for Leave to Appeal, the Court of Appeals' decision to expand the automobile exception to searches for evidence of civil infractions was based on a misunderstanding of what constitutes "contraband" in the warrantless search and seizure context.

Now in Plaintiff-Appellee's Opposition to Defendant-Appellant's Application for Leave to Appeal to the Michigan Supreme Court (the "Response"), the prosecution offers no meaningful response to the foregoing points. Instead, it "incorporates those arguments set forth in Plaintiff-Appellee's Brief on Appeal, filed in the Court of Appeals" and summarily adopts the reasoning of "the Court of Appeals' September 5, 2024 Opinion."[3] Because Mr. Wilkins thoroughly addressed (and refuted) the arguments "set forth in Plaintiff-Appellee's Brief on Appeal" in his Reply in Support of Appellant's Brief, Mr. Wilkins has attached that document as Exhibit 1. Moreover, to the extent that the prosecution adopts the reasoning of "the Court of Appeals' September 5, 2024 Opinion," Mr. Wilkins relies on his Application for Leave to Appeal.

---

[1] Opinion, p. 7-10.
[2] *Id.* at 4-7.
[3] Response, p. 1.

RECEIVED by MSC 12/18/2024 6:30:47 PM

CONCLUSION

For the reasons set forth herein and in his Application for Leave to Appeal, Mr. Wilkins requests this Court grant leave to appeal, vacate the Order issued by the 17th Circuit Court on June 9, 2023, and remand this case to the trial court with instructions that it enter an order suppressing all evidence discovered by the People as a result of their unconstitutionally prolonged *Terry* investigation and unconstitutional search of the vehicle on January 16, 2023.*

Date: December 18, 2024

Respectfully submitted,

LAURA M. JOYCE (P76649)
Kent County Office of the Public Defender
250 Monroe Ave. NW, Ste. 800
Grand Rapids, MI 49503
(616) 632-7434

ZACHARY J. HOUGHTON (P83067)
Kent County Office of the Public Defender
250 Monroe Ave. NW, Ste. 800
Grand Rapids, MI 49503
(616) 632-7436

*According to the word count of the word-processing system used to prepare this Reply in Support of Application for Leave to Appeal, the Rebuttal Argument and Conclusion sections of this document contain 457 countable words.

Exhibit 1

RECEIVED by MSC 12/18/2024 6:30:47 PM

RECEIVED by MSC 12/18/2024 6:30:47 PM

STATE OF MICHIGAN
IN THE COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v.

FREDDIE WILKINS, III,

Defendant-Appellant.

Court of Appeals No. 367209

Circuit Court No. 23-02112-FH

Attorneys for Plaintiff-Appellee:
CHRISTOPHER R. BECKER (P53752)
KIMBERLY M. MANNS (P67127)
Kent County Prosecutor's Office
82 Ionia Ave. NW, Ste. 450
Grand Rapids, MI 49503
(616) 632-6710

Attorneys for Defendant-Appellant:
RYAN C. KEAST (P84580)
ZACHARY J. HOUGHTON (P83067)
Kent County Office of the Defender
250 Monroe Ave. NW, Ste. 800
Grand Rapids, MI 49503
(616) 774-8181

*ORAL ARGUMENT SCHEDULED FOR AUGUST 6, 2024

REPLY IN SUPPORT OF APPELLANT'S BRIEF

TABLE OF CONTENTS

INDEX OF AUTHORITIES..... iii
REBUTTAL ARGUMENT.....1
CONCLUSION.....8

RECEIVED by MSC 12/18/2024 6:30:47 PM

RECEIVED by MSC 12/18/2024 6:30:47 PM

INDEX OF AUTHORITIES

Cases

Arizona v. Johnson, 555 U.S. 323 (2009) 3
Collins v. Virginia, 584 U.S. 586 (2018) 5
Com. v. Sheridan, 470 Mass. 752 (2015) 1, 2, 5, 7
Entick v. Carrington, 19 How. St. Tr. 1029 (C.P. 1765) 7
Minnesota v. Dickerson, 508 U.S. 366 (1993) 1-3
Navarette v. California, 572 U.S. 393 (2014) 2
One 1958 Plymouth Sedan v. Com. of Pa., 380 U.S. 693 (1965) 6
People v. Armstrong, 344 Mich. App. 286 (2022) 6
People v. Jack, 336 Mich. App. 316 (2021) 3
People v. Kavanaugh, 320 Mich. App. 293 (2017) 1-3
People v. Lucynski, 509 Mich. 618 (2022) 2
People v. Mahdi, 317 Mich. App. 446 (2016) 3, 5
People v. Moorman, 331 Mich. App. 481 (2020) 4
Rodriguez v. U.S., 575 U.S. 348 (2015) 1-3
Sibron v. New York, 392 U.S. 40 (1968) 1-3
Warden, Md. Penitentiary v. Hayden, 387 U.S. 294 (1967) 6, 7

Statute

MCL 333.27965(3) 1, 5

Other

Christopher Ingraham, *One of the Big Questions in Marijuana Research has been Answered*, WASH. POST (Jul. 7, 2016), https://www.washingtonpost.com/news/wonk/wp/2016/07/07/scientists-have-finally-figured-out-how-much-weed-is-in-a-joint 6

Wayne R. LaFave, Search and Seizure: A Treatise on the Fourth Amendment, § 2.6(d) (6th ed. 2024) 7

RECEIVED by MSC 12/18/2024 6:30:47 PM

REBUTTAL ARGUMENT

Trooper Tompkins stopped Mr. Wilkins for speeding. After smelling the odor of marijuana and learning that Mr. Wilkins and his passenger were under 21, Trooper Tompkins initiated a *Terry* investigation into whether either occupant possessed marijuana contrary to MCL 333.27965(3) – a civil infraction.[1] During that *Terry* investigation, Trooper Tompkins removed Mr. Wilkins from the vehicle and searched him. This was a full evidentiary search – not a *Terry* pat down for weapons. Finding nothing, Trooper Tompkins removed the passenger from the vehicle, who ***then*** told him that she had some "shake" (a small amount of marijuana residue) in the vehicle.[2] "Given this information, Trooper Tompkins began a search of the vehicle."[3] In the vehicle, he found the pistol giving rise to the pending CCW charge against Mr. Wilkins.

Mr. Wilkins argues that the pistol must be suppressed for two reasons. ***First***, Trooper Tompkins exceeded the permissible scope of the *Terry* investigation when he searched Mr. Wilkins, *see Minnesota v. Dickerson*, 508 U.S. 366, 378 (1993) (an evidentiary search during a *Terry* investigation is an "unrelated" inquiry); *Sibron v. New York*, 392 U.S. 40, 65-66 (1968) (accord), and, by searching him, Trooper Tompkins unconstitutionally prolonged the *Terry* investigation rendering Mr. Wilkins' continued detention unlawful. *See Rodriguez v. U.S.*, 575 U.S. 348, 355 (2015) (a *Terry* investigation "remains lawful only so long as unrelated inquiries do not measurably extend the duration of the stop") (cleaned up); *People v. Kavanaugh*, 320 Mich. App. 293, 301 n.6 (2017) (accord). ***Second***, even if Trooper Tompkins did not unconstitutionally prolong the *Terry* investigation by searching Mr. Wilkins, the subsequent search of the vehicle was not justified by the automobile exception because Trooper Tompkins was searching for evidence of a civil infraction – not a crime. *See Com. v. Sheridan*, 470 Mass. 752, 757 (2015).

The trial court rejected both arguments. The trial court held that Trooper Tompkins did not exceed the permissible scope of the *Terry* investigation when he searched Mr. Wilkins because his

---

[1] Trooper Tompkins only suspected Mr. Wilkins of two civil infractions – speeding and possible possession of marijuana. *See* COA Application for Leave to Appeal, Ex.7, p.11-12. The trial court explicitly found that Trooper Tompkins "observed no visible signs that Defendant was intoxicated." *Id.* at Ex.1, p.2.

[2] In their Brief on Appeal (the "Answer"), the People fail to disclose that the passenger told Trooper Tompkins about the "shake" only ***after*** he had unlawfully extended the *Terry* investigation by searching Mr. Wilkins. *See* Answer, p.1, 6-7, 11. This is troubling as the People's newly-minted "inevitable-discovery" argument relies on the passenger making this admission ***before*** the search of Mr. Wilkins. *See id.* at 10-11.

[3] COA Application for Leave, Ex.1, p.2.

RECEIVED by MSC 12/18/2024 6:30:47 PM

"actions were based on specific, reasonable inferences drawn from the initial smell of marijuana and the age of the vehicle's occupants" – i.e., he had reasonable suspicion "to extend the scope and duration of the stop to determine what amount of marijuana, if any, was present."[4] The trial court also held that because "Trooper Tompkins did not observe any amount of marijuana that would make possession a civil infraction," but rather "smelled and recognized the odor of marijuana," which "did not give … any indication of the amount of marijuana," Trooper Tompkins "had probable cause under the automobile exception to search the vehicle and its contents."[5]

As argued in Appellant's Brief, the trial court's holdings are erroneous. ***First***, a valid *Terry* investigation ***always*** involves at least reasonable suspicion. *People v. Lucynski*, 509 Mich. 618, 625 (2022). Yet, an evidentiary search is ***never*** allowed during a *Terry* investigation and never has been. *See Sibron*, 392 U.S. at 65-66 (holding that an evidentiary search during a *Terry* investigation "violates the guarantee of the Fourth Amendment."). In fact, it's "condemned." *Dickerson*, 508 U.S. at 378. This is true whether an officer is investigating a moving violation, marijuana, or murder. *See Navarette v. California*, 572 U.S. 393, 414 (2014) (Scalia, J., dissenting). Thus, even if Trooper Tompkins had reasonable suspicion to investigate "what amount of marijuana, if any, was present," he exceeded the scope of that *Terry* investigation (and unconstitutionally prolonged it) when he searched Mr. Wilkins. As such, the detention of Mr. Wilkins was unlawful from that point forward, and, because the search of the vehicle occurred during that unlawful detention, the pistol must be suppressed. *See Rodriguez*, 575 U.S. at 355; *Kavanaugh*, 320 Mich. App. at 301 n.6 (2017). ***Second***, if Trooper Tompkins did not have "any indication of the amount of marijuana" in the vehicle, then, *a fortiori*, he did not have probable cause to believe it contained a criminal amount (i.e., over 2.5 ounces) of marijuana. As such, the automobile exception was inapplicable, the search of the vehicle was unconstitutional, and the pistol must be suppressed. *See Sheridan*, 470 Mass. at 757.

In their Answer, the People offer no meaningful response. "[C]oncerning the scope and duration of the stop," the People argue that "where a traffic stop reveals new circumstances that lead to a reasonable suspicion of criminal activity, continued detention to investigate is not unconstitutional."[6] True enough. *See Kavanaugh*, 320 Mich. App. at 301. But, it's also beside the

[4] COA Application for Leave, Ex.1, p.4.
[5] *Id.* at Ex.1, p.5.
[6] Answer, p.4.

RECEIVED by MSC 12/18/2024 6:30:47 PM

point.[7] The point is, even assuming that Trooper Tompkins developed reasonable suspicion during the traffic stop to legally investigate whether Mr. Wilkins possessed marijuana contrary to MCL 333.27965(3), he exceeded the permissible scope of that *Terry* investigation when he searched Mr. Wilkins. Simply put, the evidentiary search of Mr. Wilkins was an "unrelated" inquiry vis-à-vis that – ***or any*** – *Terry* investigation, *see Dickerson*, 508 U.S. at 378; *Sibron*, 392 U.S. at 65-66, which unconstitutionally prolonged it and rendered his continued detention unlawful. *See Rodriguez*, 575 U.S. at 355; *Kavanaugh*, 320 Mich. App. at 301, n.6 (even if the police have not yet completed a *Terry* investigation, if police activity outside its permissible scope "causes that completion to be delayed, the delayed detention remains a constitutional violation."). The People offer nothing to rebut this point.

Instead, the People argue that "even were this Court to find that Trooper Tompkin's search of Defendant was improper, exclusion of the firearm located in the vehicle search is unnecessary because it would have been inevitably discovered."[8] As an initial matter, the People did not raise this argument in the trial court. Therefore, the argument is unpreserved, and this Court should not consider it. *See People v. Jack*, 336 Mich. App. 316, 319 n.2 (2021). In any event, the People's newly-minted "inevitable-discovery" argument is meritless.

The inevitable-discovery rule permits the admission of evidence obtained in violation of the Fourth Amendment if the prosecution proves that the evidence "inevitably would have been discovered through legal means." *People v. Mahdi*, 317 Mich. App. 446, 469 (2016). In deciding whether the inevitable-discovery rule applies, a court should consider: "(1) whether the legal means were truly independent, (2) whether the use of the legal means and the discovery by the legal means were truly inevitable, and (3) whether application of the inevitable-discovery doctrine could incentivize police misconduct or significantly weaken the protection provided under the Fourth Amendment." *Id.*

---

[7] In their Answer, the People raise two additional irrelevancies. The People note that an officer "conducting a traffic stop, as a matter of course, may order passengers to get out of the car pending completion of the stop without running afoul of the Fourth Amendment." Answer, p. 6 (internal quotations omitted). That's true but irrelevant. Mr. Wilkins isn't arguing that Trooper Tompkins violated his rights by asking him out the vehicle. The People also note that when "an officer has a reasonable suspicion that an individual is armed, a pat down search for weapons is appropriate." *Id.* at 7. That's not true as an officer must have reasonable suspicion that a ***legally seized*** individual is ***armed and dangerous*** to justify a pat-down search. *Arizona v. Johnson*, 555 U.S. 323, 326 (2009). Regardless, it's irrelevant. Trooper Tompkins conducted a full evidentiary search of Mr. Wilkins – not a *Terry* pat down.

[8] Answer, p.10.

RECEIVED by MSC 12/18/2024 6:30:47 PM

According to the People, even if the search of Mr. Wilkins and his subsequent detention were unlawful, the inevitable-discovery rule applies to the pistol found in the vehicle, because: (1) when Trooper Tompkins searched Mr. Wilkins, he already had authority to search the vehicle pursuant to the automobile exception (there were "legal means" to search the vehicle),[9] (2) when Trooper Tompkins searched Mr. Wilkins, he had already decided to search the vehicle (the search of the vehicle was "truly inevitable"),[10] and (3) the search of the vehicle was unrelated to the unlawful search and subsequent detention of Mr. Wilkins (the search of the vehicle was "truly independent").[11] All three of these claims are false.

The People first claim that, when Trooper Tompkins searched Mr. Wilkins, he already had authority to search the vehicle pursuant to the automobile exception because of "the odor of marijuana coming from the vehicle, the licenses of the occupants evidencing that both were under the age of 21, and the passenger's admission that ["shake"] was inside the vehicle."[12] However, the passenger told Trooper Tompkins that she had some "shake" in the vehicle ***after*** Trooper Tompkins had searched Mr. Wilkins.[13] As such, the People cannot rely on her admission to establish that Trooper Tompkins had authority to search the vehicle when he searched Mr. Wilkins. Instead, Trooper Tompkins had authority ("legal means") to search the vehicle when he searched Mr. Wilkins ***only if*** the odor of marijuana coming from a vehicle occupied by

---

[9] Answer, p.6-7, 9-11.
[10] *Id.* at 6.
[11] *Id.* at 11.
[12] *Id.* Throughout their Answer, the People also assert that Mr. Wilkins and his passenger initially denied that the vehicle contained marijuana and, therefore, when the passenger later admitted that she had some "shake" in the vehicle, Trooper Tompkins knew they had "lied." *Id.* at 1, 6-7, 9-11. There are numerous problems with this. ***First***, the trial court did not find that Mr. Wilkins and his passenger denied that the vehicle contained marijuana. ***Second***, even if the trial court had made that finding, denying that one has "marijuana" is consistent with later admitting to having some "shake" if by "marijuana" one means smokeable cannabis and by "shake" one means non-usable cannabis residue. And, to be sure, this is not some ad hoc distinction but aligns with what Trooper Tompkins actually found in the vehicle – empty dispensary bags. *See* COA Application for Leave, Ex.1, p.2. ***Third***, even if the two statements were inconsistent, the passenger didn't admit that she had some "shake" in the vehicle until after Trooper Tompkins had searched Mr. Wilkins. As such, the People cannot rely on that admission, or the alleged "lie" it exposed, to establish that Trooper Tompkins already had authority to search the vehicle when he searched Mr. Wilkins. ***Fourth***, even if the trial court had found that Mr. Wilkins and his passenger had made the denial and even if the denial was a "lie," it was a "lie" about the *unlawful* (albeit noncriminal) possession of marijuana. Therefore, *People v. Moorman*, on which the People rely, is readily distinguishable. 331 Mich. App. 481, 488 (2020) ("if defendant's possession was *lawful*, it is reasonable to believe that he would simply admit to marijuana being in the vehicle") (emphasis added).
[13] COA Application for Leave, Ex.1, p.4.

RECEIVED by MSC 12/18/2024 6:30:47 PM

individuals under 21 satisfies the requirements of the automobile exception. And, because the possession of not more than 2.5 ounces of marijuana by individuals under 21 is a civil infraction – not a crime, *see* MCL 333.27965(3), the odor of marijuana coming from a vehicle occupied by individuals under 21 satisfies the requirements of the automobile exception ***only if*** this Court expands the automobile exception to searches for evidence of civil infractions. For the reasons discussed in Appellant's Brief, this Court should explicitly decline to do that.[14]

The People further claim that, when Trooper Tompkins searched Mr. Wilkins, he had already decided to search the vehicle; therefore, the search of the vehicle was "truly inevitable." However, the trial court found that Trooper Tompkins decided to search the vehicle ***after*** the search of Mr. Wilkins based on the passenger's subsequent admission that she had some "shake" in the vehicle: "Given this information, Trooper Tompkins began a search of the vehicle."[15] As such, the search of the vehicle was not "truly inevitable." Likewise, the People's claim that the search of the vehicle was unrelated to the unlawful search and detention of Mr. Wilkins is also false. Not only did the search of the vehicle occur during the unlawful detention of Mr. Wilkins, Trooper Tompkins based his decision to search the vehicle on an admission secured during that unlawful detention. As such, the search of the vehicle was not "truly independent."[16] In sum, the People's unpreserved "inevitable-discovery" argument is without merit, and the pistol must be suppressed as a fruit of the unconstitutional search and detention of Mr. Wilkins.

Turning then to the People's argument regarding the search of the vehicle itself.[17] In their Answer, the People argue that the search of the vehicle was lawful, because: (1) the automobile exception authorizes the warrantless search of a vehicle if there's probable cause to believe that

---

[14] Even if this Court expands the automobile exception and holds that Trooper Tompkins had authority ("legal means") to search the vehicle when he searched Mr. Wilkins, the pistol still must be suppressed as a fruit of the unlawful search and detention of Mr. Wilkins because the People fail to establish ***any*** of the other components of the inevitable-discovery rule.

[15] COA Application for Leave, Ex.1, p.2; *see id.* at Ex.7, p.7.

[16] Although not addressed by the People, application of the inevitable-discovery rule would also "incentivize police misconduct," *Mahdi*, 317 Mich. App. at 469, by encouraging officers to unlawfully prolong *Terry* investigations in the hopes of making an observation or securing an admission justifying an "unrelated" search.

[17] The People also note that marijuana possessed in violation of MCL 333.27965(3) is subject to "forfeiture." Answer, p. 9. Of course, that doesn't justify the ***search*** of the vehicle. The right to seize an object and the right to search for, or access, an object to seize it are distinct constitutional inquiries. *See Collins v. Virginia*, 584 U.S. 586, 596 (2018) ("an officer must have a lawful right of access to any contraband he discovers in plain view in order to seize it"); *Sheridan*, 470 Mass. at 759 ("it is important to distinguish an officer's power to seize the marijuana from the officer's power to make entry into the vehicle to effect that seizure").

RECEIVED by MSC 12/18/2024 6:30:47 PM

"contraband or evidence of a crime" may be found therein,[18] (2) "[c]ontraband" generally means "goods that are unlawful to import, export, produce, or possess,"[19] and (3) "Trooper Tompkins had probable cause to believe that an amount of illegally possessed marijuana, i.e., contraband,[] would be found within the vehicle[.]"[20]

Now, to the extent the People are arguing that the automobile exception applies because Trooper Tompkins had probable cause to believe that the vehicle contained a criminal amount (i.e., over 2.5 ounces) of marijuana,[21] they are wrong. The generic odor of marijuana coupled with an admission by an occupant that a vehicle contains some "shake," a small amount of marijuana residue, does not give rise to probable cause to believe the vehicle contains a large amount of marijuana.[22] As the People concede, "'the smell of marijuana, by itself, does not give rise to probable cause unless it is combined with other factors that bolster the concern about illegal activity that may flow from the smell of marijuana.'"[23]

Moreover, to the extent the People are arguing that the automobile exception authorizes searches for noncriminal amounts of marijuana because it's "contraband," they are again wrong. Contraband, as used in the search and seizure context, means "property the possession of which is a *crime*" (contraband per se) and the "instrumentalities" and "fruits of a *crime*" (derivative contraband). *Warden, Md. Penitentiary v. Hayden*, 387 U.S. 294, 295-96 (1967) (emphasis added); *see also One 1958 Plymouth Sedan v. Com. of Pa.*, 380 U.S. 693, 698-99 (1965) (explaining the distinction between contraband per se – i.e., "objects the possession of which, without more, constitutes a crime" – and derivative contraband). Accordingly, the automobile

---

[18] Answer, p.8.
[19] *Id.* at 9, n.3. Instead of citing to binding authority from the search and seizure context to define "contraband," the People cherry-pick a secondary definition of the term to tacitly suggest that the automobile exception applies to searches for items the possession of which is a mere civil infraction. The People do not cite a single case from the U.S. Supreme Court, the Michigan Supreme Court, or this Court ever applying the automobile exception in that way.
[20] *Id.* at 9.
[21] A typical "joint" contains about 0.32 grams of marijuana. *See* Christopher Ingraham, *One of the Big Questions in Marijuana Research has been Answered*, WASH. POST (Jul. 7, 2016), https://www.washingtonpost.com/news/wonk/wp/2016/07/07/scientists-have-finally-figured-out-how-much-weed-is-in-a-joint. Thus, 2.5 ounces of marijuana is equivalent to well over 200 "joints."
[22] As discussed in note 12, *supra*, the People's reliance on the alleged "lie about no marijuana" is misplaced. Answer, p.10. The trial court did not find that Mr. Wilkins and his passenger denied the presence of marijuana and, even if they had, denying the presence of marijuana is not necessarily inconsistent with later admitting to some "shake." Moreover, even if they did "lie," it was not a "lie" about the *lawful* possession of marijuana, and, therefore, *Moorman* is inapposite.
[23] *Id.* at 9 (quoting *People v. Armstrong*, 344 Mich. App. 286, 297 (2022) (cleaned up)).

RECEIVED by MSC 12/18/2024 6:30:47 PM

exception authorizes the warrantless search of a vehicle if there's probable cause to believe it contains: (1) "property the possession of which is a *crime*," (contraband per se), (2) the "instrumentalities" and "fruits or a *crime*" (derivative contraband), or (3) mere "evidence of a *crime*."[24] Simply put, there must be "a nexus—automatically provided in the case of fruits, instrumentalities or contraband [per se]—between the item to be seized and *criminal behavior*." *Hayden*, 387 U.S. at 307 (emphasis added). In this case, there was no nexus to criminal behavior. Thus, the automobile exception was inapplicable, the search of the vehicle was unconstitutional, and the pistol must be suppressed. *See Sheridan*, 470 Mass. at 757.

[24] Historically, "contraband" was subject to search and seizure, while mere "evidence of a crime" was not. *See* Wayne R. LaFave, Search and Seizure: A Treatise on the Fourth Amendment, § 2.6(d) (6th ed. 2024); *Entick v. Carrington*, 19 How. St. Tr. 1029 (C.P. 1765). In 1967, though, the Supreme Court rejected "the distinction as based on premises no longer accepted as rules governing the application of the Fourth Amendment." *Hayden*, 387 U.S. at 300-01. Thus, the phrase "contraband or evidence of a crime," when used to describe the automobile exception, simply reflects that not just items that are criminal to possess (contraband per se) and instrumentalities and fruits of crime (derivative contraband) are subject to search and seizure, but so is mere "evidence of a crime," even though it was not historically.

RECEIVED by MSC 12/18/2024 6:30:47 PM

CONCLUSION

WHEREFORE, Mr. Wilkins requests that this Court vacate the Order issued by the 17th Circuit Court and hold that all evidence discovered by the People during their unconstitutionally prolonged *Terry* investigation and unconstitutional vehicle search must be suppressed.*

Date: July 11, 2024

Respectfully submitted,

RYAN C. KEAST (P84580)
Kent County Office of the Defender
250 Monroe Ave. NW, Ste. 800
Grand Rapids, MI 49503
(616) 774-8181

ZACHARY J. HOUGHTON (P83067)
Kent County Office of the Defender
250 Monroe Ave. NW, Ste. 800
Grand Rapids, MI 49503
(616) 774-8181

*According to the word count of the word-processing system used to prepare this Reply in Support of Appellant's Brief, the "Rebuttal Argument" and "Conclusion" sections of this document contain 3,192 countable words.