No. 02-809

IN THE
Supreme Court of the United States

STATE OF MARYLAND,
Petitioner,
v.
JOSEPH JERMAINE PRINGLE,
Respondent.

On Writ of Certiorari To The Court of Appeals of Maryland

BRIEF FOR PETITIONER

J. JOSEPH CURRAN, JR.
Attorney General of Maryland

GARY E. BAIR*
Solicitor General

KATHRYN GRILL GRAEFF
SHANNON E. AVERY
Assistant Attorneys General

200 Saint Paul Place
Baltimore, Maryland 21202
(410) 576-6422

Counsel for Petitioner

**Counsel of Record*

QUESTION PRESENTED

Where drugs and a roll of cash are found in the passenger compartment of a car with multiple occupants, and all deny ownership of those items, is there probable cause to arrest all occupants of the car?

PARTIES TO THE PROCEEDING

The caption contains the names of all the parties to the proceeding in the Court of Appeals of Maryland.

TABLE OF CONTENTS

Page

Page

TABLE OF AUTHORITIES

Cases:

Page

Page

Constitutional Provisions:

Page

Statutes:

Miscellaneous:

OPINIONS BELOW

The opinion of the Court of Appeals of Maryland is reported at 370 Md. 525, 805 A.2d 1016 (2002). (Pet. App. 1a-49a). The opinion of the Court of Special Appeals of Maryland is reported at 141 Md. App. 292, 785 A.2d 790 (2001). (Pet. App. 50a-77a). The opinion of the Circuit Court for Baltimore County denying Pringle's motion to suppress is unreported. (Pet. App. 78a-79a; JA 69-70).

STATEMENT OF JURISDICTION

The judgment of the Court of Appeals of Maryland was entered on August 27, 2002. (Pet. App. 1a). The petition for writ of certiorari was filed on November 22, 2002. This Court has jurisdiction pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment IV:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

United States Constitution, Amendment XIV:

Section 1.

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State

> deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

A. Circumstances of the Arrest

At 3:16 a.m. on August 7, 1999, Officer Jeffrey Snyder of the Baltimore County Police Department stopped a 1987 Nissan Maxima for speeding and because the driver was not wearing a seat belt. (Pet. App. 2a-3a; JA 5). Donte Partlow,[1] the owner of the vehicle, was driving; Respondent Joseph Jermaine Pringle was the front seat passenger; and Otis Smith was in the back seat. (Pet. App. 3a; JA 5-6). Unbeknownst to the officer, Pringle earlier had placed a roll of cash in the car's glove compartment, and a bag of crack cocaine behind the armrest located in the back seat. (JA 24).

Officer Snyder asked to see Partlow's driver's license and the registration for the Maxima. (JA 8-9). When Partlow opened the glove compartment to look for his vehicle registration, Officer Snyder saw a large quantity of rolled up cash. (Pet. App. 3a; JA 12). After checking the license and registration with the Maryland Motor Vehicle Administration, the officer gave Partlow a verbal warning and returned Partlow's documents. (JA 7-10, 14). Officer Snyder then asked Partlow whether he had any drugs or weapons in the car. (JA 10). After Partlow answered in the negative, the officer asked for and received Partlow's consent to search the vehicle. (Pet. App. 3a; JA 10).

At that time, the two passengers were asked to exit the

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[1] In the transcript of the suppression hearing, Partlow's name appears as "Parlo." Because he is referred to as Partlow in the opinions of the Court of Appeals and Court of Special Appeals, Petitioner adopts that spelling.

vehicle and join Partlow, who was seated on the sidewalk near the car. (JA 11). The search of the front seat area uncovered $763.00 in cash from the glove compartment. (Pet. App. 3a; JA 12). The search of the back seat area, which took ten to fifteen seconds, led to the discovery of a Ziploc bag containing five smaller glassine baggies of suspected crack cocaine. (Pet. App. 3a; JA 12-13). The officer found the drugs when he folded down the rear seat armrest and uncovered the bag, which had been sandwiched between the upright armrest and the back seat. (JA 13, 40-41).

Officer Snyder questioned the three occupants of the car, one at a time, about the drugs and money. (JA 13, 42). The officer first questioned Partlow, who told the officer nothing. (JA 13). He next spoke with Pringle and Smith, who also refused to divulge any information. (JA 13-14). Officer Snyder advised Pringle that they all would be arrested if no one claimed ownership of the drugs. (JA 43). When no one did so, the officer arrested all three and took them to the station house. (Pet. App. 3a-4a; JA 14, 43).

Officer Snyder and the three arrestees arrived at the police station around 4:00 a.m. (JA 44). Before questioning Pringle, the officer informed him of his *Miranda*[2] rights, which Pringle waived. (JA 15-19). Pringle thereafter made an oral and written statement, confessing that the drugs and money belonged to him. (JA 19). Pringle told the officer that he put the crack cocaine behind the armrest of the back seat, and that neither Partlow nor Smith knew about it. (Pet. App. 4a; JA 24). Pringle also said he was going to sell the cocaine or trade it for sex. (JA 26). After Pringle's confession, the officer released Partlow and Smith without charges. (Pet. App. 4a; JA 45). Pringle was charged with possession of cocaine and possession with intent to distribute cocaine. (JA 1, 45).

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[2] *Miranda v. Arizona*, 384 U.S. 436 (1966).

B. Suppression Hearing and Trial

A hearing was held on Pringle's motion to suppress evidence on March 23, 2000. (Pet. App. 78a; JA 1, 2-70). At that hearing, Pringle argued that his statements to Officer Snyder should be suppressed because his arrest was illegal, and, further, because the statements were involuntary and not in compliance with *Miranda*. (JA 3-4).[3] Officer Snyder testified at the hearing, setting forth the facts relating to the stop of the car, Pringle's arrest, and Pringle's statement, as set forth above. (JA 4-48). The only other witness at the suppression hearing was Pringle. (JA 49-60). Pringle testified that he grew up with Partlow and Smith, and was close friends with both. (JA 49-50). Pringle confirmed that he initially told the officer at the scene of the stop that he did not know to whom the drugs belonged, but that he subsequently told the officer that the drugs belonged to him. (JA 52, 54-56). Finally, Pringle admitted that he had prior convictions for a first degree sexual offense in 1990 and for distribution of drugs in 1993. (JA 59).

Defense counsel argued that Officer Snyder illegally arrested Pringle. (JA 61). In particular, counsel contended that there was insufficient probable cause to arrest Pringle because he was in the front seat, the officer did not see any movement on Pringle's part, and did not see him place the drugs in the back seat armrest. (JA 61-65). Counsel suggested that the driver could have been arrested because he was in constructive possession of items in the car, or the rear seat passenger could have been arrested because he was closer to the drugs. (JA 62-65).

In support of the arrest, the prosecutor noted that the drugs

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[3]On appeal, Pringle did not press the *Miranda* issue, and the intermediate appellate court resolved the voluntariness issue against him. (Pet. App. 61a-66a). Neither issue was raised in or ruled upon by the Court of Appeals of Maryland. (Pet. App. 1a-34a).

were found behind a folding armrest, not in a locked or secret compartment. (JA 69). When the officer found a large amount of cash in the glove compartment right in front of Pringle, and found crack cocaine in the rear seat, he had probable cause to arrest Pringle. (JA 69). To conclude otherwise, the prosecutor contended, would be to confuse the probable cause standard to arrest with the proof beyond a reasonable doubt standard to convict. (JA 69).

The suppression court agreed with the prosecution's argument and ruled that the officer had probable cause to arrest Pringle. (Pet. App. 79a; JA 69-70). Stressing the difference between probable cause and proof beyond a reasonable doubt, the court found that an inference could be drawn that a person in the front seat could place the drugs "within arm's reach behind him." (JA 63). The court also noted that a 1987 Maxima "is not a very large vehicle." (JA 63). Given that the money in the front and the drugs in the back were both within arm's reach of Pringle, the court concluded that "the officer had probable cause to make the arrest as he did." (Pet. App. 79a; JA 69).

After a two-day trial ending on April 11, 2000, a jury convicted Pringle of possession with intent to distribute cocaine and possession of cocaine. (Pet. App 1a; JA 1). On May 9, 2000, Pringle was sentenced to a term of ten years' incarceration. (Pet. App. 1a; JA 1).

C. Appellate Court Proceedings

On appeal, the Court of Special Appeals of Maryland affirmed Pringle's convictions. (Pet. App. 50a-77a). Maryland's intermediate appellate court rejected Pringle's assertion that the police lacked probable cause to arrest him. (Pet. App. 56a-61a). The court first ruled that "upon finding the cocaine, Officer Snyder had probable cause to believe a felony had been committed, specifically, possession of a controlled dangerous substance." (Pet. App. 57a). The court

then looked to the "nontechnical conception" standard of probable cause as set forth in *Brinegar v. United States*, 338 U.S. 160, 176 (1949). (Pet. App. 57a-58a). The majority concluded: "The circumstances were sufficient to constitute probable cause to make an arrest." (Pet. App. 61a). One judge dissented, finding probable cause to arrest Pringle lacking. (Pet. App. 66a-77a). This judge found it significant that, although Pringle "may have been within an arm's reach of the drugs, in fact, to expose the drugs, he would have had to stretch his body, maneuver around the back of his seat, and pull down the arm rest." (Pet. App. 74a).

On certiorari review, the Court of Appeals of Maryland reversed, in a four-to-three decision. (Pet. App. 1a-49a). According to the majority, "the mere finding of cocaine in the back armrest" was insufficient to establish probable cause to arrest a front seat passenger. (Pet. App. 21a). After positing that "[m]oney, without more, is innocuous," the majority discounted the discovery of the cash in the glove compartment because the glove compartment was closed until the driver searched for the vehicle registration. (Pet. App. 22a). The majority suggested that, although the officer did not have probable cause to arrest Pringle, perhaps the driver or the rear seat passenger lawfully could have been arrested: "We hold that a police officer's discovery of money in a closed glove compartment and cocaine concealed behind the rear armrest of a car is insufficient to establish probable cause for an arrest of a front seat passenger, who is not the owner or person in control of the vehicle, for possession of the cocaine." (Pet. App. 23a).[4]

Judge Battaglia, joined by two other members of the court, dissented, stating at the outset: "The majority's holding that the

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[4]The majority then addressed the issue of attenuation, finding no causal break between the arrest and the confession under *Brown v. Illinois*, 422 U.S. 590 (1975). (Pet. App. 24a-33a). That ruling is not at issue here.

police officers lacked probable cause to arrest [Pringle] for possession of cocaine is based primarily upon an erroneous blending of the probable cause standard for an arrest and the sufficiency of evidence standard for a conviction." (Pet. App. 36a). Continuing, the dissent stated: "The officer should not, however, be required to base a determination to arrest on the ability of the State to meet the standard of legal sufficiency for a conviction; nor should the reviewing courts measure the propriety of the arrest by such a standard." (Pet. App. 39a). The dissent found probable cause to arrest Pringle given that three men were traveling in a vehicle around 3:00 a.m. with a large amount of cash and several baggies of cocaine, and, further, that the location of the drugs and money would lead a reasonable officer to conclude that the three had joint constructive possession of the contraband. (Pet. App. 38a). The dissent concluded: "In my view, this establishes probable cause for the arrest of each of the three individuals, including [Pringle]." (Pet. App. 38a).

SUMMARY OF ARGUMENT

In its nearly two hundred years of Fourth Amendment jurisprudence, this Court consistently has defined probable cause as requiring only a reasonable belief that a crime has occurred. Although the context of those decisions has changed over the years–from the seizure of ships suspected of carrying contraband, to bootleggers, to drug runners–the Court's adherence to a practical, common sense application of the doctrine has remained constant.

Among the matters an officer takes into account when assessing probable cause are inferences that flow from an understanding about basic human behavior. The validity and relevance of these common sense inferences of everyday life have also been recognized in decisions of this Court outside of the probable cause arena. *Wyoming v. Houghton*, 526 U.S. 295 (1999), teaches that when three people are riding in a car, an

officer can draw an inference that all know each other and are engaged in a common enterprise. In a different context, *County Court of Ulster County v. Allen*, 442 U.S. 140 (1979), teaches that if a car contains weapons and drugs, the four people in the car can be presumed to be in joint possession of the contraband.

It naturally follows from the Court's probable cause decisions, together with *Houghton* and *Allen*, that an officer who finds drugs in the rear armrest of a car has probable cause to arrest all passengers in the car. Under those circumstances, the officer often will not know with certainty which one, two, or three of the occupants put the drugs there. Yet probable cause to arrest exists because the officer can draw reasonable inferences that the occupants are acquainted, that they all have ready access to the drugs, and that any one or more of them could have placed the drugs in the armrest.

Any other rule, such as the result reached by the Maryland court here, is anomalous. To hold that the officer cannot arrest the front seat passenger when drugs are found in the back seat leaves only three possible conclusions: no one can be arrested; only the driver can be arrested; or only the occupant closest to the drugs can be arrested. Any of these rules raises the probable cause bar higher than this Court's decisions contemplate. Further, any such rule would lead to incongruous results and would seriously impede society's interests in ferreting out crime and bringing the guilty to justice.

ARGUMENT

WHERE DRUGS AND A ROLL OF CASH ARE FOUND IN THE PASSENGER COMPARTMENT OF A CAR WITH MULTIPLE OCCUPANTS, AND ALL DENY OWNERSHIP OF THOSE ITEMS, THERE IS PROBABLE CAUSE TO ARREST ALL OCCUPANTS OF THE CAR.

The concept of probable cause is central to the law of search and seizure. Indeed, as this Court stated: "A single, familiar standard is essential to guide police officers, who have only limited time and expertise to reflect on and balance the social and individual interests involved in the specific circumstances they confront." *Dunaway v. New York*, 442 U.S. 200, 213-14 (1979). The Warrant Clause of the Fourth Amendment expressly dictates that warrants to search or arrest may not issue in the absence of probable cause. Similarly, warrantless seizures of property and persons generally may not occur without probable cause. When police officers have probable cause to believe that a crime has occurred, they may arrest in a public place without a warrant. *United States v. Watson*, 423 U.S. 411, 421-22 (1976). Likewise, when an officer has probable cause to believe an offense is being committed in the officer's presence, a warrantless arrest may be made. *Atwater v. City of Lago Vista*, 532 U.S. 318, 354 (2001).[5]

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[5]Consistent with *Atwater* and *Watson*, Maryland law permits warrantless arrests in the following circumstances:

§2-202. Warrantless arrests—In general.

(a) *Crime committed in presence of police officer.*--A police officer may arrest without a warrant a person who commits or attempts to commit a felony or misdemeanor in the presence or within the view of a police officer.

An officer who makes a lawful traffic stop and lawfully observes drugs in a car occupied only by the driver surely has probable cause to arrest that person for the illegal possession of those drugs. Where there are multiple occupants in the car, the result should be the same. Contrary to the holding of the Court of Appeals of Maryland, there is no valid basis for a rule that when passengers are present during such a stop the officer does not have probable cause to arrest all of them. Indeed, the opposite conclusion is the only sensible one, given the nature of probable cause and its grounding in common sense inferences based on human behavior.

A. This Court's case law has established a fluid, nontechnical concept of probable cause, which requires neither certainty nor correctness, so long as an arrest is reasonable under all the circumstances.

The arrest of Pringle in this case was justified by probable cause in accordance with this Court's description and

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(b) *Probable cause to believe crime committed in presence of officer.*--A police officer who has probable cause to believe that a felony or misdemeanor is being committed in the presence or within the view of the police officer may arrest without a warrant any person whom the police officer reasonably believes to have committed the crime.

(c) *Probable cause to believe felony committed.*--A police officer without a warrant may arrest a person if the police officer has probable cause to believe that a felony has been committed or attempted and the person has committed or attempted to commit the felony whether or not in the presence or within the view of the police officer.

Md. Code Ann., Crim. Proc. Art., § 2-202 (2001).

application of that standard since the early nineteenth century.[6] The earliest case involving application of a probable cause standard was a forfeiture action. Chief Justice Marshall's opinion in *Locke v. United States*, 11 U.S. (7 Cranch) 339, 348 (1813), spoke to the issue when interpreting a 1799 collection law whereby the burden of proof was on the claimant "only where probable cause is shown for such prosecution." The Court rejected the argument that the term meant "*prima facie* evidence, or, in other words, such evidence as, in the absence of exculpatory proof, would justify condemnation." *Id.* Rather, Chief Justice Marshall concluded, the term connoted a lower standard of proof, "fixed and well known," requiring only that the seizure was "made under circumstances which warrant suspicion." *Id.*

Two cases from the mid-nineteenth century further develop the concept of probable cause. In *The Thompson*, 70 U.S. (3 Wall.) 155, 162-63 (1865), the Court explained "that the capture of a ship was justifiable where the circumstances were such as would warrant a reasonable ground of suspicion that she was engaged in an illegal traffic." The Court noted that this view of probable cause was held by all commentators of that time. *Id.* at 163. Another case of that era involved the standard for judging a "certificate of probable cause of seizure" by revenue agents. *Stacey v. Emery*, 97 U.S. 642, 644 (1878). The Court defined the probable cause standard this way: "If the facts and circumstances before the officer are such as to warrant a man of prudence and caution in believing that the offence has been committed, it is sufficient." *Id.* at 645. The Court also noted that the 1799 collection statute construed in *Locke* used the words "reasonable cause of seizure," but that there was no difference in the two expressions. *Id.* at 646.

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[6]A recent, comprehensive review of the history of the Court's development of its probable cause standard can be found in Craig S. Lerner, *The Reasonableness of Probable Cause*, 81 Tex. L. Rev. 951, 981-95 (2003).

With the early twentieth century came the National Prohibition Act and the backdrop for modern explication of probable cause. Harkening back to its earlier cases, the Court concluded that officers had probable cause to stop and search a car where "the facts and circumstances within their knowledge and of which they had reasonably trustworthy information were sufficient in themselves to warrant a man of reasonable caution in the belief that intoxicating liquor was being transported in the automobile which they stopped and searched." *Carroll v. United States*, 267 U.S. 132, 162 (1925). The Court acknowledged that persons traveling in vehicles on the public highways "have a right to free passage without interruption or search," *id.* at 154, but that officers may stop such vehicles if they reasonably believe such vehicles are transporting contraband liquor, *id.* at 154-56. The Court found probable cause to exist where the officers knew only that the vehicle was traveling on a highway from Detroit to Grand Rapids, the highway was an active center for bootlegged liquor, and the "Carroll boys" were in the same vehicle they had been in when they had previously tried to sell whisky to the officers. *Id.* at 160-61. The *Carroll* standard was applied in subsequent cases involving similar prohibition era scenarios. *See, e.g., Husty v. United States*, 282 U.S. 694, 700-01 (1931); *Dumbra v. United States*, 268 U.S. 435, 439 (1925); *Steele v. United States*, 267 U.S. 498, 504-05 (1925).

Perhaps the most complete explanation of the rationale underlying the probable cause standard came in *Brinegar v. United States*, 338 U.S. 160 (1949). Although the national prohibition law had been repealed at the time of Brinegar's conviction, it was still illegal under federal law to import liquor into a "dry" state. *Id.* at 161-62. Brinegar, who was known for hauling liquor, was seen by a federal agent on the evening of March 3, 1947, driving a "heavily loaded" car about five miles west of the Missouri-Oklahoma line. *Id.* at 162-63. The agent knew that Oklahoma was a "dry" state, and that federal law forbade the importation of liquor except under a permit not

generally obtainable. *Id.* at 169. In fact, the agent had arrested Brinegar about five months earlier for illegally transporting liquor, and had seen him loading liquor into a vehicle in Missouri during the preceding six months. *Id.* at 162. After a high-speed chase for one mile, the car was stopped, and more than a dozen cases of liquor were seized. *Id.* at 163. These facts, which the Court found very similar to those in *Carroll*, provided probable cause to arrest because "the agent had good ground for believing that Brinegar was engaged regularly throughout the period in illicit liquor running and dealing." *Id.* at 170.

After applying *Carroll*, the Court explained how the probable cause standard balances the privacy rights of law-abiding citizens with the necessary law enforcement for the community's protection. In explaining the term, the Court stressed that "we deal with probabilities." *Id.* at 175. The standard is to be applied with regard to "the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act." *Id.*

The Court summarized the reasons behind the probable cause standard, and why it must permit officers enough room to make reasonable mistakes:

> These long-prevailing standards seek to safeguard citizens from rash and unreasonable interferences with privacy and from unfounded charges of crime. They also seek to give fair leeway for enforcing the law in the community's protection. Because many situations which confront officers in the course of executing their duties are more or less ambiguous, room must be allowed for some mistakes on their part. But the mistakes must be those of reasonable men, acting on facts leading sensibly to their conclusions of probability. The rule of probable cause is a practical, nontechnical conception affording the best compromise that has been found for accommodating these often opposing interests. Requiring more would

> unduly hamper law enforcement. To allow less would be to leave law-abiding citizens at the mercy of the officers' whim or caprice.

Id. at 176. *See also Gerstein v. Pugh*, 420 U.S. 103, 112 (1975) ("This standard, like those for searches and seizures, represents a necessary accommodation between the individual's right to liberty and the State's duty to control crime.").

In the half-century since the *Brinegar* decision, the Court has consistently preserved this balance, which protects citizens from unfounded arrests but does not unduly hamper law enforcement efforts to arrest those who may be guilty of crime. *See, e.g., Michigan v. DeFillippo*, 443 U.S. 31, 37 (1979); *Gerstein v. Pugh*, 420 U.S. at 111-12; *Beck v. Ohio*, 379 U.S. 89, 91 (1964); *Draper v. United States*, 358 U.S. 307, 312-13 (1959). Moreover, the Court has further expounded upon the *Brinegar* description of probable cause in three important ways.

First, the Court has defined the standard with more exactitude. In particular, *Terry v. Ohio*, 392 U.S. 1 (1968), has helped to place the concept of probable cause between the lower standard of reasonable suspicion and the higher one of preponderance of the evidence. In *Terry*, the Court held that the officer, consistent with the Fourth Amendment, could stop and frisk Terry even though there was no probable cause to arrest him. *Id.* at 23, 30-31. Terry's temporary seizure was lawful because the officer had reasonable suspicion that criminal activity was afoot. *Id.* at 30. This Court has since made clear that "'reasonable suspicion' is a less demanding standard than probable cause and requires a showing considerably less than preponderance of the evidence." *Illinois v. Wardlow*, 528 U.S. 119, 123 (2000). This language confirmed the Court's prior explanations that probable cause is a standard lower than preponderance of the evidence. In *Gerstein v. Pugh*, the Court said that the nature of the determination of probable cause "does not require the fine resolution of conflicting evidence that a reasonable doubt or even a preponderance standard demands, and credibility

determinations are seldom crucial in deciding whether the evidence supports a reasonable belief in guilt." 420 U.S. at 121. And in *Illinois v. Gates*, 462 U.S. 213 (1983), in discussing that probable cause requires only a "fair probability" of criminal activity, *id.* at 238, the Court remarked:

> Finely-tuned standards such as proof beyond a reasonable doubt or by a preponderance of the evidence, useful in formal trials, have no place in the magistrate's decision. While an effort to fix some general, numerically precise degree of certainty corresponding to "probable cause" may not be helpful, it is clear that "only the probability, and not a prima facie showing, of criminal activity is the standard of probable cause."

Id. at 235 (*quoting Spinelli v. United States*, 393 U.S. 410, 419 (1969)). A fortiori, an officer may have probable cause to arrest even though the evidence at trial would be insufficient to sustain a conviction. *See Michigan v. Summers*, 452 U.S. 692, 695 n.3 (1981); *Brinegar*, 338 U.S. at 172-74.

A second way the Court has built upon the *Brinegar* foundation is by stressing that the assessment of probable cause contemplates consideration of the totality of the circumstances. *Illinois v. Gates*, 462 U.S. at 230-31. The determination, which deals with probabilities, not "hard certainties," contemplates the use of "common-sense conclusions about human behavior." *Id.* at 231. Because "sufficient probability, not certainty, is the touchstone of reasonableness," reasonable mistakes do not negate probable cause. *Hill v. California*, 401 U.S. 797, 804 (1971) (officer reasonably, but mistakenly, arrested wrong person at suspect's home); *cf. Maryland v. Garrison*, 480 U.S. 79, 87-88 (1987) (reasonable mistake of fact does not render execution of warrant illegal). Even observations that might be "readily susceptible to an innocent explanation" are to be considered in the Fourth Amendment determination. *United States v. Arvizu*, 534 U.S. 266, 274 (2002). As the Court pointed out in *Gates*, probable cause is a "fluid concept–turning

on the assessment of probabilities in particular factual contexts–not readily, or even usefully, reduced to a neat set of legal rules." 462 U.S. at 232.

Third, the Court has made clear that the determination of probable cause is to be viewed from the standpoint of an objectively reasonable officer. *See Ornelas v. United States*, 517 U.S. 690, 696 (1996). Factual matters should be viewed "not in terms of library analysis by scholars, but as understood by those versed in the field of law enforcement." *Illinois v. Gates*, 462 U.S. at 232. The officer will view "the facts through the lens of his police experience and expertise." *Ornelas*, 517 U.S. at 699. Further, the "officer may draw inferences based on his own experience in deciding whether probable cause exists." *Id.* at 700. These inferences should be given "due weight" by a reviewing court. *Id.* at 699.

From the above cases, the following principles emerge: probable cause is a fluid, nontechnical concept; it is to be determined by a reasonable police officer, through the lens of the officer's experience and expertise; an officer need not be certain or, in hindsight, even correct before making an arrest; common sense inferences about human behavior and everyday life can and should be factored into the probable cause determination; credibility assessments and hypothetical innocent explanations are not crucial; and although the standard is not precisely quantifiable, it requires more than reasonable suspicion, but less than a preponderance of the evidence. Above all else, probable cause must reflect the reasonable judgments of officers who are schooled about human behavior on the street, not after-the-fact assessments of legal scholars.

B. The rationale of other decisions of this Court establishes probable cause to arrest multiple occupants of vehicles under the circumstances here.

Numerous decisions of this Court address the concept of probable cause, yet none has directly spoken to the issue here.

In factually analogous circumstances, however, the Court has given no indication that probable cause to arrest multiple occupants of a car would *not* exist. The Court did not pause to question the validity of the arrests in *New York v. Belton*, 453 U.S. 454 (1981), where all four men in a lawfully stopped car were arrested when the officer smelled burnt marijuana and saw an envelope marked "Supergold." *Id.* at 455-56. And in *United States v. Hensley*, 469 U.S. 221 (1985), although the primary issue related to the legality of the stop of the car Hensley drove, the Court found probable cause existed to arrest Hensley and a passenger after officers found several weapons in the passenger compartment of the car. *Id.* at 235-36. The arrests in *Belton* and *Hensley,* albeit not primarily at issue in those cases, were legal because they comported with common sense and flowed from an understanding of natural inferences about human behavior.

Indeed, when multiple occupants are present in a car containing illegal drugs, a common sense inference can be drawn that any or all of the occupants have knowledge of the drugs found in the car. This is so for several reasons. First, it is common knowledge that drugs often are used and shared by groups of people. Second, the law recognizes the concepts of both joint possession and constructive possession: if drugs are found in a car, all persons in the car can be charged with possession of the drugs. *See County Court of Ulster County v. Allen*, 442 U.S. 140, 143-44 (1979) (four persons in car charged with possession of handguns in passenger compartment and machine gun and heroin in trunk).[7] Third, an inference can be

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[7]By statute and case law, Maryland has long recognized the concepts of joint and constructive possession. *See* Md. Code Ann., Crim. Law. Art., § 5-101(u) (2002) (in controlled dangerous substances title, defining "possess" as "to exercise actual or constructive dominion or control over a thing by one or more persons"); *Rucker v. State*, 76 A.2d 572, 574 (Md. 1950) (conviction of driver for joint possession of illegal lottery tickets upheld where

drawn that persons traveling together in a private passenger car know each other and are engaged in a common enterprise. *Wyoming v. Houghton*, 526 U.S. 295, 304-05 (1999). *See also Chambers v. Maroney*, 399 U.S. 42, 44-47 (1970) (where car seen speeding away from gas station that was robbed, probable cause existed to arrest all four occupants in that car an hour later, even though robbery was committed by two men). Fourth, to avoid arrest, a person traveling in a car might hide illegal drugs before being stopped by police, or almost certainly when a traffic stop occurred. *See County Court of Ulster County v. Allen*, 442 U.S. at 164 (persons would naturally attempt to hide handguns from police when stopped); *cf. Rawlings v. Kentucky*, 448 U.S. 98, 101 & n.1 (1980) (man dumped drugs into woman's purse before or when he saw police pull up). Fifth, within the close confines of the passenger compartment of a car, persons have easy access to the entire compartment. *New York v. Belton*, 453 U.S. at 460. Sixth, even if all persons in the car disavow knowledge of the drugs, an officer need not believe such statements, as criminals often will lie in an effort to avoid arrest or prosecution. *See Wyoming v. Houghton*, 526 U.S. at 298 (lying about identification to avoid being connected with drugs in purse). *See also Hill v. California,* 401 U.S. at 803 ("aliases and false identifications are not uncommon").

Although decided in contexts other than probable cause to arrest, two cases of this Court in particular speak to these common sense inferences, which under the circumstances here

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numbers slips found scattered in car and five men seen standing outside car following accident); *Watson v. State*, 306 A.2d 599, 607 (Md. App.) (defendant's conviction for possession of drugs upheld even though he was not present at apartment at time drugs were found there), *cert. denied*, 269 Md. 759, 768 (1973). It is also clear that knowledge of the presence of drugs "may be proven by circumstantial evidence and by inferences drawn therefrom." *Dawkins v. State*, 547 A.2d 1041, 1047 (Md. 1988).

support the officer's determination to arrest Pringle. In *Wyoming v. Houghton*, an officer stopped an automobile in the early morning hours for speeding and driving with a faulty brake light. 526 U.S. at 297. In the front seat of the car were David Young (the driver), his girlfriend, and Sandra Houghton. *Id.* at 298. The officer noticed a hypodermic syringe in Young's shirt pocket and, upon inquiry, Young admitted that he used it to take drugs. *Id.* The two female passengers were ordered out of the car and asked for identification. Houghton falsely told officers that her name was Sandra James and she did not have any identification. *Id.* In the meantime, another officer searched the car for contraband and found a purse on the back seat. When the purse was opened, the officer found a wallet containing Houghton's driver's license as well as drugs and paraphernalia. *Id.* When asked why she lied about her name, Houghton replied: "'In case things went bad.'" *Id.*

Houghton was decided in the context of the search of a passenger's purse under the auspices of the automobile exception to the warrant requirement. The facts and rationale, however, are quite analogous to the issue here of probable cause to arrest a passenger. Three points are particularly apposite. First, the Court recognized that a car passenger "will often be engaged in a common enterprise with the driver, and have the same interest in concealing the fruits or the evidence of their wrongdoing." *Id*. at 304-05. Second, a criminal might hide contraband in another person's belongings or elsewhere in the car, perhaps even without anyone else's knowledge. *Id.* at 305. Third, a search of the passenger's purse is permitted even if the officer has no affirmative reason to believe that the passenger and driver were engaged in a common enterprise or that the driver had time to conceal an item in the passenger's belongings. *Id.*

These principles apply with equal force in the context of probable cause to arrest. An officer can reasonably infer that all persons in a car containing drugs in the back seat armrest are aware of the drugs and have an interest in concealing them. An

officer can also reasonably conclude that the drugs might have been put there by any person in the car, with or without the knowledge of others in the car. This is so regardless of whether the officer saw any movement in the car as the officer made the stop or approached the vehicle. Consequently, had the syringe or drugs found in the *Houghton* car been located in the back seat armrest, probable cause would have existed to arrest all three occupants.

This Court's decision in *County Court of Ulster County v. Allen* provides even stronger support for a finding of probable cause under the circumstances here. In *Allen*, the Court considered a due process challenge to a New York statute providing that the presence of a firearm in a private automobile, when not found upon the person of any occupant, "is presumptive evidence of its illegal possession by all persons then occupying the vehicle." 442 U.S. at 142 & n.1. A car with four occupants was stopped on the New York Thruway shortly after noon on March 28, 1973. *Id.* at 143. Through a window of the car, the officer saw two loaded handguns in an open handbag on the front floor or the front seat area where a young woman was sitting. *Id.* A loaded machine gun and a pound of heroin were found in the trunk. *Id.* at 144. Three adults (the driver and two rear seat passengers) and the juvenile (front seat passenger) were jointly tried on charges of possession of the two handguns, the machine gun, and the heroin. *Id.* at 143. At a jury trial, all four were convicted of possession of the handguns, but acquitted of possession of the machine gun and heroin. *Id.* at 144.

Because the jury had been instructed "that they were entitled to infer possession from the defendants' presence in the car," *id.* at 145, the defendants challenged the constitutionality of the statutory presumption, *id.* at 144-45. Treating the case as one involving a permissive inference rather than a mandatory presumption, *id.* at 161, the Court noted that such "[i]nferences and presumptions are a staple of our adversary system of factfinding," *id.* at 156. The validity of those devices

under the Due Process Clause depends "on the strength of the connection between the particular basic and elemental facts involved." *Id.* Under the circumstances in *Allen*, the Court found the presumption of joint and constructive possession "entirely rational." *Id.* at 163. The Court looked to several facts and inferences that naturally could be drawn therefrom. First, the passengers were not "'hitchhikers or other casual passengers.'" *Id.* Second, the guns were too large to be concealed in the handbag. *Id.* Third, part of one of the guns was in plain view, within easy access of the driver, and, perhaps, the rear seat passengers. *Id.* Fourth, an inference could be drawn that when the car was stopped for speeding, other passengers in the car attempted to hide their weapons in the handbag. *Id.* at 164. The Court concluded that there was "a 'rational connection' between the basic facts that the prosecution proved and the ultimate fact presumed, and the latter is 'more likely than not to flow from' the former." *Id.* at 165.

Four Justices dissented, reasoning that "an individual's mere presence in an automobile where there is a handgun does not even make it 'more likely than not' that the individual possesses the weapon." *Id.* at 168. The dissent would have found the presumption "unconstitutional because it did not fairly reflect what common sense and experience tell us about passengers in automobiles and the possession of handguns." *Id.* at 173. Yet, even the dissent agreed that the circumstances of the case "would have made it reasonable for the jury to 'infer that each of the respondents was fully aware of the presence of the guns and had both the ability and the intent to exercise dominion and control over the weapons.'" *Id.* at 175.

Thus, all nine Justices in *Allen* agreed that it was reasonable to infer that all passengers in the car jointly and constructively possessed the guns found in the front seat area in the open purse of one of the passengers. Given that the probable cause standard is lower than the "more likely than not" standard applicable in *Allen*, perforce there was probable

cause to arrest all four occupants of the car. Similarly, here, there was probable cause to arrest all of the car's occupants because the drugs and money were found in a common area of the car.

C. Under the totality of the circumstances, there was probable cause to arrest Pringle and all other occupants of the car.

When the facts confronting Officer Snyder are viewed in light of well-settled Fourth Amendment principles, there can be no doubt that the officer had probable cause to arrest Pringle and the other two occupants of the car. Indeed, the reasonable inferences that the officer could draw comported with what the reality of the situation was later determined to be. First, the stop occurred at 3:16 a.m., a time when the officer could infer that the three persons in the car were out for an evening of entertainment. In fact, Pringle told the officer that the group was out partying when stopped. (JA 24). Second, the officer could infer that three young men, approximately the same age together in a car at this time of the morning, were friends, not strangers or unrelated persons commuting to work. In fact, Pringle testified that the three grew up together and were close friends. (JA 49-50). Third, because the car was a 1987 Nissan Maxima, the officer could see that all persons in the car had easy access to the entire passenger compartment. In fact, the suppression court found that the area was within arm's reach of Pringle, the front seat passenger. (JA 63-64). Fourth, a large quantity of cash (perhaps proceeds of drug sales) was found in the glove compartment, directly in front of Pringle, which any of the three occupants could have put there. (JA 12). In fact, Pringle told the police that the money was his and that he had placed it in the glove compartment. (JA 24). Fifth, the officer quickly found the drugs behind the rear seat armrest, not in a locked or secret area inaccessible to the passengers. In fact, Pringle confessed to the police that he had placed the drugs

there. (JA 24). Sixth, at the time of the arrest, everyone disavowed knowledge of the drugs and cash, so the officer could infer that any or all persons were in constructive and joint possession. In fact, Pringle later confessed that the drugs and money were his alone. (JA 24). Finally, the drugs were found in five small baggies within a larger Ziploc bag, indicating possible use by more than one person. In fact, Pringle later confessed that he planned to sell or trade the drugs for sex. (JA 25-26). In light of these circumstances, together with the inferences recognized in *Houghton*, *Allen*, and this Court's numerous probable cause cases, the officer lawfully arrested Pringle.

For probable cause purposes, it does not matter that Pringle was not the closest person to the drugs. Nor does it matter that Pringle was not the owner of the car or its driver. If he had not confessed to the crime, perhaps those facts might have helped him escape conviction of the crime. But as pointed out in *Brinegar*, 338 U.S. at 172-74, and *Michigan v. Summers*, 452 U.S. at 695 n.3, the standard of proof beyond a reasonable doubt does not govern probable cause determinations in the least. It is also irrelevant, for probable cause purposes, that possibly only one of the three persons was guilty of the crime. Indeed, it is equally, if not more, probable that two or all three had knowledge of and possessed the drugs. The communal nature of drug possession coupled with the presence of the five separate baggies gave the officer probable cause to believe that all three men were in joint constructive possession of the drugs.

The probable cause to arrest Pringle and the other occupants was strong for several reasons: (1) the officer saw drugs in the passenger compartment; (2) a large quantity of cash was also found in the car; (3) all occupants of the car denied knowledge or ownership of the drugs and money; (4) the car was a relatively small sedan; (5) the drugs and money were within an arm's reach of all occupants; (6) the hour was late; and (7) the drugs were found quickly in an area that was neither locked nor secret. Under the totality of these

circumstances, there was much more than a fair probability that any or all persons in the car possessed the crack cocaine found in the rear seat armrest.

The determination whether there is probable cause to arrest multiple occupants of a car might not be quite so clear in all cases. In other scenarios, the vehicle may be larger than the one here or configured differently than a sedan, the stop may be during daylight hours, or the drugs may be found in a locked console, in the trunk, or even on the person of one of the occupants. The totality of the circumstances would be considered by the officer facing such situations and, in most of them, probable cause would exist to arrest all of the occupants present when contraband was found.

To be sure, in a small number of situations, probable cause would not exist to arrest all occupants of the vehicle. For example, the officer might have specific information that forecloses a reasonable belief that one of the occupants was guilty, thus negating probable cause to arrest that person. Illustrative of this rare situation is *United States v. Di Re*, 332 U.S. 581 (1948), a case erroneously relied upon by the Maryland court below. (Pet. App. 19a-20a). In *Di Re*, the government informant, Reed, told an Office of Price Administration investigator that he was going to buy counterfeit gas ration coupons from Buttitta. 332 U.S. at 583. Reed, seated in the back seat of Buttitta's car, with Buttitta and Di Re seated in the front, held such coupons when the federal investigator and a local police officer arrived on the scene. *Id.* But there was no evidence that Di Re was in the car when Reed obtained the coupons from Buttitta or that Di Re "heard or took part in any conversation on the subject." *Id*. at 593. On being asked, Reed named Buttitta, and not Di Re, as the party who sold him the counterfeit gas ration coupons. *Id.* at 583. The investigator nonetheless arrested Di Re as well, even though the investigator had not witnessed the crime and had not been told that Di Re had anything to do with it. *Id.* Based on "the facts peculiar to this case," the Court found probable cause was

specifically negated as to Di Re. *Id.* at 593-94. Yet, the Court recognized that in other circumstances an inference *could* be drawn that one who accompanies another to a criminal enterprise is not an innocent bystander. *Id.* at 593.

Likewise, probable cause to arrest all persons present in a vehicle would not necessarily exist where there is no nexus among the persons, such as in a cab, bus, or other common carrier. An officer could not reasonably infer that a passenger five rows from the back of a bus acted in concert with an individual in the last row, should drugs be found at the rear of the bus. That situation is analogous to the one in *Ybarra v. Illinois*, 444 U.S. 85 (1979), where a patron of a tavern was searched while officers were executing a search warrant at the premises after having seen drugs on the person of the bartender and behind the bar. *Id.* at 87-88. The search was improper because there was no connection or common enterprise between the bartender and the customer. *Id.* at 91 ("a person's mere propinquity to others independently suspected of criminal activity does not, without more, give rise to probable cause to search that person"). But as *Houghton* illustrates, the *Ybarra* situation is a far cry from the situation, like the present case, where occupants of a private car are stopped. 526 U.S. at 303 (distinguishing *Ybarra*). *See also Michigan v. Summers*, 452 U.S. at 695 n.4 (where persons have a special connection to premises about to be searched, they may be detained; *Ybarra* distinguished).

Under the circumstances of the car stop here, unlike the situations in *Di Re* and *Ybarra*, suspicion did not focus on a particular individual to the exclusion of others. Because the drugs were found not on the person of anyone, but behind the armrest within the easy grasp of the three occupants, there was probable cause to arrest Pringle, Smith, and Partlow. By arresting all three, the officer more precisely could determine criminal culpability. Pringle confessed, and the other two were set free. (JA 45). Ultimately Pringle was tried and rightly convicted. (JA 1). If the officer had not arrested Pringle, the

guilty person may never have been brought to justice. Worse yet, had the officer only arrested the driver or the rear seat passenger, it is possible that an innocent person would have been charged, tried, and convicted of an offense he may not have committed.

D. The anomalous rule announced by the Maryland court does not comport with this Court's decisions and is unworkable.

In determining that Officer Snyder did not have probable cause to arrest Pringle under the circumstances here, the Maryland court worded its ruling this way: "We hold that a police officer's discovery of money in a closed glove compartment and cocaine concealed behind the rear armrest of a car is insufficient to establish probable cause for an arrest of a front seat passenger, who is not the owner or person in control of the vehicle, for possession of the cocaine." (Pet. App. 23a). Because the other occupants of the car were not involved in the case before the state court, it was not entirely clear what rule would be applied in future cases. Logically, however, only three possibilities exist. The first possibility is that no one could be arrested in multiple occupant cases, because the police cannot link the drugs definitively to any one person in the car. A second possibility, hinted at by the Maryland court, would be that the owner or driver, as the person with authority or control over the vehicle, could be arrested. A final interpretation would be that the rear seat passenger, the person closest to the drugs, could be arrested. None of these rules, if applied in future cases on similar facts, would lead to fair, consistent, or coherent results. And, with respect to the second and third rules, practical difficulties would arise in applying them.

The first rule, that no one could be arrested under the circumstances here, is absurd. When an officer stops a car and discovers drugs or other contraband in the passenger

compartment, the officer has probable cause to believe a crime is being committed. To say that the officer *can* arrest if one person is present, but *cannot* if three people are present, is inconsistent with the standard of probable cause set forth in *Brinegar* and its progeny. *Brinegar* recognizes that police officers will confront ambiguous situations and that reasonable mistakes will occur. 338 U.S. at 176.

The consequences of such a rule are untenable. Not only is a criminal (or two or three) allowed to go free, but the officer is put in the unenviable position of having known criminals scoff at the law's authority. Persons would be allowed, even encouraged, to transport drugs with a free pass. So long as the drugs are stored in the car and not on a person, and so long as at least two persons are traveling together, criminal liability could never attach to anyone. *Cf. Wyoming v. Houghton*, 526 U.S. at 305 (rejecting "passenger's property" exception to automobile searches for similar reasons).

The second rule, that only the owner or driver of the car could be arrested, is equally untenable. Although this rule would allow a police officer to arrest *someone*, the person arrested would not necessarily be the one most likely to be guilty. It is just as likely that any of the passengers knows of an item secreted in the back seat, as was the case here. Indeed, owners or drivers who invite others into their vehicles "do not generally search them." *County Court of Ulster County v. Allen*, 442 U.S. at 174 (Powell, J., dissenting). Moreover, it will not always be possible for the officer to determine who was driving the car immediately before the stop. If this rule were applicable, drivers would have an incentive to pull off the road suddenly, particularly at night, and literally jump into the back seat. If an officer then approached a car and saw three people in the back seat, it might not be possible to discern who had been driving, and the officer would be powerless to arrest anyone. Likewise, in other circumstances, it might be difficult to determine if the owner is present and whether that person is or is not the driver.

It makes no legal sense that a person's right to be free from an unreasonable seizure should turn on such considerations. It is unfair to owners and drivers because it singles them out and is tantamount to a presumption of exclusive guilt. The rule also provides an undeserved windfall to all passengers in the car, who are just as likely guilty (or innocent) as the driver. In this regard, the rule undermines the paramount goal of the criminal justice system, to help ensure that those guilty of crimes are ultimately convicted.

The last possible rule, that only the person in closest physical proximity to the drugs can be arrested, suffers the same flaws as the other two. In addition, its implementation raises numerous practical problems. Must officers carry a yard stick or tape measure in the patrol car so that an exact measurement can be taken? How would the officer know whether the occupants had recently changed positions after stopping for a bite to eat? What would the officer do if the persons jump out of the car before the measurement can be taken? This rule also does not take into account the possibility that one occupant of the car may have secreted the contraband near another occupant, without the latter's knowledge or consent. Thus, the wrong person may be arrested as frequently as not. In Pringle's case, the drugs were closer to the rear seat passenger, Otis Smith, but it was Pringle who had placed the drugs behind the armrest.

Outside the multiple occupant car stop situation, any of the possible Maryland rules would wreak havoc in other probable cause applications. Assume an officer sees four persons sitting around a table playing cards. There is a gun in the middle of the table and one of the players is slumped over the table. No one says a word, but the officer sees smoke lingering in the air. Would the three living players be free to leave because there is no probable cause linking any one of them to the shooting? It certainly would not make sense to conclude that only the owner of the house could be arrested or that the player one inch closer

to the gun could be arrested, but the others could not.[8] The same situation would arise when drugs are found in a motel room occupied by several people or a bomb is located in a makeshift office occupied by three potential terrorists.[9]

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[8]Commentaries support the conclusion that probable cause to arrest everyone exists in such situations, even where only one person and not the others is responsible. Using a similar hypothetical, the Restatement of Torts would find probable cause to arrest all persons around the card table. *See* Restatement (Second) of Torts § 119, comment j (1965) (two persons standing over dead body; where officer not certain which person committed crime, officer can arrest either or both). The Model Code of Pre-Arraignment Procedure permits arrest "without requiring that at the time of the arrest the guilt of the person to be arrested be more probable than not." Model Code of Pre-Arraignment Procedure 14 (1975). Professor LaFave agrees with this position, noting the "investigative function which is served by the making of arrests." 2 Wayne R. LaFave, *Search and Seizure* § 3.2(e), at 65 (3d ed. 1996). If a custodial arrest is made, the police may search the arrestee, "which might produce critical evidence of the crime," or later lead to an identification or a confession. *Id.* at 65-66.

[9]Lower courts have confronted numerous other scenarios and have found probable cause to arrest (or to take other action requiring probable cause against) multiple suspects, even in situations where only one of several persons might be guilty. *See, e.g., United States v. Klinginsmith*, 25 F.3d 1507, 1510 (10th Cir.) (when dog alerted to presence of drugs in car, officers had probable cause to arrest all occupants of car and search car), *cert. denied*, 513 U.S. 1059 (1994); *People v. Sutherland*, 683 P.2d 1192, 1196 (Colo. 1984) (where a car is involved in a fatal accident, and both occupants are taken to the hospital, officer has probable cause to involuntarily extract blood from both, even though only one could have been driving); *State v. Johnson*, 682 So. 2d 385, 387 (Ala. 1996) (where police suspect two people of the child abuse-murder of a young child, either or both may be arrested); *Matter of Grand Jury Investigation*, 692 N.E.2d 56, 57 (Mass.) (where police are investigating the apparent rape of

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Given all of the circumstances of the present case, the officer had probable cause to arrest Pringle, as well as the other two occupants of the car. Simply because it was not possible to determine with certainty which one, two, or three of the persons was in constructive possession of the contraband does not mean that probable cause to arrest was lacking. When situations like the present one occur, seldom is there one person whose guilt is immediately apparent. But that does not mean that an officer is powerless to arrest anyone. Rather, it is reasonable under the Fourth Amendment to arrest everyone.

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a profoundly retarded young woman who lives with her parents and brother, and police believe either the father or the brother committed the crime, blood sample can be ordered from both), *cert. denied*, 525 U.S. 873 (1998); *Commonwealth v. Sangricco*, 379 A.2d 1342, 1344 (Pa. 1977) (where two people are present at the shooting of a victim, police have probable cause to obtain search warrant ordering a neutron activation analysis on both).

CONCLUSION

For the foregoing reasons, the State of Maryland respectfully requests that the judgment of the Court of Appeals of Maryland be reversed.

Respectfully submitted,

J. JOSEPH CURRAN, JR.
Attorney General of Maryland

GARY E. BAIR*
Solicitor General

KATHRYN GRILL GRAEFF
SHANNON E. AVERY
Assistant Attorneys General

Counsel for Petitioner

**Counsel of Record*

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