Circuit Court for Montgomery County
Case No. C-136295

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1363

September Term, 2021

DAVID LEE WILLIAMS

v.

STATE OF MARYLAND

Kehoe,
Arthur,
Wilner, Alan M.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Wilner, J.

Filed: September 9, 2022

Appellant, David Lee Williams, was convicted on a conditional plea of guilty in the Circuit Court for Montgomery County on one count of first-degree rape, for which he was sentenced to life imprisonment. The court then suspended all but 45 years of that sentence, subject to five years of supervised probation upon his release. He raises one issue in this appeal – whether a search warrant authorizing the collection of DNA from his nose through a buccal swab was supported by probable cause. We believe that it was and therefore shall affirm the Circuit Court's judgment.

THE BASIS OF THE WARRANT

The warrant, which was based largely on three events that occurred during the summer of 2017, was issued two years later, in July 2019. We recite those events as set forth in the application for the warrant filed by Montgomery County Detective Dave Davis, who had been a county police officer for 22 years.

First Event

Detective Davis first recited that, on June 8, 2017, Gaithersburg City police officers responded to a reported residential burglary at 214 Brookes Avenue, which is in Montgomery County. Upon their arrival, they met with David Carter, a resident of that home, who informed the officers that, when he returned to the home, he found the door pushed open and that, upon entering the house, he observed two Black males holding his television set worth $250. He described one of those men as 25 to 30 years old, approximately five feet 11 inches tall, weighing about 170 pounds, with medium

dreadlock/twists. The two intruders fled the apartment with the television set. In response to a question from one of the officers, Carter said that he owed "drug money" to "David," who matches the description of the individual "responsible for the burglary. Carter also provided a phone number for "David" – 301-803-0161.

Further attempts to contact Carter were unsuccessful, and the case was initially suspended (presumably by the Gaithersburg police), but Officer Davis was able to trace that phone number to appellant, whom he described as a Black male born in January 1990 (thus 27 years old), six feet tall, 170 pounds, with medium dreadlock/twists.

Second Event

On August 7, 2017 – two months later – the Gaithersburg police again responded to a possible "burglary in progress" at 214 Brookes Avenue. They again met Mr. Carter, who stated there was a loud banging noise coming from the rear of the building. The police found a shoe print on the door and a freshly broken window to the building. They also found blood on the door, the window, and a brick that had been used to break the window. They collected a blood sample and sent it to the Montgomery County Police Lab for DNA testing. That sample was entered into CODIS (the Combined DNA Index System). Officer Davis stated in the application for the warrant that he "believes the attempted burglary was committed by the same suspect as the first incident to Carter's building as retaliation for drug money."

Third Event

At approximately 5:30 on the morning of October 6, 2017, a woman described as "Victim A," was at a bus stop located at Watkins Mill Road and Travis Lane in Gaithersburg. When she arrived there, an unknown Black male described as "tall and skinny" with medium dreadlock/twists, was present. A few minutes after her arrival, the man grabbed her from behind and threw her down an embankment behind a bus stop. Upon gaining control of her, he forced a powdery substance, later determined to be cocaine, into her mouth, removed her clothing, and vaginally and anally assaulted her. Due to the brutality of that conduct, she lost consciousness. When she awoke, she was naked except for her underwear and socks. All of her belongings, including a black bag, had been removed by the assailant. She ran back to her home and contacted the police. She was transported to Shady Grove Hospital where a forensic examination occurred and evidentiary items were collected and submitted to the Montgomery County Police Lab. Male sperm fraction DNA foreign to the victim was extracted, and a sample of that was entered into CODIS. All of this, and what follows, is taken from the application for the challenged warrant.

A surveillance video was obtained from a Weis Market camera located at 883 Russell Avenue in Gaithersburg that shows a Black male walking behind Weis Market and across a parking lot shortly after the third incident. The male's direction of travel was from the area where Victim A was attacked. The male was headed in the direction of the Public Storage located at 370 Christopher Avenue in Gaithersburg, Montgomery

County[1]. A short time after the event, Montgomery County and Gaithersburg City police received an anonymous tip that an individual who matched the sexual assault suspect's description was "trespassing/residing" in the Public Storage at 370 Christopher Avenue.

As a result of the tip, officers from both agenc[ies] were detailed to the area of the storage facility in an attempt to identify the person of interest. Officer Dakkouni of the Gaithersburg Police Department stopped and identified David Lee Williams, born January 13, 1990, six feet tall, weighing 170 pounds with medium dreadlock/twists who was trespassing and believed to be living in one of the stairwells of the storage units.

On February 8, 2018, the Montgomery County Police Lab received a CODIS "case to case hit." The sample from the attempted burglary at 214 Brookes Avenue and the sample from the sexual assault matched the same suspect. The warrant application stated that the suspect was still unknown and no identifying DNA samples were in CODIS for the suspect. On July 17, 2019, the writer [Detective Davis], who was on the county cold case unit, was assigned the sexual assault case that occurred on October 6, 2017. The writer "reviewed the case file and discovered that the previous investigators had compiled information on David Lee Williams with a date of birth of January 13,

[1] Appellant's Exhibit No. 2, a map of the area, shows the location of these streets. Watkins Mill Road and Travis Lane intersect in a small wooded area a short distance from Russell Avenue. Christopher Avenue is one block away. Over the State's objection, defense counsel noted that he was not going beyond the warrant but "we all know where these locations are, we're from Montgomery County" and that the map was just "an overview of the different locations that are referenced in the search warrant." The judge overruled the objection but stated that he was going to consider only what is in the warrant [application]. APX 18, 19.

1990, based on his age, physical description, and an old address listed at 1086 Travis Lane Gaithersburg, Montgomery County, Maryland, directly in the community behind where the sexual assault occurred."

As a result of the above facts, "the writer believes that probable cause exists to obtain a Search and Seizure warrant to obtain the DNA of Davis Lee Williams, Black male with a date of birth of January 13, 1990." The DNA will be collected by use of a buccal swab. The writer verified that Williams does not have a DNA profile currently available on file for testing comparison.

The application, as set forth above, was presented to a judge of the Circuit Court for Montgomery County who, on July 30, 2019, found probable cause to authorize the requested search and seizure warrant authorizing any officer of the Montgomery County Police Department to obtain the DNA of David Lee Williams by use of a buccal swab for use as evidence of the crime of first-degree rape. The warrant was executed on August 6, 2019.

THE CHALLENGE TO THE WARRANT

In the Circuit Court, appellant attempted to make clear that he was not arguing a lack of probable cause for the warrant. Indeed, he stated that "this isn't a situation where we're claiming that probable cause is insufficient." APPX at 20. Rather, he argued there, and argues here, that "there was legal error that it was improper to issue the warrant because it was based ultimately on the speculation of the detective." APX at 20. He

offers three examples of that alleged speculation. First, he argues that the issuing judge could not "independently assess" Officer Davis's conclusion that appellant's involvement in the June 8, 2017 burglary was linked to the August 7, 2017 burglary. Second, he contended (and still contends) that Victim A's description of her attacker as a "tall and skinny Black male with deadlock/twists" is too general to establish probable cause that he committed the rape. Third, he argues that the police encounter with him at the Public Storage facility does not link him to the rape.

Notwithstanding appellant's attempt in the Circuit Court to disassociate himself from a probable cause argument, that was the basis applied by the cases he cited there and the cases he cites here. His conclusion from the points argued above is that:

> "Under settled Fourth Amendment doctrine, the totality of circumstances in Detective Davis' affidavit amounts to nothing more than a conclusory allegation that Williams committed the rape. It is clearly insufficient grounds to compel a physical intrusion by the State of a citizen's body for the purpose of collecting their most intimate, personal genetic information."

(Brief, p. 7).

CIRCUIT COURT RULING

The Circuit Court, at APX p.7, correctly viewed that argument as a lack of probable cause and treated it accordingly: "(The Defendant's Motion to Suppress Evidence Obtained from Execution of Search Warrant for DNA . . . argues that the search warrant application fails to meet the standard for probable cause because it is predicated on the detective's "belief" that the Defendant committed the attempted burglary on

August 7, 2017 . . . .") and it rejected that argument. Citing *Illinois* v. *Gates*, 462 U.S. 213, 238 (1983), the court concluded that, in determining whether probable cause exists, "warrant-issuing judges are instructed to review **all** the circumstances set forth in the affidavit – not just bits, pieces, and beliefs." On that basis, the court concluded that "the search warrant application alleged sufficient facts to establish probable cause." APX at 10.

Applying those standards, the Circuit Court found probable cause based on five findings. First, the application gave the description of the attacker given by the victim and included the stealing of her bag. Second, it included the security footage obtained from the nearby grocery store "which may show the suspected attacker walking away from the crime scene with [the victim's] bag." Third, the application asserted that the police had received an anonymous tip that an individual matching the description of the rapist was residing or trespassing in the Public Storage. Fourth, after investigating the tip, Officers found appellant, who matched the description, at the storage facility; and Fifth, in investigating the case, the detective found a record of an old address for appellant that was in close proximity to the scene of the sexual assault. APX 9-10.

Summarizing it all, the court concluded that the search warrant showed that "the man who assaulted [the victim] was caught on security camera footage with [the victim's] stolen bag, walking away from the scene of the crime, toward the Public Storage, and the Defendant – who matches the description of the suspected attacker and had a residential address near the scene of the crime – was discovered in the storage

facility shortly after the attack." That, the court concluded, alleged sufficient facts to establish probable cause.[2]

The Circuit Court, and the State, viewed appellant's argument as an impermissible "divide and conquer" strategy that both the Court of Appeals and this Court have rejected – a strategy of attacking each facet in isolation, as though it stood alone. But courts reviewing a probable cause determination are to be "scrupulously wary" of looking at each facet in a vacuum and are to focus instead "exclusively on the totality as a totality." *Freeman v. State*, 249 Md. App. 269, 300 (2021), citing *United States v. Arvizu*, 534 U.S. 266 (2002) and *United States v. Sokolow*, 400 U.S. 1 (1989).

The proper standards to be applied in determining whether probable cause exists were set forth succinctly by the Court of Appeals in *Stevenson v. State*, 455 Md. 709, 722-23 (2017). Quoting from controlling Supreme Court pronouncements, the Court viewed probable cause as "a practical nontechnical conception that deals with the factual and practical considerations of everyday life on which reasonable and prudent [persons] not legal technicians act," and that "[f]inely tuned standards such as proof beyond a reasonable doubt or by preponderance of the evidence useful in formal trials, have no place in the [probable cause] decision." Thus, "the affidavit in support of a search warrant, viewed in its totality, need only provide a 'fair probability that contraband or

[2] As a fallback, the court added that, even if it was incorrect in finding that the application was supported by probable cause, the defendant's motion to suppress would "still fail by way of the "Good Faith Exception" arising from *United States v. Leon*, 468 U.S. 897 (1984). Because we shall find that the court was correct in its "due process" analysis, we need not address that alternative conclusion.

evidence of a crime will be found in a particular place'" (quoting, in part, from *Illinois v. Gates, supra,* 462 U.S. at 231, 238).

Continuing in that vein, the *Stevenson* Court, quoting from *Brinegar v. United States*, 338 U.S. 160, 176 (1949), concluded that probable cause "does not demand any showing that such a belief be correct or more likely true than false "and that "practical, nontechnical" probability that incriminating evidence is involved is all that is required." *Stevenson,* at 723.

Applying those standards, the issuing court had before it evidence that appellant was one of the intruders or would-be intruders in the break-in and attempted break-in at David Carter's home. That came not only from the description of the burglar but as well from his telephone number and ultimately from a match of the DNA taken from that site and the foreign DNA found in the rape victim. A confirmed tip that appellant lived in close proximity to the scene of the rape, in terms of height, weight, race, age, and hairstyle, was at least similar in appearance to the description of one of the robbers and of the rapist, and was seen carrying a black bag similar in appearance to that taken from the rape victim added to create a fair probability that evidence of the crime would be found from a swab of appellant's mouth, as, indeed, it was.

JUDGMENT AFFIRMED; APPELLANT TO PAY THE COSTS.