UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0633

September Term, 2015

DEAN LEE BENNER

v.

STATE OF MARYLAND

Krauser, C.J.,
Woodward,
Salmon, James P.
(Retired, Specially Assigned),

JJ.

Opinion by Krauser, C.J.

Filed: May 18, 2016

Convicted, upon an agreed upon statement of facts, in the Circuit Court for Howard County, of three counts of second-degree sexual offense, Dean Lee Benner, appellant, contends that the circuit court erred in denying his motion to suppress evidence seized from his home. Finding no error, we affirm.

SUPPRESSION HEARING

The evidence presented at the suppression hearing, which we are required to view in a light most favorable to the prevailing party[1] – in this instance, the State – shows that on August 29, 2013, police initiated an investigation of appellant after receiving a report that appellant had sexually abused an individual, whom we shall refer to as "the victim," during his childhood. When the police interviewed the victim, then twenty-three years old, he told them that between 1997 and 2003, appellant had repeatedly sexually abused him after holding either a gun to his head or a knife to his throat and threatening him that he would kill him and his family if he did not comply with appellant's sexual demands.

The victim reported that the sexual abuse took place at appellant's residence, which appellant shared with his mother, as well as at a warehouse where appellant worked, and at a farm owned by one of appellant's friends. He further told police that appellant used an "instant-matic" camera to photograph him during the sexual assaults, while he was naked, or performing a sex act, as well as at other unspecified times. The police then sought to obtain a search warrant for his residence.

[1] *See Briscoe v. State*, 422 Md. 384, 396 (2011).

In support of the warrant, police submitted the affidavit of Detective Aaron Miller, Child Abuse Sexual Assault Investigator for the Howard County Police Department, who had interviewed the victim and recounted the victim's description of the sexual abuse at issue in the affidavit. The detective also described, in his affidavit, typical characteristics of child sexual predators, based on his training and experience. Those characteristics included the practice of collecting "trophies" of sexual and non-sexual interactions with target children so that the predator could re-live those encounters and add to the fantasies the predator had as to those encounters. Those "trophies," he stated, could be items or photographs of the victim, which the sexual predator typically retained, for many years, together with other memorabilia.

The warrant ultimately obtained by police authorized them to search for and seize the following items:

> 1) Indicia of occupancy or use consisting of articles of personal property tending to establish that Dean Lee Benner lives at the premises located at 6375 Greenfield Rd Apt 1503, Elkridge, Howard County, Maryland 21075 . . . .
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> * * *
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> 2) Any and all instant-matic cameras . . . .
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> 4) Any developed picture/photographs from an instant-matic camera . . . .
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> * * *
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> 5) Any and all images of possible child pornography, such as but not limited to prints, photographs or pictures . . . .

> 6) Any and all images of possible child erotica, such as but not limited to prints, photographs or pictures . . . .
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> * * *
>
> 11) Photographs of the interior and exterior of the residence . . . .
>
> 12) Any and all pornographic material that would show an interest in having sex with young males . . . .

Pursuant to that warrant, the police seized from appellant's home, among other things, a green photo album, a bag of photographs, ammunition, a West Virginia Sporting License application, an application to purchase a regulated firearm, gun parts, a Cannon camera, a Polaroid One Step camera, a Pentax camera, a gray plastic box with a brown wallet, a photograph of appellant with a gun to his head and a photograph of an unidentified boy.

Prior to trial, however, appellant moved to suppress only the seizure of the photograph of the unidentified boy and certain photographs contained in the green photo album and in the large bag of photographs. The court denied that motion, concluding that the seized photographs fell within the first provision of the warrant, "indicia of occupancy or use consisting of articles of personal property tending to establish that [appellant] lives at [the premises]." In so ruling, the court stated:

> Clearly, what we have here in the context of the warrant are photo albums and bags of photos that would tend to show he lives at this certain address because that's where you keep those things that are near and dear to you. So, as it relates to the remaining items, the Court is going to find that they would be covered as indicia of occupancy of use as his personal property to show he lives at 6375 Greenfield Road, Apartment 1503, Elkridge, Maryland.

STANDARD OF REVIEW

In considering the denial of a motion to suppress evidence, we review only the record of the suppression hearing. *State v. Nieves,* 383 Md. 573, 581 (2004)(citation omitted). In so doing, "[w]e review the evidence and inferences that may be drawn therefrom in the light most favorable to the party who prevails on the motion." *Briscoe*, 422 Md. at 396. Then, "in resolving the ultimate question of whether the [search] of an individual's person or property violates the Fourth Amendment, we 'make our own independent constitutional appraisal by reviewing the law and applying it to the facts of the case.'" *Crosby v. State*, 408 Md. 490, 505 (2009)(quoting *State v. Williams*, 401 Md. 676, 678 (2007)).

DISCUSSION

Appellant contends that the suppression court erred in denying his motion to suppress the seized photographs, because those items, he maintains, were outside the scope of the search warrant at issue. Specifically, appellant claims that, because the photographs were not "instant-matic" photographs, nor evidence of erotica or pornography, nor evidence of any crime, they did not fall within the scope of the warrant. Finally, he asserts that because police seized random items not specifically enumerated in the warrant, they, in effect, turned the warrant into a "general warrant," which is constitutionally prohibited.

A. The seized photographs were within the scope of the search warrant.

It is well settled that a search warrant must "particularly describe the 'things to be seized.'" *Shoemaker v. State*, 52 Md. App. 463, 484 (1982). This requirement "ensures that the executing officer is able to distinguish between those items within the scope of the

warrant and those that are not." *Garcia-Perlera v. State*, 197 Md. App. 534, 553 (2011)(citations omitted).

The warrant at issue, here, did precisely that. It specified that the items to be seized included items constituting indicia of occupancy or use, that is, articles of personal property tending to establish that the appellant lived at the premises. The photographs in question appeared to be appellant's personal property, and they were seized in his bedroom, thereby evidencing that appellant occupied the premises described in the search warrant. Moreover, the propriety of recognizing such evidence as indicia of occupancy is well established. *See State v. Gore*, 758 S.E.2d 717, 723 (S.C. 2014)(holding that non-prejudicial photographs seized from defendant's residence were sufficient to link defendant to residence); *State v. Anderson*, 842 So.2d 1222, 1228-229 (La. Ct. App. 2003)(holding that evidence of photographs of defendant, utility bills and uniforms with defendant's name on them were sufficient to establish defendant's constructive possession of contraband in a residence pursuant to a search warrant); *Herrera v. State*, 561 S.W.2d 175, 178-79 (Tex.Crim.App. 1978)(holding that photographs, receipts, addressed envelopes, utility statements, and a copy of contract and lease were properly seized from defendant's apartment pursuant to a warrant for purpose of showing defendant's joint occupancy of apartment); *State v. McGuinn,* 232 S.E.2d 229, 232 (S.C. 1977)(finding that photographs and letters seized during a search of defendant's house helped police establish who resided at the address and served as evidence of actual residency).

B. The seizure of photographs as evidence of indicia of occupancy did not render the warrant a "general warrant."

Appellant further contends that any photographs seized that were not "instant-matic" photographs,[2] were beyond the scope of the warrant and thereby rendered the warrant an unlawful "general warrant."

"A general warrant, broadly defined, is one which fails to sufficiently specify the place or person to be searched or the things to be seized, and is illegal, since, in effect, it authorizes a random or blanket search in the discretion of the police[.]" *Frey v. State*, 3 Md. App. 38, 46 (1968). The standard to be applied in reviewing a challenge to particularity is "does the warrant gives proper notice to the party whose property is being searched and does it sufficiently constrain the discretion of the officer by making clear what he may look for and take?" *Brock v. State,* 54 Md. App. 457, 468, *cert. denied*, 297 Md. 338 (1983).

We conclude that the search warrant at issue was sufficiently specific in authorizing the seizure of items constituting indicia of occupancy. In a case such as this, where the appellant was not the only occupant of the premises, it was reasonable for the warrant to authorize the police to seize evidence confirming that appellant, in fact, lived at the premises. The trial court properly found that the photographs seized reasonably fit within that description.

[2] The fourth item on the list of property to be seized in the search warrant specified "any developed picture/photographs from an instant-matic camera."

C. The photographs were properly seized as evidence of criminal activity.

We agree with the State that there were other grounds for finding that the photographs were properly seized, namely, that the police had probable cause to believe that the photographs were evidence of criminal activity. In other words, there was a nexus between the evidence seized and appellant's criminal activity. *See Warden, Maryland Penitentiary v. Hayden*, 387 U.S. 294, 307 (1967)("There must, of course, be a nexus – automatically provided in the case of fruits, instrumentalities or contraband – between the item to be seized and criminal behavior."). As this Court stated in *Crawford v. State*, 9 Md. App. 624, 627 (1970)(citations omitted), "if this nexus exists, the items the police may reasonably seize under a constitutionally valid warrant and search are not confined to those specifically designated in the warrant."

The seized photographs at issue depicted young boys engaging in the type of "grooming" activities described by the victim, including a boy driving a forklift at appellant's place of employment, and photographs of the farm and barn where appellant brought the victim and other young boys "to party." The photographs were also consistent with "trophies" kept by sexual predators, as noted in the affidavit of Detective Miller, who was present during the search. The officers therefore seized items of the same nature that were described in the warrant and which they had probable cause to believe was evidence of criminal activity. *See Anglin v. State*, 1 Md. App. 85, 91 (1967). Hence, there was a

sufficient nexus between the seized photographs and the criminal conduct in which the appellant was believed to have engaged.

JUDGMENTS OF THE CIRCUIT COURT FOR HOWARD COUNTY AFFIRMED. COSTS TO BE PAID BY THE APPELLANT.