

Circuit Court for Caroline County
Case No. 05K16011288

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2642

September Term, 2016

BROCK EVAN EYERLY

v.

STATE OF MARYLAND

Woodward C.J.,
Friedman,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned)

JJ.

PER CURIAM

Filed: December 11, 2017

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Appellant, Brock Evan Eyerly, was charged with firearm offenses after the execution of a search warrant in his home. After the Circuit Court for Caroline County denied his pre-trial motion to suppress, he entered a not guilty plea with an agreed statement of facts and was convicted of illegal possession of ammunition. Appellant was sentenced to one year of confinement, all of which was suspended, and ordered to complete two years of supervised probation. Appellant appeals from the circuit court's denial of his motion to suppress. We affirm.

BACKGROUND

On March 10, 2016, Detective Justin Reibly of the Caroline County Sheriff's Office drafted and signed an Application for Search and Seizure Warrant requesting issuance of a search and seizure warrant to search for firearms believed to be at 1100 Canvasback Lane in Denton. The home of appellant and his wife Dana Eyerly is located at that address.

In support of the warrant, affiant Detective Reibly stated that on March 10th, at approximately 7:13 a.m., members of the Denton Police Department, Caroline County Sheriff's Office, and Maryland State Police responded to 1100 Canvasback Lane for a report of a suicidal subject at that residence. Once there they made contact with Dana Eyerly by phone who reported that she had an argument with appellant the previous evening and that she became concerned after appellant began to cry hysterically, and made threats that he would hurt himself. She advised that she believed appellant to be emotionally disturbed and that he had a history of CDS usage. She further advised that appellant had threatened to harm himself approximately one week prior by holding a gun to his head. Dana Eyerly advised that she called 911 at approximately 1:00 a.m. due to her

concerns, but that she hung up the phone before the call connected, and eventually went to bed when appellant left the room in which the argument was taking place.

Dana Eyerly further advised that appellant kept an AR-15 assault rifle and a .22 caliber rifle in the home and that appellant had threatened to use those firearms on himself and law enforcement personnel, if need be. A records check revealed that appellant was prohibited from possessing any firearms due to a previous CDS conviction.

Dana Eyerly advised that the morning of March 10th she awoke at approximately 5:30 a.m., and did not see appellant, nor did she know where he was. She did notice, however, that the garage door was locked, which was unusual. When she left the home at approximately 6:30 a.m. she observed appellant's vehicle parked in the driveway of the home. At approximately 7:45 a.m. she spoke with appellant by phone who informed her that he had gone for a walk and had since returned to the home. Detective Reibly advised that law enforcement personnel were already at the home at that time and did not observe appellant. Dana Eyerly activated the Global Positioning System (GPS) on appellant's cell phone at approximately 11:00 a.m. and it indicated that appellant's phone was inside the home.

Law enforcement was unable to contact appellant during this time. Believing that appellant had barricaded himself inside the home and was in possession of weapons, members of the Maryland State Police Tactical Entry Team were called to respond to the location. At approximately 11:18 a.m. officers observed movement in an upstairs window of the home. At approximately 12:30 p.m. the GPS on appellant's cell phone was again activated and indicated that the phone was still in the residence. At approximately 12:38

p.m., Dana Eyerly observed that the GPS application had been turned off on appellant's phone.

After reviewing the application which detailed the foregoing, Judge Douglas Everngam of the District Court for Caroline County signed the Search and Seizure Warrant authorizing the entry and search of 1100 Canvasback Lane. Upon entry into the home, law enforcement personnel discovered that appellant was not inside the house, and that the house was in fact empty. Officers found an AR-15 rifle, a .22 caliber rifle, and ammunition during a subsequent search of the home.

On November 16, 2016, appellant's motion to suppress was heard in the circuit court. No witnesses were called and counsel for appellant argued that the warrant was not supported by sufficient probable cause. The court denied appellant's motion.

DISCUSSION

Whether at the suppression hearing level, or appellate level, reviewing courts "do not undertake de novo review of the magistrate's probable cause determination but, rather, pay 'great deference' to that determination." *West v. State*, 137 Md. App. 314, 322, *cert. denied*, 364 Md. 536, (2001). "Review of the magistrate's decision to issue a search warrant is limited to whether there was a substantial basis for concluding that the evidence sought would be discovered in the place described in the application and its affidavit." *Id.*

Appellant argues that "the information collected in obtaining the warrant cannot be deemed reliable," as it "was based upon hearsay, which had not been proven reliable or credible," and therefore the warrant was defective. We disagree.

“[A] constitutionally adequate search warrant may be based on hearsay, so long as the issuing judge or magistrate is confident that probable cause for the search exists on the face of the affidavit under the totality of the circumstances.” *Pearson v. State*, 126 Md. App. 530, 543-44 (1999). “[W]here the affidavit is based on hearsay, it must set out some of the underlying circumstances from which the affiant could reasonably conclude that the hearsay information was reliable and that the items sought to be seized were within the place to be searched.” *Grimm v. State*, 6 Md. App. 321, 327 (1969).

In the present case, although the information that initiated the investigation at appellant’s home was hearsay provided by appellant’s wife Dana, considering the totality of the circumstances, we hold that the affiant was reasonable in his conclusion that the hearsay information was reliable and that the firearms sought to be seized were within appellant’s home. The source of the hearsay in this case was appellant’s wife, with whom he was living at the time of the incident in this case. It is reasonable to assume that she would have direct knowledge of the presence of firearms in the home and of appellant’s mental state. Further, she provided information regarding appellant’s CDS usage, which was independently confirmed by a check of appellant’s prior record. Additionally, it was reasonable for the police to conclude, as did appellant’s wife, that appellant was in the home when, (1) the GPS function on his phone indicated that it was in the home, (2) the police observed what they believed to be movement in a window of the home, (3) the appellant’s vehicle remained in the driveway, and (4) where the police observed the rear sliding door blind open inside the residence. That the attempts to make contact with appellant inside the home were unsuccessful lead to the reasonable conclusion that

appellant's wife was correct in her assessment that appellant was mentally unstable. Considering these circumstances, we hold that there was a substantial basis for the issuing court to conclude that firearms would be found in the home.

Nevertheless, even had the warrant been issued in error, we hold that the police relied upon the warrant in good faith, and therefore the firearms seized need not have been suppressed. *United States v. Leon*, 468 919 (1984).

**JUDGMENT OF THE CIRCUIT COURT
FOR CAROLINE COUNTY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**