Circuit Court for Allegany County
Case No.: C-01-CR-21-000130

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND

160

September Term, 2023

William Wright

v.

State of Maryland

Graeff,
Zic,
Wilner, Alan M.
(Senior Judge, Specially Assigned)

JJ.

Opinion by Wilner, J.

Filed: April 15, 2024

The issue before us is the validity of a warrant to search a hotel room rented by appellant, William Wright. The warrant was issued by a judge of the District Court for Allegany County upon an application filed by Corporal Trenton Lewis, a Maryland State Police Officer assigned to the Allegany County Narcotics Task Force.

The warrant was executed, and evidence found in the hotel room was admitted against appellant who, in part upon that evidence, was convicted of various criminal offenses and given a substantial prison sentence. Trial counsel failed to file a timely notice of appeal, but, upon a consent order, appellant was permitted to file a belated appeal under the Maryland Uniform Postconviction Procedure Act, Crim. Proc. §§ 7-101 to 7-301, which he did. That is what is before us now.

In the Statement of Facts section of his brief, appellant avers that "the sole issue in this case is whether the court below erred in finding a sufficient nexus between appellant's activity [elsewhere] and the search of his hotel room." Apparently anticipating the State's response, he adds, as part of his argument, that the officers who executed the warrant were not entitled to rely on the warrant in good faith because the warrant was insufficient to establish probable cause.

The State does, indeed, raise that issue, arguing that "[e]ven if the affidavit in support of the warrant provided no substantial basis for a probable
cause finding, the circuit court still properly denied the motion to suppress because the officers executed the search warrant in good faith."

BACKGROUND

When the Court is reviewing a suppression ruling, the Court must consider "the evidence and arguments made at the hearing on the motion to suppress and not the trial record." *Portillo Funes v. State*, 469 Md. 438, 461–62 (2020), quoting *Lewis v. State*, 398 Md. 349 (2007). "The Court accepts the suppression court's factual findings and credibility determinations, unless clearly erroneous" and views evidence in the light most favorable to the prevailing party, the State.

Corporal Lewis testified at a motion-to-suppress hearing on October 19, 2021, that he and other members of the Allegany County Narcotics Task Force conducted a surveillance on March 2, 2021, in a known drug trafficking area of Cumberland, Maryland. While so engaged, he testified, they observed two black males contact multiple people in the area. He said one of those men, later identified as appellant, made contact with an unidentified white male, walked with him to a car parked at the corner, and entered the car. The white male sat in the passenger seat, Corporal Lewis said.

After a short period of time, the white male left the car. At that point, the other black male entered the car, which pulled up to Harrison Street but failed to stop at the stop sign at Altamount Terrace and Harrison Street. Corporal Lewis said they suspected that a drug

transaction had occurred in the car but concluded that they did not have sufficient information to make a stop at that point for a drug violation.

When asked why he did not stop the vehicle for the traffic violation, Corporal Lewis responded that he was in a covert vehicle with no [police] lights or body camera and had no way to make a traffic stop. Aware that a Cumberland police officer, Jacob Martel, was on duty in the area with a marked patrol vehicle, they notified him of the traffic violation and asked that he make the stop, which he did. Upon making the traffic stop, Officer Martel testified at the motion-to-suppress hearing that he called for a K-9 unit which, upon arrival, gave a positive alert. That led to a search of appellant and the car, which produced 11 green trash cans[1] of suspected crack cocaine with a value of $550, 16 plastic bags of suspected crack cocaine worth approximately $800, and 44 capsules of fentanyl worth approximately $1,320. Particularly critical to this case was the discovery in the appellant's pocket of a key to Room 310 at the Super 8 Hotel in Lavale, Md., a town asserted to be six miles from Cumberland. In his application for a warrant to search Room 310, Corporal Lewis wrote that through his training, knowledge, and experience, he knew that drug dealers use hotel rooms as a base of operations (1) to distribute drugs and conceal their identity, and (2) to store additional CDS, packaging materials, ledger books, phones, and other evidence.

[1] We are informed that a "trash can" in this context is a small container for the distribution of certain kinds of CDS.

On these averments, the court issued a warrant authorizing Corporal Lewis to enter and search Room 310 and all vehicles and persons found in or about those premises. That warrant was executed. The search of the room revealed 25 grams of suspected fentanyl, 25 grams of suspected cocaine, 3.2 grams of suspected marijuana, a digital scale, and a loaded semi-automatic 40 caliber pistol with one magazine and 16 rounds which, as a previously convicted felon, appellant was precluded from possessing.

In the initial challenge to those searches, the Court, at the October 19 motion-to-suppress hearing, recognized that there were two separate issues – the validity of the first search conducted by Officer Martel following the alleged stop sign violation, and the later search of the hotel room based on the warrant. The court found that the first search was appropriate, and that is no longer challenged.

As to the search of the hotel room, the Court clearly recognized that as a "nexus" issue, and, as to that, based on Corporal Lewis's long experience and knowledge that drug dealers not from the area will often keep narcotics "at a somewhat different location," concluded that there was a sufficient nexus between the hotel key that was found on the defendant and the resulting search warrant that was executed at the Super 8 Hotel room and that the evidence seized there was admissible. There was no mention in that proceeding of *Holmes v. State*, 368 Md. 506 (2002), *Agurs v. State*, 415 Md. 62 (2010), or *Whittington v. State*, 474 Md. 1, 32 (2021).

The motion to suppress was denied, which produced a plea agreement under which appellant entered a not guilty plea with an agreed statement of facts to possession with

intent to distribute fentanyl and possession of a magazine with a capacity of more than 10 rounds of ammunition in the commission of a felony, in return for which the State agreed to nol pros the remaining charges and further agreed to a prison sentence of ten years (the relevant guidelines being nine to 14 years). The next day, October 20, 2021, the Court accepted the plea agreement and sentenced appellant to 20 years in prison, all but 10 years suspended.

A timely appeal from that decision was not filed. Two years later, however, appellant was permitted to file a belated appeal pursuant to the Maryland Uniform Postconviction Procedure Act, in which he contends that the affidavit in support of the warrant to search the hotel room "was so bare bones that it failed to establish a nexus between the drugs found in Mr. Wright's pocket and the hotel room, and failed to provide probable cause required to search the hotel room" and that it was "so lacking in probable cause . . . [that] no well-trained officer could rely on it in good faith."

The State disagrees. It contends that there was a substantial basis for finding probable cause to search the hotel room and that the judgment should be affirmed on that basis. Alternatively, it argues that even if there was no substantial basis for finding probable cause, courts should not suppress evidence obtained from warrants executed in good faith and here, "the officers reasonably relied on the warrant in good faith, and therefore, this Court should still affirm even if it concludes there was no substantial basis for finding probable cause."

In its brief, the State supports its good faith argument on the twin grounds that (1) "[b]ecause two judges have reasonably concluded that the warrant was valid, officers were permitted to conclude the same" and (2) because the police had direct evidence that [appellant] possessed drugs, which was included in the affidavit in support of the warrant application, "shows that the warrant was not based on 'wholly conclusory statements' that rendered it so lacking in indicia of probable cause that officers could not rely on it in good faith."

DISCUSSION

Following the decision in *United States v. Leon*, 468 U.S. 897 (1984), the Maryland Supreme Court, in *Greenstreet v. State*, 392 Md. 652, 678, 683 (2006), discussed the concept and availability of "good faith" as a basis for sustaining a search warrant deficient of probable cause. *Leon* established the principle that one purpose of the exclusionary rule was to deter law enforcement officers from willful or negligent conduct that deprives a defendant of some right, and that that deterrent policy "cannot be expected, and should not be applied, to deter objectively reasonable law enforcement activity." *Leon*, 468 U.S. at 919.

The *Greenstreet* Court added that that principle was particularly true "when an officer acting with objective good faith has obtained a search warrant from a judge or magistrate and acted within its scope." *Id*. at 678. The Court added that, in such cases, "there is no police illegality and thus nothing to deter." *Id*. It is the magistrate's responsibility to determine whether the allegations establish probable cause and to issue a

warrant in conformance with Fourth Amendment requirements. In the ordinary case, "an officer cannot be expected to question the magistrate's probable-cause determination or his [or her] determination or his [or her] judgment that the form of the warrant is technically sufficient." *Id*. at 678.

Citing *Leon* and *Lo-Ji Sales, Inc. v. New York*, 442 U.S. 319 442 (1979), the *Greenstreet* Court noted that there were four exceptions to the "good faith" exception: (1) where the issuing authority is misled by information in the affidavit that the affiant knew was false or acted with reckless disregard for the truth; (2) where the magistrate "wholly abandoned" his [or her] judicial role; (3) where no reasonably well-trained officer should rely on the warrant – such as "an affidavit so lacking in indicia of probable cause to render official belief in its existence entirely unreasonable"; and (4) where the warrant is "so facially deficient that the executing officers cannot reasonably presume it to be valid." *Id.* at 679. *See also Zadeh v. State*, 258 Md. App. 547, 593 (2023). The *Greenstreet* Court concluded, however, that where a defect in the warrant is not readily apparent to a well-trained officer, the good faith exception will apply.

All of this needs to be read in the light of *Holmes v. State,* 368 Md. 706 (2002) and *Agurs v. State,* 415 Md. 62 (2010), which dealt with a situation somewhat similar to what occurred here, of evidence of drug dealing away from one's home leading to an inference that, in turn, can constitute probable cause to support a warrant to search the home. The Court in *Holmes* regarded that as a deductive nexus between observed drug transactions and the likelihood of drugs being stored in the defendant's home, citing out-of-state cases

applying that approach. The Court did not need to determine in that case whether an isolated drug transaction, especially one observed a considerable distance from the defendant's home, would suffice to serve as a nexus because in that case the defendant was seen in and out of his home immediately before and after meeting his customer.

In the *Agurs* case, Agurs appeared to be dealing drugs from his car, although the evidence of that was thought by the Appellate Court to be speculative, inconclusive, and having minimal value. The police, however, obtained a warrant to search his home on evidence that he and his wife were living beyond their means and tips that he was an upper-level distributor of cocaine. The Court held, on that flimsy evidence, that there was no probable cause to search his home.

The Court relied in part on *Holmes* for the proposition that direct evidence that contraband exists in the home is not required for a search warrant, but that probable cause may be inferred from the type of crime, the nature of the items sought, the opportunity for concealment, and reasonable inferences about where the defendant may hide incriminating items. *Agurs*, at 85. It added, citing an Opinion by Justice Ginsburg in *United States v. Thomas*, 989 F.2d 1252, 1255 (D.C. Cir. 1993) that "observations of illegal activity occurring away from the suspect's residence, can support a finding of probable cause to issue a search warrant for the residence if there is a reasonable basis to infer from the nature of the illegal activity observed that relevant evidence will be found in the residence." *Id*.

That kind of evidence was missing in *Agurs*, and so the Court concluded that the warrant should not have been issued.

This case is different. There was plenty of evidence of drug dealing by appellant, coupled with the unrebutted testimony of Corporal Lewis regarding the practice of drug dealers not from the area of stashing contraband in hotel rooms. That is enough to support a good faith belief that contraband would be found in or about Room 310 of the Super Hotel, and, based on that good faith belief, to issue the warrant that is contested here.

JUDGMENT AFFIRMED;
APPELLANT TO PAY THE COSTS.