Circuit Court for Howard County
Case No. C-13-CR-20-000188

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 295

September Term, 2021

DELONDRE MASON

v.

STATE OF MARYLAND

Beachley,
Ripken,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: April 13, 2022

Following the denial of his four motions to suppress evidence, appellant Delondre Mason entered a conditional guilty plea to one count of second-degree burglary and one count of fourth-degree burglary stemming from two separate incidents in Howard County. The conditional plea agreement reserved appellant's appellate rights. Pursuant to the plea agreement, the Circuit Court for Howard County sentenced appellant to ten years' incarceration for the second-degree burglary count, with credit for time served. The court also sentenced appellant to a concurrent three years' incarceration for the fourth-degree burglary count. Appellant timely appealed and presents the following two issues for our review:

1. Did the [circuit] court err in denying [appellant's] motions to suppress the evidence and fruits obtained and derived from the issuance of the Baltimore County cellphone and GPS location orders?

2. Did the [circuit] court err in failing to suppress the evidence and fruits obtained and derived from Howard County's unconstitutional use of a GPS tracker?

We answer both questions in the negative and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On January 27, 2020, Jack Hubbard, the owner of Lawn Crew, a landscaping business located at 3337 Joppa Road in Parkville, Maryland, discovered that his business had been burglarized. The lock to a shed had been cut, and numerous items had been stolen, including: a Stihl brand chainsaw, a Stihl brand handheld trimmer, two Stihl brand hedge trimmers, and three Shindaiwa brand backpack blowers.

Approximately two weeks later, on February 14, Heating Specialties, a heating equipment supplier located at 2908 East Joppa Road was also burglarized. The front glass door to the business was apparently shattered with a brick, and the drawer underneath the front counter was open. Fortunately, the burglar did not appear to steal anything.

That same day, the Baltimore County Police Department ("BCPD") received an anonymous tip from its "iWatch Citizen Tip Line" which stated the following:

> Delondre Mason robbed a business of its tools located by the CVS in Parkville MD and another business on Joppa RD that sold stihl tools he stole the items and used a black 2019 Impala that is registered in his girlfriend Shaniece Towsends name the vehicle was seen at the crime at Parkville. He was in the area with tools in his car when information about [the] burglary was posted on social media.

The tip further provided appellant's full name, gender, race, age, height, hair color, eye color, and indicated that appellant "Stays in motel 6 in laurel md when not with his girlfriend."

Based on the anonymous tip, Detective Layhew[1] of the BCPD suspected that appellant had committed the January 27 burglary at Lawn Crew and the February 14 burglary at Heating Specialties. Accordingly, Detective Layhew began investigating appellant in order to corroborate the details from the anonymous tip. Detective Layhew was able to confirm that appellant co-owned a black 2019 Chevy Impala with Shanice Townsend. Detective Layhew then traveled to the Motel 6 in Laurel, Maryland, and observed a "newer model, black" Chevy Impala. Running the vehicle's tag, Detective

[1] Detective Layhew's first name does not appear in the record.

Layhew verified that the vehicle was registered to Shanice Townsend and co-owned by appellant.

Apparently satisfied that it had probable cause, the BCPD submitted two separate applications pursuant to Md. Code (2001, 2018 Repl. Vol., 2021 Supp.), § 1-203.1 of the Criminal Procedure Article ("CP") on February 19, 2020.[2] One of the applications sought a court order to install a GPS tracking device on appellant's 2019 Chevy Impala; the other application sought a court order to track and trace appellant's cellular phone. A Baltimore County Circuit Court Judge granted both applications, and the BCPD began surveilling appellant. Despite these efforts, the BCPD never charged appellant for either of the burglaries associated with this tip.

Approximately three weeks later, on March 12, the BCPD, relying on data obtained from the GPS tracker, observed that appellant's vehicle stopped overnight at 7549 Montevideo Road in the Jessup area of Howard County. The BCPD contacted the Howard County Police Department ("HCPD") and informed them that they were investigating appellant and suspected that appellant may have committed a theft at that location. A detective with the HCPD responded to Excel Tree Experts, the business located at 7549 Montevideo Road, and learned that a burglary had indeed occurred in the early morning hours on March 12, 2020.

[2] Although we cite to the most recent version of CP § 1-203.1, the subsequent amendments to that statute have no bearing on the outcome of this appeal.

Based on this information, Detective James Tippett of the HCPD applied for a court order to track appellant's cellular phone location information. This application was granted on March 13, 2020.[3] Although the HCPD never applied for a separate court order to attach a GPS tracking device onto appellant's vehicle, the HCPD nevertheless placed one on appellant's 2019 Impala.

Following the issuance of the order allowing HCPD to track appellant's phone, Detective Tippett began receiving pings from appellant's phone. According to Detective Tippett, these pings were not precise enough to ascertain appellant's phone's location within five meters, but were sufficient "to generally know the location of that device[.]"

On the night of March 19, at approximately 9:00 p.m., Detective Tippett received a notification from the GPS tracker that appellant's vehicle was on the move. Detective Tippett also observed appellant's movement from a ping to appellant's phone. Based on these observations, Detective Tippett called his supervisor and received permission to conduct physical surveillance.

The GPS and phone pings indicated that appellant's vehicle was stopped on Montevideo Road. HCPD officers thereafter observed the vehicle parked near 7164 Montevideo Road, the business location for U.S. Pools. A suspect later identified as appellant approached the front of the U.S. Pools building carrying what appeared to be bolt cutters. Appellant then left the scene in his vehicle. Some of the officers followed, while

[3] Though not relevant to this appeal, we note that the HCPD applied for and obtained an additional order concerning historical cellular information covering the span between October 25, 2019, through March 17, 2020.

others remained at the scene, anticipating that appellant would return. Eventually, appellant returned to U.S. Pools, burglarized a shed, and loaded equipment into his vehicle. Appellant then traveled to his residence, and shortly thereafter, HCPD officers arrested him and recovered tools which were later confirmed to belong to U.S. Pools. Consequently, the State charged appellant with one count of second-degree burglary, two counts of theft, one count of malicious destruction of property, one count of fourth-degree burglary, and three counts of rogue and vagabond.

Prior to trial, appellant filed four separate motions to suppress. The first two motions concerned evidence seized (and any fruits thereof) based upon the two BCPD orders which allowed for GPS and cellular phone tracking. The third and fourth motions concerned the evidence seized (and any fruits thereof) based upon the HCPD cellular phone location order, and the fact that the HCPD failed to obtain a court order before placing a GPS tracking device on appellant's vehicle. Following suppression hearings on November 17 and 25, 2020, all four of appellant's motions were denied. Appellant thereafter entered a conditional guilty plea to one count of second-degree burglary for burglarizing tools from U.S. Pools, and one count of fourth-degree burglary for entering the property at Excel Tree Experts.

DISCUSSION

Appellant presents two issues for our review. First, he argues that the suppression court erred by denying his motions to suppress the evidence and fruits derived therefrom stemming from the two BCPD orders—one allowing the BCPD to track his cell phone, and

the other authorizing placement of a GPS tracker on his vehicle. Second, appellant argues that the suppression court erred by denying his motion to suppress the evidence and fruits derived therefrom stemming from the HCPD's use of a GPS tracker because the HCPD never obtained judicial authorization to use a GPS tracking device.

As we shall explain, we conclude that there was a substantial basis for the Baltimore County issuing judge to grant the applications.[4] Even assuming there was no substantial basis, we would still affirm the suppression court's decision based on the good faith exception to the exclusionary rule. Finally, we conclude that the suppression court properly applied the inevitable discovery doctrine in denying appellant's motion to suppress evidence obtained from the unauthorized use of the HCPD's GPS tracker.

I.

As noted above, appellant's first two motions to suppress concerned evidence obtained as a result of the two BCPD orders authorizing the tracking of appellant's phone and placement of a GPS device on his vehicle. The suppression court, after reviewing the two applications (including the affidavits contained therein) concluded that there was a substantial basis for the issuance of the orders. In reaching its decision, the court noted that the anonymous tip specifically mentioned that appellant stole Stihl tools, and that Stihl tools were indeed stolen from a business on Joppa Road. The suppression court was further persuaded by the fact that the tip mentioned two burglaries, and that the BCPD was able to

[4] The same Baltimore County Circuit Court Judge signed both CP § 1-203.1 orders.

identify two businesses in the same area that had been recently burglarized.[5] Finally, the court noted that police were able to corroborate the details contained in the tip regarding appellant's vehicle, and where he resided. Based on these facts, the court determined that the information provided in the applications was sufficient to establish a substantial basis for the issuing judge to find probable cause.

On appeal, appellant argues that the suppression court erred in denying his motion to suppress evidence seized as a result of the two BCPD orders. Specifically, appellant argues that the information contained in the anonymous tip, coupled with the BCPD's minimal corroboration, failed to provide the issuing judge with the requisite probable cause necessary to order the use of the GPS and cell phone location orders. According to appellant, these orders were therefore unlawful, and all evidence obtained directly or indirectly as a result of these orders violated his rights pursuant to the Fourth Amendment of the United States Constitution. Additionally, appellant argues that the good faith exception to the exclusionary rule should not apply to salvage the admissibility of this evidence. We reject these arguments in turn.

A. There was a Substantial Basis to Support the Issuance of the BCPD Orders

The Fourth Amendment of the United States Constitution provides that

> 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

[5] The court noted that the anonymous tip referred to the crimes as robberies when in fact they appeared to be burglaries.

> affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const. amend. IV. The Supreme Court has described probable cause as "a fluid concept . . . not readily, or even usefully, reduced to a neat set of legal rules." *Illinois v. Gates*, 462 U.S. 213, 232 (1983). For purposes of a search warrant, probable cause is established where the facts set forth in an affidavit, when viewed in the totality, provide "a fair probability that contraband or evidence of a crime will be found in a particular place." *Id*. at 238. The task of the judge who issues such a warrant is to "make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before [the judge], including the 'veracity' and 'basis of knowledge' of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place." *Id*. Although the BCPD orders at issue in this case are not "search warrants," in *Whittington v. State*, the Court of Appeals held that orders issued pursuant to CP § 1-203.1 constitute warrants for purposes of the Fourth Amendment, and must likewise be supported by probable cause. 474 Md. 1, 30-31 (2021). Thus, the probable cause requirement applies with equal force to court orders issued pursuant to CP § 1-203.1. *Id.*

Although the issuing judge's order must be supported by probable cause, a reviewing court is not tasked with determining the existence of probable cause on appeal. *Id*. at 31. "[R]ather[,] we must determine whether the '*issuing judge had a substantial basis* for concluding that the [court order] was supported by probable cause.'" *Id*. (quoting *Patterson v. State*, 401 Md. 76, 89 (2007)). Appellate courts employ a deferential standard

of review when evaluating an issuing court's determination regarding probable cause: "[S]o long as the magistrate had a 'substantial basis . . . for conclud[ing]' that a search would uncover evidence of wrongdoing, the Fourth Amendment requires no more." *Id*. at 31-32 (quoting *Stevenson v. State*, 455 Md. 709, 723-24 (2017)).

The *Whittington* Court described the substantial basis test as follows:

> The substantial basis test does not require direct evidence that the evidence sought would be found in the place to be searched. The substantial basis of an issuing court may be predicated on an affiant's professional experience and inferences drawn therefrom in deciding whether probable cause exists. The substantial basis test also recognizes the inherent flexibility of the probable cause standard. [P]robable 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 the incriminating items.

Id. at 32 (internal citations and quotation marks omitted).

We conclude that the issuing judge here had a substantial basis for finding probable cause to believe that appellant had committed two crimes, and that the GPS tracker and cell phone location information would lead to the discovery of evidence of those crimes. Specifically, the descriptions of the crimes themselves, coupled with the anonymous tip and police corroboration, persuade us that there was a substantial basis for the issuing judge's finding of probable cause.

The applications set forth that the BCPD was already aware of and investigating burglaries in the Parkville area. Officers noted that two recent cases appeared to be related based on the time of day, location, and method of operation. On January 27, the owner of Lawn Crew, which is located on Joppa Road in Parkville, reported that his business had

been burglarized, and that four Stihl brand tools (among other things) were stolen. On February 14, the owner of Heating Specialties, located on East Joppa Road, reported that his business had also been burglarized.

In conjunction with these two burglary reports, the BCPD received an anonymous tip on February 14. The anonymous tip provided new information, and corroborated details that the BCPD had already learned based on the burglary reports themselves. Specifically, the tip stated:

> Delondre Mason robbed a business of its tools located by the CVS in Parkville MD and another business on Joppa RD that sold stihl tools he stole the items and used a black 2019 Impala that is registered in his girlfriend Shaniece Towsends name the vehicle was seen at the crime at Parkville. He was in the area with tools in his car when information about [the] burglary was posted on social media.

The tip also described appellant's gender, race, age, height, hair color, eye color, and indicated that he "Stays in motel 6 in laurel md when not with his girlfriend."

Notably, the tip correctly indicated that there had been two separate thefts[6] in "Parkville" and on "Joppa RD," and that the thief had stolen Stihl tools from one of the businesses. The tipster's knowledge of the two separate incidents, coupled with the identification of the specific brand of the items stolen, bolstered the anonymous tipster's credibility. Additionally, the tipster's assertion that the thief used a 2019 Impala and that "the vehicle was seen at the crime at Parkville" suggested that the tipster may have actually

[6] Both the suppression court and Detective Layhew recognized that citizens without proper training often describe burglaries as robberies.

witnessed one of the crimes. We note that the tip was provided on February 14, the same day as the Heating Specialties burglary.

BCPD detectives were able to further corroborate details from the anonymous tip. Detective Layhew was able to confirm, through background checks, that appellant was indeed the co-owner of a 2019 Chevy Impala, and that the other registered owner of the vehicle was a woman named Shanice Townsend. Additionally, Detective Layhew noted that appellant had been identified as a suspect in a previous burglary, and verified that appellant's vehicle was indeed spotted at the Motel 6 in Laurel, Maryland.[7]

Based on the totality of these circumstances, we conclude that the combination of the reports of the two thefts on Joppa Road in Parkville, the anonymous tipster's information regarding those thefts, and the BCPD's investigation which corroborated several of the details contained in the tip, provided a substantial basis for the issuing court to find that evidence of the thefts would likely be found by allowing the BCPD to track appellant's phone and place a GPS on his vehicle.

In his brief, appellant argues that the applications "lacked the substance necessary to find probable cause," and that the anonymous tip lacked the necessary indicia of reliability to establish probable cause. These arguments are misguided. As noted above,

[7] In his brief, appellant claims that "it could not be known whether the information provided about the crime was known to the tipster *because of* social media and not because of any 'inside information.'" We need not speculate as to the substance of the social media post that was never produced. *See Fitzgerald v. State*, 153 Md. App. 601, 625 (2003) ("Once it is established . . . that the police obtained a search warrant, there is a presumption that the warrant was valid. The burden of proof is allocated to the defendant to rebut that presumption by proving otherwise."), *aff'd*, 384 Md. 484 (2004).

"We do not conduct a *de novo* inquiry into whether the court order in this case was supported by probable cause, rather we must determine whether the '*issuing judge had a substantial basis* for concluding that the [court order] was supported by probable cause.'" *Whittington*, 474 Md. at 31 (quoting *Patterson*, 401 Md. at 89). Our appellate lens is focused on whether the issuing judge had a substantial basis for determining the existence of probable cause, not whether the facts established "a fair probability that contraband or evidence of a crime will be found in a particular place." *Gates*, 462 U.S. at 238. Utilizing the "substantial basis" standard of review—a standard that is "less demanding than even the familiar 'clearly erroneous' standard by which appellate courts review judicial fact finding,"—we conclude that a substantial basis existed for the issuance of the orders. *State v. Jenkins*, 178 Md. App. 156, 174 (2008) (emphasis removed) (quoting *State v. Amerman*, 84 Md. App. 461, 472 (1990)).

B. Assuming for Purposes of Argument that the BCPD Orders were Improper, the Good Faith Exception Would Apply

Even if we were to assume that the issuing judge did not have a substantial basis to issue the two BCPD orders, we would nevertheless affirm appellant's convictions pursuant to the good faith exception to the exclusionary rule. The Court of Appeals has explained that "[t]he good faith exception prevents the exclusion of evidence obtained pursuant to a warrant later shown to lack probable cause when law enforcement, in objective exercise of their professional judgment, reasonably relied on a warrant issued by a detached and neutral magistrate." *Whittington*, 474 Md. at 37 (citing *United States v. Leon*, 468 U.S. 897, 920-21 (1984)).

The Supreme Court has proposed four instances in which the good faith exception would not apply to salvage the admissibility of evidence obtained pursuant to an improperly issued warrant: 1) where the issuing judge was misled by information in an affidavit that the officer either knew was false or would have known was false but for the officer's reckless disregard for the truth; 2) where the magistrate abandoned her or his detached and neutral judicial role; 3) where "the warrant was based on an affidavit that was so lacking in probable cause as to render official belief in its existence entirely unreasonable"; and 4) where the warrant was so facially deficient that the executing officers could not reasonably presume it to be valid. *Id*. at 21 n.15 (citing *Patterson*, 401 Md. at 104).

In his brief, appellant argues that the affidavits were so lacking in probable cause as to render official belief in the existence of probable cause unreasonable. Specifically, he alleges that the BCPD affidavits "consisted of conclusory allegations and lacked any indicia of reliability, in substance or source, and no independent verification was done." Appellant further argues that the BCPD simply corroborated "innocuous" details about appellant that did not tie him or his vehicle to the burglaries. We disagree and explain.

In *West v. State*, this Court concluded that there was not a substantial basis to support the issuing judge's finding of probable cause. 137 Md. App. 314, 346 (2001). There, an officer submitted an affidavit as part of an application to obtain a search warrant. *Id*. at 318-20. The affidavit noted that the officer had received "numerous complaints from several concerned citizens" about narcotics activity inside West's apartment, as well as

heavy foot traffic in the early morning hours. *Id*. at 318-19. One of the concerned citizens accurately identified West's vehicle. *Id*. at 319. The affidavit also contained West's arrest record, showing that he had previously been arrested several times, including for possession of marijuana and attempted murder. *Id*.

The suppression court found that, based on the totality of the circumstances, there was a substantial basis for the issuing judge to find probable cause. *Id*. at 320. On appeal, however, this Court held that the affidavit failed to sufficiently demonstrate the veracity or the basis of knowledge for the concerned citizens' complaints. *Id*. at 329. Accordingly, we were unable to "find a substantial basis for concluding that the evidence sought would have been discovered in the place described in the application and its affidavit, based on our review of the information contained therein." *Id*. at 346.

Despite this finding, we nevertheless affirmed West's conviction using the good faith exception to the exclusionary rule. *Id*. at 351. We explained that, although the warrant was based on insufficient probable cause, the police "did investigate the information they had been given. They obtained West's arrest record, spoke with citizens about appellant's activities, and verified that he indeed lived in the apartment and owned the vehicle in question. Thus, police did not merely make bare conclusions in this case." *Id*. at 355. We further noted the line of demarcation between the existence of the substantial basis for an issuing judge's finding of probable cause in signing a warrant, and a police officer's reasonable reliance on that warrant:

> We found that there was not a substantial basis for the issuing judge's conclusion of probable cause, not because there was no police investigation

> or supporting facts showing criminal activity, but, rather, because there was simply not *enough* corroboration or information regarding probable cause. Surely, there was enough information and corroboration, however, to support the police officers' reasonable objective belief that the warrant was validly based on probable cause.

Id. Because the police investigated West and corroborated details they obtained from concerned citizens, we could not conclude that the warrant was so lacking in probable cause that any belief in its existence would be entirely unreasonable. *Id*. at 355-56. Accordingly, we applied the good faith exception to the exclusionary rule and affirmed West's conviction. *Id*.

As in *West*, we conclude that, even if we were to assume that the BCPD orders were lacking in probable cause, they were not so lacking as to render any belief in them objectively unreasonable. Like the officers in *West*, Detective Layhew independently confirmed the anonymous tip that two crimes were committed in the Parkville area, and that Stihl tools were stolen in one of the crimes. Detective Layhew then performed an investigation in which he independently verified details contained in the anonymous tip, including the description and ownership of appellant's vehicle, and where that vehicle could be found. The police submitted the information to a neutral judicial officer who issued the orders based on what he perceived to constitute probable cause. Based on these facts, "there was enough information and corroboration . . . to support the police officers' reasonable objective belief that the warrant was validly based on probable cause." *Id*. at 355. Accordingly, even if the BCPD orders in this case were not supported by a substantial

basis, there was ample information and corroboration for the officers to reasonably believe that the warrant was validly based on probable cause.

Our conclusion that the good faith exception would apply here is bolstered by a second layer to the good faith analysis. As noted above, although the BCPD successfully obtained orders to track appellant's phone and vehicle via GPS, the BCPD never charged appellant with a crime pursuant to their investigation. Rather, during their observation of appellant, BCPD contacted the HCPD to alert them that it appeared appellant had committed a crime in Howard County. As part of that communication, Detective Layhew informed the HCPD that the BCPD had obtained court orders to track appellant. The caselaw is clear that, where a police department reasonably relies upon representations from another jurisdiction, the good faith exception mandates that the evidence not be excluded.

In *Herring v. U.S.*, 555 U.S. 135, 137-38 (2009), a police officer arrested Herring based upon an outstanding warrant from a neighboring county, but it was later revealed that the warrant used as the basis for the arrest did not exist as it "had been recalled five months earlier." A ministerial error within the neighboring county had simply failed to accurately indicate that the warrant had been recalled. *Id*. A search incident to the arrest revealed the presence of controlled dangerous substances and a firearm. *Id*. at 137. In affirming the suppression court's decision to deny Herring's motion to suppress, the Supreme Court noted that, "When a probable-cause determination was based on reasonable but mistaken assumptions, the person subjected to a search or seizure has not necessarily

been the victim of a constitutional violation." *Id*. at 139. In order to determine whether there has been a violation, a reviewing court "must consider the actions of all the police officers involved." *Id*. at 140 (quoting *Leon*, 468 U.S. at 923 n.24). Ultimately, the Court concluded that, "when police mistakes are the result of negligence such as that described here, rather than systemic error or reckless disregard of constitutional requirements," the good faith doctrine should apply. *Id*. at 147-48.

Applying *Herring*, we readily conclude that the HCPD could reasonably rely on the BCPD orders, and such reliance is not indicative of a reckless disregard of constitutional requirements. In our view, the HCPD was not required to independently assess the legitimacy of the probable cause supporting the BCPD orders—the HCPD could reasonably and in good faith believe that the BCPD orders were in fact supported by probable cause. Accordingly, even assuming the BCPD orders were not predicated upon probable cause, the HCPD reasonably relied on the BCPD orders to apply for its own court order to track appellant's cell phone location. The court therefore properly applied the good faith exception in denying the suppression motions.

II.

Appellant's final argument on appeal is that the suppression court erred in denying his motion to suppress evidence obtained as a result of the HCPD's unconstitutional use of a GPS tracker. As noted above, although the HCPD applied for and obtained an order to track appellant's cell phone, the HCPD never applied for an order to place a GPS tracker on appellant's car. Despite this failure, the HCPD attached a GPS tracker to appellant's

car, and used data relayed by the GPS to track and ultimately arrest appellant on March 19 after he burglarized U.S. Pools at 7164 Montevideo Road.

In his fourth motion to suppress, appellant argued that any evidence obtained based on the unlawful use of the GPS tracker should be suppressed, and that the inevitable discovery doctrine should not apply. Specifically, appellant argued that, although the HCPD obtained a separate order to track appellant's cell phone's location, the GPS data was more precise than the phone location information, and that the only reason the HCPD was able to track appellant to U.S. Pools was because the GPS (and not the phone tracker) notified Detective Tippett of appellant's movements.

The suppression court rejected appellant's arguments. In doing so, the court relied on Detective Tippett's testimony that, although the GPS tracker notified him that appellant was on the move, Detective Tippett also closely monitored the cell phone location information. The court noted that Detective Tippett testified that he would have requested physical surveillance based solely on the phone tracking information, which, like the GPS, indicated that appellant was "on the move." Finally, the court relied on Detective Tippett's statement that the phone tracking information alone would have led the HCPD "to th[e] general vicinity" where they eventually observed appellant commit a burglary, because appellant's vehicle "was clearly visible from the road[.]" Accordingly, the suppression court denied appellant's motion to suppress. As we shall explain, we conclude that the inevitable discovery doctrine applies to the facts of this case, and that the suppression court did not err in denying appellant's motion.

"The United States Supreme Court created the 'exclusionary rule' to prevent the admission of evidence obtained in violation of the Fourth Amendment." *Whittington*, 474 Md. at 7 n.3 (citing *Franks v. Delaware*, 438 U.S. 154, 165 (1978)). One exception to the exclusionary rule is the inevitable discovery doctrine. *Williams v. State*, 372 Md. 386, 409-10 (2002) (citing *Nix v. Williams*, 467 U.S. 431, 448 (1984)).

> "The inevitable discovery doctrine applies where evidence is not actually discovered by lawful means, but inevitably would have been. Its focus is on what would have happened if the illegal search had not aborted the lawful method of discovery. . . ." Under the inevitable discovery doctrine, evidence is admissible that *inevitably would have been* discovered through lawful means even though the means that led to its discovery were unlawful.

Id. (first quoting *State v. Winkler*, 552 N.W.3d 347, 354 n.4 (N.D. 1996); and then citing *United States v. Herrold*, 962 F.2d 1131, 1140 (3d Cir. 1992)). The State bears the burden of establishing that the otherwise tainted evidence is admissible pursuant to the inevitable discovery doctrine. *Id*. at 427-28 (quoting *Stokes v. State*, 289 Md. 155, 165-66 (1980)).

Here, the record supports the suppression court's conclusion that Detective Tippett and the HCPD would have discovered that appellant was burglarizing U.S. Pools even without the unauthorized use of the GPS tracker. At the November 25, 2020 suppression hearing, Detective Tippett testified that, on the night of March 19, 2020, he was at his home while monitoring appellant's movements based on both the GPS tracker and phone locator. Detective Tippett testified that although he received a notification from the GPS that appellant's vehicle was moving, he was also receiving pings to appellant's phone at least every fifteen minutes, and that he could receive pings from appellant's phone every five minutes if he "forc[ed the] pings."

Although Detective Tippett first received notification based on the GPS tracker, he testified that he "saw that the phone was moving as well," and that it was his practice to "always check both" the GPS and phone tracker to confirm the movements of a suspect. In this instance, Detective Tippett observed both the GPS and the phone moving simultaneously. Detective Tippett explained that he was "able to see based on both the phone movement and the GPS tracking device" where appellant was going. Although the GPS indicated that appellant's vehicle stopped in "very close proximity to . . . 7164 Montevideo Road[,]" the cell phone similarly showed that appellant was "in the area of Montevideo Road."

When asked whether he would have been able to locate appellant's vehicle without the GPS tracker, Detective Tippett testified that appellant's phone "would have put [him] on Montevideo [Road]," and that he would have easily located appellant's vehicle because "the car was parked directly off Montevideo like -- it wasn't on the shoulder, it was parked, but very visible, two feet from the roadway." Detective Tippett verified that he would have requested physical surveillance simply based on appellant's movements as indicated by the phone, and that "it would have been very, very easy to locate that target vehicle with or without a GPS tracking device on it." Although Detective Tippett acknowledged that the phone pinging alone was not precise enough to lead him to 7164 Montevideo Road, he explained that "the phone would have gotten me in the area, and my eyes would have gotten me to 7164 Montevideo [Road]."

The suppression court credited Detective Tippett's testimony that he and other members of the HCPD inevitably would have discovered that appellant was burglarizing U.S. Pools independently of the illegal GPS tracking device. In light of the court's acceptance of Detective Tippett's testimony—which appellant does not challenge as clearly erroneous—we conclude that the court correctly determined that, putting aside the GPS, appellant's location would have been inevitably discovered. Accordingly, the inevitable discovery doctrine applies, and the suppression court did not err in denying appellant's motion to suppress all derivative evidence obtained as a result of the HCPD's GPS tracker.

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