Circuit Court for Montgomery County
Case No.: 135856C

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 406

September Term, 2020

ANTHONY HARRIS

v.

STATE OF MARYLAND

Berger,
Friedman,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Berger, J.

Filed: October 1, 2021

Appellant, Anthony Harris ("Harris"), was indicted in the Circuit Court for Montgomery County, Maryland, and charged with attempted first degree murder, first degree assault, use of a handgun in the commission of a crime of violence, and illegal possession of a regulated firearm having been adjudicated in juvenile court of a disqualifying crime. After he was convicted by a jury on all charges, Harris was sentenced to life for attempted first degree murder, with all but twenty-five (25) years suspended, along with a concurrent five years, mandatory, for use of a handgun in a crime of violence, as well as a concurrent five years for illegal possession of a regulated firearm. Following his release, the court imposed supervised probation for five years. Harris timely appealed and presents the following three questions for our review:

1. Whether the trial court erred in denying the motion to suppress.
2. Whether the trial court erred in denying the motion *in limine* and in admitting inadmissible hearsay.
3. Whether the trial court erred in allowing prejudicial texts into evidence.

For the following reasons, we shall affirm.

BACKGROUND

On March 8, 2019, at around 1:00 a.m., Daquwan Williamson left his residence, located in an apartment complex on Grey Eagle Court in Montgomery County, Maryland, and walked towards a nearby Outback Steakhouse to meet a person identified as Jasmine Marcelle. As he was leaving his apartment complex, Williamson noticed a blue sports utility vehicle ("SUV") pass by him. In fact, that same vehicle passed by him several times while he was walking along Bent Willow Court, near Christa McAuliffe Elementary

School, towards Wisteria Drive. The vehicle was occupied by two people and, at one point, Williamson saw that the passenger in the vehicle was wearing a white hat.

Moments later, Williamson heard four gunshots fired in his direction. Although it was dark outside, Williamson turned and saw a short man, wearing a white hat and on foot, shooting at him. He confirmed that man was the same person that he saw riding earlier in the blue SUV.[1]

Williamson ran from the shots and hid in a nearby field. About ten minutes later, and because he erroneously thought he had been shot in the legs, he called 911. Williamson later realized that two of the shots went through his jacket.

The recording of the 911 call was played in court and, during that call, Williamson told the dispatcher that he was unsure if he had been shot, and that he was hiding in the woods across from the Outback Steakhouse located next to the school. He also stated that he thought he knew the person that shot him, stating "I think I know who it is because it looked like a person, but he doesn't like me because I'm [dating] his girlfriend." As will be discussed in more detail in the second question presented, Williamson also testified that he overheard someone in the SUV state, prior to the shooting during one of the vehicle drive-bys, "Hey, Ant, is that him?"

Williamson confirmed that he met Harris on a prior occasion, approximately two to three months before the shooting, when he was dating Dominquie Hill, the mother of

[1] The lead detective, Detective Diana Humphrey, would later testify that Harris was five feet eight inches tall and weighed 125 pounds. Police were unable to locate the SUV, or its driver, as described by Williamson and seen in surveillance videos, discussed *infra*.

Harris's daughter. This meeting occurred when Williamson was walking Hill and her daughter to her car, parked outside his apartment. At that time, Harris "popped out" from behind a car or a trash can. Harris confronted Williamson and asked him if he was dating Hill. After Williamson informed him that he was dating Hill, Harris replied, according to Williamson, that he "respect it. That was that."

Williamson also spoke to Harris on another occasion after this meeting. This transpired when Harris called Williamson approximately one or two weeks before the shooting. Williamson testified that Harris told him that "him and his baby mother were still talking. So I told him I respect that, I'll stop talking to her." Williamson testified that he stopped talking to Hill, until the night of the shooting, when he called her after he was shot.[2]

On cross-examination, Williamson agreed that he thought Harris "had a problem" with him. On redirect, Williamson maintained that the man in the white hat pointed the gun at him when he fired the shots.

Dominiquie Hill testified that Harris was the father of her three-year-old daughter. She started dating the victim in this case, Williamson, in 2018. Hill confirmed that Harris confronted her and Williamson outside Williamson's apartment on one occasion in January 2019 when he "popped out" from behind a dumpster and grabbed their daughter. Hill testified that she knew that Harris did not want her dating anyone else and that he did not

[2] Hill later testified and confirmed that, immediately prior to the shooting, she and Williamson were no longer dating.

like Williamson. She further testified that Harris wanted to get back together with her while she was dating Williamson.

Hill learned about the shooting in this case shortly after it happened on the early morning hours of March 8, 2019, when Williamson called her. Williamson sounded "calm," but "out of breath," "in shock," "frantic," and "scared."

Hill also testified that, later on that same day, March 8, 2019 at around 2:16 p.m., Harris and she exchanged text messages. In one of those messages, Hill wrote "what's next, bitch" to Harris and that Harris replied, "When I'm done with him, you're next." Hill and Harris exchanged a number of messages throughout the rest of the day, involving their relationship, as well as their daughter, and Hill's relationship with Williamson. In addition, after the shooting but before he was charged, Harris called Hill and told her "Next time I won't miss."

Detective Diana Humphrey, of the Montgomery County Police, surveyed the area near the shooting and learned that two nearby townhomes were equipped with home surveillance cameras. One video, from the residence located at 12505 Starfire Court, captured the scene at around 1:00 a.m. The video was admitted pursuant to a stipulation and played for the jury. That video shows an unidentified individual running through a parking lot, followed by an SUV driving in the area.

The second video was obtained from 19007 Laurel Grove and was also admitted without objection. Unlike the first video, the second video included audio. The video depicts an individual, apparently Mr. Williamson, walking along a sidewalk located across a parking lot and a street, traveling from left to right. The video then shows an SUV,

similar in appearance to the vehicle in the first video, passing by that individual, driving right to left, then turns a corner towards the camera. After the individual walks off screen to the right, a suspect is seen running from the left side of the camera's angle, through the parking lot in front of the home and then directly towards the individual walking away on the sidewalk. The SUV then returns from the left, and drives toward the right, near where the suspect is running towards the apparent victim who, by that point, had exited the camera's field of vision. It is at that time, and as testified to by Detective Humphrey, that ten (10) gunshots are overheard on the audio portion of the recording.

On cross-examination, Detective Humphrey confirmed that "Mr. Harris was our prime suspect from the beginning." This was based on information from both Williamson and Hill, as well as the fact that Harris fit the description of the person seen on the surveillance videos. The detective agreed, however, that Harris was not positively identified by the victim as the shooter.

Nevertheless, forensic evidence linked Harris to the shooting. Ten (10) .22 caliber shell casings were recovered from the scene. Thereafter, police obtained a search warrant for Harris's residence and seized a Sig Sauer .22 handgun from his bedroom. Eight (8) .22 caliber rounds were recovered from the magazine inside the gun, along with other .22 caliber ammunition recovered from the bedroom. The firearms examiner testified that the gun was operable and that the ten recovered casings in this case were all fired from that handgun.

Further evidence was presented from other witnesses, including Sierra Ward, Harris's girlfriend. Ward agreed that a gun was recovered from their shared residence

during execution of a search warrant, but she denied knowing who the gun belonged to and denied ever seeing Harris in possession of that gun. Detective Humphrey, however, was recalled and testified that, when the police executed the search warrant, Ward told her the gun belonged to Harris. According to the detective, Ward relayed that she had seen Harris in possession of the gun the day before the interview, or on or around March 15, 2019. During her recorded statement, a portion of which was played for the jury, Ward was asked where Harris normally kept the gun, and she stated "It usually in his pants."[3] In addition, the jury heard evidence concerning other text messages, including one from Harris to a person identified as "Vonte," in which Harris discussed his relationships and stated "I real live been thinking bout smoking this n**gah bruh." We shall include additional detail in the following discussion.

DISCUSSION

I.

Harris first contends the motion court erred in not suppressing evidence seized pursuant to a search warrant because there was no substantial basis for the magistrate to find probable cause and because the good faith exception did not apply. The State disagrees, as do we.

The Fourth Amendment to the United States Constitution provides:

> 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 affirmation, and

[3] The recording of that interview was not admitted into evidence, but is included with the record on appeal.

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

Generally, our standard of review on this issue is as follows:

> "In reviewing the rulings of the suppression courts, we rely solely upon the record developed at the suppression hearings." *Kelley v. State*, 436 Md. 406, 420, 82 A.3d 205, 213 (2013). "We view the evidence and inferences that may be drawn therefrom in the light most favorable to the party who prevails on the motion, here, the State." *Id.*, 82 A.3d at 213. "We defer to the motions court's factual findings and uphold them unless they are shown to be clearly erroneous." *Lee v. State*, 418 Md. 136, 148, 12 A.3d 1238, 1246 (2011).
>
> "The ultimate question as to whether there was a constitutional violation [of the Fourth Amendment] is a legal question on which we accord no special deference to the trial court." [*State v. Copes*, 454 Md. 581, 603 (2017)]. The application of whether the good faith exception to the exclusionary rule of the Fourth Amendment applies also is a legal issue that we review without deference. *Id.*, 165 A.3d at 431.

Whittington v. State, 474 Md. 1, 252 A.3d 529, 539-40 (2021).

When the issue is whether a search pursuant to a warrant was lawful, our standard adheres to the following prescription:

> The Fourth Amendment and Article 26 of the Maryland Declaration of Rights require that no warrant, or in this case, court order, shall issue without probable cause. 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." This Court uses a deferential standard of review when evaluating an issuing court's determination of probable cause.

Whittington, 252 A.3d at 546-47 (internal citations omitted, emphasis in original).

Further:

> 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 547 (internal citations omitted).

Turning to this case, on March 14, 2019, a magistrate of the Circuit Court for Montgomery County signed a search warrant for 19706 Crystal Rock Drive, Apartment 21, Germantown, Montgomery County, Maryland. The magistrate found that, based on an accompanying application, there was probable cause to authorize a search and seizure of said residence for evidence of the crimes of attempted first degree murder, attempted first degree assault and possession of a concealed dangerous weapon. The warrant also alleged that the evidence to be seized was a .22 caliber handgun, Harris's cell phone, and a white skull cap.

Pertinent to this issue, the application in support of this warrant informed that, on March 8, 2019, at 1:19 a.m., Montgomery County police responded to the scene of a shooting at 12698 Wisteria Drive in Germantown. The application then provided, in pertinent part, as follows:

> Victim, Daquwan Williamson, advised that just before 0100 hours on 03/08/19 he was walking from his apartment located at 12600 Grey Eagle Court, Germantown, MD 20874

> to meet Jasmine, a girl he knew from middle school. Williamson immediately noticed a blue Acura SUV following him. The windows were down and the male driver of the vehicle said "Hey Ant is that him?' He noticed the vehicle was occupied by two people. Williamson cut in front of McAuliffe Elementary School and then walked back down onto the sidewalk which parallels Wisteria Drive. He was walking on the left side of the sidewalk towards the intersection of Wisteria Drive and Great Seneca Highway. Minutes later he saw the same blue Acura SUV pass him on Wisteria Drive going the opposite direction. A few minutes after that the blue Acura SUV reappeared but without the front passenger inside. Almost immediately after the vehicle passed him the suspect described as a skinny, short, black male wearing a white skull cap and a hooded sweatshirt started running towards him. He appeared from the sidewalk on the other side of Wisteria Drive and immediately started firing a handgun at him from the middle of the street. Williamson fled to Gunners Lake Park and hid for 10 minutes before calling police.
>
> Immediately following the shooting Detective Marr responded and interviewed Williamson at the 5th District Police Station. Williamson believes the father of his girlfriend, Dominique Lashay, was the shooter. Lashay's father of her child is Anthony Lament HARRIS, black male, date of- birth 04/05/1993.
>
> Anthony HARRIS' nickname is "Ant". Lashay had recently told Williamson that "I think my babies father is going to do something to you"[4]

The application continued:

> Williamson told Detective Marr that a couple of months ago (around the end of January) he was walking Lashay and her three year old daughter to her car. All of a sudden, a man (later determined to be HARRIS) jumped out from behind the

[4] Both parties note discrepancies in the record as to Ms. Hill's name. The application appears to identify her as "Dominique Lashay," whereas she is identified as "Dominquie Hill" in the transcript. Harris notes that her surname was, in fact, "Hill," at the time of trial. We shall not change the name, "Lashay" in the application, but will continue to refer to her as Ms. Hill throughout the remainder of our opinion.

> dumpster and snatched up the three year old in his arms. HARRIS pulled Williamson aside and asked him if he was with Lashay. He confirmed that he was. No further communication occurred at that time. Two weeks ago Williamson received 11 calls from a blocked number. Williamson finally answered, and it was HARRIS. HARRIS told him I feel some type of way about you guys talking". Williamson told him Ok, I will fall back then". This encounter made Williamson nervous and as a result he cut back communication with Lashay as of recent.
>
> Although Williamson did not get a good look at the face of the suspect, he indicated that his small build and complexion was similar to HARRIS'. HARRIS is described on his Maryland Drivers license soundex H-620-067-488-268 as 5'8" and 125 lbs.

According to the application, Williamson believed his friend, Jasmine, "set him up." Jasmine's uncle was friends with Harris and was known to drive a blue SUV similar to the one seen on the evening in question. The affiant further indicated that the woman identified in the application as "Lashay" advised that she believed Harris was involved in the shooting. She informed the affiant that Harris "has been known to carry a handgun and two years ago Lashay saw HARRIS with a handgun in person." Additionally, Lashay indicated that Harris "was not happy she was dating Williamson." This belief was informed by the abovementioned encounter when Harris jumped out from behind a dumpster and told her "So this is what you are doing now?"

The application also informed that ten (10) .22 caliber shell casings were recovered from the scene of the shooting. In addition, two home surveillance cameras captured the image of the shooting suspect, described as "a skinny small statured individual," running towards the scene, followed by the sound of 10 gunshots being fired. Lashay informed

police that Harris lived at 19706 Crystal Rock Drive, and Harris was observed by police emerging from Apartment 21 from that location on several dates after the shooting but prior to issuance of the warrant. The application concluded by asking the magistrate to authorize seizure of Harris's cell phone and other items relevant to the enumerated charges. The search warrant was signed on March 14, 2019.

Prior to trial, Harris moved to suppress the gun and cell phone recovered from his residence pursuant to the warrant, alleging that there was no substantial basis to support issuance of the warrant. Agreeing that the issue would be decided based on the four corners of the warrant, the State argued that probable cause existed and that the search and seizures under the warrant should be upheld. During argument, the State conceded that the affidavit misidentified Ms. Hill by her middle name, "Lashae." The State also contended that the affidavit erroneously provided that Williamson believed Hill's father was the shooter, when the "very next sentence says, the father of Ms. Hill's child is Anthony Lamont Harris." The State argued that "the context of the paragraph when it's proceeded immediately by that next sentence makes the intent clear." The State concluded that "when you couple that with all of the other factors, the animosity, the confrontation six weeks earlier, the fact that Mr. Williamson heard the shooter identified as Ant, all of those factors, Your Honor, would be to this warrant being potentially based on probable cause."

After hearing from the State, Harris then challenged certain details in the warrant, including: the information concerning an alleged January 2019 confrontation between Harris and the victim, Mr. Williamson, near some dumpsters; the lack of eyewitnesses to the actual shooting; the fact that the home surveillance videos involved did not show

Harris; and, that the victim was unable to identify the actual shooter. Harris's counsel also argued that the name that Williamson apparently heard in the dark, "Ant," was not Harris's nickname. Further, Harris's counsel argued that the information from Ms. Hill was based on a "hunch" and not any direct evidence, and that the only information that Harris possessed a handgun was stale information from two years prior that Hill had seen one in his possession. Harris also noted that the police observed him after receiving this information and no further basis was cited based on those observations. Harris, therefore, argued there was no substantial basis for the magistrate to find probable cause to issue the search warrant.

The court then asked the parties to consider the good faith exception under the Fourth Amendment. *See United States v. Leon*, 468 U.S. 897 (1984). Harris's counsel agreed that he was not alleging that the magistrate was misled by false information that the affiant knew was false, or that the magistrate wholly abandoned their role, but instead, that the warrant lacked sufficient indicia of probable cause so as to render official belief in its existence entirely unreasonable. This was due to the totality of the circumstances, including: the staleness of when Ms. Hill saw Harris with a handgun; that the suspicion against Harris was only a "hunch" from Hill; and, that the police observations of Harris did not provide a further basis to support probable cause. The State responded that the victim, Mr. Williamson, believed the suspect was Harris based on a confrontation earlier that year, by a phone call from Harris asking him if he was dating Ms. Hill.

Following argument, the court denied the motion to suppress. Citing to the pertinent law and considering the four corners of the affidavit in support of the search warrant, the

court found that, on the night of the shooting, the victim heard someone refer to "Ant" in a nearby car, and that he, the victim, believed "Ant" to be Harris's nickname. The court also found that the description of the shooter was similar to Harris's description, as was the fact that a motive existed "in that there was some conflict between the victim and the defendant over their relationship with Ms. Hill." As for the staleness argument, the court observed that the fact that Ms. Hill saw Harris with a handgun two years earlier did not establish that that same gun was used in this shooting, but that "[a]ll it does is establish that this is an individual who's not a stranger to guns and confirms [Hill's] belief that he has been known to have a gun."

The court then concluded that:

> So, we have somebody who has a connection to the scene, has a motive, and also is not beyond using a handgun. So, one might ask then, is there probable cause to search which has been identified as his home, where he resides, where he would have certainly his cell phone or other things that he would have, and been known to carry a handgun, and that all makes perfect sense.

The court found "that there was a substantial basis to find probable cause" and that, in any event, the reasoning of *U.S. v. Leon* was applicable because "this was not a situation where, as the defendant alleges, that no reasonably trained officer should have relied on the warrant as it was so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable." The court denied the motion to suppress.

Given this background, we address Harris's specific appellate arguments. Harris asserts that the motions court was clearly erroneous in finding that the "Ant" in the statement, "Hey, Ant, is that him?" referred to himself, Anthony Harris. The State responds

that it was a reasonable inference for the magistrate as the information included in the application followed the detective's interview with the victim, Williamson, and that it is rational to conclude that "Ant" appears to be a shortened reference to a person named "Anthony."

As we consider this, and Harris's remaining arguments on this first issue, we are mindful that, when reviewing a motion to suppress evidence seized pursuant to a warrant, we must determine whether, based on the "four corners" of the warrant and its attachments, *Sweeney v. State*, 242 Md. App. 160, 185 (2019), the issuing judge had a "substantial basis" for finding probable cause to issue the warrant. *Carroll v. State*, 240 Md. App. 629, 649 (2019); *State v. Faulkner*, 190 Md. App. 37, 46-47 (2010). We recognized that the "substantial basis" standard is less than probable cause, especially considering that a "warrant will be able to cover over flaws that might be more compromising if one were examining probable cause in a warrantless setting." *State v. Johnson*, 208 Md. App. 573, 586-87 (2012). Further, in reviewing the affidavit, we must "assess affidavits for search warrants in a commonsense and realistic fashion, keeping in mind that they are normally drafted by nonlawyers in the midst and haste of a criminal investigation." *Faulkner*, 190 Md. App. at 47 (internal quotation omitted).

Based on our review, it is apparent that the detective spoke to Williamson, as well as Hill, a/k/a "Lashay," before drafting the application, and that Williamson informed the detective that he had encountered Harris, in person, on one prior occasion and had spoken with him over the telephone on another more recent encounter. Both Williamson and Hill also advised the detective that they believed Harris was involved in the shooting. We

concur with the State that it is reasonable to infer that Harris's nickname was likely conveyed to the detective/affiant, and that "Ant" is a likely nickname for Harris's first name, "Anthony." Considering that our review is under the more deferential substantial basis test, we conclude that the motions court was not clearly erroneous in arriving at a similar conclusion.

Next, Harris suggests that the application was based on hearsay and lacked a basis of knowledge. The State responds that an affiant may rely on hearsay information obtained from other sources under the substantial basis test. We concur. As this Court explained:

> It is also settled beyond question that an affidavit for a search warrant may be based on hearsay information and need not reflect the direct personal observations of the affiant, so long as the magistrate is informed of some of the underlying circumstances supporting the affiant's conclusion. More particularly, where 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, 326-27 (1969) (internal citations omitted); *see also Franks v. Delaware*, 438 U.S. 154, 165 (1978) (recognizing that "probable cause may be founded upon hearsay and upon information received from informants, as well as upon information within the affiant's own knowledge that sometimes must be garnered hastily").

Harris further argues that the information in the application was stale. "There is no 'bright-line' rule for determining the 'staleness' of probable cause; rather, it depends upon the circumstances of each case, as related in the affidavit for the warrant." *Connelly v. State*, 322 Md. 719, 733 (1991). "In making that assessment, the court considers whether

"the 'event[s] or circumstance[s] constituting probable cause, occurred at . . . [a] time . . . so remote from the date of the affidavit as to render it improbable that the alleged violation of law authorizing the search was extant at the time[.]'" *Fone v. State*, 233 Md. App. 88, 103-04 (2017) (quoting *Patterson v. State*, 401 Md. 76, 92 (2007) (in turn quoting *Peterson v. State*, 281 Md. 309, 314 (1977)). Indeed:

> The ultimate criterion in determining the degree of evaporation of probable cause, however, is not case law but reason. The likelihood that the evidence sought is still in place is a function not simply of watch and calendar but of variables that do not punch a clock: the character of the crime (chance encounter in the night or regenerating conspiracy?), or the criminal (nomadic or entrenched?), of the thing to be seized (perishable and easily transferable or of enduring utility to its holder?), or the place to be searched (mere criminal forum of convenience or secure operational base?), etc. The observation of a half-smoked marijuana cigarette in an ashtray at a cocktail party may well be stale the day after the cleaning lady has been in; the observation of a corpse in a cellar may well not be stale three decades later. The hare and the tortoise do not disappear at the same rate of speed.

Patterson, 401 Md. at 93 (quoting *Anderson v. State*, 24 Md. App. 128, 172 (1975)).

Harris's argument is twofold: (1) that the conversation between himself and Williamson about Williamson's relationship with Hill occurred months prior to the shooting; and, (2) Hill's assertion that she saw Harris in possession of a handgun occurred two years earlier. It is rational to consider these items together, as well as the other averments in the application. *See, e.g.*, *Smith v. State*, 182 Md. App. 444, 464 (2008) (observing that "[t]he reason for requiring a 'four corners' rule in the context of warrant issuance is to assess the issuing judge's probable cause determination at the time the warrant is issued, in light of 'all of the circumstances set forth in the affidavit....'")

(emphasis omitted, citing *Greenstreet*, 392 Md. at 667-68). A handgun may be easily transferable, but, considered in context of the averments in the application, we are not persuaded that the likelihood of finding the item among Harris' effects was so remote as to create an issue of staleness, under the circumstances. Notably, Hill's information about this prior possession of a handgun must be considered against the backdrop of other facts in the application, from both Hill and Williamson, as well as the surveillance videos and matching descriptions, suggesting Harris was the shooter.

That leads us to the motion court's alternative conclusion under *U.S. v. Leon*, namely, that the officers acted in good faith reliance on the application and the search warrant in executing the search of Harris's residence. "The 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*, *supra*, 252 A.3d at 550 (citing *United States v. Leon*, 468 U.S. 897, 920-21 (1984)). Under this exception, "suppression of evidence obtained pursuant to a warrant should be ordered on a case-by-case basis and only in those unusual cases in which exclusion will further the purposes of the exclusionary rule." *Whittington*, 252 A.3d at 550 (citing *U.S. v. Leon*, 468 U.S. at 918).

The motions court here stated that "this was not a situation where, as the defendant alleges, that no reasonably trained officer should have relied on the warrant as it was so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable." This finding mirrors what is known as the third exemption under the good

faith doctrine. *See Patterson*, 401 Md. at 104 (citing *U.S. v. Leon*, 468 U.S. at 923). The Court of Appeals has explained that a search warrant will be deemed insufficient under this rationale when the affidavit and application in support thereof is "bare bones" and consisting of "wholly conclusory statements, which lack the facts and circumstances from which a magistrate can independently determine probable cause." *Patterson*, 401 Md. at 107; *accord Whittington*, 252 A.3d at 550 (footnote omitted).

We conclude that such was not the case here. The application was not "bare bones" and that a reasonable trained officer could rely on the magistrate's findings, in good faith, in executing the warrant at Harris's residence. Therefore, the motions court properly denied the motion to suppress.

II.

Next, Harris next asserts that the court erred by not granting his pretrial motion *in limine*, asking the court to exclude a statement made by one of the occupants of the vehicle. Harris contends the statement, "Hey, Ant, is that him?" was offered for the truth of the matter asserted, *i.e.*, to prove that Harris was inside the vehicle located at the scene of the crime. The State responds that the issue is not preserved because Harris failed to object when the evidence was offered at trial. Further, the State argues that, even if preserved, the statement was not hearsay and was admissible as circumstantial evidence that Harris was the passenger in the vehicle at issue.

Prior to jury selection, Harris moved *in limine* to exclude the statement by an unknown declarant on the grounds of hearsay and because it was "entirely prejudicial." The court questioned whether the statement was even hearsay because it was not clear what

the statement was being admitted to prove. The court indicated that "[t]he point is it just says somebody said that." The court stated that it would reserve on the issue until it arose during trial.

The court, however, returned to the issue after jury selection. Harris maintained that the statement by an unknown declarant, "Hey, Ant, is that him?" was hearsay and prejudicial. The State countered that the statement was nonhearsay and that, even if it were, it was admissible under the present sense impression to the rule against hearsay. *See* Md. Rule 5-803 (b) (1). The court then ruled, in pertinent part, as follows:

> We have an unknown declarant who makes a statement – actually, it's not – I mean, it's words. I don't know whether it's a directed statement, but it's words, and the victim in this case overhears those words. What those words mean are – is open to determination. In fact, as I said, it's circumstantial, but I will say this: It does not appear to me to be a hearsay statement because it is not being offered for the truth of any matter asserted at all, because it doesn't assert any matter. It doesn't say Ant is in the car. Nobody is saying Ant is in the car. The question, is that him, that doesn't assert anything. In other words, if hearsay is something that is admitted for the truth of the matter asserted, then there must be a matter asserted for which you're offering it for the truth. We don't have that here.
>
> We have a statement, circumstantial in nature; words that are spoken; and the question is, were those words actually spoken? That's the issue here with this statement, is, not whether the words somehow convey the truth of an assertion. It's whether or not these words are actually heard. Did the victim hear them? How did he hear them? Was he in a position to hear them? Maybe he has a motive to make it up, so he didn't really hear them. Was the car moving? There are all of those issues. Those are not hearsay issues. Those are ability-to-hear issues. Those are ability-to-perceive issues. That is different.

After finding that the statement was not a present sense impression, a ruling that is not being challenged on appeal by any party, the court continued:

> The question then is posed by defense counsel that is it, [sic] prejudicial value outweighs its probative value, which goes to a question of whether something is truly relevant – that is, probative – or whether it's outweighed. In this particular case, the Court believes that the ability to cross-examine the victim as to what he heard or didn't hear is certainly sufficient to question his ability to hear what was said and that what the meaning of it – the meaning of that statement is clearly open to a jury to decide whether it means anything or not. I don't find that it, that the prejudicial value outweighs any probative value to it, and so I will allow the State to make reference to it in its opening.

Thereafter, the State referenced the statement during opening statement, without objection. Then, during Williamson's direct examination, Williamson was asked if he remembered speaking to the police after the shooting. He was then presented with a transcript of that interview, and defense counsel objected on the grounds that Williamson's recollection did not need to be refreshed. After the court agreed with the foundational objection, and the transcript of his interview with police was withdrawn until such foundation could be laid, the following colloquy ensued:

> Q. Mr. Williamson, do you recall telling the police that you heard something from inside the SUV?
>
> A. Yes.
>
> Q. Right. What did you tell the police you heard from inside the SUV?
>
> A. Either A, is that him or Ant, is that him –
>
> Q. Right.
>
> A. – one of them.

Q. Hey, A, is that him –

A. Yeah –

Q. or Ant, is that him?

A. – one of them. Yeah, one of them.

Q. Right. Do you recall telling the police specifically one of them?

A. Yeah.

Q. What did you tell the police?

A. I think it was either – actually, I don't know, to be honest with you. I –

Q. All right.

A. – think it was, hey, Ant.

Q. Right. Showing you what's been marked as State's Exhibit No. 3, a transcript of your interview, referring you to line 20 on page 16, what did you tell the police?

A. Hey, Ant, is that him?

Q. Ant –

A. Yeah.

Q. – is that him?

A. Yeah.

Q. Is that what you told the police that night?

A. Yes.

Q. Or early morning?

A. Uh-huh.[5]

Maryland Rule 8-131 (a) provides, in pertinent part:

> Ordinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court, but the Court may decide such an issue if necessary or desirable to guide the trial court or to avoid the expense and delay of another appeal.

Similarly, Maryland Rule 4-323 (a) provides in part:

> An objection to the admission of evidence shall be made at the time the evidence is offered or as soon thereafter as the grounds for objection become apparent. Otherwise, the objection is waived.

That an objection was raised in a motion *in limine* does not obviate the need for a contemporaneous, and timely, objection when the evidence is elicited at trial. *See Reed v. State*, 353 Md. 628, 643 (1999) (when evidence that has been contested in a motion *in limine* is admitted at trial, a contemporaneous objection must be made pursuant to Md. Rule 4-323 (a) in order for that question of admissibility to be preserved for appellate review); *Prout v. State*, 311 Md. 348, 356 (1988) (with motions *in limine*, "[i]f the trial judge admits the questionable evidence, the party who made the motion ordinarily must object at the time the evidence is actually offered to preserve his objection for appellate review"), *superseded by rule on other grounds*, *Beale v. State*, 329 Md. 263 (1993)*; accord Klauenberg v. State*, 355 Md. 528, 539-40 (1999); *see also Brown v. State*, 373 Md. 234, 242 (2003) ("[T]he [contemporaneous objection] rule generally promotes consistency and

[5] Although not offered for admission at trial, State's Exhibit 3 is identified as transcript of the March 8, 2019 interview with Williamson, taken at around 2:16 a.m. It is included with the record on appeal.

judicial efficiency") (quoting *Reed*, 353 Md. at 641); *Lee v. State*, 193 Md. App. 45, 70 ("An unsuccessful motion *in limine* to exclude certain evidence does not absolve the moving party of his or her duty to object at the time the evidence sought to be excluded actually is admitted"), *cert. denied*, 415 Md. 339 (2010). Accordingly, we agree that this issue was not properly preserved.

Even if preserved, we are in accord with the trial court that the evidence was admissible as nonhearsay. Under the Maryland Rules, hearsay is defined as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Md. Rule 5-801 (c). A "statement" is "(1) an oral or written assertion or (2) nonverbal conduct of a person, if it is intended by the person as an assertion." Md. Rule 5-801 (a). Further, "[e]xcept as otherwise provided by these rules or permitted by applicable constitutional provisions or statutes, hearsay is not admissible." Md. Rule 5-802.

However, an out-of-court statement is admissible as non-hearsay if it is offered for the purpose of showing that a person relied and acted upon the statement, rather than for the purpose of showing that the facts elicited in the statement are true." *Morales v. State*, 219 Md. App. 1, 11 (2014) (citing *Purvis v. State*, 27 Md. App. 713, 716 (1975)). Indeed, out-of-court statements "can be admitted if the statements are 'relevant and proffered not to establish the truth of the matter asserted therein, but simply to establish that the statement was made[.]'" *State v. Young*, 462 Md. 159, 170 (2018).

Harris cites *Stoddard v. State*, 389 Md. 681 (2005), while the State directs our attention to *Fields v. State*, 168 Md. App. 22, *aff'd on other grounds*, 395 Md. 758 (2006).

In *Stoddard*, the Court of Appeals considered whether an out-of-court declaration made by an 18-month-old child to her mother asking "is [the defendant] going to get me?" constituted hearsay. *Id.* at 683. The State offered this evidence to prove that the child had witnessed the murder of her three-year-old cousin. *Id.* at 683, 689. The Court held that the statement was hearsay, stating:

> [W]here the probative value of words, as offered, depends on the declarant having communicated a factual proposition, the words constitute an 'assertion' of that proposition. The declarant's intent *vel non* to communicate the proposition is irrelevant. If the words are uttered out of court, then offered in court to prove the truth of the proposition -- i.e. of the 'matter asserted'-- they are hearsay under our rules.

Id. at 703-04;[6] *see also Bernadyn v. State*, 390 Md. 1, 11 (2005) (holding that, where State relied on a medical bill found at a residence to prove that the appellant lived there, the bill was erroneously admitted to prove the truth of the matter asserted).

In *Fields, supra*, Saturio Grogrieo Fields, also known as "Sat Dogg," was convicted of first-degree murder and two counts of first-degree assault stemming from the shooting of three young men at a bowling alley. *Fields*, 168 Md. App. at 27. Upon investigating the scene of the crime, Detective Ismael Canales "observed that there was a television monitor at each bowling lane, and the name and scores of the bowlers at that lane were displayed on the screen." *Id.* at 29. Detective Canales made a handwritten list of the names appearing on the monitors for each lane, including the names on the screen above lane 22:

[6] The Court included a footnote to this proposition: "A reasonable test is to ask whether the words would remain probative if it could be established that the declarant did not believe the factual proposition for which they are offered." *Stoddard*, 389 Md. at 703 n.5.

"Sat Dogg/Bleu/Vino." *Id.* at 29.

Fields moved to preclude the State from eliciting testimony from Detective Canales that the name "Sat Dogg" appeared on the television screen in the bowling alley. *Fields*, 168 Md. App. at 29-30. He argued "that the name 'Sat Dogg' on the screen was an implied assertion, by an unknown declarant, made out of court, that the appellant was present in the bowling alley that night; and the State was offering the implied assertion in evidence to show its truth." *Id.* at 29. The State responded that "this evidence is being offered to show what names were on the screens as observed by Detective Canales when on the scene." *Id.* at 30.

On reconsideration after summary remand, this Court affirmed the trial court's decision to admit Detective Canales's testimony. Applying the Court of Appeals' then recent decision in *Bernadyn*, *supra*, 390 Md. 1 (2005), a majority of this Court held that the content of the television monitor above lane 22, as relayed to the jury by Detective Canales, constituted "an item of circumstantial evidence" of a material proposition -- specifically, that Fields was present at the bowling alley -- and not a direct or implied assertion of that proposition by an out-of-court declarant:

> The prosecutor did not attempt to use the evidence of the words "Sat Dogg" on the screen at the bowling alley to show that a known declarant believed the appellant was present there, had reason to accurately hold that belief, and therefore was impliedly asserting that factual proposition by entering his nickname on the screen. Unlike . . . *Bernadyn*, . . . the probative value of the evidence that the appellant's name was on the television screen did not depend upon the belief of the person who typed the name on the screen, or upon the accuracy of that person's belief. The prosecutor did not argue that the person who entered the name "Sat Dogg" on the screen only would

> have done so if he or she believed that the appellant was present in the bowling alley. Indeed, there was no evidence about that person's belief, because the person was not identified. The prosecutor argued only that the crime scene included a bowling lane with the name "Sat Dogg" written above it.

Fields, *supra*, 168 Md. App. at 37.

Further, while we recognized that there was some probative value to the evidence at issue, we concluded that " [t]he appellant's name on the television screen in the bowling alley was not an implied assertion of the factual proposition that the appellant was present at the bowling alley, although it was circumstantial evidence that could be probative of that fact." *Field*, 168 Md. App. at 38.[7] "Because the evidence was not an 'assertion,' under Rule 5-801(a), it was not a 'statement' under that subsection and hence was not hearsay under Rule 5-801(c). It was admissible non-hearsay evidence." *Fields*, 168 Md. App. at 38. *See also Garner v. State*, 414 Md. 372, 388 (2010) ("[I]f the statements were questions or commands, they could not-absent some indication that the statements were actually code for something else-be offered for their truth because they would not be assertive speech at all") (quoting *United States v. Rodriguez-Lopez*, 565 F.3d 312, 314-15 (6th Cir.2009)); *Carlton v. State*, 111 Md. App. 436, 443 (observing that the question "Do you need change?" impliedly asserts that the questioner has change, nevertheless, "many, if not most, questions make no assertion; the questioner simply seeks answers"), *cert. denied*, 344 Md. 328 (1996).

[7] The Court of Appeals affirmed this decision on a different ground, expressly declining to consider the merits of this Court's hearsay analysis. *Fields, supra*, 395 Md. 758 (2006).

We are persuaded that this case is closer to *Fields* than to *Stoddard*. Like *Fields*, the declarant was unknown and the name at issue was a nickname, as opposed to an outright identification. Further, the question here did not, in and of itself, make an assertion; instead, the unidentified declarant was simply seeking an answer. Moreover, the statement was circumstantial evidence that Harris was in the SUV, and not direct evidence that he was, in fact, a passenger. Thus, even if preserved, we conclude that the court properly determined that the evidence was admissible.

III.

Finally, Harris asserts that the court erred in admitting a certain series of text messages between himself and a person identified as "Keys." Those texts concern an apparent domestic violence incident(s) between Harris and Hill. Harris contends the evidence was prejudicial and also, that it was evidence that was inadmissible because it relates to prior bad acts or other crimes. The State responds that Harris's other crimes argument is not preserved. The State further responds that the texts were relevant to establish Harris's state of mind and motive, and that any error was harmless beyond a reasonable doubt.

Evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Md. Rule 5-401. The relevance threshold "is a very low bar to meet." *Williams v. State*, 457 Md. 551, 564 (2018) (citation omitted). But if evidence fails to clear this hurdle, it is inadmissible, and trial judges have no discretion to decide otherwise. *See* Md. Rule 5-402 ("Evidence that is not relevant is not admissible.") Trial

judges also receive no deference for their relevancy determinations. These are legal conclusions subject to *de novo* review on appeal. *Fuentes v. State*, 454 Md. 296, 325 (2017).

During trial, Harris moved *in limine* to exclude certain text messages obtained from his cell phone on the specific grounds that they were not properly authenticated, and were irrelevant and prejudicial. The State responded, generally, that the texts went to Harris's motive, and concerned "the deterioration of the relationship with Ms. Hill," as well as threats against Williamson. As clarified by Harris on appeal, the series of texts at issue is the following from March 4, 2019, or approximately four days prior to the shooting:

> HARRIS: My baby movah said I hit her and choke her
>
> KEYS: Angel?
>
> HARRIS: Yeah smh dummy
>
> KEYS: Oh so she bringing up some old shit?
>
> HARRIS: Nah it happened today I bump her dumb ass then she said I choke her and hit her then she said [our daughter] said I did like what
>
> KEYS: N**ga leave THAT GIRL ALONE
>
> KEYS: I heard Angel can't even fight tho
>
> HARRIS: I will smack the sht outta her wit this joint
>
> KEYS: Haha n**ga I got me a lil one

During argument on the motion, Harris's counsel argued that this was inadmissible "based on the three points that I've raised before." These objections were based on authentication, relevancy and prejudice. The State argued that these texts went to Harris's

motive, because of the "allegation of domestic violence between these parties in the days leading up to this incident." The State also contended that texts went to Harris's state of mind. Harris's counsel objected to these texts, stating that "we don't know what he's talking about" and that "the danger again is that the jury is going to misuse these and presume things about the defendant that are just based on allegedly his text messages."

The court initially tended to agree with Harris, but ultimately overruled his objection. Pertinent is the following exchange:

> THE COURT: I guess my question is if the theory is that the defendant fired upon the victim that the issue was his intent or violence against the victim. I know that the State's theory is that he was upset that his child's mother was seeing somebody else but the issue of domestic violence against her was never an issue in this case.
>
> [PROSECUTOR]: No, Your Honor. To me it's that it goes specifically to his state of mind. This is building. That they have this argument on the 4th that he himself is talking about. You'll see it in another text message where he is talking about it in more detail but then it goes to the escalation.
>
> THE COURT: Between him and the woman?
>
> [PROSECUTOR]: Yes. That's all carried over onto Mr. Williamson. It's all together. That it's her and him. She is keeping him from his daughter. No one will get any peace. No one will get any sleep after all of this. I think this is the start of the escalation period.
>
> THE COURT: Well, we've already had some testimony and questions about that but the witness never talked about or at least I don't recall her testifying about domestic violence by the defendant against her.
>
> [PROSECUTOR]: No, Your Honor, don't believe her testifying about it would be admissible. I think his statements in these text messages which go specifically to his state of mind

> at the time. This is after a domestic violence incident. I don't believe the actual incident would come in.
>
> THE COURT: No.
>
> [PROSECUTOR]: As a prior bad act or anything like that but I think his words and these messages are showing the escalation of intent to do harm.
>
> THE COURT: Okay. I'm going to overrule the objection and allow it.

Later that morning, the text message evidence was presented during the testimony of Detective Michael Zito, who was accepted as an expert in computer forensics and cellular telephone and device technology, data collection, and storage. When the State asked Detective Zito about the messages within the pertinent exhibit, Harris's trial counsel objected, specifically, on the grounds that he was objecting to the detective reading the text messages to the jury. Counsel also objected on the grounds that the detective not be permitted to testify that the messages related to the underlying event, stating "I guess his characterization of the messages as related to the event he can't say that they are related to the event." Notably, defense counsel did not renew or refer to the earlier objection or the motion *in limine*, and no objection was made when the State moved in, and the court admitted, the exhibit in question.

Based on our review, we conclude that this issue is not preserved. See Md. Rules 4-323, 8-131; *see also Haslup v. State*, 30 Md. App. 230, 239 (1976) (observing that an appellate court may determine *sua sponte* whether party has preserved issue for appellate review). Although Harris raised this issue earlier that day, when the evidence was elicited, he raised different grounds and did not maintain the same argument he raised earlier. *See*

Watson v. State, 311 Md. 370, 372-73 n. 1, 535 A.2d 455, 457 n. 1 (1988) ("[W]hen a trial judge makes a final ruling on a motion *in limine* to admit evidence, the party opposing the admission of the evidence must subsequently object at trial when the evidence is offered to preserve his objection for appeal"). Moreover, the other crimes/prior bad acts argument was never raised at trial. As this Court has explained, "where an appellant states specific grounds when objecting to evidence at trial, the appellant has forfeited all other grounds for objection on appeal." *Perry v. State*, 229 Md. App. 687, 709 (2016) (citing *Klauenberg*, 355 Md. at 541), *cert. dismissed*, 453 Md. 25 (2017). Accordingly, Harris did not properly preserve this issue for further review.

Moreover, were we to conclude that the issue is preserved, and recognizing, as apparently did the trial court, that relevance was problematic given that the evidence of domestic violence related more to Harris's relationship with Hill, as opposed to the victim, Williamson, we are persuaded that any error was harmless beyond a reasonable doubt. *See Dorsey v. State*, 276 Md. 638, 659 (1976) (error will be harmless when reviewing court, upon independent review, is able to declare a belief beyond a reasonable doubt that there is no reasonable possibility that the error contributed to the verdict). *See generally, Fields v. State*, 395 Md. 758, 759 (2006) ("Because we shall hold that even if the court erred with respect to the evidentiary issue, the error was harmless beyond a reasonable doubt, we do not reach the [merits of the hearsay] issue"); *Brown v. State*, 364 Md. 37, 38 (2001) (declining to address merits of challenged evidentiary ruling where error was harmless in any event).

The text messages were not so prejudicial to Harris's case because, even with their admission, there was other evidence that Harris was abusive and controlling toward Hill. These included the fact that Hill was dating Williamson and that Harris did not approve, as evident in the chance meeting between all three in person, as well as Harris's phone call to Williamson shortly before the shooting, and the remaining texts. In addition to this evidence, the case against Harris was strong in that the gun used in the shooting was found in Harris's possession. Further, the home surveillance video footage showed a person, apparently fitting Harris's description, running towards Williamson, followed by the sound of ten (10) gunshots. Accordingly, and even if preserved, any error in admitting the text messages between Harris and Keys was harmless beyond a reasonable doubt.

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