

Circuit Court for Wicomico County
Case No. C-22-CR-19-000087

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 835

September Term, 2019

LANIER LANDAU BRIGHT, JR.

v.

STATE OF MARYLAND

Reed,
Wells,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Raker, J.

Filed: July 28, 2020

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

Appellant Lanier Landau Bright Jr. appeals the judgment of conviction in the Circuit Court for Wicomico County for possession with intent to distribute fentanyl. Appellant presents the following question for our review, which we have rephrased for clarity:

Did the circuit court err by denying appellant’s motion to suppress evidence seized pursuant to a search warrant?

Finding no error, we shall affirm.

I.

On December 17, 2018, the Circuit Court for Wicomico County issued a search and seizure warrant for a private residence located at 620 Liberty Street in Salisbury, Maryland. A sworn affidavit of a police officer of the Wicomico Sheriff’s Department, which referenced an anonymous “tip” or information, traffic stops, and “trash pulls,”¹ supported the warrant application. On December 18, 2018, police officers executed the search warrant at 620 Liberty Street and seized fentanyl and other drugs. The police arrested appellant. By criminal information filed in the Circuit Court for Wicomico County, the State charged appellant with possession with intent to distribute a narcotic and related charges. Following the circuit court’s denial of appellant’s motion to suppress evidence, the court found appellant guilty of possession with intent to distribute fentanyl. The court sentenced appellant to a term of incarceration of twenty years, all but ten years suspended,

¹ “A trash pull is an undercover investigative technique in which the police search a person’s trash that has been placed at or near the street for garbage pickup.” *United States v. Morales*, No. 18-14056-CR, 2019 WL 572660, at *1 (S.D. Fla. Jan. 9, 2019).

followed by three years supervised probation.

The following pertinent facts were set out in the affidavit supporting the search warrant. In November 2018, an anonymous source informed the Wicomico County Sheriff's Office that appellant was distributing cocaine, heroin, crack cocaine, marijuana, and pills from 610 and 620 Liberty Street. According to the source, appellant drove a blue Pontiac Bonneville, a gold Pontiac G6, and a burgundy Ford Expedition. The affidavit represented that the source reported that both the Bonneville and G6 were registered to "Danielle Dashielle." On November 26, 2018, police began to watch 610 and 620 Liberty Street. The officers observed these three vehicles, as well as other vehicles including a red Pontiac sedan registered to Danielle Dashields, parked at 620 Liberty Street. A police check through the Maryland Electronic Ticketing System corroborated the anonymous source's information that appellant drove the G6 and Ford.² Police further corroborated that the Bonneville and G6 were registered to Ms. Dashields through a registration check.

While observing 610 and 620 Liberty Street, officers conducted three traffic stops—on a maroon Hyundai driven by Katherine Odea, the Bonneville driven by Kimberly Cooper, and the Ford driven by Trevon Brown, from November 29 to December 6, 2018. First, during the week of November 26, 2018, police observed a maroon Hyundai at appellant's house. Police conducted surveillance of the vehicle's registered address, 645

² The affidavit stated: "Your Affiant conducted a check through the Maryland Electronic Ticketing System (ETIX) and learned that Lanier Landau Bright . . . has been stopped driving the maroon Ford Expedition, the red Pontiac 4 door sedan, and the gold Pontiac G6 within the last year."

Decatur Avenue, and on November 29, 2019 stopped the driver, Ms. Odea, leaving this address. The search of the vehicle revealed suspected marijuana pieces, a piece of paper containing an off-white powder substance, and other suspected drug paraphernalia.

Second, on December 3, 2018, police stopped the blue Pontiac Bonneville registered to Ms. Dashiels after it left 610 Liberty Street. The driver, Ms. Cooper, stated that she lived at 610 Liberty Street and admitted to having marijuana in her bra. Additionally, she gave police two small bags of marijuana, and police found in the trunk a small sifter and a glass cup with cocaine residue confirmed by a field test.

Third, on December 6, 2018, an officer stopped the Ford Expedition near 1307 N. Salisbury Boulevard. The driver, Mr. Brown, stated that Ms. Dashiels was his sister and that he sometimes stayed at 620 Liberty Street. A police dog alerted officers to the presence of narcotics, and officers found a bag in the driver's side door panel containing white residue that tested positive on a cocaine test swab. Officers arrested Mr. Brown for possession of cocaine.

Police conducted two trash pulls at 620 Liberty Street. In the first trash pull, on December 7, 2018, the police took trash from a garbage can placed at the edge of the property near the sidewalk. In the trash can, police discovered a plastic sandwich bag missing its corner with white residue that tested positive for cocaine. In addition, police discovered in the trash can two plastic sandwich bags missing their corners and two knotted pieces of plastic bags. In the second trash pull at 620 Liberty Street, on December 14, 2018, the police searched the garbage can found on the sidewalk in front of the residence.

They discovered mail addressed to 228 Clover Street, Salisbury, Maryland,³ where Ms. Dashields and appellant previously resided, an empty box of sandwich bags, four full-sized sandwich bags each lined with white powder that tested positive for cocaine, and four plastic bag pieces.

The affidavit additionally stated that appellant had a conviction for possession of a controlled dangerous substance and a conviction for robbery.

Appellant filed a motion to suppress the evidence seized by the police pursuant to the search and seizure warrant. At the hearing on the motion, appellant argued that the issuing judge lacked a sufficient basis for finding probable cause to search 620 Liberty Avenue because (1) the tip to the police came from an anonymous source who was not identified in the application for the warrant and whose credibility, because of anonymity, could not be established; (2) traffic stops conducted by the police near the location to be searched did not create a nexus between contraband and the location to be searched, 620 Liberty Street; and (3) the trash pulls conducted by the police by the curb at 620 Liberty Street were not reliable.

Following the hearing on the motion, the court denied the motion to suppress and ruled as follows:

“Now I do agree with [defense counsel] that there is a lot of information in this application and affidavit that really does not add a lot to the case. And I agree also that the information from the anonymous source is not in and of itself entitled to great consideration.

³ The affidavit does not state if the addressed mail included a name.

But it is information that I guess can be considered in a totality of the circumstances but it's not a major factor. What does seem to me to be determinative are the trash pulls, and recognizing the possibilities that might influence that as outlined by [defense counsel]. And I would agree if it was only the first trash pull which had just corners from baggies or a baggy with the corner missing or that type of thing, but then the following week on trash day they pulled another which actually contained baggies with what tested to be cocaine residue. And it seems to me taking all of the factors that are set forth, discounting to a great extent, or probably discounting entirely the traffic stop of some woman who started from a different place and so forth, nonetheless with the trash pulls I do believe that there was a substantial basis for the decision to issue the search warrant, so I'm going to deny the motion to suppress."

Appellant then entered a not guilty plea, waiving formal proof. After the State read the agreed statement of facts to support the charges, the court found appellant guilty and imposed sentence. This timely appeal followed.

II.

Before this Court, appellant argues that the circuit court erred in denying the motion to suppress evidence because there was no probable cause to support the search warrant. In his view, the warrant lacked sufficient nexus between criminal activity, the things to be seized, and the place to be searched. Therefore, there was no substantial basis for probable cause.

First, appellant argues that the anonymous source's information should not be given any weight in the totality of circumstances. In his view, the search warrant did not

demonstrate the anonymous source's basis of knowledge or veracity, making it an insufficient *indicia* of reliability. For a magistrate to rely on an anonymous source's information when issuing a warrant, there must be "sufficient detail that the magistrate may know that he is relying on something more substantial than a casual rumor." *Birthead v. State*, 317 Md. 691, 704 (1989) (quoting *Spinelli v. United States*, 393 U.S. 410, 416 (1996)). Appellant argues that although police corroborated the source's information regarding the type of drugs sold by appellant and the registration of the Bonneville and the G6, this corroboration of "innocuous details" does not demonstrate that the source had sufficient knowledge of appellant's criminal activity.

Second, police made two of the three vehicle stops several days after seeing one of the vehicles at 610 Liberty Street and the other at 620 Liberty Street, and the drivers did not state that the drugs had come from 620 Liberty Street or appellant.

Third, the affidavit lacked pertinent information about the trash pulls, such as the condition of the trash bags in the trash can. Appellant argues that because the affidavit lacked this information and the public had easy access to the trash, the link between appellant and the trash is too indirect. In other words, the evidence from the trash is unreliable as it could have come from a third party. In other cases, police demonstrated a direct link and thus the reliability of the evidence, by observing the defendant take out the trash or finding mail addressed to the residence; however, none of this evidence was present in appellant's case. Fourth, appellant argues that Maryland appellate courts have definitively rejected that police always have probable cause to search a drug dealer's home

based solely on the assumption that a drug dealer keeps drugs and records of his drug trade at his residence.

Appellant recognizes that evidence obtained pursuant to a warrant later ruled invalid may be admissible if the executing officers acted in objective good faith “in reasonable reliance on a search warrant.” *United States v. Leon*, 468 U.S. 897, 897 (1984). But he argues that the good faith exception does not apply in this case because a reasonable officer would have recognized the absence of probable cause on the face of the affidavit, thereby negating the application of the “good faith” exception.

In response, the State argues that the circuit court did not err in denying the motion to suppress, as the issuing judge had a substantial basis for concluding that there was probable cause for a warrant. The State agrees with appellant that there must be a nexus between the criminal activity and the place that police seek to search but contends that a nexus can be established through “indirect evidence and reasonable inferences.”

The State argues that the anonymous source’s information should be given weight in the totality of circumstances. In the State’s view, the anonymous source’s information is a sufficient *indicia* of reliability for two reasons. First, it is unlikely that a mere observer would know that two of the vehicles that appellant drove were registered to Ms. Dashields. Second, police corroborated the anonymous source’s information. Additionally, the affiant Deputy John Seichepine’s explanation that drug dealers often keep drugs in their homes to protect their product from police and competitors bolstered a nexus between 620 Liberty Street and the criminal activity. The State acknowledges that the circuit court gave little

weight to the traffic stops and argues that the trash pulls alone, or when considered with the rest of the evidence presented in the warrant application, provided probable cause for issuance of a warrant. As police conducted the two trash pulls a week apart, it is unlikely that a third party, as opposed to appellant, threw the cocaine residue into the trash. Additionally, while police did not find mail addressed to 620 Liberty Street in the trash, they did find mail addressed to appellant's former address. The State maintains that this case does not present a close call, but that if it did, any doubts should be "largely determined by the preference to be accorded warrants." *Illinois v. Gates*, 462 U.S. 213, 237 n. 10 (1983).

Even if the warrant lacked probable cause, the State argues that the good faith exception would apply because this is not a case where the officers were dishonest or reckless in preparing their affidavit or where they could not have harbored an objectively reasonable belief in the existence of probable cause. In the State's view, this affidavit was neither "bare bones" nor "conclusory." Thus, the State argues, even if *arguendo* probable cause was lacking here, the good faith exception would apply.

III.

We review a lower court's finding of probable cause under a deferential standard and consider whether there was a "substantial basis" for the warrant-issuing judge to conclude that probable cause exists to show that evidence of a crime would be found in the location described in the warrant application. *State v. Amerman*, 84 Md. App. 461, 471–

72 (1990). The “substantial basis” standard requires only that the warrant-issuing judge’s decision be based on the common-sense of a layman. *Id.* at 473. This practical decision is based on a totality of the circumstances. *Id.* Reviewing courts should decide close calls as to whether there was a “substantial basis” for a finding of probable cause in favor of the issuing judge’s decision to grant the warrant. *State v. Jenkins*, 178 Md. App. 156, 171 (2008).

The Fourth Amendment to the United States Constitution provides that “[t]he 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” U.S. Const. amend. IV. Probable cause exists “where the known facts and circumstances are sufficient to warrant a man of reasonable prudence in the belief that contraband or evidence of a crime will be found.” *Ornelas v. United States*, 517 U.S. 690, 696 (1996).

To find probable cause to search a place, there must be “some nexus . . . established, even in the absence of direct evidence, between the nature of the items sought and the place where they are to be seized.” *Agurs v. State*, 415 Md. 62, 86 (2010). The nexus may be established indirectly. *See Holmes v. State*, 368 Md. 506, 522 (2002) (“Probable cause may be inferred from the type of crime, the nature of the items sought, the opportunity for concealment, and reasonable inferences about where the defendant may hide the incriminating items.”).

We hold that the motions court did not err in denying appellant’s motion to suppress

evidence. The issuing judge had a substantial basis for concluding that there was probable cause for a warrant considering the totality of the circumstances: the anonymous source, car stops,⁴ and trash pulls.

The information from the anonymous source did contribute to the finding of probable cause, even though the issuing judge correctly minimized its contribution, as “an anonymous tip alone seldom demonstrates the informant’s basis of knowledge or veracity.” *Mack v. State*, 237 Md. App. 488, 496 (2018) (quoting *Alabama v. White*, 496 U.S. 325, 329 (1990)). An anonymous source’s reliability can be strengthened by corroboration of his information by police, as was the case here. *Thompson v. State*, 245 Md. App. 450, 485 (2020). But as the trial judge correctly noted, the anonymous source’s corroborated information, though still entitled to some weight in the totality of circumstances, is given less weight than predictive information.⁵ Moreover, in this case, the facts before the issuing

⁴ At the motions hearing, the judge gave little or no weight to the car stops, stating that he was “discounting to a great extent, or probably discounting entirely the traffic stop of some woman who started from a different place and so forth.” For the purposes of this analysis, we will assume that the judge gave no weight to the car stops.

⁵ Predictive information is information predicting future criminal activities. *Gates*, 462 U.S. at 245. A comparison between *Florida v. J.L.*, 529 U.S. 266 (2000) and *Alabama v. White*, 496 U.S. 325 (1990) demonstrates the lesser weight given to corroborated information than predictive information. In *J.L.*, an anonymous source informed police that a young black man wearing a plaid shirt at a specific bus stop was carrying a gun. 529 U.S. at 266. Police corroborated this information, but the Supreme Court held that the evidence was insufficient to justify a warrant. *Id.* at 274. In contrast, in *White*, an anonymous source stated that the suspect would leave an apartment at a specific time, get into a car matching a specific description, and drive to a named motel. 496 U.S. at 325. Police confirmed that this information was accurate, and because it was predictive information, the Supreme Court upheld the warrant’s validity. *Id.* at 332.

magistrate were not facts solely from an anonymous source.

The information contained in the affidavit supporting the warrant established a nexus between the items sought (controlled dangerous substances) and the location to be searched (620 Liberty Street). The anonymous source indicated that appellant was selling drugs and that he was doing so from 620 Liberty Street. The source provided information about vehicles seen frequently at that location, and the police corroborated that information. The source identified the type of drugs sold from 620 Liberty Street—*i.e.*, cocaine, heroin, crack cocaine, marijuana, and pills. The trash pulled from the garbage can in front of 620 Liberty Street, on two occasions, contained cocaine residue and plastic bags missing corners, consistent with use in drug sales. The officers also found mail addressed to appellant in the trash at that location, corroborating the anonymous source’s information that appellant was connected to 620 Liberty Street.

The police corroborated some of the information given by the anonymous source. Although “an anonymous tip alone seldom demonstrates the informant’s basis of knowledge or veracity,” *White*, 496 U.S. at 329, here the information given by the source, as noted above, could be and was corroborated by the police.

In addition, the police examined trash they pulled from garbage cans left at the edge of the property. We need not determine whether one trash pull would be sufficient to establish probable cause to search a residence because here there were two trash pulls, a week apart, and additional evidence connecting contraband to the home and corroborating the anonymous source’s information. *See United States v. Leonard*, 884 F.3d 730, 734–35

(7th Cir. 2018) (finding probable cause for a search warrant, reasoning that “[w]hile one search turning up marijuana in the trash might be a fluke, two indicate a trend.”).

We hold that the trial court correctly denied the motion to suppress the evidence, considering the totality of the circumstances.

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