Circuit Court for Howard County
Case Nos. C-13-CR-19-000133, C-13-CR-19-000136,
C-13-CR-19-000156, C-13-CR-19-000160

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

Nos. 1259, 1260, 2142

September Term, 2019

&

No. 51

September Term, 2020

ROBERT CHARLES DAVIS

v.

STATE OF MARYLAND

Graeff,
Beachley,
Eyler, James R.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Graeff, J.

Filed: August 9, 2021

*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.

On January 18, 2019, Robert Charles Davis, appellant, was arrested at 9521 Clocktower Lane in Columbia, Maryland for armed robbery. The home subsequently was searched, on three separate occasions, pursuant to three different warrants relating to multiple incidents, including three burglaries committed on August 21, 2018, August 25, 2018, and October 5, 2018, as well as an armed robbery committed on December 20, 2018.

Appellant was charged in the Circuit Court for Howard County on multiple charges in connection with those incidents. He filed identical motions to suppress the evidence found in the home in each case. The motions were denied, and appellant subsequently was convicted, in multiple separate proceedings, of three counts of second-degree burglary, two counts of armed robbery, two counts of first-degree assault, three counts of theft under $1,500, and several firearms counts. The court sentenced him to a total of 68 years' imprisonment.

Appellant filed separate appeals in the different cases. In 2020, this Court granted motions to consolidate Case Nos. 1259, 1260, & 2142, Sept. Term, 2019, which involved the convictions relating to the three burglaries. On March 26, 2021, this Court granted appellant's "Unopposed Motion to Consolidate for Consideration by the Same Panel" Case No. 51, Sept. Term, 2020, which involved the armed robbery, with the other three cases.

On appeal in this consolidated action, appellant presents the following questions for this Court's review, which we have consolidated and rephrased, as follows:

1. Did the circuit court err in denying appellant's motion to suppress evidence seized from his home based on findings that: (1) appellant

lacked standing to challenge the search of 9521 Clocktower Lane; and (2) there was a substantial basis to support the initial search warrant?

2. Did the trial court err in allowing the prosecutor in Case No. C-13-CR-19-000156 to cross-examine the appellant about stolen goods unrelated to the present case that it alleged were in his home?

For the reasons set forth below, we shall affirm the judgments of the circuit court in Case Nos. 1259, 1260, 2142, Sept. Term, 2019, but reverse the judgment in Case No. 51, Sept. Term, 2020.

FACTUAL AND PROCEDURAL BACKGROUND

This case involves the execution of three separate search warrants for the home located at 9521 Clocktower Lane. The first search warrant was issued to Detective Woctchou on January 18, 2019, relating to evidence regarding an armed robbery occurring on December 20, 2018. The second search warrant, issued to Detective Cheuvront on January 19, 2019, at 12:26 p.m., related to a theft of a gun shop in North Carolina, and it relied on firearms seized in the first search that matched those stolen from the shop. The third search warrant, issued to Detective Yoon on January 19, 2019, at 2:47 p.m., related to several apartment leasing office burglaries in Columbia, and it relied on items that the police observed in the home during the first warrant that were consistent with items stolen in those burglaries.

On January 18, 2019, appellant was arrested at 9521 Clocktower Lane. As indicated, the police subsequently conducted three searches of the residence pursuant to three different search warrants. The searches revealed incriminating evidence against appellant relating to the armed robbery and the burglaries.

On February 27, 2019, three indictments were filed against appellant in the Circuit Court for Howard County in connection with apartment leasing office burglaries, each charging him with second-degree burglary and theft under $1,500. A fourth indictment was filed that same day in connection with the December 2018 armed robbery, charging appellant with two counts of armed robbery, two counts of first-degree assault, two counts of theft under $1,500, and related firearms charges. The four cases were not consolidated in the circuit court, but as indicated, they had a common suppression hearing, and the convictions in each case are addressed in this opinion.

I.

Motion to Suppress

On June 21, 2019, appellant filed four identical motions to suppress the evidence found at 9521 Clocktower Lane, alleging a violation of his Fourth Amendment rights. On July 2, 2019, the circuit court held a joint hearing on the motions. Appellant introduced into evidence the three search and seizure warrants and their supporting affidavits.

A.

Individual Warrants

1.

Detective Woctchou's Robbery Warrant

The first search warrant was issued on January 18, 2019, and it authorized a search of 9521 Clocktower Lane for evidence relating to an armed robbery that occurred in Columbia on December 20, 2018. The warrant affidavit, authored by Detective Woctchou,

a member of the Howard County Police Department's robbery unit, stated that two people were walking on the sidewalk of Cradlerock Way when a "tan colored Chevy SUV" stopped across the street from them. A man, who the victims described as a short, muscular, African-American male with facial hair, wearing a green, two-piece track suit, exited the vehicle, approached the victims, and demanded their money at gunpoint, using a "black semi[-]automatic handgun." The victims handed over a blue "Helly Hansen" jacket and a wallet, but the suspect returned the wallet because it did not have any money in it.

The man got back in his car and drove away, but he then made a U-turn and stopped to confront the victims again. This time, the man asked the victims to give him their phones. The victims complied and handed over an iPhone 7 and an iPhone 6S. The man threatened to kill them if they reported the incident. Before driving away, the man fired the handgun into the air. Surveillance video from a nearby business captured the incident and corroborated the victims' story. One of the victims later reported that the man also took a pair of gold-colored "Beats" headphones.

On January 16, 2018, Detective Woctchou and two additional detectives were preparing to conduct a canvas of the neighborhood. They observed a tan-colored Chevy Tahoe displaying only a rear Virginia license plate. The vehicle resembled the SUV used in the December armed robbery. The detectives requested a marked patrol vehicle to initiate a traffic stop of the Chevy Tahoe while they followed it and conducted a computer

check on the license plate. This check showed that the tags were registered to a 2002 Kia van belonging to Angela D. Williams of Virginia.

When the patrol unit attempted to pull over the Chevy Tahoe, the suspect did not stop. A chase ensued for approximately 20 minutes, reaching speeds of more than 80 miles per hour. The Tahoe struck other vehicles during the pursuit, and it eventually "struck a light pole and a tree" on the side of Thunder Hill Road. The driver fled on foot, but the police quickly located an injured man matching the driver's description on Thunder Hill Road. That person, identified as appellant, was taken into custody. Detective Woctchou noted that appellant was short and had facial hair, "which matched the description the victims of the armed robbery provided."

The Chevy Tahoe was seized and searched pursuant to a warrant. During the search, the police located mail addressed to the residents of 9521 Clocktower Lane in Columbia, but there was no named addressee.

That same day, Detective Woctchou conducted an interview of appellant. Appellant stated that he lived in Adelphi in Prince George's County, but his fiancée, Angela Williams, lived in Columbia, although he refused to provide her exact address. Appellant was taken to Howard County Central Booking Facility ("CBF") for processing.

Detective Woctchou's warrant affidavit stated that, on January 17, 2019, he composed a photo array, and one of the victims "identified [appellant] as the person who robbed him and his friend at gunpoint on December 20, 2018." Detective Woctchou began to monitor appellant's phone calls from CBF, and appellant made several calls to a person

he identified as "Angie." He told her: "[D]on't say anything. You already know if I don't come home or call you what to do." A computer check for Angela Williams revealed that she previously had a listed address of 9521 Clocktower Lane, Columbia, Maryland.

The affidavit continued:

> On January 17, 2019, [appellant] was released from CBF. On the same day, Howard County Detectives began to monitor 9521 Clocktower Lane. Detectives noted a vehicle parked bearing [a] Maryland registration . . . . The vehicle was still covered with snow. Computer checks for the registration revealed that Angela Denise Williams was the registered owner and her listed address was 4006 Gelston Drive, Baltimore, Maryland 21229.
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> On January 18, 2019, during the surveillance of 9521 Clocktower Lane, Detectives observed Angela Williams entering and exiting this location. Additionally, [appellant] also exited 9521 Clocktower Lane to assist Angela Williams [in] mov[ing] groceries from a vehicle [to] inside the residence. [Appellant] is currently wanted on the charges of armed robbery, robbery, theft less than $1,500, assault in the second degree, and reckless endangerment after DFC Woctchou obtained an arrest warrant on January 17, 2019 at 1911 hours.
>
> While Detectives were monitoring 9521 Clocktower Lane, [t]hey observed [appellant] load up three motorcycles in the back of a rental Home Depot truck. There was another subject assisting [appellant]. Howard County Detectives took [appellant] into custody on the arrest warrant. A computer check[] of the motorcycles revealed that they were reported stolen in Howard County, Baltimore County, [and] Montgomery County, Maryland.
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> * * *
>
> On October 31, 2018, at approximately 0834 hours, Howard County Police Officers responded to 8923 Early April Way, Apt C, Columbia, Howard County, Maryland for the report of a vehicle theft. The victim reported that on October 30, 2018 at approximately 2230 hours, his 2016 gray in color Yamaha motorcycle . . . was parked in front of his building. The next morning at approximately 0800, he noted the motorcycle was missing. The motorcycle was entered into NCIC as stolen.

> DFC Woctchou has not been able to recover any property taken during the above robbery. DFC Woctchou believes that [appellant] may be storing the property taken during the robbery, the clothes worn during the robbery and any evidence related to the robbery in the residence located at 9521 Clocktower Lane, Columbia, Howard County, Maryland 21046.

The warrant application listed property to be seized from 9521 Clocktower Lane, including: indicia of occupancy or residency at that address; cellular mobile devices, including those used while engaging in the crime; the victims' iPhone 7 and iPhone 6S; blue "Helly Hansen" jacket; gold-colored "Beats" headphones; an "olive green colored track suit (top and bottom)"; a "Gray/Black beanie hat"; any and all firearms; and a 2016 grey Yamaha motorcycle with a VIN number matching the one reported stolen in October 2018.

While the warrant application was being prepared by Detective Woctchou, Detective Ambrose was instructed to go to 9521 Clocktower Lane and "hold the home." Detective Ambrose arrived at 2:45 p.m. and entered the home to conduct a "walk-through as a safety sweep."[1]

The judge signed the warrant on January 18, 2019, at 4:45 p.m. At 4:53 p.m., Detective Ambrose, who was still inside the house, received word that the warrant had been signed, and he began executing the search of the home. The warrant return showed

[1] Detective Ambrose testified at the suppression hearing that he remained in the home for approximately two hours because there were unattended young children inside, and it was cold outside. The record does not indicate how old the children were. Ms. Williams testified at the suppression hearing that her four children lived with them at 9521 Clocktower Lane. The children were left alone because Ms. Williams also was arrested that day.

that police ultimately seized a black and grey knit hat, "Dark Green/Black Nike Track Suit," a "Dell" laptop, a "LG" cell phone, a credit card writer and embosser, and a handgun. Inside a safe in the master bedroom closet, police found and seized three additional firearms and ammunition, along with appellant's birth certificate and health insurance card.

On January 18, 2019, following the search of the home, appellant was interviewed a second time by Detective Woctchou. Appellant said that he did not live at 9521 Clocktower Lane, and he provided an address in Adelphi as his residence.

2.

Detective Cheuvront's Firearms Warrant

The second warrant application for 9521 Clocktower Lane was authored by Detective Cheuvront, a member of the Howard County Police Department's Firearms Investigation Unit. The application stated that, when the robbery unit executed the first search warrant at the residence on January 18, 2019, three firearms were recovered from a safe in the master bedroom, which also contained appellant's birth certificate and insurance card. These firearms had been reported stolen from a gun and pawn shop in North Carolina on November 4, 2018.

Detective Cheuvront's affidavit stated that, based on conversations with the North Carolina Sheriff's Office, the officers executing the first warrant, and other events, he believed that clothing and other items connecting appellant to the stolen firearms would be found in the residence. Detective Cheuvront's firearms search warrant was issued on January 19, 2019, at 12:26 p.m. The warrant return sheet in the record is faded and

illegible, but we can discern that three items are listed. The firearms in question had already been seized under Detective Woctchou's warrant.[2]

3.

Detective Yoon's Burglary Warrant

The third warrant for 9521 Clocktower Lane was issued on January 19, 2019, at 2:47 p.m. Detective Yoon's warrant affidavit described a series of commercial burglaries of apartment leasing offices in Columbia.

On August 21, 2018, at approximately 11:14 p.m., "an unknown suspect broke into the Alister Columbia Apartments leasing office." The suspect was described as a "muscular black male" wearing a "ball cap," a "t-shirt around his face," athletic clothing, and gloves. Video surveillance showed that the suspect made 11 trips in and out of the leasing office and removed the following items: three 55-inch Samsung flat screen televisions; one 40-inch Samsung flat screen television; two Apple iMac desktops; six kettlebells; six dumbbells; a "[l]arge wall painting/canvas of a shaggy dog;" a Comcast cable box; and a shop vacuum.

A subsequent review of the video surveillance showed the suspect "casing" the leasing office approximately two hours before the items were taken. At that time, the

[2] On June 12, 2019, appellant was charged with three counts of firearm possession as a disqualified person in Case No. C-13-CR-19-000422. The charges ultimately were *nol prossed* on November 6, 2019. Although appellant challenges this warrant, he does not identify, nor have we found, any reference in the record to evidence found pursuant to this warrant that was used in the four cases against appellant in this appeal. Accordingly, we will not further discuss this warrant.

suspect was not wearing a mask, hat, or gloves. His "physical build [was] consistent with the burglar from the video surveillance footage." Employees of Alister Apartments told police that they did not recognize the suspect as a resident or frequent visitor.

On August 25, 2019, at approximately 9:15 p.m., "the same suspect returned to the Alister leasing office and committed another burglary." He again gained access by jumping the pool fence and entering the leasing office through a restroom pool entrance. The suspect was "topless," with his t-shirt tied around his face, and he was wearing a ball cap, but no gloves. The surveillance video showed the suspect picking up a "[w]hite mesh cloth designer chair" and carrying it out the rear door of the leasing office.

A resident who saw the suspect walking to the parking lot carrying the chair over his head contacted a maintenance worker. The maintenance worker saw the suspect drive away with the chair in a "black Hyundai sedan." The resident described the suspect as "a black male" who was "stocky and muscular."

On October 5, 2018, at approximately 2:00 a.m., "the same suspect broke into the Columbia Commons leasing office." The suspect took a "Troy-Built power washer," $10 cash, and three "matching small tables in varying heights." The suspect was wearing a hat, but not a mask, and his full beard was visible.

Detective Yoon stated in the warrant application that, based on information provided by detectives from the robbery unit, who had arrested appellant, appellant "fit the physical description of the burglary suspect of the leasing offices." Detective Yoon shared

photographs of the burglary suspect with Detective Woctchou, who confirmed that the man was appellant.

Detective Yoon also learned that, when executing the robbery search warrant at 9521 Clocktower Lane on January 18, 2019, the officers had observed "several Samsung televisions," an Apple iMac desktop, "a large painting/canvas with the image of shaggy dog," three "matching small tables in varying heights," and numerous pieces of gym equipment, including dumbbells and kettlebells. These items were "consistent with the stolen property from the Alister [l]easing [o]ffice as well as the Columbia Commons leasing office." He noted that 9521 Clocktower Lane was only three minutes away from the Alister Apartments and two minutes away from the Columbia Commons apartments. Detective Yoon believed that a search warrant for 9521 Clocktower Lane would "recover stolen property from these three commercial burglaries."

The circuit court signed Detective Yoon's burglary warrant for 9521 Clocktower Lane on January 19, 2018, at 2:47 p.m. During the search, police seized a large wall painting of a shaggy dog, a 55-inch Samsung television, an Apple iMac desktop, six kettlebells, six dumbbells, and a "white mesh cloth designer chair."

B.

Suppression Hearing

On June 21, 2019, appellant filed, in each of the cases filed against him, identical motions to suppress the items found in the home as a result of the three searches. He raised several arguments in support of his motions. First, he argued that the initial, warrantless

entry into the home by Detective Ambrose was illegal. Next, he asserted that the issuing judge for the first warrant, executed on January 18, 2019, "lacked a substantial basis for finding probable cause to search 9521 Clocktower Lane" because there was no nexus between the alleged criminal activity and that address. He also argued that the good faith exception to the exclusionary rule did not apply because a well-trained officer would have recognized this lack of nexus. Finally, he argued that the third search warrant, which relied on information from the first search, was "tainted" by the prior illegality, and therefore, all the evidence seized in that search must be suppressed.

The State filed a motion in opposition, listing several reasons why appellant's motions should be denied. First, he did not have standing to bring his Fourth Amendment claims because he abandoned his expectation of privacy when he denied living at 9521 Clocktower Lane in the January 18, 2019, interview with Detective Woctchou. Second, the State asserted that Detective Woctchou's search warrant was supported by probable cause because it contained numerous details regarding the armed robbery and the nexus between appellant, the home, and the fruits of the robbery. Finally, the State argued that the good faith exception would apply because a reasonable officer could have relied on the warrant.

On July 2, 2019, the circuit court held a hearing. With respect to the standing issue, Leila Haxton, a neighbor who lived at 9523 Clocktower Lane, testified that both appellant and Ms. Williams moved into 9521 Clocktower Lane in August 2018, and she regularly saw appellant coming and going from the house. Ms. Williams similarly testified that

appellant had lived with her and her children at 9521 Clocktower Lane from August 2018 until his arrest. He slept there and had his own key. On cross-examination, she stated that they had fought on the day appellant was arrested, and she had told him to move out of the house.[3] She stated, however, that she had made this demand during previous fights, but they continued to reside together in the home.

The State called Detective Woctchou, who testified that, during the January 18, 2019 interview, appellant "said he never lived" at 9521 Clocktower Lane and provided an address in Adelphi. When the detective confronted appellant about the fact that there was male clothing in appellant's size in the house, as well as his birth certificate and health insurance card, appellant maintained that "he didn't live there, that was not his house," that police "had no right to go in the house," and he "never lived there." This statement, denying that he lived at the residence, occurred after the first search warrant, the one relating to the robbery, was applied for and executed.

On the merits of his Fourth Amendment claims, appellant presented three arguments for suppressing the evidence seized in the three searches: (1) Detective Ambrose's initial entry was illegal and tainted the subsequent search warrant; (2) Detective Woctchou's warrant lacked probable cause because it failed to provide a nexus between the items sought and the place to be searched; and (3) the warrant issued to Detective Yoon similarly was

[3] Appellant was not on the lease for 9521 Clocktower Lane. Ms. Williams testified that she was receiving public housing assistance at the time, which precluded an individual with felony convictions from residing with her.

defective because the proffered probable cause flowed from the execution of Detective Woctchou's warrant, and the officers could not, in good faith, have relied on a warrant unsupported by probable cause.

With respect to the initial entry, Detective Ambrose testified that he performed the "walk-through as a safety sweep of the residence because [police] were planning to hold the home for the search warrant," the charges against appellant involved a firearm, there were young children alone in the house, and "it was cold outside at the time." In response to appellant's argument that this entry tainted the robbery warrant, Detective Woctchou testified that he did not base any of the information in his warrant application on information obtained from Detective Ambrose inside the house.

The court ultimately denied appellant's motions to suppress. First, it found that appellant did not have standing because he had affirmatively abandoned his expectation of privacy at 9521 Clocktower Lane during the January 18 police interview with Detective Woctchou. It explained:

> If everything had stopped at the moment that the [robbery] officers executed the arrest warrant and if there was nothing else, I would find that he had standing because the evidence of his connection and of his regular residence within the home.
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> * * *
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> . . . That being said, he decided to abandon that. That is my finding. He was *Mirandized*, he made a voluntary decision to speak. I don't see a whole lot of daylight between this case and *Duncan and Smith v. State*, 281 Md. 247 [(1977)]. The appellate court in that case, the Court of Appeals, noted that when interviewed the appellants denied any connection with the automobile. They said it was not their car. That they don't know whose it was or how it

> got there. They declared they had never seen it before, they had no connection with it, it was not driven there.
>
> And in this case [appellant's] statements aren't that he doesn't even know that the address is or that he's never been there. But he insists it's not his place. That his stuff isn't there, it's not his residence, it's not his house. And maybe he's lying. But it's understandable that he would try to distance himself from a house that has apparently what was found in it. But you have to be responsible for what your own words are. And he chose to abandon. And I think that you can abandon that which you have. I mean, that's the way that *Smith* reads. Abandon[ment] is primarily a question of intent. Intent may be inferred from words spoken, acts done. Other objective facts. All relevant circumstances. His position at the time of the alleged abandonment should be considered. He's trying to get himself far away from guns and TVs and all this other stuff that was found in there. I can appreciate that. I can understand that. But I think that he's abandoned it and I don't think that he has standing to challenge because he chose to remove himself from that. You can't have your cake and eat it, too. You can't on one hand try to tell the world that you can't be held responsible for what's found in [there] because it's not your place, and then when you get yourself arrested change your mind.

Despite finding that appellant did not have standing to object to the search, the court went on to address the merits of appellant's arguments. With respect to Detective Ambrose's initial entry, the court found that a protective sweep was justified because the arrest warrant was for an armed robbery in which a firearm was used, and there were children inside the house. It further noted that, even if the initial entry was unlawful, it had no practical effect on the suppression issue because Detective Woctchou's warrant application did not contain any "information gleaned [from] that pre-warrant intrusion."

Next, the court found that there was a substantial basis for the issuing judge for the robbery warrant to conclude that the evidence sought would be found at 9521 Clocktower Lane. The court referenced *Borschlegal v. State*, 156 Md. App. 322 (2004), which held

that there was a substantial basis for concluding that evidence of illegal gambling in Pennsylvania would be found in defendant's Maryland home because it was logical that he would keep evidence of illegal gambling in his home. It then found that the subsequent warrants issued to Detectives Yoon and Cheuvront were not tainted because the initial warrant was proper.

Finally, with respect to the officers' good faith reliance on the warrant, the court found that "there is also a lot to be said for the good faith exception." It stated that there was "no evidence that any of the detectives . . . engaged in behavior that was inappropriate in preparing these warrants or could not reasonably rely on the warrants that they secured."

II.

Dispositions

A.

Burglary Cases

On July 23 and 24, 2019, the circuit court held a jury trial on the charges relating to the August 20, 2018 burglary of the Alister Apartments. The jury found appellant guilty of second-degree burglary and theft under $1,500, and the court sentenced him to seven years' imprisonment.

On September 12, 2019, appellant pleaded not guilty pursuant to an agreed statement of facts with respect to the charges relating to the August 25, 2018 burglary of the Alister Apartments and the October 5, 2018 burglary of the Columbia Commons

apartments.[4] The court found appellant guilty of second-degree burglary of the Alister Apartments and second-degree burglary of the Columbia Commons apartments, and it sentenced appellant to three years on each conviction. In total, appellant was sentenced to 13 years' imprisonment in the three apartment burglary cases. Appellant appealed those convictions to this Court, where they subsequently were consolidated for appeal (Case Nos. 1259, 1260, & 2142, Sept. Term, 2019).

B.

Armed Robbery Case

On January 14–16, 2020, the circuit court held a jury trial for the armed robbery, assault, theft, and firearms charges related to the December 20, 2018, armed robbery in Columbia. Because the appeal in this case involves more than the suppression issue, we will discuss in more detail the evidence presented in this case.

The robbery victims, Tyrese Tolbert and Daniel Crossland-Francis, who were 18 years old at the time of the robbery, testified that they had been walking together down Cradlerock Way in Columbia at approximately 10:30 p.m. on December 20, 2018. A truck pulled up alongside them, and the driver rolled down the window and asked them "what [they] were doing out in the rain." The victims testified that the assailant got out of the car, approached them, and then pointed a black handgun at them.

[4] Another case pertaining to the motorcycle thefts and possession of the re-encoder device also was called at the trial on September 12, 2019, but those charges were placed on the stet docket.

The assailant demanded that they hand over Mr. Tolbert's "Helly Hansen" jacket and Mr. Crossland-Francis' "Beats" headphones, which they did. The assailant got back into his vehicle and drove away, but he "spun right back around," got out of the car, and came back towards them. Mr. Tolbert testified that, this time, the assailant demanded their iPhones and passcodes.[5] After he took their phones, the assailant returned to his vehicle, shot his gun into the air, and then "sped off."

A neighbor testified that she heard a gunshot at approximately 10:30 p.m. that evening and called the police. The next day, the police searched for shell casings in the area, but they did not find anything. Both victims testified that the assailant dropped the gun after firing it, but he picked it up before leaving the scene.

The State introduced surveillance video showing the initial encounter between the victims and the assailant, corroborating that part of their story. The second part of the incident, after the assailant made a U-turn and came back, was not captured by the camera.

Mr. Tolbert reported the incident to the police the following day. He described the assailant as an African-American male, who was approximately 5'9" and wearing a black beanie, an "olive-green hoodie," and black sweatpants. The man was driving a large, black Toyota SUV truck. Mr. Tolbert subsequently identified the assailant as appellant during a photo array.

[5] Mr. Tolbert's and Mr. Crossland-Francis' testimonies differed slightly regarding what was taken when, but that discrepancy is not relevant to the issue raised on appeal.

Mr. Crossland-Francis described the assailant as approximately 25 years old, 5’10” to 5’11”, bearded, and wearing all-black “sweat gear” with a black hat on. He testified that the vehicle was a “tannish, large SUV” with customized “silver rims.” The victims’ stolen items were never recovered.

Detective Jonathan Berry, a member of the Howard County Police Department’s Robbery Section, testified that he participated in the execution of the first search warrant at 9521 Clocktower Lane on January 18, 2019. The police seized, among other things, three handguns and documentation belonging to appellant from inside the bedroom safe.[6] Inside the closet, they found a “green and black” track suit, along with other male clothing. The guns and track suit, with a “pullover” sweatshirt, as well as photographs of these items, were introduced into evidence without objection. Mr. Tolbert testified that the track suit pictured in a photograph was the same one worn by his assailant.

Appellant testified that, at approximately 6:00 p.m. on December 20, 2018, he was jogging at Lake Elkhorn in Columbia when a friend messaged him asking for help with her car battery. As he was driving on Cradlerock Way after helping the friend, someone standing in the road threw something at his truck, so he slowed down, rolled down his window, and asked why the man had thrown something at him. The man, who was now on the sidewalk with another individual, denied throwing anything. When the discussion became heated, appellant got out of the car and approached the two individuals.

[6] During his post-arrest interview with police, appellant admitted that the guns in the safe belonged to him.

Tensions eventually cooled, and Mr. Tolbert, someone he recognized from around the neighborhood, told him they had just come from a friend's home, and they had been robbed of their phones, a jacket, and a pair of headphones. Appellant offered them use of his cell phone or a ride home, but they declined. Following this encounter, he stopped at the grocery store and then returned home. Appellant did not deny that he was the individual captured on the surveillance video approaching the two young men, but he maintained that the interaction was "cordial."

The jury found appellant guilty on all counts. On March 13, 2020, the court sentenced him to 55 years' imprisonment: 20 years' imprisonment on each armed robbery conviction (merging the respective assault and theft convictions) and 15 years total on the two firearms convictions. Appellant appealed these convictions to this Court, docketed as Case No. 51, Sept. Term, 2020, and this appeal subsequently was consolidated for review by the same panel assigned to Case Nos. 1259, 1260, & 2142, Sept. Term, 2019.

DISCUSSION

I.

Suppression of Items Found at Clocktower Lane

On appeal, appellant argues that the circuit court erred in denying his motions to suppress the evidence seized from 9521 Clocktower Lane.[7] He makes several arguments in that regard. We will address each argument, in turn.

[7] Appellant's brief in Case No. 51, Sept. Term, 2020 adopts the arguments regarding this issue made in the two appellant briefs filed in Case Nos. 1259, 1260, & 2142, Sept. Term, 2019.

A.

Standard of Review

"In reviewing the denial of a motion to suppress evidence under the Fourth Amendment, we look only to the record of the suppression hearing and do not consider any evidence adduced at trial." *Daniels v. State*, 172 Md. App. 75, 87 (2006), *cert. denied*, 398 Md. 314 (2007). "We accept the trial court's factual findings unless they are clearly erroneous, but we review *de novo* the 'court's application of the law to its findings of fact.'" *Pacheco v. State*, 465 Md. 311, 319 (2019) (quoting *Norman v. State*, 452 Md. 373, 386 (2017)). "When a party raises a constitutional challenge to a search or seizure, this Court renders an 'independent constitutional evaluation by reviewing the relevant law and applying it to the unique facts and circumstances of the case.'" *Id.* at 319–20 (quoting *Grant v. State*, 449 Md. 1, 15 (2016)).

B.

Standing

Appellant first contends that the court incorrectly found that he lacked standing to challenge the search of the home. He argues that he presented evidence that he resided at the home, and therefore, he had a reasonable expectation of privacy in the residence. Appellant asserts that the court's finding that he nevertheless abandoned his privacy interest in the residence by advising the police that he did not live there was wrong because: (1) his statement came after the execution of the search warrant; and (2) regardless of the

timing, his verbal disclaimer, without more, was insufficient to extinguish the expectation of privacy in a dwelling when he did, in fact, reside there.

The State contends that the circuit court properly denied appellant's motions to suppress, for several reasons. With respect to Case No. 51, Sept. Term, 2020, relating to the robbery, the State argues that appellant "may have had standing to challenge the first search" pursuant to the robbery warrant because that search occurred prior to his statement abandoning his privacy interest in the house. It argues, however, that the contention is not preserved for review in that case because when evidence obtained during the execution of the warrant was moved into evidence, counsel specifically stated: "No objection." Accordingly, it argues that appellant has waived any challenge to the admission of the evidence in that case.

With respect to the burglary cases, Case Nos. 1250, 1260, and 2142, Sept. Term, 2019, it asserts that the court properly found that appellant abandoned his privacy interest in the residence by telling the police that he did not live there, and therefore, he lacked standing to challenge the search. It contends that a defendant may affirmatively abandon his or her privacy interest in a home by an express, verbal disclaimer of that interest, and appellant did so here. With respect to timing, the State notes that the evidence related to the burglaries was seized as part of Detective Yoon's January 19, 2019 warrant, which was issued and executed *after* appellant's interview with Detective Woctchou the previous day. Accordingly, the State argues that appellant did not have standing to challenge the search

and seizure of "the stolen property related to the burglaries for which he was convicted."[8] Because appellant lacked standing, the State asserts that the validity of the warrants is irrelevant in those cases.

The Fourth Amendment to the United States Constitution, made applicable to the States by the Fourteenth Amendment, guarantees individuals the right to be secure in "their persons, houses, papers, and effects, against unreasonable searches and seizures." *Lewis v. State*, 470 Md. 1, 17 (2020); U.S. Const. amend IV. "The capacity to invoke Fourth Amendment protection requires the individual to establish that he or she maintained 'a legitimate expectation of privacy' in the house, papers, or effects searched or seized." *Whiting v. State*, 389 Md. 334, 346 (2005) (quoting *Katz v. United States*, 389 U.S. 347, 353 (1967)). Thus, in order "to determine whether an individual has standing under the Fourth Amendment, we must examine whether the individual possessed a legitimate expectation of privacy in the effects or premises searched or seized." *Id.* at 347.

It is well settled that "Fourth Amendment protection . . . does not extend to property that is abandoned." *Stanberry v. State*, 343 Md. 720, 731 (1996), *cert. denied*, 520 U.S. 1210 (1997). "[T]o enjoy Fourth Amendment standing, a defendant must have both 1) an actual subjective expectation of privacy and 2) an expectation that is objectively reasonable." *State v. Savage*, 170 Md. App. 149, 182 (2006). "By abandoning property,

[8] Alternatively, the State contends that appellant no longer had permission to live at 9521 Clocktower Lane at the time of his arrest, relying on Ms. Williams' testimony that she had asked appellant to "get out of the house" and "move his stuff out" during a fight prior to the search.

the owner relinquishes the legitimate expectation of privacy that triggers Fourth Amendment protection." *Stanberry*, 343 Md. at 731. As the Court of Appeals has explained:

> Whether property has been "abandoned is generally a question of fact based upon evidence of a combination of act and intent." *Everhart v. State*, [274 Md. 459, 483 (1975)]. Intention is a prime factor in considering whether there has been an abandonment; it is to be ascertained from what the actor said and did since intent, although subjective, is determined from objective facts at hand. [*Duncan*, 281 Md. at 262; *Everhart*, 274 Md. at 483.] Accordingly, while a brief relinquishment of possession or control over property would not ordinarily constitute an abandonment, the question necessarily turns in each case upon whether the complaining party retained a reasonable expectation of privacy in the articles alleged to be abandoned. [*Venner v. State*, 279 Md. 47, 53 (1977)]. As we said in [*Duncan and Smith v. State*, *supra*,] "the expectation of privacy . . . is at the heart of the test for abandonment." 281 Md. at 262, 378 A.2d at 1117.

Morton v. State, 284 Md. 526, 531–32 (1979). *Accord Joyner v. State*, 87 Md. App. 444, 458 (1991) ("The test for abandonment is 'not whether all formal property rights have been relinquished, but whether the complaining party retains a reasonable expectation of privacy in the articles alleged to be abandoned.'") (quoting *Duncan v. State*, 281 Md. at 262). "Intent must be ascertained from what the actor said and did; intent, though subjective, is determined from the objective facts at hand." *Duncan*, 281 Md. at 264.

Here, the State essentially concedes that, because Detective Woctchou's warrant, which resulted in the discovery of the clothing and firearms that connected appellant to the December 20, 2018 armed robbery, was executed *prior* to appellant's statement that he did not live at the residence, appellant had standing to challenge the first search, i.e., the search based on Detective Woctchou's robbery warrant. *See In re Tariq A-R-Y*, 347 Md. 484, 491

(1997) (A person's "expectation of privacy is to be measured as of the time of the offending intrusion."), *cert. denied*, 522 U.S. 1140 (1998).

A more difficult question, however, involves the subsequent warrant, i.e., Detective Yoon's burglary warrant, where the search occurred the day *after* the alleged abandonment. Although an interesting issue, we will not address it because, as discussed, *infra*, even if the court erred in finding that appellant did not have standing to contest the warrant in the burglary cases, the court properly denied the motion to suppress on other grounds, i.e., that there was a substantial basis to issue the warrant, and even if there was not, the officers relied on the warrant in good faith.

C.

Initial Entry

Before turning to the issue whether there was a substantial basis to issue the warrant, we note that appellant argues preliminarily that the suppression court erred in denying the motion to suppress because Detective Ambrose's initial, warrantless entry into the home was not justified either as a protective sweep or one justified by exigent circumstances. The circuit court found that Detective Ambrose's initial protective sweep of 9521 Clocktower Lane was justified because the arrest warrant suggested the presence of firearms and there were children inside the house. Alternatively, it found that, even if the initial entry was unlawful, it had no effect on the challenged warrants, and therefore, suppression on that basis was unnecessary.

Given the evidence here, where Detective Woctchou testified that no observations from the protective sweep were included in the search warrant application, the circuit court properly concluded that Detective Ambrose's entry had no effect on Detective Woctchou's warrant or the evidence seized pursuant to it, and it properly declined to grant the suppression motion on this basis. *See United States v. Crews*, 445 U.S. 463, 475 (1980) ("[T]he exclusionary rule enjoins the Government from benefiting from evidence it has unlawfully obtained."); *Hudson v. Michigan*, 547 U.S. 586, 592 (2006) ("[B]ut-for causation," i.e., where a constitutional violation is "a 'but for' cause of obtaining evidence," is a necessary, but not a sufficient, condition for suppression.). *See also New York v. Harris*, 495 U.S. 14, 19 (1990) ("[A]ttenuation analysis is only appropriate where, as a threshold matter, courts determine that 'the challenged evidence is in some sense the product of illegal governmental activity.'" (quoting *Crews*, 445 U.S. at 471)).

D.

Substantial Basis

Appellant next contends that the first warrant, the robbery search warrant, was invalid because the warrant application failed to establish a nexus between 9521 Clocktower Lane and the items related to the armed robbery. He further contends that the burglary search warrant, which relied on evidence found pursuant to the first warrant, was therefore tainted and also invalid.

The State contends that there was a substantial basis to issue the robbery search warrant. It argues that the warrant affidavit contained sufficient evidence connecting

appellant to the home, and it was "reasonable to infer" that he may stash stolen property and other evidence there. The State asserts that police are not required to have "personal knowledge or direct evidence that the items sought are located in the place" to be searched, and probable cause may be inferred based on the circumstances.

As the circuit court correctly noted at the suppression hearing, its role was not to determine *de novo* whether there was probable cause to support the warrant, but rather, whether there was a substantial basis for the issuing judge to conclude that probable cause existed. *Illinois v. Gates*, 462 U.S. 213, 236–39 ("[A]fter-the-fact scrutiny by courts of the sufficiency of an affidavit should not take the form of *de novo* review."), *reh'g denied*, 463 U.S. 1237 (1983). This deferential standard is applied to "encourage the police to resort to warrants rather than to warrantless searches." *State v. Jenkins*, 178 Md. App. 156, 164–65 (2008). *Accord Stevenson v. State*, 455 Md. 709, 723–24 (2017), *cert. denied*, __U.S.__, 138 S.Ct. 705 (2018). On appeal, this Court similarly owes deference to the warrant-issuing judge, and therefore, our standard of review is precisely the same as the suppression court's review. *Jenkins*, 178 Md. App. at 170–71; *State v. Johnson*, 208 Md. App. 573, 581 (2012).

"[F]inding a 'substantial basis' for the issuance of a warrant means something less than establishing probable cause in the context of reviewing warrantless police activity." *Jenkins*, 178 Md. App. at 174. It is sufficient that "there be some credible evidence which, if believed, could establish each and every distinct element of an offense." *Id.*

"The task of a judicial officer presented with a warrant application 'is to reach a practical and common-sense decision, given all of the circumstances set forth in the affidavit, as to whether there exists a fair probability that contraband or evidence of a crime will be found in a particular search.'" *State v. Faulkner*, 190 Md. App. 37, 46 (2010) (quoting *Greenstreet v. State*, 392 Md. 652, 668 (2006)). "When we review the basis of the issuing judge's probable cause finding, we ordinarily apply the 'four corners rule' and 'confine our consideration of probable cause solely to the information provided in the warrant and its accompanying application documents.'" *Sweeny v. State*, 242 Md. App. 160, 185 (2019) (quoting *Williams v. State*, 231 Md. App. 156, 175 (2016)).

The issuing judge in this case had a substantial basis for finding probable cause to search 9521 Clocktower Lane in connection with the armed robbery. In a nine-page affidavit, Detective Woctchou provided extensive information regarding the December 2018 armed robbery, the surveillance video capturing the robbery, the subsequent observation of a vehicle matching the one involved in the robbery, the ensuing car chase, which resulted in the discovery of mail in the car addressed to 9521 Clocktower Lane, and the subsequent surveillance of that address. Detective Woctchou stated that he believed that appellant was "storing the property taken during the robbery, the clothes worn during the robbery and any evidence related to the robbery in the residence located at 9521 Clocktower Lane."

In addressing appellant's argument that the warrant application did not provide a nexus between the residence and the crime, we must determine whether the warrant-issuing

judge reasonably could infer that evidence relating to the robbery could be found in the residence. *Holmes v. State*, 368 Md. 506, 519 (2002). This Court has explained that

> [d]irect evidence that contraband exists in the home is not required for [the] search warrant [to issue]; rather, 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.

Faulkner, 190 Md. App. at 51 (quoting *Holmes*, 368 Md. at 522).

Here, the affidavit established a nexus between appellant and the residence. Mail for that residence was found in the car appellant was driving, the car was registered to Angela Williams, who had a listed address of 9521 Clocktower Lane, appellant made several calls to a person he called "Angie" while at Central Booking, and the police observed appellant assisting Ms. Williams in bringing groceries into the house and removing motorcycles that the police confirmed were stolen. Appellant acknowledges, in the brief filed in Case Nos. 1259 and 1260, Sept. Term, 2019, and adopted in Case No. 51, Sept. Term, 2020, that this evidence "pointed to the conclusion" that appellant lived at the residence.

The affidavit also permitted an inference that evidence relating to the robbery would be found at the residence. In *Carroll v. State*, 240 Md. App. 629, 652–53, *cert. denied*, 465 Md. 649 (2019), this Court found "a clear nexus" between appellant and the residence searched because it would be reasonable to infer that appellant "would still have evidence of the robbery and homicide in close proximity to him until he could use it for his benefit

or discard it so it could not be found."[9] *Accord United States v. Harris*, 884 F.Supp.2d 383, 393–94 (W.D. Penn. 2012) (Reasonable inference from facts provided nexus between crime and residence, despite the lack of direct evidence linking the defendant's aunt's house to evidence relating to a robbery, where appellant lived there, contraband from the robbery was of a size that "could readily be hidden almost anywhere" and was the "types of items that criminals would likely hide in their residence," the location of the robbery was near the residence, and the items had not been found by the time of appellant's arrest.).

Here, there similarly was an inference that appellant had the stolen goods in the residence. There was evidence indicating that appellant lived there, the robbery occurred close to the residence,[10] the phones and the other items stolen could easily be hidden there, and they had not yet been found.

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[9] In *Carroll v. State*, 240 Md. App. 629, 652–53 (2019), this Court held that there was a nexus between appellant and the places to be searched, but we held that there was not a substantial basis to issue the warrant because there was no information showing why appellant was a suspect for the crimes. Here, appellant does not argue that there was not a substantial basis to believe that he committed the robbery. His sole contention involves the nexus between the residence and evidence relating to the robbery.

[10] According to Google Maps, 9521 Clocktower Lane is approximately a 10-minute drive from the location of the armed robbery. This Court may take judicial notice of digital maps from online mapping services. *See, e.g.*, *Ray v. Mayor & City Council of Balt.*, 203 Md. App. 15, 34–35 (2012) (Using MapQuest to measure distance, including driving distance, between residence and proposed development area.), *aff'd*, 430 Md. 74 (2013); *Cobrand v. Adventist Healthcare, Inc.*, 149 Md. App. 431, 442 n.7 (2003) (Using MapQuest to compare driving distance and travel time between a home and certain courthouses.). *See also Pahls v. Thomas*, 718 F.3d 1210, 1216 n.1 (10th Cir. 2013) (taking judicial notice of Google Maps and satellite images).

Moreover, the inference that appellant was taking stolen goods to the residence was even stronger here, where officers witnessed appellant loading stolen motorcycles into a rental truck outside the home. Given evidence that appellant was storing stolen property at the residence, it was reasonable to infer that he was storing stolen property from the robbery as well. As a result, there was a fair probability that the stolen property from the robbery, that had yet to be recovered, would also be found at that location.

Moreover, the police were looking for other things besides the stolen property, including the firearm used. The Court of Appeals has upheld warrants to search residences where weapons were used in the commission of a crime, and the weapon had not been found at the time of the suspect's arrest. *State v. Ward*, 350 Md. 372, 378–79 (1998); *Mills v. State*, 278 Md. App. 262, 277 (1976).

To be sure, there was a month between the robbery and the execution of the search warrant, which appellant suggests, in Case No. 2142, Sept. Term, 2019, diluted a basis to believe that stolen property would be stored at the residence. Appellant, however, did not make this argument below. Because appellant did not raise the argument below that a lapse of time between the robbery and the warrant made any probable cause stale, the issue is not preserved for this Court's review. *See Carter v. State*, 178 Md. App. 400, 412 n.2 (2008) (Argument not raised during the suppression hearing was not preserved for appellate review.).

Even if the argument was preserved for review, and assuming it had merit with respect to the presence of the stolen property, there was a substantial basis to believe that

other items related to the robbery, such as the weapon used and clothing worn, would be found at the residence. As the Court of Appeals has explained: "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." *Greenstreet*, 392 Md. at 674 (quoting *Connelly v. State*, 322 Md. 719, 733 (1991)). "Factors used to determine staleness include: passage of time, the particular kind of criminal activity involved, the length of the activity, and the nature of the property to be seized." *Id.*

Appellant cites no Maryland case in support of his argument. Other jurisdictions, however, have held that it is reasonable for law enforcement to believe that a robber may store non-perishable evidence that is not inherently incriminating and that has continued utility, such as clothing or weapons, in their home for extended periods of time.

In *United States v. Steeves*, 525 F.2d 33, 35 (8th Cir. 1975), the police obtained a warrant relating to bank robbery, and they found guns during the ensuing search. The United States Court of Appeals for the Eighth Circuit held that the warrant authorizing the search of the defendant's home, which was issued three months after the robbery, was supported by probable cause because, although there was "little reason to believe that any of the bank's money" would still be in the home, the revolver used and the clothing worn by the assailant "were not incriminating in themselves," and the time lapse did not invalidate the warrant. *Id.* at 38. *Accord State v. Martinez*, 719 A.2d 1213, 1221 (Conn. 1998) (Because "clothing may have contained traces of blood, but not necessarily to the point where it was inherently incriminating, the clothing had lasting value and was likely

to remain in the apartment."); *Foster v. State*, 633 N.E.2d 337, 345 (Ind. Ct. App. 1994) (Because the items sought by the police included clothing, which was innocuous, and a gun, which a court could reasonably infer would be kept, the delay between the crime and the warrant did not render the warrant stale.).

Here, the police sought to seize clothing and weapons involved in the robbery (i.e., the olive-green track suit, the gray/black beanie, and "[a]ny or all firearms"). Pursuant to the reasoning of the caselaw discussed, there was a substantial basis to believe that those items would be found in the home a month after the robbery. Accordingly, the circuit court properly found that there was a substantial basis for the issuance of the robbery warrant, and therefore, there was no taint invalidating the warrant involving the burglaries. The circuit court properly denied the motion to suppress.

E.

Good Faith Exception

Although we have concluded that the circuit court properly declined to suppress the evidence seized from the residence because there was a substantial basis for the warrant, we will address the circuit court's alternate finding that, even if there was not a substantial basis to issue the robbery warrant, the good faith exception to the exclusionary rule applied. Appellant contends that the police could not rely in good faith on the robbery warrant because the nexus between the items to be seized and the residence was "so facially deficient" that the police could not "reasonabl[y] presume it to be valid." (quoting *Agurs v. State*, 415 Md. 62, 78 (2010)). The State disagrees, arguing that the police "reasonably

relied on the search warrants in good faith," and therefore, suppression of the evidence seized in the residence was not appropriate.

The exclusion of evidence obtained in violation of the Fourth Amendment is an extreme sanction. *Hudson*, 547 U.S. at 591. It is a remedy "designed to deter police misconduct." *United States v. Leon*, 468 U.S. 897, 916, *reh'g denied*, 468 U.S. 1250 (1984), and therefore, its "rationale loses much of its force" when the police act in good faith, *id.* at 919 (quoting *United States v. Peltier*, 422 U.S. 531, 539 (1975)).

Under the good faith exception, evidence seized pursuant to a warrant subsequently determined to be invalid will not be suppressed unless the officer submitting the warrant application was "dishonest or reckless in preparing the[] affidavit or could not have harbored an objectively reasonable belief in the existence of probable cause." *Agurs*, 415 Md. at 76 (quoting *Leon*, 468 U.S. at 926). In *Leon*, 468 U.S. at 918, 922, the Supreme Court held that "the marginal or nonexistent benefits produced by suppressing evidence obtained in objectively reasonable reliance on a subsequently invalidated search warrant cannot justify the substantial costs of exclusion," and "the suppression of evidence obtained pursuant to a warrant should be ordered only on a case-by-case basis and only in those unusual cases in which exclusion will further the purposes of the exclusionary rule." *Accord Herbert v. State*, 136 Md. App. 458, 488 (2001) ("Even when the warrant is bad, the mere exercise of having obtained it will salvage all but the rarest and most outrageous of warranted searches.").

The Court of Appeals has outlined four scenarios "where the good faith exception would not apply even though the police had relied on a warrant when conducting a search":

> (1) the magistrate was misled by information in an affidavit that the officer knew was false or would have known was false except for the officer's reckless regard for the truth;
>
> (2) the magistrate wholly abandoned his detached and neutral judicial role;
>
> (3) 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) the warrant was so facially deficient, by failing to particularize the place to be searched or the things to be seized, that the executing officers cannot reasonabl[y] presume it to be valid.

Patterson v. State, 401 Md. 76, 104 (2007), *cert. denied*, 552 U.S. 1270 (2008). *Accord Leon*, 468 U.S. at 923.

As indicated, appellant relies on the third scenario. He asserts that the affidavit was so lacking in probable cause that any belief that it was valid was unreasonable.

In assessing this claim, we note that "[t]he standard of factual support required to be presented by the affidavit in order for evidence to be admitted under the good faith exception is considerably lower than the standard for establishing a substantial basis for finding of probable cause by a judge issuing a search warrant." *Marshall v. State*, 415 Md. 399, 410 (2010). Exclusion based on this exemption to good faith exception rule should only be applied in "rare and unusual cases." *Jenkins*, 178 Md. App. at 196.

Here, Detective Woctchou's nine-page affidavit contained numerous details about the armed robbery, the connection of the SUV appellant was driving to the residence, and appellant's connection to the residence. The robbery and the detective's observations all

occurred within the previous month, and based on those observations, Detective Woctchou stated that he believed the evidence sought likely would be found in the home. As indicated, we have concluded that the affidavit satisfied the "substantial basis" test, but even if it did not, the officers reasonably relied on it in good faith. Accordingly, the circuit court properly denied appellant's motions to suppress.

II.

Opening the Door

Appellant's final contention involves only the armed robbery case, Case No. 51, Sept. Term, 2020. Appellant argues that the trial court erred in allowing the State to cross-examine him about stolen goods found in his home that were not relevant to the robbery.

The State contends that the claim, in part, is not preserved for this Court's review. In any event, it argues that the court did not abuse its discretion in allowing the "prosecutor to cross-examine [appellant] about his true motivation for lying about not residing at 9521 Clocktower Lane." It asserts that appellant's trial testimony opened the door to this line of questioning.

A.

Proceedings Below

During cross-examination, the prosecutor established that, when appellant was being questioned by the police, he knew he was being investigated for the robbery. He asked appellant about a conversation that appellant had with Ms. Williams, who had become his wife by the time of trial. The conversation related to the judge's comment at

the suppression hearing that appellant could not "have [his] cake and eat it too," in reference to not being able to tell the police that he did not live at the residence but then claim he did for purposes of standing. Appellant admitted that he said: "I'm a suspect so I'm a liar right of[f] the jump," and he "could have been lying the whole time" during his interview.

On re-direct examination, defense counsel asked what appellant meant by that statement. Appellant conceded that he lied about where he lived during the police interview, but he stated that he did so because he was trying to protect his wife.

The State subsequently requested a bench conference, during which the prosecutor indicated his intent to ask appellant if he lied to the police about the residence because there were stolen goods in the residence, as opposed to trying to protect his wife. Defense counsel objected, asserting that "those charges are on appeal, they're not admissible here." The prosecutor responded that appellant had "open[ed] the door by saying that he lied because of the one reason when he's lying because of another reason." Defense counsel again objected, both on the ground that the convictions regarding those items were on appeal and because "it's much more prejudicial than it is probative." The prosecutor stated that he was not going to refer to convictions, but he reiterated that appellant "opened the door by saying I lied about living there to protect, you know, giving an alternate answer. When the real answer is, there is stolen items, there are stolen weight sets, there are stolen everything there." The circuit court ruled that the prosecutor should not refer to a conviction, but "if the motivation that he testified to was to protect his wife and there was

a different motivation based on a whole bunch of stolen goods and property I think that's fair game."

On re-cross examination of appellant, the following exchange occurred:

> [PROSECUTOR]: So you admitted that you lied to the officers about living at Clocktower Lane, correct? You actually did live at Clocktower Lane, correct?
>
> [APPELLANT]: Yes, I did.
>
> [PROSECUTOR]: And you just now in front of the jury said you lied because you were trying to protect [your wife], correct?
>
> [APPELLANT]: (non-verbal response)
>
> [PROSECUTOR]: Isn't it true that you also lied to the police because there was a bunch of stolen goods that were found there and you were protecting yourself as well?
>
> [APPELLANT]: You're asking me or telling me?
>
> [PROSECUTOR]: I'm asking you.
>
> [APPELLANT]: I wasn't protecting myself.
>
> [PROSECUTOR]: So you – you're saying that you didn't – you did not want to distance yourself from that house?
>
> * * *
>
> [APPELLANT]: It wasn't about me distancing myself, it was about the warrant. Me knowing that they had no right to come in that house.
>
> [PROSECUTOR]: So you were willing to lie to hopefully get the warrant kicked, is that what you're saying?
>
> [APPELLANT]: That's exactly what I'm saying.
>
> [PROSECUTOR]: So you're willing to lie when you need to lie to help yourself, correct, that's what you're saying?

> [APPELLANT]: It wasn't to help me, it was to help my wife because I didn't know what was going on. It had nothing to do with me. She was three months pregnant and I wasn't thinking of me.
>
> [PROSECUTOR]: How does you not living at the house with a bunch of stolen goods protect her, because that would leave her the only person there with these stolen goods and not you? So how does that help her?
>
> [APPELLANT]: She was arrested, right. And they had no warrant to come in the house. So I knew if I distanced myself from the house because my name wasn't on the house basically, so I knew I was wrong but I didn't want them locking her up accusing her of something that she had nothing to do with because I didn't know what was going on.
>
> [PROSECUTOR]: And –
>
> [APPELLANT]: So I told them I didn't live there, and you're correct.[11]

B.

Analysis

Appellant contends that the trial court erred in allowing the prosecutor to ask him about the stolen goods at the home for two reasons. First, he asserts that the questioning involved a collateral issue that could not be introduced pursuant to the "open door"

[11] During closing arguments, the State referenced this line of questioning, stating as follows:

> So I just hope that when you're deliberating you take the time to look at the evidence and when you think about everything, what makes sense, that the Defendant stood here – sat here and said I will not . . . I will lie when it suits me. The fact that he said no, I lied about living at that house to protect Angela, and then when I asked him how would this separating yourself from a house with stolen goods in it, leaving only your wife or girlfriend Angela in the house to be accused of those items, how does that protect Angela? He didn't have a good answer. He didn't have an answer. It doesn't make sense.

doctrine. Second, he argues that the danger of unfair prejudice outweighed the probative value of the evidence.

In *State v. Heath*, 464 Md. 445, 459–60 (2019), the Court of Appeals explained the "opening the door" doctrine as follows:

> [T]he legal doctrine of "opening the door" . . . expands the rule of relevancy. The opening the door doctrine "authorizes admitting evidence which otherwise would have been irrelevant in order to respond to (1) admissible evidence which generates an issue, or (2) inadmissible evidence admitted by the court over objection." *Clark v. State*, 332 Md. 77, 84–85, 629 A.2d 1239, 1243 (1993). For example, the doctrine provides a remedy where one party introduces evidence that was previously irrelevant, over objection, and in doing so, makes relevant an issue in the case. As a remedial tactic, "the trial court may rule that the first party has 'opened the door' to evidence offered as a fair response by the opposing party that previously would have been inadmissible because irrelevant, but has now become relevant." 5 Lynn McLain, *Maryland Evidence State and Federal*, § 103:13(c)(i) at 82 (3rd ed. 2013). Put another way, "'opening the door' is simply a way of saying: 'My opponent has injected an issue into the case, and I ought to be able to introduce evidence on that issue.' " *Clark*, 332 Md. at 85, 629 A.2d at 1243.
>
> Although the "opening the door" doctrine expands the rule of relevancy, the doctrine has its limitations. The doctrine does not allow, for example, "injecting collateral issues into a case or introducing extrinsic evidence on collateral issues." *Id.* at 87, 629 A.2d at 1244. A collateral issue is one that is immaterial to the issues in the case. *See Hardison v. State*, 118 Md. App. 225, 239, 702 A.2d 444, 451 (1997) (defining a "non-collateral fact" as one that is material to the issues in the case); *see also Gray v. State*, 137 Md. App. 460, 481–85, 769 A.2d 192, 204–06 (2001) (holding that testimony from a witness concerning her being raped was a collateral issue because the alleged rape existed only as an unproven allegation, testimony of the allegation was highly likely to lead the jury on a detour as to whether the rape had actually happened and would distract the jury).
>
> An additional limitation of the doctrine is consistent with Maryland Rule 5-403. That limitation excludes evidence if its probative value "is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Md. Rule 5-403.

With that background in mind, we address the parties' contentions.

1.

Preservation

The State initially argues that appellant's first contention, that the questioning was improper because it related to a collateral issue that could not be admitted in the case pursuant to the open door doctrine, is unpreserved for review because it was not raised below. Appellant argues that this argument is preserved because: (1) defense counsel's request at the conclusion of the bench conference, that the court "note [his] objection," was a general objection that preserved all arguments in support of his claim of error; and (2) his argument on appeal does not raise a new issue, but instead, it asserts a new theory or rationale in support of an already raised and decided issue.

We agree with the State that appellant's argument in this regard is unpreserved for our review. "It is well-settled that when specific grounds are given at trial for an objection, the party objecting will be held to those grounds and ordinarily waives any grounds not specified that are later raised on appeal." *Klauenberg v. State*, 355 Md. 528, 541 (1999). Here, appellant's argument that counsel's objection at the end of the bench conference qualified as a general objection that preserved all possible grounds is without merit. Counsel's comment clearly was a reference back to his specific objections articulated moments earlier. *See Stewart-Bey v. State*, 218 Md. App. 101, 127 (2014) ("An objection loses its status as a general one . . . where the objector . . . voluntarily offers specific reasons for objecting to certain evidence." (emphasis omitted)).

With respect to appellant's second argument, he is correct that an appellant may, under some circumstances, properly present an appellate court with a "more detailed version" of an argument made at trial. The Court of Appeals, however, has refused to require trial courts "to imagine all reasonable offshoots of the argument actually presented to them before making a ruling on admissibility." *Starr v. State*, 405 Md. 293, 304 (2008) (quoting *Sifrit v. State*, 383 Md. 116, 136 (2004)). *Accord Klauenberg*, 355 Md. at 541 (An objection based on relevance did not preserve an appellate argument that the testimony was improper "bad acts evidence."); *Jeffries v. State*, 113 Md. App. 322, 340–42 (Appellate argument that evidence was unduly prejudicial and improper other crimes evidence was not preserved where objection below was only that the evidence was irrelevant.), *cert. denied*, 345 Md. 457 (1997).

Here, as the State correctly notes, appellant objected to the prosecutor's line of questioning regarding the stolen goods only on the grounds that (1) the State was not permitted to refer to convictions pending appeal; and (2) the evidence was unfairly prejudicial. Although the bench conference concerned the opening the door doctrine, appellant did not raise the contention that the State's line of questioning was inappropriate under that doctrine because it would insert a collateral or immaterial issue. Accordingly, that issue is not preserved for our review.[12]

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[12] Even if preserved, we note that it is difficult to argue that appellant's credibility, the basis for the State's questioning, was not material to the case.

2.

Unfair Prejudice

We thus turn to the argument that is preserved for our review, i.e., that the State's line of questioning regarding the stolen items in the home was inadmissible because the probative value of the evidence was substantially outweighed by the danger of unfair prejudice. Appellant contends that permitting the State to discuss the stolen goods was highly prejudicial because it "invited the jury to infer that he had a propensity to steal," and it severely undermined his credibility, which was particularly damaging because his defense was dependent on his credibility.

The State argues that the circuit court properly exercised its discretion in permitting the prosecutor's cross-examination. With respect to probative value, it asserts that appellant inserted the issue of his motivation for lying to the police, and the State was entitled to "meet fire with fire," *Heath*, 464 Md. at 456, and confront appellant with his real reason for lying to the police, i.e., to protect himself from connection to the stolen property found at the residence. It further argues that the questioning was not unfairly prejudicial, stating that the prosecutor did not ask any details about the stolen goods, "suggest when they were stolen, or even accuse [appellant] of stealing them."

We agree with the State that the questioning had some probative value after appellant injected the issue of his motivation for lying to the police about his residence. The issue, though, is whether the probative value of this questioning was outweighed by unfair prejudice. Maryland Rule 5-403 provides that, even when evidence is relevant, it is

subject to exclusion "if its probative value is substantially outweighed by the danger of unfair prejudice." *Accord Heath*, 464 Md. at 459–61 (Evidence is not admissible under the "opening the door doctrine," if its probative value is "substantially outweighed by the danger of unfair prejudice.").

A trial court's decision in the balancing of probative value and unfair prejudice is reviewed under an abuse of discretion standard. *Oesby v. State*, 142 Md. App. 144, 167–68, *cert. denied*, 369 Md. 181 (2002). "An abuse of discretion occurs where no reasonable person would take the view adopted by the circuit court." *Williams v. State*, 457 Md. 551, 563 (2018).

Appellant contends that this questioning unfairly prejudiced him because it damaged his credibility with the jury. In *Heath*, 464 Md. at 464, the Court of Appeals held that the probative value of testimony regarding the defendant's real purpose in being at the crime scene was substantially outweighed by the danger of unfair prejudice because, among other things, it called into question his credibility, which was crucial for his claim of self-defense. Appellant's credibility in this case similarly was crucial given that his defense was premised almost entirely on his testimony that his interaction with the two victims was innocent, and they told him that their possessions had been stolen before running into appellant. "The success of that claim depended upon the jury's willingness to believe [his] version of events." *Id.* at 465.

Only unfair prejudice, however, precludes the admission of evidence. *See Newman v. State*, 236 Md. App. 533, 549 (2018) ("What must be balanced against 'probative value'

is not 'prejudice' but, as expressly stated by Rule 5-403, only 'unfair prejudice.'"). Here, once appellant injected his credibility into evidence by saying he lied to the police only to protect his wife, it does not seem unfair for the State to explore that testimony. As the State notes, the facts in *Heath*, 464 Md. at 464, were different because the comments that were found to open the door were made by counsel in opening statement, as opposed to testimony given by the defendant.

Given the facts of this case, however, and the repeated reference to stolen goods found in the home, we conclude that the questioning was unduly prejudicial. Appellant was on trial for an armed robbery, in which he was alleged to have stolen various property from the victims.[13] We agree with appellant that the prosecutor's multiple references to the "bunch of stolen goods" found in his home suggested to the jury that appellant had a propensity to steal. Given that appellant was not on trial with respect to those stolen goods, and that no limiting instruction was given, permitting this questioning was unfairly prejudicial in this case. The circuit court abused its discretion in permitting the State to pursue it. *See State v. Tickler*, 25 P.3d 445, 449 (Wash. Ct. App. 2001) (Allowing the State to prove that defendant was in possession of stolen items not related to the stolen property at issue in the case was highly prejudicial, and an abuse of discretion, because it left the jury to conclude that the defendant was a thief.). Accordingly, we reverse appellant's convictions involved in Case No. 51, Sept. Term, 2020, relating to the armed robbery.

[13] The jury was advised that none of the item taken from the victims during the armed robbery were found in the home.

III.

Conclusion

In sum we conclude that the circuit court did not err in denying appellant's motions to suppress in all cases on appeal. With respect to Case No. 51, Sept. Term, 2020, however, we hold that the circuit court abused its discretion in permitting the prosecutor to pursue a line of questioning in which the probative value of the elicited evidence was outweighed by unfair prejudice. Accordingly, we reverse the judgment in that case.

JUDGMENTS OF THE CIRCUIT COURT FOR HOWARD COUNTY AFFIRMED IN CASE NOS. 1259, 1260, & 2142, SEPT. TERM, 2019. JUDGMENT IN CASE NO. 51, SEPT. TERM, 2020 REVERSED. COSTS TO BE SPLIT EVENLY.