Circuit Court for Baltimore City
Case No.: 119148028

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1282

September Term, 2020

DEREK HOEY

v.

STATE OF MARYLAND

Beachley,
Shaw,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Shaw, J.

Filed: February 3, 2022

Appellant, Derek Hoey, was indicted in the Circuit Court for Baltimore City and charged with first degree murder and wearing and carrying a dangerous weapon, arising from a stabbing in the 5700 block of Pennington Avenue. Appellant was convicted by a jury of first degree murder and sentenced to life imprisonment. On this timely appeal, appellant asks us to address the following questions:

> 1. Did the trial court err in failing to suppress the fruits of the search warrant for Appellant's vehicle?
>
> 2. Did the trial court err in allowing the victim's boss to testify when the testimony was irrelevant and prejudicial?

For the following reasons, we affirm.[1]

BACKGROUND

In the early morning hours of May 4, 2019, Paul Denes was riding his bicycle home on Pennington Avenue when he saw a dark-colored car driving erratically towards him at a high rate of speed.[2] Denes observed a white man driving and a woman with dark hair seated in the front seat. He did not see anyone in the back seat, but did see movement, testifying "[t]here was something – something pulsing around in the back of that car." The car quickly pulled into a driveway and Denes continued riding his bike.

[1] Appellant was tried along with his co-defendant, Kara Bach. Bach was convicted of accessory after the fact to murder. On May 14, 2021, this Court granted the unopposed joint motion to consolidate appellant's and Bach's appeal, in Case Number 1355 of the September 2020 Term. Thereafter, on May 25, 2021, Bach entered a line of dismissal and this Court ordered that Bach's appeal be dismissed, effective June 1, 2021. *Bach v. State*, No. 1355, Sept. Term, 2020 (Mandate issued June 1, 2021).

[2] Mr. Denes' name is spelled differently in some transcripts. We shall use the spelling as provided in one of those transcripts and in the State's supplemental discovery.

Shortly thereafter, the car again came towards him, and Denes moved out of the way. He then heard "a screeching halt." Denes stated:

> [T]he next thing I see is a white male standing at the rear passenger door, the driver's side. I can still visualize in my mind the door open like this. And that male standing there lunged repetitively down into the car seat. I can't see anything else but that. I can still in my visualize [sic] see the hand's pointy.

Denes testified he thought "it was a fight," and he called the police. Denes then approached the scene and saw a man standing in the street with "about two feet of blood squirting out of this arm into the air." Denes grabbed the man and tried to stop the bleeding. He moved him to the curb and noticed that he "went limp." Denes then took off his shirt and used it to try to stop the victim's bleeding. He continued until the paramedics and police arrived on the scene. Denes confirmed that he spoke to the police afterwards, including Detective Cruz.[3]

The victim was identified as Jorge Perez. An autopsy revealed that Perez sustained eighteen (18) cutting wounds and thirteen (13) stab wounds to his chest, abdomen, back, head, cheek, arms, and hands. Perez had a blood alcohol content of 0.11, but there were

[3] Although not clear, it appears that Denes may have pointed at appellant in the courtroom at one point during his redirect examination. Denes testified that he saw "this man doing this… into the back seat." However, during recross, Denes agreed that he never made an identification of appellant, either during trial or prior to trial. He also agreed that, when he was interviewed near the time of the incident, he told Detective Veney, "I cannot picture his face."

no drugs present in his system. The cause of death was multiple sharp force injuries, and the manner of death was homicide.

The case proceeded to trial and following jury selection, appellant's counsel proffered that, as part of discovery, he was only provided with a photograph of the first page of the search warrant for appellant's vehicle. Neither side disputes that the full warrant was not received. Counsel made clear "I don't suggest that the State hid that from me," and "I just think that it inadvertently did not get to either defense attorney. I'm not suggesting any purposeful foul play." Counsel argued that the late disclosure was a violation of the State's discovery obligations.

Upon inquiry by the court, defense counsel agreed that he was not asking for a hearing based on *Franks v. Delaware*, 438 U.S. 154 (1978). Counsel then was asked what he would have raised had the warrant been provided earlier, and the following ensued:

> [DEFENSE COUNSEL]: Well, the only thing that I would have argued is, when you look at the affidavit for the search warrant for the car, the warrant actually, and this might be an error, I don't know. But the police actually asked for, in the affidavit for the car, the right to search for his DNA. They didn't even ask to search the car. Maybe that's a typographical error, but it doesn't say that.
>
> THE COURT: Wait. Say that again.
>
> [DEFENSE COUNSEL]: In other words, the affidavit lists everything that happens. And then the last paragraph is, may we please get his DNA. It doesn't even ask to search the car. So I think I would have raise[d] that, because – I mean, I don't know if it was a *Franks*. But they didn't ask to search the car. So I think that the – I would have argued that the reviewing judge, …, advocated [sic] his responsibility because –

THE COURT: In signing it.

[DEFENSE COUNSEL]: -- in signing it, because it did not ask for – the affiant didn't say we believe stuff's in the car, it said we're asking for his DNA. That's just what it said. I certainly would have made that challenge.

The State responded that, for purposes of the motion, State's Exhibit 1 was the photograph of the first page of the warrant, provided in discovery. State's Exhibit 2 was a note indicating that the State had applied for a separate search warrant for appellant's DNA.[4] And, State's Exhibit 3 was the State's Initial Disclosures, Notices and Motions, provided on or around August 23, 2019, and indicating that there was a search warrant in this case. The State then argued, relying on *Thomas v. State*, 397 Md. 557 (2007), that there was no allegation that it acted in bad faith in this matter and that appellant suffered no prejudice that would warrant the extreme sanction of exclusion of the evidence recovered pursuant to the search warrant.

The court then addressed defense counsel:

THE COURT: [Defense counsel], are you asking for me to consider whether [the reviewing judge] had a sufficient basis upon which to sign a warrant for the car?

[DEFENSE COUNSEL]: Yes.

THE COURT: All right. Other than that, can you suggest any prejudice that you or your client suffered as a result

[4] That one page "note" provides that, "[o]n Saturday May 4, 2019 a DNA Search and Seizure Warrant was obtained for suspect Derek Hoey. The warrant was signed by District Court Judge Flynn Owens. The warrant was executed on this same day at the Homicide Unit. Mr. Hoey's DNA collected by taking oral swabs from his mouth. The oral swabs were submitted to the Evidence Control Section as listed below." The DNA search warrant mentioned in this note is not included with the record on appeal.

of the State's failure to disclose anything other than the initial page of the search warrant?

[DEFENSE COUNSEL]: Other than the?

THE COURT: Initial page. Because I think everyone agrees that you had it.

[DEFENSE COUNSEL]: No other prejudice.

The court ruled on the discovery motion:

Okay. I am going to review – first, with respect to the discovery violation. I believe that [the Prosecutor's] reliance on Thomas versus State is appropriate. In this case, with these circumstances, I do find that exclusion of the evidence would be extreme. That if [Defense Counsel] wished to request a continuance based on the late disclosure of the warrant – and I will note for the record, that despite my sympathies for counsel in reviewing quite this many photographs, it was disclosed the fact the existence of a search warrant was disclosed, because the front page was disclosed with respect to – within the photographs.

I will also note that both counsel, being as experienced as they are, I think appropriately expressed some surprise in the fact that there would not have been a search warrant in this case. So frankly, I'm not going to give [appellant] the windfall of exclusion. . . .

The court then denied the motion to suppress:

If I could see the Court Exhibit 1 that I just handed you. Thanks. And officer, if you would, remove his restraints, please. Thanks. I've had an opportunity to review in its entirety that which I have marked as Court's Exhibit 1 for purposes of this motion, which is the search warrant for the Saturn at issue in this case.

[Defense counsel] appropriately points out that the paperwork, the affidavit in support of the search warrant, does request the wrong relief. It prays for a search and seizure warrant to be granted to obtain DNA oral swabs from Derek

> Hoey. But it also, I note throughout the entirety of the affidavit, as well as in the search warrant, the entire thing refers to a Saturn and any objects which may be recovered in the Saturn. As the entirety of the search warrant needs to be reviewed on its four corners, I am satisfied that at the time he signed it, [the reviewing judge] did have probably [sic] cause to sign the search warrant authorizing the search of the black Saturn.
>
> Because it does – while the affidavit does pray for the wrong relief, the search warrant itself does contain probable cause upon which [the reviewing judge] had to rely. And therefore I'm going to respectfully deny the – I'm sorry. I'm going to deny [Defense Counsel's] motion to suppress any evidence seized as a result of the execution of this search warrant. As I've stated, I'm having this document in its entirety marked Court Exhibit 1 for purposes of the motion.

The appellate record was supplemented with Court's Exhibit 1, the search warrant and affidavit in support thereof, via Appellant's unopposed motion to supplement the record, on or around August 3, 2021. That search and seizure warrant provides as follows:

> TO: Any Police Officer of Baltimore City:
>
> The affidavit having been made before me by (a) Detective Aaron J. Cruz, said Affidavit being incorporated by reference into this warrant and made a part thereof, that he (they) has (have) reason to believe that in the vehicle (b) 2001 Saturn . . . Black 4 Door
>
> in the City of Baltimore, there is now being concealed certain property, namely:
>
> (c) blood, clothing, knife or any sharp objects, cell phones and any other evidence relating to criminal activity
>
> Which is (are) evidence relating to the commission of a crime pertaining to
>
> (d) CR 2-201 1st Degree Murder

> and I am satisfied that there is probable cause to believe that the property so described is being concealed on the vehicle above described and that the foregoing grounds for issuance of the search warrant exists. You are therefore commanded, with the necessary and proper assistance, to search forthwith the vehicle herein above described for the property specified, executing this warrant and making the search; and if the property be found there, to seize it; and if upon execution of this warrant, there are found persons then and there engaged in the commission of a crime, arrest those so participating; leaving a copy of this warrant with the inventory of the property seized and returning cop[y of said warrant and inventory, if any, to me within ten days after execution of this warrant; or, if not served, to return this warrant to me promptly, but not later than five days after this expiration, as required by law.

The warrant is supported by affidavit, and that document indicates, in the first line, that it was for a 2001 Saturn, Black 4 Door. The affidavit then recounts facts in support of probable cause, including, but not limited to, that on May 4, 2019, at approximately 1:27 a.m., Baltimore City Police Officers responded to the 5700 block of Pennington Avenue for a report of a male stabbed. Upon their arrival, police located a victim with multiple stab wounds, who ultimately succumbed to his injuries. As part of the investigation, witnesses indicated the victim was seated in the rear driver's side of a black car when an unidentified white male exited the front of the car and stabbed the victim multiple times. The suspect vehicle then fled the scene, northbound on Pennington Avenue towards Patapsco Avenue. The affidavit continues:

> At the conclusion of our investigation at the scene, your Affiant along with members of his squad left the scene driving towards Pennington and Patapsco. While driving onto the 1300 block of Patapsco, we observed a vehicle accident which Police Officers were investigating. The vehicle was a black

> Saturn, ... The vehicle had crashed and was sitting on top of the medium [sic] with front end damage. In the vehicle we observed a white female along with a white male at that time, we stopped to investigate the vehicle further. Upon closer inspection, we observed the male to be not conscious with a large amount of blood on his hands and clothing. We also observed a large amount of blood on the rear driver's side of the car along with blood in the rear passenger seat.

The male was identified as appellant and was transported to the hospital for treatment for lacerations to his left hand and an apparent overdose. The female, identified as Kara Elaina Bach, informed the police that appellant was "in a physical altercation with a male in their car at which time Mr. Hoey stabbed the victim multiple times on Pennington Ave where we found the victim."

Pertinent to the issue on appeal, the affidavit concludes as follows:

> At this time, your Affiant prays a search & seizure be granted to obtain DNA oral swabs from suspect Derek Steven Hoey M/W/DOB 12/7/87. This is to compare the blood obtained from the scene along with comparing blood evidence from the victim and the suspect Derek Steven Hoey.[5]

At trial, the State's investigation of the homicide was recounted through a number of additional witnesses, including Baltimore City Police Detective Mark Veney. Veney testified that, while he was en route to the crime scene, he noticed a disabled vehicle in the 1300 block of Patapsco Avenue. He took note of the vehicle, but he continued along his

[5] The fourth page of Court's Exhibit 1 is the return. The top part of the return does not identify the place searched, but lists the following inventory: "blood swabs, 2 brown leather wallets (one w/blood) found on front passenger floor, Black & Decker folded knife w/blood found in middle console, misc. paperwork Kara Bach & Derek Hoey, female clothing found in bag on backseat, 2 female bag rear seat, one green ziplock bag w/white residue (front passenger seat), one pair of jeans w/suspected blood (in trunk)."

way to respond to the scene of the stabbing. After speaking with witnesses at the crime scene and gathering information, Veney returned to the vehicle he saw earlier.[6] Detective Veney observed "a large amount of blood" on its exterior. He also saw blood in the backseat, as well as on a hat located in the backseat. Detective Veney further testified, without objection, that he saw cuts on that hat.

Detective Veney stated that appellant was seated in the front passenger seat of the vehicle in question, and Bach was in the driver's seat. Appellant appeared "semi-conscious," he had blood on his person, and his left hand was bandaged. As the detective spoke with appellant, appellant lost consciousness and had to be transported to a hospital.

As part of the investigation, Detective Aaron Cruz applied for, and obtained a search and seizure warrant for the vehicle. Detective Veney assisted in the execution of that warrant. Photographs of the vehicle, taken during the search, were admitted into evidence at trial, without objection. Detective Veney testified that the vehicle contained blood on the exterior and interior. Personal papers in appellant's name were found in the glove compartment. A knife and "some powder" were found in the center console. The knife was admitted without objection.

The forensic evidence in the case included DNA and blood evidence recovered from the vehicle, appellant, Bach, and the victim. As will be detailed, that evidence, also

[6] Photographs of the vehicle were admitted into evidence. Most of the exhibits admitted at trial are not included with the record on appeal.

admitted without objection, included evidence of the victim's DNA on swabs taken from the appellant's right hand, the murder weapon, and the vehicle.

Appellant's DNA was found on the exterior of the vehicle, and Perez's DNA was found on the exterior and interior of the vehicle. Three different DNA profiles were found on various samples recovered from a bloody knife found in the center console of the Saturn, and both appellant's and Bach's DNA profiles matched ones recovered from that knife. Other evidence recovered from the interior of the vehicle, including a wallet, was covered with blood. In addition, blood stained pants were found in the trunk. Latent fingerprints were recovered from the vehicle, and no objection was made at trial to their admission. Some of those prints were consistent with appellant's fingerprints and palm print. Swabs were also taken from appellant's right hand, and the victim's DNA was found as part of a mixture on that swab. The expert's report detailing the DNA evidence recovered from the vehicle was admitted without objection.

DISCUSSION

I.

Appellant first contends that the court erred in not suppressing the fruits of the search of the vehicle in question, pursuant to a search warrant, on the grounds that the affidavit in support of the warrant lacked particularity in identifying the place to be searched. Specifically, appellant avers the affidavit indicated the search was for appellant's DNA, not the vehicle. Appellant also argues that the State violated its discovery obligation by disclosing only the first page of the warrant until the day before trial. The State responds

that although the affidavit in support of the warrant requested the authorization of a search for appellant's DNA, the search warrant, itself, particularly identified the vehicle to be searched. Further, the executing officers relied in good faith on the warrant, and appellant was not prejudiced by the State's late disclosure of the entire search warrant.[7]

"The Fourth Amendment to the United States Constitution protects '[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.'" *State v. Johnson*, 458 Md. 519, 533 (2018) (quoting U.S. Const. amend. IV). "Reasonableness within the meaning of the Fourth Amendment 'generally requires the obtaining of a judicial warrant.'" *State v. Johnson*, 458 Md. at 533 (quoting *Riley v. California*, 573 U.S. 373, 382 (2014)).

"When the State seeks to introduce evidence obtained pursuant to a warrant, 'there is a presumption that the warrant is valid[,]' and 'the burden of proof is allocated to the

[7] Both parties recognize, but neither relies upon, the general principle that the police may search a vehicle without a warrant when there is probable cause to believe that the vehicle contains evidence of crime. *See generally, Pacheco v. State*, 465 Md. 311, 321 (2019) ("[*Carroll v. United States*, 267 U.S. 132 (1925)] and its progeny authorize the warrantless search of a vehicle if, at the time of the search, the police have developed 'probable cause to believe the vehicle contains contraband or evidence of a crime'") (citations omitted). Although it is arguable this exception applies under the circumstances of this case and could apply as an independent source to attenuate any illegality in execution of the search warrant, *see, e.g., Williams v. State*, 372 Md. 386, 412 (2002) (citing *Murray v. U.S.*, 487 U.S. 533, 542 (1988)), whereas the issue does not appear to have been raised in the motions court, we decline to discuss it further. *Cf. Elliott v. State*, 417 Md. 413, 437-38 (2010) ("[A]bsent evidence relating to inevitable discovery, the doctrine should not be applied *sua sponte* because an appellate court's determination of the issue would be based on speculation rather than 'historical facts that can be verified or impeached'") (citation omitted).

defendant to rebut that presumption by proving otherwise.'" *Volkomer v. State*, 168 Md. App. 470, 486 (2006) (quoting *Fitzgerald v. State*, 153 Md. App. 601, 625 (2003), in turn, discussing *Franks v. Delaware*, 438 U.S. 154, 171 (1978)). Further, when reviewing a motion to suppress evidence seized pursuant to a warrant, we must determine whether, based on the "four corners" of the warrant and its attachments, *Sweeney v. State*, 242 Md. App. 160, 185 (2019), the issuing judge had a "substantial basis" for finding probable cause to issue the warrant. *Carroll v. State*, 240 Md. App. 629, 649, *cert. denied*, 465 Md. 649 (2019); *see Moats v. State*, 230 Md. App. 374, 391 (2016) ("The evidence necessary to demonstrate a "substantial basis" is less than that which is required to prove "probable cause"), *aff'd*, 455 Md. 682 (2017).

Moreover, "[a]lthough in a particular case it may not be easy to determine when an affidavit demonstrates the existence of probable cause, the resolution of doubtful or marginal cases in this area should be largely determined by the preference to be accorded to warrants." *United States v. Ventresca*, 380 U.S. 102, 109 (1965) (citation omitted). This encourages use of "the warrant process by police officers" and "recognition that once a warrant has been obtained, intrusion upon interests protected by the Fourth Amendment is less severe than otherwise may be the case." *Illinois v. Gates*, 462 U.S. 213, 236 n. 10 (1983); *see also Moats*, 230 Md. App. at 391 ("This deferential review is motivated by the Courts' express desire to encourage police officers to seek warrants before conducting any search or seizure"). As the Supreme Court explained:

> These decisions reflect the recognition that the Fourth Amendment's commands, like all constitutional requirements,

> are practical and not abstract. If the teachings of the Court's cases are to be followed and the constitutional policy served, affidavits for search warrants, such as the one involved here, must be tested and interpreted by magistrates and courts in a common-sense and realistic fashion. They are normally drafted by nonlawyers in the midst and haste of a criminal investigation. Technical requirements of elaborate specificity once exacted under common law pleading have no proper place in this area. A grudging or negative attitude by reviewing courts toward warrants will tend to discourage police officers from submitting their evidence to a judicial officer before acting.

Ventresca, 380 U.S. at 108.

A. Waiver

Although our standard of review is limited to the facts elicited at the suppression hearing, *see Trott v. State*, 473 Md. 245, 253-54 (2021), it appears this issue was waived during trial. *See also Haslup v. State*, 30 Md. App. 230, 239 (1976) (observing that an appellate court may determine *sua sponte* whether party has preserved a suppression issue for appellate review). Maryland Rule 4-252 (h) (2) (C) provides:

> If the court denies a motion to suppress evidence, the ruling is binding at the trial unless the court, on the motion of a defendant and in the exercise of its discretion, grants a supplemental hearing or a hearing de novo and rules otherwise. A pretrial ruling denying the motion to suppress is reviewable on a motion for a new trial or on appeal of a conviction.

Waiver prevents a party from raising "'any claim of error based upon a right they have waived before a trial court.'" *Brice v. State*, 225 Md. App. 666, 679 (2015) (quoting *Brockington v. Grimstead*, 176 Md. App. 327, 355 (2007), *aff'd*, 417 Md. 332 (2010)), *cert. denied*, 447 Md. 298 (2016). If a court denies a motion to suppress and the defendant says

nothing at trial when the State moves to introduce the evidence, the defendant has preserved their objection to the denial of the motion to suppress, and there is no waiver. *Jackson v. State*, 52 Md. App. 327, 331 (1982). On the other hand, "[i]f a pretrial motion is denied and at trial appellant says he has no objection to the admission of the contested evidence, his statement effects a waiver." *Id*. at 332. Therefore, where a court denies a motion to suppress and at trial the defendant affirmatively states that they have no objection to that evidence, the defendant waives their objection to the denial of the motion to suppress. *Erman v. State*, 49 Md. App. 605, 630 (1981).

Here, although appellant raised an issue with respect to the search warrant prior to the reception of evidence, namely whether the affidavit accurately identified the place to be searched and whether the State violated its discovery obligations by providing the entirety of the warrant and affidavit the day before jury selection, during trial, when the evidence sought to be suppressed was admitted, appellant's counsel repeatedly stated at trial that he had "no objection" to the admission of that evidence seized following execution of the search warrant.

For instance, when photographs of the vehicle, taken during the search, were admitted, defense counsel was asked whether he had any objection to their admission, and he replied, "No." There were three different profiles found on various samples recovered from a bloody knife found in the center console of the Saturn, and both appellant's and Bach's profiles matched DNA recovered from that item. When the court asked defense counsel if he had any objection to admission of this knife, counsel replied "No." Also,

when the State sought to move in the expert's report detailing the DNA evidence recovered from the vehicle, in response to the court's question whether he had any objection, defense counsel again replied in the negative. As such, any issues concerning the items seized during the execution of the search warrant were waived.

B. Search Warrant

Even if not waived, the primary basis of appellant's argument is that there is a discrepancy between the identification of the item to be searched between the warrant and the affidavit and that this conflict renders the search of the vehicle unlawful under the Fourth Amendment. The particularity requirement of the Fourth Amendment "ensures that the search will be carefully tailored to its justifications and will not take on the character of the wide ranging exploratory searches the Framers intended to prohibit." *Peters v. State*, 224 Md. App. 306, 342-43 (quoting *Maryland v. Garrison*, 480 U.S. 79, 84 (1987) (footnote omitted)), *cert. denied*, 445 Md. 127 (2015). "Additionally, the description of the limited places to be searched must be 'definite enough to prevent any unauthorized and unnecessary invasion' of privacy rights." *Eusebio v. State*, 245 Md. App. 1, 26 (2020) (quoting *Moats*, 455 Md. at 708 (Adkins, J., concurring) (in turn quoting *Saunders v. State*, 199 Md. 568, 572 (1952)). And "[t]he description must be 'such that the officer with a search warrant can, with reasonable effort ascertain and identify the place intended.'" *Eusebio*, 245 Md. App. at 26 (quoting *Steele v. United States*, 267 U.S. 498, 503 (1925)).

The search warrant in this case set forth the place to be searched as a black four door 2001 Saturn with Maryland Tags. We are persuaded that this particularly described the

place to be searched. Although the place to be searched identified in the affidavit was in conflict, *i.e*., appellant's DNA, we conclude that discrepancy, even under the four corners approach, did not undermine the legitimacy of the warrant itself. "Any other conclusion would elevate the author of the incorporated probable cause affidavit over the judge issuing the warrant." *United States v. Sedaghaty*, 728 F.3d 885, 914 (9th Cir. 2013) (citing *Johnson v. United States*, 333 U.S. 10, 13-14 (1948)); *see also Doe v. Groody*, 361 F.3d 232, 241 (3d Cir. 2004) ("The warrant provides the license to search, not the affidavit"), *cert. denied*, 543 U.S. 873 (2004); *United States v. Kaye*, 432 F.2d 647, 649 (D.C. Cir.1970) ("It is the description in the search warrant, not the language of the affidavit, which determines the place to be searched"). *But see Silbert v. State*, 10 Md. App. 56, 60 (1970) ("It is firmly established in this State that the court's consideration of the showing of probable cause should be confined solely to the affidavit itself").

Moreover, the executing officers acted in good faith reliance on the search warrant. *See United States v. Leon*, 468 U.S. 897 (1984). As the Court of Appeals has stated:

> The good faith exception prevents the exclusion of evidence obtained pursuant to a warrant later shown to lack probable cause when law enforcement, in objective exercise of their professional judgment, reasonably relied on a warrant issued by a detached and neutral magistrate. *Leon*, 468 U.S. at 920-21, 104 S. Ct. at 3419 (noting that the deterrent effect of the exclusionary rule cannot be served when an officer in good faith relies on the magistrate's error). On this basis, "suppression of evidence obtained pursuant to a warrant should be ordered on a case-by-case basis and only in those unusual cases in which exclusion will further the purposes of the exclusionary rule." *Id*. at 918, 104 S. Ct. at 3418 (emphasis added) (footnote omitted).

Whittington v. State, 474 Md. 1, 37 (2021); *See also Richardson v. State*, 252 Md. App. 363, 259 A.3d 156, 172-73 ("[B]ecause 'the exclusionary rule is designed to deter police misconduct rather than to punish the errors of judges and magistrates,' the rule "cannot be expected, and should not be applied, to deter objectively reasonable law enforcement activity'") (quoting *United States v. Leon*, 468 U.S. at 916, 919), *cert. granted*, 476 Md. 418 (2021) (to be argued March 3, 2022).

We note, there are exceptions to the good faith doctrine, one of which is "when the warrant at issue fails to 'particularize the place to be searched or the things to be seized.'" *Patterson v. State*, 401 Md. 76, 110 (2007) (quoting *Leon*, 468 U.S. at 923); *accord Richardson*, 252 Md. App. at 173. Here, although the affidavit asks for appellant's DNA, the search warrant requests permission to search the Saturn. Given the discrepancy between the description provided by the affidavit, and the description approved by the magistrate, it would not be unreasonable for the executing officers to rely upon the judge. Notably, the Supreme Court has cautioned that suppression "has always been our last resort, not our first impulse." *Hudson v. Michigan*, 547 U.S. 586, 591 (2006); *see also Arizona v. Evans*, 514 U.S. 1, 10 (1995) (recognizing, in a case involving clerical error, "that the Fourth Amendment contains no provision expressly precluding the use of evidence obtained in violation of its commands" and that "[t]he question whether the exclusionary rule's remedy is appropriate in a particular context has long been regarded as an issue separate from the question whether the Fourth Amendment rights of the party seeking to invoke the rule were violated by police conduct") (quoting *Illinois v. Gates*,

supra, 462 U.S. at 223); 2 Lafave, *Search & Seizure*, § 4.5. Particular description of place to be searched (6th ed.)

C. Discretion

Appellant also argues the court should have excluded the search warrant and its fruits on the grounds that the State violated its discovery obligations. Conceding that there was a violation, the State responds that the court properly applied its discretion.

Discovery in Maryland is governed by Maryland Rule 4-263. "The main objective of the discovery rule is to assist the defendant in preparing his defense, and to protect him from surprise." *Alarcon-Ozoria v. State*, __ Md. __, No. 4, Sept. Term, 2021 (filed Dec. 21, 2021) (slip op. at 24) (citations omitted). "The rule accomplishes its purpose through its mandatory disclosure provisions." *Id*. We exercise *de novo* review when deciding whether a discovery violation occurred, however, the standard of whether any sanction is required is reviewed under the abuse of discretion standard. *Id*. at 10-11 (citations omitted). Finally, discovery errors are subject to the harmless error standard. *Id.*

Here, as the State concedes, it was required to disclose the search warrant and "all relevant material or information regarding" that warrant, pursuant to Maryland Rule 4-263 (d) (7) (A) ("Without the necessity of a request, the State's Attorney shall provide to the defense: All relevant material or information regarding: specific searches and seizures, eavesdropping, and electronic surveillance including wiretaps") (cleaned up). A photograph of the first page of the warrant, standing alone, did not comply with this duty. However, as defense counsel acknowledged after jury selection, the entire search warrant

was provided, albeit belatedly, prior to the start of trial. The issue then is whether the court properly exercised its discretion in addressing the discovery violation.

If a party has failed to comply with its discovery obligations, the rule permits the trial court to "order the party to permit the discovery of the matters not previously disclosed, strike the testimony to which the undisclosed matter relates, grant a reasonable continuance, prohibit the party from introducing in evidence the matter not disclosed, grant a mistrial, or enter any other order appropriate under the circumstances." Md. Rule 4-263(n). When faced with a discovery violation, the trial court should impose "the least severe sanction that is consistent with the discovery rules." With respect to exclusion of evidence, the Court of Appeals recognized that it was "one of the most drastic measures that can be imposed." *Thomas v. State*, 397 Md. 557, 572 (2007). "Because the exclusion of prosecution evidence as a discovery sanction may result in a windfall to the defense, exclusion of evidence should be ordered only in extreme cases." *Id*. at 573. The Court set forth the following test:

> In exercising its discretion regarding sanctions for discovery violations, a trial court should consider: (1) the reasons why the disclosure was not made; (2) the existence and amount of any prejudice to the opposing party; (3) the feasibility of curing any prejudice with a continuance; and (4) any other relevant circumstances.

Id. at 570-71 (footnote and citations omitted).

Applying these factors, it is unclear, in the present case, why the State did not provide the entire search warrant and affidavit. However, it was undisputed that the State disclosed that a warrant existed and provided the first page. Defense counsel agreed that

the failure to provide the remainder was inadvertent and not due to any "purposeful foul play." Defense counsel was able to argue his motion to suppress and agreed that there was "[n]o other prejudice" due to the State's belated disclosure. The court noted that defense counsel were "experienced," that they could have requested a continuance, but did not and, they appeared prepared for motions and for trial. The court held that the discovery violation did not warrant the extreme sanction of exclusion of the evidence and we hold the trial court properly exercised its discretion in ruling on the motion.

We also conclude that any error was harmless beyond a reasonable doubt. "The purpose of the harmless error rule is to prevent a small error, "assuming, [arguendo], that [there] was error[,]" from setting aside convictions for a defect that would not have changed the result at trial." *Alarcon-Ozoria*, *supra*, (slip op. at 31-32). As recounted above, most of the evidence that was recovered from the vehicle following execution of the search warrant was admitted at trial, without objection. This included, but was not limited to, the bloody knife and blood and DNA evidence. There was also direct and circumstantial evidence clearly suggesting that appellant fatally stabbed the victim repeatedly. Furthermore, defense counsel rigorously cross-examined the State's lay and expert witnesses at trial. Under these circumstances, any error in the belated disclosure of the entirety of the search warrant was harmless beyond a reasonable doubt.

II.

Appellant next asserts that the trial court erred by allowing John Gamrod, the victim's boss, to testify at trial. Specifically, appellant contends that it was error to permit

testimony that Gamrod loaned Mr. Perez money hours before the stabbing. The State responds that the evidence was relevant, and the court properly exercised its discretion.

Prior to the reception of evidence at trial, appellant moved *in limine* to exclude the testimony of John Gamrod, the victim's boss, on the grounds of relevance. Counsel argued that Gamrod would testify that the victim asked to borrow $100 and that the two men met at a bar where Gamrod gave the victim either a $100 bill or two $50 bills. The victim then left and was stabbed. Counsel argued that, because no such currency was found in the car or on the defendants, Gamrod's testimony was irrelevant.

The State responded that the relevance was to establish that the victim, Perez, met Gamrod, at a certain bar, to borrow $100 and that the two remained at the bar for an indeterminate period of time. Gamrod would testify that Perez did not use any of the $100 while they were at the bar and did not ingest any illicit substances, apparently an allegation made by one of the defendants in a pretrial statement to the police. Gamrod would also testify that Perez asked for a ride home because he had taken a bus to the bar and that Gamrod declined to take him home because he had too much to drink. Perez then met the defendants, who the State proffered were "using their car as a hack," meaning a car hired for transport. The State concluded that Gamrod's testimony was "necessary to set the scene" and that Gamrod "was the last person known to see Mr. Perez alive, with the exception of the Defendants."

After hearing from defense counsel, the court responded that "the bar for relevant evidence is somewhat low" and that "[i]t's evidence that tends to establish any fact at issue[.]" The court denied the motion in limine.

Following opening statements, the State called John Gamrod, who testified that he was a subcontractor in basement waterproofing, and the victim, Jorge Perez, worked for him for about a year as a laborer. On May 3, 2019, he met Perez at Fred and Margie's bar, which was located near Pennington and Patapsco Avenues. That day was Perez's birthday, and he asked Gamrod if he could borrow $100.00. Gamrod loaned Perez the money, and they stayed at the bar for about three hours and drank about three or four drinks together. Gamrod paid for the drinks and at the end of the evening, around 10:00 p.m., Perez asked Gamrod for a ride home. Gamrod testified that he had been drinking and did not want to drink and drive Perez "all the way back to Essex." Perez then told Gamrod that he would take a bus home.

On cross-examination, Gamrod confirmed the testimony he had given on direct. He also stated that it was not unusual for him to loan his employees money. He testified that: he did not believe that Perez was drunk, but "he could have been." He admitted that he did not know what happened to Perez after he left the bar.

Evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Md. Rule 5-401. The relevance threshold "is a very low bar to meet." *Williams v. State*, 457 Md. 551, 564 (2018) (citation omitted). But if

evidence fails to clear this hurdle, it is inadmissible, and trial judges have no discretion to decide otherwise. *See* Md. Rule 5-402 ("Evidence that is not relevant is not admissible"); *see also Fuentes v. State*, 454 Md. 296, 325 (2017) ("'[T]rial judges do not have discretion to admit irrelevant evidence'") (quoting *State v. Simms*, 420 Md. 705, 724 (2011)). "'[T]he determination of whether evidence is relevant is a matter of law, to be reviewed *de novo* by an appellate court.'" *Id*. (quoting *DeLeon v. State*, 407 Md. 16, 20 (2008)). A trial court's weighing of the probative value of the evidence against its harmful effects, however, is subject to the more deferential abuse of discretion standard. *Id*. at 326 n. 13.

Relevance is comprised of two components: materiality and probative value. *Molina v. State*, 244 Md. App. 67, 127 (2019) (citing *Smith v. State*, 423 Md. 572, 590 (2011)). "A material proposition is also called a 'consequential fact.' Materiality looks to the relation between the proposition for which the evidence is offered and the issues in the case. Probative value is the tendency of evidence to establish the proposition that it is offered to prove." *Id*. (internal citations and some quotation marks omitted). As explained by the Court of Appeals:

> Relevance is a relational concept. Accordingly, an item of evidence can be relevant only when, through proper analysis and reasoning, it is related logically to a matter at issue in the case, *i.e.*, one that is properly provable in the case. In order to find that such a relationship exists, the trial court must be satisfied that the proffered item of evidence is, on its face or otherwise, what the proponent claims that item to be, and, if so, that its admission increases or decreases the probability of the existence of a material fact. Moreover, the relevancy determination is not made in isolation. Instead, the test of relevance is whether, in conjunction with all other relevant

> evidence, the evidence tends to make the proposition asserted more or less probable.

Snyder v. State, 361 Md. 580, 591-92 (2000) (citations omitted).

Although the evidence that Perez met Gamrod at a bar not far from the scene of the crime on the night in question was clearly relevant, because it did, as the State suggests, "set the scene," we are unable to discern how evidence of the $100 loan met that definition. The $100 loan or the fact that Perez may have had cash on his person did not have "any tendency to make the existence of any fact that is of consequence to the determination of [this] action more probable or less probable than it would be without the evidence." This is especially true given that there were no facts admitted at trial that suggested that the motive for the stabbing was robbery or theft. We hold that the evidence was not relevant, and therefore, it was error to admit it, over objection.

That being said, we turn to whether the error was harmless beyond a reasonable doubt. The Court of Appeals explained the standard as follows:

> "When we have determined that the trial court erred in a criminal case, 'reversal is required unless the error did not influence the verdict.' " *Porter v. State*, 455 Md. 220, 234, 166 A.3d 1044, 1052 (2017) (quoting *Bellamy v. State*, 403 Md. 308, 333, 941 A.2d 1107 (2008)). In other words, "an error is harmless only if it did not play any role in the jury's verdict." *Id*. at 234, 166 A.3d at 1052 (emphasis omitted). As we do in all cases, where a party has alleged error, we look to see if there was error and inquire into whether the error prejudiced the defendant. If our answer is no, the inquiry ends. If we determine that the error prejudiced the defendant, we analyze how the error prejudiced the defendant. If, as in this case here, we cannot say beyond a reasonable doubt that the error in no way influenced the verdict, we reverse and remand the case for a new trial.

Williams v. State, 462 Md. 335, 352-53 (2019); *see also Dionas v. State*, 436 Md. 97, 108 (2013) ("An error is harmless when a reviewing court is 'satisfied that there is no reasonable possibility that the evidence complained of - whether erroneously admitted or excluded - may have contributed to the rendition of the guilty verdict'") (quoting *Dorsey v. State*, 276 Md. 638, 659 (1976)).

We note there was other evidence at trial, admitted without objection, that Perez met Gamrod at the bar to obtain a loan. Perez's fiancée, Louise Tom, testified that she and Perez were engaged and lived together in Dundalk and that, on the day in question, Perez took a bus to meet his "boss" to pick up his paycheck. There was no objection to this testimony.

"The law in this State is settled that where a witness later gives testimony, without objection, which is to the same effect as earlier testimony to which an objection was overruled, any error in the earlier ruling is harmless." *Robeson v. State*, 285 Md. 498, 507 (1979); *see Holloway v. State*, 26 Md. App. 382, 389-96, (although error to admit third statement, since two earlier statements entered without objection, any error was harmless beyond a reasonable doubt), *cert. denied*, 276 Md. 745 (1975); *see also Yates v. State*, 429 Md. 112, 120-21 (2012) ("Where competent evidence of a matter is received, no prejudice is sustained where other objected to evidence of the same matter is also received") (citation and internal quotation marks omitted).

Further, even without Ms. Tom's testimony, we are not persuaded that the evidence of the $100 loan undermined confidence in the jury's verdict in this case. The State's

closing argument was concerned with criminal agency, not motive. The only mention of "Gamrod" or Perez's "boss" came during closing by appellant's counsel, when he questioned the amount of the loan, and the reasons why Perez asked his boss for money.

In addition, as the State points out in its brief, evidence of appellant's criminal agency was strong. An eyewitness saw what appeared to be a stabbing in the backseat of a car in which appellant was later found, covered in blood and injury. The victim's DNA was found in the car, on a knife recovered from the center console, and on appellant's hand. Any error in admitting evidence that the victim had earlier that evening received a $100 loan from his employer was clearly harmless beyond a reasonable doubt.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED; COSTS TO BE PAID BY THE APPELLANT.