UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1418

September Term, 2014

JAMAR BROOKS

v.

STATE OF MARYLAND

Krauser, C.J.,
Woodward,
Wright,

JJ.

Opinion by Wright, J.

Filed: July 17, 2015

Appellant, Jamar Brooks,[1] appeals the denial of his motion to suppress evidence by the Circuit Court for Harford County. In April 2013, the Aberdeen Police Department ("Department") received a tip from a confidential informant that Brooks was selling cocaine from 41 Pritchard Avenue, Apartment 2B, Aberdeen, Maryland. The Department set up a controlled buy using the informant and, after a sale by Brooks at the apartment, applied for a warrant to search the apartment. Based on the evidence collected from the search warrant, the State indicted Brooks for, *inter alia*, possession with intent to distribute.

Brooks filed a motion to suppress the evidence derived from the search warrant. On September 18, 2013, the circuit court denied Brooks's motion. Eventually, Brooks tendered a plea of not guilty and proceeded on an agreed upon statement of facts, upon which the court convicted Brooks for possession with intent to distribute. Brooks timely appealed and presents one question for our review:

Did the court err in denying [Brooks]'s motion to suppress evidence?

Although we do not hold that there was a substantial basis to support the issuance of the search warrant, we hold that the good faith exception applies and, therefore, affirm the judgment of the circuit court.

Facts

In April 2013, Detective Robert Tice of the Department received a tip from a confidential informant that Brooks was selling cocaine from the apartment. The

[1] Jamar is also spelled "Jarmar" in various parts of the record and his brief. It is unclear which is correct. Accordingly, we shall refer to him as "Brooks" throughout.

confidential informant ("CI") told Detective Tice that he had personal knowledge of Brooks's actions because he had purchased narcotics from Brooks at that location. Later that month, the CI advised Detective Tice that he was willing to make a controlled purchase of cocaine from Brooks. On May 17, 2013, after the CI completed the controlled buy at 41 Pritchard Avenue, Detective Tice applied for a warrant to search the apartment. In his application, Detective Tice attested as follows:

> During the middle of April 2013, your affiant received a tip from CI 1 of suspected drug activity occurring at 41 Pritchard Ave Apt. 2B, Aberdeen, Maryland 21001. CI 1 stated he/she knows there are persons packaging and distributing CDS from this residence because CI 1 has purchased CDS from this residence, from Jarmar Brooks, current resident of 41 Pritchard Ave Apt 2B.
>
> Your affiant, in April 2013, was contacted by CI 1 and advised him that he/she was willing to make a controlled purchase of cocaine from a subject known to him/her as Jarmar Brooks, 41 Pritchard Ave 2B, Aberdeen Md. 21001. Your affiant met with the CI 1 at a predetermined location. Your affiant caused a search to be made of CI 1 and found him/her to be free of any CDS, paraphernalia, and money. Your affiant handed the CI 1 a sufficient amount of United States Currency to buy a quantity of cocaine. CI 1 arrived at 41 Pritchard Ave 2B Aberdeen MD. 21001. CI was seen walking directly up to and entering the building of 41 Pritchard Ave Aberdeen, MD 21001 and a short time later, CI 1 was seen exiting the building of 41 Pritchard Ave Aberdeen, MD 21001. Surveillance was conducted on CI 1 until he/she arrived at a predetermined location, and CI 1 handed your affiant one small corner torn plastic baggie containing a white rock substance suspected to be cocaine. CI 1 advised he/she had received the suspected cocaine from a subject known to him/her as Jarmar Brooks from 41 Pritchard Ave Apartment 2B, Aberdeen MD 21001. Your affiant again caused a search of CI 1 and found him/her to be free of any money, CDS, and paraphernalia. Your affiant showed CI 1 an MVA photo of Jarmar Brooks, which CI 1 confirmed as the person he/she knows as Jarmar Brooks. Your affiant tested the suspected cocaine using a Sirchie Nark Cocaine ID swipe, which tested positive for cocaine. Your affiant then placed the cocaine onto a MSP Lab form and placed into the APD CDS Drop Box.

Your affiant caused check through the Maryland Department of Motor Vehicle Administration [("MVA")] to ascertain the follow information:

Jarmar Brooks B/M Date of Birth – 06/1/1981
2825 Beckon Dr. Edgewood MD 21040 6'00" 250 lbs.

✓ Eligible Maryland License

Your affiant caused a check to be made of the Maryland Criminal History Records and revealed the following:

Jarmar Brooks	M/B 6/1/81	
2/16/2013	Assault 2nd Degree- Law Enforcement/ P&P Agent	No Disposition
2/16/2013	Resisting/Interfere with Arrest	No Disposition
10/30/2006	CDS: Possession w/ Intent to Distribute	Guilty
11/5/2002	Trespassing: Private Property	Guilty
10/14/2002	Trespassing: Private Property	Guilty
8/22/2002	Manuf, Sale, Poss CDS Schedule I, II (Virginia)	Nolle Prosequi
6/1/2001	CDS: Possession w/ Intent to Distribute	Nolle Prosequi
6/1/2001	CDS: No Marijuana	Nolle Prosequi
6/28/99	CDS: Possession w/ Intent to Distribute	Guilty
6/28/99	CDS: Possession CDS	Nolle Prosequi
6/28/99	CDS: Possession CDS	Nolle Prosequi
6/28/99	CDS: Dist. CDS on School Property	Nolle Prosequi
6/28/99	Violation of Probation	Guilty

Your affiant caused a check of the Maryland Department of Assessments and Taxation, to find that 41 Pritchard Ave is owned and managed by the State of Maryland Housing Department. The residence is a rental property.

Your affiant conducted an inquiry through the Baltimore Gas and Electric Company for subscriber information for 41 Pritchard Ave Apt 2B, Aberdeen, Maryland 21001. Charlanda Alexis Sconlon was the subscriber listed since 2005.

Your affiant caused a check through the Maryland Department of Motor Vehicle Administration to ascertain the follow information:

Charlanda Alexis Sconlon B/F Date of Birth – 06/1/1981
6 Baldwin Circle Aberdeen MD 21001 5'02" 170lbs.

✓ Suspended and Revoked License

* * *

Your affiant caused a check of the Aberdeen Department of Water to ascertain the subscriber information for 41 Pritchard Ave Apt 2B, Aberdeen, MD 21001. There is no subscriber on record.

* * *

CI 1 is familiar with the drug trade and has willingly provided copious amounts of narcotic information, leading to other active narcotic investigations. CI 1 has proven reliable by providing a target and making a controlled purchase for controlled dangerous substances from the target; a known person who consumes, packages, and distributes controlled dangerous substance from his/her residence.

Your affiant avers based upon your affiants [sic] expertise, training, and receiving an initial complaint by CI 1 about possible drug activity at 41 Pritchard Avenue. Apt 2B, and the subsequent controlled purchase of one small plastic baggy containing white rock substance suspected cocaine (field tested positive using Sirchie Nark Cocaine Wipe for cocaine) from 41 Pritchard Avenue. Apt 2B. Through your affiant's training knowledge and experience and the fact that a controlled purchase of cocaine was made by CI1 from Jarmar Brooks at 41 Pritchard Avenue, Apt 2B is consistent of persons possessing and distributing cocaine; that there is probable cause to believe and your affiant does believe, that the laws relating to the manufacturing, sale and/or possession with intent to distribute controlled dangerous substances, as herein before cited are being violated in the premise herein before described as:

41 Pritchard Ave Apartment 2B, Aberdeen, Harford County, Maryland 21001 and being violated by Jarmar Brooks, a black male, weighing 250 lbs, 6'00" tall, having a date of birth of June 1, 1981.

(Emphasis in original).

The circuit court granted the application on May 17, 2013, and it was executed on May 24, 2013. While the warrant was executed, police observed Brooks attempting to escape out of a window of the apartment. Inside the apartment, police found a black safe containing $2,200.00 and 204.3 grams of cocaine.

Brooks moved to suppress the evidence derived from the search warrant and, on September 18, 2013, the circuit court heard motions. Brooks challenged whether the application for the search warrant established probable cause:

> This application — I'll be frank with Your Honor, I have never seen one that is so void of any kind of independent verification of any information. . . . Your Honor, there is no mention at all of anything connecting Mr. Brooks to the apartment other than the CI saying it. The police didn't observe any hand to hand transaction. All they say in the affidavit is that they saw the CI-1 going into the apartment building and then coming out. So I think that that right there should raise some red flags.
>
> Additionally, Your Honor, with no independent verification, there is no way to tell whether this CI is a credible witness or not. . . . So you have got an allegedly controlled buy in an apartment building that they didn't personally witness. They have no independent verification of any of the facts.

The State argued that *State v. Coley*, 145 Md. App. 502 (2002), applied because:

> [It] factually is absolutely 100 percent similar to this case where the Maryland State Police there had generated a criminal informant who had made, I think, two controlled purchases, controlled dangerous substance from a named target. Based on that information, they took that, were able to get a warrant and just like in this particular case, they observed this particular criminal informant. They actually lost observation at one point but searched him or her — had searched him or her before and after the transaction had taken place and found no other substances and there is no other opportunity to obtain CDS.

The circuit court agreed with the State that *Coley* governed and that there was a substantial basis for the warrant to have been issued:

> I believe [*Coley*] is pretty much on point. But fact of the matter is that this particular warrant is going to be signed probably every time by every judge that it is presented to. It is a CI. That poses somewhat of a problem, but the standard to accept CI's representations are that, I believe it is *Gates* but I could be wrong about which case established it, but the affiant has to attest to the reliability and past experience with the CI and that he is determined to be reliable and in those facts are contained in this particular application. Based on that, accepting the recitation that the controlled dangerous substances were purchased from the Defendant at a particular location and all the underlying facts support that particular statement either by direct proof or by inference as to the surrounding total circumstances, it is clear. There was a substantial basis for Judge Bowen issuing that particular warrant and I agree, it is not even close, Mr. Pommett. So the motion for suppression is denied.

Brooks proceeded to a bench trial on a not guilty agreed upon statement of facts. The circuit court convicted him of possession with intent to distribute and, on August 6, 2014, sentenced him to 40 years' incarceration with all suspended but 20 years.

Standard of Review

"The rubric that we use to review a defendant's challenge to a search warrant, and the evidence seized and utilized as a result, is well established." *Ellis v. State*, 185 Md. App. 522, 533 (2009). The Fourth Amendment guarantees that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation[.]" U.S. CONST. amend. IV. The Fourteenth Amendment applies the probable cause requirement to the states. *Birchead v. State*, 317 Md. 691, 700 (1989).

Probable cause means a "fair probability that contraband or evidence of a crime will be found in a particular place." *Illinois v. Gates*, 462 U.S. 213, 238 (1983). It is "a

fluid concept — turning on the assessment of probabilities in particular factual contexts — not readily, or even usefully, reduced to a neat set of legal rules." *Id*. at 232. In making a probable cause determination, the court issuing the search warrant "is confined to the averments contained in the search warrant application." *Ferguson v. State*, 157 Md. App. 580, 592 (2004) (citation omitted). If a defendant challenges the issuance of a warrant, the reviewing court "do[es] not undertake a *de novo* review, but, instead, pay[s] great deference to the magistrate's determination." *Ferguson*, 157 Md. App. at 592-93 (citation omitted).

We have stressed that "[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 warrants." *Coley*, 145 Md. App. at 520 (citations omitted). For that reason, we have explained before that our charge "is to ensure that the issuing judge had a 'substantial basis . . . for conclud[ing] that probable cause existed.'" *Ellis*, 185 Md. App. at 534 (citation and emphasis omitted) (alterations in original). In so doing, we accept the issuing judge's "implicit fact-finding, unless clearly erroneous, and, beyond that, we will view the factual recitations in the warrant application in the light most favorable to the State." *State v. Jenkins*, 178 Md. App. 156, 174 (2008). "Under that mandate, the furthering of valuable liberties under the Fourth Amendment requires that we read possibly ambiguous language with an eye toward upholding the warrant rather than toward striking it down." *Id.* at 173-74 (citation omitted).

In *Coley*, we explained the substantial basis standard:

> The substantial basis standard involves "something less than finding the existence of probable cause," [*State v.*] *Amerman*, 84 Md. App. [461, 470-71,] 581 A.2d 19 (1990) (citing *Massachusetts v. Upton*, 466 U.S. 727, 728, 104 S. Ct. 2085, 80 L.Ed.2d 721 (1984)), and "is less demanding than even the familiar 'clearly erroneous' standard by which appellate courts review judicial fact finding in a trial setting." *Amerman*, 84 Md. App. at 472, 581 A.2d 19.
>
> > Thus, while the "clearly erroneous" test demands some legally sufficient evidence for each and every element to be proved—to wit, that a *prima facie* case be established—*Illinois v. Gates* rejected such a rigorous standard for establishing probable cause and opted instead for a "totalilty of circumstances" approach wherein an excess of evidence as to one aspect of proof may make up for a deficit as to another. *Illinois v. Gates*, 462 U.S. at 235, 103 S. Ct. at 2330, expressly stated that a legally sufficient or *prima facie* showing [of probable cause] is not required[.]"
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> *Amerman*, 84 Md. App. at 473, 581 A.2d 19.

Coley, 145 Md. App. at 520.

Still, "that deference is 'not boundless' because the reviewing court must require that (1) the affidavit supporting the warrant application not be based on reckless falsity, (2) the issuing judge not serve merely as a 'rubber stamp for the police,' and (3) the affidavit provide the issuing judge with a substantial basis for cause." *Greenstreet v. State*, 392 Md. 652, 668-69 (2006) (quoting *United States v. Leon*, 468 U.S. 897, 914 (1984)).

Discussion

Brooks argues that there was no "substantial basis for issuing the search warrant based on the [CI's] representations" because the "police simply did not establish a nexus between Mr. Brooks, apartment 2B and the distribution of cocaine." Brooks asserts that,

because there was no independent verification of the CI's statements, the warrant should have not been issued, and that the good faith exception does not save the fruits of the search.

The State argues that "the police-observed, sufficiently-controlled drug buy was in and of itself sufficient to establish probable cause to search" and that, as a result, the need to question "the credibility of the controlled buyer" has been obviated. The State contends that "[e]ven if the warrant was invalid, police relied upon it in good faith" because the "detective's affidavit described a controlled buy between Brooks and a [CI] that took place inside Apartment B at [the Property]."

I. Issuance of the Warrant

Brooks asserts that "[t]here was nothing to tie Mr. Brooks to [Apartment 2B] other than the [CI's] say so." Brooks points to the "police allow[ing] the [CI], a known user, purchaser and seller of narcotics, to enter a closed apartment building with at least two floors . . . [without] see[ing] whether CI 1 even entered apartment 2B" as problematic. Brooks avers that, because the "police never personally saw Mr. Brooks either with the [CI] or coming in or out of the apartment building[,]" the police could not "determine that apartment 2B was being used as a stash house."

In response, the State asserts that *Hignut v. State*, 17 Md. App. 399 (1973), and *Jenkins, supra*, govern because, like those cases, "the controls used in this case were adequate for the 'controlled buy,' standing alone, to support the search warrant." According to the State, *Jenkins* explains that "[i]f the controls are adequate in a 'controlled buy' exercise, the credibility of the controlled buyer is utterly immaterial[,]"

and *Hignut* allows "the issuance of a warrant where the officer-affiant accompanied a [CI] to the target location, searched the informant before entry, watched the [CI] ascend the steps and enter the suspect's apartment, and return a few minutes later with drugs." Taken together, the State contends that these cases stand for the proposition that "before and after searches of the [CI] by the affiant are sufficient to ensure the integrity of the 'controlled buy.'" As a result, the State argues that the "police-observed, sufficiently-controlled drug buy [in this case] was in and of itself sufficient to establish probable cause to search 41 Pritchard Avenue, Apartment B."

We begin our analysis with *Hignut*, which is "the leading Maryland case on the investigative technique of a controlled buy." *Jenkins*, 178 Md. App. at 178. In *Hignut*, police received information from a CI that narcotics were present in a two-story apartment house. *Hignut*, 17 Md. App. at 407. The police set up a controlled buy with the CI and used the controlled buy as the basis for their warrant application. *Id.* The affidavit stated as follows:

> It is further stated that the informant, after being searched by the affiants went to the said apartment house, then to the second floor of the said house, knocked on the door of apartment #3 and was permitted entrance to the said apartment #3. After entering said apartment, the informant had conversation with Laura Gunther, occupant of said apartment #3. It is further stated that the informant while in said apartment obtained a small block of compressed brown vegetable substance, wrapped in tinfoil, which your affiants tentatively identified as Hashish, a form of Marihuana. The informant exited from the said apartment house and brought the suspected Controlled Dangerous Substance directly to your affiant Patricia Ann Duty, who was standing in the hallway of 302 North Main St., Bel Air, Maryland. Your affiant, Patricia Ann Duty, with the Confidential Informant went directly to your affiant Sgt. Daniel V. Leftridge, who was waiting for them

> at the Bel Air Police Department, located at 39 Hickory Avenue, Bel Air, Maryland.

Id.

We noted in *Hignut* that, although the affidavit failed to give "some of the underlying circumstances . . . from which the officer concluded that the [CI] . . . was 'credible' or his information 'reliable'[,]" the CI's credibility could be established another way:

> *Spinelli* [*v. United States*, 393 U.S. 410 (1969), *abrogated by Gates*, 462 U.S. 213], however, points out an alternate route to the establishment of 'credibility'. Even where the internal evidence about the informant himself, or about the circumstances under which the information was furnished, fails to establish intrinsically personal 'credibility' or informational 'reliability,' external evidence, contained elsewhere in the application, may be examined to see what buttressing it provides. Independent police observation may tend to verify-to corroborate-the story as told by the informant. A direct showing that some of the story has been verified as true lends credence to the remaining unverified portions of the story. How much verification is needed depends upon how much bolstering the 'credibility' requires. *Dawson v. State*, 14 Md. App. 18, 41-42, 284 A.2d 861 [(1971)].

Id. at 410-11.

With that background, we then examined the controlled buy in the affidavit:

> We look now, under *Spinelli*, to the verifying observations made directly by Sgt. Leftridge and by Mrs. Duty, who were both affiants on the warrant application. Although the narrative language is again trimmed to the bone, its clear import is that the affiants (or the appropriate one of them) searched the informant and found him 'clean,' and sent him into the suspect premises, whence he came out 'dirty'. This is the typical 'controlled buy' investigative technique. So long as the controls are adequate, the 'controlled buy' alone may well establish probable cause to search a suspect premises, let along verify from scratch an informant's otherwise unestablished 'credibility'.

Id. at 412 (footnotes omitted).

We then turned to the controls employed by the officers in *Hignut*:

> The application spelled out that 302 North Main Street was only a two-story apartment house. It spelled out that [the officer] stationed herself 'in the hallway of 302 North Main Street.' Under the most unfavorable of readings-that [the officer] was downstairs and in no position to see where the informant went, once he was upstairs-the field of possibilities is still reduced to no more than two, or at most three, apartments. This is a far cry from a surveillant's seeing, from the outside, an informant disappear into the bowels of a large, high-rise apartment house. The mathematical reduction in the number of possibilities is, ipso facto, the ratio of improved probability. Remembering that independent observation need only verify a significant part, and not the totality, of an informant's story, even this unfavorable reading might well pass constitutional muster.

Id. at 412-13.

Although the description of the controlled buy lacked detail, we interpreted the limited information:

> We, therefore, read the clauses, 'went to the said apartment house, then to the second floor of the said house, knocked on the door of apartment #3, and was permitted entrance to the said apartment #3,' to be a recital of the direct observations of the affiant [the officer]. This is a reasonable interpretation, since more definite language that followed established clearly that [the officer] went inside 302 North Main Street and was 'standing in the hallway'. The reasonable import of the application is, further, that [the officer] and the informant went immediately to 302 North Main Street together, after the informant had been searched and found 'clean'. A fair reading of the application establishes, further, that, upon exiting apartment #3, the informant was observed by [the officer]; the informant showed the contraband to [the officer]; and the two of them went 'directly' back to police headquarters and the waiting Sgt. Leftridge.
>
> Although it would have been desirable to have had the informant describe the 'cutting operation' which she observed, the large amounts of hashish and complementary paraphernalia in the apartment, and the invitation to the 'pot party' scheduled for that evening, the inference is still clear that contraband remained on the premises after the informant's departure. It would be unreasonable to conclude that a single 'controlled

> buy' (or gift) exhausted the merchandise in stock. The probabilities run in the other direction.

Id. at 413-14.

In upholding the warrant, we said:

> This verification of so much of the informant's story clearly lends credence to the few remaining unverified portions of it and establishes 'credibility' under *Spinelli*. Significantly, however, all that the informant actually added to the direct police observations was 'that Hashish was present in the said apartment house' and that, after entering apartment #3, the informant 'had conversation with Laura Gunther'. The informant's story, once 'credibility' is established, becomes little more than surplusage. If the informant had been nothing more than a robot or a trained ape, the directly observed 'controlled buy'-with the informant as a mere mechanical agent-would have been sufficient to establish probable cause.

Id. at 415.

Disagreeing "strongly" with the majority opinion, Judge Menchine rejected the majority's favorable interpretation of the affidavit's description of the controlled buy:

> The majority contends that the data contained within the subject affidavit furnished that 'probable cause.' Dissenting strongly from that conclusion, it appears appropriate to declare the basis for the contrary view.
>
> * * *
>
> In making its preliminary assessment of that affidavit the majority opinion stated that 'the actual recitation of supporting data was so spare as to be almost cavalier' (Maj. Op. 177), yet finally concluded that 'Upon our constitutionally mandated, independent review, * * * we find that the search was carried out pursuant to a validly issued warrant.' (Maj. Op. 181)
>
> The labored effort of the majority to find probable cause for issuance of the warrant in the pages intervening between those two statements is not persuasive.
>
> The majority acknowledges that the 'confidential informant' at bar 'fails '*Aguilar* [*v. Texas*, 378 U.S. 108 (1964), *abrogated by Illinois v.*

> *Gates*, 462 U.S. 213 (1983)]*'s* credibility' test abjectly' (Maj. Op. 179), but suggests that 'Independent police observation may tend to verify-to corroborate-the story as told by the informant.' (Maj. Op. 9)
>
> The majority's assessment of those police observations begins with the unwarranted assumption '302 North Main Street was only a two-story apartment house.' The affidavit does not say so.
>
> The majority then comments: 'Under the most unfavorable of readings-* * * [The officer] was downstairs and in no position to see where the informant went.' We suggest this is not 'the most unfavorable' reading. It is the only permissible reading from the four corners of the affidavit. Thus, there is neither fact nor inference to show that the informant entered 'the place proposed to be searched' without contraband and emerged therefrom with contraband.
>
> Brushing this circumstance aside, the majority then suggest that 'the field of possibilities is still reduced to no more than two, or at most three, apartments,' adding that 'The mathematical reduction in the number of possibilities is, *ipsa facto*, the ratio of improved probability.' Implicit in that suggestion is a willingness by the majority to accept the affidavit as furnishing probable cause for the search of any of their assumed two or three apartments.

Id. at 423-25 (Menchine, J., dissenting) (footnotes omitted).

Since *Hignut* was decided, the test for probable cause established under *Aguilar* and *Spinelli* has been abandoned in favor of a totality-of-the-circumstances approach set out in *Gates*, 462 U.S. at 230-41. Even though *Gates* has changed our approach to the question of probable cause, we have said that "much of the analysis that informed the *Aguilar-Spinelli* regime still enhances our understanding of how to handle information from informants." *Jenkins*, 178 Md. App. at 182 (footnote omitted). Indeed, in *Matthews v. State*, 59 Md. App. 15 (1984), *disapproved of on other grounds*, *Long v. State*, 343 Md. 662 (1996), which was decided after the *Gates* opinion, we discussed the intersection of the two in the context of the *Hignut* case:

> We no longer subject an unnamed confidential informant to the rigors of an *Aguilar-Spinelli* examination, *Gates*, *supra*, 103 S. Ct. at 2332; *see Brown v. State*, 57 Md. App. 186, 469 A.2d 865 (1984). So, if we assume, *arguendo*, that insufficient information was supplied in the affidavit to establish the informant's veracity, the warrant stands or falls on the strength of its controlled buys. We must look then to the "adequacy of the controls," recognizing that the description of those transactions in *Hignut* represents the barest minimum of information possible to permit an application to "scrape by." *Id*. [17 Md. App.] at 407, 415 n.8, 303 A.2d at 180, 181 n.10.

Matthews, 59 Md. App. at 19 (footnotes omitted) (alteration in original).

In *Matthews*, we discussed the validity of a warrant based on two controlled buys of drugs made by a CI that took place inside of an inn. *Id.* At the outset, we repeated language from *Hignut*: "[s]o long *as the controls are adequate*, the 'controlled buy' alone may well establish probable cause to search a suspect premises, let alone verify from scratch an [CI's] otherwise unestablished credibility." *Id.* at 18-19 (citation omitted) (emphasis in original). The CI used in *Matthews* had participated in "three separate investigations . . . one of which has resulted in an arrest, and the other investigations are still pending." *Id.* at 19 n.2. In the investigation at issue, the CI purchased drugs from the manager of the inn in the presence of the owner of the inn. *Id.* at 19. The officer in *Matthews* attested:

> 13. That C.I. [confidential informant] # 409 has observed Robert Matthews bring a locked black briefcase into the building, at which time a large amount of cash and controlled dangerous substances were observed by C.I. # 409 after the briefcase was opened and that the briefcase is transported in a white van with a blue stripe.
>
> 15. That your affiant has made contact with the Maryland State Police narcotics officer and that said officer has been investigating Robert Matthews and learned through his investigation that Matthews travels to the Easton and Salisbury areas and has displayed Controlled dangerous

> substances and money which he carries around in a locked black briefcase that he transports in a white van with a blue stripe.
>
> 16. That C.I. # 409 and the narcotics officer have never met, yet described the same individual, briefcase and contents, and the same vehicle used for transporting same.

Id. at 19-20. We held that, "[w]hile the absence of detail causes the affidavit in the case *sub judice* to bear more resemblance to the one that 'scraped by' in *Hignut* than to the ideal, with a boost from *Gates* it passes." *Id.* at 20 (internal citation omitted).

We revisited *Hignut* in a post-*Gates* case again in *Jenkins*, 178 Md. App. 156. In *Jenkins*, we examined the following attestation of an officer in a warrant application:

> Your Affiant met with the CI at a secluded location within the Town of Easton. At the location *a complete and thorough search was done of the CI. No controlled dangerous substances were located on his/her person.* Your *Affiant then explained the route the CI was to take to make the controlled purchase. Your Affiant then handed the CI an amount of U.S. currency* from the Easton Police Department Special Operations Drug Fund. *The CI then went the predetermined route and met with Jenkins. An exchange for U.S. currency took place for crack cocaine. After the buy* took place *the CI then went back to the predetermined location and [met] with your Affiant.*
>
> At the predetermined location, your affiant took possession of the suspected crack cocaine. *A thorough search was then conducted of the CI. There was no money or controlled dangerous substances located on his/her person.* The CI was then debriefed and excused. At the Easton Police Department your Affiant field tested the suspected crack cocaine utilizing a Narcotics Identification Kit cocaine ID swab which yielded a positive reaction for the presence of cocaine. The crack cocaine was placed in the Eastern Police Departments Evidence system.

Jenkins, 178 Md. App. at 177-78 (emphasis and alteration in original).

We referenced our requirement of "adequate" controls in *Hignut* and determined that whether "the 'buy' itself [was] directly observed [was] ambiguous." *Id.* at 179. In

Jenkins, we said that we did "not absolutely know, one way or the other, because the critical event is unfortunately described in the passive voice." *Id.* We returned to *Hignut* for guidance in resolving the ambiguity — "[T]he Fourth Amendment requires that we read possibly ambiguous language with an eye toward upholding the warrant rather than toward striking it down." *Id.* at 182 (alteration in original). Because of the preference for upholding warrants, we said that a judge would be "permitted to draw the inference that the buy, which occurred outside in the open air, did take place under direct police surveillance." *Id.* at 181.

We continued in *Jenkins* to opine about what could have been if we assumed that the controlled buy was not observed. *Id.* at 182. We said that, in that instance, "we would then have to turn with a more critical eye to what we know about the CI." *Id.* In reference to the *Aguilar-Spinelli* test, we said that the first prong — the "basis of knowledge" — can be satisfied by the CI purchasing drugs "directly from the appellee." *Id.* at 183. Notably, we said that "[i]t is the other prong, or inquiry, that becomes critical in this case, if, *arguendo*, the need for its satisfaction is not obviated by the adequacy of the controls on the controlled buy. This prong is universally referred to as the 'veracity' prong. Its focus was, 'Why should we believe the [CI]?'" *Id.*

To satisfy the second prong of *Aguilar-Spinelli*, we explained that there must be "some of the underlying circumstances from which the officer concluded that the [CI] . . . was 'credible' or his information 'reliable.' . . . For a professional police [CI], . . . the usual way of establishing credibility directly was by showing a 'track record' of reliable past performances." *Id.* Notably, we also identified "independent police verification" as

a way to corroborate an CI's story and establish its veracity. *Id.* at 183-84. We acknowledged that, should an CI's veracity be at issue, it "could not be summarily dismissed simply because of the absence of a 'track record' of past performances." *Id.* at 185. Echoing our language in *Hignut* about considering the affidavit as a whole, we identified some of the other types of independent police verification that could overcome the lack of a track record: "1) [an officer's] own experience with respect to the 'high crime' area involved; 2) the other observations about and identifying the [defendant]; and 3) more significantly, the [defendant's] criminal record[.]" *Id.* at 193.

With the foundation of *Hignut*, *Matthews*, and *Jenkins*, we can discern that there are two distinct paths that an officer can take to establish a substantial basis for a court to issue a warrant based on a CI's controlled buy: (1) through adequate controls or (2) through establishing the informant's veracity. Although one path may not independently support the issuance of the warrant, the other path may provide a substantial basis for a judge to believe that probable cause exists to issue a search warrant. Moreover, because of the totality-of-the-circumstances test established in *Gates*, even if neither path independently establishes the required substantial basis, we can consider the steps taken in each route together to find a substantial basis for concluding that probable cause exists.

We return to the facts of this case with that understanding and, first, examine the controlled buy. We agree that the CI in this case entered the building clean and came out dirty, which supports a finding of adequate controls on the front-end and back-end of the controlled buy. What this case lacks, though, is adequate controls in the middle to

support a substantial basis to issue a warrant based solely on the controlled buy. We explain.

In his affidavit, Detective Tice attested that he saw the CI "walking directly up to and entering the building of 41 Pritchard Ave Aberdeen, MD 21001[,] and a short time later, CI 1 was seen exiting the building[.]" Unlike *Hignut* and *Jenkins*, there was no ambiguity about whether the buy was directly observed. *See Hignut*, 17 Md. App. at 407 (recounting that the affidavit stated that the CI "went to the said apartment house, then to the second floor of the said house, knocked on the door of apartment #3 and was permitted entrance to the said apartment #3"); *Jenkins*, 178 Md. App. at 177 (quoting the affidavit's language that the officer gave the CI money, the CI "went the predetermined route and met with Jenkins. An exchange for U.S. currency took place") (emphasis omitted). Without ambiguity about whether the officer directly observed the controlled buy, we cannot infer that the buy took place under direct police surveillance. Indeed, based on the recitation of facts in the affidavit, we have no alternative conclusion to draw about whether the controlled buy was observed. *Cf. Hignut*, 17 Md. App. at 413-14; *Jenkins*, 178 Md. App. at 181. *See also Hignut*, 17 Md. App. at 423-25 (Menchine, J., dissenting). Without adequate controls, we cannot verify where the CI went upon entering 41 Pritchard Avenue to make the purchase.

Because we lack adequate controls that would verify what the CI did once inside of 41 Pritchard Avenue, we must turn to the second path — what we know about the CI — to determine whether the CI's account of what happened inside of 41 Pritchard Avenue is true. *See Jenkins*, 178 Md. App. at 182 (if "the police surveillance of the

'controlled buy' was not uninterrupted, we would then have to turn with a more critical eye to what we know about the CI"). In other words, we ask "Why should we believe the [CI]?" *Id*. at 183.

The usual way that we establish credibility is "by showing a 'track record' of reliable past performances[,]" *id.*, and we begin there. In *Barber v. State*, we examined what type of showing in an affidavit establishes a reliable track record for a CI:

> The State contends that the veracity prong was satisfied by the informant's past performance, his declaration against penal interest and independent police corroboration of facts. A close examination of these factors illustrates that the credibility of the informant was not established. The magistrate did not have enough indicia of the informant's credibility to support a finding of probable cause. The affidavit states that the informant had participated in a controlled buy which led to one arrest and a seizure of controlled dangerous substances. It is true that this Court has stated that a controlled buy is sufficient to establish credibility of the informant. *Hignut v. State*, 17 Md. App. 399, 303 A.2d 173, 180 (1973). The controlled buy in *Hignut*, however, related to those against whom the search warrant was executed. In other words, the informant had participated in the controlled buy with the person who would be subject to the search warrant in issue. In the present case, the informant did not participate in a controlled buy with Barber, but with someone else unrelated to the appellant. Although we could find no case specifically on point, *it seems clear that only one previous controlled buy unrelated to the present search warrant will not prove the veracity of the informant. What an individual would do when he knows police officers are watching him may well be entirely different from what he does otherwise. All cases we could find where the veracity of the informant was upheld show that the informant's reliability had been repeatedly demonstrated. See, e. g., McCray v. Illinois*, 386 U.S. 300, 303, 87 S. Ct. 1056, 18 L.Ed.2d 62 (1967) (informant had supplied accurate information on approximately 15 prior occasions); *State v. Kraft*, 269 Md. 583, 307 A.2d 683 (1973), *Cert. denied*, 416 U.S. 994, 94 S. Ct. 2408, 40 L.Ed.2d 774 (1974) (informant had previously been responsible for eleven narcotics arrests); *Comi v. State*, 26 Md. App. 511, 338 A.2d 918, *Cert. denied*, 276 Md. 740 (1975) (informant had previously provided accurate information to other police officers besides affiant); *Owings v. State*, 8 Md. App. 572, 573-74, 261 A.2d 223, *Cert. denied*, 258 Md. 729 (1970), *Cert. denied*, 401 U.S. 937, 91 S. Ct. 922, 28 L.Ed.2d 216 (1971) (informant had

> supplied information leading to the arrest and conviction of five individuals and recoveries of various amounts of drugs); *Green v. State*, 8 Md. App. 352, 353-54, 259 A.2d 829 (1969), *Cert. denied*, 257 Md. 733 (1970) (informant had supplied information to police on a daily basis for a seven month period, information had led to 30-40 convictions).

43 Md. App. 613, 615-16 (1979) (emphasis added), *abrogated on other grounds by Ashford v. State*, 147 Md. App. 1 (2002).

In this case, Detective Tice attested to the following about the CI's track record:

> CI 1 is familiar with the drug trade and has willingly provided copious amounts of narcotic information, leading to other active narcotic investigations. CI 1 has proven reliable by providing a target and making a controlled purchase for controlled dangerous substances from the target; a known person who consumes, packages, and distributes controlled dangerous substance from his/her residence.

From this, we can establish that the CI is familiar with the drug trade, and he has willingly provided copious amounts of narcotic information leading to other active narcotic investigations. From this alone, we learn that the information imparted by the CI has been plentiful and has led to at least two investigations. In addition, the CI made one controlled purchase, unrelated to the one at issue. But, from *Barber*, we know that this is not enough, on its own, to establish a reliable track record. *See Barber*, 43 Md. App. at 615-16 ("only one previous controlled buy . . . will not prove the veracity of the [CI]"); *see also Kraft*, 269 Md. at 610 ("The most commonly accepted and approved allegation to substantiate reliability is that the [CI] . . . has furnished information to law enforcement officers which has been instrumental in procuring convictions") (citation omitted).

Although this CI lacked a track record, that cannot be used to "summarily dismiss[]" the CI's veracity. *Jenkins*, 178 Md. App. at 185. Instead, because we favor

upholding warrants, we must look to alternative means of satisfying the veracity prong of an CI's reliability. *See Gates*, 462 U.S. at 238-39 (requiring a flexible approach by using the totality of the circumstances to establish probable cause). When we do so, we can look at "[i]nformation available to the police, other than through the mouth of the [CI]" to buttress the CI's account. *Jenkins*, 178 Md. App. at 183. In particular, an officer "may rely upon information received through an [CI], rather than upon his direct observations, so long as the [CI's] statement is reasonably corroborated by other matters within the officer's knowledge." *Gates*, 462 U.S. at 242 (citation omitted). In essence, we look to whether the officer independently verified the facts that the CI supplied. Because Detective Tice did not maintain visual surveillance of the CI once the CI entered 41 Pritchard Avenue, there was no independent verification of what happened inside of the building, and that part of his story is not buttressed. Instead, we must examine the other facts that the CI supplied that are independently verifiable to support his veracity about what he did during the buy.

From the affidavit, we know that the CI told the officer that he received cocaine from Brooks inside of the apartment — a terminal fact that could be independently verified. That information was verified by Detective Tice's field test that was positive for cocaine.

The confidential informant also told the officer that Brooks was the "current resident of 41 Pritchard Ave Apt 2B" — another fact subject to independent verification. Detective Tice attempted to supply such verification by establishing who was the record tenant of 41 Pritchard Avenue, Apartment 2B, and by establishing Brooks's address of

record.[2] But, his search of public records did not tie Brooks to the apartment. Brooks's information from the MVA indicated that he lived in Edgewood, at an entirely different

[2] Although we could not find a Maryland case on point, we found a similar method employed in a New Jersey case to independently verify that a suspect resided in the apartment that the CI reported to the police:

> In contrast, the State argues that the controlled buys in this case, standing alone and without further police corroboration, established probable cause to believe that illegal activity was occurring at Apartment A. The State claims that the informant's drug purchases served to corroborate his tip, and that the police supervision of the informant further bolstered his credibility. The State asserts that it would have been impractical for the police to observe the informant enter defendant's apartment given the fact that Apartment A was part of a multi-unit building. Additionally, the State contends that even if the controlled buys standing alone were insufficient to establish probable cause, the further police corroboration of the tip satisfied that standard.
>
> We are persuaded that the additional police corroboration in this case helped to demonstrate probable cause. That additional corroboration included (1) the detective's review of the PSE & G records, which verified that (a) the telephone number that the informant had provided to the detective matched the telephone number of Apartment A and (b) the apartment's utilities had been activated prior to June 1996 when, according to the informant, defendant began selling drugs from that location; and (2) the confirmation that the substance purchased by the informant was cocaine. Those facts served as sufficient indicia of the informant's reliability. That the informant was able to provide a detailed description of defendant and the apartment building furthered the reasonableness of the police in conducting the controlled drug buys in the first instance. When coupled with the completion of those buys, the corroboration described in the applying officer's affidavit formed a well-grounded basis to support the warrant.
>
> The fact that the police were unable to observe the informant enter Apartment A itself does not prevent a finding of probable cause. Rather, the inability of the police in that regard is one factor to be considered by the issuing judge under the totality-of-circumstances test. *See also [Commonwealth v.] Desper, supra*, 643 N.E.2d [1008,] at 1012-13 [(1994)] (finding probable cause within context of controlled buy even though police

address. The search of the Department of Assessments and Taxation revealed that 41 Pritchard Avenue was a rental, but was otherwise inconclusive. A search of Baltimore Gas and Electric Company records for 41 Pritchard Avenue did not name Brooks; instead, Charlanda Alexis Sconlon was listed as the subscriber. Nothing was found to connect Sconlon with Brooks. Finally, the Aberdeen Department of Water did not have any subscriber information. Although it would not be unreasonable for Brooks to be using Sconlon's apartment to sell drugs considering that his listed address was close by in Harford County, the facts that Detective Tice provided in his affidavit do not independently verify the CI's statement that Brooks resided in 41 Pritchard Avenue, Apartment 2B.

Nonetheless, we will examine the facts of the affidavit to determine whether we can find some other source of independent verification to support the CI's story. We identified some of the methods in *Jenkins*:

> This does not yet take into account the other independent police verification, such as 1) Detective Jones's own experience with respect to the "high crime" area involved; 2) the other observations about and identifying the appellee; and 3) more significantly, the appellee's criminal record, including a recent arrest (one year old) for the possession of narcotics and yet another arrest for the distribution of crack cocaine.

Jenkins, 178 Md. App. at 193.

> did not observe informant enter specific apartment). We expect that the police will continue to corroborate as much of an informant's tip as possible prior to seeking a search warrant and will not rely exclusively on controlled drug buys.

State v. Sullivan, 777 A.2d 60, 67 (N.J. 2001).

Aside from the controlled buy, there is no indication that Detective Tice is experienced with this particular area or that this is a high crime area. However, the affidavit in the case *sub judice* states that Detective Tice has "personal experiences . . . with narcotic appearance, concealment, packaging methods of distribution, street terms and prices." There is, therefore, the implication that Detective Tice is familiar with the manufacture or distribution of street drugs.

As to observations about Brooks, Detective Tice did not state any observations about him in the affidavit. The CI did identify Brooks based on a MVA photo, but no other description of Brooks is provided separate from the recitation of his records at the MVA. Without more, this type of identification is circular and leads nowhere.

In the past, a suspect's criminal history, as well as his criminal reputation, has supported a finding of probable cause. *See Amerman*, 84 Md. App. at 484; *Agurs v. State*, 415 Md. 62, 93 (2010) (past convictions for drug violations are relevant to determining whether there is probable cause to believe a suspect is currently dealing drugs). Brooks's criminal history as recited in the affidavit included a conviction for controlled dangerous substances. However, his last conviction was in 2006, at least six years prior to the warrant's application, and he has not had any arrests since then related to narcotics. Although we do give some weight to his prior conviction, Brooks's criminal history varies significantly from previous cases where we have found a prior criminal record to be a significant factor in the probable cause equation. *See Jenkins*, 178 Md. App. at 193 (arrest for similar charges was one year prior); *West v. State*, 137 Md. App. 314, 350 (2001) (requiring numerous arrests within 10 years of the issuance of a warrant

to be relevant to a probable cause determination). *See also Brinegar v. United States*, 338 U.S. 160, 162 (1949) (arrest five months prior for similar offense supported probable cause); *Carroll v. United States*, 267 U.S. 132 (1925) (police observation of suspect engaging in similar criminal activity three months prior supported probable cause). Brooks's most relevant conviction was some six years hence.

Bringing all of the strands of the controlled buy and independent verification together, we have the following: (1) the CI went in 41 Pritchard Avenue clean and came out dirty; (2) the CI provided a drug following the buy that was confirmed to be cocaine; (3) the CI has previously provided information that has led to investigations; (4) Detective Tice was familiar with the manufacture or distribution of street drugs; and (5) Brooks had a criminal history that included a conviction for narcotics over six years ago. Under the totality-of-the-circumstances approach outlined in *Gates*, this would likely be enough to establish a substantial basis for probable cause to believe that cocaine was being sold from somewhere in 41 Pritchard Avenue. But, even under the totality-of-the-circumstances approach, this does not amount to a substantial basis for probable cause to believe that Brooks was selling drugs from inside of Apartment 2B of 41 Pritchard Avenue. Although there may be disagreement over whether this is a marginal case that requires us to defer to the issuing magistrate as in *Coley*, 145 Md. App. at 532, we hold that there is no other permissible reading of the affidavit, based on the four corners of the affidavit, because "there is neither fact nor inference to show that the CI entered 'the place proposed to be searched' without contraband and emerged therefrom with contraband." *Hignut*, 18 Md. App. at 424 (Menchine, J., dissenting).

Because we cannot validate the CI's account of the transaction through controls, a reliable track record, or other independent verification, we cannot find a sufficient basis for the initial grant of the warrant.

II. Good Faith Exception

Because there was no substantial basis for the issuance of the warrant, we proceed to address whether the good faith exception to the exclusionary rule applies. A warrantless search conducted without probable cause violates the Fourth Amendment. *Belote v. State*, 411 Md. 104, 112 (2009). Typically, the exclusionary rule is "the appropriate remedy for a violation of the Fourth Amendment." *Myers v. State*, 395 Md. 261, 278 (2006); *see also Weeks v. United States*, 232 U.S. 383 (1914) (establishing the exclusionary rule); *Mapp v. Ohio*, 367 U.S. 643 (1961) (applying the exclusionary rule to the states). But, application of the exclusionary rule is not *per se*: it "has always been our last resort, not our first impulse." *Hudson v. Michigan*, 547 U.S. 586, 591 (2006); *see also Gates*, 462 U.S. at 223.

One restraint on the application of the exclusionary rule is the good faith exception, which was established in *Leon*, *supra*. Under the good faith exception, "suppression is appropriate only if the officers were dishonest or reckless in preparing their affidavit or could not have harbored an objectively reasonable belief in the existence of probable cause." *Leon*, 468 U.S. at 926. Although a warrant issued by a magistrate usually suffices to establish good faith, an officer's reliance on the warrant must be objectively reasonable. *United States v. Ross*, 456 U.S. 798, 823 n.32 (1982). The *Leon* court, thus, established four instances where the good faith exception would not apply

even if police relied on a warrant in conducting a search. *Id.* at 923. In *Patterson v. State*, 401 Md. 76, 104 (2007), we described each situation:

> (1) the magistrate was mislead [sic] 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.

Of these situations, only the third is at issue. The Court of Appeals has explained that "[t]his exception under *Leon* requires the application of an objective test of a police officer's good faith reliance on the search warrant." *Id.* at 106. In particular, this test requires that "officers, exercising professional judgment, could have reasonably believed that the averments of their affidavit related [] a present and continuing violation of law[.]" *Connelly v. State*, 322 Md. 719, 735 (1991). In other words, the affidavit cannot be "bare bones" or "one that contains wholly conclusory statements, which lack the facts and circumstances from which a magistrate can independently determine probable cause." *Patterson*, 401 Md. at 107 (citation and internal quotation marks omitted).

Although we have explained that officers are not lawyers, *Jenkins*, 178 Md. App. at 194, a mistake in the probable cause determination is obvious if "a reasonably well-trained officer would have known that the search was illegal despite the magistrate's authorization." *Leon*, 468 U.S. at 922 n.23 (internal quotation marks omitted). Reasonably well-trained officers (1) "should know that a warrant cannot authorize an unreasonable search and that a search warrant issued on less than probable cause is

illegal" and (2) "must know that the affidavit he or she submits has to provide the magistrate with a substantial basis for determining the existence of probable cause." *Patterson*, 401 Md. at 107.

When we review warrants under the good faith exception, we must "determine whether the officers could have reasonably relied on the warrant." *Agurs*, 415 Md. at 79. In so doing, we make our determinations as a matter of a law and upon review of all of the facts set forth in the affidavit. *Id.* at 95. In the past, "some indicia of probable cause" even if "substantially weak" is enough for us to exercise the good faith exception. *Id.* at 81. Still, it does not grant us *carte blanche* to apply it in every case. *See id.* at 82-83 (discussing instances where we have refused to use the good faith exception). From all of this, we have created "some generally applicable principles" about this particular situation:

> This limitation is inapplicable where there is "some indicia of probable cause." *See Patterson*, 401 Md. at 108, 930 A.2d at 368; *McDonald*, 347 Md. at 472, 701 A.2d at 685. It is also inapplicable when reasonable minds might disagree about its applicability. *See Connelly*, 322 Md. at 735, 589 A.2d at 967. It will apply, however, when the absence of probable cause "is apparent on the face of the affidavit." *Greenstreet*, 392 Md. at 683, 898 A.2d at 979.

Id.

In *Agurs*, the Court of Appeals concluded that the evidence derived from a search warrant could not be saved by the good faith exception because "no reasonably well-trained police officer could have relied on the warrant that authorized the search of Agurs' home." *Id.* at 83. Their first consideration was "whether the police should have been aware that there must be a nexus between criminal activity and the place to be

searched." *Id*. at 84. The nexus requirement was explained in *Holmes v. State*, 368 Md. 506, 523 (2002):

> [T]he mere observation, documentation, or suspicion of a defendant's participation in criminal activity will not necessarily suffice, by itself, to establish probable cause that inculpatory evidence will be found in the home. There must be something more that, directly or by reasonable inference, will allow a neutral magistrate to determine that the contraband may be found in the home.

(Internal citations omitted).

In *Agurs*, 415 Md. at 86-87, we elaborated on the nexus requirement:

> As *Holmes* and *Coley* suggest, we have never provided a definitive test for establishing whether a sufficient nexus exists between alleged criminal activity and the suspected criminal's home. These cases do, however, establish some relevant principles. As evidenced by *Holmes*, there is more likely to be probable cause to search a suspected drug dealer's home when the police have seen the suspect engage in a drug sale near his home, when the police have found drugs on the suspect before the search, and when the defendant has been in and out of his home near the time of the drug sale. These factors support the "reasonable inference . . . that the contraband may be found in the home." *Holmes*, 368 Md. at 523, 796 A.2d at 101; *see also Coley*, 145 Md. App. at 530-31, 805 A.2d at 1204 (asserting similar facts). On the other hand, there must be facts shown from which this reasonable inference may be drawn. *Holmes*, 368 Md. at 523, 796 A.2d at 100. Our decision in *Holmes* twice states that a suspect's home cannot be searched unless there are facts supporting a reasonable inference that contraband might be found there, 368 Md. at 522-23, 796 A.2d at 100-01, and the Court of Special Appeals reiterated that requirement in *Coley*, 145 Md. App. at 526, 530, 805 A.2d at 1201, 1204. We conclude that these principles are sufficiently well-established that the police must be aware of them.

(Footnote omitted).

In *Agurs*, the Court of Appeals "s[aw] nothing that suggests that [the CI's] assertions . . . were reliable." *Id.* at 97. On the facts before it, the Court of Appeals said that "[t]he limited nature of facts suggesting that Agurs was involved in drug distribution

further establishes that the police officers' reliance on the warrant was unreasonable." *Id.* In *Agurs*, the Court of Appeals noted that "Agurs was 'somehow' involved with drugs, based entirely on inconclusive facts, uncorroborated statements by an [CI] with no stated personal knowledge to support those statements, and statements by unidentified and entirely uncorroborated informants." *Id.* Significantly, the Court of Appeals opined that they were "aware of no published cases where a nexus was established under such limited facts regarding the suspect's alleged criminal activity." *Id.* (footnote omitted).

In the instant case, although there were not enough facts supplied to reach the substantial basis standard, there were enough facts (although weak) to give some *indicia* of probable cause. We repeat the verified facts from the affidavit: (1) the CI went in 41 Pritchard Avenue clean and came out dirty; (2) the CI provided a drug following the buy that was confirmed to be cocaine; (3) the CI has provided information that has led to at least two investigations; (4) Detective Tice was familiar with the manufacture or distribution of street drugs; and (5) Brooks had a criminal history that included a conviction for narcotics some six years prior to the application for the warrant. "Moreover, the application for the search warrant provided sufficient evidence to create disagreement among thoughtful and competent judges as to the existence of probable cause."[3] *Patterson*, 401 Md. at 109 (citing *Leon*, 468 U.S. at 926) (footnote omitted).

Although limited, sufficient facts tie Brooks to the apartment and to the criminal activity. The absence of probable cause was not "apparent on the face of the affiant."

[3] Both the issuing judge and the circuit court judge believed that there was a sufficient basis to support a finding of probable cause to issue the search warrant.

Therefore, a reasonable well-trained police officer could have relied upon the warrant in good faith.

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