UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1453

September Term, 2014

BRIAN KEITH HENSLEY

v.

STATE OF MARYLAND

Krauser, C.J.,
Graeff,
Friedman,

JJ.

Opinion by Friedman, J.

Filed: October 13, 2015

Brian Keith Hensley, appellant, was convicted by a jury in the Circuit Court for Wicomico County of attempted first and second-degree murder, first and second-degree assault, reckless endangerment, armed robbery, robbery, possession of marijuana, possession of a controlled dangerous substance, and possession of drug paraphernalia. He filed a motion for new trial, which was denied. Thereafter, he was sentenced to incarceration for life for attempted first-degree murder, a concurrent term of four years for possession of a controlled dangerous substance, and a concurrent term of one year for possession of marijuana. No sentence was imposed for possession of drug paraphernalia and the remaining convictions merged for sentencing purposes. This timely appeal followed.

QUESTION PRESENTED

Hensley presents only one question for our consideration, which we have rephrased slightly as follows:

> Did the lower court err in denying his motion for new trial when, after trial, the court and the parties discovered that a warrant application that was not admitted in evidence was sent to the jury room during the jury deliberations.

For the reasons set forth below, we shall hold that the circuit court neither abused its discretion nor erred in denying Hensley's motion for new trial.

FACTUAL BACKGROUND

The State's case against Hensley was straightforward. It alleged that he attempted to murder his drug dealer, Jamie Fagans, by striking him over the head with a vodka bottle, and that he stole drugs, cash, and other items from him. After he committed the crime, he

left the house and went to his former boss's house, where he was soon arrested in possession of the stolen goods. In resolving the issue before us, we are required to consider the totality of the evidence of Hensley's guilt in the context of a harmless error analysis. Accordingly, although the issue presented is rather narrow, we set forth a detailed account of the facts.

In May 2013, Gwendolyn Dize rented a home at 235 Ohio Avenue in Salisbury, and she allowed several others to stay at her house. Denise ("Myra") Cole moved in to the house on a temporary basis in April 2013. Hensley, whom Cole identified as Dize's boyfriend, began living at Dize's house in early May. Fagans, an eighteen-year-old, began staying at the house on or about May 13, 2013. Dize was aware that Fagans was "cooking" drugs and selling them from her home.

Dize and Cole gave similar testimony about what occurred on the night of May 15, 2013. Dize, Hensley, Cole, and Fagans, were at Dize's home and several others came and went throughout the night, some of whom purchased drugs. Everyone except Hensley was drinking Grey Goose vodka. Dize was aware that Fagans was in possession of some money that night because he took a "pretty thick wad" of cash out of his pocket and gave some of it to Cole to purchase a sandwich. Hensley, who was between jobs and did not have any money, was present in the room when Fagans gave Cole the money.

Eventually, Fagans and Cole fell asleep in the living room and Dize went upstairs to her bedroom. Dize was "up and down" through the night, but finally went to sleep at about 3 a.m. Hensley remained in the living room and, at some point, woke up Cole and told her to go up to her room to sleep.

At about the time the sun was coming up, Hensley entered Dize's room, sat on the edge of her bed, and offered to share a cigarette. Hensley told her he was going to try to get some money that day. According to Dize, Hensley was either trying to get his boss to give him some money or that his boss owed him money. Dize then fell back asleep.

Later, Dize awoke to the sound of crashing dishes and silverware. She jumped out of bed and went downstairs, where she saw the living room and kitchen covered in blood. She found Fagans lying on the dining room floor. His feet were "spasming," his eyes were rolled back in his head, he made a "horrible rasping noise when he was breathing," and there was blood everywhere. Dize called for Cole to come help and Cole called 911.

Dize did not see Hensley anywhere in the house. Both Dize and Cole testified that the front and back doors to the house were locked when they went to bed. According to Dize, the front door had to be opened with a key and she used the key to open the door for the police. After the police arrived, but before the ambulance got there, Dize noticed that the back door was closed, but unlocked, and had blood smeared on it. She testified that the back door was always locked and that Hensley did not have a key to the house. Hensley kept a duffle bag containing his clean clothing at the house, but shortly after finding Fagans, Dize noticed that it was missing. Dize gave the police Hensley's phone number.

Fagans testified that he fell asleep in Dize's living room. The next thing he remembered was waking up at Shock Trauma in Baltimore City. After being released from Shock Trauma, Fagans spent about a month in a rehabilitation center. He testified that at the time he fell asleep, he had more than one thousand dollars in his wallet. He did not

give anyone permission to take his wallet, his money, or any of the three cell phones he had with him at Dize's house.

Steve Willin, who owns a flooring business, testified that he had employed Hensley for a few jobs. He allowed Hensley to live with him from the middle of March until May 6, 2013, when he told Hensley that he was no longer welcome in his home. On May 16, 2013, Willin received text messages from Hensley, one of which stated, in part, "I don't have shit else to lose so am [sic] going to be that piece of shit criminal that society so much wants me to be." On the same day that Fagans was assaulted, Willin spoke with police officers about Hensley. While Willin was at the police station talking to officers, he received a message from his girlfriend that a dead bolt lock at their home that was not usually used, was locked. Willin shared this information with the police and then gave them the key to his house and permission to enter it.

Detective Thomas C. Burt, of the Salisbury Police Department, obtained a search warrant and entered Willin's house. Police apprehended Hensley in Willin's house and seized two pair of sweatpants, one blue and one gray, a duffle bag containing his clothing, crack cocaine, heroin, syringes and other drug paraphernalia, several cell phones, and $413 in cash. In addition, they recovered Fagans' wallet, driver's license, and social security card. DNA testing revealed that blood found on the blue sweatpants was Fagans' and blood found on the gray sweatpants was Hensley's.

Salisbury City Police Officer Steven Schmidt testified that he responded to the 911 call for assistance. He observed Fagans convulsing on the floor, covered in blood, and suffering from wounds that ran from his ear to his temple. Officer Schmidt observed what

appeared to be a puncture wound about a quarter inch in diameter behind Fagans's temple. He found a Grey Goose vodka bottle covered with blood beside the refrigerator, which was near the back door of Dize's house. Police took photographs of the house, collected blood samples, and recovered various items including the Grey Goose vodka bottle with blood on it, a white tank top, and a pair of True Religion jeans that had $202 in a pocket. Detective Burt and Maryland State Police Detective Sergeant Chastity Blades interviewed Hensley at the Salisbury City Police Department. Hensley told them that he had stayed at Dize's house on the night of May 15, 2013, and that he had taken Fagans' wallet while he was asleep. Hensley made sure that Fagans was "good and asleep" before he stole his wallet. He claimed that Fagans "was a G," an apparent reference to a "gangster," and said that if Fagans caught him taking his wallet he "would probably kill him." Hensley, however, denied hurting Fagans.

At trial, Hensley testified on his own behalf. He acknowledged that from May 6-16, 2013, he was staying with Dize, that he and Dize were "drug friends," and they "got high together." Fagans, whom he referred to as Baby G., was his drug dealer. Hensley delivered drugs to Fagans' customers in exchange for drugs. He also stole drugs from the packages he was asked to deliver.

Hensley testified that at about 1:30 or 2 a.m. on May 16, 2013, he went to Dize's house where he met Dize, Cole, and a "neighborhood guy" who was known by the name "Q." "People were coming in and out buying drugs" from Fagans while Hensley and others were "getting high, smoking cocaine, [and] shooting heroin." Between 2 and 2:30 in the morning, Dize went to bed and Fagans "was in and out of sleep because he would have to

get up to serve people that came." Cole sat on a couch waiting for a local prostitute to stop by to purchase drugs, but eventually she fell asleep. Hensley started to drift in and out of sleep. He woke up around 6 a.m. and sent a text to Willin. He packed some things and then let Dize know he was going to Willin's house, where he rented a room. Before leaving the house, Hensley woke up Cole and then stole a bag from Fagans that contained a wallet, a cell phone, and some drugs. Hensley denied hitting Fagans.

Hensley left Dize's house, walked around the block and sold four "eight balls" of cocaine and four grams of heroin that he had stolen from Fagans. He then went to a WaWa store, bought a pack of cigarettes, and took a taxi to Willin's house. Hensley entered Willin's house with a key that Willin had given to him "when [he] paid rent." The first thing he did upon entering the house was "get high." The police came to the door of Willin's house shortly after Hensley arrived, but then left. Hensley went to the bathroom so that he "could flush the drugs" if the police entered, but when they did not enter the house, Hensley used the last of the drugs. A couple of hours later, the police returned and entered the house. Hensley was arrested. At the police station, he spoke to Detective Sergeant Chastity Blades and "told her basically what happened," but "lied to her about the drugs" and what he had stolen. Hensley testified that he was truthful when he told Detective Blades that he did not hit Fagans.

DISCUSSION

Hensley contends that the trial court erred in denying his motion for new trial based on the discovery, after trial, that a warrant application and affidavit that had not been

admitted in evidence, had been sent to the jury room during jury deliberations. We disagree and explain.

A. The Evidence Presented at Trial

At trial, Fagans identified State's Exhibits 30, 31, and 32 as his cell phones. In response to the State's request to submit the exhibits in evidence, defense counsel replied, "No objection." The three exhibits were entered in evidence.

Subsequently, Detective Burt gave the following testimony about the three cell phones, which were recovered pursuant to a search and seizure warrant for Willin's home on Topaz Court:

> [Prosecutor]: I've already showed you the duffle bag, I'm going to have you take a look now at what's marked as State's Exhibit 30, 31 and 32 and ask you if you recognize those. Can you identify the items?
>
> [Officer Burt]: This is a search warrant, cell phone.
>
> Q. That cell phone was recovered from Topaz Court?
>
> A. Yes.
>
> Q. That's State's Exhibit 32. Showing you what's been marked as State's Exhibit 31, just identify the items in the bag.
>
> A. The search warrant and cell phone.
>
> Q. And that was one of the cell phones recovered from Topaz Court?
>
> A. Yes.
>
> Q. It's got your name on the bag?
>
> A. Yes, it has my name on the bag.

Q. State's 30.

A. Again another cell phone from Topaz Court.

At the conclusion of the State's case, the court recessed to allow counsel to confer with the courtroom clerk. At the conclusion of the recess, the following colloquy occurred:

THE COURT: All right, we're back on the record in Brian Keith Hensley, 22-K-13-0401. Mr. Hensley is present with his counsel. Ms. Schultz and Ms. Disharoon are present for the State of Maryland and we are ready to proceed. Have you had an opportunity to confer with the Clerk on the receipt of evidentiary matters?

[Prosecutor]: Yes.

THE COURT: Madam Clerk, do you have all the offered or marked items, other than the 24D, which was for identification only, marked and received, is that correct?

THE CLERK: Everything has been entered and received. I'm still going through to make sure I have everything from them.

THE COURT: Did you need more time?

THE CLERK: They can continue, I can do it while they are continuing.

THE COURT: I'm offering to give you as much time as you need, Madam Clerk, this is your opportunity.

THE CLERK: If I could, five minutes would be great.

THE COURT: We'll take five more minutes and then, counsel, when we come back should I be prepared for the State to close?

[Prosecutor]: Your Honor, what I was wondering if I could propose, we have one more exhibit that I believe is by stipulation, the medical records.

[Defense Counsel]: It is.

* * *

[Prosecutor]: The State would move to admit State's Exhibit 29, they are the medical records of Jamie Fagans, along with the business record certification from the University of Maryland Medical Center.

[Defense Counsel]: No objection.

After the jury completed its deliberations, the courtroom clerk noticed that the warrant application and supporting affidavit associated with each of the cell phones had erroneously been given to the jury. The clerk informed the trial judge who, in turn, notified counsel. Several days after the verdict had been entered, but prior to sentencing, Hensley filed a motion for new trial in which he argued that the jury should not have had the opportunity to review the warrant application, the affidavit, or the search and seizure warrant, and that this error denied him a fair trial.

B. The Application, the Affidavit, and the Warrant

At the hearing on the motion for a new trial, the application for a search and seizure warrant, the affidavit in support of the application, and the warrant, were removed from inside the evidence bag marked at trial as State's Exhibit No. 32, and marked, collectively, as State's Exhibit No. 1. The application for a search and seizure warrant, which was signed by Detective Burt and a judge, identified six cellular telephones, asserted that they contained evidence of certain crimes, and requested a search and seizure warrant for them.

The affidavit in support of the application set forth Detective Burt's "law enforcement training and expertise," including information that the detective had been employed by the Salisbury Police Department since July 2006, and that from July through

December 2006, he had received 905 hours of training "in all aspects for law enforcement duties." The affidavit disclosed that Detective Burt had attended classes or received training on the following subjects: survival Spanish for law enforcement officers; sexual assault investigations; clandestine lab investigations and the chemicals associated with them; crisis negotiation training; preparing schools for active shooter events; field training and how to instruct new officers on basic law enforcement skills; patrol officers and community policing; radar speed measurement; LIDAR speed measurement (laser speed measurement); police cyclist certification, and fundamentals of criminal investigation.

According to the affidavit, Detective Burt had "been awarded with numerous types of awards[,]" ranging from "a certificate of appreciation to the Silver Star," and that he had received awards from "several outside agencies, such as MADD and the Wicomico County Coalition to Prevent Under Age Drinking." The affidavit provided that Detective Burt had served five and a half years on road patrol before being assigned to the Criminal Investigation Division, which was his current assignment, and had "handled numerous types of investigations from the simple to the complex." The affidavit also reported that, in 2012, Detective Burt was assigned to a multi-jurisdictional task force to investigate pharmacy robberies and burglaries.

The affidavit included a statement of facts that was similar to the facts adduced at trial. After describing how Dize and Cole discovered Fagans lying in a pool of blood, Detective Burt wrote that "Brian Keith Hensley had fled the residence." Detective Burt also wrote, "Dize advised that when Hensley leaves he normally lets her know where he is

going but he did not advise her prior to departing on this morning." In addition, the detective stated that when a search warrant was executed at Dize's house, "[i]t was determined that there were no signs of forced entry into this residence, further indicating that no one else other than Dize, Cole, and Hensley were in the residence at the time Fagans was injured." The affidavit also included information about text messages Willin had received from Hensley indicating that he "was in trouble." Finally, the affidavit contained the following statement by Detective Burt:

> Based on your affiants training and experience it is known that suspects involved in criminal activity will utilize their phones to communicate and try to conceal their criminal activity. Your Affiant is knowledgeable that people involved in the drug community will also possess multiple phones to conduct illegal activity on. . . .
>
> Hensley was using these cellular devices prior to and after the assault of Fagans occurred. Hensley utilized at least one cellular phone based on the text messages received by Willin. None of the aforementioned cellular phones belonged to Cole, Dize, or Willin[.]

C. The Hearing on the Motion for New Trial

At the hearing on the motion for new trial, defense counsel acknowledged that he should have looked at the search warrant before it was entered in evidence, but did not. Notwithstanding that error, he argued that the information in the affidavit about Detective Burt's training and awards, as well as a judge's signature on the warrant, were prejudicial because they would lead a jury to give more weight to the detective's testimony. In addition, defense counsel noted that there was a reference to Hensley fleeing the residence, which he argued was prejudicial to Hensley. Defense counsel urged the court to resolve

the issue by granting a new trial because it would provide faster relief to Hensley than a post-conviction proceeding.

The State countered that a new trial was not warranted because, at trial, Detective Burt identified each cell phone and warrant as he removed them from the evidence bags. Moreover, each bag and its contents had been marked, in its totality, as an exhibit and entered in evidence. The prosecutor asserted that defense counsel did not object to the admission of the exhibits in evidence, although she acknowledged that the State had not intended to introduce the warrant or affidavit. In addition, the State argued that the propriety of sending the warrant and affidavit to the jury was an issue better suited for post-conviction review, in light of the fact that she, the judge, and defense counsel were witnesses to what had occurred. Lastly, the State argued that even if sending the warrant and affidavit to the jury was in error, the evidence against Hensley was overwhelming, and that the State did not rely on either the cell phones or the warrants, Detective Burt's role in the investigation was minimal, the references in the warrant and affidavit to Hensley's criminal history were very brief, the detective was not qualified as an expert witness and his training was not applicable to any issue in the case, and, except for information about the detective's training, and the warrant contained facts that were presented through other witnesses at trial.

The court denied Hensley's motion for new trial stating, in part:

> The Court finds based on the credible evidence and arguments presented at the hearing on the motion for a new trial that it is not in the interest of justice to grant Defendant a new trial. The affidavit accompanying the erroneously admitted search warrant only contained one reference to Defendant's criminal history. Specifically, the affidavit stated that

> Defendant was arrested on a violation of probation arrest warrant. The affidavit does not include any reference to Defendant's past criminal convictions.
>
> Further, the Defendant failed to present evidence to support a conclusion that the other facts contained in the affidavit were prejudicial as opposed to cumulative. The Defendant has the burden of proving that it is in the interest of justice to grant the new trial. He failed to show other facts contained in the affidavit were contrary to those presented at trial or to otherwise show prejudice to the Defendant. The Defense did not produce a transcript of the trial testimony so a precise comparison of the affidavit and trial testimony was impossible. Therefore, the Court does not find the need for a new trial to ensure fairness and justice.

D. Hensley's Assertions of Error on Appeal

On appeal, Hensley contends that the circuit court erred in failing to grant his motion for new trial. Specifically, he maintains that the circuit court applied "an inappropriate and incorrect standard in denying the motion," by requiring him to prove that he was prejudiced by the erroneous inclusion of inadmissible evidence in the jury room and by relieving the State of its affirmative burden to prove that the error was harmless. Relying on *Merritt v. State*, Hensley argues that a defendant has no burden other than to establish an error that could not be known at the time of trial. 367 Md. 17 (2001). A defendant does not need to show prejudice. Rather, once error is established, the State bears an affirmative burden to show that the error was harmless beyond a reasonable doubt. If the State cannot show that the error did not contribute to the guilty verdict, the error cannot be deemed harmless and the court must grant a request for a new trial. According to Hensley, the motions court abused its discretion as a matter of law by ascribing to him the burden of proving prejudice, and inappropriately relieving the State of its burden to prove that the error was harmless.

Even assuming that the trial court did not err in placing the burden on him to prove prejudice, Hensley insists that he was prejudiced by the information contained in the warrant application. Specifically, he argues that the information pertaining to Detective Burt's training and commendations improperly bolstered the detective's testimony, and the judge's signature could be interpreted as an endorsement of, or agreement with, the facts set forth in the affidavit. In addition, Hensley points to the following statements in the affidavit as being particularly prejudicial: (1) that there were no signs of forced entry into Dize's house; (2) that there was no one other than Dize, Cole, and Hensley in the house at the time Fagans was injured; (3) that Hensley had been arrested on an outstanding violation of probation warrant; (4) that suspects involved in criminal activity utilize their phones to communicate and conceal criminal activity; and, (5) that people involved in the drug community possess multiple phones and conduct illegal activity on them.

E. Standard of Review

Motions for new trial are governed, in part, by Maryland Rule 4-331(a), which provides that "[o]n motion of the defendant filed within ten days after a verdict, the court, in the interest of justice, may order a new trial." In examining a circuit court's denial of a motion for a new trial, we generally use the abuse of discretion standard. *Merritt*, 367 Md. at 28-29. In certain limited circumstances, however, we use another standard of review: "[W]hen an alleged error is committed during the trial, when the losing party or that party's counsel, without fault, does not discover the alleged error during the trial, and when the issue is then raised by a motion for new trial, we have reviewed denial of the new trial motion under a standard of whether the denial was erroneous." *Id.* at 31 (concluding that

the motion for a new trial should be reviewed under the standard of whether error was committed and, if so, whether it is harmless error). Thus, the question of the appropriate standard turns on whether Hensley's counsel was blameless or shared some of the fault for the error.

F. The Applicable Standard of Review in Hensley's Case

In the instant case, the record makes clear that State's Exhibits 31 and 32 each included a cell phone and a document identified by Detective Burt as "the search warrant." The parties acknowledge that the document identified by Detective Burt actually consisted of the application for a search and seizure warrant, the supporting affidavit, and the warrant. The record before us makes clear that the alleged error occurred because Hensley's attorney did not examine the bags containing the cell phones, raise the issue after the court gave counsel an opportunity to confer with the courtroom clerk about the exhibits, or lodge an objection, either at the time the exhibits were admitted or after Detective Burt testified that the evidence bags included the phones and the warrant. Maryland Rule 4-326 provides, in part, that the jury may take "exhibits which have been admitted into evidence" when they retire for deliberation. For these reasons, Hensley's attorney was not without fault in failing to discover the inclusion of the application, affidavit, and warrant in the exhibit that was admitted in evidence. The exhibits consisting of a cell phone and the application, affidavit, and warrant were admitted in evidence without objection and, as a result, there was no error in submitting them to the jury.

Because Hensley cannot demonstrate that he was without fault in failing to discover the presence of the application, affidavit, and warrant in the bags containing the cell

phones, the abuse of discretion standard applies to our review of the circuit court's denial of his motion for new trial. *Jenkins v. State*, 375 Md. 284 (2003).

To find that a circuit court abused its discretion, we must find that it acted "'without reference to any guiding rules or principles,' or that 'no reasonable person would take the view adopted by the [circuit] court,' or that the decision of that court is 'well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.'" *Michael Gerald D. v. Roseann B.*, 220 Md. App. 669, 686 (2014)(citations omitted); *Jones v. State*, 403 Md. 267, 291 (2008)(same). In Hensley's case, the trial judge's decision to deny the motion for new trial was not an abuse of discretion.

In concluding that Hensley failed to establish that the facts about which he complained were so prejudicial as to warrant a new trial, the judge noted that the information contained in the application, affidavit, and warrant was largely cumulative of evidence presented at trial and that the non-cumulative facts were not so prejudicial as to deny Hensley a fair trial. The trial judge was in the best position to judge the credibility of the witnesses, the weight of the evidence, and the likely impact of any alleged error on the outcome of the trial. For these reasons, we conclude that the trial judge did not abuse her discretion in denying Hensley's motion for new trial.

Even if the harmless error standard of review applied in the instant case, Hensley would fare no better. Harmless error exists when "a reviewing court, upon its own independent review of the record, is able to declare a belief, beyond a reasonable doubt, that the error in no way influenced the verdict." *Dorsey*, 276 Md. at 659. We must be

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." *Id.* We may consider whether the evidence presented was cumulative of other evidence properly admitted or admitted without objection, and whether there was overwhelming evidence of Hensley's guilt. *Id.* at 659-660 (and cases cited therein).

In the case at hand, the list of Detective Burt's training and awards set forth in the affidavit does not suggest any training or particular expertise in any issue pertaining to the investigation of Fagans' assault and robbery. The affidavit does not describe what the detective did to earn the "Silver Star" or his award from Mothers Against Drunk Driving and the Wicomico County Coalition to Prevent Under Age Drinking. Detective Burt was called, primarily, to establish the chain of custody of evidence recovered from Willin's house. To the extent that the list of his training and awards may have bolstered his testimony, it did not affect the outcome of the trial.

As for Detective Burt's statement that during the investigation it was determined that there was no sign of forced entry into Dize's home, "further indicating that no one else other than Dize, Cole, and Hensley were in the residence when Fagans was injured[,]" we note that Dize also testified that there was no sign of forced entry, that the back door was unlocked, and that a key was necessary to open both the front and back door. Cole also testified that the doors were locked when she went to bed. The evidence presented at trial suggested a short timeframe between when Hensley left the house and when Dize discovered Fagans in the dining room, and the DNA evidence linked Hensley to Fagans. Detective Burt did not claim that all of the doors and windows were locked, thus, there

was, in fact, a way for someone other than Dize, Cole, or Hensley to enter and assault Fagans after Hensley left the house. The detective did not opine, however, that only Dize, Cole or Hensley could have assaulted Fagans. He merely stated that the lack of a forced entry further suggested that was the case. In light of all the evidence presented at trial, we cannot say that Hensley was prejudiced by Detective Burt's statement.

Hensley also complains about a statement in the affidavit referring to his arrest on an outstanding warrant charging him with a violation of probation. Hensley argues that the statement was dually prejudicial because "it asserted both criminal behavior and failed reformation." Again, when considering all of the evidence presented at trial, we cannot say that Hensley was prejudiced by this statement. The statement did not reveal the nature of the offense for which Hensley was on probation. In addition, the information was cumulative. Hensley testified that he used a couple of hundred dollars' worth of cocaine a day, that he distributed drugs for Fagans, and that he stole some of those drugs. He also admitted that he was not working, that he had stolen Fagans' property, and that he was using heroin when the police arrested him. The additional revelation that Hensley was on probation for an undisclosed offense was, therefore, harmless beyond a reasonable doubt.

For the same reasons, we conclude that Hensley was not prejudiced by Detective Burt's statements that "suspects involved in criminal activity will utilize their phones to communicate and try to conceal criminal activity" and "people involved in the drug community will also possess multiple phones and conduct illegal activity on it." Hensley readily admitted that he had one working cell phone and "multiple other cell phones that didn't work." He admitted that he used cocaine and heroin, that he engaged in criminal

activity, that he stole drugs and a cell phone from Fagans. In addition, Willin testified that he received a text from Hensley that said, in part, "I don't have shit else to lose so am [sic] going to be that piece of shit criminal that society so much wants me to be." In light of all of this evidence, the detective's statements were harmless beyond a reasonable doubt.

Hensley's final assertion is that the judge's signature on the warrant could be interpreted by the jurors to mean that the judge agreed with facts that were included in the affidavit but inconsistent with his defense. On the application for the search and seizure warrant and the affidavit, the judge's signature appears under Detective Burt's signature and under the statement, "Sworn to before me and subscribed in my presence this 24th day of May 2013." In context, the judge's signature merely signified that the officer had sworn and affirmed the truth of the matters stated in the application and affidavit. The judge's signature also appears is at the end of the warrant. The warrant begins with the words, "An affidavit having been made before me by Det. Thomas Burt, the undersigned Judge of the Circuit Court for Wicomico County, State of Maryland, finds that probable cause does exist to believe that" there might be evidence pertaining to the crime being concealed on the cell phones. The only reasonable conclusion from these words is that the judge found the facts stated in the affidavit to be sufficient to support a reasonable belief that evidence relevant to the crime might be found on the cell phones. There is nothing in the application, affidavit, or warrant to suggest that the judge's signature indicated her personal belief in the truth of the facts. Moreover, the trial judge instructed the jurors that "any comments that I may make about the facts are not binding upon you and are advisory only. It is your duty to decide the facts and apply the law to those facts." Jurors generally are presumed

to follow the court's instructions. *Dillard v. State,* 415 Md. 445, 465 (2010)(citing *Ezenwa v.* State, 82 Md. App. 489, 518 (1990)). For these reasons, we conclude that any error in admitting the documents containing a judge's signature was harmless beyond a reasonable doubt.

Lastly, any error in submitting the application, affidavit and/or warrant to the jury was harmless because the properly admitted evidence was so overwhelming that any prejudicial effect of the erroneously admitted evidence is insignificant. *Dorsey*, 276 Md. at 649. The evidence presented at trial established that Hensley had both a motive and an opportunity to try to kill Fagans. Hensley testified that he was depressed and desperate for money, and the text message that he sent to Willin stated that he did not "have shit else to lose so am [sic] going to be that piece of shit criminal that society so much wants me to be." Hensley told Detective Sergeant Chastity Blades that if Fagans caught him stealing his drugs and money he would "probably kill him," and that he had to make sure that Fagans was "good and asleep" before taking his wallet.

Even though it was conceivably possible that someone else entered Dize's house and assaulted Fagans after Hensley stole from him, it is highly unlikely. In addition, it is unlikely that an unidentified robber would enter the house without bringing a weapon and instead rely on the possibility that a weapon, such as the Grey Goose vodka bottle, might be inside the house. Most significantly, however, is the fact that DNA evidence linked Fagans' blood to the pants Hensley was wearing when he was last seen by Dize. There was absolutely no evidence to explain how Fagans' blood got on Hensley's pants except that Hensley hit him over the head with the Grey Goose bottle.

The evidence of Hensley's guilt was so overwhelming that even if the application, affidavit, and warrant had been excluded, there is no reasonable possibility that the jury's decision would have been any different. As a result, the circuit court neither abused its discretion nor erred in denying Hensley's motion for new trial.

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