Circuit Court for Harford County
Case No. 12-K-17-001106

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1583

September Term, 2021

ANTOINE SHELDON DAVIS

v.

STATE OF MARYLAND

Graeff,
Tang,
Raker, Irma,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Graeff, J.

Filed: October 24, 2022

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

On February 7, 2018, a jury in the Circuit Court for Harford County found Antoine Davis, appellant, guilty of first-degree assault and conspiracy to commit first-degree assault. The court sentenced him to a total of 25 years' imprisonment, all but 18 years suspended. In his first appeal, appellant argued, among other things, that the circuit court erred in denying his motion to suppress evidence found in his apartment, asserting that the evidence was tainted by the officers' earlier illegal entry into the apartment. This Court, in an unreported opinion, ordered a remand for the circuit court to make a finding on whether, pursuant to *Murray v. United States*, 487 U.S. 533 (1988), the "police would have sought a warrant regardless of the illegal entry." *Davis v. State*, No. 315, Sept. Term, 2018, slip op. at 15 (filed Oct. 16, 2019). The circuit court subsequently found that the police would have sought a warrant had the warrantless entry not occurred, and it confirmed its previous denial of the motion to suppress.

In this second appeal, appellant presents the following questions for this Court's review, which we have rephrased slightly, as follows:

1. Was a remand for further proceedings, and/or for a "plenary hearing," permitted where the evidence presented at the original hearing on the motion to suppress showed that the police decision to seek the warrant was prompted by what they had seen during the initial entry and/or the information obtained during that entry was presented to the Magistrate and affected his decision to issue the warrant?

2. If the remand for further proceedings, and/or a "plenary hearing," was impermissible, did the circuit court err in denying the original motion to suppress?

3. In the alternative, given the evidence presented at the plenary hearing on the motion to suppress that was conducted upon remand, did the circuit court err in denying that motion?

For the reasons set forth below, we shall affirm the judgments of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

The underlying facts and proceedings have been detailed more fully in our previous unreported opinion. *See Davis*, slip op. at 1-8. We set forth here only the facts needed to address the issues on appeal.

I.

The Incident and First Motion to Suppress

On July 16, 2017, Mr. Ronald Coyner was assaulted after he went to appellant's apartment on Cedar Crest Court in Baltimore. As Mr. Coyner attempted to leave, appellant and two other accomplices brutally assaulted him. He woke up in a nearby wooded area, suffering from injuries to his abdomen and neck, with blood on his head and arms.

Deputy Buttion[1], Corporal Brian Potts, and another officer responded to a call for a robbery at approximately 9:15 p.m. and saw Mr. Coyner bleeding. He said he had been assaulted as he exited appellant's apartment through the back doorway.

The officers went to appellant's apartment. Deputy Buttion knocked on the front door and looked through the rear door, but no one responded. He noticed blood on the patio near the doorway where Mr. Coyner was assaulted. Officers also noticed an outside surveillance camera pointed at the patio area. Corporal Potts was concerned that there were other victims or suspects inside the apartment. Because of another incident, however, one officer left, and Corporal Potts and the other officer remained to "hold the perimeter." At

[1] Deputy Buttion's first name was not elicited in the transcript.

approximately 10:45 p.m., after the other incident had resolved, the police knocked again, and after receiving no response, they entered appellant's home.

Once inside, the officers observed Robert Williams on the couch, and they detained him. They did not collect evidence, but they saw blood and a belt that could have left distinctive marks on the victim in plain view. Detective Kramer called Detective DeFazio, who was with Mr. Coyner at the hospital. Detective DeFazio advised that the victim's cell phone was missing. Detective Kramer then dialed the number provided by Detective DeFazio and a phone rang in the apartment. After confirming that it was the victim's phone, Detective Kramer asked Detective DeFazio to get a search warrant.

On his way to draft a warrant application, Detective DeFazio stopped at appellant's apartment. Detective DeFazio also observed blood, the belt, and the surveillance camera at appellant's apartment. He then returned to his office to draft the application for a search warrant. While he was doing so, Detective Kramer advised that Mr. Williams told him that the video recording system videotaped both the inside and the outside of the home. The warrant was signed at approximately 4:00 a.m., and it was subsequently executed. The search concluded at approximately 5:25 a.m. The police seized evidence, including a belt alleged to have been used on Mr. Coyner, the surveillance video camera system, Mr. Coyner's cell phone, and a tire iron.

At the first suppression hearing, appellant argued that the initial warrantless entry was unlawful because it was not justified by exigent circumstances, and this illegal entry tainted the evidence recovered from the home pursuant to a search warrant. The circuit

court denied appellant's motion to suppress, finding that there was sufficient probable cause to support the warrant apart from the warrantless entry into appellant's home.

After appellant's trial and convictions, he filed an appeal to this Court, arguing, among other things, that the circuit court erred in denying his motion to suppress the evidence seized from his apartment.

II.

Prior Appeal

In a detailed and thorough opinion written by Judge Alpert, this Court concluded that: (1) the initial entry was not justified by exigent circumstances; and (2) further factfinding was required on whether the evidence recovered pursuant to the warrant was inadmissible pursuant to the independent source doctrine. *Davis*, slip op. at 15, 21. This Court explained that the independent source doctrine "allows trial courts to admit evidence obtained in an unlawful search if officers independently acquired it from a separate, independent source." *Id.* at 10 (quoting *Utah v. Strieff*, 579 U.S. 232, 238 (2016)). Pursuant to this doctrine, even if the initial entry was illegal, evidence seized pursuant to the subsequent warrant could be admissible if the warrant generally was an independent source of the evidence. *Id.* at 11. The Supreme Court has adopted a two-prong test to determine whether the independent source doctrine applies: (1) whether the police would have sought a warrant absent the prior entry; and (2) whether, after excising the tainted information from the warrant, the remaining information supports a finding of probable cause. *Id.* at 11-13. We concluded that the second prong was satisfied, but the circuit court

had not made a factual finding on the first prong. *Id.* at 15, 18. Accordingly, we remanded for a plenary hearing after which the circuit court would make a finding on the limited issue of "whether the police would have sought a warrant regardless of the illegal entry." *Id.* at 15, 17-18. We stated that, "if the suppression court finds that the officers would have sought a warrant even if they had not entered appellant's apartment, appellant's conviction will stand." *Id.* at 30. Conversely, "[i]f the suppression court finds that the entry into and search of appellant's apartment prompted the police to seek a warrant . . . the court must suppress the evidence . . . [and] the State is permitted to retry appellant." *Id.*

Appellant filed a petition for a writ of certiorari, which the Court of Appeals denied. The case then proceeded to the circuit court on remand.

III.

Hearing on Remand

On December 6, 2021, the circuit court held another hearing to address the limited issue of whether the police would have sought the search warrant regardless of the illegal entry. Detective DeFazio testified that, on July 16, 2017, at approximately 11:11 p.m., he went to Bayview Hospital to speak with Mr. Coyner.[2] Detective DeFazio observed various physical injuries, including a patterned injury on Mr. Coyner's abdomen that was linear and had holes consistent with belt holes.

[2] Defense counsel objected to the State recalling Detective DeFazio as a witness. Counsel acknowledged that this Court had remanded for a plenary hearing, but he objected to recalling Detective DeFazio because he had already testified in the first hearing.

Mr. Coyner told Detective DeFazio that he entered the premises on Cedar Crest Court at the rear door, was escorted outside, and then assaulted and knocked unconscious. He also stated that his assailant took his cellphone and keys during the assault.

At approximately 11:45 p.m., Detective DeFazio proceeded to Cedar Crest in anticipation of preparing a search warrant application. Upon his arrival, Detective DeFazio observed what appeared to be blood on the patio and a surveillance camera on the exterior of the building facing the patio. He knew that property management did not own cameras there. Detective DeFazio stated that he went to the crime scene so he could say in the warrant application that he had observed the crime scene. After approximately 15 to 20 minutes, Detective DeFazio left Cedar Crest and returned to his office to draft the application for the search warrant. The warrant was signed at approximately 4:04 a.m. on July 17, 2017, and the search concluded at approximately 5:25 a.m.

Detective DeFazio stated that, while he was at the hospital, he spoke with Detective Kramer, who advised that Mr. Coyner's phone was ringing inside the apartment. Even if he had not been told that information, he would have sought the search warrant, based on Mr. Coyner's statement that his phone was taken after he was in the apartment, and the patterned injury on Mr. Coyner's abdomen, which be believed was caused by an object likely to be in the apartment. Detective DeFazio stated that it was part of his normal procedure to obtain a search warrant in his investigations as a detective.

IV.

The Circuit Court Ruling on Remand

In issuing its opinion on remand, the circuit court noted that the remand was limited to determine "whether the police would have sought the warrant regardless of the illegal entry." The court noted that, although this is a subjective inquiry regarding the officer's intent, the court should look to all of the surrounding circumstances. It stated that it would address the issue both on the record from the first hearing in 2017 and the record as supplemented on remand.

Based on the evidence from the November 2017 hearings, the court stated that it was "clear that through the course of predictable police procedures the police would have obtained a warrant for the defendant's apartment, even without the warrantless entry." The court noted that the uniformed officers responded first, the victim's injuries indicated the use of an implement in beating him, and the officers saw blood on the patio and surveillance cameras outside, "which if functional, would have captured" the assault. These observations were made before the warrantless entry and caused Corporal Potts to call the detectives, who execute search warrants, to take over the investigation. Detective DeFazio also determined before the entry that the victim had lost his cell phone. The court found that, based on the "pattern of how the police were deployed," with the uniform officers calling the detectives, who were working prior to the entry, the "predictable police procedures" related to obtaining the warrant were "well in motion before the warrantless entry." The court further stated that the strength of the probable cause prior to the entry

was compelling evidence that the officers would have sought a warrant, even without the warrantless entry. The court found that the deliberate, lengthy process employed was "an indication that the warrantless entry was not the catalyst for the warrant." Although "the delay in the entry eliminated exigency as a legal justification," the court found that the officers "did not enter the apartment to see if a search warrant would be worthwhile. They entered to make sure that no one was unconscious on the floor or being menaced by the perpetrators." The court found that, based on the "totality of the evidence and testimony and the logic of how this police investigation developed following a well worn investigative protocol," "the police would have obtained a warrant to search the defendant's apartment had there been no warrantless entry at 11 p.m."

The court then addressed the additional testimony presented from Detective DeFazio on remand. It stated that this evidence "simply makes explicit what was implicit in the previous testimony." The court found that, at the point "the detectives were called, the police always intended to obtain a warrant in order to . . . collect evidence," and that intention and plan "was in motion before the warrantless entry." The court noted the testimony of Detective DeFazio that he would have obtained a warrant even if there had not been the warrantless entry, stating that it found his testimony credible and corroborated by the other evidence. The court stated:

> Detective DeFazio's visit to the apartment was not the source of his motivation to obtain a warrant. It was his particular best practice as a police officer to observe with his own eyes what has been described for him by other officers and the victim so that he could accurately describe it under oath in the application for the search warrant. And I note that he observed for himself what could be observed - - what had been observed by the other first

> responding deputies before they entered the apartment. And that included blood spatter on the patio, which could be seen from the common areas of the apartment complex, not setting foot on the patio; the surveillance camera over the door; and also he had himself observed the victim's injuries.

The circuit court found that the police would have sought the sought the warrant even if the warrantless entry had not taken place. It confirmed its earlier denial of appellant's motion to suppress.

This appeal followed.

DISCUSSION

I.

Propriety of the Remand

Appellant contends that this Court erred in the prior appeal in ordering "a remand for further proceedings and/or for a 'plenary hearing.'" He argues that the record at the first suppression hearing showed that "the officer's decision to seek the warrant was prompted by what they had seen during the initial unlawful entry" and "showed that the 'information obtained during that entry was presented to the [m]agistrate and affected his decision to issue the warrant.'" (quoting *Murray*, 487 U.S. at 542). Appellant asserts that a remand was not necessary because, based on the facts from the first hearing, "no motions court would conclude that the officers' decision to seek a warrant was not based on what they observed and learned on the initial unlawful entry."

The State contends that this Court should not address this argument because the propriety of the remand is the law of the case in this appeal. In any event, it asserts that the remand was a proper exercise of this Court's judicial discretion.

The law of the case doctrine provides that, "once an appellate court rules upon a question presented on appeal, litigants and lower courts become bound by the ruling, which is considered to be the law of the case." *Grandison v. State*, 234 Md. App. 564, 580 (2017) (quoting *Scott v. State*, 379 Md. 170, 183 (2004)). Moreover,

> [n]ot only are lower courts bound by the law of the case, but decisions rendered by a prior appellate panel will generally govern the second appeal at the same appellate level as well, unless the previous decision is incorrect because it is out of keeping with controlling principles announced by a higher court and following the decision would result in manifest injustice.

Holloway v. State, 232 Md. App. 272, 279 (2017). *Accord Goldstein & Baron Chartered v. Chesley*, 375 Md. 244, 253 (2003) (decisions rendered by a prior appellate panel of the Court of Special Appeals "generally govern in a second appeal unless (1) the previous decision is patently inconsistent with controlling principles announced by a higher court and is therefore clearly incorrect, and (2) following the previous decision would create manifest injustice.").

Appellant has failed to make the requisite showing to avoid the conclusion that this claim is barred by the law of the case doctrine. We will not revisit the propriety of the remand in this case.[3]

[3] Appellant also contends that the second prong of *Murray* was not satisfied, i.e., that there was not probable cause after the information obtained from the illegal entry is excised from the warrant. Appellant agrees, however, that this contention is barred by the law of the case.

II.

Opinion on Remand

The only claim raised by appellant that is properly before this court for review on the merits is the argument that, given all the evidence, including the new testimony in the post-remand suppression record, the circuit court erred in finding that the first prong of *Murray* was met. For the reasons set forth below, we disagree and conclude that the circuit court did not err in denying the motion to suppress following the plenary hearing.

A.

Standard of Review

In reviewing the grant or denial of a motion to suppress, "we must rely solely upon the record developed at the suppression hearing." *Raynor v. State*, 440 Md. 71, 81 (2014), *cert. denied*, 547 U.S. 1192 (2015). We view the evidence adduced at the suppression hearing and any inferences that may be drawn therefrom "in the light most favorable to the party who prevails on the motion." *Id.* Moreover, we "accept the suppression court's factual findings unless they are shown to be clearly erroneous." *Id.* "We, however, make our own independent constitutional appraisal of the suppression court's ruling, by applying the law to the facts found by that court." *Id.*

B.

Analysis

The Fourth Amendment to the Constitution of the United States protects against "unreasonable searches and seizures." U.S. CONST. amend. IV. Here, we found in the

prior appeal that the initial warrantless entry into appellant's apartment, without consent or exigent circumstances, was unreasonable. *See Jones v. State*, 425 Md. 1, 28-29 (2012) ("[E]xcept when pursuant to valid consent or exigent circumstances . . . the entry into a home to conduct a search or make an arrest is unreasonable under the Fourth Amendment unless done pursuant to a warrant.") (quoting *Steagald v. United States*, 451 U.S. 204, 211 (1981)) (internal quotations omitted). Generally, when the police obtain evidence in violation of the Fourth Amendment, the "[i]llegally obtained evidence is excluded under the exclusionary rule." *Cox v. State*, 194 Md. App. 629, 653 (2010) (quoting *Myers v. State*, 395 Md. 261, 282 (2006)), *aff'd*, 421 Md. 630 (2011). This "judicially imposed sanction . . . serves to deter lawless and unwarranted searches and seizures by law enforcement officers." *Id.* (internal quotations omitted).

There are three circumstances, however, in which evidence obtained after initial unlawful conduct can be purged of taint:

> First, evidence obtained after initial unlawful governmental activity will be purged of its taint if it was inevitable that the police would have discovered the evidence. *See Nix v. Williams*, 467 U.S. 431, 444, 104 S. Ct. 2501, 2509, 81 L. Ed. 2d 377, 387 (1984). Second, the taint will be purged upon a showing that the evidence was derived from an independent source. *See United States v. Wade*, 388 U.S. 218, 239–242, 87 S. Ct. 1926, 1938–1940, 18 L. Ed. 2d 1149, 1164–1166 (1967). The third exception . . . will allow the use of evidence where it can be shown that the so-called poison of the unlawful governmental conduct is so attenuated from the evidence as to purge any taint resulting from said conduct. *See Wong Sun* [*v. United States*], 371 U.S. [471,] 488, 83 S. Ct. [407,] 417, 9 L. Ed. 2d [441,] 455 [(1963)].

Id. at 652 (quoting *Miles v. State*, 365 Md. 488, 520 21 (2001)). These exceptions to the exclusionary rule "aim to balance the interests of society in deterring unlawful police

conduct with the interest of ensuring juries receive all probative evidence of a crime." *Williams v. State*, 372 Md. 386, 409-10 (2002).

In this case, the evidence was admitted pursuant to the independent source doctrine, which applies to evidence initially discovered illegally, but later obtained by an independent source untainted by the initial illegality. *Murray*, 487 U.S. at 542. In *Murray*, the police forced entry into an unoccupied warehouse they believed to contain marijuana and "observed in plain view numerous burlap-wrapped bales that were later found to contain marijuana." *Id.* at 535. They left without disturbing the bales, but they kept the warehouse under surveillance. *Id.* They did not reenter the warehouse until they obtained a search warrant approximately eight hours later. *Id.* at 536. The police then reentered the warehouse and seized 270 bales of marijuana. *Id.* at 535-36.

The Supreme Court held that the independent source doctrine applies "to evidence initially discovered during, or as a consequence of, an unlawful search, but later obtained independently from activities untainted by the initial illegality." *Id.* at 537. The Supreme Court explained that, if police discover items X and Y during an illegal search, but later, during an independent legal search, discover item Z and rediscover items X and Y, items X and Y, as well as item Z, are admissible. *Id.* at 538.

As indicated, the Supreme Court set forth a two-prong test to determine whether a search warrant was independent of an earlier warrantless search. Only the first prong, i.e., whether the officers "decision to seek the warrant was prompted by what they had seen during the initial entry," *id.* at 542, is at issue on this appeal.

Here, Detective DeFazio testified that he would have obtained a warrant even without the warrantless entry based on: (1) his interview with Mr. Coyner, where Mr. Coyner said that his phone was taken after visiting the apartment; (2) the blood found on the exterior patio; (3) the unusual, patterned injuries on Mr. Coyner's abdomen, which he believed was caused by an object in the apartment; and (4) the observation of a surveillance camera which likely caught part of the alleged assault. The court stated that it found Detective DeFazio's testimony to be credible and corroborative of other evidence, which indicated that detectives were called once it was determined that a warrant was needed. Based on this record, there was no error or abuse of discretion by the circuit court in finding that the first prong of *Murray* was satisfied and in denying the motion to suppress.

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