Circuit Court for Baltimore City
Case No. 11-6060033

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1601

September Term, 2017

ERIC ROSE

v.

STATE OF MARYLAND

Berger,
Friedman,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Berger, J.

Filed: November 15, 2018

Following a jury trial in the Circuit Court for Baltimore City, Eric Rose ("Rose"), appellant, was convicted of unlawful possession of a firearm. Rose was sentenced to five years' incarceration. Before trial, Rose filed a motion to suppress evidence on the grounds that the police lacked probable cause to search Rose's residence. The circuit court denied the motion to suppress, finding that the police relied in good faith on the search warrant.

On appeal, Rose poses a single question, which we set forth *verbatim*.

> Did the motions court err in ruling that police officers relied in good faith on a search warrant that the court determined was improperly-issued without a substantial basis for a finding of probable cause.

For the reasons explained herein, we affirm.

FACTS AND PROCEEDINGS

On January 1, 2016, police officers approached Rose's vehicle after smelling an odor of marijuana in an area that the officers considered an "open air drug market." The officers searched the vehicle and found bulk packaging material and 437 small zip lock bags containing marijuana. Police also found 16 bags of marijuana in Rose's jacket pocket. Police recovered approximately 260 grams of marijuana from the search, and Rose admitted that it was his marijuana. Rose was then arrested and charged with possession and possession with the intent to distribute a controlled dangerous substance. Rose provided his home address as 2613 Pelham Avenue. The police discovered that Rose's vehicle is registered to the same address.

Three weeks after arresting Rose, Officer Jared Dollard met with a confidential informant ("C.I. #1"), who stated that an individual named "Lil Eric" sold marijuana and worked with other participants in robbing drug distributors. After Officer Dollard presented a picture of Rose to C.I. #1, the confidential informant confirmed that Rose and Lil Eric are the same individual. That same week, Sergeant Joseph Donato -- one of Rose's arresting officers -- met with a second confidential informant ("C.I. #2"). C.I. #2 stated that Rose uses firearms to rob drug shops in the 1500 block of Pennsylvania Avenue and the McCulloh Homes Projects.

Following the conversations with the two informants, Officer Dollard and several other members of the Central District Operations Unit surveilled Rose and observed his vehicle parked in front of the Pelham Avenue residence on multiple occasions. Officer Dollard also inquired into Rose's criminal record and discovered that in 2002, he was convicted of attempted murder in the second degree and use of a handgun in committing a crime. Officer Dollard detailed these facts in an affidavit and applied for a search and seizure warrant. Officer Dollard specifically requested the search of Rose's person, residence, and vehicle, believing that police would find stolen drugs and firearms.

On February 2, 2016, a judge of the District Court of Maryland for Baltimore City issued the search warrant. That same day, police officers searched Rose's residence and discovered a firearm. The police arrested and charged Rose with unlawful possession of a firearm. Thereafter, Rose filed a motion to suppress the firearm as evidence, alleging that the judge lacked a substantial basis for finding probable cause to search the residence. After holding a motions hearing, the Circuit Court for Baltimore City ruled that the District

Court did not have a substantial basis to find probable cause, but nonetheless denied the motion to suppress, finding that the good faith exception to the exclusionary rule applied. The circuit court explained:

* * *

> Because the information provided by the confidential informants is so truly the nucleus of the search warrant and because each of the confidential informants appears to have come from more a criminal milieu than a concerned citizen and because none of the information provided by either of the confidential informants was subject to, would appear to be any independent corroboration or investigation by officers, I do find that the issuing judge lacked a substantial basis to issue the search warrant, but I also find that the good faith exception applies and the good faith exception is sort of the safety net, Mr. Rose.
>
> And the reason that I find that it applies, and I went back to, you know, when does it not apply, because what I want to be careful about is that simply because a search warrant is issued, certainly in every circumstance when a search warrant is issued, officers are not entitled to go running off, you know, waving their hands with the search warrant and say now I can do what I want to do.
>
> There has to be a good faith understanding that that officer went to a judge who exercised her good faith expertise and that on that basis they're entitled to sort of be protected from an accusation of having violated your Fourth Amendment rights against unreasonable search and seizure. When that good faith exception does not apply it's accompanied by circumstances where the application is so truly bare bones, it is so obviously facially deficient that any officer in Officer Dollard's position exercising any degree of judgment and good discretion should know better and I don't find that those circumstances exist here.
>
> As I said, in fairness to both parties and in all honesty I don't think there [was a] substantial basis to find probable cause existed here. You know, I'm a different judge at a

> different time and so I respect that the judge issued the warrant. I don't think there was a substantial basis to find that probable cause existed.
>
> But I do not think that the warrant on its face is so deficient that the affidavit was not entitled -- I'm sorry. That the affiant who ultimately won the search warrant was not entitled to rely upon the fact that Judge Russell exercised her expertise and discretion and had the proper basis to think that [the affiant] had probable cause once he had the warrant. So I'm going to deny the motion on the four corners.
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> * * *

Subsequently, a jury found Rose guilty of unlawful possession of a firearm. This appeal of the motion to suppress followed.

STANDARD OF REVIEW

When determining whether a constitutional right has been violated, we apply a *de novo* standard of review. *Coley v. State*, 215 Md. App. 570, 576 (2013); *see also Patterson v. State*, 401 Md. 76, 104-05 (2007) ("[T]he applicability of the *Leon* good faith exception to the exclusionary rule is reviewed *de novo* when the facts are not in dispute."). The motions court's legal determinations are paid no deference on review. *See Wilkes v. State*, 364 Md. 554, 569 (2001). Under the good faith exception, "suppression of evidence obtained pursuant to a warrant should be ordered only on a case-by-case basis and only in those unusual cases in which exclusion will further the purposes of the exclusionary rule." *United States v. Leon*, 468 U.S. 897, 918 (1984). "We review all of the facts in the affidavit in support of the warrant to determine the" applicability of the good faith exception. *Marshall v. State*, 415 Md. 399, 408 (2010) (citing *Connelly v. State*, 322 Md. 719, 735 (1991)).

DISCUSSION

Rose's chief contention is that the warrant was so deficient on its face that it rendered the good faith exception inapplicable. Rose argues that Officer Dollard's affidavit lacked any indicia of probable cause. As a result, it was unreasonable for Officer Dollard to believe that probable cause existed to search Rose's residence. Rose further maintains that the evidence the police relied upon was stale and also unreliable because it came from confidential informants. The State takes the opposing position that the affidavit in support of the search warrant was supported by probable cause. In the alternative, the State contends that the police relied in good faith on the search warrant. "For purposes of our analysis in the present case, we shall . . . assume *arguendo* that the search warrant issued here lacked probable cause . . . Thus, we confine our analysis of the merits to the good faith exception question." *See Marshall, supra*, 415 Md. at 408.

"Under the good faith exception to the Fourth Amendment's exclusionary rule, evidence obtained pursuant to a search warrant, later determined or assumed to have been issued improperly[,]" is generally admissible. *Marshall*, *supra*, 415 Md. at 408. Evidence must be suppressed, however, under the following circumstances:

> (1) [I]f the magistrate, in issuing a warrant, 'was misled by information in an affidavit that the affiant knew was false or would have known was false except for a reckless disregard of the truth,' or (2) 'in cases where the issuing magistrate wholly abandoned his judicial role so that no reasonably well trained officer should rely on the warrant,' or (3) in cases in which an officer would not 'manifest objective good faith in relying on a warrant based on an affidavit so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable,' or (4) in cases where 'a warrant may be so facially deficient—*i.e.*, in failing to particularize the place to

> be searched or the things to be seized—that the executing officers cannot reasonably presume the warrant to be valid.'

Marshall, *supra*, 415 Md. at 408-09 (quoting *Connelly*, *supra*, 322 Md. at 729).

Rose contends that the third category applies, and argues that no well-trained officer could have reasonably believed that the affidavit established probable cause. "In this category of cases, evidence obtained during a police search should be excluded at trial only if the warrant was so clearly lacking in indicia of probable cause as to render police reliance on the warrant entirely unreasonable." *Marshall*, *supra*, 415 Md. at 409. "A warrant may be considered 'so lacking in indicia of probable cause' if the applicant files merely a 'bare bones' affidavit, one which contains only 'wholly conclusory statements' and presents essentially no evidence outside of such conclusory statements." *Id.* (citation omitted). Moreover, "[w]here the defect in the warrant is not readily apparent to a well-trained officer, or, where the warrant is based on 'evidence sufficient to create disagreement among thoughtful and competent judges as to the existence of probable cause,' then the good faith exception will apply."[1] *Greenstreet v. State*, 392 Md. 652, 679 (2006) (citation omitted).

Contrary to Rose's claim, the affidavit attached to the search warrant application in this case was not "bare bones" or "conclusory." Indeed, the affidavit included specific facts connecting Rose to drug trafficking and armed robberies. The affidavit contained Rose's own admission that he possessed 453 individually wrapped marijuana bags and

[1] Additionally, in evaluating a police officer's reliance, we do not hold the officer to the same standard as the issuing judge. *See Marshall*, 415 Md. at 412 n.9 ("[E]ven if we were to expect police officers to know the reasoning of applicable cases, we certainly would not expect them to apply it to new circumstances as carefully as judges should.").

bulk packaging material, which Officer Dollard found in Rose's vehicle, parked in an "open air drug market." The affidavit further relayed conversations that Officer Dollard and Sergeant Donato had with two confidential informants three weeks after finding the contraband in Rose's vehicle. The two informants both stated that Rose is a drug distributor who uses firearms to steal drugs from competitors. Clearly, the affidavit was not so lacking in indicia of probable cause, even if it was insufficient to establish probable cause at the outset. *See Marshall*, *supra*, 415 Md. at 411 (holding that the affidavit need only present "*some* evidence" for the good faith exception to apply) (emphasis supplied). [2]

Rose points out that the evidence had no direct relation to his residence because his initial arrest took place approximately five miles from his residence. The police were not, however, required to present direct evidence. *See Marshall*, *supra*, 415 Md. at 411 ("Although the drug-related evidence the police sought was not connected directly to Marshall's residence, both Marshall and the vehicle from which the police observed him sell drugs were."). While Officer Dollard never observed Rose sell or keep drugs inside his house, Officer Dollard found drugs in Rose's vehicle, discovered that Rose's vehicle is

[2] Rose raises for the first time in his reply brief that the good faith exception is inapplicable because Sergeant Donato was not aware of well-established law. Rose contends that, because Sergeant Donato knowingly coerced Rose into admitting ownership of the firearm, Sergeant Donato could not have been aware of well-established legal principles. The record demonstrates that Rose did not raise this argument in his motion to suppress or initial appellate brief. Nevertheless, we are not persuaded. The sole issue before us is the reasonableness of the officers' reliance on the affidavit and search warrant. As discussed, *infra* and *supra*, the affidavit provided some facts for the officers to reasonably rely on the validity of the search warrant. Accordingly, we hold that the good faith exception applies.

registered to the home address, and observed the vehicle parked in front of the home on several occasions.

The affidavit further provided that Officer Dollard has experience in making "over 300 arrests for violations of the Controlled Dangerous Substance laws[,]" and that he has learned "[t]hat it is common for drug traffickers to secrete illegal drugs and other contraband . . . within their residence[.]" These facts, taken together, demonstrate that it was not unreasonable for Officer Dollard to believe that there was probable cause to search Rose's residence. *See Marshall, supra,* 415 Md. at 411-12 (weighing "the police officers' professed training and experience in narcotics investigations"); *Williams v. State*, 231 Md. App. 156, 191-92 (2016) (considering the fact that the affiant "related in detail his own experiences and prior contact with [the defendant] as well as other members of the drug task force unit"), *cert. denied*, 452 Md. 47 (2017).

Rose urges us to hold that the good faith exception does not apply because, in Rose's view, "Maryland courts have 'explicitly rejected' the notion that there is always probable cause to believe that drug dealers keep drugs and records of their drug trade in their home." While Rose is correct that in *Williams*, *supra*, 231 Md. App. at 185, we stated that probable cause to search a drug dealer's home is not automatic, we specifically held that "some nexus" must first exist. In *Williams*, an anonymous source stated to police that the source purchased heroin from the defendant, and two confidential informants additionally told police that they purchased heroin from the defendant "not at his house, but on the same back road[.]" *Id.* at 189. There was no direct evidence linking the defendant's drug trade to his residence, but we still found a nexus. We were persuaded by the Sergeant's statement

in the warrant application "that he knew, through his training and experience, that drug dealers often do not sell directly from where they reside or where they keep their drug supplies to protect themselves from detection by the police, rival drug dealers, and customers." *Id.* We concluded that "there was information offered that [the defendant] used his home as a 'stash house' where he stored, but did not sell drugs." *Id.*

The facts in this case share similarities with those in *Williams*. We hold that, based on Officer Dollard's experience and training, the statements of the two confidential informants, and the marijuana found in Rose's vehicle, it was not unreasonable for Officer Dollard to believe that he had probable cause to search Rose's residence for drugs and other contraband.[3] *See also State v. Faulkner*, 190 Md. App. 37, 64 (2010) (holding that "the detectives reasonably could believe that narcotics and related evidence of drug sales would be found at the [defendant's residence] even without having observed [the defendant] dealing drugs directly from that location.").

Rose also argues that the good faith exception is unavailable because the police relied on uncorroborated information from anonymous sources. Rose claims that these tipsters likely come from the "criminal underworld" and are inherently untrustworthy. *See*

[3] Rose further asserts that the Court of Appeals' decision in *Agurs v. State*, 415 Md. 62 (2010) is controlling to support his contention that there was no nexus between his residence and the suspected illegal drug activity. We disagree. In *Agurs*, the Court held only that the "[nexus] principles are sufficiently well-established that the police must be aware of them." 415 Md. at 87. The Court majority did not join Part B of the opinion, which discussed the applicability of the good faith exception. *Joppy v. State*, 232 Md. App. 510, 523 (2017), *cert. denied*, 454 Md. 662 (2017); *State v. Johnson*, 208 Md. App. 573, 600 (2012) ("Only Part A, however, speaks for the majority of the Court and only Part A, therefore, is the prevailing law of Maryland."). Consequently, *Agurs* is not controlling in this case.

Fitzgerald v. State, 153 Md. App. 601, 623 (2003), *aff'd* 384 Md. 484 (2004). We disagree. Even if the two informants were from the criminal underworld, they were not anonymous, and their information was corroborated. Indeed, Officer Dollard stated in the affidavit that "[i]nformation gained from C.I. #2 has been corroborated through various observations and arrest[s]" and that "C.I. #2 has proven to be extremely reliable" providing "information on various drug organizations." C.I. #1 and C.I. #2 both personally identified Rose as a marijuana dealer and an armed robber through photo identifications. The identification of Rose as a marijuana dealer matched up with Rose's January 1 arrest. While the police did not actually witness Rose commit an armed robbery with a handgun, that information was corroborated by two key facts: (1) the informants stated that Rose robbed drug dealers in the same neighborhood where he was arrested three weeks earlier; and (2) Rose had prior convictions of attempted murder and use of a handgun in committing a crime. *See Fitzgerald*, *supra*, 153 Md. App. at 623-24 ("The [defendant's] juvenile record . . . serves as independent police verification of the reliability of the information coming from the anonymous source.").

Rose further contends that the good faith exception does not apply because the police relied on stale information. We disagree. We have recognized that "[b]y its nature, traffic in illegal drugs is ordinarily a regenerating activity." *State v. Amerman*, 84 Md. App. 461, 482 (1990) (quoting *Peterson v. State*, 281 Md. 309, 321 (1977)). Critically, the Court of Appeals has acknowledged a presumption against staleness where the facts indicate that the drugs are "readily replaceable" or that the defendant has "an available source of supply." *Id.* (quoting *Peterson*, *supra*, 281 Md. at 321). Here, Officer Dollard

found 453 individually wrapped bags of marijuana in Rose's vehicle and in Rose's jacket on January 1, 2016. Just three weeks later, Officer Dollard and Sergeant Donato learned from two confidential informants that Rose was a marijuana dealer who acquired his drug supply by robbing competing dealers. This not only confirmed the evidence that suggested Rose was a drug dealer; it also indicated that Rose had a "readily replaceable" and "available source of supply." Clearly, the evidence was not so stale as to render the good faith exception inapplicable.

After reviewing the affidavit, we conclude that Officer Dollard's reliance on the warrant was reasonable.[4] Critically, the affidavit was not "bare bones" or "so obviously inadequate that a police officer could not objectively rely upon it in good faith." *See Faulkner*, *supra*, 190 Md. App. at 63. The affidavit provided some facts for Officer Dollard to reasonably believe that there was probable cause to search Rose's residence. Consequently, we hold that the good faith exception applies. The circuit court, therefore, did not err in denying Rose's motion to suppress.

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

[4] Rose lastly argues that the motions court explicitly found that the issuing judge lacked a substantial basis to issue the warrant. Rose further maintains that this weighs against applying the good faith exception. We disagree. As discussed, *supra*, the affidavit provided some facts for Officer Dollard to reasonably believe that probable cause existed. Therefore, the good faith exception clearly applies.