UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1897

September Term, 2014

COREY RAMON SCHOOLFIELD

v.

STATE OF MARYLAND

Meredith,
Berger,
Kenney, James A., III
(Retired, Specially Assigned),

JJ.

Opinion by Meredith, J.

Filed: August 21, 2015

* 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.

Following a bench trial, Corey Ramon Schoolfield, appellant, was convicted of offenses relating to possession and distribution of cocaine and unlawful possession of firearms. The Circuit Court for Wicomico County merged a number of the convictions and sentenced appellant to ten years' imprisonment and imposed a $500 fine. The evidence supporting the convictions was seized, in large part, during the execution of a search warrant at appellant's apartment. Appellant sought, unsuccessfully, to suppress the evidence. In this appeal, appellant challenges the denial of his motion to suppress.

QUESTION PRESENTED

Appellant presented one question for our review:

> Was there a substantial basis to conclude that the search warrant in this case was supported by probable cause when the material facts in the warrant affidavit were almost three months old and intervening events severed any connection between those facts and the place to be searched?

Because we are satisfied that the application for the search warrant provided a substantial basis for the issuing judge to conclude that there was probable cause that contraband or evidence of a crime would be found in the subject property, we conclude that the circuit court did not err in denying the motion to suppress.

BACKGROUND

In January 2013, the Wicomico County Narcotics Task Force ("WINTF"), the Federal Bureau of Investigation ("FBI"), and the Drug Enforcement Agency, Salisbury Post of Duty ("DEA"), initiated an investigation into a group of suspected drug dealers known as the "Brown Organization." This organization was believed to be distributing large quantities of illegal narcotics and laundering hundreds of thousands of dollars in bulk currency in locations around the Eastern Shore of Maryland.

During July and August 2013, the DEA intercepted phone calls and text messages between appellant and an individual named Royce Brown, believed to be the leader of the organization. The DEA suspected that the intercepted communications between appellant and Brown established that appellant was a "drug trafficker" for the Brown Organization. On July 30, 2013, a series of intercepted telephone calls and text messages led the DEA to believe that appellant would be purchasing a kilogram of cocaine from Brown for $42,000. That same day, Detective J. Banks observed Brown leaving a residence where appellant's truck was parked outside. On August 13, 2013, DEA agents intercepted calls and texts that led them to believe Brown was selling appellant another kilogram of cocaine for $41,500. Detective Banks and Detective Pizzaia responded to the area and observed appellant's truck parked outside the location where they believed the drug transaction was set to occur. On August 27, 2013, Brown was arrested; he had in his possession seven kilograms of cocaine and $140,040. Following Brown's arrest, law enforcement learned that appellant had moved to a new residence on Barbara Ann Way in Delmar, Maryland.

On October 3, 2013, a confidential informant ("CI") told police that the CI had known appellant for three years and had purchased cocaine from him on many occasions. The CI told police that appellant was "the biggest drug dealer" that the CI knew, and that the CI had seen appellant in possession of up to ten kilograms of cocaine at one time. The CI had observed appellant moving in to his new apartment at 8731 Barbara Ann Way, and the CI had "been to the target residence on multiple occasions." The CI said that, "while inside the target residence, [the CI] personally observed Schoolfield with large amounts of cocaine in black duffle bags." On October 31, 2013, law enforcement confirmed appellant's connection

with the new residence at Barbara Ann Way when they observed appellant leaving the apartment complex and driving to a local store. Appellant remained at the store for approximately fifteen minutes and then returned in his Ford truck to the apartment complex.

Twenty days after police confirmed appellant's connection to this residence, DEA Special Agent Michael Cereo applied for a warrant to search appellant's apartment located at Barbara Ann Way. Agent Cereo attached a 19-page affidavit, affirming that he had been employed by the DEA since 2005 and had received "specialized training and experience in narcotics smuggling and distribution." Agent Cereo affirmed that, as a result of his personal participation in the investigation of appellant, the affiant believed that evidence relating to violations of the federal narcotics laws would be found inside appellant's residence, including "proceeds derived from the sale of illegal drugs, assets purchased with the proceeds of drug trafficking activity, ledgers, documents, records, letters, photographs, notes, names, [and] phone numbers." The affidavit described the investigation of the Brown Organization and the continued surveillance of appellant.

On November 20, 2013, the warrant was authorized and signed by the Honorable C. Bruce Anderson, Magistrate Judge of the United States District Court for the District of Maryland. The warrant authorized a search for "evidence and information relating to the distribution and possession with intent to distribute cocaine, as well as conspiracy to commit those offenses, in violation of Title 21, United States Code §§ 841(a)(1) and 846."

On November 20, 2013, the Wicomico County Narcotics Task Force executed the search warrant at appellant's residence at 8731 Barbara Ann Way, Apt. 304. Inside the apartment officers recovered the following: a .40 caliber Glock handgun with live

ammunition; eighty grams of powder cocaine; 23 grams of crack cocaine; two small bags of heroin; $13,000 in cash from a safe; and two digital scales. Appellant was arrested that same day and charged in the Circuit Court for Wicomico County with numerous offenses relating to possession and distribution of a controlled dangerous substance ("CDS") and unlawful possession of firearms, including: two counts of possession with intent to distribute CDS; two counts of possession of CDS; two counts of firearm possession by a disqualified person; one count of possession of a regulated firearm; and two counts of possession of CDS paraphernalia.

Before trial, appellant filed a motion asking the trial court to suppress the items seized during the search of his apartment, arguing that there had been no probable cause to support issuance of the warrant, and that the good faith exception to the exclusionary rule did not apply. By opinion and order dated July 7, 2014, the circuit court denied appellant's motion, concluding that the application had provided adequate probable cause for the issuance of the warrant, and that the officers who executed the warrant relied upon it in good faith.

At trial, appellant was convicted of possession and distribution of CDS and possession of firearms. Appellant was sentenced to ten years' imprisonment and fined $500. This timely appeal followed.

STANDARD OF REVIEW

Upon review of the issuance of a warrant, the reviewing court does not undertake *de novo* review of the issuing judge's probable cause determination, but rather, pays "great deference" to that determination. *Birchead v. State*, 317 Md. 691, 701 (1989). The appellate court's deference is to the warrant-issuing judge, not to the suppression court. *State v.*

Jenkins, 178 Md. App. 156, 170 (2008). As long as the issuing judge, in light of the totality of the circumstances set forth in the affidavit, had a "substantial basis" for concluding that contraband or evidence of a crime would probably be found in the particular location to be searched, the search should be upheld. *Greenstreet v. State*, 392 Md. 652, 667-68 (2006); *Jenkins, supra*, 178 Md. App. at 169-70.

DISCUSSION

Appellant contends that the evidence recovered upon execution of the search warrant at his apartment should have been suppressed because the issuing judge did not have an adequate basis to find that the warrant application was supported by probable cause. Further, appellant argues that, if we agree the warrant should not have been issued because no substantial basis existed, the good faith exception recognized in *United States v. Leon*, 468 U.S. 897 (1984), does not apply to salvage the search because the warrant application here was so deficient that no reasonably well-trained officer could have relied on the warrant in good faith.

In appellant's view, the information in the application for the warrant was too "stale" to support probable cause because Brown's arrest on August 27, 2013, combined with appellant's move to a new apartment, "aged any probable cause" contained in the warrant application. The principles governing appellate review of a claim of staleness were summarized as follows by the Court of Appeals in *Patterson v. State*, 401 Md. 76, 92-94 (2007):

> In making an assessment of probable cause, one of the factors the warrant-issuing judge must consider is whether the "event[s] or circumstance[s] constituting probable cause, occurred at ... [a] time ... so

remote from the date of the affidavit as to render it improbable that the alleged violation of law authorizing the search was extant at the time....” *Peterson v. State*, 281 Md. 309, 314, 379 A.2d 164, 167 (1977), *cert. denied*[,] 435 U.S. 945, 98 S.Ct. 1528, 55 L.Ed.2d 542 (1978) (internal citations omitted); *Sgro v. United States*, 287 U.S. 206, 210, 53 S.Ct. 138, 140, 77 L.Ed. 260, 263 (1932) (noting that “proof must be of facts so closely related to the time of the issue of the warrant as to justify a finding of probable cause at that time”). As we noted in *Greenstreet*, [392 Md. at 674–75]:

> “There is no ‘bright-line’ rule for determining the ‘staleness’ of probable cause; rather, it depends upon the circumstances of each case, as related in the affidavit for the warrant.” *Connelly v. State*, 322 Md. 719, 733, 589 A.2d 958, 965–66 (1991) (citations omitted). Factors used to determine staleness include: passage of time, the particular kind of criminal activity involved, the length of the activity, and the nature of the property to be seized. *Peterson v. State*, 281 Md. 309, 317–18, 379 A.2d 164, 168–69 (1977) (citations omitted). The Court of Special Appeals explained the general rule of stale probable cause in *Andresen v. State*, 24 Md. App. 128, 331 A.2d 78 (1975), which we adopted in *Peterson*:
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>> The ultimate criterion in determining the degree of evaporation of probable cause, however, is not case law but reason. The likelihood that the evidence sought is still in place is a function not simply of watch and calendar but of variables that do not punch a clock: the character of the crime (chance encounter in the night or regenerating conspiracy?), of the criminal (nomadic or entrenched?), of the thing to be seized (perishable and easily transferable or of enduring utility to its holder?), of the place to be searched (mere criminal forum of convenience or secure operational base?), etc. The observation of a half-smoked marijuana cigarette in an ashtray at a cocktail party may well be stale the day after the cleaning lady has been in; the observation of the burial of a corpse in a cellar may well not be stale three decades later. The hare and the tortoise do not disappear at the same rate of speed.
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> *Andresen*, 24 Md. App. at 172, 331 A.2d at 106. **Where the affidavit in a case “recites facts indicating activity of a protracted and continuous nature, or a course of conduct,**

> **the passage of time becomes less significant, so as not to vitiate the warrant."** *Peterson*, 281 Md. at 318, 379 A.2d at 168–69 (citations omitted); *see also Lee v. State*, 47 Md. App. 213, 219, 422 A.2d 62, 65 (1980) (finding probable cause stale when based upon a drug sale from defendant's apartment eleven months before application for a warrant); *Connelly*, 322 Md. at 734, 589 A.2d at 966 (concluding that probable cause could be found to be stale where the probable cause finding was based on evidence of an alleged illegal lottery operation from observations taken over a "few" months, beginning nine months prior to application for the warrant); *Amerman*, 84 Md. App. at 475, 581 A.2d at 26 (finding probable cause not stale when based on evidence of alleged illegal drug sales from surveillance and investigation conducted one month prior to warrant application).

392 Md. at 674–75, 898 A.2d at 974–75.

(Emphasis added.)

Upon viewing the totality of the circumstances set forth in the application, we are satisfied that there was a substantial basis for the issuing magistrate judge to find that probable cause was not stale. The lengthy and meticulously planned investigation of the Brown Organization involved both State and federal law enforcement officials and was still ongoing at the time of the warrant application and execution, even though Mr. Brown had been arrested on August 27, 2013. Appellant had engaged in large-scale drug purchases in July and August, and purchases of such large quantities of cocaine were indicative of drug dealing of a continuing nature. According to a confidential informant, appellant's involvement in the drug trade had not ended suddenly upon the arrest of Mr. Brown, but instead, continued after appellant moved to the target location. The statements made by the CI regarding appellant being a major drug dealer were consistent with the information officers themselves had gathered during their own investigation, as was the CI's

identification of appellant and his truck. The CI claimed to have personally seen that appellant had kept large quantities of cocaine at the subject location. Based upon Agent Cereo's specialized training and experience in narcotics investigations, the affiant believed that a search of appellant's apartment would probably lead to the discovery of not only physical evidence of drugs, but also documents and electronic records relating to drug activity, including customer lists, bank ledgers, calendars, and tax returns, all of which are items likely to be kept by a drug dealer for an extended period of time.

Considering all facts in the application in light of the totality of the circumstances, we are persuaded that the information presented in the warrant application was not stale, and therefore, the issuing magistrate judge had a substantial basis upon which to find probable cause. Accordingly, the circuit court did not err in denying the motion to suppress.

Moreover, we note that, in the court's written opinion upholding the validity of the search warrant, the court stated that, "[a]s to any contraband seized as the result of [Magistrate Judge] Anderson['s] warrant which does not neatly fit within the twenty paragraphs of Attachment B ('Particular Things to be Seized'), they fall within the 'good faith' exception and will not be suppressed. *Maryland v. Garrison*, 480 U.S. 79 (1987); [*United States v. Leon*], 486 U.S. 897 (1984)." On appeal, the State asserts that the good faith exception recognized in *Leon* supports the denial of the motion to suppress "even if the reviewing courts conclude that the warrant was not supported by probable cause," because "the exclusionary rule will not be brought to bear if the police relied upon the warrant in good faith." We agree with the State's contention, in the alternative, that the *Leon* exception would support the suppression court's denial of appellant's motion to suppress even if there

were merit to appellant's argument that the application was not sufficient for the issuing magistrate judge to find probable cause.

In *Leon*, 468 U.S. at 900, the Supreme Court held that "the Fourth Amendment exclusionary rule should be modified so as not to bar the use in the prosecution's case in chief of evidence obtained by officers acting in reasonable reliance on a search warrant issued by a detached and neutral magistrate." In explaining the *Leon* decision in *Connelly v. State,* 322 Md. 719, 728 (1991), the Court of Appeals stated:

> The Court [in *Leon*] emphasized that 'the exclusionary rule was designed to deter police misconduct rather than to punish the errors of judges and magistrates.' *Id.* at 916, 104 S.Ct. at 3417. It said that '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.' *Id.* at 918, 104 S.Ct. at 3418. In this regard, the Court questioned whether the exclusionary rule has a deterrent effect when the offending officers 'acted in the objectively reasonable belief that their conduct did not violate the Fourth Amendment.' *Id.*

When the officer conducting the search acts with "objective good faith" in the belief that the warrant is a valid one, the evidence seized as a result of that warrant should not be suppressed. *Connelly,* 322 Md. at 728-29; *Patterson, supra*, 401 Md. at 104.

Judge Moylan explained the rationale behind the good faith exception doctrine in *Jenkins, supra*, 178 Md. App. at 194, as follows:

> The basic rationale of . . . *Leon* is easy. The Exclusionary Rule is intended to deter unreasonable police behavior, not judicial error. The judge may have made a mistake in issuing the warrant, but the officer is not unreasonable in relying on the judge's legal judgment. Accordingly, the officer is not unreasonable in executing a judicially issued warrant and thus exclusion is not called for even if the warrant is bad.

In analyzing the reasonableness of a police officer relying upon a search warrant that has been approved by a Magistrate Judge of the United States District Court for the District of Maryland, the reviewing court must bear in mind, as we stated in *Jenkins*, that "the police officer is not a lawyer and that the reasonableness of his investigative behavior, therefore, is not to be assessed as if he were." *Id.*

Whether the police acted in good faith is a question of law we review *de novo*. *Patterson, supra ,* 401 Md. at 104-05. Whereas the answer generally depends upon all the circumstances of the case, *id.* at 105, in the absence of any evidence on the issue of good faith, we rely solely upon the contents of the affidavit. *Connelly v. State*, 322 Md. 719, 735-36 (1991) ("As application of the good faith exception to the allegations of the affidavit presents an objectively ascertainable question, it is for the appellate court to decide whether the affidavit was sufficient to support the requisite belief that the warrant was valid.").

We presume the police acted in good faith when they have obtained a warrant. *Patterson, supra*, 401 Md. at 104. "In the ordinary case, an officer cannot be expected to question the magistrate's probable-cause determination or his judgment. . . ." *Id.* at 111.

Nevertheless, as the Court of Appeals noted in *Patterson, id.* at 104, there are four situations in which the trial court must suppress evidence obtained pursuant to an illegal warrant. They are:

> (1) the magistrate was misle[d] 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 reasonable [sic] presume it to be valid.

Id. at 104 (citing *United States v. Leon*, 468 U.S. 897, 923 (1984)). Only rarely do any of these conditions obtain. *Id*; *Jenkins, supra*, 178 Md. App. at 196.

In this case, appellant contends that the third condition applies, and that a reasonably well-trained officer should have known that the warrant application was not legally sufficient. After all, appellant asserts, "The law has prohibited a warrant issuing upon stale probable cause for a very long time."

But, even though police officers are charged with knowledge of well-established current law, including judicial precedent, *Greenstreet, supra*, 392 Md. at 679, it is rare for a police officer to know more than a federal magistrate judge about the law governing the issuance of warrants. *Jenkins, supra*, 178 Md. App. at 194 ("the police officer is not a lawyer and . . . the reasonableness of his investigative behavior, therefore, is not to be assessed as if he were"). As this Court stated in *West v. State*, 137 Md. App. 314, 356 (2001):

> In applying *Leon*, we must bear in mind the euthanasia of pure reason that would result from holding police officers in the field, usually having no legal education besides the one they ostensibly acquire while on duty, to a higher legal standard than we hold the issuing judge himself, who has legal training and has the benefit of an objective and neutral perspective. It is the judge who possesses the legal acumen to objectively analyze the facts and render a decision as to the constitutionality of a search warrant.

See also Minor v. State, 334 Md. 707, 715 (1994) ("the officer has no duty to second guess the judge").

When we review an affidavit for good faith, we ask whether the affidavit is "'so lacking in indicia of probable cause as to render official belief in its existence entirely [un]reasonable.'" *Patterson*, 401 Md. at 108 (brackets in original) (quoting *Leon*, 468 U.S. at 923). Here, the affidavit supplied enough information for the executing police officers to have reasonably believed, in good faith, that the application provided a substantial basis to conclude there was a fair probability that they would find evidence of appellant's drug law violations in the apartment, and therefore, that the federal magistrate judge had properly issued a valid warrant. There was no need for them to seek a second opinion before acting upon the warrant. The warrant application included extensive details about a sophisticated and lengthy investigation that had established that the appellant was regularly engaged in major drug transactions. The application also included information from a confidential informant, whose statements regarding the appellant were consistent with the facts independently discovered by the investigators, but added the personal observation of drugs in the apartment which was the target of the warrant. The affidavit also included the affiant's expert opinion that drug dealers maintain records of drug transactions, and that such records typically "are stored by drug traffickers . . . in their . . . residences, and other closely controlled locations." Based upon all the information provided in the application, a federal magistrate judge issued the warrant. There being no apparent reason for the officers to question the magistrate's judge's competence or legal knowledge regarding the application of the Fourth Amendment, and no basis for the officers to second-guess the magistrate judge's judicial determination that the application was adequate for the issuance of a warrant, the officers were entitled to rely upon that warrant.

Accordingly, we agree with the State's alternative argument that, under *Leon*, the court did not err in denying the motion to suppress.

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