

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0592

September Term, 2015

ROBERT McKINNEY, JR.

v.

STATE OF MARYLAND

Krauser, C.J.,
Woodward,
Salmon, James P.
(Retired, Specially Assigned),

JJ.

Opinion by Krauser, C.J.

Filed: June 15, 2016

*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.

Convicted by a jury, in the Circuit Court for Prince George's County, of numerous drug¹ and weapons² offenses, Robert McKinney, Jr., appellant, contends that the circuit court erred in denying his motion to suppress evidence seized from his home. Finding no error, we affirm.

I.

In May 2014, Detective Jason Swope and Detective Paul Mazzei of the Prince George's County Police Department received, from a confidential source, information regarding a potential marijuana growing operation at 3910 Walls Lane in Suitland, Maryland. According to that source, the growing operation was located in the basement of that property.

After finding in a curbside trashcan, located directly in front of 3910 Walls Lane, 486.5 grams of marijuana leaves and stems and three documents of U.S. Mail addressed both to and from 3910 Walls Lane, the detectives obtained a search warrant for 3910 Walls Lane, which described the property as:

[A] single family residence that is black in color. The residence has a black front door with a black steel security door. The property to the residence is surrounded by a six foot tall wooden privacy fence with a secured gate on the driveway. The outside of the gate has the numbers "3910" spray painted in black both horizontally and vertically.

¹ The drug offenses for which appellant was convicted were possession of marijuana with intent to distribute, manufacturing marijuana, possession of marijuana, and possession of cocaine.

² The weapons offenses for which appellant was convicted were possession of a firearm with a nexus to drug trafficking, possession of a firearm after a disqualifying conviction, possession of a shotgun after a disqualifying conviction, and manufacturing a representation of a destructive device.

In the course of executing that warrant, police found, in appellant's home, harvested marijuana, marijuana plants, marijuana growing and packaging paraphernalia, hydroponic growing and lighting systems, firearms, and "an improvised explosive device."

II.

Prior to trial, appellant sought to suppress the drugs, drug-related equipment, and weapons seized pursuant to the search warrant at issue, claiming that the search warrant had misstated his address as "3910," instead of "3905" (his actual address), and thereby failed to adequately identify the premises to be searched, though, his counsel, at the suppression hearing, acknowledged that appellant's house, a single family home, had two house numbers on it: "3910" and "3905." Specifically, the front of the house and the front of the mailbox both bore the number "3905," while the side of the mailbox exhibited the number, "3910." Moreover, there was no dispute that the side porch bore the number, "3910," and that "3910" was spray painted on the fence surrounding the property at two different locations. Finally, while appellant provided the suppression court with copies of permits, electrical bills and other documentation addressed to appellant at the address "3905," the State submitted a Pepco bill that displayed the "3910" address.

Following the hearing, the suppression court denied the motion, concluding that, because both numbers, "3905" and "3910," were displayed on the exterior of the house, the police officers had acted in good faith in applying for and executing the warrant. Specifically, the court stated:

The facts are essentially agreed to; the search warrant is valid and timely executed. It provided for a search of 3910 Walls Lane, Suitland, Maryland. However, the Defendant's proper address is 3905 Walls Lane, Suitland,

Maryland. Numerous exhibits presented by the Defendant clearly indicate that the correct address is 3905. However, the side of the Defendant’s mailbox says 3910. In two places on the gate to Defendant’s property the number 3910 is painted on. Furthermore, the description of the residence itself, as contained in the search warrant application, tends to match the pictures provided as exhibits of 3905 fairly clearly. Looking at all the evidence, it is clear to the Court that the officers acted in good faith both in applying for the warrant and in executing it.

III.

In considering the denial of a motion to suppress evidence, our review is limited to the record of the suppression hearing. *Byndloss v. State*, 391 Md. 462, 477 (2006)(citations omitted). We accept the facts as found by the suppression court, unless clearly erroneous. *Carter v. State*, 367 Md. 447, 457 (2002). In so doing, “[w]e review the evidence and inferences that may be drawn therefrom in the light most favorable to the party who prevails on the motion.” *Briscoe v. State*, 422 Md. 384, 396 (2011). Then, “in resolving the ultimate question of whether the [search] of an individual’s person or property violates the Fourth Amendment, we ‘make our own independent constitutional appraisal by reviewing the law and applying it to the facts of the case.’” *Crosby v. State*, 408 Md. 490, 505 (2009)(quoting *State v. Williams*, 401 Md. 676, 678 (2007)).

IV.

Appellant’s sole contention on appeal is that the search of his home was unreasonable, because the search warrant misstated address of his residence and, therefore, failed to sufficiently identify the premises to be searched. The State responds that the search warrant did, in fact, identify the property in question with sufficient particularity to satisfy the Fourth Amendment, and, therefore, the search of appellant’s home was lawful.

Moreover, even if this was not so, the police, the State points out, acted reasonably and in good faith when they, acting on the warrant, searched appellant’s residence.

The Fourth Amendment “prohibits the issuance of any warrant except one particularly describing the place to be searched and the persons or things to be seized.” *Maryland v. Garrison*, 480 U.S. 79, 84 (1987). The particularity requirement “prevents the seizure of one thing under a warrant describing another.” *Andresen v. Maryland*, 427 U.S. 463, 480 (1976)(citations omitted). But “[t]here is, of course, no formula which can be used to measure the particularity with which premises must be described in a search warrant, the adequacy of such description in every case necessarily depending on the facts and circumstances there present.” *Frey v. State*, 3 Md. App. 38, 46 (1968)(citation omitted).

“Moreover, an error in the description or location of the property set out in the warrant is not automatically fatal to its validity.” *Harris and Schmitt v. State*, 17 Md. App. 484, 488 (1973)(holding that the search warrant at issue met the particularity requirement, where, despite an error in the description of the property, the search warrant sufficiently described the appearance of the house, and the officers had no difficulty finding the house)(citations omitted). In fact, “[t]he cardinal consideration is that the premises be described with such particularity or sufficiency, ‘that the officer with a search warrant can, with reasonable effort ascertain and identify the place intended.’” *Id.* (citing *Steele v. United States No. 1*, 267 U.S. 498, 503 (1925)); *Frey*, 3 Md. App. at 46.

The search warrant in the present case satisfied the particularity requirement of the Fourth Amendment. Despite having the wrong house number, the warrant sufficiently described the premises to be searched because it included precise details about the property,

specifically, that it was “surrounded by a six foot tall wooden privacy fence with a secured gate on the driveway. The outside of the gate had the numbers ‘3910’ spray painted in black both horizontally and vertically.” There was no evidence that the officers had any difficulty identifying the property to be searched. Indeed, the officers entered the home through the basement entrance, where the officers believed, based on the information that they had received, that the marijuana growing operation would be located.

Furthermore, the suppression court’s decision is affirmable under the good faith exception to the Fourth Amendment’s exclusionary rule. That exception applies “when [evidence] is discovered by officers acting in good faith and in the reasonable, though mistaken belief, that they were authorized by a signed search warrant.” *Walls v. State*, 179 Md. App. 234, 253-54 (2008).

Appellant does not contend that the officers did not act in good faith, nor that it was unreasonable for those officers to rely on the information set forth in the warrant. Although the search warrant set forth the incorrect house number, that number was publicly displayed on the property at several different locations. Consequently, the officers’ belief in the validity of the warrant was reasonable, and the officers acted in good faith in executing it.

**JUDGMENT OF THE CIRCUIT COURT
FOR PRINCE GEORGE’S COUNTY
AFFIRMED. COSTS TO BE PAID BY THE
APPELLANT.**