UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 516

September Term, 2016

JOSHUA MICHAEL SANDERSON

v.

STATE OF MARYLAND

Krauser, C.J.,
Nazarian,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: April 6, 2017

Convicted of possession of marijuana following a jury trial, in the Circuit Court for Prince George's County, Joshua Michael Sanderson, appellant, raises a single issue on appeal: whether the circuit court erred in denying his motion to suppress evidence that was seized from his residence following the execution of search warrant. Specifically, Sanderson asserts that the search warrant application failed to supply probable cause to justify the search of his residence and that the good faith exception to the exclusionary rule is not applicable. For the reasons that follow, we affirm.

"In cases involving relatively well-settled Fourth Amendment principles, such as those which question whether the attributed facts set forth in an affidavit rise to the level of probable cause, it is unnecessary to determine whether the warrant was issued on a showing of probable cause." *McDonald v. State*, 347 Md. 452, 470-71 (1997) (citing *United States v. Maggitt,* 778 F.2d 1029, 1033 (5th Cir. 1985)). Instead, the Court may "assume *arguendo* that [the] search warrant lacked probable cause" and consider whether the "good faith exception applies and permits the evidence to be admitted." *Id*. at 471. We therefore turn first to the question of whether the officers acted in good faith.

"[A]ppellate review of the police officers' good faith reliance on a search warrant . . . is a question of law . . . and, as such, that review is conducted *de novo.*" *Marshall,* 415 Md. at 408 (internal citations omitted). 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." *See United States v. Leon,* 468 U.S. 897, 918 (1984). Consequently, "[e]ven when the warrant is bad, the mere exercise of having obtained it will salvage all

but the rarest and most outrageous of warranted searches." *State v. Riley*, 147 Md. App. 113, 130 (2002) (internal quotation marks and citation omitted).

Nevertheless, suppression of evidence recovered during the execution of a search warrant is still appropriate in the following four circumstances:

> (1) if 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 v. State, 415 Md. 399, 408–09 (2010) (citation omitted).

We only address the third category because Sanderson does not contend that either of the other categories applied. "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*, 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." *Greenstreet v. State*, 392 Md. 652, 679 (2006) (citation omitted).

The search warrant application in this case was not supported by a "bare bones" or "conclusory" affidavit. Specifically, the affidavit set forth that, after receiving intelligence regarding drug sales at the residence, officers recovered .3 grams of marijuana, and mail addressed to the residence, from a trash can located in front of the residence. Thereafter, the officers conducted surveillance of the residence for approximately four months and, during that time, they observed activity "consistent with the sale and distribution of controlled dangerous substances from residences" including: numerous vehicles parked in front of the residence that were registered to owners who did not live in the area; heavy vehicle traffic, with visitors staying for brief periods of time; and multiple different males standing in the front yard who appeared to be acting as lookouts.

Moreover, during the period of surveillance, the officers stopped and searched two vehicles leaving the residence and recovered narcotics from both vehicles. Most notably, the search warrant affidavit indicated that on February 6, 2015, four days before the warrant was issued:

> [S]urveillance operations observed a vehicle pull in the front of [the residence] and a male exited the vehicle and entered the house, the vehicle then drove away from the house. The vehicle was stopped . . . and the vehicle and the driver were searched with negative results. The vehicle then returned to the residence and picked up the male that was initially dropped off. The vehicle was stopped [again and] as the officer approached it was obvious that the male that exited [the residence] was hiding something under the center console of the vehicle. A strong odor of Marijuana was now present in the vehicle and the driver consented to a search. The following items were recovered in a plastic bag under the center console: 1) 6 bags of

> cocaine (4grams), 2) 2 bags of methamphetamine (4 grams), 3) 1 bag of hash marijuana (2.5 grams), 4) 1 bag of marijuana (1 gram) 5) 4 bags of heroin (4 grams).

That vehicle stop, when combined with the officer's other observations, supported an inference that the passenger of the vehicle had just obtained drugs from the residence and, therefore, that more drugs might be found inside. Consequently, the search warrant application proffered at least some evidence, beyond mere conclusory statements, to support the issuance of a search warrant for the residence.

Finally, we note that, despite making comments that the search warrant application was "thin", the suppression judge, like the judge issuing the warrant, ultimately found that there was probable cause to issue the warrant. Thus, at a minimum, the evidence offered in support of the warrant was "sufficient to create disagreement among thoughtful and competent judges as to the existence of probable cause." *See Greenstreet*, 392 Md. at 679.

Because the lack of probable cause was not apparent from the face of the affidavit and there was some evidence to support the conclusion that drugs were likely to be found at the residence, the police officer's reliance on the warrant was objectively reasonable. Accordingly, the good faith exception applies, and the court did not err in denying the motion to suppress.

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