Circuit Court for Harford County
Case No. C-12-CR-22-000230

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 2136

September Term, 2022

OTIS HUFF

v.

STATE OF MARYLAND

Nazarian,
Albright,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Nazarian, J.

Filed: April 3, 2024

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for persuasive value only if the citation conforms to Maryland Rule 1-104(a)(2)(B).

In January 2021, deputies from the Harford County Sheriff's Office responded to a one-car accident involving Otis Huff and, after recognizing him as a person of interest in a then-recent shooting, seized four cell phones, among other things. The phones were transferred at some point to the Aberdeen Police Department, who held them for eight months. Then, in September 2021, officers from the Sheriff's Office retrieved the phones and applied for a warrant to search them. Upon searching the phones, the detectives found that Mr. Huff was connected to an apartment where they suspected he was storing a supply of drugs. Relying in part on the information learned from the search of the cell phones, the detectives then obtained a warrant to search the apartment and found various drugs and a firearm.

Mr. Huff was charged with fourteen counts relating to firearm possession and drug distribution. He moved to suppress the evidence found in the apartment on the grounds that (1) the information learned from the cell phones must be excised from the warrant to search the apartment because the warrantless eight-month retention of his cell phones violated the Fourth Amendment, (2) the warrant to search the apartment lacked probable cause without the information learned from the cell phones, and (3) the good-faith exception does not apply. The Circuit Court for Harford County denied the motion and ruled against Mr. Huff on all three grounds.

Mr. Huff was convicted of possession with the intent to distribute cocaine, possession of a firearm by a person convicted of a crime of violence, and accessory after the fact of a felony. On appeal, Mr. Huff challenges the court's denial of the suppression

motion. We agree with the circuit court that the warrant to search the apartment does not fail for lack of probable cause even when excluding the information learned from Mr. Huff's cell phones and affirm.

I. BACKGROUND

A. Warrant To Search Mr. Huff's Cell Phones.

On January 10, 2021, Harford County Sheriff's deputies responded to the scene of a single vehicle crash in Aberdeen. When they arrived, the police found a vehicle off the roadway and a man sitting on the ground. The man refused to identify himself, but the officers recognized him as Mr. Huff because the Aberdeen Police Department had published a flier, with his photograph, that identified him as a suspect in a shooting. The officers also learned that Mr. Huff had an active arrest warrant for selling controlled dangerous substances.

While on the scene of the crash, Harford County police found "several cell phones as well as a large amount of U.S. currency and CDS" in Mr. Huff's possession. The officers contacted the Aberdeen Police Department and Aberdeen detectives seized Mr. Huff's cell phones for "further examination." The detectives seized a total of four cell phones. Two of the four cell phones were smartphones that the detectives were unable to access due to the phones' security features. The Aberdeen Police Department retained the cell phones for the eight months while it had an ongoing investigation of Mr. Huff for attempted murder, but never requested assistance with searching the cell phones. No charges arose from Mr. Huff's possession of the items found on the scene of the crash.

On August 31, 2021, Detective Corporal Christopher Maddox of the Harford County Sheriff's Office received information that Mr. Huff had been involved in a shooting earlier that month. The next day, Corporal Maddox retrieved Mr. Huff's cell phones from the Aberdeen Police Department. On September 13, 2021, Corporal Maddox applied for a warrant to search the two smartphones "for evidence of the crimes of [m]urder" and the warrant was approved on the same day. Within about two weeks of the approval of the warrant, Harford County detectives completed a cellular download on Mr. Huff's phones.[1]

B. Warrant To Search Apartment 4.

About four months later, on January 5, 2022, Corporal Maddox began surveilling Mr. Huff at his apartment building in Aberdeen. Mr. Huff lived on the third floor in Apartment 9. But based on his observations, Corporal Maddox determined that Mr. Huff was stashing a supply of drugs in Apartment 4 on the ground floor of the building.

On March 5, 2022, after learning that Mr. Huff was a suspected accessory after the fact in a shooting that occurred the night before, Detective Corporal Joshua Shoffstall of the Aberdeen Police Department contacted Corporal Maddox to request details about Mr. Huff's movements. Corporal Maddox reported that about a dozen times between February and March 2022, he observed Mr. Huff walking toward and conducting drug transactions outside of Apartment 4. Because of his viewpoint and the layout of the apartment building, however, Corporal Maddox was not able to see Mr. Huff enter Apartment 4 directly. He watched Mr. Huff's movements through a pole camera located about 300 feet away from

[1] We explain the results of the cellular download below.

the apartment building and thought initially that Mr. Huff could have been entering Apartment 3, which was adjacent to Apartment 4.

Despite the limited view, Corporal Maddox reported that he was "certain" that Mr. Huff was using Apartment 4 to conceal his supply of drugs. He described repeatedly that he saw Mr. Huff "turning sharply to the right" toward, "mak[ing] a sharp right turn toward[]," "walking downstairs and immediately to the right[] toward," and "mak[ing] a hard right toward" Apartment 4. He also explained that another detective, Detective Hana Pilachowski, found a connection between Mr. Huff and the tenant in Apartment 4. Detective Pilachowski had completed a cellular download on Mr. Huff's phones that revealed in Mr. Huff's contacts the phone number belonging to the tenant in Apartment 4. Additionally, Corporal Maddox explained that he was unable to develop any connection between Mr. Huff and Apartment 3 because Apartment 3 became vacant for a period during the surveillance due to a change of tenants.

Detective Shoffstall incorporated Corporal Maddox's observations and findings, including the information from the cellular download, into a search and seizure warrant application for Apartment 4. The warrant was approved on March 11, 2022. The next day, officers from the Harford County Sheriff's Office and the Aberdeen Police Department executed the warrant for Apartment 4. The officers found Mr. Huff lying on a sofa in the living room. They found as well a handgun and various drugs in amounts that indicated an intent to distribute. Mr. Huff was charged with fourteen counts relating to firearm possession and drug distribution.

C. Procedural History.

Mr. Huff moved to suppress the evidence obtained from the search of Apartment 4 and the court held a suppression hearing on November 9, 2022. At the hearing, Mr. Huff argued that the September 13, 2021 warrant to search Mr. Huff's cell phones should not have been approved because the Aberdeen Police Department's eight-month retention of the phones when the "phones were no longer of evidentiary value" and "weren't part of an investigation" constituted an unreasonable seizure under the Fourth Amendment. Mr. Huff also argued that Detective Shoffstall acted in bad faith by including the cell phone information in the warrant application to search Apartment 4 because he was aware that the phones had been retained unlawfully. Mr. Huff contended as well that after excising the information learned from his phones, there would be no probable cause to support a warrant to search Apartment 4.

The State responded that the eight-month retention of Mr. Huff's phones before seeking a search warrant was justified because the phones were evidence of a crime, regardless of their contents. As a result, the State contends, the cell phone search warrant was approved correctly and the information obtained from the cell phones should not be suppressed. Moreover, the State contended, neither Corporal Maddox nor Detective Shoffstall acted in bad faith by including the cell phone information in their warrant applications because the applications did not conceal the fact that the Aberdeen Police Department had retained the phones for eight months while being unable to access them. Also, the State argued that even if the cell phone information had been excluded from the

warrant application, Corporal Maddox's observations would have been sufficient to support a warrant to search Apartment 4 because he saw repeatedly that Mr. Huff made a "hard right" turn toward Apartment 4 and he found that Apartment 3 was vacant for part of the surveillance period.

The court denied Mr. Huff's motion to suppress. The court found that although the initial seizure of Mr. Huff's phones was lawful, the Aberdeen Police Department's eight-month retention of the phones was unlawful because "there was no investigation involving the[] phones." The court concluded that the warrant to search the cell phones should not have been approved, but that the good-faith exception applied to Detective Shoffstall's reliance on the information obtained as a result of the cell phone search warrant. In addition, the court determined that even if the information from Mr. Huff's cell phones were excluded from the warrant application for Apartment 4, Corporal Maddox's observations and findings by themselves formed a reasonable basis to issue the warrant.

A month later, on December 15, 2022, Mr. Huff entered a entered a guilty plea to Count 2, possession with the intent to distribute cocaine, and an *Alford* plea to Count 6, possession of a firearm by a person convicted of a crime of violence. He preserved his right to appeal the denial of his motion to suppress. The court accepted his pleas and sentenced him to five years of incarceration without parole.[2] Additional facts will be provided as necessary below.

[2] Mr. Huff also entered a guilty plea to one count of being an accessory after the fact of a felony, which he does not challenge on appeal. The court sentenced him to five years of incarceration to run concurrently with the other sentences.

II. DISCUSSION

Mr. Huff raises one question on appeal: did the circuit court err in denying his motion to suppress the evidence obtained from Apartment 4?[3] We hold that it didn't. We agree with the circuit court that the information learned from the search of Mr. Huff's cell phones was obtained illegally, but if we excise it from the warrant application to search Apartment 4, there still would be a substantial basis for concluding that the warrant was supported by probable cause. The circuit court denied the suppression motion properly.

In reviewing the denial of a suppression motion, "we must rely solely upon the record developed at the suppression hearing" and "[w]e view the evidence and inferences that may be drawn therefrom in the light most favorable to the party who prevails on the motion." *Raynor v. State*, 440 Md. 71, 81 (2014) (cleaned up). "'[W]e review legal questions *de novo*, and where, as here, a party has raised a constitutional challenge to a search or seizure, we must make an independent constitutional evaluation by reviewing the relevant law and applying it to the unique facts and circumstances of the case.'" *Moats v. State*, 455 Md. 682, 694 (2017) (*quoting Grant v. State*, 449 Md. 1, 14–15 (2016)).

A. We Are Not Convinced That Mr. Huff's Cell Phones Had Independent Evidentiary Value That Would Justify Their Warrantless Eight-Month Retention By Law Enforcement.

Mr. Huff argues *first* that "[t]he police violated the Fourth Amendment by

[3] Mr. Huff phrased his Question Presented as: "Did the circuit court err in denying Appellant's suppression motion?"

The State phrased its Question Presented as: "Did the circuit court properly deny Huff's motion to suppress evidence?"

unreasonably delaying the request for the cellphone-search warrant" and that as a result, "the information from that warrant must be excised from the apartment-search warrant." The State responds that "the delay in the police searching [Mr.] Huff's phone was immaterial to the reasonableness of the seizure because the phone itself carried independent evidentiary value as indicia of drug trafficking." Therefore, the State contends, "the police were justified in retaining the devices on that basis alone" and "suppression of the data obtained from the cell phones was not required . . . ."

"The Fourth Amendment protects the 'right of the people to be secure in their persons, houses, papers, *and effects*, against unreasonable searches and seizures.'" *United States v. Place*, 462 U.S. 696, 700 (1983). "A 'seizure' of property occurs when there is some meaningful interference with an individual's possessory interests in that property." *United States v. Jacobsen*, 466 U.S. 109, 113 (1984). Generally, seizures of personal property are unreasonable unless accomplished pursuant to a judicial warrant. *Illinois v. McArthur*, 531 U.S. 326, 331 (2001). But police may seize property without a warrant if they have probable cause to believe that the property is "evidence of a crime" or another "recognized exception to the warrant requirement is present." *Place*, 462 U.S. at 701.

Even when an exception applies such that law enforcement may conduct a "permissible warrantless seizure," "police must obtain a search warrant within a reasonable period of time." *United States v. Burgard*, 675 F.3d 1029, 1032 (7th Cir. 2012); *United States v. Smith*, 967 F.3d 198, 210 (2d Cir. 2020) ("[T]he Fourth Amendment imposes a time-sensitive duty to diligently apply for a search warrant if an item has been seized for

that very purpose, and all the more so if the item has been warrantlessly seized."); *United States v. Martin*, 157 F.3d 46, 54 (2d Cir. 1998) ("[E]ven a seizure based on probable cause is unconstitutional if police act with unreasonable delay in securing a warrant."). There is "no bright line past which a delay becomes unreasonable," *Burgard*, 675 F.3d at 1033, but courts have held that "a month-long delay well exceeds what is ordinarily reasonable." *Smith*, 967 F.3d at 207. But if the seized property has "investigative or prosecutorial value regardless of any further search of its contents," a delay in securing a search warrant will be immaterial to the reasonableness of the seizure. *Id.* at 209 ("[I]ndependent evidentiary value [of a tablet seized by police] would have justified the police's retention of the tablet without regard to whether they ever sought a warrant to search the tablet's contents."); *United States v. Burris*, 22 F.4th 781, 785 (8th Cir. 2022) (eight-month retention of seven cell phones before obtaining a search warrant was reasonable where the phones "had evidentiary value independent of their contents").

Here, the Aberdeen Police Department seized Mr. Huff's cell phones and held them for eight months without obtaining a warrant to search them. A delay of that length is presumptively unreasonable under the Fourth Amendment. *Smith*, 967 F.3d at 207. The State posits that the delay in securing a search warrant "was immaterial to the reasonableness of the seizure" of Mr. Huff's phones because the phones "carried independent evidentiary value as indicia of drug trafficking." But no drug trafficking charges were brought against Mr. Huff in connection with the phones. And the circuit court found that "there was no investigation involving the[] phones."

Because there was no investigation or criminal proceedings involving the seized cell phones, we are not persuaded that the phones had "investigative or prosecutorial value" that would justify their warrantless eight-month retention. *See United States v. Carter*, 139 F.3d 424, 426 (4th Cir. 1998) (retention of "admissible evidence" seized incident to an arrest was reasonable "prior to the disposition of the pending criminal charge for which the defendant was arrested"); *Burris*, 22 F.4th at 785 (retention of cell phones seized as indicia of drug trafficking was reasonable while police conducted drug trafficking investigation). The State has not pointed us to any authority for the proposition that an item has independent evidentiary value when law enforcement does not seek to pursue charges involving the item. Under these circumstances, we agree that the circuit court did not err in concluding that the eight-month retention of Mr. Huff's cell phones was unlawful.

B. There Is A Substantial Basis For Concluding That The Warrant To Search Apartment 4 Was Supported By Probable Cause Even Without The Information Learned From The Search Of Mr. Huff's Phones.

Second, Mr. Huff argues that "[w]ithout the cellphone information, the evidence was insufficient to link [him] to Apartment 4, and thus failed to provide probable cause that evidence would be recovered there." The State counters that "[e]ven without information obtained from the search of [Mr. Huff's] cell phones, the warrant nonetheless contained probable cause to search Apartment 4" because the warrant application explained that "[Mr.] Huff's movements were consistent with him entering Apartment 4" and "[t]he police ruled out Apartment 3 by obtaining a tenant roster and determining that it was vacant for a period during their surveillance."

"When confronted with whether a search warrant is legal, the question before us ordinarily is 'whether the issuing judge had a substantial basis to conclude that the warrant was supported by probable cause.'" *Williams v. State*, 231 Md. App. 156, 174 (2016) (*quoting Greenstreet v. State*, 392 Md. 652, 667 (2006)). "As a predicate for the issuance of a search warrant, probable cause simply means a fair probability that contraband or evidence of a crime will be found in a particular place." *Sweeney v. State*, 242 Md. App. 160, 185 (2019) (cleaned up). "To determine whether the issuing judge had a 'substantial basis,' we do not apply 'a *de novo* standard of review, but rather a deferential one.'" *Williams*, 231 Md. App. at 174 (*quoting Greenstreet*, 392 Md. at 667); *Carter*, 178 Md. App. at 408 ("The substantial basis standard involves something less than finding the existence of probable cause, and is less demanding than even the familiar 'clearly erroneous' standard . . . ." (cleaned up)). We also "apply the 'four corners rule' and 'confine our consideration of probable cause solely to the information provided in the warrant and its accompanying application documents.'" *Sweeney*, 242 Md. App. at 185 (*quoting Williams*, 231 Md. App. at 175).

We agree with the circuit court that there was a substantial basis for concluding in this case that the warrant to search Apartment 4 was supported by probable cause even without considering the information learned from Mr. Huff's phones. The warrant application included Corporal Maddox's observations that Mr. Huff walked toward or conducted drug transactions outside of Apartment 4 on a dozen occasions. Although Corporal Maddox could not see Mr. Huff enter Apartment 4 directly, Corporal Maddox

described how Mr. Huff often made a right turn toward Apartment 4 after conducting drug transactions: "[Mr.] Huff was observed walking downstairs and immediately to the right, toward [A]partment 4 . . . ." Corporal Maddox reported as well that he watched Mr. Huff's suspected drug buyers "walk down the steps and make a hard right toward [A]partment 4." And Detective Shoffstall clarified in the warrant application that the right turn led to Apartment 4 based on the layout of the apartment building: "[Mr.] Huff enter[ed] the stairwell of [the apartment building] and proceed[ed] down to the ground level, turning sharply to the right. This would indicate that [Mr.] Huff was going to [Apartment] 4, as the ground level floor layout would indicate."

Corporal Maddox reported that he was "unable to develop any connection between [Mr.] Huff and the tenants of . . . Apartment 3," which was adjacent to Apartment 4. He explained that he learned through the tenant roster for the apartment complex that the tenants of Apartment 3 had changed and that the apartment became vacant during the surveillance period. The warrant-issuing judge could find a "fair probability" that evidence of drug trafficking would be found in Apartment 4 based on Corporal Maddox's determination that Mr. Huff's movements indicated he was entering Apartment 4 and that the change of tenants indicated that he was not going to Apartment 3. Based on these observations and findings, we conclude that there was a substantial basis for determining that the warrant to search Apartment 4 was supported by probable cause. And to the extent that Mr. Huff argues that the information learned from the cell phone search may have influenced Corporal Maddox's and Detective Shoffstall's conclusions that Mr. Huff's

movements were headed toward Apartment 4, we resolve that ambiguity in favor of finding probable cause. *Carter*, 178 Md. App. at 409 ("Doubtful or marginal cases should be resolved in favor of the judge's decision to issue the warrant."); *State v. Jenkins*, 178 Md. App. 156, 173–74 (2008) ("[T]he Fourth Amendment requires that we read possibly ambiguous language with an eye toward upholding the warrant rather than toward striking it down.") (cleaned up).

Our analysis is not changed by Mr. Huff's argument that Corporal Maddox's "testimony from the [suppression] hearing inappropriately colored the court's findings on the sufficiency of the affidavit within its four corners." Corporal Maddox may have explained more precisely at the suppression hearing how Mr. Huff's movements indicated that he was entering Apartment 4, but his explanation in the warrant application sufficed to provide a substantial basis for concluding that there was probable cause to search Apartment 4.[4]

JUDGMENT OF THE CIRCUIT COURT FOR HARFORD COUNTY AFFIRMED. APPELLANT TO PAY COSTS.

[4] Mr. Huff argues as well that "the good-faith exception does not apply" to save the information from the cell phone search from exclusion. Because we have determined that there was a substantial basis for concluding that the warrant to search Apartment 4 was supported by probable cause even when excising the information from the cell phone search, we need not address the applicability of the good-faith exception.