Circuit Court for Harford County
Case No. C-12-CR-22-001031

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 2347

September Term, 2023

CALEB ABDIEL BONILLA-BAEZ

v.

STATE OF MARYLAND

Graeff,
Albright,
Woodward, Patrick L.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Albright, J.

Filed: July 14, 2025

*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 Md. Rule 1-104(a)(2)(B).

Appellant Caleb Abdiel Bonilla-Baez was charged with forty-eight counts of possession and distribution of child pornography in the Circuit Court for Harford County. Following the circuit court's denial of his motion to suppress evidence recovered during a search of his person upon the execution of a search and seizure warrant at his roommate's house, Mr. Bonilla-Baez pleaded not guilty on an agreed statement of facts to one count of possession of child pornography. The circuit court found sufficient evidence to convict Mr. Bonilla-Baez of the charged offense and sentenced him to five years in prison, suspending all but time served.

In his timely appeal, Mr. Bonilla-Baez raises a single question for our consideration:

> Did the motions court err in denying the motion to suppress the fruits of the search of Mr. Bonilla-Baez where the warrant which purported to authorize the search violated the Fourth Amendment's particularity requirement?

For the reasons that follow, we conclude that the circuit court did not so err. We therefore affirm Mr. Bonilla-Baez's conviction.

BACKGROUND

In May 2022, the National Center for Missing & Exploited Children ("NCMEC") received a tip from Kik, a freeware instant messaging mobile application, that several videos containing child pornography were being shared on its platform by user "s1ssywh0re420;" an accompanying email address to the user name was provided. NCMEC generated a report, including the content of thirty-five videos of confirmed child pornography, which was forwarded to the Maryland Internet Crimes Against Children Task Force and the Harford County Sheriff's Office/Child Advocacy Center.

Detective David Skica, assigned to the Criminal Investigation Division of the Child Advocacy Center, obtained a search warrant for the suspect Kik account. The account contained 184 photos and videos, the majority of which were sexual in nature, although not all qualified as child pornography. All thirty-five videos listed in the NCMEC tip were present.

A Samsung SMG998 model (Galaxy S21) cell phone was associated with the Kik account. Upon service of a court order upon Comcast, Detective Skica obtained the Internet Protocol ("IP") address used to upload most of the content to Kik.[1] Keith Rosekrans, III, was identified as the registrant of the IP address, with a service address on Webb Lane in Havre de Grace, Harford County. None of the Kik videos, however, could be verified as having been shared by Mr. Rosekrans.

While reviewing the records obtained from Kik, Detective Skica found a non-sexual photograph of a white male's face, which bore "a striking resemblance" to Facebook and Motor Vehicles Administration photos the detective had located of Mr. Rosekrans. The photo, unlike the media shared on Kik, had been "verified as being constructed by the suspect." Detective Skica confirmed that Mr. Rosekrans had a four-year-old son over whom he had some form of custody, which was of concern, as some of Kik videos depicted sexual contact with pre-pubescent males.

Aware that videos and photos can be generated and stored on, and downloaded to, cell phones, and not knowing if Mr. Rosekrans had access to more than one cell phone or

[1] An IP address is a unique numerical label associated with a device connected to the internet.

whether the Samsung phone had been the one used to initiate the Kik account, Detective Skica applied for a warrant for a search of the person of Mr. Rosekrans and seizure of "all cellular devices used by Keith Rosekrans[, III,] to determine if additional evidence of violations" of child pornography laws had occurred. The detective further requested that the warrant require Mr. Rosekrans to unlock his phone with any biometric feature enabled to access its contents.

Detective Skica applied simultaneously for a search and seizure warrant for Mr. Rosekrans's residence, on the ground that there was probable cause to believe evidence of violations of Maryland's child pornography laws were being concealed on the property. In his warrant application and affidavit, Detective Skica stated that "cell phones and computers have software that enables them to utilize IP addresses to access online content" and that suspects of possession of child pornography often keep photos and videos on computer drives for future viewing.

Because he could not verify if the content of Mr. Rosekrans's Kik account was limited to the cell phone app, the detective deemed it necessary to "seize all devices used by the suspect[.]" He therefore requested a warrant to enter Mr. Rosekrans's residence to "photograph and search the residence, items, and occupants found within" and to seize, search, examine, and copy "any and all": (1) computers; (2) mobile devices, including but not limited to cell phones, tablets, pocket computers, personal data assistants, other portable mobile devices, SIM cards, removable media cards, and related digital storage media; (3) digital storage devices; (4) digital recording devices; (5) evidence of associated data to user accounts that "may demonstrate attribution to a particular user(s);"

(6) records concerning any accounts with Internet Service Providers; (7) diaries and other documents reflecting personal contact and other activities with minors; (8) records and other documents pertaining to occupancy of the house; and (9) records and other documents relating to the transmission of obscene materials to or soliciting minors.[2]

The circuit court found probable cause to believe that evidence of possession of child pornography was being concealed "on the person of Keith Gene Rosekrans[, III,]" and issued the search and seizure warrant for his person and devices. The warrant permitted search of Mr. Rosekrans's person, seizure of "all cell phones relating to the violations of the aforementioned laws," attainment of Mr. Rosekrans's thumb or fingerprint to unlock the phones, and seizure of all other fruits and evidence of a crime. The warrant noted that Mr. Rosekrans "is the target of the below-listed investigation and can be identified by your affiant, Detective David Skica[.]"

The court also found probable cause to issue the search and seizure warrant for Mr. Rosekrans's residence. The warrant permitted the police to enter the home, "photograph and search the residence, items, and occupants found within," and seize, search, and examine all computers, mobile devices, etc., as set forth in the attached warrant application and affidavit.

The warrants were executed at Mr. Rosekrans's home on August 11, 2022. Present in the home at the time were Mr. Rosekrans, Mr. Rosekrans's minor son, a woman named Dawn Layton, and Mr. Bonilla-Baez, an occupant of the house. The police permitted Ms.

[2] Both warrant applications gave an extensive description of the detective's background and training.

Layton and Mr. Bonilla-Baez to leave the house while they detained and interviewed Mr. Rosekrans and secured his cell phone. To the officers, Mr. Rosekrans credibly denied illegal activity or any sexual interest in children and claimed that the white male in the photo Detective Skica had viewed on Kik was not him but his roommate, Mr. Bonilla-Baez.

Detective Skica's suspicions then turned to Mr. Bonilla-Baez, who was detained and questioned. During his police interview, Mr. Bonilla-Baez was nervous, and although admitting that he had maintained a Kik account in 2012, he denied that the suspect account was his. He further denied that the non-sexual photo from the Kik account depicted him, but, to the detective, Mr. Bonilla-Baez's "facial hair struck a distinctly similarity [sic] as to the overall facial features of the photograph." The mother of his child also later identified Mr. Bonilla-Baez as the person in the picture.

Detective Skica seized Mr. Bonilla-Baez's Samsung Galaxy S21 phone—the same model as the phone used to access the Kik account—from his person, along with four other phones and a laptop computer. A forensic download of Mr. Bonilla-Baez's Samsung phone revealed that four photos contained on the phone were identical to photos contained in the record from Kik and shared in group messages. No child pornography was found. The images were determined to have been shared from Mr. Bonilla-Baez's phone while using the IP address at Mr. Rosekrans's residence while Mr. Bonilla-Baez was known to have resided there.

Mr. Bonilla-Baez was indicted on twenty-four counts of possession of child pornography and twenty-four counts of distribution of child pornography. A warrant for his arrest was issued on November 9, 2022, and he was arrested on January 30, 2023.

Mr. Bonilla-Baez moved to suppress the evidence recovered from his cell phone and computer, on the ground that the warrant which allowed for the seizure, examination, search, and copying of any mobile device located in Mr. Rosekrans's residence was overbroad. In Mr. Bonilla-Baez's view, there was no justification for the police to seize his belongings without a separate warrant, and to the extent that the phone could have been *seized* pursuant to a lawful arrest, which did not occur at the time, a subsequent warrant authorizing the *search* of the phone was required. And, even assuming, for the sake of argument, that the warrant was sufficiently particularized and valid, Detective Skica had exceeded the scope of the warrant in searching Mr. Bonilla-Baez and his phone, as the warrant for Mr. Rosekrans's residence did not permit the detective to search Mr. Bonilla-Baez or items on his person based solely on his presence in the house at the time of the execution of the warrant.

At the August 21, 2023, hearing on Mr. Bonilla-Baez's motion to suppress, the parties initially stipulated that the cell phone recovered from Mr. Bonilla-Baez's person was a Samsung SMG998 model, which contained "some images" the State intended to enter in its case-in-chief, but no child pornography.

Mr. Bonilla-Baez argued that the warrant authorizing the search of Mr. Rosekrans's house was not particularized enough as to the information sought by the police to permit the deputies to enter the premises and take any and all electronic devices

of any resident of the home, including those belonging to someone who admittedly was not the suspect targeted by the search warrant. And, even if the warrant were sufficiently particular as to the items to be seized such that it permitted a search of Mr. Rosekrans's residence, pursuant to *State v. Zadeh*, 468 Md. 124 (2020),[3] the phone should not have been seized from him in the absence of a separate warrant because it was on his person. As such, Mr. Bonilla-Baez continued, the "entire warrant fails," and any evidence obtained from the cellphone, that is, the phone itself and the images that linked the phone to the pertinent Kik account, must be suppressed.

As to any potential claim the State might offer of good faith on the part of the police officers in executing the search, Mr. Bonilla-Baez argued that, even with a warrant, the police were not permitted, under the Fourth Amendment, to search a person who was not identified in the warrant. Because police officers are deemed to know that a warrant cannot authorize an unconstitutional search, they could not rely on the overbroad warrant, and good faith would not apply to prevent the exclusion of the wrongfully obtained evidence. Instead, the deputies should have commanded Mr. Bonilla-Baez to remain in place, made sure he did not destroy or manipulate any potential evidence, and

[3] In *Zadeh*, the Supreme Court of Maryland held that when a search warrant specified a particular vehicle as the place to be searched, the seizure of any evidence of the crime inside the vehicle was permissible, but seizure of a cell phone from the person of the driver was not permissible because it was not implicated in the warrant, and "[p]robable cause to search and seize electronic equipment in one location cannot be transferred to a person." 468 Md. at 152–53 (citing *Ybarra v. Illinois*, 444 U.S. 85 (1971)).

obtained a separate search and seizure warrant for his phone, if they had developed sufficient probable cause from their interviews with him and Mr. Rosekrans.

The State responded that the warrant for the search of Mr. Rosekrans's house, within its four corners, was particularized enough to permit the police to seize "any electronic device" in the residence or on the person of any resident to allow for a determination of whether those devices had access to the pertinent Kik account and the child pornography contained therein from the home's IP address. As the warrant permitted search and examination of any and all mobile devices seeking matters pertaining to child pornography, it was reasonable for the officers to gather the items specified in the warrant, which included the phones of all the occupants of the house, including Mr. Bonilla-Baez. In the State's view, then, the warrant was sufficiently particularized.

Even if the warrant were not sufficiently particularized, the State continued, *Richardson v. State*, 481 Md. 423 (2022),[4] provides "a caveat exception specifically for

[4] In *Richardson*, the Supreme Court held that, in general, a search warrant that uses overbroad "language effectively permitting the searching officers to seize all data on a cell phone" fails to comply with the particularity requirement. 481 Md. at 460. The Court discussed ways for a warrant to restrict the officers' discretion so as "not to intrude on the phone owner's privacy interests any more than reasonably necessary to locate the evidence for which there is probable cause to search." *Id.* at 462. The *Richardson* Court recognized, however, that selecting the scope of a cell phone search "is a fact-intensive inquiry and must be resolved based on the particular facts of each case," *id.* at 460 (quoting *Commonwealth v. Snow*, 160 N.E.3d 277, 288 (Mass. 2021)), and "[w]ith respect to a small subset of cases, most notably child pornography and financial crimes, experience has shown that some perpetrators purposely mislabel electronic files or hide evidence in unusual places. Thus, a search warrant authorizing a broad forensic analysis

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child pornography," which requires a "broader net . . . due to the nature of [child pornography] offenses." In addition, the good faith exception to the exclusionary rule would apply to permit the officers to rely upon the duly issued warrant in conducting their search for all electronic devices in the house—including those belonging to Mr. Bonilla-Baez, an occupant who was present during the execution of the search warrant—that might have access to the Kik platform.

To preface its oral ruling, the circuit court explained that while the Supreme Court's discussion in *Richardson* regarding particularity and cell phone warrants was "instructive" and "helpful," *Richardson* was not law at the time the search warrant application and warrant in this matter were issued and therefore was not controlling.[5] The court went on to reiterate the information contained in Detective Skica's affidavit and warrant application and the resulting warrant to highlight the fact that the affidavit made clear that the investigation related to child pornography, which is "very different from other crimes," as it "exists in the shadows of the internet, and . . . there are different ways to access the internet, and . . . what was desired in this particular case is to seize any device that had the capability to use that IP address and access child pornography and share that information."

of a cell phone can be appropriate where the warrant limits the search for evidence of one of these crimes (but an issuing court should consider requiring the inclusion of search protocols to restrict how the searching officers conduct such an analysis)." *Id*. at 461.

[5] The search warrant issued on August 8, 2022, and was executed on August 11, 2022. *Richardson* was decided on August 29, 2022.

Unlike in *Zadeh*, which permitted the search of the interior of a vehicle in a murder case but not of any person in the vehicle, the warrant in this matter specifically provided for the search of the residence and, "importantly," also the occupants found therein: "[n]ot just anyone inside the . . . home, but occupants." Therefore, the court did not find that *Zadeh* was controlling.

The circuit court ruled that the duly issued warrant permitted the seizure of all mobile devices located on the persons of any occupants of the house, and it was sufficiently particular because occupants would be individuals "who are connected to the home in some way, as opposed to just a random individual who . . . is there" and who "would have access to the IP addresses, like we all do living within our home."

Even if it were to find that the warrant was not sufficiently particular, the court continued, the good faith exception to the exclusionary rule would apply. Detective Skica's affidavit and the resulting warrant sufficiently described the nature of the crime and what was to be searched. The warrant permitted search of the house and its occupants, and as it was undisputed that Mr. Bonilla-Baez was an occupant, it was reasonable for the officers to rely on the validity of the affidavit and warrant in searching him and seizing his cell phone. The court therefore denied Mr. Bonilla-Baez's motion to suppress.[6]

[6] Mr. Bonilla-Baez's attorney asked for clarification of the court's logic, stating that he had argued "that the clause that gave permission for the officers to search any occupant of the house was invalid" and asking the court, "You're finding that it was not valid?" The court answered, "I found that invalid. Yes." Given the nature of the court's

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On September 5, 2023, Mr. Bonilla-Baez pleaded not guilty on an agreed statement of facts to one count of possession of child pornography.[7] Based on the evidence presented, the court found him guilty beyond a reasonable doubt. The court sentenced Mr. Bonilla-Baez to five years in prison, suspending all but time served, and required him to register as a tier 1 sex offender for fifteen years, with no unsupervised contact with any person under the age of eighteen, except for his biological child.

DISCUSSION

I. Parties' Contentions

Mr. Bonilla-Baez contends that the circuit court erred in denying his motion to suppress the fruits of the search of his person during the execution of the search warrant at Mr. Rosekrans's home because the search violated the Fourth Amendment's particularity requirement. He argues, first, that "the warrant was impermissibly broad and general because it allowed law enforcement to search all occupants of the private residence, without identifying them by name and without probable cause to believe all occupants were involved in the crime being investigated," and, second, "the warrant used catch-all language and commanded a broad search of items in the house without the requisite probable cause to justify its breadth."

Mr. Bonilla-Baez additionally argues that the good faith exception to the exclusionary rule is not applicable because the deputies who executed the search warrant

immediately preceding oral ruling and its written order that followed, it appears that the court's response was either made in error or mis-transcribed.

[7] The State *nolle prossed* the remaining charges.

"should have known that the 'occupants found within' provision did not permit the search of" his person. In his view, the police officers also should have known that the command to search "any and all mobile devices" in the residence did not permit the search of Mr. Bonilla-Baez's phone because a search warrant for a particular place "does not give police permission to search an individual who may be in that place[.]"

The State counters that the circuit court properly denied Mr. Bonilla-Baez's motion to suppress the evidence found on his cell phone because the search warrant for Mr. Rosekrans's house was based on probable cause to believe that evidence of child pornography could be found on multiple devices used by any of the home's occupants, and the warrant was sufficiently particularized to permit a search of all occupants of the home who had access to, and might have used, the home's IP address to view, share, and store child pornography. Even if the warrant was not sufficiently particularized, the State concludes, the officers executing the search warrant acted in objective good faith in relying on its legitimacy in doing so.

II. Standard of Review

When reviewing a circuit court's decision on a motion to suppress, we limit ourselves to the record developed at the suppression hearing, and

> we assess the record in the light most favorable to the party who prevails on the issue that the defendant raises in the motion to suppress. We accept the trial court's factual findings unless they are clearly erroneous, but we review *de novo* the court's application of the law to its findings of fact. When a party raises a constitutional challenge to a search or seizure, this Court renders an independent constitutional evaluation by reviewing the relevant law and applying it to the unique facts and circumstances of the case.

Pacheco v. State, 465 Md. 311, 319–20 (2019) (cleaned up).

When a search is conducted pursuant to a warrant, "the warrant is presumed valid, and the burden of proving the unlawfulness of the search shifts to the defendant." *Tomanek v. State*, 261 Md. App. 694, 711–12 (2024). In a challenge to the validity of a search warrant, we afford the trial court's determination of probable cause great deference, so long as the court had a "substantial basis for concluding that a search would uncover evidence of wrongdoing[.]" *West v. State*, 137 Md. App. 314, 322 (2001).

III. Warrant Requirements of Probable Cause and Particularity

The Fourth Amendment to the United States Constitution, made applicable to the States by the Fourteenth Amendment, protects against unreasonable searches and seizures and provides that warrants must be based on probable cause and must "particularly describ[e] the place to be searched, and the persons or things to be seized." U.S. Const. amend IV. Probable cause exists when the supporting affidavit "sets forth sufficient facts to establish 'a fair probability that contraband or evidence of a crime will be found in a particular place.'" *United States v. Darr*, 661 F.3d 375, 380 (8th Cir. 2011) (quoting *Illinois v. Gates*, 462 U.S. 213, 238 (1983)).

"The particularity requirement of the Fourth Amendment protects against general and overbroad warrants that leave the scope of the search to the discretion of law enforcement." *Richardson*, 481 Md. at 450. As the United States Supreme Court has explained:

> The manifest purpose of this particularity requirement was to prevent general searches. By limiting the authorization to search to the specific areas and things for which there is probable cause to search, the requirement ensures

> that the search will be carefully tailored to its justifications, and will not take on the character of the wide-ranging exploratory searches the Framers intended to prohibit. Thus, the scope of a lawful search is 'defined by the object of the search and the places in which there is probable cause to believe that it may be found. Just as probable cause to believe that a stolen lawnmower may be found in a garage will not support a warrant to search an upstairs bedroom, probable cause to believe that undocumented aliens are being transported in a van will not justify a warrantless search of a suitcase.' *United States v. Ross*, 456 U.S. 798, 824, 102 S.Ct. 2157, 2172, 72 L.Ed.2d 572 (1982).

Maryland v. Garrison, 480 U.S. 79, 84–85 (1987) (footnote omitted).

"The Fourth Amendment's particularity requirement is a standard of practical accuracy rather than a hypertechnical one." *United States v. Maccani*, 49 F.4th 1126, 1131 (8th Cir. 2022) (cleaned up). Generally, there is no bright-line rule for determining the reasonableness of a search. Instead, courts consider the purpose for which the warrant was issued and apply a totality of the circumstances analysis, based on the unique facts and circumstances of each case. *State v. McDonnell*, 484 Md. 56, 80 (2023). In other words, the degree of particularity required is flexible and may vary depending on the circumstances and the type of items involved. *United States v. Horn*, 187 F.3d 781, 788 (8th Cir. 1999).

A. Search Warrant For Rosekrans's Residence Was Based on Probable Cause

In this matter, Detective Skica's affidavit included information that child pornography had been shared using Kik and that the IP address used to access the Kik application was linked to the subscriber, Keith Rosekrans, who lived at the Webb Lane address. Detective Skica explained in the affidavit that

> cell phones and computers have software that enables them to utilize IP addresses to access online content and utilize applications downloaded from the internet onto their devices. Furthermore, your affiant knows that photos/videos made by suspects with a sexual interest in children are often kept on computer drives/memory as 'trophies' of gratification for the present or future. Your affiant has not been able to verify if the content on the suspect's Kik account is solely within a cellular phone application or if it is used on a desktop/laptop computer, or both. Your affiant is aware that Kik users can access Kik via software installed on their computer to utilize the platform. Your affiant respectfully submits that it will be necessary to seize all devices used by the suspect to confirm if the nexus to the account is cellular-based, desktop/laptop computer-based or both.

Based on this information, supported by the detective's background and experience, the circuit court found, and we agree, there was probable cause to believe that physical evidence of violations of the child pornography laws would be located on electronic devices at the Webb Lane address that had access to the IP address. Despite the fact that Rosekrans was the targeted suspect, it is clear that the warrant application allowed for the possibility that other residents or occupants of the house with access to the IP address possibly could have committed similar offenses. Therefore, the warrant, which permitted the search of the entire single story ranch-style residence, was reasonably based on probable cause. *See United States v. Green*, 954 F.3d 1119, 1123 (8th Cir. 2020) (where "[t]he question is whether there was a reasonable probability that evidence of child-pornography crimes would be found on the electronic devices . . . inside the house," the Court rejected a nexus argument when law enforcement obtained a search warrant after an account requested child pornography, that account was affiliated with an IP address, and that IP address was registered to the address that law enforcement searched).

B. Warrant Permitting Search And Seizure Of Electronic Devices From All Occupants Was Sufficiently Particular

Mr. Bonilla-Baez argues that even if the warrant permitting the search of Mr. Rosekrans's house and its occupants was reasonable, it was not particularized enough to permit the officers to seize the electronic devices located on his person without a separate warrant identifying him by name, especially because he was not the suspect targeted by the search and, at the time the warrant issued, the police were not even aware that anyone else lived in the house. We disagree.

As noted above, Detective Skica's affidavit made clear that any phone, desktop or laptop computer, or other electronic device with access to Mr. Rosekrans's IP address could access Kik and share and save child pornography. Although Mr. Rosekrans admittedly was the initial target suspect, once he credibly denied any illegal activity and identified Mr. Bonilla-Baez, an occupant of his house with access to his IP address, as the person seen in the non-sexual photo on Kik—which had been verified as "constructed by the suspect"—Detective Skica's suspicions turned toward him, as did the focus of the search warrant.

Although the warrant and supporting application identified a target suspect, it was, by its very language, not restricted to that suspect, permitting the search of "all occupants" of the home and seizure and examination of all electronic devices of those occupants who had access to Mr. Rosekrans's IP address. As we explained in *Tomanek*,

> Neither the probable cause requirement nor the particularity requirement demand that a search be linked to any one person. As the State correctly notes, a search warrant is an investigative tool, and a valid search warrant may be issued before the police have identified a suspect. So long as

> the warrant application provides a fair probability that evidence will be found in the place being searched, and so long as the warrant itself is definite enough to ensure that the police can identify the place being searched and conduct the search without any unauthorized or unnecessary invasion of privacy rights, then the probable cause and particularity requirements have been met.

261 Md. App. at 716.

In addressing the so-called "all persons present" clause of a search warrant, which authorizes police to search persons present when a search warrant is executed without identifying the persons subject to search by name, we determined, in *Eusebio v. State*, 245 Md. App. 1 (2020), that such a clause can provide sufficient particularity. We explained that "these provisions may at first blush appear impermissibly general, failing to sufficiently specify the place or person to be searched[.] But they do not offend the Fourth Amendment. That is because, properly understood, the provisions do not authorize random or blanket searches in the discretion of the police." *Id*. at 35–36 (cleaned up).

We noted that "Maryland's appellate jurisprudence regarding all-persons-present warrants appears to be limited to dicta in one case: *Sutton v. State*, 128 Md. App. 308, 738 A.2d 286 (1999)." *Id*. at 36. In a "purely academic discussion" in *Sutton*, this Court stated that a warrant to search all persons found at some place is not impermissibly general if "the information supplied the magistrate supports the conclusion that it is probable anyone in the described place when the warrant is executed is involved in the criminal activity in such a way as to have evidence thereof on his person," 128 Md. App. at 322, 325, and that when there is "good reason to suspect or believe that anyone present at the anticipated scene will probably be a participant, presence becomes the descriptive

fact satisfying the aim of the Fourth Amendment[,]" *id*. at 321 (quoting *State v. DeSimone*, 288 A.2d 849, 850 (N.J. 1972)).

In *Eusebio*, we went on to discuss why the *Sutton* dicta reflects the majority rule with respect to all-persons-present warrants. 245 Md. App. at 36–37. We concluded that "the majority rule seems to us, as it does to Professor LaFave, '[u]nquestionably . . . correct.'" 245 Md. App. at 37 (quoting 2 Wayne R. LaFave, *Search & Seizure* § 4.5(e) (5th ed. 2019)). *See also United States v. Guadarrama*, 128 F. Supp. 2d 1202, 1208 n.7 (E.D. Wis. 2001) (surveying state and federal appellate decisions considering all-persons-present warrants).

As mentioned, courts in a majority of other states hold similarly. In considering whether a search warrant authorizing a search of "all the occupants" at a given location violates the Fourth Amendment's particularity requirement, the Pennsylvania Superior Court has explained that there are

> two approaches in analyzing the constitutionality of 'all persons present' warrants. One is to strike such warrants as general warrants repugnant to the fourth amendment's specificity requirement.
>
> We believe the better-reasoned approach, and the one adopted by the majority of other jurisdictions, is found in the cases which analyze each such warrant individually in order to determine whether an 'all persons present' warrant was justified under the particular circumstances present when the warrant issued.

Commonwealth. v. Heidelberg, 535 A.2d 611, 612 (Pa. Super. 1987), *aff'd sub nom. Commonwealth. v. Gilliam*, 560 A.2d 140 (Pa. 1989) (internal citation and footnotes omitted). In *Heidelberg*, the Pennsylvania Superior Court approved of the reasoning in *DeSimone*, that is, that

> the sufficiency of a warrant to search persons identified only by their presence at a specified place should depend upon the facts. . . No more is demanded than a well-grounded suspicion or belief that an offense is taking place and the individual is party to it. . . . And, with regard to the Fourth Amendment demand for specificity as to the subject to be searched, there is none of the vice of a general warrant if the individual is thus identified by physical nexus to the on-going criminal event itself.

Id. at 612–13 (quoting *DeSimone*, 288 A.2d at 850).

Using the *DeSimone* analysis, the Pennsylvania Superior Court found that the subject search warrant was properly issued because, under the particular facts of the case, probable cause existed to believe that anyone at the residence on the night in question was involved in the suspected crime and a sufficient physical nexus was established between the persons likely to be found in the place to be searched and the illegal activity alleged to be occurring there. *Heidelberg*, 535 A.2d at 615. *See also Doe v. Groody,* 361 F.3d 232, 239 (3d Cir. 2004) (concluding that if a search warrant was read in light of the officer's request to search "all occupants" of the residence, "then police had legal authority to search anybody that they encountered inside the house when they came to execute the warrant").

Regarding an all-persons-present warrant in a child pornography case, Virginia's intermediate appellate court similarly held that

> [t]he magistrate issued a warrant based upon a highly detailed affidavit linking child pornography to a unique IP address. The IP address led to a specific property located at 106 Barricks Mill Road, Topping, Virginia. It was entirely reasonable for the magistrate to order a search of all physical structures and "all persons" at that address. . . . For purposes of the search, it mattered not who posted the child pornography onto the Internet—only that someone did.

Jeffers v. Commonwealth, 743 S.E.2d 289, 293 (Va. Ct. App. 2013).[8]

We hold similarly here. For the reasons previously stated, Detective Skica's affidavit was not so lacking in indicia of probable cause as to preclude the officers who executed the search warrant from reasonably relying on the issuing judge's finding of probable cause, nor was the "all occupants" warrant lacking in particularity under the particular circumstances.

Based on the information provided in the warrant affidavit, including the information provided through the NCMEC tip and from Comcast, there was a nexus between the criminal activity (the sharing of child pornography) and the Webb Lane residence. And although there is no dispute that Rosekrans was the initial target of the investigation, the tip was that child pornography was being shared from a Samsung Galaxy S21 using the residence's IP address.

When Detective Skica's investigation revealed that Rosekrans was the owner of the house, it was reasonable for the detective to assume that he was the perpetrator of the offense. Upon interview, however, Rosekrans credibly denied any illegal activity and identified his roommate, Mr. Bonilla-Baez, as the person in the non-sexual photo on the Kik account. As an occupant of the home who owned a Samsung Galaxy S21 and had

[8] Jeffers did not contest the "all persons" aspect of the warrant's scope, for, as the Court noted, "good reason," because if there was reasonable suspicion that "anyone present at the anticipated scene will probably be a participant, presence becomes the descriptive fact satisfying the aim of the Fourth Amendment." 743 S.E.2d at 293 (quoting *Felton v. Commonwealth*, 690 S.E.2d 318, 321 n.7 (Va. App. 2010).

access to the home's IP address, Detective Skica's suspicion reasonably turned to Mr. Bonilla-Baez.

In our view, Detective Skica's affidavit and warrant application provided for the possibility that other occupants of the Webb Lane house with access to the IP address may also, or instead, have committed the offenses of possessing and distributing child pornography by the use of more than one electronic device and could have had evidence of those crimes on his person when the warrant was executed. That is why the detective sought a warrant permitting the search of all occupants and the seizure of their devices, which the circuit court issued. The warrant was sufficiently particular in that it limited the search and seizure to occupants of the house who would have access to the IP address, a very small group that included Mr. Bonilla-Baez. The warrant was not overbroad so as to permit what would amount to a fishing expedition for items not relating to the possession or distribution of child pornography or an exploratory search of anyone randomly present at the house at the time of the search.[9]

[9] Indeed, the actions of the officers executing the search and seizure belie any overbreadth in their search. They initially released Mr. Bonilla-Baez and Ms. Layton because Mr. Rosekrans was the target of their search. When Mr. Rosekrans denied any wrongdoing and placed suspicion upon Mr. Bonilla-Baez, there is no evidence that Detective Skica made any effort to search Ms. Layton, who appears to have been a mere visitor. And the detective did not immediately seize Mr. Bonilla-Baez's cell phones and computer; he first conducted an interview with Mr. Bonilla-Baez that presumably confirmed that Mr. Bonilla-Baez was an occupant of the house and likely the person in the NCMEC tip. Only then did the detective seize Mr. Bonilla-Baez's devices, as permitted by the warrant.

C. Even If The Warrant Was Not Sufficiently Particular, The Police Officers Relied Upon It In Good Faith

Even assuming, arguendo, that the warrant was invalid, Mr. Bonilla-Baez would nevertheless not be entitled to suppression of the incriminating evidence. If Detective Skica's affidavit failed to provide the issuing judge with a substantial basis for finding probable cause to seize Mr. Bonilla-Baez's devices from his person during the search of the Webb Lane home, the evidence from that search would still be admissible under the good-faith exception to the exclusionary rule.

"Evidence obtained in violation of the Fourth Amendment will ordinarily be inadmissible under the exclusionary rule." *Richardson*, 481 Md. at 446. Yet, exclusion is not an automatic remedy; rather, it is a remedy to be used only as a "last resort." *Utah v. Strieff*, 579 U.S. 232, 237–38 (2016) (quoting *Hudson v. Michigan*, 547 U.S. 586, 591 (2006)).

Suppression is not warranted when the police were acting in "good faith" in executing the search and seizure warrant issued by a judge, even if that warrant is later found to have been improperly issued. *United States v. Leon*, 468 U.S. 897, 906, 920–21 (1984). In other words, under the good faith exception, "the exclusionary rule does not apply when the police conduct a search in 'objectively reasonable reliance' on a warrant later held invalid"; the error in such a case "rests with the issuing magistrate, not the police officer, and 'punish[ing] the errors of judges' is not the office of the exclusionary rule." *Davis v. United States*, 564 U.S. 229, 238–39 (2011) (quoting *Leon*, 468 U.S. at 916, 922). *See also Richardson*, 481 Md. at 446 (under the good faith

exception, "evidence will not be suppressed under the exclusionary rule if the officers who obtained it acted in objectively reasonable reliance on a search warrant"); *Herbert v. State*, 136 Md. App. 458, 488 (2001) (obtaining a warrant generally insulates a search from exclusion, barring extreme or outrageous circumstances).

As the United States Supreme Court has explained, "searches pursuant to a warrant will rarely require any deep inquiry into reasonableness, for a warrant issued by a magistrate normally suffices to establish that a law enforcement officer has acted in good faith in conducting the search." *Leon*, 468 U.S. at 922 (cleaned up). Notably, "the standard of factual support required" to admit evidence under the good faith exception "is considerably lower than the standard for establishing a substantial basis for a finding of probable cause by a judge issuing a search warrant." *Marshall v. State*, 415 Md. 399, 410 (2010). There are only four circumstances in which a police officer's reliance on a search warrant would not be considered reasonable under the good faith exception:

> (1) the magistrate was misled 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 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 reasonably presume it to be valid.

Patterson v. State, 401 Md. 76, 104 (2007) (quoting *Leon*, 468 U.S. at 923).

Mr. Bonilla-Baez raises an argument related only to the last circumstance, that the warrant was not sufficiently particularized, so the executing officers could not reasonably

have presumed it was valid. He asserts that "the detectives had no reasonable grounds for believing that the warrant was properly issued, given the chasm between the focus of the investigation, Rosekrans, and the broad leeway applied for and received to search people and items wholly unrelated to the person or crime being investigated." The scope of the investigation, he continues, "was limited to one target, Rosekrans, and the nature of the crime was one that inherently does not include multiple parties for its commission. Nothing in the affidavit in support of the warrant suggested anyone other than Rosekrans was involved."

The scope of the investigation was not, as Mr. Bonilla-Baez claims, "limited" to Mr. Rosekrans. Instead, it started with Mr. Rosekrans and necessarily expanded to any occupant of his house who had access to his IP address when Mr. Rosekrans was essentially excluded as a suspect. In attempting to ascertain the identity of the person or persons sharing child pornography, the warrant permitted the search of Mr. Rosekrans and all occupants of his home, which included Mr. Bonilla-Baez. There is nothing to suggest that the deputies who executed the search warrant at the Webb Lane residence were without reasonable grounds to believe the warrant, which permitted the seizure and search of the electronic devices of all occupants of the home for evidence limited to violations of child pornography laws, satisfied the particularity requirement and was properly issued.

We also note that two circuit court judges believed the warrant was sufficient to satisfy the Fourth Amendment—the issuing judge and the judge who denied the motion to suppress. That also weighs in favor of a finding that the police relied in good faith on

the warrant. *Stevenson v. State*, 455 Md. 709, 727–32 (2017) ("[W]e agree with the State that the issuance of the search warrant by not just one judge—but two judges independently of one another—weighs in favor of applying the good faith exception in this case."). *Accord Agurs v. State*, 415 Md. 62, 81 (2010) (noting that when both "lower courts reviewing the warrant application [have] upheld the warrant," it indicates that "the officers' reliance on the warrant was reasonable").

As discussed in greater detail, above, we are convinced that the warrant and accompanying affidavit contained sufficient probable cause and particularity, and we cannot say that the warrant was so facially deficient in its particularity that the executing officers could not have reasonably presumed the warrant to be valid. Consequently, the police were acting in "good faith" in executing the warrant, such that suppression of the evidence derived therefrom would not be appropriate even had we concluded that the search warrant was deficient.

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