Circuit Court for Montgomery County
Case No. 134078C

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 3366

September Term, 2018

RANDELL JAMAL WRIGHT

v.

STATE OF MARYLAND

Meredith,
Berger,
Woodward, Patrick L.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Woodward, J.

Filed: January 15, 2020

On February 12, 2019, a jury in the Circuit Court for Montgomery County convicted Randell Jamal Wright, appellant, of one count of second degree burglary, one count of theft under $1500, and one count of malicious destruction of property. On appeal, appellant challenges the circuit court's refusal to grant his motion to suppress the evidence found in a gray 2018 Dodge Caravan minivan ("the minivan") that appellant operated shortly before his arrest.

QUESTION PRESENTED

On appeal, appellant raises one question for our review, which we have rephrased as follows: Did the circuit court err when it denied appellant's motion to suppress the evidence seized from the minivan?[1]

For the reasons set forth herein, we shall affirm the judgment of the circuit court.

BACKGROUND

"Our review of a ruling on a motion to suppress evidence is limited to the record developed at the suppression hearing." *Moats v. State*, 455 Md. 682, 694 (2017) (citation omitted). In the instant case, the record at the suppression hearing consisted of the testimony of Detective Sarah White of the Montgomery County Police Department ("MCPD"), the Application for Search and Seizure Warrant signed by Detective White and dated May 31, 2018, the Search and Seizure Warrant ("the search warrant") signed by Judge Sharon Burrell of the Circuit Court for Montgomery County, and the Search Warrant

[1] The question as posed by appellant is: "Did the Circuit Court err by not suppressing the evidence seized from Appellant's vehicle at his trial?"

Inventory Report and Return, dated May 31, 2018, and signed by Detective White and Judge Burrell.

In February 2018, Detective White was assigned to investigate a developing trend of laundry card machine burglaries in and around Montgomery County, Maryland. In total, there were approximately thirty-nine incidents of laundry card machine burglaries or attempted burglaries ("the burglaries" or "laundry card machine burglaries") between February 5, 2018 and May 3, 2018, throughout several Maryland counties and in the District of Columbia. In each of the thirty-nine incidents, a group of individuals either used power tools to cut into laundry card machines to take the money within or stole the entire laundry card machines from the apartment buildings' communal laundry rooms. We will provide details regarding the specific burglaries relevant to the disposition of this appeal.

On February 24, 2018, at 5600 54th Avenue, Riverdale Park, Prince George's County, Md., a Riverdale Park patrol officer apprehended several individuals while they were in the act of stealing money from an apartment laundry card machine. One of the individuals, Robert Mackie, was arrested after he was seen getting into a rental car. When that rental car was searched, a tool bag containing a screwdriver, an angle grinder, a battery charger, and a portable power station was discovered. During a later interview, Mackie implicated his cousin, appellant, in the burglaries. The burglaries continued to occur.

On March 14, 2018, at 2900 St. Clair Drive, Temple Hills, Prince George's County, Md., Prince George's County officers responded to a call for a burglary in progress at an apartment building's laundry facility. Upon arrival at the scene, the officers observed two

men and a woman standing at the back of an open U-Haul truck and another man carrying a laundry card machine. The three suspects standing by the U-Haul fled, but the officers caught the man carrying the laundry card machine. Police identified him as Monte Ball.

On March 20, 2018, at 8830 Piney Branch Road, Silver Spring, Montgomery County, Md., surveillance video recorded two men forcing their way into an apartment building laundry room, cutting a laundry card machine and removing all of the cash from inside. The officers recognized both of these men as the suspects who had been seen in surveillance videos of previous laundry card machine burglaries. One of the men was "a lighter skinned male with a skinny mustache wearing a dark hooded jacket and using a black and white scarf to cover his face."

On April 16, 2018, at 1121 University Boulevard West, Silver Spring, Montgomery County, Md., apartment building surveillance cameras showed a "black male suspect wearing [a] black hooded jacket with [a] silver zipper and carrying a black laptop bag," a heavyset light skinned male wearing a dark hooded jacket, and a third black male enter the apartment building and go into the laundry room. One of the men sprayed paint over the lens of the surveillance camera in the communal laundry room. The laundry card machine was cut, and the suspects removed the cash from within.

On April 21, 2018, at 1 Hickory Place, La Plata, Charles County, Md., police officers responded to a previous burglary at an apartment building. Surveillance video showed a "black male, wearing glasses and a black jacket with a silver zipper and a lighter skinned black male with a thin mustache wearing a black jacket and a baseball hat" enter the building, tamper with a surveillance camera, and cut into the laundry card machine with

a power tool. Surveillance video from a nearby business showed the two men getting into a white four door sedan.

On April 26, 2018, at 95 East Wayne Avenue, Silver Spring, Montgomery County, Md., the police responded to a call for a burglary in progress at an apartment building. The caller complained of hearing a power saw cutting in the laundry room. Surveillance video showed a black male, wearing a black jacket with a silver zipper and carrying a black messenger bag flee from the apartment laundry machine room. While he was fleeing, the man ditched the messenger bag at a nearby construction site. When the police recovered the discarded messenger bag, they found therein screwdrivers, a grinder, a grinder chuck, an extension cord, and additional grinder blades. The police recognized the messenger bag from the surveillance video of the April 21, 2018 burglary in La Plata and from surveillance footage from other burglaries.

On May 2, 2018, at 7975 Crain Highway, Glen Burnie, Anne Arundel County, Md., police officers responded to a burglary where suspects used a power tool to cut into the laundry card machine and steal the money from within. Witnesses told the police that on the day before the burglary, they saw a thin black male "wearing glasses and a black male that was more heavyset" sitting in a tan metallic paint pickup truck with a covered cab in the parking lot.

After viewing these surveillance videos, it was clear to Detective White "that the main suspect was a black male, approximately 5'10" tall and with a slim build." The main suspect was almost always accompanied by "a lighter skinned male, approximately 6'0" tall with a medium to heavy build and a thin mustache and distinct eyebrows." This suspect

wore a "dark jacket with the hood up" in a few of the videos and sometimes wore a black and white checkered scarf or a pair of dark coveralls. Based on the information that Mackie provided in the interview after his arrest, Detective White obtained a photo of appellant. Detective White compared appellant's photo with the surveillance video from the burglaries. She then concluded that appellant was the heavyset light skinned male with a thin mustache, who sometimes wore a white and black checkered scarf or coveralls. Additionally, on April 25, 2018, Detective White interviewed Ball, and he identified appellant as "the light skinned subject seen in the surveillance videos with the thin mustache." Ball also told Detective White that the leader of the group, Robert Brown, used a messenger bag to carry screwdrivers, power tools, and spray paint to and from each burglary site. From all of this information, Detective White determined that appellant was definitely involved in the Silver Spring burglaries that occurred on March 20, 2018 and April 16, 2018.

Detective White obtained an arrest warrant for appellant on May 4, 2018. The arrest warrant charged appellant with two counts of second degree burglary, two counts of theft under $1500, and two counts of malicious destruction of property. After Detective White obtained the arrest warrant, she turned the case over to the repeat offender section of the MCPD in order for that unit to research the possible whereabouts of appellant. The repeat offender section received information that appellant might appear at a particular apartment building in Washington, D.C. where the mother of appellant's children lived. After setting up surveillance at that apartment building, on May 30, 2018, police observed appellant "going back to [his children's mother's] apartment operating [the minivan]." MCPD

officers, with the assistance from police officers in Washington, D.C., then arrested appellant. Detective White was not at the scene of arrest, but she was concerned that there might be evidence in the minivan, such as clothes, tools, or proceeds of the burglaries, that could link appellant to the burglaries. As a result, MCPD officers impounded the minivan, and a tow truck company transported the minivan to an impound lot in Silver Spring, Maryland. MCPD officers did not search the minivan when they arrested appellant, nor did they search the minivan at the impound lot prior to obtaining a search warrant. At the time that appellant was arrested, the minivan that he was operating was a rental vehicle.

On May 31, 2018, the day after appellant was arrested and the minivan was impounded, Detective White applied for a search warrant of the minivan seeking evidence of the burglaries that was potentially located therein. The same day, Judge Burrell signed the search warrant, which allowed officers to search the minivan for the fruits and/or instrumentalities of the burglaries. Detective White then searched the minivan at the impound lot. Pursuant to this search, Detective White seized twenty-one pieces of evidence, including a saw, saw blades, gloves, bolt cutters, a pry bar, and various items of clothing.

On January 2, 2019, appellant filed a motion to suppress all physical evidence that the State had acquired by searching the minivan. Judge Harry Storm of the Circuit Court for Montgomery County conducted a hearing on appellant's motion to suppress on January 30, 2019. On February 4, 2019, in a written Opinion Memorandum and Order, Judge Storm denied appellant's motion to suppress. In reaching his decision, Judge Storm reasoned that MCPD officers had the authority to search the vehicle at the time of appellant's arrest,

because the police reasonably believed that the minivan contained evidence related to the burglaries. Furthermore, Judge Storm concluded that MCPD officers and Detective White "acted cautiously and reasonably in following the procedure they did."

On February 11, 2019, trial began in front of Judge Burrell. On February 12, 2019, a jury convicted appellant of one count of second degree burglary, one count of theft under $1500, and one count of malicious destruction of property. Appellant was subsequently sentenced to ten years of incarceration with all but three years suspended on the first count (second degree burglary), concurrent sentences for the other counts, and a term of probation. He then filed this timely appeal. We will include additional facts as necessary to the disposition of this appeal.

STANDARD OF REVIEW

In our review of a lower court's ruling on a motion to suppress, "[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, here, the State." *Moats*, 455 Md. at 694. (quotation omitted). "We will not disturb the [circuit] court's factual findings unless they are clearly erroneous." *Grant v. State*, 449 Md. 1, 15 (2016) (quotation omitted) (alteration in *Grant*). "Even so, we 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." *Id.* at 14–15 (quotation omitted).

DISCUSSION

A. Parties' Contentions

Appellant challenges the "warrantless seizing" of the minivan when it was impounded at the time of his arrest. Appellant contends that the impoundment of the minivan did not fall within the automobile exception to the warrant requirement.[2] Specifically, appellant asserts that neither the seizure of the minivan nor the subsequent search warrant was supported by probable cause. According to appellant, the only facts that supported probable cause to search the minivan at the time of its seizure were that (1) appellant was suspected of committing a crime twenty-seven days prior to his arrest, (2) he was being arrested for crimes committed in March and April of 2018, and (3) he had been in the minivan recently.

The State counters that appellant's motion to suppress evidence seized from the minivan was properly denied. The State contends that the automobile exception to the warrant requirement applies because MCPD officers had probable cause that the minivan contained evidence of the burglaries, and thus MCPD officers were legally permitted to impound the minivan and then obtain a search warrant for the minivan at a later time.

[2] Appellant also contends that the seizure of the minivan did not fall within the search incident to arrest exception to the warrant requirement. In *Preston v. United States*, the Supreme Court explained that "[u]nquestionably, when a person is lawfully arrested, the police have the right, without a search warrant, to make a contemporaneous search of the person of the accused for weapons or for the fruits of or implements used to commit the crime." 376 U.S. 364, 368 (1964). Because the search of the minivan occurred the day after appellant's arrest, appellant argues that the situation presented here does not fall under the search incident to arrest exception to the warrant requirement. The State essentially agrees with appellant, because the State wrote in its brief: "The State declines to pursue this legal theory on appeal." Therefore, we will not discuss further the search incident to arrest exception to the warrant requirement.

According to the State, because the MCPD officers did not include in the search warrant application any facts that occurred after the seizure of the minivan, and because Judge Burrell found probable cause for the issuance of the search warrant, it follows that probable cause to search the minivan existed at the time of appellant's arrest. In addition, the State argues that appellant's concession at the suppression hearing that the search warrant was valid forecloses his argument that the officers lacked probable cause when they impounded the minivan. Even if appellant's argument is not automatically foreclosed, the State concludes that the MCPD officers had probable cause that evidence of the burglaries was in the minivan at the time of appellant's arrest.[3]

B. The Automobile Exception

The Fourth Amendment, as applicable to the states through the Fourteenth Amendment, protects persons against unreasonable searches and seizures. *See Spell v. State*, 239 Md. App. 495, 507 (2018), *cert. denied*, 462 Md. 581 (2019) (citation omitted). A seizure 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). "[T]he ultimate touchstone of the Fourth Amendment is reasonableness. Reasonableness within the meaning of the Fourth Amendment generally requires the obtaining of a judicial warrant." *State v. Johnson*, 458 Md. 519, 533 (2018) (quotation omitted) (brackets in

[3] The State finally argues that, even if the impoundment of the minivan was unlawful, the search was justified under the independent source doctrine. Because we hold, *infra*, that the police had probable cause to search the minivan at the time of appellant's arrest, we need not address the State's contention regarding the independent source doctrine.

Johnson). Searches that are conducted without a warrant "are per se unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions." *Katz v. United States*, 389 U.S. 347, 357 (1967) (footnotes omitted). One of those exceptions, the automobile exception, is at issue in this appeal.

In *Carroll v. United States*, 267 U.S. 132 (1925), the United States Supreme Court adopted the automobile exception to the warrant requirement. The automobile exception to the warrant requirement states that, "[i]f a car is readily mobile and probable cause exists to believe it contains contraband, the Fourth Amendment thus permits police to search the vehicle without more." *Pennsylvania v. Labron*, 518 U.S. 938, 940 (1996) (quotation omitted). In *Maryland v. Dyson*, the Supreme Court further elaborated that "the automobile exception does not have a separate exigency requirement: If a car is readily mobile and probable cause exists to believe it contains contraband, the Fourth Amendment . . . permits police to search the vehicle without more." 527 U.S. 465, 467 (1999) (quotation omitted).

In *Chambers v. Maroney*, 399 U.S. 42 (1970), the Supreme Court examined whether the automobile exception applied when police officers searched a station wagon after moving the station wagon from the scene of arrest to the police station. In *Chambers*, police officers pulled over and arrested four men who were suspected of robbing a service station. *Id.* at 44. The officers then drove the station wagon to the police station. *Id.* At the police station, the officers searched the station wagon and found evidence of the robbery. *Id.* The Supreme Court held that, because the police officers had probable cause to search the station wagon where it had been stopped, the warrantless seizure and subsequent search at the police station did not violate the defendant's right to be free from

unreasonable searches and seizures. *Id.* at 52. In its analysis, the Court debated whether the temporary seizure of the car was less intrusive than a warrantless search of the vehicle. *Id.* at 51–52. The Court ultimately concluded:

> For constitutional purposes, we see no difference between on the one hand seizing and holding a car before presenting the probable cause issue to a magistrate and on the other hand carrying out an immediate search without a warrant. Given probable cause to search, either course is reasonable under the Fourth Amendment.

Id. at 52. Justice Harlan, concurring in part and dissenting in part, advocated that police officers temporarily seize the vehicle and then obtain a search warrant. Justice Harlan reasoned:

> The [majority] concedes that the police could prevent removal of the evidence by temporarily seizing the car for the time necessary to obtain a warrant. It does not dispute that such a course would fully protect the interests of effective law enforcement; rather it states that whether temporary seizure is a lesser intrusion than warrantless search is itself a debatable question and the answer may depend on a variety of circumstances. I believe it clear that a warrantless search involves the greater sacrifice of Fourth Amendment values.
>
> The Fourth Amendment proscribes, to be sure, unreasonable seizures as well as searches. **However, in the circumstances in which this problem is likely to occur, the lesser intrusion will almost always be the simple seizure of the car for the period—perhaps a day—necessary to enable the officers to obtain a search warrant.**

Id. at 63 (Harlan, J., dissenting and concurring) (cleaned up) (emphasis added).

The Supreme Court later reaffirmed the *Chambers* decision in *Cardwell v. Lewis*, 417 U.S. 583 (1974). In *Cardwell*, a couple of months after a murder, law enforcement agents requested that the defendant come to the police station for questioning. *Id.* at 586. The defendant complied and left his car at a public parking lot nearby while agents

interviewed him. *Id.* at 587. After arresting the defendant, agents then towed the defendant's car to a police impound lot and conducted a warrantless examination of the outside of the car. *Id.* at 587–88. Relying in part on *Chambers*, the Court held that the agents did not violate the defendant's right to be free from unreasonable searches and seizures. *Id.* at 594–95. The Court reasoned that it made no difference that the defendant's car was seized from a parking lot and that the defendant was not in the car immediately before police seized it, even though in *Chambers* the police seized the station wagon shortly after the robbery while the suspects were still inside of the car. *Id.* The Court reasoned that "[t]he same arguments and considerations of exigency, immobilization on the spot, and posting a guard obtain." *Id.* Therefore, the Court concluded: "We do not think that, because the police impounded the car prior to the examination, which they could have made on the spot, there is a constitutional barrier to the use of the evidence obtained thereby. Under the circumstances of this case, the seizure itself was not unreasonable." *Id.* at 593.

In Maryland, this Court held in *McDonald v. State*, 61 Md. App. 461 (1985), that the automobile exception applied when police officers towed and then searched a vehicle. Relying on *Chambers* and *Cardwell*, we explained that, "[i]nasmuch as there was probable cause to arrest the [defendant] and probable cause to believe that his car contained evidence of the crime, the police officers' decision to impound the automobile was valid." *Id.* at 469–70 (citation omitted).

Additionally, although not cited by either appellant or the State, this Court addressed the issue of whether the police violated a defendant's Fourth Amendment rights when they

impounded a vehicle, received a search warrant, and then searched the vehicle. *Skinner v. State*, 16 Md. App. 116 (1972), *cert. denied*, 267 Md. 744 (1972). In *Skinner*, a law enforcement officer heard a police broadcast that gave a description of the defendant, a description of another man seen with the defendant, and the car in which the two men were traveling. *Id.* at 119. The police were looking for the men because they had just tried to cash stolen checks at a bank, and witnesses saw the men jump into the car. *Id.* at 118. The officer spotted the defendant and the other man in a car matching the description provided in the broadcast and apprehended the men in a parking lot. *Id.* at 119. After that officer transported the defendant and the other man to the police station, other officers did not search the car; instead, they monitored the vehicle to ensure that no one tampered with the contents inside, called a tow truck to tow the vehicle to police headquarters, applied for a search warrant, and then searched the vehicle after the application was granted. *Id.* at 120. On appeal, the defendant did not contest that police officers had probable cause to search and seize the defendant's vehicle. *Id.* Rather, the defendant challenged the process that the officers used prior to searching the vehicle. *Id.* Writing for this Court, Judge Charles Moylan, Jr. stated:

> Even the most conscientious police find it difficult to please convicted defendants. The almost universal plaint, following a successful warrantless search of an automobile, is that the police should have immobilized the car and then obtained a warrant for its search. In the case at bar, they did just that. Unpropitiated, the [defendant], Michael Thomas Skinner, still manages to complain.

Id. at 117–18. This Court noted that by obtaining the search warrant, law enforcement officers demonstrated "scrupulous regard for their suspect's 4th Amendment protections"

and "did more than they were required to do." *Id.* at 118. Citing *Carroll* and *Chambers*, we concluded that law enforcement agents did not violate the defendant's constitutional rights. *Id.* at 121.

Here, although MCPD officers believed that they had probable cause that the fruits and/or instrumentalities of the burglaries were inside the minivan at the time of appellant's arrest, they followed the protocol recommended in Justice Harlan's minority opinion in *Chambers*, and that we commended in *Skinner*. By impounding the minivan and then applying for a warrant to confirm that probable cause did in fact exist, MCPD officers relied not only on their own probable cause determination, but also asked a judge to double-check their probable cause analysis. *See United States v. Silva*, 742 F.3d 1, 8 (1st Cir. 2014) (instructing that "[t]he practice of awaiting a magistrate's warrant prior to conducting a search, even where officers feel confident in their own assessment of probable cause, is one that should be commended, not punished with exclusion"). Such procedure provided appellant with Fourth Amendment protections that not only met, but exceeded, what the Supreme Court has determined is constitutionally required. *See Skinner*, 16 Md. App. at 118. Therefore, as long as MCPD officers had probable cause that evidence of the burglaries was in the minivan at the time of appellant's arrest, MCPD officers did not violate appellant's Fourth Amendment rights by impounding the minivan and then searching the minivan after receiving the search warrant.

C. Probable Cause

Although appellant did not challenge the validity of the search warrant for the minivan at the suppression hearing, on appeal he contends that neither the impoundment

of the minivan at the time of his arrest nor the subsequent search warrant was supported by probable cause that the minivan contained evidence of the burglaries. We disagree and shall explain.

The probable cause determination takes into account all of the relevant circumstances leading up to the search, "viewed from the standpoint of an objectively reasonable police officer." *Johnson*, 458 Md. at 533 (quotation omitted). Furthermore, courts have recognized "that a police officer may draw inferences based on his [or her] own experience in deciding whether probable cause exists." *Id.* at 534 (quotation omitted). The Court of Appeals recently explained:

> Probable cause exists where the known facts and circumstances are sufficient to warrant a [person] of reasonable prudence in the belief that contraband or evidence of a crime will be found. Probable cause is a fluid concept, incapable of precise definition or quantification into percentages because it deals with probabilities and depends on the totality of the circumstances. It is a practical, nontechnical conception that deals with the factual and practical considerations of everyday life on which reasonable and prudent [persons], not legal technicians, act. The *quanta* of proof appropriate in ordinary judicial proceedings are inapplicable to the probable cause determination; consequently, finely tuned standards such as proof beyond a reasonable doubt or by a preponderance of the evidence, useful in formal trials, have no place in the probable cause determination. In short, probable cause is not a high bar.

Id. at 535 (cleaned up).

The State contends that, because no facts that occurred after the minivan was seized were added to the search warrant application, and because Judge Burrell determined that there was probable cause to search the minivan, it follows that probable cause existed at the time that the minivan was seized. The State argues further that, because appellant conceded the validity of the search warrant at the suppression hearing, he is foreclosed

from challenging the existence of probable cause on appeal. To support its argument, the State relies on *United States v. Respress*, 9 F.3d 483 (6th Cir. 1993). In *Respress*, the Court of Appeals for the Sixth Circuit examined whether police officers "exhibit[ed] a substantial probability that incriminating evidence would be found in [the defendant's] suitcase" when the officers seized the defendant's suitcase, held it for approximately ten hours, and then obtained a warrant to search the suitcase. *Id.* at 485, 488. The Sixth Circuit began its analysis by stating:

> We initially note that because the officers obtained no new investigatory information between the time of the seizure and the time they applied for the search warrant, if there was probable cause to *search* the suitcase, there was ipso facto probable cause to *seize* the suitcase. And, because the magistrate judge found probable cause and issued the warrant, for us to find a lack of probable cause would be a bold second-guess on our part, and in direct contradiction of binding authority, which requires that we generally defer to a magistrate's finding of probable cause.

Id. at 486–87 (emphasis in original) (footnotes and citation omitted).

The Sixth Circuit went on to independently analyze whether the officers had probable cause that evidence was in the suitcase when they seized the suitcase. *Id.* at 487–88. At the conclusion of that independent analysis, the Sixth Circuit determined that there was probable cause to seize the suitcase. *Id.* Therefore, contrary to the State's contention, *Respress* does not stand for the proposition that, because appellant did not challenge the validity of the search warrant at the suppression hearing, he is automatically precluded from challenging the seizure of the minivan on appeal. Instead, as the Sixth Circuit did in *Respress*, we will independently examine the facts adduced at the suppression hearing

"taken in a light most likely to support the magistrate's finding of probable cause." *Id.* at 487.

Appellant claims that probable cause to search the minivan did not exist because there was no evidence that the minivan was being used in a crime at the time of its seizure, was recently used in a crime at the time of its seizure, or that appellant was actively engaged in a crime at the time of his arrest. According to appellant, the only facts supporting probable cause, which he claims are insufficient, were that (1) he was suspected of committing a crime twenty-seven days prior to his arrest, (2) he was being arrested for crimes that were allegedly committed in March and April of 2018, and (3) he had been in the minivan recently. Appellant, however, overlooks other facts and inferences existing at the time of the seizure of the minivan that would "warrant a [person] of reasonable prudence in the belief that contraband or evidence of a crime [would] be found." *Johnson*, 458 Md. at 535.

The string of burglaries constituted a "regenerating conspiracy" because there were at least thirty-nine incidents, and the burglaries continued to occur even after some of the other members of the group were arrested. *See Shoemaker v. State*, 52 Md. App. 463, 479–80 (1982). MCPD officers had evidence that appellant was involved in some of the burglaries that constituted this regenerating conspiracy. Mackie and Ball both implicated appellant as one of the members of the group participating in the burglaries. Based on Mackie's statements, Detective White was able to confirm that appellant was the light skinned black male with a thin mustache and distinct eyebrows by matching a photo of appellant with video surveillance footage. Additionally, MCPD officers were reasonably

sure that appellant continued to participate in the burglaries because Mackie was arrested on February 24, 2018, and Ball was arrested on March 14, 2018, yet appellant was seen in surveillance footage burglarizing an apartment building laundry card machine on March 20, 2018, and again on April 16, 2018. Therefore, MCPD officers could have reasonably inferred that appellant would continue to burglarize laundry machine cards, despite the arrest of Mackie and Ball.

Of particular importance in this case is the type of evidence that MCPD officers had to support probable cause. One such type of evidence are items that have an enduring utility to the holder. In *Gatling v. State*, this Court held that, where a gun had "enduring utility to its owner," the police had probable cause to believe that the defendant could still be storing the gun in his automobile, which the police searched four days after the defendant allegedly committed the crime. 38 Md. App. 255, 264 (1977), *cert. denied*, 282 Md. 732 (1978). The *Gatling* Court elaborated:

> 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.

Id. at 262 (quotation omitted) (emphasis added).

MCPD officers knew that the tools and clothing used during the burglaries had enduring utility to the group because Ball told Detective White that the group transported power tools to and from each burglary site and the suspects in the surveillance footage wore the same clothes in several of the burglaries. Additionally, the burglaries were ongoing when appellant was arrested. Therefore, potential evidence of the burglaries, such as clothing and power tools, had just as much utility to appellant on the day of his arrest as that evidence did months before, because appellant was still using such items to burglarize apartment laundry card machines. Thus the passage of time did not negate the probability that such evidence would have been in close proximity to appellant on the date of appellant's arrest. Because of the enduring utility of tools and disguises MCPD officers knew appellant used, MCPD officers had probable cause to believe that appellant retained such evidence, even though appellant was arrested for committing burglaries that occurred months before his arrest.

In addition to the enduring utility of the evidence, the police officers knew that group members transported such tools and disguises from one burglary site to the next. In the application for the search warrant, Detective White stated that Ball told her that a messenger bag was used to carry screwdrivers and power tools from one burglary site to the next. The police confirmed Ball's assertion when they recovered the messenger bag at a construction site and found therein screwdrivers, a grinder, a grinder chuck, an extension cord, and additional grinder blades.

In the application for the search warrant, Detective White also mentioned four different vehicles, including rental vehicles, that she suspected the group had used in

connection with the burglaries. Indeed, when Mackie was apprehended, he was near a rental vehicle, and a search of that rental vehicle revealed evidence of the burglaries. Just like Mackie, appellant was arrested in close proximity to a rental vehicle, the minivan. Because MCPD officers had previously found evidence of the burglaries in Mackie's rental car, it was clearly reasonable for the police officers to believe that other evidence of the burglaries may have been in the minivan at time of its seizure.

Based on all of these facts, we hold that MCPD officers had probable cause to believe that the fruits and/or instrumentalities of the burglaries were in the minivan at the time of appellant's arrest and the minivan's seizure, and thus the officers did not violate appellant's Fourth Amendment right to be free from unreasonable searches and seizures. Accordingly, the trial court did not err in denying appellant's motion to suppress.

JUDGMENTS OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.