UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0580

September Term, 2016

STATE OF MARYLAND

v.

ROBERT L. COPES, JR.

Wright,
Friedman,
Shaw Geter,

JJ.

Opinion by Wright, J.

Filed: October 25, 2016

This interlocutory appeal arises from the Circuit Court for Baltimore City's grant of a motion to suppress filed by appellee, Robert Copes, Jr. By indictment filed on March 31, 2014, Copes was charged with murder in the first degree and wearing and carrying a dangerous weapon. On September 2, 2015, Copes filed a motion to suppress all evidence and statements recovered by the Baltimore City Police Department pursuant to the issuance of a search and seizure warrant, the use of a "Pen Register/Trap & Trace and Cellular Tracking Device" order, and their subsequent use of a "Stingray" device.[1] Following a hearing on April 25, 2016, the circuit court granted Copes's motion. On April 29, 2016, the State of Maryland timely appealed, presenting a single question for our review:

Should the court have declined to apply the exclusionary rule in this case?

[1] We have previously explained:

> This technology, commonly called the StingRay, the most well-known brand name of a family of surveillance devices known more generically as "IMSI catchers," is used by law enforcement agencies to obtain, directly and in real time, unique device identifiers and detailed location information of cellular phones—data that it would otherwise be unable to obtain without the assistance of a wireless carrier.
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> * * *
>
> By impersonating a cellular network base station, a StingRay—a surveillance device that can be carried by hand, installed in a vehicle, or even mounted on a drone—tricks all nearby phones and other mobile devices into identifying themselves (by revealing their unique serial numbers) just as they would register with genuine base stations in the immediate vicinity. As each phone in the area identifies itself, the StingRay can determine the location from which the signal came.

State v. Andrews, 227 Md. App. 350, 379 (2016) (citation and emphasis omitted).

For the reasons that follow, we answer "no" and affirm the judgment of the circuit court.

Facts

On February 4, 2014, the burned body of Ina Jenkins was found behind a vacant building at 4013 Penhurst Avenue in northwest Baltimore. The Baltimore City Police Department investigated, led by Detective Bryan Kershaw, and found evidence indicating that Jenkins was killed elsewhere by blunt force trauma, with her wrists and ankles subsequently bound for transport to the space behind 4013 Penhurst Avenue, where it was burned. Near the body, the police found a black backpack containing a plastic bottle that still held some gasoline. Det. Kershaw believed that "whoever placed her there was on foot, and they discarded this backpack as they left the scene most likely on that side of the building towards Penhurst."

The police immediately began interviewing the occupants of the apartment building across the street at 4014 Penhurst Avenue, beginning with the people who had gathered in front of the apartments on the night the police were called to the scene. Det. Kershaw attempted to speak to all of the residents of 4014, and the police continued to conduct daytime and evening canvasses in the area during the week of February 10, 2014. On February 12, 2014, the tenant at Apartment 1-W advised Det. Kershaw that Apartment 1-E was occupied while the apartment on the second floor was vacant. Det. Kershaw was unsuccessful in making contact with the tenant of Apartment 1-E during that week.

In the interim, the police traced Jenkins's Independence Card, which led them to surveillance video of her making purchases at a Walmart and 7-Eleven on the days immediately preceding her death. In the video, Jenkins was accompanied by an unidentified black male wearing a distinctive blue and yellow jacket. According to Det. Kershaw, while Jenkins had been living in homeless shelters during that time, her grocery store purchases were more consistent with someone living in a house or an apartment.

The police spoke to Jenkins's mother, from whom they obtained three cell phone numbers. The first number was known by Jenkins's mother to have belonged to Jenkins, the second was provided to her mother in a letter from Jenkins, and the third had been used by Jenkins to call her mother. The phone associated with the first number was determined to be out of service; thus, the police focused on the other two numbers. On February 11, 2014, they applied for, and obtained, "Pen Register/Trap & Trace and Cellular Tracking Device" orders allowing them to trace those phones, both of which Det. Kershaw believed belonged to Jenkins.

Det. Kershaw regularly called both phone numbers. One of the phones, with a number ending in 4686, was known to be a prepaid, "burner" phone as there was no subscriber information available. On February 18, 2014, a phone call Kershaw placed to the burner was answered by a male voice. Det. Kershaw immediately hung up and notified the Advanced Technical Team ("ATT") via fax that the targeted phone was active. The ATT obtained cell tower information from the cellular service provider and determined that the phone was most likely in the Penhurst neighborhood of Baltimore

City. The ATT then drove a vehicle carrying a cell site simulator – with the model name "Hailstorm" – to the area, activated the Hailstorm device, and determined that the targeted phone was in 4014 Penhurst Avenue. Det. Kershaw and other officers came to the scene. After 11:00 p.m., the Hailstorm device was again activated, at which time it confirmed the location of the phone to be 4014 Penhurst Avenue.

Det. Kershaw and other police officers approached the front and rear exits of the building. Thereafter, they encountered an unknown individual coming down the back steps. After being asked by the police to stop, the individual fled from the officers and ran back in the apartment building, into a third-floor apartment that police had not known was occupied. Det. Kershaw and another officer forced their way into that unit, where they identified the fleeing individual as Perry Renwick. After determining that no one in that unit had anything to do with Jenkins's murder, Det. Kershaw went to Apartment 1-E and knocked on the door.

The door to Apartment 1-E was answered by Copes. Det. Kershaw testified that he "immediately recognized" Copes as the person who had been in the Walmart and 7-Eleven videos with Jenkins. Det. Kershaw explained to Copes that he was investigating Jenkins's murder and showed him a picture of Jenkins. Copes stated that he recognized her from a "Code Blue" shelter and invited the police into his apartment. Upon entering the apartment, Det. Kershaw saw numerous containers of bleach and cleaners, a space in the apartment where the carpet had been pulled out and cut away, bleach spots on the carpet, and the distinctive blue and yellow jacket that he had seen in the videos.

Subsequently, Copes agreed to come to the police station to answer more questions about Jenkins. Police secured the apartment, and applied for and obtained a search warrant for the apartment, as well as for Copes's DNA. The warrant application included the fact that the victim's phone was tracked to the apartment building. A search of the apartment pursuant to the warrant revealed, among other things, blood stains and other inculpatory items. In April 2014, upon reviewing photographs taken during the execution of the search warrant, Det. Kershaw noticed a book in Copes's apartment that matched one Jenkins was known to have checked out of the library shortly before her death. As a result, Det. Kershaw applied for, and obtained, a second search warrant for the apartment, and returned to collect that book. It was later confirmed to be the same book that Jenkins had borrowed from the library.

Copes was charged with the murder of Jenkins. On September 2, 2015, counsel for the defense filed a motion to suppress the results of the searches of Copes's apartment, arguing that the use of the cell site simulator violated the Fourth Amendment and that, pursuant to *State v. Andrews*, 227 Md. App. 350 (2016), any evidence seized after using a cell site simulator must be suppressed.

Following a motions hearing on April 25, 2016, the circuit court found that this Court's holding in *Andrews* precluded a good faith exception to the exclusionary rule. In addition, the court found that the doctrine of inevitable discovery did not apply, and therefore, it granted Copes's motion to suppress. The evidence taken from Copes's apartment was suppressed. This appeal followed.

Additional facts will be included as they become relevant to our discussion, below.

Discussion

"We review the grant of a motion to suppress based on the record of the suppression hearing, and we view the facts in the light most favorable to the prevailing party." *Andrews*, 227 Md. App. at 371 (citation omitted). In so doing, "we extend 'great deference' to the factual findings and credibility determinations of the circuit court, and review those findings only for clear error." *State v. Donaldson*, 221 Md. App. 134, 138 (citation omitted), *cert. denied*, 442 Md. 745 (2015). "But we make an independent, *de novo*, appraisal of whether a constitutional right has been violated by applying the law to facts presented in a particular case." *Andrews*, 227 Md. App. at 371 (citing *Williams v. State*, 372 Md. 386, 401 (2002)).

I. Warrant

In *Andrews*, 227 Md. App. at 393, this Court held that the use of a cell site simulator to track a cell phone constituted a Fourth Amendment search. The State does not take issue with that holding; instead, it argues that the "order authorizing the use of a cellular tracking device to locate a suspect's cell phone" constituted "sufficient judicial authorization to use the device," or in other words, the order was "the functional equivalent of a warrant." We disagree.

As Copes points out in his brief, *Andrews* directly discussed this issue in a section of the opinion entitled "The Order Obtained by the State Was Not Equivalent to a Warrant." *Id.* at 408-13. There, we stated:

> We determine that the pen register\trap & trace order in this case failed to meet the requirements of a warrant. To allow the government to collect real-time location information on an unknown number of private cell phones, without any geographic boundaries, without any reporting requirements or requirements that any unrelated data be deleted, and without a showing of probable cause that contraband or evidence of a particular crime will be found through the particular manner in which the search is conducted would certainly run afoul of the Fourth Amendment.

Id. at 412. The State acknowledges that "the order and application in this case are nearly identical to the one in *Andrews*." Therefore, as we cannot disregard our previous ruling that such application failed to make "a particularized showing of probable cause, based on sufficient information about the technology involved to allow a court to contour reasonable limitations on the scope and manner of the search," *id.* at 413, we reach the same conclusion here as we did in *Andrews*. The order was not equivalent to a warrant.

II. Good Faith

Alternatively, the State argues that the exclusionary rule should not have been applied in this case because "the police acted in good faith." The Court of Appeals has previously reiterated that there are "four situations in which an officer's reliance on a search warrant would not be reasonable and the good faith exception would not apply:"

> (1) the magistrate was misle[d] 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;
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> (2) the magistrate wholly abandoned his detached and neutral judicial role;
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> (3) the warrant was based on an affidavit that was 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 reasonable presume it to be valid.

Patterson v. State, 401 Md. 76, 104 (2007) (citing *United States v. Leon*, 468 U.S. 897, 923 (1984)). Here, the State asserts that: (1) there was no evidence that the police deliberately misled the judge into signing the Pen Register/Trap & Trace and Cellular Tracking Device order, as there had never been any indication that there was a problem with the process in place at that time; and (2) the circuit court had a full record regarding the device and the procedures surrounding its use, and the ATT detective was willing to answer any of the judge's questions. Neither assertion is persuasive.

The central flaw of the State's argument is that the Pen Register/Trap & Trace and Cellular Tracking Device application at issue did not provide clearly what technology it sought to use, nor the manner in which the technology operated. At the time the order was sought, the nondisclosure agreement governing the Baltimore City Police Department's conduct stated, in pertinent part:

> [T]o ensure that [ ] wireless collection equipment/technology continues to be available for use by the law enforcement community, the equipment/technology and any information related to its functions, operation, and use shall be protected from potential compromise by precluding disclosure of this information to the public in any manner including b[ut] not limited to: in press release, in court documents, during judicial hearings, or during other public forums or proceedings. Accordingly, the Baltimore City Police Department agrees to the following conditions in connection with its purchase and use of the Harris Corporation equipment/technology:
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> 5. The Baltimore City Police Department and Office of the State's Attorney for Baltimore City shall not, in any civil or criminal proceeding, use or provide any information concerning the Harris Corporation wireless

> collection equipment/technology, its associated software, operating manuals, and any related documentation (including its technical/engineering description(s) and capabilities) beyond the evidentiary results obtained through the use the equipment/technology including, but not limited to, during pre-trial matters, in search warrants and related affidavits, in discovery, in response to court ordered disclosure, in other affidavits, in grand jury hearings, in the State's case-in-chief, rebuttal, or on appeal, or in testimony in any phase of civil or criminal trial, without the prior written approval of the FBI . . . .

Andrews, 227 Md. App. at 374-75 (emphasis omitted). Therefore, even if the circuit court knew the relevant questions to ask, there is no guarantee that it would have received the exact information it sought.

Moreover, it is irrelevant that the ATT detective would have been willing to answer any of the circuit court's questions in signing the order. When performing a "good faith" analysis, "the standard of reasonableness we adopt . . . does not turn on the subjective good faith of individual officers." *Illinois v. Krull*, 480 U.S. 340, 355 (1987) (citing *Leon*, 468 U.S. at 919 n.20). Rather, it is an objective test. *Id.* Thus, assuming the ATT detective's intentions to be true, they still have no bearing on our good faith analysis.

Based upon the record here, the State failed to make the requisite threshold showing for application of the good faith doctrine. Accordingly, the circuit court did not err in applying the exclusionary rule.

III. Inevitable Discovery

Next, the State argues that "Copes would inevitably and independently have been discovered in the apartment," and therefore, the fruits of the search should have been

deemed admissible. According to the State, the circuit court "recognized that the . . . investigating detective was specifically attempting to make contact with whoever lives in Apartment 1-E" but discounted the "inevitable discovery" exception "by speculating that Copes could have destroyed more evidence before the next time the police knocked on his door." The State contends that this amounted to error on the court's part because "the hypothetical possibility that a suspect might have eliminated evidence in the intervening time is not a proper consideration under the inevitable discovery doctrine."

In response, Copes avers that the circuit court acted properly in excluding the evidence. Copes argues that, although the State established that certain investigatory means would have been utilized, it failed to meet its burden of showing "how those means would have led at some certain time to the discovery and/or seizure of the evidence." We agree with Copes.

The pertinent question to determine exclusion of evidence is: "whether, granting establishment of the primary illegality, the evidence to which instant objection is made has been come [sic] at by exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint." *Cox v. State*, 421 Md. 630, 651 (2011) (quoting *Wong Sun v. United States*, 371 U.S. 471, 488 (1963)). Like the Supreme Court, Maryland courts have identified three exceptions to the exclusionary rule, all of which "purge the taint" of the illegality: (1) inevitable discovery; (2) independent source; and (3) attenuation. *See id.* at 652. The Court of Appeals briefly described all three exceptions as follows:

> First, evidence obtained after initial unlawful governmental activity will be purged of its taint if it was inevitable that the police would have discovered the evidence. Second, the taint will be purged upon a showing that the evidence was derived from an independent source. The third exception . . . will allow the use of evidence where it can be shown that the so-called poison of the unlawful governmental conduct is so attenuated from the evidence as to purge any taint resulting from said conduct.

Miles v. State, 365 Md. 488, 520-21 (2001) (internal citations omitted). The State does not contest independent source on appeal; as such, we shall focus only on the doctrines of inevitable discovery and attenuation.

Under the inevitable discovery doctrine, "[e]vidence obtained as a result of an illegal search is admissible where, absent the illegal conduct, the evidence inevitably would have been discovered through legal means." *Williams*, 372 Md. at 415 (citing *Nix v. Williams*, 467 U.S. 431, 447 (1984)). For the doctrine to apply, *the State must prove* by preponderance of the evidence that the evidence in question inevitably would have been found through lawful means. *Id.* at 417. *See Oken v. State*, 327 Md. 628, 654-56 (1992). The State's burden of proving inevitable discovery consists of a two-part showing: "first, that certain proper and predictable investigatory procedures would have been utilized in the case at bar, and second, that those procedures would have inevitably resulted in the discovery of the evidence in question." *Stokes v. State*, 289 Md. 155, 163 (1990) (citation omitted). Moreover, the Court of Appeals has stated that "inevitable discovery cannot rest upon speculation but must be supported by historical facts that can be verified or impeached." *Williams*, 372 Md. at 424 (citing *Nix*, 467 U.S. at 444 n.5).

In this case, although the State established that it actively pursued lawful means in investigating the illegal conduct, it failed to meet its burden of proving, by a preponderance of the evidence, that those procedures would have successfully led them to the evidence at issue. The only testimony provided by the State, "as it relates to [their] investigation[,]" was as follows:

> Well, as we usually do, we did what's called a daytime canvass, and we also did evening canvasses which is the homicide side of things. And our Operations Unit was conducting surveillance beginning the week of the 10th. Because we had a video image of the person last seen with [Jenkins], our hope was that we would see this person exit a house. So the picture of Mr. Copes was given to plainclothes units, operations units, and we continued to canvass the 4000 block of Penhurst heavily door to door.

The police officers testified that there was an ongoing investigation in the neighborhood of 4014 Penhurst Avenue, but they did not say how or when they would have gained access to Copes's apartment. Therefore, the circuit court properly declined to speculate that the officers would have knocked on Copes's door in the near future, that Copes would have opened the door, that the apartment would have been in the same condition, and that the recovered evidence would have been present. *See Williams*, 372 Md. at 426 (declining to apply the inevitable discovery exception to cocaine found in defendant's pajamas during the search incident to his arrest where the court would have had to speculate "that he inevitably would have been in the motel rooms when the police executed the search warrant" and "dressed in his pajamas, with the cocaine concealed therein").

The State cites *Oken* in support of its argument but that case is distinguishable. There, the Court of Appeals found that property left in a motel room was admissible under the doctrine of inevitable discovery because the State showed that even if police officers had not entered the room earlier, the maids assigned to clean the room eventually would have gone into the room after checkout time had passed and seen the various items. *Oken*, 327 Md. at 654-55 ("[A]mple evidence" of inevitable discovery was presented at the suppression hearing when the motel manager testified that "the cleaning crew, accompanied by her, would have started cleaning the rooms at approximately 7:00 a.m. and would have finished no later than 8:00 a.m." and "she would have picked up the shirt, and upon discovering the blood, would 'immediately' have called" the police.). By contrast, here, the State did not present evidence of a "predictable and customary" procedure that would have led to the inevitable discovery of the relevant evidence. *See id.* at 654. As the Court of Appeals stated in *Stokes*, 289 Md. at 164:

> It is not enough to show that the evidence "might" or "could" have been otherwise obtained. Once the illegal act is shown to have been in fact the sole effective cause of the discovery of certain evidence, such evidence is inadmissible unless the prosecution severs the causal connection by an *affirmative showing* that it would have acquired the evidence in any event.

(Citation omitted; emphasis added).

In its reply brief, the State avers that the circuit court determined, as a matter of fact, that "the police investigatory efforts would inevitably have led officers to Copes." The State then urges us to defer to this finding. At the conclusion of the suppression hearing, the circuit court stated, in pertinent part:

> I then have to consider whether or not there is the inevitable discovery. And I will tell you that this case is a much closer call than *Andrews*. The police were already very focused on this block of Penhurst. The testimony is that there had been area canvasses day and night, that doors had been knocked upon, including Mr. Copes' door.
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> Had Detective Kershaw knocked on the door *before Detective Haley was in the block with Hailstorm*, and Mr. Copes had come to the door, Detective Kershaw would have recognized his face, would have asked to speak with him, likely would have gained the same access to the home that he did, likely would have made the same discovery as to the missing carpet, the cleaning supplies, the bleach stains and likely would have arrested Mr. Copes, and Mr. Copes'[s] trial would be moving forward. It is the insertion of the Hailstorm, however, which interrupts that chain.

(Emphasis added).

The circuit court's statement that the evidence would "likely" have been discovered was based on its exploration of a hypothetical situation where the police officers knocked on Copes's door prior to, or during, its use of Hailstorm. There is no dispute that such events did not take place, and the record does not reflect that the State made "an affirmative showing that it would have acquired the evidence in any event." *Stokes*, 289 Md. at 164 (citation omitted). Thus, the circuit court properly concluded:

> And I don't know how I can just ignore the use of the Hailstorm technology and say Detective Kershaw would have been there anyway. He might have been there a week later when all of the carpet was gone, and all of the cleaning supplies were gone. He might have been there a month later when Mr. Copes was gone. But *I can't play the what-if game* with the Constitution and with fairness.

(Citations omitted). Contrary to the State's assertion, the circuit court refused to engage in speculation. Rather, because the State failed to show "historical facts capable of easy

verification," the court did not err in declining to apply the inevitable discovery exception to the exclusionary rule.

IV. Attenuation

On appeal, the State also argues that the attenuation exception to the exclusionary rule should apply. Specifically, the State contends that "the 'taint' of the cellular tracking device was attenuated by the ensuing circumstances." This argument, however, was not presented to the circuit court below and, therefore, has been waived.

At the outset of the suppression hearing, the State raised "four exceptions" to the warrant requirement that would preclude application of the exclusionary rule in Copes's case: (1) good faith; (2) inevitable discovery; (3) independent source; and (4) Copes's consent to allow police entry into his residence. Later, the State added that the pen register order constituted functional judicial authorization for the Hailstorm search. At no point did the State – or the circuit court – raise the doctrine of attenuation or any of its factors. Accordingly, this argument is not properly before us. Md. Rule 8-131(a) ("Ordinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court."); *see also Elliott v. State*, 417 Md. 413, 443 (2010) (concluding that "the defense was unfairly prejudiced . . . because counsel did not have the opportunity to rebut the application of the [exception] at the suppression hearing, as the State did not raise the issue").

Even if this issue had been preserved, the State's argument would still fail. Under the attenuation doctrine, "[e]vidence is admissible when the connection between

unconstitutional police conduct and the evidence is remote or has been interrupted by some intervening circumstance, so that 'the interest protected by the constitutional guarantee that has been violated would not be served by suppression of the evidence obtained.'" *Utah v. Strieff*, 136 S. Ct. 2056, 2061 (2016) (quoting *Hudson v. Michigan*, 547 U.S. 568, 593 (2006)). Three factors guide our analysis into whether the attenuation doctrine applies to allow admission of evidence: (1) "the 'temporal proximity' between the unconstitutional conduct and the discovery of evidence[;]" (2) "the presence of intervening circumstances[;]" and (3) "the purpose and flagrancy of the official misconduct." *Id.* at 2062 (citations and internal quotations omitted). "[T]he analysis involves a balancing test, and no single factor is dispositive on the issue of attenuation." *Cox*, 421 Md. at 653 (internal quotations omitted).

With regard to the first factor, both parties agree that "temporal proximity [] may favor suppression, but not strongly."

As to the second factor, the Court of Appeals has previously stated, "the 'focus should more appropriately be on the accused to determine whether there was any event that contributed to his ability to consider carefully and objectively his options and to exercise his free will.'" *Id.* at 654 (quoting *Ferguson v. State*, 301 Md. 542, 551 (1984)). According to the Supreme Court, the appropriate question is "whether, granting establishment of the primary illegality, the evidence to which instant objection is made has been come at by exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint." *Wong Sun*, 371 U.S. at 488. The

Supreme Court has held that, where the incriminating evidence "has been come at by the exploitation of that illegality," it should be suppressed. *Id.* In this case, Copes voluntarily invited police into his apartment, but he did so only after the Hailstorm device led police to his building. Thus, like in *Wong Sun*, where narcotics were properly suppressed after police used unconstitutional methods to pinpoint a home occupied by defendant, and upon entry by police, defendant voluntarily surrendered the narcotics, this is not a case "in which the connection between the lawless conduct of the police and the discovery of the challenged evidence has become so attenuated as to dissipate the taint." *Id.* at 487 (internal quotations omitted). This factor also weighs in favor of suppression.

With regard to the third factor, the misconduct requiring scrutiny was the use of a cell site simulator without judicial authorization. As to purpose, the police used Hailstorm to broadly search a Baltimore neighborhood "in the hope that something would turn up." *Taylor v. Alabama*, 457 U.S. 687, 691 (1982). As to flagrancy, it is well documented that the Baltimore City Police Department and State's Attorney's Office took steps to affirmatively hide this technology from public and judicial oversight. *See Andrews*, 227 Md. App. 374-77. Because "police misconduct with a quality of purposefulness will weigh in favor of exclusion of the resulting evidence," *Cox*, 421 Md. at 655 (internal quotations and citation omitted), we agree with Copes that this factor, like the others, weighs in favor of suppression.

V. Exclusionary Rule

Lastly, the State asks us to reexamine our previous application of the exclusionary rule. *See, e.g.*, *Andrews*, 227 Md. App. at 414-17 (2016) (affirming the suppression court's exclusion of all the evidence found to be tainted by the police's unlawful use of the Hailstorm cell site simulator). Although the State correctly identifies "the purpose of the exclusionary rule, deterring police misconduct," *Patterson v. State*, 401 Md. 76, 111 (2007), it incorrectly asserts that deterrence "is not advanced in this case [because] prior to *Andrews*, police had no reason to believe they were engaged in misconduct when they obtained a court order to use a cellular tracking device." As Copes stated in his brief, the unconstitutional use of a secret surveillance device by police to probe the homes of an entire neighborhood is the exact type of misconduct that demands deterrence. It was just earlier this year that we detailed our reasons for holding that "the use of a cell site simulator requires a valid search warrant, or an order satisfying the constitutional requisites of a warrant, unless an established exception to the warrant requirement applies." *Andrews*, 227 Md. App. at 355. We decline the State's invitation to overturn that holding today.

For all of the foregoing reasons, we affirm the circuit court's judgment.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY THE MAYOR AND CITY COUNCIL OF BALTIMORE.