Circuit Court for Cecil County
Case No. C-07-CR-21-000189

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 454

September Term, 2022

JAHLEN THOMAS JOHNSON

v.

STATE OF MARYLAND

Nazarian,
Friedman,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned)

JJ.

Opinion by Friedman, J.

Filed: October 20, 2023

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

In the Circuit Court for Cecil County, appellant Jahlen Johnson pleaded not guilty on an agreed statement of facts to one count of possession of a firearm with a felony conviction. He was found guilty and sentenced to 15 years of incarceration, with all but five years suspended. In this appeal, Johnson alleges that (1) he is entitled to a new hearing on his motion to suppress because the circuit court judge who ruled on the motion should have recused himself prior to the hearing, (2) it was error for his motion to suppress to be denied, and (3) the sentencing court failed to properly award him credit for the days he was incarcerated pending trial. For the reasons that follow, we shall affirm.

BACKGROUND

On the morning of January 22, 2021, Ebony Skinner appeared at the Delaware State Police Barracks to report that she had been assaulted. Because Skinner stated that the assault had taken place at 214 Patriots Way in Elkton, Maryland, a Delaware State Trooper contacted the Elkton Police Department and Patrol Officer Blackson went to the Delaware barracks to interview Skinner.

Skinner was reluctant to answer questions during the interview, but identified her assailant as her boyfriend, appellant Jahlen Johnson. Skinner described that she and Johnson had been fighting on and off for several days and some of the arguments had become physical. During the most recent argument that morning, Johnson had pulled out a black semi-automatic pistol and held it to her head. Skinner stated that Johnson carried the gun in his waistband and had previously concealed it in her car. Skinner also provided detailed information about Johnson's residence.

Officer Blackson wrote a report about his interview with Skinner. In the report, he noted that a female trooper at the barracks reported seeing multiple bruises on both of Johnson's arms. On Monday, January 25, Detective LaSassa reviewed the report and prepared a search and seizure warrant for the location identified by Skinner, 214 Patriot's Way, to look for the gun and ammunition. The warrant was executed on January 28, 2021, and police found a 9mm handgun in a dresser drawer. During the search, police also observed what appeared to be counterfeit money, marijuana, and a digital scale. Officers halted the search and requested a second search warrant based on their observations. After the second warrant was issued, the additional contraband was seized. Johnson was charged in two separate indictments. In the first indictment, Johnson was charged with first degree assault, reckless endangerment, and illegal possession of a firearm. In the second indictment, Johnson was charged with possession with intent to distribute marijuana, possession of counterfeit currency, and illegal possession of a firearm.

Prior to trial, Johnson filed a motion to suppress the evidence seized under both search warrants. Johnson's case was assigned to Judge William W. Davis, Jr. of the Circuit Court for Cecil County. On September 17, 2021, Judge Davis denied Johnson's motion to suppress following a hearing. The parties appeared before Judge Davis again on September 27, 2021 for a pretrial hearing. At that time, Johnson's case was set for trial on October 6, 2021. The day before trial, however, Judge Davis issued an order recusing himself from all matters related to Johnson.

On October 6, 2021, Johnson and the State appeared instead before Judge Keith Baynes. At that hearing, Johnson's counsel explained that they had planned to present a plea agreement, but part of that agreement was for Judge Davis to sentence Johnson on both the current case and two pending violation of probation cases. With Judge Davis's recusal, there was no longer an agreement. Johnson waived his right to a speedy trial, and the case was reset. On May 9, 2022, Johnson entered a plea on an agreed statement of facts and was sentenced to 15 years' incarceration with all but the mandatory minimum of five years suspended.

DISCUSSION

I. RECUSAL

In his first issue, Johnson argues that he is entitled to a new hearing on his motion to suppress because Judge Davis abused his discretion by not recusing himself prior to the suppression hearing. As a preliminary matter, we note that Johnson has failed to preserve error on this issue. For an issue to be preserved for appellate review, it must "plainly [appear] by the record to have been raised in or decided by the trial court." MD. R. 8-131(a). This preservation requirement includes allegations of judicial bias. *Joseph v. State*, 190 Md. App. 275, 289 (2010); *Scott v. State*, 110 Md. App. 464, 486 (1996). Thus, in the absence of "very extenuating circumstance," a party should raise the issue in the lower court. *Scott*, 110 Md. App. at 486 (noting that trial counsel may have declined to raise the issue of recusal "because he did not want to provoke further wrath" from the trial judge).

Although the circumstances of Judge Davis's recusal were unusual, Johnson had ample opportunity to raise objections in the trial court. Judge Davis issued the order recusing himself on October 5, 2021, and his office contacted defense counsel the same day to inform them of the Judge's decision. Johnson's case was reassigned, and the parties appeared at a hearing before Judge Baynes the following day. At that hearing, the parties informed Judge Baynes that the plea agreement would have to be renegotiated in light of Judge Davis's recusal, but neither party objected to the recusal or requested a hearing on the matter. Johnson's plea agreement was not entered until seven months later, on May 9, 2022, giving Johnson ample time to raise an objection to Judge Davis's recusal. We conclude, therefore, that Johnson has failed to preserve the issue for our review.

Given the unusual circumstances of Judge Davis's recusal, we further note that even if Johnson had preserved the issue, we do not agree that the record "compels the conclusion" that he is entitled to a new hearing on his motion to suppress. There is a strong presumption in Maryland that judges are impartial participants in the legal process, and their "duty to preside when qualified is as strong as their duty to refrain from presiding when not qualified." *Jefferson-El v. State*, 330 Md. 99, 107 (1993) (citing *Boyd v. State*, 321 Md. 69,74 (1990); *Doering v. Fader*, 316 Md. 351, 360 (1989)). "Bald allegations and adverse rulings are not sufficient to overcome the presumption of impartiality." *Reed v. Baltimore Life Ins. Co*., 127 Md. App. 536, 556 (1999). Rather, a party seeking recusal must establish that the judge has "a personal bias or prejudice" that comes from an "extrajudicial source." *Jefferson-El*, 330 Md. at 107 (citing *Boyd*, 321 Md. at 75-80; *Fader*,

316 Md. at 356). A judge's decision regarding recusal is discretionary and will not be overturned on appeal absent an abuse of that discretion. *Jefferson-El*, 330 Md. at 107; *Conner v. State*, 472 Md. 722, 744 (2021).

Both parties acknowledge that the record is silent as to why Judge Davis recused himself. Johnson argues that because Judge Davis did not state a reason for his recusal and because the record doesn't indicate "what could have changed" between the suppression hearing and the recusal order, the disqualification must have been preexisting. Thus, Johnson insists that Judge Davis was biased against him all along and abused his discretion in not recusing himself before the suppression hearing. We are not persuaded.

Johnson does not identify any personal bias or prejudice that Judge Davis may have had against him at any time, either before or after the suppression hearing. Although Johnson argues that "it would appear to any reasonable person that Judge Davis's basis for recusal must have existed at least at the time of the suppression hearing," broad speculation from a silent record is insufficient to overcome the presumption of impartiality that applies to judges. Without any evidence at all regarding a possible bias or prejudice, we have no way of knowing whether Judge Davis should have recused himself earlier, recused himself at the appropriate time, or should not have recused himself at all. *Cf. Fader*, 316 Md. at 359 (discussing that a trial judge may have recused himself due to a misunderstanding of the law and should reconsider whether he was in fact qualified to continue presiding over the defendant's sentencing). Thus, even if the issue had been preserved for our review, the

record does not support Johnson's assertion that Judge Davis abused his discretion by presiding over the suppression hearing.

II. MOTION TO SUPPRESS

Johnson next challenges that the circuit court erred in denying his motions to suppress the evidence because the affidavit in support of the warrant was insufficient. Specifically, Johnson complains that the affidavit was impermissibly based on hearsay from Officer Blackson's report, and that the information provided to the police by Skinner was not properly corroborated. Neither argument has merit.

Both the federal and state constitutions protect against unreasonable searches and seizures, and the law developed under these provisions has a strong preference for searches conducted pursuant to a warrant. *State v. Faulkner*, 190 Md. App. 37, 47 (2010) (citing *Illinois v. Gates*, 462 U.S. 213, 236 (1983)). As a result, when evidence has been recovered in a search authorized by a warrant, a reviewing court—whether it is a "[trial] court ruling on a motion to suppress, or an appellate court reviewing the suppression decision on appeal"—evaluates the issuing judge's decision under a highly deferential standard. *Faulkner*, 190 Md. App. at 46-47; *State v. Amerman*, 84 Md. App

. 461, 471-72 (1990). Under circumstances where reasonable minds might differ, a reviewing court defers to the issuing judge's determination. *Moats v. State*, 455 Md. 682, 699-700 (2017) (citing *United States v. Ventresca*, 380 U.S. 102, 108-09 (1965)).

A valid search warrant must be supported by probable cause. *West v. State*, 137 Md. App. 314, 321 (2001). For purposes of a search warrant, "probable cause" is not a technical

legal term. *Patterson v. State*, 401 Md. 76, 91-92 (2007). Rather, it is intended to represent a "practical[ ] common-sense decision whether, given all the circumstances set forth in the affidavit ... there is a fair probability that contraband or evidence of a crime will be found in a particular place." *Gates*, 462 U.S. at 238; *Patterson*, 401 Md. at 91-92. Moreover, the role of a reviewing court is not to determine whether it would have found probable cause under the same circumstances, but whether the issuing judge had a "substantial basis" for finding probable cause to issue the warrant. *Carroll v. State*, 240 Md. App. 629, 649 (2019); *Faulkner*, 190 Md. App. at 47 (citing *State v. Jenkins*, 178 Md. App. 156, 163 (2008)). A substantial basis is "something less than finding the existence of probable cause," and the application of this standard acknowledges that affidavits in support of search warrants "are normally drafted by nonlawyers in the midst and haste of a criminal investigation." *Faulkner*, 190 Md. App. at 47 (quoting *State v. Coley*, 145 Md. App. 502, 521 (2002)); *Ventresca*, 380 U.S. at 108.

A judge issuing a search warrant is "confined to the averments contained within the four corners of the search warrant application." *West v. State*, 137 Md. App. 314, 322 (2001).[1] An affidavit in support of a warrant must present sufficient information to the issuing judge "to allow that official to determine probable cause." *West*, 137 Md. App. at

[1] Johnson also argues that the warrant was invalid because the affidavit may have been based on or corroborated by information obtained during an unauthorized entry into Johnson's residence on January 24, 2021, when police responded to an emergency call from Skinner's cell phone. There is, however, nothing within the four corners of the affidavit related to the January 24th emergency call. As a result, we reject Johnson's argument.

323 (quoting *Gates*, 462 U.S. at 239). Conclusory statements are not enough. *West*, 137 Md. App. at 324 (quoting *Gates*, 462 U.S. at 329). Whether an affidavit is sufficient to establish probable cause is determined by weighing the totality of the circumstances. *Thompson v. State*, 245 Md. App. 450, 471 (2020).

Maryland courts have accepted as "beyond dispute that a constitutionally adequate search warrant may be based on hearsay, so long as the issuing judge or magistrate is confident that probable cause for the search exists on the face of the affidavit under the totality of the circumstances." *Pearson v. State*, 126 Md. App. 530, 543-44 (1999) (citing *Gates*, 462 U.S. at 238). Indeed, the reliability of hearsay information obtained from other members of an investigating police team named in an affidavit is generally considered "too plain to require discussion." *Grimm v. State*, 6 Md. App. 321, 328 (1969). Thus, the fact that the affidavit in support of the warrant relied on information from Officer Blackson's report does not render it either unreliable or insufficient.

Moreover, whether information provided to the police requires corroboration depends on the perceived credibility of the source. Corroboration is usually necessary when the police have relied on information from a confidential informant. *Thompson*, 245 Md. App. at 483. Information from an informant is reviewed based on the source of the informant's knowledge, the credibility of the informant, the reliability of information previously disclosed to the police, and other indicia of reliability. *Id*. at 481. No one factor is determinative. In general, however, courts attribute more credibility to sources who have a history of providing reliable information to the police or an informant "who has not

concealed their identity, as the person is then available for follow-up questions and can be criminally charged if the information proves false." *Id.* at 483 (citations omitted).

Here, the source of the information was not an unidentified confidential informant, but Ebony Skinner, Johnson's girlfriend. Skinner's identity was known to the officer who submitted the affidavit, and she was identified in the affidavit as the source of the information. Moreover, the information she reported to the police was not based on rumors or speculation, but her own first-hand knowledge gained through direct contact with Johnson. *See Thompson*, 245 Md. App. at 483. Given the source of the information, no independent corroboration was necessary for the affidavit to be sufficiently reliable for the issuing judge to rely on it to find that there was probable cause to issue the warrant.

We conclude, therefore, that it was not an abuse of discretion for the circuit court to deny Johnson's motion to suppress.

III. CREDIT FOR TIME HELD

Finally, Johnson argues that he is entitled to receive 430 days of additional credit against his sentence in this case. We disagree.

Johnson was arrested in this matter on January 28, 2021 and held without bond. At the time of his arrest, Johnson was already on probation for two previous, unrelated offenses. On February 2, 2021, bench warrants were issued to detain Johnson for violating the conditions of his probation. On February 17, 2021, detainers were lodged with the Cecil County Detention Center to hold Johnson without bond on the additional charges. A hearing was held on April 8, 2022, at which Johnson was found guilty of violating his

probation and sentenced. Johnson was sentenced to incarceration for 430 days in the first case and 430 days in the second case, to be served consecutively. The sentencing judge then awarded Johnson credit in both cases for 430 days of pretrial detention, calculated from when the bench warrants were issued until the day of the sentencing hearing. One month later, on May 9, 2022, the same judge sentenced Johnson in the current case. At that hearing, the sentencing judge awarded Johnson 53 days of credit for time served in pretrial detention, calculated from the day he was arrested in the current case until the day of the sentencing hearing, but explicitly excluding the 430 days that had been credited to Johnson's sentences in the first two cases.

Credit for time served pending trial is governed by Section 6-218 of the Criminal Procedure article of the Maryland Code:

> (b)(1) A defendant who is convicted and sentenced shall receive credit against and a reduction of the term of a definite or life sentence … for all time spent in the custody of a correctional facility … or other unit because of:
>
> (i) the charge for which the sentence is imposed; or
>
> (ii) the conduct on which the charge is based.
>
> (2) If a defendant is in custody because of a charge that results in a dismissal or acquittal, the time that would have been credited if a sentence had been imposed shall be credited against any sentence that is based on a charge for which a warrant or commitment was filed during that custody.
>
> (3) In a case other than a case described in paragraph (2) of this subsection, the sentencing court may apply credit against a sentence for time spent in custody for another charge or crime.

MD. CODE, CRIM. PROC. ("CP"), § 6-218(b).

The purpose of these provisions is two-fold. First, it is intended to avoid "banked time," that is, to prevent a defendant from accumulating credit to be applied to a future sentence for a crime that has yet to be committed. *Blankenship v. State*, 135 Md. App. 615, 617 (2000). It is also intended to avoid "dead time," that is, to protect a defendant from spending time in custody that is not credited to any valid sentence. *Id*. at 618. In effectuating these dual purposes, the "elemental equation is one actual day for one actual day, and the paper shuffling of multiple sentences will neither decrease it nor increase it." *Id*. at 619.

Johnson argues that because he was brought into custody for these charges *first*, he was being held "because of" them and it was therefore mandatory under CP § 6-218 (b)(1) for the sentencing court to apply the entire pretrial incarceration against his sentence, regardless of whether it was also credited against another sentence. Johnson asserts that if the sentencing court had any discretion, it was only with regard to whether his time in pretrial detention would also be credited to his sentences in the two violation of probation cases, and the discretionary decision in those cases is irrelevant to the mandatory application of CP § 6-218(b)(1) in this case.

Contrary to Johnson's argument, there is nothing in CP § 6-218(b) that prioritizes one case or sentence over another for the purposes of receiving credit for time served in pretrial detention. Although Johnson was first arrested and detained on the charges in the current case, once the detainers were issued by the detention center for the other two cases,

Johnson was also being held "because of" those charges. This Court has previously rejected the argument that when a defendant is incarcerated on multiple pending charges that result in consecutive sentences, they are entitled to receive the same time credit on each sentence. *Blankenship*, 135 Md. App. at 618-19. A "defendant is not entitled to double or triple or quadruple credit for time served in the case of consecutive sentences." *Id*. at 618. Significantly, although a defendant is not *entitled* to receive credit multiple times, the statute leaves it to the discretion of the sentencing judge to choose to do so. CP § 6-218(b)(3). Indeed, the sentencing judge in Johnson's violation of probation cases doubled the credit to which Johnson was entitled by applying the same 430 days of incarceration to each of the consecutive sentences. It was not an abuse of discretion for the sentencing judge to decline to triple that credit and apply it to yet a third sentence.

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