

Circuit Court for Wicomico County
Case No. C-22-CR-22-000507

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND*

No. 496

September Term, 2023

TREYVON R'SHON WALSTON

v.

STATE OF MARYLAND

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

JJ.

Opinion by Graeff, J.

Filed: August 14, 2024

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

Treyvon Walston, appellant, was convicted in the Circuit Court for Wicomico County, pursuant to an agreed statement of facts, of possession of fentanyl with the intent to distribute. The court imposed a sentence of 15 years.

On appeal, appellant presents the following question for this Court's review:

Did the circuit court err in denying appellant's motion to suppress?

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

FACTUAL AND PROCEDURAL BACKGROUND

On July 26, 2022, Detective Dylan L. Tawes, a member of the Wicomico County Sheriff's Office, prepared an application and affidavit for a search warrant for 25308 Nanticoke Road, Quantico, Wicomico County, Maryland 21856. The application detailed Detective Tawes' experience as a police officer. It set forth the following facts in support of the warrant:

During the month of June, the Wicomico County Sheriff's Office (WCSO) received a tip from Detective Marzec of the Delmar Police Department. Det. Marzec advised that he received information from a confidential source, [hereinafter] referred to as (CS-1). CS-1 stated that they have purchased [] controlled dangerous substances (CDS) from Treyvon Walston. CS-1 advised that Walston has "high quality" dope. Your affiant knows that "dope" is street slang for heroin. Your affiant knows such based on his training, knowledge and experience as a police officer. CS-1 advised that Walston has two vehicles, a White SUV and a Black Nissan. CS-1 advised that he/she has met Walston at a residence on Nanticoke Road to purchase CDS.

The police searched appellant's name on Maryland E-tix,¹ which revealed that appellant had been stopped in a black Nissan passenger car with Maryland registration, 4EW3062, owned by Arrin Michelle Spence. The police then determined that the owner had an address of 25308 Nanticoke Road, Quantico, Maryland 21856. Based on this information, Detective Tawes believed that the owner and appellant were in a relationship. Detective Tawes drove by 25308 Nanticoke Road and observed a black Nissan passenger car with Maryland registration 4EW3062 and a White Toyota SUV with Maryland registration 61197CJ in the driveway of the address. The affidavit further stated that Officer Tawes observed the white Toyota SUV and the black Nissan in the driveway of 25308 Nanticoke Road eight times. Officer Tawes learned that appellant had been stopped by the police in the white SUV in May 2022 on Nanticoke Road/Wells Road, which indicated that appellant was residing in the area.

The affidavit then stated:

On July 25, 2022, Det. Gilmore, and your Affiant, Det. Tawes, conducted a trash pull from 25308 Quantico Road, Quantico, Wicomico County, Maryland 21856. One large can was observed on the edge of the property next to the roadway. Several bags of trash were removed from the can. The bags of trash were transported back to WCSO for processing. The trash was removed without trespassing on the property.

¹ Maryland E-tix “was developed by the Maryland State Police and is provided to allied agencies to be used as a method to issue Maryland Uniform Complaint[s] and Citations.” See *Electronic Traffic Information Exchange*, <https://perma.cc/6VDM-X3YW>, (last accessed August 6, 2024). E-tix are “used to issue and print warnings, S.E.R.O.[s], and accident exchange forms.” *Id.*

The trash was processed at the Wicomico County Sheriff's Office, where Detective Tawes found "[e]ight glassine corner baggies containing a white powder residue with the corners missing from the baggies," "[f]ive baggies containing a white powder residue," "[f]our white latex gloves that were turned inside out," and "several of the glassine baggies" inside one of the latex gloves.

A Macy's packaging bag also was found in the trash. The shipping label read "Treyv," "and after the V was a partial letter of 'o,' indicating the receiver of the parcel as Treyvon." The affidavit further stated: "It should be noted that Your Affiant observed both the White SUV, and the Black Nissan[,] at the residence during the trash pull."

The affidavit then noted appellant's criminal history. It included prior convictions "of CDS Possession with Intent to Distribute a Narcotic," "CDS Possession of Paraphernalia," and "Sex Offense Second Degree."

The affidavit then concluded:

Based upon the information contained herein, it is the belief of your Affiant, Det[ective] Tawes, that probable cause does exist to believe that certain property, namely: controlled dangerous substances, controlled dangerous substance related ledgers/records, monies/proceeds from controlled dangerous substance transactions, electronic recording equipment, electronically recorded tapes, computers, cellular telephones, documents, paperwork, additional evidence related to controlled dangerous substances (hereafter referred to as CDS), which are:

- 1) Contraband and therefore possession of said property is a violation of the Laws of Maryland; and
- 2) Evidence of violations of the Annotated Code of Maryland, Criminal Law Article, Title 5.

And that these items can be found in the following premises (to include the curtilage and any and all outbuildings):

- 25308 Nanticoke Road, Quantico, Wicomico County, Maryland 21856. Said residence is more specifically described as a Tan two-story house with a black front door with white trim. The number “25308” is affixed to the mailbox in front of the residence, across the street. 25308 Nanticoke Road is the 1st residence from the intersection of Quantico Road/Nanticoke Road.

Appellant moved to suppress the evidence found in the subsequent search pursuant to the warrant. Counsel argued at the suppression hearing that the warrant referenced a trash pull at 25308 Quantico Road, which did not provide “a nexus to CDS activity at the Nanticoke Road address.” Counsel argued that the warrant, on its face, was invalid.

Counsel for the State argued that the application for the warrant, the affidavit, and the warrant itself “all coalesce together, to show that [the Quantico Road address was] a typographical error.” Counsel noted that the affidavit stated that “the white SUV and black Nissan were [] in the driveway of the residence at the time [officers] did the trash pull.” Counsel argued that typographical errors do not destroy warrants, and there was a substantial basis for the warrant.

The circuit court noted that everything involved in the case involved the address of 25308 Nanticoke Road, and it would be “nonsensical” to conclude that officers completed a trash pull at a location with no other connection to their investigation. The court stated:

[I]t would be nonsensical to read this, that Detective Tawes, Detective Gilmore, on that day go to 25308 Quantico Road to do a trash pull with the vehicles, the white SUV and the black Nissan, at that residence, happen to just be at that residence with no other connection to that residence anywhere else in the warrant, versus the idea that that was a typographical error that was

made, because of the fact that Nanticoke Road is in Quantico, and the address, to me, that is the more reasonable and rational reading of this.

The circuit court found that listing the Quantico Road address in reference to the trash pull was “a typographical error that was made and is not dispositive of the warrant,” and there was a substantial basis for the issuance of the warrant. Accordingly, it denied appellant’s motion to suppress.

This appeal followed.

DISCUSSION

Appellant contends that the “circuit court erred in denying the motion to suppress.” He argues that “the issuing-judge did not have a substantial basis to conclude that the warrant was supported by probable cause” because the warrant relied on information obtained from a trash pull at 25308 Quantico Road, which did not have a nexus to 25308 Nanticoke Road, the place searched. Appellant asserts that “[t]here are insufficient facts in the affidavit to support the [State’s] argument that the reference to 25308 Quantico Road was a typographical error.” Appellant additionally argues that “the good faith exception to the exclusionary rule does not apply because the affidavit supporting the search warrant was so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable.”

The State contends that “the warrant-issuing judge had a substantial basis to conclude the warrant application was supported by probable cause.” It notes that the “legal standard for a substantial basis is relatively low, and this Court gives deference to the warrant-issuing judge.” The State argues that “the typographical error does not eliminate

the existence of a substantial basis to conclude the warrant application was supported by probable cause.” Alternatively, the State contends that, if this Court finds there was no substantial basis to issue the warrant, “the search was still proper pursuant to the good faith exception to the exclusionary rule.”

A.

Substantial Basis

“A judicially issued search warrant is presumptively valid, and the burden is allocated to the defendant to rebut that presumed validity.” *Wood v. State*, 196 Md. App. 146, 164 (2010), *cert. denied*, 418 Md. 192 (2011). A reviewing court “do[es] not conduct a *de novo* inquiry into whether the court order . . . was supported by probable cause, rather [it] must determine whether the ‘*issuing judge had a substantial basis* for concluding that the [court order] was supported by probable cause.’” *Whittington v. State*, 474 Md. 1, 31 (2021) (quoting *Patterson v. State*, 401 Md. 76, 89 (2007)).

A “substantial basis” to issue a warrant requires less than probable cause and is “less demanding than even the familiar ‘clearly erroneous’ standard.” *State v. Jenkins*, 178 Md. App. 156, 174 (2008) (quoting *State v. Amerman*, 84 Md. App. 461, 472 (1990)) (emphasis omitted). We give deference to the issuing judge “to encourage the police to resort to warrants rather than to warrantless searches.” *Id.* at 165. “To determine whether an issuing judge had a substantial basis to find probable cause, we ‘ordinarily’ look only ‘to the information provided in the warrant and its accompanying application documents.’” *Carroll v. State*, 240 Md. App. 629, 649 (quoting *Greenstreet v. State*, 392 Md. 652, 669

(2006)), *cert. denied*, 465 Md. 649 (2019). “We do not consider evidence that seeks to supplement or controvert the truth of the grounds advanced in the affidavit.” *Greenstreet*, 392 Md. at 669. “This principle is known as the ‘four corners rule.’” *Id.*

In arguing that the typographical error in the warrant application, listing the location of the trash pull as 25308 Quantico Road instead of 25308 Nanticoke Road, defeats the warrant, appellant relies on *Greenstreet*. In that case, the warrant application included the wrong date for a trash pull, and the incorrect date “constituted a stale basis for probable cause.” *Id.* at 674. The Court held that the officer could not testify that the date was a typographical error because review was confirmed to “the information provided in the warrant and its accompanying application documents.” *Id.* at 669. The Court made clear, however, that typographical errors do not automatically nullify a warrant. *Id.* at 672. It recognized the holdings in other jurisdictions that

[w]here a factual date in the affidavit material to the probable cause finding is an apparent typographical error because it is contradicted by another factual time or date more likely to be true, also contained within the four corners of the affidavit, then a reviewing court may infer that a typographical error was made by the affiant and treat it as something other than what was written in the affidavit.

Id. The Court held that the affidavit in that case did not present “enough internal, specific, and direct evidence from which to infer a clear mistake of a material date upon which the affiant police officer depended for probable cause.” *Id.* at 673.

Thus, in this case, we assess whether the warrant application and the accompanying affidavit “provide[s] enough inherent contradiction from which to conclude with certainty that the [address] was in fact simply an error.” *Id.* at 674. We conclude that it does.

The Application for Search and Seizure Warrant (the “Application”) submitted by Detective Tawes identified only one residence, i.e., 25308 Nanticoke Road, Quantico, Wicomico County, Maryland 21856 (“25308 Nanticoke Road”). The initial source of information about appellant came from a confidential informant, who had purchased CDS from appellant “at a residence on Nanticoke Road.” The informant advised that appellant had two vehicles, a white SUV, and a black Nissan.

The police then connected appellant to a black Nissan registered to a person with an address at 25308 Nanticoke Road. The police went to that address and observed both a black Nissan and a white SUV in the driveway of 25308 Nanticoke Road. They observed the vehicle at that address eight times, including on numerous occasions in “the early morning hours of the day.” Based on this information, Detective Tawes concluded that appellant resided at 25308 Nanticoke Road.

All of the information in the warrant application focused on this one residence. Although the affidavit referred to a trash pull on 25308 Quantico Road, the warrant, as a whole, showed that this was a typographical error. The affidavit states that the black Nissan and the white SUV were both “at the residence during the trash pull.” Moreover, the trash collected included a Macy’s bag with a partially ripped label with the name “Treyv” and a partial letter “o” after the “v,” indicating to officers that the receiver of the package was Treyvon Walston. The police also stated that their belief that CDS would be found at 25408 Nanticoke Road was based on, among other things, the trash pull conducted by the police.

We conclude, therefore, that the affidavit, read as a whole, demonstrates that the address listed for the trash pull was a typographical error, and the warrant issuing judge had a substantial basis to issue the warrant. The circuit court properly denied the motion to suppress.

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