Circuit Court for Howard County
Case No.: C-13-CR-20-000589

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 0584

September Term, 2022

DEDRICK TYRONE WILKERSON

v.

STATE OF MARYLAND

Graeff,
Zic,
Kenney, James R., III
(Senior Judge, Specially Assigned),

JJ.

Opinion by Zic, J.

Filed: February 2, 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 its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

Appellant, Dedrick Tyrone Wilkerson, was convicted by a jury in the Circuit Court for Howard County, Maryland of possession with the intent to distribute cocaine, possession with intent to distribute heroin, possession with intent to distribute fentanyl, and possession of buprenorphine. After he was sentenced to 12 years for possession with the intent to distribute cocaine and thirty days concurrent for possession of buprenorphine, with the remaining two possession with intent counts merged, Mr. Wilkerson filed this timely appeal, and asks us to address the following questions:

1. Did the motions court err in denying the motion to suppress?

2. Did the trial court err in granting the State's motion to introduce other crimes evidence?

3. Was the evidence legally insufficient to sustain Mr. Wilkinson's convictions?

For the following reasons, we remand this case for the court to correct the commitment record, and otherwise affirm.[1]

[1] Mr. Wilkinson was indicted for (1) possession of a large amount of heroin, (2) possession with intent to distribute cocaine, (3) possession with intent to distribute heroin, (4) possession with intent to distribute fentanyl, (5) possession with intent to distribute a mixture of heroin and fentanyl, (6) possession of heroin, (7) possession of cocaine, (8) possession of fentanyl, and (9) possession of buprenorphine. Prior to trial, the State entered *nolle prosequis* on Counts 1, 5, 6, 7, and 8 of the indictment. Counts 2, 3, 4, and 9 went to the jury and resulted in guilty verdicts on all counts. Based on our review of the record, the commitment renumbered these counts from the indictment, *i.e.*, Counts 2, 3, 4, and 9, and erroneously identified them as Counts 1, 2, 3, and 4. Although the sentence corresponds to the sentence entered by the trial court and is otherwise accurate, the count numbers and the accompanying citation charges listed in the commitment do not correspond to the actual counts in the indictment. We shall remand this case so the court can correct the commitment record accordingly. *See* Md. Rules 4-351, 8-604(d); *see also Bratt v. State*, 468 Md. 481, 506-07 (2020) (observing that no hearing is required to correct a commitment record under Maryland Rule 4-351).

BACKGROUND

After several weeks of observation by both electronic and direct means, and after multiple controlled buys of narcotics from Mr. Wilkerson using a confidential informant and an undercover police officer, Howard County police applied for and obtained a search warrant to search 5488 Green Dory Lane in Columbia, Maryland (hereinafter "Green Dory Lane") on the suspicion that Mr. Wilkerson was storing controlled dangerous substances at that residence. That warrant was executed on October 2, 2020, at around 12:20 a.m. At the time, a total of six individuals were found in the home. Mr. Wilkerson was located inside a second-floor bedroom.

As part of the search, police found contraband on top of the bed in the second-floor primary bedroom. That contraband included suspected marijuana in bags, some packing material, and U.S. currency. In addition, a distinctive black and white zippered fanny pack, sometimes referred to as a satchel, was found in the bedroom closet. A similar styled fanny pack/satchel had previously been seen in Mr. Wilkerson's possession when undercover police conducted a controlled buy directly from him on September 14, 2020.

Inside the fanny pack/satchel, police discovered gelatin capsules, crack cocaine, suboxone strips, and three bags of suspected heroin. Some of the narcotics were stored in multi-colored plastic containers, which were called "trash cans" or "garbage cans" and several witnesses referred to them as looking like a "mini-trash can." The recovered

narcotics tested positive for fentanyl, cocaine, heroin, etizolam, and buprenorphine.[2] A wallet, which contained Mr. Wilkerson's identification cards and identification cards, driver's licenses, and debit cards belonging to two other individuals, was also found inside the fanny pack/satchel.

Detective David Meltzer, accepted as an expert in packaging, distribution, and sale of controlled dangerous substances, opined that the narcotics recovered from Green Dory Lane on October 2, 2022 were consistent with distribution rather than personal use after listening to all the testimony and considering the evidence in this case, specifically the quantity and the manner of packaging. Detective Meltzer also testified that drug dealers often use a "stash house," including houses where they do not live, in order to "house their illegal substances, it could be drugs, it could be money, it could be guns, and have no affiliation to that person" and in order "[t]o elude police." Detective Meltzer concluded that the value of the narcotics seized from the fanny pack/satchel on October 2, 2020 was "a couple of thousand dollars maybe[,]" and that it was "[n]ot common" for a drug user to buy that much cocaine, suboxone, and heroin laced with fentanyl.

We shall include additional detail in the following discussion.

[2] The chemist testified that etizolam is not a controlled dangerous substance and is in the "same class of drugs as alprazolam." She also testified that suboxone is a prescription medication used to treat opioid addiction. *See also* Suboxone, https://www.suboxone.com/ (indicating that suboxone is comprised of buprenorphine and naloxone and is used as part of a complete treatment program for opioid addiction).

DISCUSSION[3]

I. THE TRIAL COURT PROPERLY FOUND THE WARRANT-ISSUING JUDGE TO HAVE HAD A SUBSTANTIAL BASIS TO FIND PROBABLE CAUSE TO ISSUE A SEARCH WARRANT FOR GREEN DORY LANE.

At the motions hearing, Defense Counsel argued Mr. Wilkerson did not reside at Green Dory Lane, noting that the address listed for him by the Maryland Motor Vehicle Administration ("MVA") was 5499 Harpers Farm Road, Apartment 4 ("Harpers Farm Road").[4] Thus, Defense Counsel maintained there was not a sufficient nexus between Green Dory Lane and the contraband recovered from the residence to provide a substantial basis for the issuing judge to find probable cause to support a search warrant of that location. Moreover, because of the alleged "facial deficiencies and guesswork" included in the affidavit supporting the application for a search warrant, Defense Counsel

[3] The State responds to Mr. Wilkerson's second and third arguments in reverse order. For ease of reference, we shall use the order of issues as presented in Mr. Wilkerson's brief.

[4] Defense counsel stated that, as to Harpers Farm Road, Apartment 4, "they believe that's where he resides or where he may stay with his mother." The motions court took judicial notice that the residence at Green Dory Lane is located a half mile from the residence at Harpers Farm Road. Although it is not clear, it appears the court also took judicial notice that the Safeway on Harpers Farms Road was located nearby. We note that the search warrant lists the pertinent locations as: 5488 Green Dory Lane (subject of the search warrant); 5499 Harpers Farm Road (Mr. Wilkerson's home residence as listed by the MVA); and 5485 Harpers Farm Road (Safeway). *See generally*, Md. Rule 5-201 (judicial notice); *Dean v. State*, 205 Md. 274, 280 (1954) (recognizing that a judge may use judicial notice and reasonable inferences to assess probable cause in an application for a search warrant).

also argued there was not a good faith basis for the police to execute the warrant and search Green Dory Lane. Mr. Wilkerson maintains these arguments on appeal.

In response, the State looked to the four corners of the application and summarized the facts suggesting that: Mr. Wilkerson was a "drug dealer;" he engaged in narcotics-related activities that "tie him to this target residence at Green Dory Lane;" and he had a history of prior arrests for possession with intent to distribute. The information that suggested Mr. Wilkerson was a "drug dealer" included two controlled buys where Mr. Wilkerson sold heroin to a confidential informant and police officers' observations of Mr. Wilkerson conducting drug transactions in the area of Harpers Farm Road on multiple occasions.[5] Facts connecting Mr. Wilkerson to Green Dory Lane included the following: he was seen driving a vehicle registered to that location; electronic surveillance placed Mr. Wilkerson in the vicinity of Green Dory Lane on several occasions; and in September 2020, Mr. Wilkerson was seen exiting Green Dory Lane and travelling to a nearby Safeway where he was observed conducting yet another narcotics transaction. The State concluded that, not only did these allegations provide a substantial basis to support the issuing judge's conclusion that there was probable cause, *i.e.*, the standard of review at issue in both the circuit court and this Court, but also, the executing police

[5] Although there was evidence at trial that Mr. Wilkerson also sold narcotics to an undercover police officer prior to execution of the search warrant, these other controlled buys were not mentioned in either the search warrant or the hearing.

officers had a good faith basis to rely on the issuing judge's finding. The State retains these arguments in this Court.[6]

After hearing from Defense Counsel in rebuttal, and after holding its decision *sub curia*, the court denied the motion by written order. The court found: there was a substantial basis for the issuing judge to find probable cause; that, even assuming the case was "doubtful or marginal," there was a preference for searches conducted by search warrant; and, moreover, the good faith exception to the exclusionary rule applied to this case. Accordingly, the court denied the motion to suppress.

Relevant to our analysis, the search warrant was entered into evidence at the hearing and is included as an appendix to Mr. Wilkerson's brief. There, the Applicants averred that, as to Mr. Wilkerson, there was probable cause to believe that contraband and/or evidence relating to the possession with intent to distribute narcotics and possession of paraphernalia was on, or in, the premises at Green Dory Lane. In support thereof, the Applicants, after setting forth their experience, training, education, and knowledge pertinent to drug investigations, further averred that they had received information from a reliable confidential informant ("CI#1") that Mr. Wilkerson, *a.k.a.* "Trill," was distributing quantities of heroin and crack cocaine in the county, using a particular cellphone in the course of that activity. A criminal history check of Mr.

[6] The State did not argue, in either the motions court or this Court, that Mr. Wilkerson did not have standing to challenge the search of Green Dory Lane. *See Upshur v. State*, 208 Md. App. 383, 395-96 (2012) ("[I]f the State does not present standing as an issue to the trial court, it generally waives an appellate challenge to the defendant's standing to seek suppression."), *cert. denied*, 430 Md. 646 (2013).

Wilkerson's background revealed past arrests for second degree rape and possession with intent to distribute.

CI#1 then informed the Affiants that Mr. Wilkerson had a quantity of heroin for sale. In August 2020, the Affiants conducted two controlled buys involving CI#1 and Mr. Wilkerson, which resulted in the recovery of quantities of suspected heroin. In addition, as part of the investigation, the Affiant obtained an *ex parte* order to monitor Mr. Wilkerson's cellphone. On September 2, 2020, electronic surveillance revealed a conversation between Mr. Wilkerson and another individual that the Affiants knew, based on their training, knowledge, and experience, involved the sale of narcotics. Although Mr. Wilkerson was seen near Harpers Farm Road, electronic surveillance put him in the vicinity of both that location, listed by MVA as his home address, and Green Dory Lane.

With respect to Mr. Wilkerson's relationship to Green Dory Lane, the subject of the issue presented, the Affidavit provides the following:

> During the end of September 2020, in the early morning hours, your Affiant conducted surveillance at 5488 Green Dory Lane. Your Affiant observed two females exit the location and enter the driver side and front passenger side of a black Nissan Pathfinder SL Maryland Registration . . . (hereinafter referred to as Pathfinder). *At approximately 0912 hrs, your Affiant observed Wilkerson exit 5488 Green Dory Lane as well and enter the rear passenger side of the Pathfinder*. Another unknown male exited the location wearing a blue bandana on his head and entered the rear passenger side of the Pathfinder. The vehicle then left the location. Your Affiant continued surveillance on the vehicle.
>
> *A short time later, your Affiant observed the Pathfinder travel directly to the Safeway grocery store*

> *located at 5485 Harpers Farm Road. It should be noted that this is one of the areas where Wilkerson has been observed conducting his illegal narcotics transactions. Your Affiant observed Wilkerson exit the vehicle and meet with a male subject. A brief interaction took place between Wilkerson and the male subject. After the brief interaction, both parties left in separate directions. This brief interaction was consistent with previous observations of Wilkerson.* It should be noted that during the interaction with Wilkerson and the male subject, the male wearing the blue bandana on his head was standing nearby. The male in the blue bandana was looking in multiple directions as the interaction was taking place. Your Affiants know that individuals involved in the sale of narcotics often have members of their operation looking out for law enforcement and/or other rival gang members. *Based on detective's training, knowledge and experience, this brief encounter is consistent with a drug transaction*.
>
> Your Affiants know through their training, knowledge and experience that drug dealers commonly store evidence of their crimes in multiple addresses. This evidence could include, but is not limited to: profits from illegal distribution, ledgers, amounts of unsold CDS, paraphernalia used to weigh, package and prepare CDS (scales, plastic bags, cutting agents, cooking containers, heat sealers, etc.) and cellular phones used to facilitate distribution. Your Affiants further know through their training, knowledge and experience that it is common for drug dealers to keep firearms in these residences to protect the above-mentioned evidence of their crimes.

(emphasis added).[7]

Our review of the ruling of suppression courts relies "solely upon the record developed at the suppression hearings." *Whittington v. State*, 474 Md. 1, 19-20 (2021)

[7] As indicated in our background, evidence that contraband was recovered from Green Dory Lane was admitted during trial. The jury also learned that no contraband was recovered following a search of his mother's house.

(citation omitted). The evidence and inferences drawn therefrom are considered "in the light most favorable to the party who prevails on the motion[.]" *Id*. at 20. Further, we shall "defer to the motions court's factual findings and uphold them unless they are shown to be clearly erroneous." *Id*. (quoting *Lee v. State*, 418 Md. 136, 148 (2011)).

"The Fourth Amendment to the United States Constitution protects '[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.'" *State v. Johnson*, 458 Md. 519, 533 (2018) (quoting U.S. Const. amend. IV). "Reasonableness within the meaning of the Fourth Amendment 'generally requires the obtaining of a judicial warrant.'" *State v. Johnson*, 458 Md. at 533 (quoting *Riley v. California*, 573 U.S. 373, 382 (2014)).

When evidence is seized pursuant to a search warrant, our review is not *de novo*, but instead, is whether the issuing judge had a "substantial basis" for finding probable cause to issue the warrant based on the "four corners" of the warrant and its attachments. *See Carroll v. State*, 240 Md. App. 629, 649, *cert. denied*, 465 Md. 649 (2019); *Sweeney v. State*, 242 Md. App. 160, 185 (2019). As our Supreme Court explained:

> We do not conduct a *de novo* inquiry into whether the court order in this case was supported by probable cause, rather we must determine whether the "*issuing judge had a substantial basis* for concluding that the [court order] was supported by probable cause." [*Patterson v. State*, 401 Md. 76, 89 (2007)] (emphasis added) (citing *Greenstreet v. State*, 392 Md. 652 (2006)). This Court uses a deferential standard of review when evaluating an issuing court's determination of probable cause. *Stevenson v. State*, 455 Md. 709, 723 (2017); *Malcolm v. State*, 314 Md. 221, 229 (1988) ("As the key protection from unreasonable government searches, warrants continue to be favored [by] law."). "[S]o long as the magistrate had a 'substantial basis for . . . conclud[ing]' that a search would

> uncover evidence of wrongdoing, the Fourth Amendment requires no more." *Stevenson*, 455 Md. at 723-24 (citation omitted); *see also Illinois v. Gates*, 462 U.S. 213, 236 (1983) ("[W]e have repeatedly said that after-the-fact scrutiny by courts of the sufficiency of an affidavit should not take the form of *de novo* review").

Whittington, 474 Md. at 31-32; *see also Stevenson*, 455 Md. at 723, 727 ("[I]n a doubtful or marginal case a search under a warrant may be sustainable where without one it would fall" and, recognizing that "the information set forth in a warrant affidavit is to be considered in its totality") (citations omitted); *Moats v. State*, 230 Md. App. 374, 391 (2016) ("The evidence necessary to demonstrate a 'substantial basis' is less than that which is required to prove 'probable cause[.]'") (citations omitted), *aff'd*, 455 Md. 682 (2017).

The issue here is whether there was a nexus between Green Dory Lane and Mr. Wilkerson's alleged drug dealing to provide a substantial basis for the issuing judge to find probable cause to issue the search warrant for that location. The general rule is that there is a "permitted inference that perpetrators of crimes of violence will likely keep the weapons or other instrumentalities of crime in their homes." *Joppy v. State*, 232 Md. App. 510, 524 (citations omitted), *cert. denied*, 454 Md. 662 (2017). This principle applies "to cases involving drugs as well as weapons." *Joppy*, 232 Md. App. at 525 (citation omitted). As our Supreme Court explained:

> That same kind of deductive approach, based on reasonable factual assumptions, has been used by a number of courts in finding a nexus between observed or documented drug transactions and the likelihood that drugs or other evidence of drug law violations may be found in the defendant's car or home. The reasoning, supported by both experience and

> logic, is that, if a person is dealing in drugs, he or she is likely to have a stash of the product, along with records and other evidence incidental to the business, that those items have to be kept somewhere, that if not found on the person of the defendant, they are likely to be found in a place that is readily accessible to the defendant but not accessible to others, and that the defendant's home is such a place.

Holmes v. State, 368 Md. 506, 521-22 (2002).

In other words, "[d]irect evidence that contraband exists in the home is not required for a search warrant; rather, probable cause may be inferred from the type of crime, the nature of the items sought, the opportunity for concealment, and reasonable inferences about where the defendant may hide the incriminating items." *Holmes*, 368 Md. at 522. "[T]he mere observation, documentation, or suspicion of a defendant's . . . criminal activity will not necessarily suffice . . . to establish probable cause that inculpatory evidence will be found in the home. There must be something more that . . . allow[s] a neutral magistrate to determine that the contraband may be found in the home." *Holmes*, 368 Md. at 523 (internal citations omitted); *see also State v. Johnson*, 208 Md. App. 573, 606 (2012) ("A finding of nexus does not depend upon some direct observation of suspicious behavior in or near the residence[.]").

The above nexus cases concern a suspect's home or residence. *See Holmes*, 368 Md. at 508; *Joppy*, 232 Md. App. at 515; *State v. Johnson*, 208 Md. App. at 577, 581; *see also Agurs v. State*, 415 Md. 62, 65 (2010) (finding there was no nexus and no good faith to search suspect's home); *State v. Coley*, 145 Md. App. 502, 511 (2002) (reversing suppression court's grant of a motion to suppress search of defendant's home). Here, the search warrant identifies 5499 Harpers Farm Road, Apartment 4 as Mr.

Wilkerson's home address. Because of this, Mr. Wilkerson argues that there was nothing that "legally connects him to Green Dory[,]" and "there is no evidence that it was his residence."

However, a "legal connection," whatever that may be, is not required; the standard is probable cause. *See Holmes*, 368 Md. at 519 ("As a predicate for the issuance of a search warrant, it simply means 'a fair probability that contraband or evidence of a crime will be found in a particular place.'") (quoting *Illinois v. Gates*, 462 U.S. 213, 238 (1983)). As the Fourth Circuit explained:

> There must also be some nexus between the suspected crime and the place to be searched – 'a substantial likelihood that evidence of a crime will be found *in a particular place*.'" *United States v. Allen*, 631 F.3d 164, 173 (4th Cir. 2011) [(emphasis added by *U.S. v. Orozco*)]. As part of the probable-cause inquiry, whether a nexus exists is a "practical, commonsense determination" to be made by the issuing judge. *Id*. And it may be established by "the normal inferences of where one would likely keep" the evidence being sought.

United States v. Orozco, 41 F.4th 403, 409 (4th Cir. 2022); *see, e.g., Carroll*, 240 Md. App. at 652-53 (concluding there was a "clear nexus" between appellant, who was alleged to have murdered two people in Maryland, and a residence in New Jersey where he was eventually found by the U.S. Marshal's Office); *State v. Faulkner*, 190 Md. App. 37, 58-60 (2010) (concluding there was a substantial basis even where suspect kept multiple homes and an office and stating "[t]he nexus is there, however, and is bolstered by the significant fact that Faulkner was using two "homes" at one time, in the same City, and was having substantial contact with the home that was not registered as his home

address"); *see also United States v. Grossman*, 400 F.3d 212, 218 (4th Cir. 2005) (upholding the search of three different homes associated with defendant and stating, "these searches are not invalid merely because he splits his time among several different homes"); *Moore v. State*, 650 So. 2d 958, 965 (Ala. Crim. App. 1994) (holding that there were sufficient facts connecting the defendants with the apartment in which cocaine was found because, before selling cocaine to an informant, the defendants had that same day been at the apartment and, after the sale, returned to the apartment), *cert. denied*, 650 So.2d 966 (Ala. 1994), *cert. denied*, 514 U.S. 1017 (1995).

We have reviewed the Affidavit in support of the Application for a Search Warrant and found three references to Green Dory Lane, beyond the initial identification of that location as the place to be searched. Mr. Wilkerson was known to sell drugs in the Harpers Farm Road and Twin Rivers Road area on multiple occasions; on one of those occasions, he arrived in a vehicle registered to Green Dory Lane. Electronic surveillance (police tracking on his cell phone location) put him near Green Dory Lane. Also, at the end of September, Mr. Wilkerson was seen leaving Green Dory Lane in a Nissan Pathfinder in the company of two unidentified females, and then travelling to a nearby Safeway where he engaged in an apparent hand-to-hand drug transaction. The issuing judge had this information.

Generally, in determining whether probable cause exists to support a warrant, the issuing judge is confined to the four corners of the search warrant application. *State v. Faulkner*, 190 Md. App. at 49. In this case, the judge found these averments sufficient to establish probable cause. Our standard of review, as equivalent to that of the suppression

hearing judge, is not whether we agree that this provided probable cause; instead, it is whether there was a substantial basis for the issuing judge to make that finding.

In reviewing a warrant under the substantial basis standard, the following must be kept in mind:

> Probable cause does not suddenly spring to life at some fixed point along the probability continuum. It may arise at any number of points within a band of not insignificant width. Within that range of legitimate possibilities, the determination is as much an art form as a mathematical exercise and relies necessarily upon the eye of the beholder. One judge may give a circumstance great weight; another may give it slight weight; each is entitled to weigh for himself and neither will be legally wrong in so doing. Within proper limits, one judge may choose to draw a reasonable inference; another may as readily decline the inference; each will be correct and each is entitled, therefore, to the endorsement of a reviewing colleague. A permitted inference, after all, is not a compelled inference.
>
> Under the circumstances, it is perfectly logical and not at all unexpected that a suppression hearing judge might say, "I myself would not find probable cause from these circumstances; but that is immaterial. I cannot say that the warrant-issuing judge who did find probable cause from them lacked a substantial basis to do so; and that is material." There is a Voltairean echo, "I may disagree with what you decide but I will defend with my ruling your right to decide it."

State v. Amerman, 84 Md. App. 461, 463-64 (1990) (footnotes omitted).

Indeed, as this Court has reaffirmed:

> Even if this case were a "close call" on probable cause, however, our task is not to decide probable cause but instead to decide whether there was a substantial basis for the issuing court's probable cause finding; and in doing so, we are to resolve a marginal case with preference to the warrant.

Joppy, 232 Md. App. at 528-29 (quoting *State v. Faulkner*, 190 Md. App. at 60) (emphasis omitted). *See also State v. Jenkins*, 178 Md. App. 156, 176 (2008) ("Our review of the Supreme Court pronouncements left no doubt of the fact that a 'substantial basis' test for issuing a warrant did not require the establishing of a prima facie or legally sufficient case of criminal activity.").

The same test applies to appellate court judges, and we are persuaded there was a substantial basis for the issuing judge to find probable cause based on the facts as alleged in the Affidavit. Although Mr. Wilkerson's connection to Green Dory Lane was circumstantial, *i.e.*, his cellular device had been marked to be in the vicinity of that residence on prior occasions and he was seen travelling in a vehicle registered to that residence, there was direct evidence that he left that residence in the company of others and engaged in what appeared to be a hand-to-hand drug transaction. Under the totality of the circumstances as alleged in the Affidavit, it was not unreasonable to conclude that the instrumentalities of that crime would be found in that residence based on Mr. Wilkerson's association with the residence.

A. The police had a good faith basis to reasonably rely on the warrant.

In any event, as both parties recognize, the motions court also found that the executing police officers had a good faith basis to rely on the determination of probable cause in the search warrant as issued by a neutral and detached magistrate. We concur.

In *United States v. Leon*, 468 U.S. 897, 919-20 (1984), the United States Supreme Court held that evidence seized under a warrant subsequently determined to be invalid

may be admissible if the officers executing the warrant acted in objective good faith with reasonable reliance on the warrant. *Accord Massachusetts v. Sheppard*, 468 U.S. 981, 988 (1984). "[S]uppression of evidence obtained pursuant to a warrant should be ordered only on a case-by-case basis and only in those unusual cases in which exclusion will further the purposes of the exclusionary rule." *Leon*, 468 U.S. at 918. *Accord Whittington*, 474 Md. at 37; *see also Joppy, supra*, 232 Md. App. at 536 (finding that "[t]he very core of the Good Faith concept is that it is reasonable for the police officer to defer to the warrant"). Resolution of this exception is a legal question, and we owe no deference to the suppression court's conclusions. *See State v. Copes*, 454 Md. 581, 603 (2017).

There are a number of circumstances where the good faith exception will not apply. Mr. Wilkerson argues this case was such a circumstance because "the warrant was based on an affidavit that was so lacking in probable cause as to render official belief in its existence entirely unreasonable." *Richardson v. State*, 481 Md. 423, 470 (2022) (setting forth the exceptions to the good faith rule and citing *Patterson v. State*, 401 Md. 76, 104, (2007)). In maintaining that no well-trained officer would have looked at this search warrant and concluded there was a nexus between Mr. Wilkerson's alleged drug dealing and Green Dory Lane, Mr. Wilkerson directs our attention to *Agurs v. State*, 415 Md. 62 (2010).

In *Agurs*, the Court first concluded that a reasonably well-trained police officer should be aware of legal precedent requiring a nexus between criminal activity and the place to be searched. 415 Md. at 85-87. "[A] suspect's home cannot be searched unless

there are facts supporting a reasonable inference that contraband might be found there . . . ." *Agurs*, 415 Md. at 87. The Court cited factors that could support such a reasonable inference, such as "when the police have seen the suspect engage in a drug sale near his home, when the police have found drugs on the suspect before the search, and when the defendant has been in and out of his home near the time of the drug sale." *Id*. (quoting *Holmes*, 368 Md. at 523). Applying this rubric to the facts before it, the Court determined that the good faith exception could not apply because "not only did the affidavit submitted to the issuing judge lack any indicia of probable cause that the nexus requirement was satisfied, it also provided limited facts suggesting that Agurs was involved with drug distribution." *Id*. at 88.

Importantly, however, the Court observed in a footnote that it was not holding the good faith exception inapplicable in all cases where the nexus requirement is not sufficiently established:

> We do not suggest that the good faith exception can never apply when a reviewing court determines that an affidavit failed to satisfy the nexus requirement. There will undoubtedly be circumstances where "reasonable minds may differ" as to whether the nexus requirement was satisfied. *Connelly v. State*, 322 Md. 719, 735 (1991); *see also Patterson*, 401 Md. at 109 (noting, when applying the good faith exception in a case involving the nexus requirement, that 'the application for the disagreement among thoughtful and competent judges as to the existence of probable cause')." An officer cannot, however, rely in good faith on a warrant that was based upon an affidavit that completely fails to establish a reasonable inference that contraband might be found in the place to be searched. *Holmes v. State*, 368 Md. 506, 522-23, 796 A.2d 90, 101 (2002).

Agurs, 415 Md. at 87 n.12.

We are persuaded that *Agurs* is distinguishable from Mr. Wilkerson's case. The Affidavit in support of the Application for a Search Warrant in this case includes details of several controlled buys of narcotics from Mr. Wilkerson by a police-confidential informant in addition to information detailing Mr. Wilkerson seen leaving Green Dory Lane and travelling to a nearby Safeway to engage in an apparent drug transaction, which the Affiants considered consistent with their prior observations of Mr. Wilkerson's activities. We conclude this was sufficient to provide the police officers executing the search warrant a good faith basis to rely on the findings of the issuing judge. As this Court has explained:

> The [Supreme Court of Maryland] said in *Agurs* that police are required to be aware of the nexus requirement, 415 Md. at 84, but we do not interpret that to mean that the police must apply it with judicial precision. If that were the requirement, there would be less need for a neutral and detached magistrate to sign off on a search warrant. Besides, on this record, it is clear that two judges came to two different conclusions about whether the warrant application met the nexus requirement. This is not one of the exceptional cases in which an officer should be "required to disbelieve a judge who has just advised him, by word and by action, that the warrant he possesses authorizes him to conduct the search he has requested." *Joppy*, 232 Md. App. at 535 (quoting *Massachusetts v. Sheppard*, 468 U.S. 981, 989-90 (1984)). Thus, the circuit court judge was correct in applying the good faith exception and denying Mr. Whittington's motion to suppress.

Whittington v. State, 246 Md. App. 451, 500 (2020), *aff'd*, 474 Md. 1 (2021); *see also Joppy*, 232 Md. App. at 539 (explaining "[t]hat location of the decision-making authority in the judge, whenever possible, is the very function and purpose of the Fourth Amendment's warrant clause").

In sum, there was a substantial basis for the issuing judge to find a nexus to authorize a search of Green Dory Lane. Moreover, the police officers who executed the resulting search warrant had a good faith basis to rely on that judge's finding of probable cause. The court properly denied the motion to suppress.

II. THE TRIAL COURT EXERCISED PROPER DISCRETION IN ADMITTING EVIDENCE OF MR. WILKERSON'S PRIOR CRIMINAL ACTS.

Mr. Wilkerson next asserts the court erred by admitting evidence of two other controlled buys, which were the subject of a prior trial that resulted in "no convictions, two acquittals, and a mistrial declared on four counts." The State responds that, to the extent preserved, the evidence of these controlled buys were admissible in this trial because they were specially relevant to Mr. Wilkerson's identity, motive, and intent.

During the hearing on the State's "Motion in Limine to Introduce Other Crimes, Wrongs or Acts under Maryland Rule 5-404(b)", the State made an extensive argument as to why evidence of the two prior controlled buys from September 14 and 21, 2020, were admissible in this trial, which was based on events transpiring on or around October 2, 2020, under Maryland Rule 5-404(b). Namely, the State argued that the prior other crimes were substantially relevant to prove Mr. Wilkerson's identity, motive, intent, and common scheme or plan. The State also submitted that it could show these prior crimes by clear and convincing evidence.[8]

[8] The court specifically found the evidence of the other crimes was established by clear and convincing evidence.

Mr. Wilkerson's argument in opposition began with the observation that a mistrial pertaining to the two prior September controlled buys had been declared just one day earlier.[9] Mr. Wilkerson then focused on whether the probative value of this other evidence, notably occurring two to three weeks before the search warrant was executed, was substantially outweighed by the unfair prejudice that admission would create. Defense Counsel argued that "the State wants to tell you that when they entered the house not associated with this young man and the drugs were found in a closet in a bag and he was in the master bedroom, that they must be his drugs because he's a drug dealer." Defense Counsel concluded that the evidence was unnecessary and that, "[i]n fact, the only reason they're doing it is to unfairly prejudice him."

The court ruled as follows:

> Yes. In this case and with the allegations in considering the caselaw that I am familiar with, in balancing the prejudicial versus unfair prejudicial effect, I do believe that the evidence comes in. Obviously, if presented properly, it comes in. And the State will be allowed to present the 5-404(b) evidence of those two prior transactions specifically because it does go to intent in regard to the specific allegations in this case. It goes to intent and motive and I do believe that the negative treatment outlined in [*Wynn v. State,* 351 Md. 307 (1998)] in this case is not on point with this case

[9] We take judicial notice that Mr. Wilkerson was charged in Circuit Court Case Number C-13-CR-20-596 with multiple counts relating to the distribution of controlled dangerous substances on or around September 14, 21, and November 17, 2020. *See generally* Md. Rule 5-201 (judicial notice rule); *Lewis v. State*, 229 Md. App. 86, 90 n.1 (2016) (taking judicial notice of docket entries available on Maryland Judiciary website), *aff'd on other grounds*, 452 Md. 663 (2017). Trial on those charges ended the day before this trial began and resulted in two acquittals, several non-verdicts, with the court declaring mistrials on four counts.

> in terms of those types of transactions and what the State seeks to prove with it.
>
> In terms of the balancing and also -- well, you have the standard of proving those acts by clear and convincing evidence. Certainly yesterday's verdict or mistrial does not affect the ability of the State to present that because it's different standards for those acts and a lower standard in this for them to find those acts of a clear and convincing versus beyond a reasonable doubt for the trial previously.
>
> I do not believe that it is unfairly prejudicial to present that evidence of those two occasions. And so I will grant the motion in limine that the State will be able to introduce the other crimes.
>
> When the time comes, [Defense Counsel], I'm assuming that you will make a motion at that time and you can request a continuing objection at that time so you can preserve the record.

Initially, we are not persuaded by the State's preservation argument. The State suggests that Mr. Wilkerson's argument in his brief that "[t]he court erred in finding that the other crimes evidence fit within an exception to the exclusionary rule," is a new ground that was not made at trial. Our understanding of Mr. Wilkerson's argument differs from the State's; it appears Mr. Wilkerson is simply referring to the general rule of evidentiary exclusion that is the threshold consideration in an other crimes/bad acts analysis. *See, e.g., Burris v. State*, 435 Md. 370, 385 (2013) ("Rule 5-404(b) is a rule of exclusion . . . ."). In any event, we conclude that Mr. Wilkerson repeatedly made clear that he was objecting to the evidence about the controlled buys conducted between Detective Stem and Mr. Wilkerson and was granted continuing objections to that evidence. That issue is preserved. *See* Md. Rule 4-323(b) ("At the request of a party or

on its own initiative, the court may grant a continuing objection to a line of questions by an opposing party. For purposes of review by the trial court or on appeal, the continuing objection is effective only as to questions clearly within its scope."). *See also Lockett v. Blue Ocean Bristol, LLC*, 446 Md. 397, 417-18 (2016) ("When, as here, both parties discussed the issue and the court necessarily decided it in reaching its decision, the issue has been raised for the purposes of Rule 8-131(a).").

As for the merits, the general rule is that relevant evidence is admissible, and irrelevant evidence is not admissible. *See Woodlin v. State*, 484 Md. 253, 264 (2023). Pertinent to our discussion, there are two exceptions to these rules: Maryland Rule 5-403, which excludes relevant evidence if the probative value is substantially outweighed by the danger of unfair prejudice, and Maryland Rule 5-404(b), which is the propensity exclusion. *Woodlin*, 484 Md. at 264-65. The latter rule provides:

> Evidence of other crimes, wrongs, or other acts including delinquent acts as defined by Code, Courts Article § 3-8A-01 is not admissible to prove the character of a person in order to show action in the conformity therewith. Such evidence, however, may be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, common scheme or plan, knowledge, identity, absence of mistake or accident, or in conformity with Rule 5-413.

Md. Rule 5-404(b).

As explained by the Supreme Court of Maryland, "[t]he policy consideration underlying Rule 5-404(b) is to avoid tainting the jury into thinking that the defendant is a bad person 'who should be punished regardless of his [or her] guilt of the charged crime, or to infer that he [or she] committed the charged crime due to a criminal disposition.'"

Woodlin, 484 Md. at 265 (citations omitted). However, "[d]espite that prohibition, such evidence historically has been admissible to prove things other than a defendant's general propensity to commit a crime, such as "proof of motive, opportunity, intent, preparation, common scheme or plan, knowledge, identity, [or] absence of mistake or accident[.]" *Id*. (citing *Merzbacher v. State*, 346 Md. 391, 407 (1997), footnote omitted).

There is a three-part test for admission of other crimes evidence:

> First, the court must determine whether the evidence fits into one or more of the exceptions in Rule 5-404(b). This is a legal determination. Second, it must be shown by clear and convincing evidence that the defendant engaged in the alleged criminal acts. In this regard, we review the trial court's decision to determine if there is sufficient evidence to support its finding. Third, the court must find that the probative value of the evidence outweighs any unfair prejudice. This determination involves the exercise of discretion by the trial court.

Colkley v. State, 251 Md. App. 243, 273 (further citations omitted), *cert. denied*, 476 Md. 268 (2021). *Accord State v. Faulkner*, 314 Md. 630, 634-35 (1989).

There is no claim in this case that the evidence was not clear and convincing. Instead, Mr. Wilkerson's contends that the trial court erred because the evidence was not specially relevant under any of the exceptions to the rule and because its probative value was substantially outweighed by the danger of unfair prejudice. Again, the State disagrees, asserting the evidence was relevant to prove Mr. Wilkerson's identity, motive, and intent. Before we consider those claims, we provide further background of the pertinent evidence elicited at trial.

Here, Detective Jonathan Stem testified that, on September 14 and 21, 2020, he was working in an undercover capacity and, while doing so, bought suspected narcotics directly from Mr. Wilkerson.[10] Detective Stem provided detailed testimony about each of these controlled buys including, but not limited to: the arrangements he made directly on the phone with Mr. Wilkerson; the negotiations to purchase specific quantities of crack cocaine and heroin; the meeting places, including parking lots at a local CVS Pharmacy and the Columbia Mall; the meeting itself and the exchange of money for narcotics; the covert surveillance of these meetings by other members of the police team; his use of a body wire to record conversations with Mr. Wilkerson during these transactions;[11] and finally, the meeting with his police team after the transaction.

Detective Stem also testified that, when he personally met Mr. Wilkerson on September 14, Mr. Wilkerson kept the narcotics in a distinctive zippered "satchel." On both occasions, Mr. Wilkerson gave him suspected crack cocaine packaged in multi-colored vial containers which the detective called "trashcans." Mr. Wilkerson also produced suspected heroin/fentanyl, stored in plastic bags, from the satchel. The detective testified that the "trashcans" were similar to the ones recovered, pursuant to the search warrant, from Green Dory Lane on October 2. At the end of the transaction on September 14, Detective Stem drove Mr. Wilkerson to the Safeway near Harpers Farm at

[10] As indicated, Defense Counsel was granted a continuing objection to testimony concerning the undercover controlled buys made on September 14 and 21 by this detective.

[11] The recordings were admitted over objection and played in court for the jury.

Mr. Wilkerson's request. Detective Stem identified Mr. Wilkerson in court as the person he bought narcotics from on September 14 and 21, 2020.

A. The circumstances of the prior drug sales to Detective Stem were specially relevant to prove Mr. Wilkerson's identity in connection to the narcotics found inside Green Dory Lane.

Evidence of other offenses may be received to establish identity if it shows, *inter alia*, the defendant's presence in or near the locality of the crime, a peculiar *modus operandi*, or the use of certain objects used by the perpetrator of the crime at the time at issue. *See Emory v. State*, 101 Md. App. 585, 610-11 (1994) (listing various scenarios and citing *State v. Faulkner*, 314 Md. at 637-38), *cert. denied*, 337 Md. 90 (1995); *see Hurst v. State*, 400 Md. 397, 414 (2007) ("[t]he *modus operandi* exception is a subset of the identity exception under Rule 5-404(b)" and that "[t]his type of 'signature crime' evidence is useful in identifying a defendant who claims that he was not the person who committed the crime"), *superseded on other grounds as stated in Woodlin,* 484 Md. at 267.

Mr. Wilkerson directs our attention to *Anaweck v. State*, 63 Md. App. 239 (1985), *overruled on other grounds*, *Wynn v. State*, 351 Md. 307 (1998). There, a husband and wife were convicted of possession with intent to distribute cocaine after five baggies of wholesale quality cocaine were seized from their apartment during the execution of a search warrant. Only the wife was home when the warrant was executed, and she directed the police to the location of the drugs. *Anaweck*, 63 Md. App. at 242. Over objection, the State adduced evidence that a neighbor of the couple had purchased cocaine from them twice in the two days preceding execution of the search warrant. *Id*.

at 246. On appeal following conviction, this Court held that the evidence of the prior drug sales properly was admitted to show motive, intent, absence of mistake, common scheme or plan, and identity. *Id*. at 257-59.

In support of our holding, we discussed *Nutter v. State*, 8 Md. App. 635 (1970), a case in which a defendant was convicted of possession of cocaine after the drugs were found in a barbershop where he and two other barbers worked. *See Anaweck*, 63 Md. App. at 253-54. In that case, we reasoned that evidence of two prior drug sales by the defendant occurring, respectively, one month and two weeks prior to the discovery of the drugs at the barbershop, was relevant and admissible to prove his knowledge and intent and, thus, that he, and not the other barbers, possessed the cocaine. *Id. at* 254 (discussing *Nutter*, 8 Md. App. at 652).

We also are instructed by *Garcia-Perlera v. State*, 197 Md. App. 534 (2011), a case involving a motion to sever counts. There, we held that the trial court did not abuse its discretion in joining four different Montgomery County home invasion robberies during a one-year period "along the River Road corridor in houses that were within walking distance of each other." *Garcia-Perlera*, 197 Md. App. at 548-50. Although there were "slight differences between the crimes[,]" and they occurred over a period of twelve months, we concluded that "the record evidence also reveals overwhelming similarities among them." *Id*. at 548. Viewing "the totality of the[se] circumstances," we held that those "numerous similarities" were "more than sufficient to establish a distinctive *modus operandi*, and the common facts could prove the alleged identity." *Id*. at 548-49; *see also Henry v. State*, 184 Md. App. 146, 169 (2009) (concluding other

crimes evidence regarding defendant's possession of a similar weapon two-and-a-half-weeks after the charged crime was admissible under the identity exception), *aff'd*, 419 Md. 588 (2011).

Here, Detective Stem testified that Mr. Wilkerson stored some of his narcotics in a zippered satchel during one of the controlled buys. A zippered satchel containing narcotics was found in the bedroom at Green Dory Lane. In addition, after one of the two buys at issue, Mr. Wilkerson asked Detective Stem to drive him to a nearby Safeway. On another occasion, Mr. Wilkerson was observed leaving Green Dory Lane and then went to a nearby Safeway where he conducted an apparent hand-to-hand narcotics transaction. Finally, distinctive multi-colored containers, known by their street name as "trash cans" or "garbage cans," were in Mr. Wilkerson's possession during the controlled buys with Detective Stem and were found inside the satchel during the search of Green Dory Lane. We are persuaded that identity was specially relevant in this constructive possession case.

B. The circumstances of the prior drug sales to Detective Stem were specially relevant to prove Mr. Wilkerson's motive and intent in connection to the narcotics found inside Green Dory Lane.

Next, "[t]his Court has recognized that evidence relevant to establish motive and intent may also be relevant to establishing identity." *Page v. State*, 222 Md. App. 648, 663 (concluding evidence of prior assaults two weeks earlier were specially relevant to show motive and intent to commit a shooting), *cert. denied*, 445 Md. 6 (2015); *see also Snyder v. State*, 361 Md. 580, 604 (2000) (finding that "[m]otive . . . also may be relevant to the proof of . . . intent or identity"); *Emory*, 101 Md. App. at 606 ("Showing which suspect had a motive to commit a crime . . . helps to establish the identity of the

criminal."). Moreover, "[l]ike intent, motive is a mental state, the proof of which necessarily requires inferences to be drawn from conduct or extrinsic acts." *Johnson v. State*, 332 Md. 456, 471 (1993); *see also Anaweck*, 63 Md. App. at 257-58 (Evidence of other prior sales of drugs was specially relevant to show that the appellants had the motive to procure cash in exchange for contraband and intent to distribute.). Mr. Wilkerson distributed narcotics to Detective Stem on two prior occasions was relevant to establish his intent when the drugs were found at Green Dory Lane, some of which were in a satchel that also contained his identification. We concur with the court's finding that the evidence was specially relevant to prove Mr. Wilkerson's motive and intent.

C. The other crimes evidence was more probative than unfairly prejudicial.

The third prong of the other crimes test requires the trial court to balance the probative value against the danger that admission of the evidence will be unfairly prejudicial. *See Colkley*, 251 Md. App. at 278 ("The trial court was in the best position to assess the prejudicial impact of the testimony[.]"); *see also Bellard v. State*, 229 Md. App. 312, 343 (2016) (stating that the balancing prong is subject to review for abuse of discretion), *aff'd*, 452 Md. 467 (2017); *Page*, 222 Md. App. at 667 (concluding the court did not abuse its discretion in balancing unfair prejudice against probative value).

Mr. Wilkerson's theory of the case was that he was simply a visitor to Green Dory Lane and that he did not possess the narcotics recovered from within the residence. This theme was repeated throughout opening statement, the testimonial portion of the trial, and in closing argument. The probative value of the evidence was to counter this theme. We concur that the trial court was in the best position to assess whether admitting this

evidence was unfairly prejudicial. Notably, as the State observes, the jury was instructed that the evidence was offered for a limited purpose, *i.e.*, only to show Mr. Wilkerson's identity, motive and intent, and not his criminal propensity.[12]

Moreover, Mr. Wilkerson did not object when evidence of other controlled buys from him to a confidential informant was admitted during the State's redirect examination of Detective Rodriguez. The scope of Mr. Wilkerson's continuing objection was to the specific controlled buys involving Detective Stem, not the ones involving the confidential informant. Because evidence of other controlled buys was before the jury, we are not persuaded that Mr. Wilkerson was unfairly prejudiced when the court admitted different evidence of the two buys with Detective Stem.[13] For these reasons, we

[12] The jury was instructed:

> You have heard that the Defendant committed the bad acts of drug distribution, which is not a charge in this case. You may consider this evidence only on the question of identity, motive, and intent. However, you may not consider this evidence for any other purpose, specifically, you may not consider it as evidence that the Defendant is of bad character or has a tendency to commit crime.

See Maryland State Bar Ass'n, *Maryland Criminal Pattern Jury Instructions* 3:23 at 373 (2d ed. 2022) ("MPJI-Cr").

[13] We recognize that, at one point during discussion about the jury instructions, Defense Counsel stated: "I'm still objecting to any testimony as to the prior controlled buys[.]" However, Maryland Rule 4-323(b) provides, in pertinent part: "For purposes of review by the trial court or on appeal, the continuing objection is effective only as to questions clearly within its scope." *See also Kang v. State*, 163 Md. App. 22, 44 (2005) (A continuing objection "is without any effect unless the proposed continuing objection is expressly granted by the trial judge, and even then the objection is effective to preserve an issue for appeal only as to questions clearly within its scope."), *aff'd*, 393 Md. 97 (2006) (citation and internal quotations omitted). Based on our review of the entire

(continued)

conclude that the other crimes involving the distribution of narcotics to Detective Stem were specially relevant, and the trial court properly exercised its discretion in admitting the evidence during trial.

III. THE EVIDENCE WAS LEGALLY SUFFICIENT TO SUSTAIN MR. WILKERSON'S CONVICTIONS.

Finally, Mr. Wilkerson maintains that the evidence was insufficient to establish that he constructively possessed the contraband discovered in a satchel in the residence in question. The State disagrees, as do we.

"The sufficiency of the evidence is viewed in the light most favorable to the prosecution." *State v. Morrison*, 470 Md. 86, 105 (2020). Accordingly, "we examine the record solely to determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *State v. Wilson*, 471 Md. 136, 159 (2020) (quoting *Fuentes v. State*, 454 Md. 296, 307 (2017)); *accord Jackson v. Virginia*, 443 U.S. 307, 319 (1979). Moreover, this Court "does not 're-weigh' the credibility of witnesses or attempt to resolve any conflicts in the evidence," *Morrison*, 470 Md. at 106 (quoting *Fuentes*, 454 Md. at 307-08), but rather, we "assess 'whether the verdict was supported by sufficient evidence, direct or circumstantial, which could convince a rational trier of fact of the defendant's guilt of the offenses charged[.]'" *Id*. at 105 (quoting *White v. State*, 363 Md. 150, 162 (2001)).

record, it is clear that the scope of the continuing objection went to the evidence of the buys involving Detective Stem and not to the other buys involving the confidential informant.

The issue is one of constructive and joint possession. Possession "means to exercise actual or constructive dominion or control over a thing by one or more persons." Md. Code (2002, 2021 Repl. Vol.) § 5-101(v) of the Criminal Law Article. *Accord Nicholson v. State*, 239 Md. App. 228, 252 (2018), *cert. denied*, 462 Md. 576 (2019). "'Control' is defined as 'the exercise of a restraining or directing influence over the thing allegedly possessed.'" *Williams v. State*, 231 Md. App. 156, 200 (2016) (quotation marks omitted), *cert. dismissed as improvidently granted*, 452 Md. 47 (2017). That said, "[c]ontraband need not be on a defendant's person to establish possession." *Handy v. State*, 175 Md. App. 538, 563, *cert. denied*, 402 Md. 353 (2007). "Rather, a person may have actual or constructive possession of the [contraband], and the possession may be either exclusive or joint in nature." *Moye v. State*, 369 Md. 2, 14 (2002).

When considering whether the evidence is sufficient to establish joint and/or constructive possession, we generally look at the following factors: 1) the proximity between the defendant and the contraband; 2) whether the contraband was within the view or knowledge of the defendant; 3) whether the defendant had ownership of or some possessory right in where the contraband was found; and 4) whether a reasonable inference can be drawn that the defendant was participating in the mutual use and enjoyment of the contraband. *Cerrato-Molina v. State*, 223 Md. App. 329, 335 (quotation marks omitted), *cert. denied*, 445 Md. 5 (2015). We also consider the nature of the premises where the contraband is found and whether there are circumstances indicating a common criminal enterprise. *Nicholson*, 239 Md. App. at 253 (quotation marks omitted). Possession is not determined by any one factor, but rather "by

examining the facts and circumstances of each case." *Smith v. State*, 415 Md. 174, 198 (2010).

Looking to the factors, Mr. Wilkerson was on the second floor of the house when narcotics were found on the bed and in a fanny pack/satchel in the master bedroom. Although there was no indication Mr. Wilkerson had any legal connection to the premises at Green Dory Lane, there was evidence that suggested Mr. Wilkerson had knowledge of, and dominion and control over, the narcotics recovered. This included direct evidence that Mr. Wilkerson sold narcotics, prior to the search, to two different confidential informants and Detective Stem, and, on a different occasion, Mr. Wilkerson went from Green Dory Lane to a nearby Safeway where he engaged in an apparent drug transaction with an unidentified individual.

On one of those occasions, Mr. Wilkerson transported the narcotics in a fanny pack/satchel that was similar to the one found in the bedroom closet. In addition, some of the narcotics found, *i.e*., the "trash cans" or "garbage cans," were similar to ones sold in the prior controlled buys. Finally, and perhaps the strongest evidence of possession, was the discovery of Mr. Wilkerson's identification card inside the fanny pack/satchel along with the drugs. A reasonable inference could be drawn that Mr. Wilkerson was distributing narcotics for sale and knew of, had dominion over, and controlled the narcotics found at Green Dory Lane.

We are also not persuaded by Mr. Wilkerson's reliance on *Taylor v. State*, 346 Md. 452 (1997), *Garrison v. State*, 272 Md. 123 (1974), and *State v. Leach*, 296 Md. 591 (1983). In *Taylor*, the contraband was secreted in an area not shown to be within

Taylor's control, thus, no rational inference could be drawn that he possessed them. *Taylor,* 346 Md. at 459. *See State v. Suddith*, 379 Md. 425, 440 (2004) ("The drugs in *Taylor* were found in concealed bags that were personal to their owner – someone *other* than Taylor.") (emphasis in original).

In *Garrison*, the appellant was "nude, in bed, under the covers," when police executed a warrant at around 8:15 a.m., and found appellant's husband attempting to discard heroin down the commode in an adjacent bedroom. *Garrison*, 272 Md. at 126. There was no other contraband discovered in the bedroom, other than U.S. currency. *Id.* at 127. There was "no substantive evidence offered which showed directly or supported a rational inference that she had "the exercise of (either) actual or constructive dominion or control" over the narcotics in her husband's possession. *Id*. at 142.

And, in *State v. Leach*, 296 Md. 591 (1983), police executed a search warrant at the residence of Michael Leach and recovered phencyclidine (PCP) within a closed container on a bedroom dresser, as well as other paraphernalia. *Id.* at 594. The Court did not agree that Michael Leach's brother, Stephen, either resided at the apartment or had joint dominion and control over the PCP found in a closed container in Michael's bedroom. *Id*. at 595-97. As the Supreme Court later stated in *Taylor*, "[m]ere proximity to the drug, mere presence on the property where it is located, or mere association, without more, with the person who does control the drug or property on which it is found, is insufficient to support a finding of possession." *Taylor*, 346 Md. at 460 (citation omitted).

Here, by contrast, Mr. Wilkerson's identification card was in the fanny pack/satchel with the drugs, and the drugs were similarly packaged to the ones previously distributed to Detective Stem. Other facts, as evidenced by the multiple controlled buys and the surveillance, both observational and electronic, were more than sufficient for a rational fact finder, *i.e.*, the jury, to find that Mr. Wilkerson was distributing drugs and that he stored them at Green Dory Lane.

REMANDED TO CORRECT COMMITMENT RECORD, AS DISCUSSED IN FOOTNOTE 1; OTHERWISE, JUDGMENTS AFFIRMED. COSTS TO BE ASSESSED TO APPELLANT.