Circuit Court for Anne Arundel County
Case No.: C-02-CR-23-001212

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 2230

September Term, 2023

STATE OF MARYLAND

v.

RAYMOND BROWN, JR.

Nazarian,
Kehoe, S.,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Zarnoch, J.

Filed: June 11, 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).

Following the issuance and execution of a search and seizure warrant, Raymond Brown, Jr., was indicted in the Circuit Court for Anne Arundel County and charged with possession with intent to distribute cocaine, possession with intent to distribute cannabis, possession of Oxycodone, possession of methamphetamine, possession of several firearms in relation to a drug trafficking crime, possession of a stolen regulated firearm, and related charges. On January 10, 2024, the circuit court entered an order granting Brown's motion to suppress evidence seized pursuant to the search warrant. The State timely appealed the order pursuant to Md. Code (1974, 2020 Repl. Vol.) § 12-302(c)(4) of the Courts and Judicial Proceedings Article ("Cts. & Jud. Proc."). The circuit court stayed trial, and the State now asks us to address the following question on appeal:

> Did the circuit court err in suppressing evidence seized under a search warrant when the supporting affidavit provided a substantial basis to find probable cause and, if not, officers relied on the warrant in good faith?

For the following reasons, we shall reverse the circuit court's order granting the motion to suppress.[1]

BACKGROUND

Application and Affidavit for Search and Seizure Warrant[2]

On May 8, 2023, Detective Shapiro (#1849) prepared an Application and Affidavit for a Search and Seizure Warrant to search 7897 Bastille Pl., Severn, Md. 21144, a 2011

[1] Pursuant to Cts. & Jud. Proc. § 12-302(c)(4)(iv), this Court's decision shall be heard and decided before July 16th, 2024.

[2] Throughout the proceedings in the circuit court and in this Court, the parties both refer to the Application and Affidavit as State's Exhibit 1 and the Search Warrant as State's (continued…)

black Chrysler 200, and the person of Raymond Brown, for certain property believed to relate to the distribution and possession of controlled dangerous substances.[3] In support of that allegation, Detective Shapiro averred:

> During the month of March 2023, I received a drug tip from the Baltimore DEA. Baltimore DEA advised that they received a call in March of 2023 from an anonymous complainant advising that Raymond Brown has "drugs and guns all though out [sic] the house and kids live there. Leave everything layered out in the open for the kids to see it all." The complainant provided Raymond Brown's address as 7897 Bastille Pl, Severn, MD 21144.

Within the last forty-five days prior to preparing the Application and Affidavit, Detective Shapiro met with a confidential informant ("CI"), who he considered to be reliable based on "their history of providing truthful and correct information" that had led to "the arrest and successful prosecution of numerous drug dealers." The CI informed Detective Shapiro that he could purchase cocaine from Brown, *a.k.a*. "Lil Man." As part of the investigation relating to this information, Detective Shapiro arranged two controlled buys of narcotics by the CI from Brown. The details of the two illicit transactions are detailed in the Application and Affidavit as follows:

> Controlled Buy #1
>
> Within the last 45 days, Det. Wright and I conducted surveillance of 7897 Bastille Pl, Severn, MD 21144. During surveillance we observed

Exhibit 2. Although the motions court did not formally admit these exhibits after the State moved them into evidence, the Supreme Court of Maryland has held that the rules of evidence do not "apply strictly in suppression hearings." *See Matoumba v. State*, 390 Md. 544, 550 (2006) ("[T]he process due at a suppression hearing may be less demanding and elaborate than the protections accorded the defendant at the trial itself." (quotation marks and citation omitted)). In any event, there is no dispute as to the contents of these exhibits.

[3] Detective Shapiro's expertise is detailed in the Application and Affidavit. Detective Shapiro's first name does not appear in the record.

BROWN JR exit 7897 Bastille P1, Severn, MD 21144 through the front door and leave the residence in a black Chrysler 200 (MD 5FB2328). Det. Wright and I followed BROWN JR to a location in Jessup, MD and then back to the residence at 7897 Bastille Pl, Severn, MD 21144. Shortly thereafter, Det. Wright and I met with the CI in a secluded location in Anne Arundel County. The CI contacted BROWN JR on a phone number known to the CI as BROWN JR's cell phone number and arranged to purchase a specified quantity of cocaine. BROWN JR and the CI agreed to meet at a specified location in Severn, MD to conduct the exchange. I searched the CI for the presence of CDS and/or currency and the result was negative. I gave the CI a quantity of official Anne Arundel County funds that were intended for the purchase of cocaine.

Det. Kessler #1744 maintained visual surveillance of the CI. Sgt. Smith #1985 conducted surveillance at 7897 Bastille Pl, Severn, MD 21144 and observed BROWN JR exit the residence a short time after the drug deal was arranged. Sgt. Smith observed BROWN JR enter the same Chrysler 200 and depart from the area. Detectives maintained visual surveillance of the Chrysler 200 and observed BROWN JR arrive at the agreed upon buy location a short time later. Det. Kessler observed BROWN JR and the CI meet, and then the two walked out of Det. Kessler's eyesight. BROWN JR returned approximately one minute later and left the area in the Chrysler 200. Det. Wright and I met with the CI at a predetermined location where the CI handed me a plastic baggy containing a white powdery substance. Through my training, knowledge and experience I knew the white powdery substance was cocaine, a schedule II CDS. I searched the CI for the presence of CDS and/or currency and the result was negative. The CI told me that the CI obtained the cocaine from "Lil Man" in exchange for official Anne Arundel County funds.

Controlled Buy #2

Within the last 10 days, Det. Wright and I met with the CI in a secluded location in Anne Arundel County. The CI contacted BROWN JR on a phone number known to the CI as BROWN JR's cell phone number and arranged to purchase a specified quantity of cocaine. BROWN JR and the CI agreed to meet at a specified location in Severn, MD to conduct the exchange. I searched the CI for the presence of CDS and/or currency and the result was negative. I gave the CI a quantity of official Anne Arundel County funds that were intended for the purchase of cocaine.

Det. Wright #2029 and I maintained visual surveillance of the CI. Det. Gundlah #2329 maintained visual surveillance of 7897 Bastille Pl, Severn,

> MD 21144 and observed BROWN JR exit the residence a short time after the drug deal was arranged. Det. Gundlah observed BROWN JR enter the Chrysler 200 (MD 5FB2328) and depart from the area. Detectives maintained visual surveillance of the Chrysler 200 and observed BROWN JR arrive at the agreed upon buy location a short time later. Det. Wright and I observed BROWN JR and the CI meet, and then the two walked out of our eyesight. BROWN JR returned approximately one minute later and left the area in the Chrysler 200. Detectives maintained visual surveillance of the Chrysler 200 and observed BROWN JR drive directly back to 7897 Bastille Pl, Severn, MD 21144 from the buy location. Det. Gundlah observed BROWN JR enter the house through the front door. Det. Wright and I met with the CI at a predetermined location where the CI handed me a plastic baggy containing a piece of plastic with a white powdery substance. Through my training, knowledge and experience I knew the white powdery substance was cocaine, a schedule II CDS. I searched the CI for the presence of CDS and/or currency and the result was negative. The CI told me that the CI obtained the cocaine from "Lil Man" in exchange for official Anne Arundel County funds.

In addition to this detailed information about two controlled buys between a reliable confidential informant and Brown, Detective Shapiro averred that ongoing surveillance over the last forty-five days established a connection between Brown and the places to be searched, namely, 7897 Bastille Place in Severn, and the aforementioned Chrysler 200. This included Detective Shapiro's direct observation on May 4, 2023, just four days before issuance of the warrant, of Brown arriving at the residence in the Chrysler 200.

The Application and Affidavit further provided that: Brown was the registered owner of the Chrysler; the Chrysler was detected in the area of 7897 Bastille Place on multiple prior occasions between September 2022 and April 2023; Brown had prior criminal charges of possession of controlled dangerous substances with intent to distribute, possessing a handgun in a vehicle, and possessing a firearm in relation to a drug trafficking crime, albeit from July 2008; the home was not owned by Brown, but by two other

individuals who did not list it as a primary residence; Brown was on the property in June 2021 after police responded to a report, later proved inaccurate, that he was there in possession of guns and drugs while there was an active warrant for his arrest; Brown had been stopped in a vehicle in 2019 in possession of suspected cannabis; and, Brown was a witness to a shooting in Severn in 2012.

Based on all the foregoing, Detective Shapiro applied for the issuance of a search and seizure warrant for 7897 Bastille Place in Severn, a specific 2011 Chrysler 200, and for Brown. Detective Shapiro averred that, based on his training, knowledge, and experience, he believed Brown was residing at the residence and was using it, as well as the Chrysler, to possess and distribute controlled dangerous substances and to conceal evidence of those crimes. The Application was granted on May 8, 2023, when the Honorable Christine Celeste signed the Search and Seizure Warrant directing that any Anne Arundel County police officer search the aforementioned locations and seize any evidence, as specified, relating to the commission of narcotics-related crimes.

Motions Hearing

At the hearing, no witnesses were called and the court and the parties, for the most part, focused on the averments in the Application and Affidavit for the Search and Seizure Warrant. However, counsel for Brown proffered additional evidence, outside the four corners of that exhibit, that Brown did not live at the subject address, and did not have a possessory interest in that location. Counsel then argued that the averments in the Application did not provide a "basis to tie any possessory interest or residential tie between Mr. Brown and the target address." As for the controlled buys detailed in the Application,

counsel argued that the officers did not witness either transaction, and that, with respect to the one that occurred forty-five days earlier, although the officers saw Brown leave the subject address, they did not see him return. Counsel then argued that the remaining controlled buy, which occurred ten days prior to issuance of the search warrant, did not provide adequate probable cause because that probable cause was stale. Counsel also argued that probable cause "has to exist not at the signing of the warrant but it has to exist at the execution of a warrant[.]" Further, counsel argued "probable cause can only exist for 10 days[,]" and that, as to the second controlled buy, that occurred "10 days prior to the officer getting the warrant but he waited 2 days and it is our position in those 2 days it evaporated."[4] Counsel also argued that, not only was there no substantial basis for issuance of the warrant, but that the search was not salvageable under the good faith doctrine.

In reply, the State argued the Application detailed facts that "ties the Defendant to that residence[,]" including "because he is seen there, his vehicle is seen there, he has been seen interacting with other people in that residence, the children in this case." The court interjected, "the information is obtained in March, but the warrant – there is not even an application for the warrant until May." The motions judge continued by suggesting that, if he were the issuing judge, he might not have signed the search warrant, stating:

> [H]ere is the problem. The affidavit goes from it is now May, this happened in March, then, paragraph 2, this happened 45 days ago or within the last 45 days. Paragraph 3, this happened within the last 10 days. *I would have no*

[4] The return of service for the search warrant is not included in the record. However, the Statement of Probable Cause filed with the charges in the District Court of Maryland for Anne Arundel County provides that the warrant was executed on May 10, 2023. The parties agree on this date.

> *problem signing this warrant if something happened within the last 5 days but in the last 10 days I am like, I don't know*.

(Emphasis added.)

Responding to the staleness suggestion, the State focused on the second controlled buy, which occurred ten days prior to issuance of the search warrant, asserting "the second controlled buy where the detectives not only observed the Defendant leave the residence but also return to the residence after making that controlled buy with the confidential informant where he sold the confidential informant cocaine." Considered along with Brown's nexus to the residence and the car, which formed the bulk of the State's argument, the State concluded that the "specific observation, provided facts that, when taken ----, as [the issuing judge] did when issuing the warrant, provided probable cause for the fact that the Defendant – that there are narcotics at the residence and it is the Defendant's residence or Defendant has a nexus to that residence based on the observations from the detective[.]" The State also argued there was a good faith basis for the officers to execute the search warrant and that the officers could "believe that the search warrant was valid when it was issued."

After hearing rebuttal from Brown concerning his nexus to the residence, the motions court ruled as follows:

> Okay. I am going to quote from Judge Kenney in [*State v. Coley*, 145 Md. App. 502 (2002)] and he is quoting from a case called [*State v. Amerman*, 84 Md. App. 461 (1990)]. This is at 522.
>
> > "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 which 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 that inference. Each would be correct and each is entitled to, therefore, the enforcement of a ---- colleague. A permitted inference, after all, is not a compelled inference.
>
> Under the circumstances, it is perfectly logical and not, at all, unexpected that the suppression hearing judge might say I, myself, would not find probable cause from these circumstances but that is immaterial. I cannot say the warrant issuing judge, who did find probable cause from them, lacked a substantial basis to do so and that is material."[5]

I will stop there because it takes on another twist. I think, in this case, the motion should be granted to suppress in that the most current contact with this Defendant at the point the application for warrant was submitted to my colleague was, and I quote from the application.

> "Within the last 45 days I have conducted numerous hours of surveillance at 7897 Bastille Place, Severn, Maryland. I have observed Brown, Jr., come in and out of the residence on multiple occasions. I have observed Brown, Jr., assist children from the house onto a school bus that stops in front of the house in the morning and I have observed him assist children off of the school bus and back into the house in the afternoon.
>
> I have observed Brown, Jr., exit 7897 Bastille Place, Severn, Maryland 21144, and leave the residence in the Chrysler 200 on numerous occasions. On May 4th, 2023, I observed Brown, Jr. arrive home in the Chrysler 200 and enter

[5] Although the motions court stopped at this point, the quoted passage from *State v. Amerman* continues: "There is a Voltairean echo, 'I may disagree with what you decide but I will defend with my ruling your right to decide it.'" 84 Md. App. at 464. And, as stated in a footnote in that opinion, "[e]ven undisputed facts may be assessed and evaluated by different judicial fact finders in legitimately different ways." *Id*. at 463 n.1.

> 7897 Bastille Place, Severn, Maryland 21144 through the front door."
>
> As Mr. Robinson urges the Court, there is absolutely no criminality, of any kind, in that statement. Prior to that, the last contact was 10 days before the warrant application but, again, if the warrant wasn't executed until, what date was the warrant executed?
>
> [DEFENSE COUNSEL]: 10th, May 10th.
>
> THE COURT: When the warrant was issued by my colleague on the 8th and executed on the 10th, I am not sure that I see the nexus at that point. So with all due respect, the motion to suppress is granted.

DISCUSSION

The State's primary argument is, essentially, that the motions court erred because it applied the wrong standard when reviewing the search warrant. Specifically, the State argues there was a substantial basis for the issuing judge to find probable cause to support the search warrant based on the detailed averments by Detective Shapiro and the fact that probable cause was not stale. In addition, the motions court did not consider whether the officers who executed the search warrant had a good faith basis to rely on the issuing judge's decision. Brown disagrees, asserting that there was no substantial basis to support issuance of the warrant and that the officers could not have relied on the issuing judge's determination in good faith.

The Fourth Amendment to the United States Constitution commands that, "no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

U.S. CONST., amend. IV.[6] *Accord Richardson v. State*, 481 Md. 423, 450 (2022). In the context of search warrants, probable cause has been defined as a "fair probability that contraband or evidence of a crime will be found in a particular place." *Illinois v. Gates*, 462 U.S. 213, 238 (1983); *see also Maryland v. Pringle*, 540 U.S. 366, 370-71 (2003) (restating the well-known doctrine of probable cause to be a "a fluid concept–turning on the assessment of probabilities in particular factual contexts[,]" concerning "the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act[,]" and that "depends on the totality of the circumstances" (quotation marks and citations omitted)); *Pacheco v. State*, 465 Md. 311, 324 (2019) ("In describing probable cause, the Supreme Court has 'rejected rigid rules, bright-line tests, and mechanistic inquiries in favor of a more flexible, all-things-considered approach.'" (citations omitted)).

Indeed, although it is meant "to safeguard citizens from rash and unreasonable interferences with privacy and from unfounded charges of crime[,]" *Brinegar v. United States*, 338 U.S. 160, 176 (1949), the probable-cause standard does not set a '"high bar"' for police. *State v. Johnson*, 458 Md. 519, 535 (2018) (quoting *Dist. of Columbia v. Wesby*, 583 U.S. 48, 57 (2018)). While the arresting officer must have something "more than bare suspicion[,]" *Brinegar*, 338 U.S. at 175, he need not have proof sufficient to conclusively establish guilt beyond a reasonable doubt or even by a preponderance of the evidence. *Gates*, 462 U.S. at 235. All that is required is a "fair probability" or a "substantial chance" of the arrestee's criminal activity. *Id.* at 243 n.13, 246.

[6] The same constitutional rights are provided to Marylanders in Article 26 of the Maryland Declaration of Rights.

Standard of Review of Search Warrants and the Substantial Basis Test

In determining whether probable cause exists, both the issuing judge or magistrate, as well as a reviewing court, are confined to the averments contained within the four corners of the search warrant application. *Sweeney v. State*, 242 Md. App. 160, 185 (2019) ("When we review the basis of the issuing judge's probable cause finding, we ordinarily apply the four corners rule and confine our consideration of probable cause solely to the information provided in the warrant and its accompanying application documents." (quotation marks and citations omitted)). Those averments are to be considered under the totality of the circumstances. *Stevenson v. State*, 455 Md. 709, 727 (2017) ("No single item of information in the affidavit stands alone in supplying the requisite probable cause for the warrant-issuing judge, or the 'substantial basis' analysis that reviewing courts must use in assessing that judge's probable cause determination.").

Moreover, "[w]e 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."' *Whittington v. State*, 474 Md. 1, 31 (2021) (emphasis added in *Whittington*) (quoting *Patterson v. State*, 401 Md. 76, 89 (2007), *cert. denied*, 552 U.S. 1270 (2008), in turn citing *Greenstreet v. State*, 392 Md. 652 (2006)). *Accord Tomanek v. State*, __ Md. App. __, __, No. 972, Sept. Term, 2022, slip op. at 12-13 (filed May 1, 2024). And, just like this Court, the suppression court "sits in an appellate-like capacity with all of the attendant appellate constraints." *State v. Johnson*, 208 Md. App. 573, 578 (2012) (quotation marks and citation omitted); *see also State v. Jenkins*, 178 Md. App. 156, 170

(2008) ("In a review posture such as the present one, the deference that is owed by us is to the warrant-issuing judge, just as the deference of the suppression hearing judge was owed to the warrant-issuing judge."). Further, "[u]nder those 'attendant appellate constraints,' the suppression hearing judge may well be called upon to uphold the warrant-issuing judge for having had a substantial basis for issuing a warrant even if the suppression hearing judge himself would not have found probable cause from the same set of circumstances." *Johnson*, 208 Md. App. at 578. *Accord Amerman*, 84 Md. App. at 463.

Notably, "[t]he substantial basis standard involves something less than finding the existence of probable cause, and is less demanding than even the familiar 'clearly erroneous' standard by which appellate courts review judicial fact finding in a trial setting." *Coley*, 145 Md. App. at 521 (quotation marks and citations omitted); *see also Moats v. State*, 230 Md. App. 374, 390 (2016) ("Critically, the substantial basis test is *highly deferential*." (emphasis added) (citing *Gates*, 462 U.S. at 236)), *aff'd*, 455 Md. 682 (2017); *Amerman*, 84 Md. App. at 463 ("The issue is no longer the familiar one of whether probable cause exists; that has already been determined by someone else.").

Additionally, "reviewing courts must assess affidavits for search warrants in 'a commonsense and realistic fashion,' keeping in mind that they 'are normally drafted by nonlawyers in the midst and haste of a criminal investigation.'" *State v. Faulkner*, 190 Md. App. 37, 47 (2010) (quoting *United States v. Ventresca*, 380 U.S. 102, 108 (1965)). Ultimately:

> [W]e bear in mind not only "the Fourth Amendment's strong preference for searches conducted pursuant to a warrant," *Gates*, 462 U.S. at 236, but also the Supreme Court's recognition that "[r]easonable minds frequently may

> differ on the question whether a particular affidavit establishes probable cause," [*United States v. Leon*, 468 U.S. 897, 914 (1984)]. In consideration of both principles, the Supreme Court has "concluded that *the preference for warrants is most appropriately effectuated by according 'great deference' to a magistrate's determination." Id. Thus, "in a doubtful or marginal case a search under a warrant may be sustainable where without one it would fall." Id*. "[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." *Gates*, 462 U.S. at 236. If that "substantial basis" standard is met, then any court called upon thereafter to review the warrant is required to uphold it.

Stevenson, 455 Md. at 723-24 (emphasis added; some internal citations omitted).

In assessing whether there was a substantial basis for the issuing judge to find probable cause to support the search warrant, the parties argue whether there was a nexus between the locations identified in the application and the controlled buys, and whether or not probable cause had gone stale. It is not the reviewing court's role to make that determination under the substantial basis test. Instead, our review is simply whether there was evidence from which the issuing judge could make that determination.

Nexus

As concerning evidence of nexus, the applicable law provides that, before an officer can seize a person's property under the Fourth Amendment, "[t]here must, of course, be a nexus . . . between the item to be seized and criminal behavior." *Warden, Md. Penitentiary v. Hayden*, 387 U.S. 294, 307 (1967); *Coley*, 145 Md. App. at 527 n.18 ("The approach used by Maryland, the U.S. Court of Appeals for the Fourth Circuit, and other jurisdictions requires some nexus be established, even in the absence of direct evidence, between the nature of the items sought and the place where they are to be seized."). 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 (citing *Holmes v. State*, 368 Md. 506, 520 (2002)), *cert. denied*, 454 Md. 662 (2017). As our Supreme Court explained:

> 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, 368 Md. at 521-22 (also providing that direct evidence that the contraband exists in the home is not required to support a search warrant); *see also Williams v. State*, 231 Md. App. 156, 189 (2016) (holding that information from an anonymous source and two confidential informants that they purchased heroin from the defendant, albeit away from his house, provided enough evidence, along with the affiant's training and experience, to link the transactions to the defendant's residence), *cert. denied*, 452 Md. 47 (2017); *Coley*, 145 Md. App. at 531 (concluding that evidence that the defendant exited his residence prior to two controlled buys and was seen returning to that residence after one of those was a relevant factor in the analysis).[7]

Here, in addition to the two controlled buys, where police witnessed Brown leave his home to distribute cocaine to a reliable confidential informant, one of which occurred within ten days of the application and involved Brown returning to that same residence immediately thereafter, the application provided numerous contacts between Brown, the

[7] Brown relies on *Agurs v. State*, 415 Md. 62 (2010). That case is distinguishable because there, unlike here, the drug transactions did not involve multiple controlled buys immediately after the suspect left the subject residence. *Id.* at 88-89.

residence, and the vehicle. Further, Detective Shapiro detailed his expertise and his opinion that, based on his training, knowledge, and experience, Brown was using the residence to conceal evidence of crimes violating the laws concerning controlled dangerous substances. Considering a common sense approach and the preference for warrants, we are persuaded there was a substantial basis for the issuing judge to find a nexus between Brown's drug distribution and the subject residence.

Staleness

Turning to the argument whether there was no substantial basis for the issuing judge to find probable cause because it had gone stale ten days after the last controlled buy, "[t]here is no 'bright-line' rule for determining the 'staleness' of probable cause; rather, it depends upon the circumstances of each case, as related in the affidavit for the warrant." *Connelly v. State*, 322 Md. 719, 733 (1991). '"Factors used to determine staleness include: passage of time, the particular kind of criminal activity involved, the length of the activity, and the nature of the property to be seized."' *Patterson*, 401 Md. at 93 (quoting *Greenstreet, supra*, 392 Md. at 674). The general rule follows:

> The ultimate criterion in determining the degree of evaporation of probable cause, however, is not case law but reason. The likelihood that the evidence sought is still in place is a function not simply of watch and calendar but of variables that do not punch a clock: the character of the crime (chance encounter in the night or regenerating conspiracy?), or the criminal (nomadic or entrenched?), of the thing to be seized (perishable and easily transferable or of enduring utility to its holder?), of the place to be searched (mere criminal forum of convenience or secure operational base?), etc. The observation of a half-smoked marijuana cigarette in an ashtray at a cocktail party may well be stale the day after the cleaning lady has been in; the observation of the burial of a corpse in a cellar may well not be stale three decades later. The hare and the tortoise do not disappear at the same rate of speed.

Id. (quotation marks and further citations omitted) (quoting *Andreson v. State*, 24 Md. App. 128, 172 (1975)).

Here, the controlled buy forty-five days before issuance of the search warrant is problematic, if only considered in isolation apart from the other averments in the application. *See, e.g., id.* at 102 (stating that probable cause did not exist to support search warrant thirty-four days after incriminating evidence found in a traffic stop to believe the defendant had a gun at his residence); *Greenstreet*, 392 Md. at 677 (holding that an affidavit citing evidence recovered in a residential trash seizure one year prior was insufficient to provide probable cause to issue a search warrant); *Lee v. State*, 47 Md. App. 213, 231 (1980) (holding that information from a drug sale eleven months prior was too stale to support probable cause to issue search warrant). However, our case law instructs that staleness is not considered in a vacuum, especially when applied to a case involving the distribution of narcotics, which '"[b]y its nature"' is a '"regenerating activity[.]"' *Amerman*, 84 Md. App. at 482 (quoting *Peterson v. State*, 281 Md. 309, 321 (1977), *cert. denied*, 435 U.S. 945 (1978)); *see Joppy*, 232 Md. App. at 533 (stating, in a case concerning illegal distribution of crack cocaine, that "[t]he 'character of the crime' was that of 'a regenerating conspiracy' and not 'a chance encounter in the night'"); *see also Connelly*, 322 Md. at 734 (observing that, as part of an investigation of an alleged illegal lottery and gambling operation spanning several months, although it is possible to conclude probable cause was stale, "*when the affidavit is considered in its entirety* . . . [i]t is also possible to determine that the affiants, in preparing the affidavit, and relating their investigatory

observations, were describing a continuing criminal enterprise, ongoing at the time of their application, and thus the probable cause relied upon was not stale" (emphasis added)).

Moreover, we are not persuaded the probable cause derived from a controlled buy only ten days earlier had gone stale. *See, e.g., Peterson*, 281 Md. at 320-22 (holding that probable cause was not stale even though last observed sale of narcotics occurred five weeks before warrant was issued and last observed sale at premises to be searched occurred two months before warrant was issued); *Amerman*, 84 Md. App. at 475 (stating that probable cause was not stale when based on evidence of alleged illegal drug sales conducted one month before application); *Yeagy v. State*, 63 Md. App. 1, 6-7 (1985) (holding that probable cause not stale where the sale of cocaine occurred sixteen days before application and issuance of the search warrant); *Davidson v. State*, 54 Md. App. 323, 331 (1983) (holding that "a potential time lapse of nineteen days between the date of the controlled buy and the issuance and execution of the warrant" did not render the warrant "improper").[8]

There was a Substantial Basis for the Issuing Judge to Find Probable Cause

Here, there were two controlled buys involving a reliable confidential informant who contacted Brown. Police watched Brown leave the subject premises to make the sale of cocaine, and evidence of that sale was later confirmed. On one of the occasions, ten days

[8] In *Yeagy*, as here, the search warrant was executed within the statutory time limits. *See Yeagy*, 63 Md. App. at 16-17; *see also* Md. Code (2001, 2018 Repl. Vol.) § 1-203(a)(5)(i) of the Criminal Procedure Article (providing that a search warrant must be executed within ten calendar days from the date of issuance). The parties agree that the search warrant here issued on May 8, 2023, and was executed on May 10, 2023.

before the application, Brown returned to the residence after the transaction. Brown's connection to the residence, as well as his criminal history, were corroborated by independent investigation. Considering the ongoing nature of the activity described, when the application and affidavit is read in its entirety and tested in a "common sense and realistic fashion," there was a substantial basis for the issuing judge to find that probable cause was not stale under the circumstances.

In sum, whether or not a reviewing court, *i.e.*, either this Court or the motions court, disagreed with these findings concerning nexus, staleness, and ultimately probable cause, there is no doubt that there were facts supporting the issuing judge's determination to sign the search warrant to search the subject premises, the car, and Brown's person. That is all the substantial basis standard requires. The motions court's conclusion to the contrary was error.

Good Faith

Furthermore, we hold that the officers who executed this search warrant did so in good faith reliance on the findings made by the warrant-issuing judge.[9] "Under the good faith exception, evidence will not be suppressed under the exclusionary rule if the officers who obtained it acted in objectively reasonable reliance on a search warrant." *Richardson,*

[9] Although argued by the parties in the motions court, the motions court did not consider the good faith doctrine. We shall do so on appeal. *See McDonald v. State*, 347 Md. 452, 470 n.10 (1997) ("The ultimate question of good faith *vel non* is a legal issue."); *Connelly*, 322 Md. at 735 ("As the application of the good faith exception to the allegations of the affidavit presents an objectively ascertainable question, it is for the appellate court to decide whether the affidavit was sufficient to support the requisite belief that the warrant was valid.").

supra, 481 Md. at 446 (citing *Leon*, *supra*, 468 U.S. at 922-24); *see also Whittington, supra*, 474 Md. at 37 (‘“[S]uppression of evidence obtained pursuant to a warrant should be ordered on a case-by-case basis and only in those unusual cases in which exclusion will further the purposes of the exclusionary rule.”’ (emphasis omitted) (quoting *Leon*, 468 U.S. at 918)). Whether the good faith exception applies is reviewed by this Court *de novo. See State v. Copes*, 454 Md. 581, 603 (2017). “As the United States Supreme Court has explained, ‘searches pursuant to a warrant will rarely require any deep inquiry into reasonableness, for a warrant issued by a magistrate normally suffices to establish that a law enforcement officer has acted in good faith in conducting the search.’” *Tomanek*, __ Md. App. at __, slip op. at 21 (quoting *Leon*, 468 U.S. at 922). In fact, there are but four recognized circumstances when the good faith exception may not apply:

> (1) the issuing judge was misled by information in an affidavit that the officer knew was false or would have known was false but for the officer’s reckless regard for the truth;
>
> (2) the issuing judge wholly abandoned his or her detached and neutral judicial role;
>
> (3) the warrant was based on an affidavit that was so lacking in probable cause as to render official belief in its existence entirely unreasonable; and
>
> (4) the warrant was so facially deficient, by failing to particularize the place to be searched or the things to be seized, that the executing officers could not reasonably believe it to be valid.

Richardson, 481 Md. at 470; *accord Tomanek,* __ Md. App. at __, slip op. at 21.

Brown argues that the third circumstance applies here because “the warrant application was facially insufficient to demonstrate that there was probable cause to search the Bastille Place home because the warrant application failed to establish a sufficient

nexus between alleged criminal activities and the home." And yet, our Supreme Court has explained that "[c]ases in which courts have refused to apply the good faith exception demonstrate that the safe harbor of the exception is foreclosed only when there exists *essentially no evidence* to support a finding of probable cause." *Marshall v. State*, 415 Md. 399, 410 (2010) (emphasis added).

As set forth in our discussion of whether there was a substantial basis to support the search warrant, there was sufficient evidence of both a nexus between the illegal distribution of cocaine, namely, two controlled buys with a reliable confidential informant where the police observed Brown leave the subject residence twice and return once, with the latter buy occurring just ten days before the warrant issued. We are persuaded that these averments, as considered and determined by a neutral and detached magistrate, *i.e.*, the issuing judge, to be sufficient probable cause to support the search and seizure warrant, could reasonably be relied upon by the officers when they executed that warrant two days later. As this Court stated in *West v. State*, 137 Md. App. 314, 356 *cert. denied*, 364 Md. 536 (2001):

> In applying *Leon*, we must bear in mind the euthanasia of pure reason that would result from holding police officers in the field, usually having no legal education besides the one they ostensibly acquire while on duty, to a higher legal standard than we hold the issuing judge himself, who has legal training and has the benefit of an objective and neutral perspective. It is the judge who possesses the legal acumen to objectively analyze the facts and render a decision as to the constitutionality of a search warrant.

See also Minor v. State, 334 Md. 707, 715 (1994) ("[T]he officer has no duty to second guess the judge[.]"); *Joppy, supra*, 232 Md. App. at 536 ("The very core of the Good Faith concept is that it is reasonable for the police officer to defer to the warrant.").

Conclusion

Thus, we hold that the motions court erred in failing to apply the substantial basis test to the issuing judge's assessment of probable cause because there was a sufficient nexus between Brown's drug possession and distribution, evident through two controlled buys involving a reliable confidential informant and 7897 Bastille Place, Severn, Maryland, and that the probable cause had not gone stale between those transactions and the application and issuance of the search and seizure warrant. Moreover, the executing officers could reasonably rely in good faith on the averments in the application and search warrant, as approved by the neutral issuing judge when they executed the search warrant in a timely manner only two days later.

JUDGMENT REVERSED. CASE REMANDED TO THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY FOR FURTHER PROCEEDINGS. COSTS TO BE PAID BY APPELLEE.