

Circuit Court for Dorchester County
Case No. C-09-CR-20-109

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 718

September Term, 2021

STATE OF MARYLAND

v.

JAMES ANDRE REDDICK, JR.

Kehoe,
Berger,
Nazarian,

JJ.

Opinion by Berger, J.

Filed: December 22, 2021

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

This case is before us on the State’s appeal of the Circuit Court for Dorchester County’s order granting a motion to suppress filed by James Andre Reddick, Jr. (“Reddick”), appellee. The circuit court granted Reddick’s motion to suppress evidence recovered under an order issued pursuant to Maryland Code (2018 Repl. Vol., 2021 Supp.), § 1-203.1 of the Criminal Procedure Article (“CP”). The State raises the following single issue for our consideration on appeal:

Did the circuit court err by granting Reddick’s motion to suppress evidence recovered pursuant to the search order?

For the reasons explained herein, we shall answer this question in the affirmative. Accordingly, we shall reverse the judgment of the circuit court granting the motion to suppress and remand for further proceedings.

FACTS AND PROCEEDINGS

The following factual account is drawn from the evidence that was before the suppression court on July 12, 2021. On April 24, 2020, Detective J.M. Battaglia of the Baltimore County Police submitted an application pursuant to CP § 1-203.1 for an order authorizing the disclosure of geographic location information for a mobile telephone associated with Reddick.¹ The District Court sitting in Baltimore County issued the requested search order on the same day.

¹ CP § 1-203.1(b)(1) sets forth the procedure for the issuance of a court order authorizing the use of electronic location data. As we shall explain *infra* in Part I of this opinion, there is no substantive difference in judicial review of a search order issued pursuant to CP § 1-203.1 and a traditional search warrant. The circuit court used the terms “search order” and “search warrant” interchangeably. For consistency, we shall use the term “search order” except when quoting specific language using a different term.

Detective Battaglia submitted the following affidavit in support of the search order request:

Affidavit in Support of Application: The following sets forth the basis for probable cause that a crime has been, is being, or will be committed by the owner or user of the electronic device or by the individual about whom location information is being sought; and the location information is being sought:

1. Is evidence of, or will lead to evidence of, the crime being investigated; or
2. Will lead to the apprehension of an individual for whom an arrest order has been previously issued.
3. The Order names or describes with REASONABLE PARTICULARITY
 - a. The user of the device if known, or the identifying number of the electronic device about which the location information is sought.
 - b. The owner, if known and if the owner is a person or entity other than the user, of the electronic device.

On 04/18/20 the Baltimore County Police Department took a missing person report for a Deontae Vilada Belcher M/B 02/25/95. Belcher's mother, Anita Thomas, reported that on 04/04/20 her nephew, Shaundezz Allen, and a subject she knew as "Shane" came to her house at 7925 33rd St. 21237 and picked up Belcher. Belcher returned to the house and told her that Allen had returned to New Jersey where he lives. For the next week Shane returned to the house each day and picked up Belcher. On 04/11/20, Shane again came to the house and picked up Belcher. Belcher did not return to the house and no one has seen or heard from Belcher since that date. Ms. Thomas contacted Shane and Shane told her that he last saw Belcher on 04/11/20.

On 04/22/20, Baltimore City Police received a phone call from a subject who wished to remain anonymous. That anonymous source advised that they had received information from a subject known as Francisco Stokes M/B 03/27/80. Stokes

advised the anonymous subject that he, Shane, and victim Belcher had been hanging out together getting high. Belcher made a comment that offended Stokes and Shane. Stokes and Shane then assaulted victim Belcher until he was deceased. Stokes and Shane then took Belcher's body to Leakin Park in Baltimore City where they dumped him in the woods. Baltimore Police conducted a search of Leakin Park but were unable to locate Belcher.

Shane was subsequently identified as James Reddick M/B 04/15/91. Ms. Thomas provided Reddick's phone number as 717-324-8860. Detectives believe the information requested will aid in locating Reddick and furthering this investigation.

WHEREFORE, it is respectfully requested that the Court grant an Order:

1. Authorizing the detectives of the Baltimore County Police Department to obtain location information, meaning Real-time or present location information concerning the geographic location of the electronic device;
2. Authorizing the disclosure of Real-time or present geographic location information as described above;
3. Directing SPRINT, and any other necessary service provider to furnish the requested location information and telecommunication records;
4. Sealing this application, affidavit and the Court's Order and delaying notification to the subscriber, customer, user or owner for a period of thirty (30) days after the expiration of the Order;
5. Directing SPRINT, and any other necessary service provided to refrain from notifying the user, owner, or any other person of the disclosure of location information for as long as the notice be delayed; and
6. Any and all further relief as necessary.

I affirm, under the penalties of perjury, and upon personal knowledge, that the contents are true and correct to the best of my knowledge, information, and belief.

[Digital Signature of Detective J.M. Battaglia]

Following the issuance of the requested search order, Baltimore County police investigators used cell site location information recovered pursuant to the search order, as well as financial transactions and video surveillance footage, to develop their case against Reddick. On August 3, 2020, Reddick was ultimately charged via criminal information in connection with Belcher's death.² Reddick was charged in the Circuit Court for Dorchester County with first-degree murder, conspiracy to commit first-degree murder, robbery, assault, multiple handgun offenses, and related conspiracy and lesser-included offenses.

Reddick moved to suppress the evidence recovered pursuant to the search order. A hearing on the motion was held before the circuit court on July 12, 2021. At the hearing, the circuit court heard testimony from Detective Carroll Bollinger of the Baltimore County Police Department. Detective Bollinger was not the affiant of the search order request, but he testified regarding the investigation into Belcher's disappearance and Reddick's subsequent arrest. Detective Bollinger testified that "the information garnered [from the informant identified in Detective Battaglia's affidavit] turned out actually to be false information" and that the informant "had previously called on other occasions to Baltimore City Police and provided false information." Detective Bollinger did not testify as to when or how frequently the informant had previously supplied false information, nor did Detective Bollinger testify that Detective Battaglia knew or had reason to know that the

² The State alleges that Belcher's body was ultimately located in Dorchester County on May 1, 2020. This fact was not established at the hearing on the motion to suppress, but we provide this detail for context.

informant had previously provided false information at the time he submitted the search order affidavit. No other witnesses testified at the hearing.

The circuit court issued a written order dated July 14, 2021 that provided as follows:

1. The seizure and subsequent interrogation of [Reddick] in York, PA on April 29, 2020, was unlawful, and as a result, any statements made by [Reddick] during the associated interrogation, and any physical evidence, including the contents of [Reddick's] wallet and cell phone are excluded; and
2. The judge who issued the Order on April 24, 2020, for both historic and real-time records, for [the] cell phone . . . attributed to [Reddick], did not have a substantial basis for doing so, and thus, evidence that was obtained thereby is excluded[.]

On July 19, 2021, the parties returned to the courtroom and the circuit court put its reasoning supporting the prior written order on the record. With respect to the search order, the circuit court explained its reasoning as to why it had determined that there was no substantial basis to support the issuance of the search order.³ The court explained:

[I]n this particular case . . . where we fail to meet the substantial basis test is one, there was no crime alleged in the application. There was no conclusion by the affiant that consistent with training, knowledge, experience that a crime had been committed or may be committed . . . nor any mention of any astringent evidence of a crime. Such as a ransom note, a body, and the only tip that the application relied upon proved to be erroneous given by someone who was known to give false information. So, based on the testimony at the hearing, you know my questions are did they have financials? Did they have

³ The circuit court also addressed the statements made by Reddick when he was questioned in York, Pennsylvania, explaining that the court had “concluded that the seizure of Mr. Reddick was illegal.” The court emphasized that “[t]here was no arrest order for him” but “he essentially was taken into custody, cuffed, he had no choice in this matter” and was “held for an interrogation.” This determination is not at issue on appeal.

video at that time to support the application and failed to articulate that, or was it just some wild guess? . . . [B]ut in any case I don't see how a neutral detached magistrate would have a substantial basis to issue that order. And therefore, anything seized as a result of that order . . . would be excluded.

This appeal, in which the State challenges the circuit court's conclusion as to the April 24, 2020 search order but does not present any challenge as to the circuit court's determination that the April 29, 2020 seizure and subsequent interrogation was unlawful, followed.

DISCUSSION

On appeal, the State asserts that the circuit court erred by granting Reddick's motion to suppress the evidence obtained pursuant to the search order issued under § 1-203.1, which authorized police to access the location data for a mobile telephone attributed to Reddick. The State does not raise an issue as to the circuit court's determination that the April 29, 2020 seizure and subsequent interrogation of Reddick was unlawful. Reddick presents two additional arguments as to why the location data should be suppressed: (1) because notice was not provided as required by the statute; and (2) because the search order application exceeded the scope of the statute.

I. Judicial Review of the Issuance of a Search Order

Our review of a circuit court's ruling on a motion to suppress evidence under the Fourth Amendment is limited to the record developed at the suppression hearing. *Raynor v. State*, 440 Md. 71, 81 (2014). "We view the evidence and inferences that may be drawn therefrom in the light most favorable to the party who prevails on the motion." *Id.* (quoting *Briscoe v. State*, 422 Md. 384, 396 (2011)). "[W]e review legal questions *de*

novo, and where, as here, a party has raised a constitutional challenge to a search or seizure, we must make an independent constitutional evaluation by reviewing the relevant law and applying it to the unique facts and circumstances of the case.” *Grant v. State*, 449 Md. 1, 14-15 (2016) (quoting *State v. Wallace*, 372 Md. 137, 144 (2002)).

As we explained in *Whittington v. State*, 246 Md. App. 451, 481 (2020), *aff’d* 474 Md. 1 (2021), when an individual challenges probable cause to justify a search, there is no substantive difference between an order issued pursuant to CP § 1-203.1 and a traditional search warrant. We explained that CP § 1 203.1 “embodies all of the order requirements inhering in the Fourth Amendment.” *Whittington, supra*, 246 Md. App. at 481, 491-500. The Court of Appeals agreed, concluding that “the plain text of [CP] § 1-203.1 fulfills the three criteria of a valid order” and “the legislative history demonstrates the intent of the General Assembly to bring the use of GPS tracking by law enforcement into substantive compliance with the Fourth Amendment.” *Whittington v. State*, 474 Md. 1, 252 A.3d 529, 545-46 (2021).

We have described the standard of review we apply when considering a challenge to a search order or search warrant as follows:

We determine first whether the issuing judge had a substantial basis to conclude that the warrant was supported by probable cause. *State v. Amerman*, 84 Md. App. 461, 463-64, 581 A.2d 19, 20 (1990). We do so not by applying a *de novo* standard of review, but rather a deferential one. The task of the issuing judge is to reach a practical and common-sense decision, given all of the circumstances set forth in the affidavit, as to whether there exists a fair probability that contraband or evidence of a crime will be found in a particular search. *Illinois v. Gates*, 462 U.S. 213, 238-39, 103 S. Ct. 2317, 2332, 76 L.Ed.2d 527, 548 (1983). The duty of a reviewing court is to ensure

that the issuing judge had a “substantial basis for . . . conclud[ing] that probable cause existed.” *Id.* (Quotation and citations omitted); *Birthead v. State*, 317 Md. 691, 701, 566 A.2d 488, 492–93 (1989); *Potts v. State*, 300 Md. 567, 572, 479 A.2d 1335, 1338 (1984) (Quotation and citation omitted). The U.S. Supreme Court explained in *Gates* that the purpose of this standard of review is to encourage the police to submit to the order process. *Gates*, 462 U.S. at 237 n.10, 103 S. Ct. at 2331 n.10, 76 L. Ed. 2d at 547 n.10.

Fone v. State, 233 Md. App. 88, 103 (2017) (quoting *Greenstreet v. State*, 392 Md. 652, 667-68 (2006)). “The probable cause standard is a ‘practical, nontechnical conception’ that deals with ‘the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.’” *Moats v. State*, 455 Md. 682, 698 (2017) (quoting *Maryland v. Pringle*, 540 U.S. 366, 370 (2003) (quoting *Illinois v. Gates*, 462 U.S. 213, 231 (1983))). “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 order and its accompanying application documents.’” *Williams v. State*, 231 Md. App. 156, 175 (2016) (quoting *Greenstreet v. State*, 392 Md. 652, 669 (2006)).⁴

The Court of Appeals has summarized the highly deferential review applied in such circumstances as follows:

⁴ We have explained that “[t]here are limited circumstances when we deviate from the rule and look to evidence outside of the order and its affidavit. Those circumstances occur when a defendant makes a required showing for a *Franks* hearing or where the order is undecipherable” *Id.*, see also *Franks v. Delaware*, 438 U.S. 154, 98 S. Ct. 2674, 57 L.Ed.2d 667 (1978) (permitting the admission of extraneous evidence where a defendant shows that the affiant has perjured himself on a material matter). This case does not present a circumstance in which we look outside the order and its affidavit.

The Supreme Court has identified “the Fourth Amendment’s strong preference for searches conducted pursuant to a warrant.” [*Gates*, 462 U.S. at] at 236, 103 S. Ct. 2317. Moreover, because “[r]easonable minds frequently may differ on the question whether a particular affidavit establishes probable cause,” the Court has “thus concluded that the preference for orders is most appropriately effectuated by according ‘great deference’ to a magistrate’s determination.” *United States v. Leon*, 468 U.S. at 914, 104 S. Ct. 3405 (citing *Spinelli v. United States*, 393 U.S. 410, 419, 89 S. Ct. 584, 21 L.Ed.2d 637 (1969); *United States v. Ventresca*, 380 U.S. 102, 108–09, 85 S. Ct. 741, 13 L.Ed.2d 684 (1965); and *Gates*, 462 U.S. at 236, 103 S. Ct. 2317). Consequently, “in a doubtful or marginal case a search under a warrant may be sustainable where without one it would fall.” *Ventresca*, 380 U.S. at 106, 85 S. Ct. 741.

The deference owed to the judge who issued the order has produced the following standard by which a warrant is assessed for compliance with the dictates of the Fourth Amendment: “[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, 103 S. Ct. 2317. As a result, once the reviewing court finds a substantial basis for the probable cause determination, that court is required to uphold the order. *Id.* at 238-39, 103 S. Ct. 2317; *see also Patterson v. State*, 401 Md. 76, 89-90, 930 A.2d 348 (2007).

Moats, supra, 455 Md. at 699-700. Notably, as summarized above, while we owe significant deference to the judge who issued the search order, no such deference is owed to the circuit court’s evaluation of whether the issuing judge had a substantial basis for the probable cause determination. The circuit court’s assessment of whether the search order was properly or improperly issued was a legal determination that we review *de novo*. It is with this analytic framework in mind that we consider whether the judge who issued the

search order had a substantial basis for concluding that there was probable cause to authorize the search of Reddick's telephone's location data.

II. The Search Order-Issuing Judge had a Substantial Basis to Conclude that Probable Cause Existed.

With the applicable deferential standard in mind, we turn to the specific affidavit submitted by Detective Battaglia in support of the search order request. The affidavit provided that Belcher's mother had told investigators that, prior to Belcher's disappearance, he had been spending each day for approximately one week with an individual she knew by the nickname "Shane." The last day Belcher was seen before his disappearance -- April 11, 2020 -- he was picked up by "Shane" in the morning in the same manner as he had been for the prior week. That evening, Belcher failed to return. Belcher's mother contacted "Shane," but "Shane" told her that he had not seen Belcher since April 11, 2020. Ms. Thomas provided the telephone number she had for "Shane" to investigators. This is the telephone number that was the target of the subsequent search order.

By the time Detective Battaglia submitted the affidavit in support of his search order request, Belcher had been missing for nearly two weeks. In addition to setting forth the information obtained from Belcher's mother, the affidavit provided that Baltimore City Police had received a telephone call from an anonymous source providing additional details about Belcher's disappearance. The anonymous source advised that they had learned from an individual named Francisco Stokes that Stokes, Belcher, and "Shane" had all been "hanging out together getting high" but that Stokes and "Shane" had assaulted and

ultimately killed Belcher. The anonymous source provided a location where they believed Belcher's body had been "dumped in the woods," but a search of the location identified by the source did not result in finding Belcher. The individual known as "Shane" was subsequently identified as Reddick.

In our view, the information set forth in the search order affidavit was sufficient for the issuing judge to conclude that there was a substantial basis for concluding that a search of the location data for the telephone number that Ms. Thomas had provided and identified as belonging to "Shane" would uncover evidence of wrongdoing. Two separate individuals identified Reddick as the last person seen with Belcher alive, Belcher had not been seen for nearly two weeks, and an anonymous source specifically stated that Belcher had been killed by Reddick and a second individual. Both Ms. Thomas and the anonymous source referred to Reddick by the same nickname, "Shane." Although "an anonymous tip alone seldom demonstrates the informant's basis of knowledge or veracity," *Mack v. State*, 237 Md. App. 488, 496 (2018) (quotation and citation omitted), additional information corroborated portions of the anonymous tip in this case. Indeed, Belcher's mother had specifically identified Reddick, whom she knew as "Shane," as the person who had last been with Belcher before his disappearance, which was consistent with the anonymous caller's tip about Reddick. The issuing judge appropriately considered the anonymous tip within the larger totality of the circumstances analysis when determining whether there was a substantial basis for finding probable cause. *See Thompson v. State*, 245 Md. App. 450, 484-85 (2020) (explaining that the corroboration of an anonymous tip can provide a

substantial basis for finding probable cause). In our view, when considering the totality of the circumstances, the sum of the evidence set forth in Detective Battaglia’s affidavit was more than sufficient to support the search order-issuing judge’s determination.

When assessing whether the issuing judge had a substantial basis to conclude that the search order was supported by probable cause, the circuit court considered the testimony of Detective Bollinger, who was not the affiant. The circuit court credited Detective Bollinger’s testimony that the anonymous source had been known to provide false information in the past, but there is absolutely no indication in the record that either Detective Battaglia or the issuing judge was made aware of the anonymous source’s prior unreliability.⁵

Moreover, by emphasizing Detective Bollinger’s testimony regarding the overall investigation into Belcher’s disappearance, the circuit court failed to apply the “four corners rule” and did not confine the “consideration of probable cause solely to the information provided in the order and its accompanying application documents.” *Williams, supra*, 231 Md. App. at 175. In addition, the circuit court improperly emphasized the fact that “[t]here was no conclusion by the affiant that consistent with [his] training, knowledge, [and] experience that a crime had been committed or may be committed.” The specific

⁵ Reddick suggests that “it is a fair inference” that the Baltimore County Police Department knew as early as April 24, 2020 “that the anonymous source was completely unreliable,” particularly given that the search of Leakin Park failed to result in the finding of Belcher’s body, but we disagree. The anonymous source’s incorrect information about one detail relating to Belcher’s disappearance does not render all of what the anonymous source reported unreliable, particularly given the corroborating evidence provided by Belcher’s mother.

language referenced by the circuit court was not required in order for the issuing judge to find a substantial basis for the issuance of the search order. What was required was that “the affidavit that accompanie[d the] request for a search warrant . . . show that ‘the known facts and circumstances are sufficient to warrant a man of reasonable prudence in the belief that contraband or evidence of a crime will be found’ in a particular place.” *Moats v. State*, 230 Md. App. 374, 389 (2016), *aff’d*, 455 Md. 682, (2017) (quoting *Ornelas v. United States*, 517 U.S. 690, 696 (1996)).

Detective Battaglia’s affidavit set forth the length of Belcher’s disappearance, Belcher’s interactions with Reddick prior to his disappearance, and the anonymous tip reporting that Reddick and another individual had “assaulted Belcher until he was deceased.” These facts and circumstances were sufficient to support a conclusion that Reddick’s location data, obtained via location records for the phone number provided by Ms. Thomas, would provide evidence of a crime.

We conclude that the search order-issuing judge acted within her broad discretion when determining that there was a substantial basis for finding probable cause to issue the order authorizing the disclosure of geographic location data for the telephone associated with Reddick. Accordingly, we hold that the circuit court erred in finding that there was no substantial basis for the issuance of the search order.

III. Even if the Search Order-Issuing Judge Lacked a Substantial Basis to Issue the Search Order, the Good Faith Exception to the Exclusionary Rule Applies.

Although we conclude that the issuing judge had a substantial basis to issue the search order, we shall briefly address the State’s alternative argument that even if the search

order affidavit did not support a finding of probable cause, the good faith exception applies and precludes exclusion because the officers relied upon the search order in objective good faith with reasonable reliance on the search order.⁶

“Under the good faith exception to the Fourth Amendment’s exclusionary rule, evidence obtained pursuant to a search warrant, later determined or assumed to have been issued improperly,” is generally admissible. *Marshall v. State*, 415 Md. 399, 408 (2010).

Evidence must be suppressed, however, under the following circumstances:

(1) [I]f the magistrate, in issuing a warrant, ‘was misled by information in an affidavit that the affiant knew was false or would have known was false except for a reckless disregard of the truth,’ or (2) ‘in cases where the issuing magistrate wholly abandoned his judicial role so that no reasonably well trained officer should rely on the warrant,’ or (3) in cases in which an officer would not ‘manifest objective good faith in relying on a warrant based on an affidavit so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable,’ or (4) in cases where ‘a warrant may be so facially deficient—*i.e.*, in failing to particularize the place to be searched or the things to be seized—that the executing officers cannot reasonably presume the warrant to be valid.’

Id. at 408-09 (quoting *Connelly v. State*, 322 Md. 719, 729 (1991) (additional quotations omitted)).

⁶ Neither this Court nor the Court of Appeals has specifically addressed the applicability of the good faith exception to a search order issued pursuant to CP § 1-203.1. Nevertheless, in our view, given that an order issued pursuant to CP § 1-203.1 is an analogue that encompasses all of the same Fourth Amendment protections as a traditional warrant, *Whittington, supra*, 471 Md. 1, 252 A.3d 529 at 542-46, we see no reason why the good faith exception should not apply in this context as well.

In this case, Reddick raised no allegations that the issuing judge abandoned her judicial role or that the search order was facially deficient. Reddick asserts on appeal that we should infer that Detective Battaglia knew or should have known that the anonymous source was not reliable when he submitted the affidavit in support of the search order, but, as we explained *supra*, although Detective Bollinger was aware that the source had provided inaccurate information at some point, the record does not reflect that Detective Battaglia himself knew the same.

Notably, this issue is not properly before us given that Reddick did not seek a *Franks* hearing before the circuit court.⁷ Reddick asserts that Detective Bollinger “converted the suppression hearing into a *Franks* hearing” by commenting on the informant’s prior unreliability, but we reject this assertion. A *Franks* hearing -- wherein a defendant is granted an evidentiary hearing after making a substantial preliminary showing that a governmental affiant has perjured himself on a material matter -- “is a rare and extraordinary exception 1) that must be expressly requested and 2) that will not be indulged unless rigorous threshold requirements have been satisfied.” *Fitzgerald v. State*, 153 Md. App. 601, 638, 642 (2003), *aff’d on other grounds*, 384 Md. 484, 864 A.2d 1006 (2004). We rejected a similar argument in *Fitzgerald* when an appellant argued that a *Franks* issue had been generated when witnesses testified “outside the four corners of the warrant” at a hearing on a motion to suppress. 153 Md. App. at 651. Likewise, we reject this argument in this case.

⁷ *Franks v. Delaware*, 438 U.S. 154 (1978).

Furthermore, Reddick asserted that the order was lacking in indicia of probable cause, but, as we explained *supra* in Part II, we disagree with the circuit court’s conclusion that there was no substantial basis for finding probable cause. Moreover, this exemption to the good faith doctrine applies only when an affidavit is “bare bones” and contains only “wholly conclusory statements and presents essentially no evidence outside of such conclusory statements.” *Id.* at 409 (quotation and citation omitted). The affidavit submitted by Detective Battaglia, which specifically outlined the precise evidence surrounding Belcher’s disappearance and the specific reasons why Reddick had been developed as a suspect, was not, in our view, so “bare bones” or “conclusory” so as to render officers’ reliance upon it unreasonable. Accordingly, even if the issuing judge lacked a substantial basis to issue the search order, suppression would not be available under the good faith exception to the exclusionary rule.

IV. The Search Order Issued in this Case was not Invalid Because it Exceeded the Scope of the Statute.

Reddick further contends that the location data obtained by law enforcement officers in this case was historical location data rather than real-time data, which, Reddick asserts, is not within the scope of CP § 1-203.1. For this reason, Reddick asserts that any location data obtained pursuant to the search order (as well as any evidence tainted by the location data’s use for subsequent investigation) must be suppressed. This issue was raised before the circuit court, but, because the circuit court suppressed the challenged location data on other grounds, the circuit court did not reach this issue. As we shall explain, we are not

persuaded that the historical location data must be suppressed because it exceeded the scope of CP § 1-203.1.

The April 24, 2020 search order issued by the circuit court in this case provided, *inter alia*:

IT IS . . . ORDERED that SPRINT or any Telecommunication service provider of said target number, furnish . . . the following transactional records for a time period of 04/01/20 through thirty (30) days after the issuance of this order.

1. Any and all identifying information for telephone hardware including, but not limited to: IMEI, ESN, MEID, authorized account holders, subscriber information or information that identified the account, including MIN, MSID, IMSI, and all services associated with the account, and any other subsequent IMEI, ESH, MEID, MSID, MIN, IMSI, ICCCID or SIM assigned to this subscriber, or any newly assigned dialed number and updated account information[.]
2. ***Call Detail Records with Cell Site Information*** to include Outgoing numbers dialed to and from mobile handset, including forwarding numbers and call durations, RTT with raw data, Reveal, PCMD (Per Call Measurement Data), ***NELOS (Network Location Services), Mobile Locator***, or True Call Data

(Emphasis supplied.) Reddick asserts that this location data -- involving the mobile telephone's location *prior to* the issuance of the April 24, 2020 search order -- is not within the scope of the statute and should, therefore, be suppressed.

In support of this assertion, Reddick directs our attention to the legislative history of CP § 1-203.1. Specifically, Reddick points out that when the legislation was originally proposed, Senate Bill 698 (Md. Gen. Assembly, 2014 Reg. Session), defined “location information” as “past or present information concerning the location of an electronic device

that, in whole or in part, is generated by or derived from the operation of that device.” By the time the statute was enacted, however, the definition of “location information” was amended to provide that “‘location information’ means real-time or present information concerning the geographic location of an electronic device that is generated by or derived from the operation of that device.” CP § 1-203.1(a)(6).

Although the search order requested and obtained in this case was styled as a search order authorized by CP § 1-203.1, Reddick appears to be correct that the statute itself does not govern the disclosure of historical location data. Although CP § 1-203.1 does not specifically authorize the disclosure of historical location data, it does not necessarily follow that the search order was unlawful. Indeed, Reddick is correct that law enforcement’s acquisition of historical cell site location information constitutes a Fourth Amendment search and requires a warrant. *See Carpenter v. United States*, ___ U.S. ___, 138 S. Ct. 2206, 2220 (2018). Although historical location data is not specifically referenced in CP § 1-203.1, as we explained *supra*, a search order issued pursuant to CP § 1-203.1 is analogous to a traditional search warrant and encompasses the same Fourth Amendment protections. *Whittington*, *supra*, 474 Md. 1, 252 A.3d at 546. As we have explained, the information set forth in the search order affidavit was sufficient for the issuing judge to conclude that there was a substantial basis for concluding that a search of Reddick’s location data -- including historical location data -- would uncover evidence of wrongdoing. This is what the Fourth Amendment requires. As such, we decline to adopt

Reddick’s assertion that the circuit court’s grant of his motion to suppress should be affirmed on the grounds that the search order exceeded the scope of the statute.

V. The Statutory Notice Requirement is Inapplicable to this Case.

Reddick contends that even if there was a substantial basis for the issuance of the search order, any location data obtained pursuant to the search order must be suppressed because the relevant statute requires the defendant to receive notice, which he asserts he did not receive. Reddick asserts that it is undisputed that there was no compliance with the notice requirement in this case and further contends that the location data should be suppressed pursuant to the exclusionary rule. We are not persuaded.

In addition to embodying all of the Fourth Amendment warrant requirements, CP § 1-203.1 sets forth specific time limitation and notice requirements. CP § 1-203.1(c) provides that an order authorizing the disclosure of location data “may not exceed 30 days” absent an express finding of “continuing probable cause.” When such a finding has been made, the search order may be extended for “an additional 30 calendar days, unless the court finds continuing probable cause and determines that good cause exists for a longer extension.” The statute further provides that “notice of the court’s order shall be delivered to the user and, if known and if the owner is a person or an entity other than the user, the subscriber of the electronic device at issue . . . within 10 calendar days after the expiration of the order.”

At the motions hearing before the circuit court on July 12, 2021, the notice requirement was addressed in the following exchange:

[THE PROSECUTOR]: . . . [I]n terms of the notice provision I would just argue that the [s]tatute doesn't provide for an exclusionary provision. There's nothing in here that says it gets kicked out for that reason.

THE COURT: Right.

On appeal, Reddick points to CP § 1-203.1(e)(2), which provides that “evidence obtained in violation of this section is subject to the exclusionary rule as judicially determined.” Notably, the specific reference to the exclusionary rule was not part of the statute in effect at the time the search order was issued in this case. CP § 1-203.1(e)(2) was added to the statute via Chapter 223, Laws of Maryland 2020, which became law on midnight of May 7, 2020 and took effect on October 1, 2020.⁸ Statutes are presumed to apply prospectively unless the General Assembly “clearly expresses an intent that the statute apply retroactively.” *Allstate Ins. Co. v. Kim*, 376 Md. 276, 289 (2003) (internal quotation omitted). Regardless of the statutory exclusionary provision, however, as we explained *supra* in Section IV of this opinion, the disclosure of historical location data at issue in this case was not expressly authorized by CP § 1.203.1, which applies to orders for real-time or present location data. *See* CP § 1-203.1(a)(6)(“‘Location information’ means real-time or present information concerning the geographic location of an electronic device that is generated by or derived from the operation of that device.”). Accordingly, the statutory notice requirement and statutory exclusionary provision do not apply.

⁸ Given the exchange before the circuit court regarding the notice provision, it appears that the parties and the circuit court were unaware of the revision to the statute.

We further observe that the circuit court made no finding as to whether the notice requirement was violated. Indeed, at the time the relevant evidence was recovered pursuant to the order, the 30-day initial period had not yet expired. We need not consider the significance of this, if any, in light of our determination that the statutory notice requirement does not apply to the historical location data at issue in this appeal.

VI. Conclusion

We note that although the State challenged the circuit court’s ruling with respect to location data on appeal, the State did not raise any argument as to the other portion of the circuit court’s July 14, 2021 order. In addition to excluding evidence obtained pursuant to the April 24, 2020 order authorizing the disclosure of location data for Reddick’s phone, the circuit court also ruled that “[t]he seizure and subsequent interrogation of [Reddick] in York, PA on April 29, 2020, was unlawful, and as a result, any statements made by [Reddick] during the associated interrogation, and any physical evidence, including the contents of [Reddick’s] wallet and cell phone are excluded.” No argument regarding that particular ruling of the motions judge has been presented for our consideration on appeal. On remand, the circuit court may address to what extent, if any, the ruling as to the April 29, 2020 seizure and interrogation is affected by our determination that the circuit court erred when it determined that there was no substantial basis for the issuance of the April 24, 2020 search order.

**JUDGMENT OF THE CIRCUIT COURT
FOR DORCHESTER COUNTY
REVERSED IN PART. ORDER
GRANTING MOTION TO SUPPRESS**

**LOCATION DATA RECOVERED
PURSUANT TO APRIL 24, 2020 SEARCH
ORDER VACATED. CASE REMANDED
FOR FURTHER PROCEEDINGS
CONSISTENT WITH THIS OPINION.
COSTS TO BE PAID BY APPELLEE.**