

Circuit Court for Allegany County
Case No. C-01-CR-21-000136

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1514

September Term, 2021

DERRICK JACKSON

v.

STATE OF MARYLAND

Berger,
Nazarian,
Albright,

JJ.

Opinion by Berger, J.

Filed: August 23, 2022

*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.

By indictment filed in the Circuit Court for Allegany County in March 2021, the State charged the appellant, Derrick Jackson, with possession of fentanyl with the intent to distribute and related offenses. After a hearing in August 2021, the court denied Jackson’s motion to suppress the evidence received from a search warrant that was executed in March 2021. In October 2021, Jackson entered a not guilty plea on an agreed statement of facts to one count of possession of fentanyl with the intent to distribute. The court sentenced Jackson to 20 years of incarceration, with all but 12 years suspended, followed by five years of probation, with several conditions, including a condition that Jackson “be of good behavior[.]” On appeal, Jackson presents two questions¹ for our review:

- I. Whether the motions court erred by denying Jackson’s motion to suppress.
- II. Whether the trial court imposed an improper condition of probation.

For the reasons to be discussed, we shall strike the condition of probation that required Jackson to “be of good behavior,” and otherwise affirm the judgment of the circuit court.

BACKGROUND

On the October 2021 trial date, the parties proceeded with jury selection, but then Jackson waived his right to a jury trial and chose to proceed with a not guilty plea on an agreed statement of facts. The State read the following statement of facts into the record:

¹ Jackson’s opening brief in this Court contained three questions presented. Two months after Jackson’s counsel filed that brief, however, Jackson’s counsel filed a line that stated: “Appellant, by counsel, . . . hereby dismisses Argument II, ‘The Trial Court Erred by Failing to Comply with the Requirements of Maryland Rule 4-242(c),’ as contained in Appellant’s Brief[.]” Because of Jackson’s voluntary dismissal of that question, this Court decides the remaining two questions presented.

That on March 11th of this year, Trooper Trent Lewis of the Maryland State Police authored a Search and Seizure Warrant for 25 Bowery Street, Apartment [B], Frostburg, Maryland. . .

Prior to the execution of the search warrant, surveillance was conducted on 25 Bowery Street, Apartment [B]. Through surveillance investigators observed Derrick Jackson arrive at the residence in a white 2019 Nissan Sentra bearing Maryland registration 2ED1425. Derrick Jackson was observed entering and exiting the residence and placing a black bookbag inside a white B.M.W. four-door, passenger vehicle parked in the driveway. Shortly after Derrick Jackson and Gracie Jacobs were observed exiting the residence and entering the white 2019 Nissan Sentra bearing Maryland registration 2ED1425.

Upon the vehicle exiting the driveway, the vehicle stopped at the corner of College Street and Spring Street, which is within a quarter[-]mile of the residence. After the vehicle was stopped they executed the Search and Seizure Warrant at 25 Bowery Street, Apartment [B], Frostburg, Maryland. Located within the residence and the white B.M.W. passenger vehicle, and the following items were found.

One plastic bag containing a white powder. The officers were able to identify as fentanyl, based on his training, knowledge and experience. The fentanyl weighed 130 grams.

Another plastic bag contained a white powdery substance the officer believed to be fentanyl weighing approximately 105.6 grams.

Another plastic bag contained a white powdery substance, the officer again, believed to be fentanyl weighing 107.1 grams.

One plastic bag containing another plastic bag contained a white powdery substance the officer believed to be fentanyl, weighing 3.5 grams.

In addition two digital scales contain[ing] suspected fentanyl residue were recovered. The officer knows through his

training, knowledge and experience that drug dealers utilize scales to weigh C.D.S. for resale. A total of \$2,683.00 in U.S. currency was also seized.

Through the combination of the large amount of fentanyl, which totaled 354.2 grams, the way it was packaged, the digital scales, the multiple clear plastic bags, and the large sum of U.S. currency, along with the distribution of fentanyl to a confidential informant in a prior instance, the officer knew through his training and knowledge and experience that Derrick Jackson possessed fentanyl with the intent to distribute the same.

Your Honor, the seized items in this case, specifically the suspected C.D.S., were properly packaged and forwarded to the Maryland State Police Crime Lab where they were tested. . . . As the court can see, the substance did come back as positive for . . . a combination of fentanyl, [xylazine], and heroin. The fentanyl was certainly present in every substance that was tested. All events occurred in Allegany County.

The court found Jackson guilty of possession of fentanyl with the intent to distribute:

The Court finds there is a factual basis to enter a verdict of guilty to count two, possession with intent to distribute narcotics, specifically fentanyl. In accordance with the agreement, as it relates to the not-guilty/agreed statement of facts, the Court will enter a dismissal on the companion charges.

The Search Warrant Application

The charges in this case stem from a search warrant that was executed in March 2021. During the search warrant execution, police searched Jackson’s apartment (25 Bowery Street, Apartment B in Frostburg) and a BMW parked outside. Jackson moved to suppress the evidence recovered. At the hearing on the motion to suppress, the search

warrant application was introduced into evidence. Because Jackson contends that the issuing judge lacked a substantial basis for finding probable cause to search the apartment and the BMW, we quote the relevant portions of the affidavit in support of the warrant application, which was authored by Maryland State Police Corporal Trenton Lewis:

In support of this application, and as the basis for probable cause, your Affiant deposes and says:

During the month of September 2020, members of the Allegany County Narcotics Task Force, hereinafter referred to as ACNTF, began an investigation into “Fresh”, who has been identified by ACNTF investigators as Derrick Jackson, through previous investigations. Jackson has been identified as a CDS distributor in the Allegany County, Maryland area[.]

During the week of September 19, 2020, members of the ACNTF made contact with a Confidential Informant, hereinafter referred to as CI #1. CI #1 stated he/she knows a subject named Fresh, who he/she has purchased heroin from in the past. CI #1 advised Fresh sells in the area of Polk Street, Cumberland, Maryland. CI #1 stated Fresh is connected to a “Tammy and Phil”, who live on Ore Street, in Allegany County, Maryland.

During the week of October 9, 2020, CI #1 advised he/she could purchase a specific amount of heroin/fentanyl for a specific amount of U.S. Currency from “Fresh”.

At approximately 1115 hours, Cpl Bittinger, M/Tpr Mallow and TFC Whorton met with CI #1 at a pre-determined meeting location in Allegany County, MD. A search of CI #1 was conducted and CI #1 was found to be free/clear of any CDS or United States Currency. CI #1 was provided with a specific amount of pre-recorded U.S. Currency to make the controlled purchase. CI #1 was provided with Consensual Monitoring equipment. CI #1 contacted Jackson via telephone and he directed CI #1 to the area of lower Polk Street, Cumberland, MD.

After meeting with CI #1, TFC Whorton drove CI #1 to the area of Mechanic Street, near Market Street, Cumberland, MD. Upon arriving in the area, CI #1 contacted Jackson again who advised he would be on Polk Street soon. CI #1 exited TFC Whorton's vehicle at approximately 1146 hours and began walking to lower Polk Street. As CI #1 was walking, ACNTF members maintained surveillance of CI #1 and positioned in the area of 130 Polk Street. CI #1 was observed waiting for Jackson on the sidewalk of Polk Street. At this time, a gray Nissan Maxima bearing PA registration (LFC8284) was observed by ACNTF members entering Polk Street from Center Street. As the Nissan was observed, your Affiant and M/Tpr Mallow were able to identify the operator as Derrick Jackson. As the Nissan arrived on Polk Street, CI #1 entered the vehicle. Upon entering the Nissan, Jackson stopped in a parking lot near 130 Polk Street, directly beside M/Tpr Mallow's vehicle. M/Tpr Mallow was able to observe what he believed to be a CDS exchange between Jackson and CI #1. After a short period of time, CI #1 exited the Nissan and began to walk back to Mechanic Street as ACNTF members[] maintained surveillance. Jackson was also observed leaving the area, traveling from Polk Street onto Center Street. While CI #1 was walking back to Mechanic Street, M/Tpr Mallow picked him/her up and drove them to a pre-determined meeting location in Allegany County, MD.

Upon arriving at the meeting location, TFC Whorton took possession of a small knotted plastic baggie of suspected fentanyl. CI #1 was searched afterward and found to be free and clear of any CDS or United States Currency. CI #1 stated he/she exchanged the specific amount of pre-recorded U.S. Currency for the baggie of suspected fentanyl with Jackson.

TFC Whorton was able to identify the suspected fentanyl, a schedule II narcotic, based on his training, knowledge and experience as a Maryland State Trooper. The suspected fentanyl was processed and forwarded to the Maryland State Police Crime Lab for further analysis.

**It should be noted, CI #1 has been deemed credible by members of the ACNTF. Information provided by CI #1 regarding CDS distributors, vehicles, and locations in the past

have been corroborated by ACNTF members. During the aforementioned controlled purchase, CI #1 stated he/she could purchase a specific drug, for specific price, from a specific person, which he/she did.

Since the controlled buy, your Affiant conducted a search of E-Tix, a traffic stop database utilized by numerous Police Agencies in the State of Maryland, which revealed Jackson had previously been stopped operating the above Nissan on September 9, 2020 in Washington County, MD.

Your Affiant has also maintained surveillance on 25 Bowery Street, in which your Affiant has observed Jackson entering and exiting multiple different vehicles over the past several months. On February 9, 2021, your Affiant observed Jackson entering and exiting a silver Dodge Caravan, bearing CA registration 8KWB193.

On February 11, 2021, your Affiant observed a dark colored Chevrolet Silverado, back into the driveway of 25 Bowery Street, Frostburg, Maryland. Your Affiant observed Jackson exit the vehicle and enter the rear second floor door of the residence. Your Affiant has observed Jackson entering and exiting the vehicle on a daily occurrence since February 11.

On February 12, 2021, your Affiant and Det. Pirolozzi[] made contact with a Potential Confidential Informant, herein referred to as PCI. The PCI advised a subject he/she knows as “Fresh”, is one of the biggest drug dealers he/she knows in the area. The PCI advised Fresh lives in Frostburg with his girlfriend. The PCI advised he/she has known Fresh for years and Fresh has had multiple different vehicles since he/she has known him. The PCI stated Fresh sells heroin for \$140 U.S. Currency. The PCI stated while Fresh would come to his/her residence to deal, he usually would set up another deal or two to other people at the same time. The PCI stated Fresh would typically sell to him/her in the morning hours. The PCI stated Fresh typically has ten half gram bags to ten whole gram bags of heroin on him at a time when he is out selling.

It should be noted, the information provided by the PCI has been corroborated by ACNTF members.

On February 15, 2021, while conducting surveillance on 25 Bowery Street, your Affiant identified the registration tag on the Chevrolet Silverado to be Maryland registration 99302CJ. Your Affiant also observed Derrick Jackson exiting the driveway in the Chevrolet Silverado. Your Affiant conducted a MVA check on the registration through the MSP Cumberland Barrack who advised the vehicle came back registered to Derrick Jackson, DOB: 2/22/1987, 1802 Ashburton Street, Baltimore, Maryland. The MVA check also displayed the registration plate was just issued on 2/11/2021.

On February 24, 2021, members of the Maryland State Police Western Narcotics Unit[] were conducting a CDS related investigation in Garrett County, Maryland. As a result of the investigation, the target advised a guy named D-Rock is buying heroin from Fresh. The target also stated Fresh[] drops off heroin to D-Rock[] at Michael Alburtis's residence behind the Jolly Roger's liquor store in Lavale, Maryland. The target advised there is a maroon Ford passenger car in the driveway.

Investigators with the ACNTF were able to corroborate the above target's information and confirm Alburtis's address to be 545 B Street Lavale, Maryland. It should be noted investigators with the ACNTF are familiar with the address through previous CDS investigations. A check of the local law enforcement database revealed on January 24, 2021, Michael Alburtis and Breann Haines were stopped involved in a CDS related traffic stop. A K-9 search was conducted on the stop and resulted in Haines being charged on a criminal summons for possession of CDS paraphernalia. During the stop, both Michael Alburtis and Breann Haines provided an address of 545 B Street, Lavale, Maryland.

On February 25, 2021, investigators of the ACNTF[] began surveillance on Jackson who was operating his Chevrolet Silverado. Investigators observed through electronic surveillance the Chevrolet Silverado traveled to Baltimore, Maryland. The Silverado was in Baltimore for less than an hour before starting to travel westbound. Upon arriving in Allegany County, Maryland, investigators identified Derrick Jackson driving the Silverado. Surveillance was maintained on

the vehicle to the area of the 600 block of Centre Street, where a white female with dark hair entered the passenger seat of the Silverado. The Silverado was then surveilled back to 25 Bowery Street. Jackson and the white female were then observed entering 25 Bowery Street, Apartment B, utilizing the second-floor rear door of the residence.

Shortly after arriving at 25 Bowery Street, a blue Chrysler passenger car, bearing MD registration 4DR1552, was observed pulling in front of the residence. A black male was observed exiting the front passenger door of the vehicle and entering the front door of 25 Bowery Street and returning to the vehicle after a short time period. Your Affiant knows through his training, knowledge, and experience as a narcotics investigator that individuals entering residences and exiting in short time periods is indicative of an individual purchasing illegal CDS.

Surveillance was continued on Derrick Jackson and he was observed leaving 25 Bowery Street in the Chevrolet Silverado. While continuing surveillance investigators observed Jackson travel to multiple known drug locations and meet multiple individuals. One of the locations Jackson was observed traveling to was . . . 545 B Street, Lavale, Maryland, corroborating the information provided from the target providing information to the Maryland State Police Western Narcotics Unit on February 24, 2021.

Also, on February 25, 2021, your Affiant conducted a MVA check on Derrick Jackson through the MSP Cumberland Barrack. The check revealed Derrick Jackson made an address change to 25 Bowery Street Apartment B, Frostburg, Maryland on February 21, 2021.

On February 26, 2021, while conducting electronic surveillance, your Affiant observed Derrick Jackson backing up a white four door BMW in the driveway of the residence. Your Affiant also observed Jackson enter 25 Bowery Street Apartment B, utilizing the rear second-floor door of the residence.

Your Affiant knows that drug dealers/users utilize motor vehicles to transport and sell illegal CDS. Your Affiant knows that drug dealers travel to their sources of supply and often travel by vehicle to meet with their customers, in order to avoid selling CDS directly from their residence to avoid law enforcement detection. Your Affiant knows that drug dealers often utilize different vehicles to avoid detection from the police. Your Affiant knows that Baltimore Maryland is a source of supply for people in Allegany County, Maryland.

Based on a previous investigation, a controlled purchase from Derrick Jackson, surveillance on the target, along with information provided to investigators through a confidential informant and potential confidential informant, it is apparent through your Affiant's training, knowledge and experience that[] Derrick Jackson[] has continued an ongoing criminal enterprise to include but not limited to, possession of CDS and distribution of CDS.

* * *

Your Affiant, based on this investigation therefore, prays that a Search and Seizure Warrant be issued for the aforesaid premise, more particularly described aforesaid with the necessary and proper assistance without here to knocking:

- (A) Enter, without knocking, and search the aforesaid premises, including the residence, outbuildings and all vehicles, to include a 2007 blue Chevrolet Silverado MD registration 99302CJ, and a white BMW passenger car, associated with individuals that reside at 25 Bowery Street, Apartment B, Frostburg, Allegany County, Maryland[.]

The Motion to Suppress

At the hearing on Jackson's motion to suppress, Jackson's counsel argued that the facts alleged in the search warrant application failed to establish a nexus between Jackson's drug distribution activity and the two places that were searched: the apartment and the BMW parked outside. The State contended that the warrant application established a nexus

between those places and Jackson’s drug distribution activity based on the affiant’s description of the following: the controlled purchase, the confidential informant, the potential confidential informant, and the target of the Garrett County investigation. As it related to the search of the BMW, the State pointed to the affiant’s knowledge of drug distributors’ use of motor vehicles to transport and sell narcotics:

the Affiant knows that drug dealers and users utilize motor vehicles to transport and sell illegal C.D.S. Your Affiant knows that drug dealers travel to the sources of supply and often travel by vehicles to meet with their customers in order to avoid selling C.D.S. directly from the residence to avoid law enforcement detection.

The Trial Court’s Memorandum and Order

The court took the motion to suppress under advisement before issuing an order and memorandum opinion. The order and memorandum opinion denied the motion to suppress:

Defendant argues there was insufficient evidence to support a finding of probable cause for the search warrant. Specifically, he argues the warrant issued failed to establish a factual nexus to permit a search of his Bowery Street home and the white BMW located at the residence. The defendant relies upon *Agurs v. State*, 415 Md. 62 [(2010)], in support of his motion to suppress. The Court does not find the defendant’s reliance persuasive as the factual scenarios differ greatly from each other. Most notably, there was no direct evidence asserted in the *Agurs* warrant directly tying the defendant to the sale of illegal narcotics. At best, the most pertinent facts presented in the *Agurs* warrant were that (1) the defendant was seen associating with an individual the police had made controlled purchases from and (2) a suspicious incident where the defendant met with an unknown individual who later left that meeting with a “bulge in his right pocket.” *Id.* at 69-73. There

was nothing in the *Agurs* warrant that directly tied the defendant to criminal activity, much less his home or vehicles.

In the instant case, there is direct evidence that the Defendant was engaged in the illegal sale of narcotics. Beginning in the fall of 2020, members of the Allegany County Narcotic Task Force (Task Force) were advised by a confidential informant that the Defendant was selling drugs in the area of Polk Street, Cumberland, Maryland. As part of that investigation, a controlled purchase was arranged between the Defendant and the confidential informant. This exchange occurred, consistent with the confidential informant's information, on Polk Street. As part of this exchange, Task Force members were able to identify the Defendant as the person making the sale of suspected fentanyl, a Schedule II narcotic. Additionally, the Defendant was observed driving a gray Nissan Maxima during the transaction.

The investigation continued with Task Force members observing that the Defendant drove multiple vehicles to, from, and around his residence on 25 Bowery Street (to include the white BMW). The Defendant's use of multiple vehicles was corroborated by information received from a potential confidential informant. Furthermore, in February 2021 the Defendant was observed travelling to Baltimore, Maryland, where he stayed less than an hour before returning to his home at 25 Bowery Street. Shortly after returning, investigators described an individual entering the Defendant's home then leaving quickly thereafter which the warrant asserts was indicative of a narcotics transaction. The Defendant was then observed leaving his home and traveling to several "known drug locations" including a residence occupied by suspected drug users.

In applying these facts to the relevant law in Maryland the Court is satisfied that the issuing judge's decision to authorize the warrant in this case is supported by substantial evidence. The Defendant resided at 25 Bowery Street and it is not unreasonable to assume based on information provided in the warrant that he would keep evidence of his illegal activity at that location. This is particularly true considering the type of criminal activity in which he was allegedly involved (the sale

of narcotics) and the quantities of narcotics he was alleged to have on his person when actively selling. *Holmes v. State*, 368 Md. 506 [(2002)]. Furthermore, the observations made by members of the Task Force and corroborated with information from confidential informants showed that the Defendant utilized multiple vehicles during suspected criminal activity. Corporal Lewis, a police officer since 2015 and specially assigned to narcotics investigations since 2017, swore that based on his knowledge and experience drug dealers avoid selling narcotics from their home and use multiple vehicles to avoid detection by law enforcement and that Baltimore is a supply source of illegal drugs for Allegany County.

Assuming as we must that all of the information within the four corners of the warrant is true and accurate, it is clear to this Court that there is substantial evidence establishing a nexus between the Defendant’s activity and the residence at 25 Bowery Street and all of the vehicles at that location.

Finally, even assuming *arguendo*, that this warrant would fall under the category as “doubtful” or “marginal” in establishing the nexus to those areas ultimately searched (which it does not) great preference must be accorded to obtaining warrants. *Mills v. State*, 278 Md. 262 at 280 [(1976)].

DISCUSSION

I. The court did not err in denying Jackson’s motion to suppress.

a. There was a substantial basis for the court to find that probable cause existed to search the Bowery Street apartment and the BMW.

Jackson argues that the issuing judge lacked a substantial basis for finding probable cause to search the Bowery Street apartment and the BMW. The Fourth Amendment to the United States Constitution, made applicable to the states via the Fourteenth Amendment, states as follows:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and

seizures, shall not be violated, and 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. *See also Mapp v. Ohio*, 367 U.S. 643, 654-55 (1961).

“Reasonableness within the meaning of the Fourth Amendment generally requires the obtaining of a judicial warrant.” *State v. Johnson*, 458 Md. 519, 533 (2018) (cleaned up). A warrant must be supported by probable cause, which is “a ‘practical, nontechnical conception’ that deals with ‘the factual and practical considerations of everyday life on which reasonable and prudent [individuals], not legal technicians, act.’” *Maryland v. Pringle*, 540 U.S. 366, 370 (2003) (quoting *Illinois v. Gates*, 462 U.S. 213, 231 (1983)). Indeed, “[t]he probable-cause standard is incapable of precise definition or quantification into percentages because it deals with probabilities and depends on the totality of the circumstances.” *Pringle*, 540 U.S. at 371. Ultimately, “[t]he substance of all the definitions of probable cause is a reasonable ground for belief of guilt,’ . . . and that the belief of guilt must be particularized with respect to the person to be searched or seized[.]” *Id.* (quoting *Brinegar v. United States*, 338 U.S. 160, 175 (1949)).

“A judicially issued search warrant is presumptively valid, and the burden is allocated to the defendant to rebut that presumed validity. A mere assertion is not an effective rebuttal.” *Wood v. State*, 196 Md. App. 146, 164 (2010), *cert. denied*, 418 Md. 192 (2011). As the Supreme Court explained:

We also have said that “[a]lthough in a particular case it may not be easy to determine when an affidavit demonstrates the existence of probable cause, the resolution of doubtful or

marginal cases in this area should be largely determined by the preference to be accorded to warrants,” [*United States v. Ventresca*, 380 U.S. [102,]109, 85 S.Ct. [741,] 746 [(1965)]. This reflects both a desire to encourage use of the warrant process by police officers and a recognition that once a warrant has been obtained, intrusion upon interests protected by the Fourth Amendment is less severe than otherwise may be the case.

Illinois v. Gates, 462 U.S. at 237 n.10.

The Court in *Gates* outlined the deference owed to the issuing judge under 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.” *Id.* at 236. “The substantial basis of an issuing court may be predicated on an affiant’s professional experience and inferences drawn therefrom in deciding whether probable cause exists.” *Whittington v. State*, 474 Md. 1, 32 (2021). Once the reviewing court finds a substantial basis for the probable cause determination, that court must uphold the warrant. *See, e.g., Stevenson v. State*, 455 Md. 709, 724 (2017).

The Court of Appeals “has explained that suspected possession or distribution of narcotics frequently gives rise to a reasonable inference that evidence of such activity likely will be found in the defendant’s home[.]” *Whittington*, 474 Md. at 32 (citing *Holmes v. State*, 368 Md. 506, 521-22 (2002)). However, “mere observation, documentation, or suspicion of a defendant’s participation in criminal activity will not necessarily suffice, by itself, to establish probable cause that inculpatory evidence will be found in the home.” *Holmes*, 368 Md. at 523.

We are not persuaded by Jackson’s reliance on *Agurs v. State*, 415 Md. 62 (2010), which he contends supports his argument that the warrant application failed to establish a nexus between the alleged criminal activity and the places searched. The significance of *Agurs* is primarily in its analysis of the good faith doctrine. Indeed, the *Agurs* Court noted as follows:

We apply the substantial basis standard when reviewing a judge’s decision to issue a search warrant, . . . but that is not the issue before us. There is no question that the warrant in this case should not have been issued; the Court of Special Appeals concluded as such, and we denied the State’s request to review that conclusion. The question before us is whether the officers relied in good faith on the warrant[.]

Id. at 95 (citation omitted). At any rate, the instant case is distinguishable from *Agurs*.

In *Agurs*, two detectives applied for a search and seizure warrant for two residences, five vehicles, and four individuals. *Id.* at 68. One of the two residences belonged to *Agurs*. *Id.* The affidavit in support of the search warrant made numerous allegations about narcotics dealing, including the following: (1) confidential informants identified *Agurs* as a crack cocaine supplier; (2) two controlled purchases were made from an alleged associate, Andrew Lee Tillman; (3) *Agurs* was seen meeting with another unidentified individual in a clothing store and the unidentified man was then seen leaving the store with a bulge in his pocket; (4) police saw Tillman and *Agurs* meet at an auto detail shop; and (5) *Agurs* had an extensive criminal record. *Id.* at 70-72.

The trial court granted *Agurs*’ motion to suppress evidence because “there had been no substantial basis for the issuing judge to find probable cause to search *Agurs*’ home and

vehicles.” *Id.* at 73 (footnote omitted). The Court of Appeals concluded that the affidavit in support of the warrant application “failed to assert any facts suggesting a nexus between drugs and Agurs’ home[,]” and “no reasonably well-trained police officer could have relied on the warrant[.]” *Id.* at 83, 89. Thus, the Court determined that the good faith exception did not apply. *Id.* at 99.

By contrast, the circuit court here had a substantial basis for concluding that a search of the Bowery Street apartment and the BMW would uncover evidence of Jackson’s drug distribution. For the following reasons, the warrant application establishes a nexus between those places and Jackson’s drug distribution activity.

While *Agurs* involved controlled purchases of narcotics from another target (Tillman), the application here describes a controlled purchase of suspected fentanyl from Jackson, himself. That controlled purchase occurred after Jackson drove to a location on Polk Street in a Nissan. There, the confidential informant entered the Nissan. Jackson then stopped the vehicle in a parking lot and sold suspected fentanyl to the confidential informant.

The application here provides that the affiant “maintained surveillance on 25 Bowery Street” and “observed Jackson entering and exiting multiple different vehicles over the past several months.” Moreover, the application states that drug dealers “often utilize different vehicles to avoid detection from the police” and that drug dealers “utilize motor vehicles to transport and sell illegal CDS.” Aside from the BMW that the affiant observed

Jackson operating, Jackson was also observed driving a Nissan Maxima and a Chevrolet Silverado.²

In February 2021, police observed Jackson drive from Allegany County to Baltimore City, stay for an hour, and then return to the Bowery Street apartment. The application states as follows: “Your Affiant knows that Baltimore Maryland is a source of supply for people in Allegany County, Maryland.” Once Jackson returned to the Bowery Street apartment, police observed an individual drive up and enter that residence for a brief time before the individual returned to his car and drove away. The application states that the affiant knows through “training, knowledge, and experience” that “individuals entering residences and exiting in short time periods is indicative of an individual purchasing illegal CDS.”

Moreover, “investigators observed Jackson travel to multiple known drug locations and meet multiple individuals.” The target of an investigation in Garrett County advised that “Fresh” sells heroin to the target. The investigation outlined in the search warrant application establishes that Jackson is also known as “Fresh.” The target stated that “Fresh” sells heroin at a residence in Lavale. Police corroborated that information and observed Jackson traveling by car to that Lavale residence. Lastly, the search warrant application states that the affiant checked the Motor Vehicle Administration database, which confirmed that Jackson had recently changed his address “to 25 Bowery Street Apartment B, Frostburg, Maryland[.]” For all these reasons, the nexus requirement was

² The warrant application also provides that the affiant observed Jackson “entering and exiting” a Dodge Caravan.

met, and there was a substantial basis for the issuing judge to find probable cause to search the Bowery Street apartment and the BMW.

- b. Even if the warrant application lacked a substantial basis for the court to find probable cause to search the apartment and the BMW, the good faith exception would apply.**

Even if a substantial basis did not exist to find probable cause to search the apartment and the BMW, we are persuaded that the good faith exception announced in *United States v. Leon*, 468 U.S. 897 (1984), would apply. “The application of whether the good faith exception to the exclusionary rule of the Fourth Amendment applies . . . is a legal issue that we review without deference.” *Whittington*, 474 Md. at 20.

In *Leon*, the 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 and with reasonable reliance on the warrant. *Leon*, 468 U.S. at 919-20. The *Leon* Court reasoned that “the exclusionary rule is designed to deter police misconduct rather than to punish the errors of judges and magistrates,” and thus the rule “cannot be expected, and should not be applied, to deter objectively reasonable law enforcement activity.” *Id.* at 916, 919.

The *Leon* Court recognized, however, that there are certain circumstances under which police will be unable to reasonably rely on a warrant that is later determined to have been issued improperly:

Suppression therefore remains an appropriate remedy if [1] the magistrate or judge 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 his reckless disregard

of the truth. The exception we recognize today will also not apply in cases where [2] the issuing magistrate wholly abandoned his judicial role . . . [and] no reasonably well trained officer should rely on the warrant. Nor would an officer manifest objective good faith in [3] 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. Finally, [4] depending on the circumstances of the particular case, 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 it to be valid.

Id. at 923 (cleaned up).

Jackson argues that the third exemption applies here because, according to Jackson: “Any reasonably well-trained police officer would have recognized that the facts asserted in the warrant application did not establish a nexus between the alleged drug activity and the places to be searched.” We disagree. The “third exemption was clearly intended to deal with warrant applications which were nothing beyond mere conclusions[.]” *State v. Jenkins*, 178 Md. App. 156, 203 (2008). The warrant application here included the following details that would lead a reasonable officer to believe that the warrant was valid:

- The affiant described a confidential informant’s controlled purchase of suspected fentanyl from Jackson. That controlled purchase occurred after Jackson picked up the confidential informant in a vehicle that Jackson was driving.
- The affiant described the extensive police surveillance of 25 Bowery Street. That surveillance included an observation that Jackson left Bowery Street to drive to Baltimore only to return after an hour. Police then observed that an individual made a brief visit to the Bowery Street apartment shortly after Jackson returned from Baltimore. The affiant stated that both of those observations indicated drug activity.

- The search warrant application reveals that Jackson drove three different vehicles, one of which he operated around the time of the transaction with the confidential informant. The affiant stated as follows: “Your Affiant knows that drug dealers often utilize different vehicles to avoid detection from the police,” and “Your Affiant knows that drug dealers travel to their sources of supply and often travel by vehicle to meet with their customers, in order to avoid selling CDS directly from their residence to avoid law enforcement detection.”
- The target of an investigation in Garrett County stated that “Fresh” sold heroin at a specific location in Lavale. The information in the search warrant application reveals that “Fresh” is Jackson’s alias. Police corroborated the information provided by the target when police observed Jackson driving to that location in Lavale. In addition, “surveillance investigators observed Jackson travel to multiple known drug locations and meet multiple individuals.”

Based on this information in the search warrant application, even if the warrant application lacked a substantial basis to search the apartment and the BMW, the *Leon* good faith exception would apply.

II. The probation condition that Jackson “be of good character” is impermissibly vague.

Next, Jackson argues that the probation condition that he “be of good character” is improper and must be stricken. The State concedes that this probation condition is impermissibly vague, and thus it should be stricken.

When imposing Jackson’s sentence, the court announced the following conditions of probation:

Upon [Jackson’s] release he will be placed on a period of supervised probation of five years. Conditions of that probation will be standard conditions in that the Defendant obey all laws, have no serious motor vehicle violations, and otherwise be of good behavior. Specific conditions will be that he will be subject to evaluation for any substance abuse issues. If such an evaluation indicates treatment as appropriate, he will be required to attend any treatment that is recommended by the

Office of Parole and Probation. Furthermore, he will be required to completely abstain from any illegal drug use to ensure compliance with that provision. [Jackson] will be subject to random testing, random testing at the discretion of the Office of Parole and Probation.

The Court of Appeals has held that a probation condition is impermissibly vague when it is “so amorphous that it is not reasonable to say that the defendant’s complained of action was regulated by the standard of conduct imposed by the sentencing judge, thus rendering the penalty inherently incapable of enforcement.” *Hudgins v. State*, 292 Md. 342, 348 (1982). Here, the probation condition that Jackson “be of good character” is too vague and indefinite to be enforced. As the State concedes, that condition must be stricken.

CONDITION OF PROBATION THAT APPELLANT “BE OF GOOD CHARACTER” STRICKEN. JUDGMENT OTHERWISE AFFIRMED. COSTS TO BE PAID 1/2 BY APPELLANT AND 1/2 BY ALLEGANY COUNTY.