

Circuit Court for Montgomery County  
Case No. C-15-CR-22-001129

UNREPORTED\*  
IN THE APPELLATE COURT  
OF MARYLAND

No. 1804

September Term, 2024

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DAMIEN CARLTON FISHER

v.

STATE OF MARYLAND

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Arthur,  
Tang,  
Beachley, Donald E.  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Arthur, J.

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Filed: March 31, 2026

\*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).

The State charged appellant Damien Fisher in the Circuit Court for Montgomery County with attempted murder and using a firearm in the commission of a crime of violence. Before trial, Fisher moved to suppress a handgun found by the police while executing a search warrant at an apartment that he frequented. Following a hearing, the circuit court denied Fisher’s motion. A jury convicted Fisher of attempted second-degree murder and using a firearm in the commission of a crime of violence, and the court sentenced him to a total term of 50 years’ imprisonment, with all but 20 years suspended.

In this appeal, Fisher presents a single question for our review: “Did the suppression court err in denying Mr. Fisher’s motion to suppress?”

For reasons to follow, we hold that the court did not err in denying Fisher’s motion. Accordingly, we affirm the circuit court’s judgment.

### **BACKGROUND**

This case concerns the facial validity of a search warrant that the police obtained to gather evidence in an investigation concerning Fisher’s involvement in a carjacking. The execution of that warrant led to the discovery of a handgun that had been used in yet another crime. The salient facts are as follows.

On or about August 16, 2022, Harley Penado Medina was shot outside of a residence in Montgomery County. Medina survived.

In September 2022, while the investigation into the Medina shooting was pending, the Montgomery County police located a stolen car at the Hamptons at Town Center Apartments on Crystal Rock Drive in Germantown. The police made contact with the

car's owner, who reported that the car had been taken during an armed carjacking that occurred earlier that month. The victim identified Fisher as the perpetrator.

***Police Apply for Search and Seizure Warrant***

On September 22, 2022, a Montgomery County detective applied for a search and seizure warrant for 19667 Crystal Rock Drive, Apartment 14, in Germantown, which is an address that Fisher frequented in the Hamptons Apartments complex. The affidavit accompanying the application stated that the police were looking for evidence of the crimes of kidnapping, first-degree assault, and unauthorized removal of a vehicle. That evidence included: any firearms and ammunition, firearm accessories, replica guns, and BB guns, and any cell phones associated with Fisher.

According to the affidavit, on September 8, 2022, police officers responded to the Hamptons Apartments for a report of a trespassing. Once there, the police arrested a woman and, upon searching her person, discovered a set of car keys for a rental car. The police located the car, which was parked in front of 19564 Crystal Rock Drive, and discovered that it had been rented to another person. The police made contact with that person, to whom they referred as "Victim 1." Victim 1 told the police that he did not want to be identified by name, because of his "fear of possible reprisals."

In his statement to the police, Victim 1 reported that on September 5, 2022, he drove his rental car to the Hamptons Apartments, where he intended to meet a friend. When Victim 1 arrived at the apartment complex, his friend was with another person, whom Victim 1 identified as Fisher. The friend asked Victim 1 to give Fisher a ride,

Victim 1 agreed, and Fisher got into the front passenger seat. At some point during the car ride, Fisher “became irate” and started striking Victim 1 in the face. Fisher “displayed a semiautomatic handgun, pointed it at Victim 1, and instructed him to keep driving back to the Hamptons Apartments.”

According to affidavit, Victim 1 stated that, when they returned to the apartment building, Fisher brandished a gun, “took the keys[,]” and forced Victim 1 to get out of the car and accompany him to a friend’s apartment. Fisher and Victim 1 eventually returned to the rental vehicle, and Fisher told Victim 1 to drive to a nearby hotel, where the two got a hotel room. Once inside the hotel room, Fisher again pointed the gun at Victim 1, “threatening to take his life and telling him that it was a good day to die.”

After a short time, Fisher forced Victim 1 to get back into the rental car and drive to the Hamptons Apartments. At the apartment complex, Victim 1 managed to get away from Fisher and flee the scene, leaving the keys and car behind. Victim 1 recovered the car and keys from the police a few days later.

Victim 1 informed the police about a separate incident involving Fisher that occurred on September 13, 2022, several days after Victim 1 had recovered the rental car. On that occasion, Victim 1 drove his rental car to the Hamptons Apartments, where he inadvertently ran into Fisher. Victim 1 accompanied Fisher to a nearby apartment complex and went into one of the apartments. Once there, Fisher told Victim 1 that he needed to get something out of the rental car. When Victim 1 refused to give Fisher the keys, Fisher struck Victim 1 in the ribs and demanded the keys. Fisher took the keys,

went back to the rental car, and returned to the apartment a short time later. After a time, Victim 1 and Fisher got back in the rental car, and Fisher drove to various places. Fisher eventually drove back to the Hamptons Apartments, where he gave Victim 1 the keys. Victim 1 did not see Fisher again after that incident.

According to the affidavit, Victim 1 gave the police Fisher’s cell phone number, and the police obtained certified historical location data for that number. That data showed that “Fisher’s cellphone was in fact in many of the places where Victim 1 said he was at times consistent with his version of events.”

The affidavit indicated that Victim 1 had told the police “that Fisher stays in the Hamptons at Town Center Apartments on Crystal Rock Drive in Germantown,” but that “he did not know the exact apartment number.” Over the next several days, the police conducted covert surveillance at the Hamptons Apartments.

On September 19, 2022, at approximately 9:11 p.m., an officer “observed Fisher exit 19667 Crystal Rock Drive, Apartment 14.” Approximately 30 minutes later, the officer observed Fisher reenter the apartment.

On September 21, 2022, at approximately 3:15 a.m., an officer “observed Fisher exit [Apartment 14] and then immediately go back inside.”

In addition to making those observations, the police reviewed Fisher’s cell phone data and discovered “that his cellphone most frequently hits off of towers in the area of Crystal Rock Drive.”

***Search and Seizure Warrant Issued and Executed***

On September 22, 2022, upon reviewing the warrant application, a circuit court judge issued a search and seizure warrant for Apartment 14. The following day, the police executed the warrant and recovered a loaded, nine millimeter handgun. Fisher was arrested at the scene. A ballistics analysis of the handgun revealed that bullets and cartridge casings test-fired from the handgun were consistent with bullets and cartridge casings recovered from the scene of the shooting of Harley Medina.

***Fisher Charged in Two Separate Cases***

The State charged Fisher in two separate cases. In Case No. C-15-CR-22-001129, which involved the shooting of Medina, the State charged Fisher with attempted murder and using a handgun in the commission of a crime of violence. In Case No. C-15-CR-22-001131, which involved the carjacking of Victim 1, the State charged Fisher with armed carjacking, assault, kidnapping, and various weapons offenses.

***Fisher Files the Same Motion to Suppress in Both Cases***

In both cases, Fisher filed identical motions to suppress the handgun found in Apartment 14. Fisher argued that the application for the search and seizure warrant failed to articulate a sufficient factual predicate to establish probable cause to believe that a handgun would be found at the apartment.

On April 4, 2023, the court heard argument on Fisher’s motion to suppress in the carjacking case, Case No. C-15-CR-22-001131. At the conclusion of that hearing, the

court denied the motion. On April 18, 2023, Fisher pleaded guilty to illegal possession of a regulated firearm, and the State dismissed the remaining counts. Fisher did not appeal.

On July 25, 2023, the court heard argument on Fisher’s motion to suppress in the attempted murder case, Case No. C-15-CR-22-001129. At that hearing, the State argued that Fisher was barred from relitigating the merits of the motion because an identical motion had already been decided in Case No. C-15-CR-22-001131. The State also argued that the warrant was facially valid.

The court denied Fisher’s motion on two independent grounds. First, the court found that Fisher was collaterally estopped from relitigating the merits of the motion, which had already been decided in Fisher’s other case. Second, the court found that the affidavit contained sufficient facts upon which the issuing court could find probable cause to believe that a firearm would be found at Apartment 14. The court noted that Victim 1 positively identified Fisher as the person who carjacked and kidnapped him and that Victim 1 stated that Fisher had brandished a handgun in committing those crimes. The court found that handguns are “personal items” that people ordinarily “would have in their home with them.” The court also found it to be unlikely that Fisher would have disposed of the gun in the 17 days between when he first threatened Victim 1 and when the circuit court judge issued the warrant.

The case proceeded to a jury trial. The jury convicted Fisher of attempted second-degree murder and use of a handgun in the commission of a crime of violence. This timely appeal followed.

## STANDARD OF REVIEW

“When reviewing a circuit court’s denial of a motion to suppress evidence, we are ‘limited to the record developed at the suppression hearing.’” *Rodriguez v. State*, 258 Md. App. 104, 114 (2023) (quoting *Moats v. State*, 455 Md. 682, 694 (2017)). “We assess the record and view the evidence ‘presented at the [suppression] hearing, along with any reasonable inferences drawable therefrom, in a light most favorable to the prevailing party.’” *Borges v. State*, 262 Md. App. 538, 546 (2024) (quoting *Davis v. State*, 426 Md. 211, 219 (2012)). We accept the court’s first-level findings of fact unless they are clearly erroneous, but we give no deference to its legal conclusions. *Ingersoll v. State*, 262 Md. App. 60, 83-84 (2024). “Where a party raises a constitutional challenge, ‘we must make an independent constitutional evaluation by reviewing the relevant law and applying it to the unique facts and circumstances of the case.’” *Tomanek v. State*, 261 Md. App. 694, 710 (2024) (quoting *State v. Johnson*, 458 Md. 519, 532-33 (2018)).

## DISCUSSION

### A.

The Fourth Amendment to the United States Constitution prohibits “unreasonable searches and seizures.” That prohibition “is generally satisfied when law enforcement officers obtain a warrant authorizing the search in question.” *State v. Copes*, 454 Md. 581, 618 (2017). When “a search is conducted pursuant to a warrant, the warrant is presumed valid, and the burden of proving the unlawfulness of the search shifts to the defendant.” *Tomanek v. State*, 261 Md. App. at 711-12. The defendant may satisfy that

burden by showing that “the warrant, on its face, fails to comply with the basic requirements of the Fourth Amendment.” *Id.* at 712. One of those requirements is that the warrant must be based on probable cause. *Id.*

“[F]or a search warrant to be based on probable cause, ‘the affidavit in support of [the] search warrant, viewed in its totality, need only provide a fair probability that contraband or evidence of a crime will be found in a particular place.’” *Id.* (quoting *Stevenson v. State*, 455 Md. 709, 723 (2017)) (further quotation marks omitted).

“[B]ecause reasonable minds may differ on the question of probable cause, a magistrate’s determination that a particular affidavit established probable cause to justify a search is afforded great deference.” *Id.* For that reason, we do not review a magistrate’s probable cause determination *de novo*; rather, we look to see if the magistrate had a “substantial basis” for concluding that the search in question would uncover evidence of a crime. *State v. Johnson*, 208 Md. App. 573, 584-86 (2012). The “substantial basis” standard involves “something less than establishing probable cause in the context of reviewing warrantless police activity[]” and is “less demanding than even the familiar ‘clearly erroneous’ standard by which appellate courts review judicial factfinding in a trial setting.” *Id.* at 588-89 (citations omitted).

In cases such as this one, wherein a defendant has challenged a search warrant on the grounds that the affidavit failed to establish a sufficient nexus between the residence being searched and the item sought by the police, direct evidence of contraband in the residence is not necessary for the search warrant to be valid. *See id.* at 598-617

(discussing cases). “[R]ather, probable cause may be inferred from the type of crime, the nature of the items sought, the opportunity for concealment, and reasonable inferences about where the defendant may hide the incriminating items.” *Holmes v. State*, 368 Md. 506, 522 (2002). Furthermore, “[t]he likelihood that certain types of property will be retained by a suspect for extended periods of time does not depend upon the observation of suspicious activity in or near the suspect’s residence.” *State v. Johnson*, 208 Md. App. at 617.

In *Mills v. State*, 278 Md. 262, 280 (1976), for instance, the Court affirmed the denial of a suppression motion in which the defendant claimed that the search of his home was unreasonable because the warrant affidavit was devoid of any facts tending to show that the evidence being sought, a hunting knife allegedly used during a rape perpetrated away from the defendant’s home, would be located in his home. *Id.* The Court noted that other courts have upheld searches even though the nexus between the items seized and the place searched “rested not on direct observation, as in the normal search-and-seizure case, but on the type of crime, the nature of the missing items, the extent of the suspect’s opportunity for concealment, and normal inferences as to where a criminal would be likely to hide stolen property.” *Id.* at 277 (quoting *United States v. Lucarz*, 430 F.2d 1051, 1055 (9th Cir. 1970)). The Court concluded that, because the defendant’s home “was a probable place for secreting objects such as a hunting knife[,]” the circuit court did not err in denying the motion to suppress. *Id.* at 280.

Similarly, in *State v. Ward*, 350 Md. 372, 378 (1998), the Court held that the search of the defendant’s home was proper even though the warrant affidavit contained no direct evidence that the items being sought, a handgun and ammunition used in a murder perpetrated away from the defendant’s home, would be found in the defendant’s home. In so holding, the Court highlighted several factors as supporting a reasonable inference that the handgun was likely to be found in the defendant’s home: “a particular kind of weapon was used in the crime; there was evidence linking the defendant to the crime; the weapon was of a kind likely to be kept, and not disposed of, by the defendant; [and] when arrested shortly after the crime, the defendant was not in direct possession of the weapon[.]” *Holmes v. State*, 368 Md. at 521 (discussing *Ward*).

Applying those principles to the instant case, we hold that the warrant affidavit provided a “substantial basis” for the circuit court judge who issued the warrant to conclude that the search in question would uncover evidence of a crime. First, the affidavit supported a reasonable inference that Fisher lived or at least frequently stayed at Apartment 14 on September 22, 2022, when the warrant application was submitted. Victim 1 told the police that Fisher lived in the Hamptons Apartments, where Apartment 14 was located. In addition, the incidents involving Victim 1 and Fisher, which occurred on September 5 and September 13, 2022, both began and ended at the Hamptons Apartments. When the police conducted surveillance at those apartments on September 19, 2022, they saw Fisher exiting Apartment 14 at 9:11 p.m. and returning to the apartment 30 minutes later. Three days later, the police again conducted surveillance at

the apartments and again saw Fisher exiting Apartment 14, this time at 3:15 a.m., and going back inside. Given the evidence establishing Fisher’s residency at the Hamptons Apartments and the observations of Fisher exiting and entering Apartment 14 at odd hours, one could reasonably infer that Fisher resided at Apartment 14 when the warrant application was submitted.

Likewise, one could reasonably infer that a handgun would be found in Apartment 14. Approximately two weeks before the warrant application was submitted, Victim 1 positively identified Fisher as the person who carjacked him at gunpoint. According to Victim 1, that incident was not an isolated attack, but rather involved a continuing course of conduct, during which Fisher brandished the handgun multiple times and in multiple locations over an extended period. And, as noted, the incident began and ended at the Hamptons Apartments, where Fisher lived. Victim 1 gave no indication that Fisher had disposed of the handgun either during or following the incident. To the contrary, Victim 1 made clear that he feared “possible reprisals” were he to be identified. Thus, one could reasonably infer that Fisher maintained possession of the handgun during the 17-day period between when the carjacking occurred and when the warrant application was submitted. Because the handgun, like the weapons at issue in *Ward* and *Mills*, was allegedly used in the commission of a violent crime to which Fisher was definitively linked, and because the handgun was the kind of item that Fisher was likely to keep or retain, the circuit court had a substantial basis to conclude that the handgun would be found through a search of what appears to have been Fisher’s residence.

In an effort to distinguish his case from *Ward* and *Mills*, Fisher notes that, in those cases, the defendant’s home address was undisputed, whereas in his case, he says, the information in the affidavit did not establish that he lived at Apartment 14. Fisher also notes that in those cases the searches occurred only a few days after the crimes were committed, and the defendants had already been arrested and found not to possess the weapons at issue. In his case, Fisher argues, the search occurred more than two weeks after the crime, and the police had no information that he was in direct possession of the handgun at the time of the search. Fisher contends that, because of those differences, the reasoning used to establish probable cause in *Ward* and *Mills* is inapplicable here.

We are not persuaded by Fisher’s arguments. The core holding of *Ward* and *Mills* is that direct evidence of the existence of a weapon in a home is not required to establish probable cause for a search warrant. *Holmes v. State*, 368 Md. at 522. Rather, probable cause may be inferred from the attendant circumstances, such as the nature of the crime and weapon at issue, the potential for concealment, and any reasonable inferences about where the weapon may be hidden. *Id.* Here, the attendant circumstances more than sufficed to establish probable cause, despite any factual dissimilarities between this case and *Ward* or *Mills*.

In any event, the alleged factual dissimilarities cited by Fisher do not sway the pendulum in his favor. As noted, the affidavit contained sufficient evidence establishing Apartment 14 as Fisher’s residence. “[T]he quantum of facts needed to show the connection between the suspect and the purported place of occupancy is hardly

daunting[.]” *Braxton v. State*, 123 Md. App. 599, 630 (1998), and that connection is ordinarily made via “an averment tying the suspect to the targeted location on the basis of surveillance, a check of utility records, verification with a landlord, an address from the phone book, or the like.” *Id.* Such a connection was made here. That Fisher’s residency may or may not have been conclusively established is immaterial.

Furthermore, the length of time between the crime and the search is not prohibitive. “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[.]” *State v. Johnson*, 208 Md. App. at 619 (citations omitted). Those variables include the character of the crime and criminal and the nature of the place to be searched and thing to be seized. *Id.* Here, the item to be seized, a handgun, had continuing utility, and there was no evidence that Fisher disposed of the gun, or had reason to, after the first incident with Victim 1. During that incident, Fisher brandished the gun multiple times and in multiple places over an extended period of time, and Fisher was picked up from and dropped off at the Hamptons Apartments before and after the incident. Given the nature of the weapon and Fisher’s possession of the weapon while he traveled to and from the Hamptons Apartments, it was reasonable to infer that Fisher kept the gun in Apartment 14 at the time of the crime and that he continued to keep the gun at the apartment up to the time of the search.

In sum, we hold that the affidavit in support of the search warrant provided a fair probability that a handgun would be found at Apartment 14. Accordingly, the court did not err in denying Fisher’s motion to suppress.

**B.**

Even if the court erred (which it did not), we would not reverse the convictions, because the police officers were acting in “good faith” in executing the warrant.<sup>1</sup> Under the good faith doctrine, “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 v. State*, 481 Md. 423, 446 (2022). A police officer’s reliance on a search warrant would be considered unreasonable in only four circumstances:

(1) the magistrate was misled by information in an affidavit that the officer knew was false or would have known was false except for the officer’s reckless regard for the truth;

(2) the magistrate wholly abandoned [the] 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; [or]

(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 cannot reasonably presume it to be valid.

*See Patterson v. State*, 401 Md. 76, 104 (2007).

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<sup>1</sup> Although the circuit court did not decide this issue, the issue was raised at the suppression hearing, and the record contains sufficient evidence for us to decide the issue. Accordingly, we may affirm on those grounds. *See Martin v. State*, 267 Md. App. 556, 574 (2025).

Here, nothing in the record suggests that the circuit court judge was misled or that she abandoned her detached and neutral judicial role. Furthermore, for the reasons given in Part A, the warrant and accompanying affidavit were not so lacking in probable cause as to render belief in its existence entirely unreasonable, nor was the warrant so facially deficient in its particularity that the executing officers could not have reasonably presumed the warrant to be valid. Accordingly, we conclude that the police acted in good faith in relying on the warrant in executing the search of Apartment 14.

**JUDGMENTS OF THE CIRCUIT COURT  
FOR MONTGOMERY COUNTY  
AFFIRMED; COSTS TO BE PAID BY  
APPELLANT.**