Circuit Court for Howard County
Case Nos. 13-K-15-56008; 09; 18; 19

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

Nos. 1564 & 1565

September Term, 2016

LEDELL MAXWELL PADMORE

v.

STATE OF MARYLAND

Woodward, C.J.,
Friedman,
Beachley,

JJ.

Opinion by Friedman, J.

Filed: December 7, 2017

A jury sitting in the Circuit Court for Howard County, found appellant, Ledell Padmore, guilty of three counts of armed carjacking, one count of attempted armed carjacking, four counts of armed robbery, three counts of kidnapping, four counts of conspiracy to commit armed carjacking, four counts of conspiracy to commit armed robbery, four counts of conspiracy to commit kidnapping, four counts of second degree assault, and four counts of theft of property worth less than one-thousand dollars, for his participation in four separate incidents that occurred within a few days of each other, and within a relatively small geographic area. This timely appeal followed.

QUESTIONS PRESENTED

Padmore presents the following questions for our consideration, which we have slightly rephrased:

1. Did the trial court err in denying Padmore's motion to suppress evidence seized pursuant to a search and seizure warrant?

2. Did the trial court err in in granting the State's motion to join the charges against Padmore?

For the reasons that follow, we affirm.

FACTUAL BACKGROUND

As indicated above, Padmore was found guilty, in a single trial, of various offenses for his participation in four separate, but factually similar, incidents, occurring over the span of a few days, where he and another man would approach a person who was sitting in a parked vehicle and demand money at gunpoint. This appeal requires a close look at the incidents, which we recount here.

Victim I

On October 6, 2015, while parked outside her home on Cedar Lane in Columbia, Maryland, Stacey Benjamin noticed two men walking in the parking lot wearing dark clothing. Shortly thereafter, one of them tapped on her driver's side window with a black handgun, and the other one entered her vehicle and sat in the front passenger seat. They demanded "everything she had on her" and she gave them her debit card, about $20 in cash, and her PIN. They took her phone and shut it off, and ordered her to lie face down in the backseat.

Next, they drove her car to various ATMs attempting to withdraw her money, eventually withdrawing $120. While they continued to drive around, one of the men set up some form of meeting over the phone. The men made a stop where the passenger left the vehicle for a few minutes before returning. Benjamin could not see what the pair were doing, but after the passenger returned to the car, she heard them handling a plastic bag and discussing "how they were gonna split whatever they had." She said "they were splitting it and weighing it and had a discussion about that." She then smelled something "smokey" with a "chemical type odor."

Later, the men dropped her off at the top of a hill near her home and told her that her car could soon be found at the bottom of that hill with all of her belongings in it. They told her to not contact the police, and issued a veiled threat to her by telling her that they knew what she looked like, but she did not know what they looked like. After she looked for her car and realized that she could not find it, she ran to Howard County General

Hospital and called the police. Her car was found by the police nearby with all of her belongings in it, and the keys in the driver's side sun visor.

One of her attackers, the one who initially tapped on her window with the pistol, was dark-skinned and tall. He wore camouflage cargo pants, a dark hoodie, "wooly" gloves, and a dark scarf around his face. The other man was bigger and lighter skinned. He wore a dark zipped-up hoodie, similar gloves, glasses with a dark colored frame, and also had a scarf covering his face. She never identified Padmore as one of her attackers, but she said that she heard one of the men refer to the other one as "Low."[1]

Victim II

On October 9, 2015, while sleeping in her car in front of her home on Little Patuxent Parkway in Columbia, Maryland, Sayeda Esmaell-Crozier was awakened sometime around 4:00 a.m. by a tall dark-skinned man knocking on her window. Because she thought she knew the person knocking, she unlocked her doors. A light-skinned, heavier man was at her passenger side door. The dark-skinned man pulled on her, hit her on the jaw, and displayed a black pistol. After the struggle, she climbed her way into the back seat. The men demanded cash and credit cards. She said that she did not have any money, and then she began screaming. The lighter-skinned man took her purse, which contained a wallet. The men then ran away.

Esmaell-Crozier said the dark-skinned assailant who came from the driver's side of her vehicle wore a black hoodie and covered his face with a bandana. The lighter-skinned,

[1] At trial, Garfia Pugh testified that Padmore often went by "Low" or "Lo."

passenger-side assailant also covered his face with a bandana. The Howard County Police, using a tracking dog, tracked a scent from her car to the back door of an apartment building at 12290 Green Meadow Drive in Columbia, Maryland.

Victim III

On October 10, 2015, while he sat waiting in his vehicle for his girlfriend on Hickory Ridge Road in Columbia, Maryland, Kyle Radford noticed two men walk past his vehicle several times around 10:30 p.m. He became suspicious of the men when they kept looking into his vehicle and, as a result, he moved to a different parking space.

Eventually one of the men tapped on the driver's side window with a pistol. He then pointed the gun at Radford and told him to unlock the car, get out of the front seat, and get into the back seat. He complied. The man with the gun sat in the driver's seat and the other man sat in the passenger seat. The man in the passenger seat turned on the interior lights and then demanded Radford's wallet and phone. The pair then began rummaging through Radford's car. The man in the passenger seat shut off Radford's phone. Radford was ordered to lie face down in the back seat.

Radford heard the man in the passenger seat make a phone call and say "Yo, it's L. Meet me at the spot." The men drove around the area and made three stops. Before the second stop, Radford overheard a second phone call where one of the two men said "Yo, I'm on my way just meet me at the spot." Radford smelled cigarette smoke in the car after this stop. During the third stop, the passenger got out of the car and returned about five or ten minutes later. Radford heard plastic bags rustling after the passenger returned to the car.

Eventually, the men returned to an area near where the episode began and told Radford to get out of the car. At some point along the trip, the men photographed Radford's identification card and threatened him to not go to the police. They also told him where to find the car, and told him that his wallet, his phone and his keys would all be in the car. They said the keys would be under the driver's side sun visor. Radford found his vehicle where the men told him he would find it. His phone and wallet were in it, and the keys were in the driver's side sun visor.

Both men were African American and both wore dark clothing and gloves. The man with the gun concealed his identity with a black and white checkered scarf, and the other wore a ski mask.

Victim IV

On October 11, 2015, Kyle Johnson parked his car at his home on Blue February Way in Columbia, Maryland, a little after 6:00 a.m., and noticed a man wearing a winter sweater walking down a hill near his car. Someone then knocked on his window with the butt of a handgun. The gunman ordered Johnson out of the car and into the back seat. He told Johnson to lay face down and put his hands on his head. Johnson complied. The man with the gun got in the driver's seat, and another man got in the front passenger's seat. After they drove off, the men asked for Johnson's wallet and PIN. The wallet had about $110 in cash in it.

They made several stops, including one at a drive-through ATM where the men withdrew $700 from Johnson's account. After that, Johnson overheard a phone call the passenger had made "talking about a meeting spot … a gas station that was near another

gas station." When they arrived at a gas station, the driver exited the vehicle. After the driver returned about five to ten minutes later, Johnson heard the crinkling of a plastic bag, and noticed that the two men were smoking cigarettes. The men photographed Johnson's identification card and threatened him to not go to the police because "we know where you live," and "what you look like."

Eventually, the men stopped and told Johnson to crawl out of the car, stand up and not look at the car as they drove away. They had previously told him where to find his car. When he found his car, his cell phone, wallet and keys were in it. His keys were in the driver's side sun visor. Johnson said both men wore masks and gloves. He said the passenger was wearing a sweater vest and a hat, was larger than the driver, and was darker skinned.

The Investigation

In the course of their investigation into the four incidents, the police obtained surveillance photographs and video recordings from ATMs, and surveillance video from Benjamin's neighbor. On October 8, the police used the information they had gathered to that date to issue a press release, and a social media post, containing copies of the surveillance photographs. After the police distributed those photographs, and after the police spoke with Garfia Pugh, Taylor Pugh's wife, the police began to suspect Taylor Pugh and Padmore. Thereafter, the police sought and obtained a search warrant for apartments B and G in an apartment building located at 12280 Green Meadow Drive in Columbia, Maryland. Taylor Pugh resided in apartment G, and Padmore resided in apartment B.

On October 13, 2015, police officers searched apartments B and G. In the search of Padmore's apartment, the police recovered Esmaell-Crozer's purse and wallet, Benjamin's cut up Wells Fargo bank card, a black BB gun, a cell phone, and clothes similar to those one of the assailants was observed wearing.

DISCUSSION

I. The Warrant

Padmore claims the trial court erred in denying his motion to suppress evidence seized pursuant to a warrant. He argues that the judge who issued the warrant lacked a substantial basis to conclude that it was supported by probable cause. He contends that the warrant affidavit failed to provide a nexus between the crime alleged and the "place" the police sought to search, i.e., Padmore's apartment. Padmore also argues that the good-faith exception to the exclusionary rule does not apply because no reasonable police officer would have had reasonable grounds to believe that the warrant was properly issued, given that, according to Padmore, the warrant application contained no indication of a nexus between the crimes and Padmore's apartment.

The State responds that the affidavit in support of the warrant to search the apartment supplied the requisite substantial basis for the suppression court to uphold the warrant. The State further argues that, even if the warrant were deemed invalid, because the officers relied in good-faith on the warrant, the evidence should not be suppressed.

The Fourth Amendment to the United States Constitution prohibits the issuance of any warrant except "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. The Court of Appeals recently noted that:

> [Probable cause 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) (cleaned up).[2] The Court of Appeals added that:

> "So long as the magistrate had a substantial basis for concluding that a search would uncover evidence of wrongdoing, the Fourth Amendment requires no more. If that "substantial basis" standard is met, then any court called upon thereafter to review the warrant is required to uphold it.

Stevenson v. State, 455 Md. 709, 723–24 (2017) (cleaned up).

In *Holmes v. State*, 368 Md. 506, (2002) the Court of Appeals addressed the requirement that a warrant application establish an adequate nexus between a suspect's home and criminal activity when the criminal activity occurs away from the home. While no direct inculpatory activity has to be observed at the home, the Court found, there must be some reason to infer that evidence will be found there. *Id*. at 522. When there is no substantial basis for a warrant, evidence seized must, generally, be excluded. *Id.* at 524.

The exclusion of evidence, however, is not an appropriate remedy when the police rely in good faith on a warrant. *Connelly v. State*, 322 Md. 719, 735 (1991). Good faith is presumed, except under certain, enumerated circumstances. *Patterson v. State*, 401 Md.

[2] *See* Jack Metzler, *Cleaning Up Quotations*, J. APP. PRAC. & PROCESS (forthcoming 2018), https://perma.cc/43XE-96W5.

76, 104 (2007). Padmore challenges the sufficiency of the affidavit to demonstrate a nexus with his residence, so we are concerned with the exception when:

> [T]he warrant was based on an affidavit that was so lacking in probable cause as to render official belief in its existence entirely unreasonable.

Id. "Where the defect in the warrant is not readily apparent to a well-trained officer, or, where the warrant is based on 'evidence sufficient to create disagreement among thoughtful and competent judges as to the existence of probable cause,' then the good faith exception will apply." *Greenstreet v. State*, 392 Md. 652, 679 (2006) (quoting *U.S. v. Leon*, 468 U.S. 897, 926 (1984)).

Turning to the instant case, we must determine whether the judge who issued the search warrant had a substantial basis for finding probable cause to believe that fruits, evidence, or instrumentalities of a crime would be found inside Padmore's apartment located at 12280 Green Meadow Drive, Apartment B, Columbia, Maryland, and if not, whether the police relied on the warrant in good faith. The affidavit in support of the search warrant application recounted the facts of the four incidents in a substantially similar way as they were testified to at trial. In addition, the affidavit supplied the following specific information supporting a finding of probable cause and connecting Padmore's apartment to those offenses, not all of which was testified to at trial.

After the October 9, 2015, robbery, a "Howard County Police canine unit responded and conducted a track. The trail was followed from the location of the robbery to the end point of the rear of 12290 Green Meadow Drive, Columbia, Howard County, Maryland 21044." Padmore's apartment "is geographically located less than .35 miles from the

locations where each vehicle was left by the suspects." During the October 6, 2015, incident "[o]ne suspect referred to the other suspect 'Lo' approximately three times."

On October 12, 2015, police officers responded to 12280 Green Meadow Drive, Apartment G for a domestic incident between Garfia Pugh and her husband Taylor Pugh. Garfia Pugh told the police that she viewed the social media posting containing a surveillance photograph that the police published on October 8, 2015 and that she "immediately knew" the photograph was of Taylor Pugh. Garfia Pugh also told the police that Taylor Pugh "has an acquaintance who she knows by the name of 'Lo'" who lived with his wife, Sherre, in the same building. She described where "Lo" lived by saying that he lived "on the lower level" … "[w]hen you enter the building, go down the stairs, the far door on the left."

A police officer who responded to the domestic incident between Garfia Pugh and Taylor Pugh "reported when they were leaving the building they saw a male enter the building and walk down the stairs to one of the basement apartments. Upon a check of a known photograph of Ledell Padmore, [the officer] noted the male he saw enter the building and walk downstairs was in fact Ledell Padmore."

After the police determined that the apartment Garfia Pugh described was 12280 Green Meadow Drive, Apartment B, they learned that Padmore had provided that address to the police earlier that year, on July 9, 2015, and that a person matching his description had been seen coming and going from that apartment. The police officer concluded that "[i]n summary, [the police have] discovered through extensive investigation that Ledell Maxwell Padmore is a known and current resident of the above described premise."

With respect to the police officer's belief that evidence associated with the incidents could be found in Padmore's apartment, the police officer stated:

> Based upon the aforementioned knowledge, training, experience, and participation in other investigations involving robberies and assaults, your affiant knows that:
>
> - Individuals involved in the aforementioned types of criminal activity will often keep some or all of the property taken in those cases, will maintain it on their persons, in their residences, on their property, to be converted for their own use or to hide from law enforcement until they dispose of the property.
>
> - Individuals involved in such crimes are known to secrete contraband, proceeds of stolen property sales, and record/receipts of these transactions in secure locations within their residence for ready access and to conceal them from law enforcement agencies.
>
> - Individuals involved in such crimes often keep items for nothing more than a trophy of the crime committed. They also keep notes, maps, letters and/or diagrams of their crimes.
>
> Your affiant aver[s] that an extensive and detailed evaluation of the total circumstances, as related above, taken into context with the police training and experience in criminal investigations of your affiant, would lead a reasonable person to believe that probable cause exists and the items described on the face of this warrant are being concealed in or on the premises described on the face of this warrant.

In denying Padmore's motion to suppress evidence, the court said the following:

> [Garfia] Pugh, said a known associate of her husband is a dark-skinned male who goes by the name Lo. He lives in the same apartment building. His wife's name is Sherry. And the building is in close proximity to where the defendants let the

> cars off, where they told the victims to go. The items that they took, then, would be secreted in either Pugh or Padmore's apartment … .
>
> But, even if Judge Brown did not have substantial basis in finding probable cause to issue the search warrant, there's nothing egregious in the warrant that would explain to an experienced police officer that there's just no way this warrant should be relied on. … I find that Judge Brown had substantial basis, that she found probable cause to issue the warrant. And even if she didn't, the police officer would not be on notice, an experienced police officer, that the warrant was so devoid of information that they should not have relied on it.
>
> The police officer is experienced. The warrant is reasonable to have relied on. … therefore, motion to suppress, to invalidate the search warrant, suppress the search warrant and any of the items or fruits taken from the premises based on the search warrant is denied.

We agree with the State that, based on the contents of the affidavit in support of the warrant application, the judge who signed the warrant had a substantial basis for finding probable cause to believe that fruits, evidence, or instrumentalities of a crime could be found inside Padmore's apartment.[3] Information in the affidavit revealed that "Lo" was one of the robbers, Taylor Pugh was one of the robbers, "Lo" and Taylor Pugh were acquaintances, "Lo" and Taylor Pugh lived in the same apartment building, a police canine tracked one of the robberies to an area close to that building, and the vehicles in each of the four incidents were left within 0.35 miles of that building. We hold that the judge who signed the warrant had a substantial basis to conclude that there was "a fair probability that

[3] The Court also discussed the experience of the Judge who signed the warrant. We note that the experience of the judge who signs a warrant is not a relevant factor to consider.

contraband or evidence of a crime will be found" in Padmore's apartment. *Gates*, 462 U.S. at 238. The information supplied a sufficient nexus between at least one of the robberies and Padmore's apartment.

Nevertheless, even if the warrant application were deficient as Padmore suggests, we agree with the court that the "good faith" exception applies. As noted above, the officers are presumed to have acted in good faith, unless an enumerated exception applies. Given that the warrant application demonstrated that Padmore was "Lo," that Padmore participated in the crimes, the close proximity of Padmore's apartment to the offenses, and a canine track to a place very near Padmore's apartment, the police officers who executed the warrant "acted in objective good faith with reasonable reliance on the warrant." *McDonald v. State*, 347 Md. 452, 467–68 (1997).

II. Joinder

Prior to trial, the State moved for a joint trial of all four of the previously discussed incidents.[4] After holding a hearing on the State's motion, the circuit court granted it and Padmore was tried, in a single trial, for all four crimes arising from all four incidents. Padmore claims the trial court erred in in granting the State's motion to join the charges.

In pertinent part, Md. Rule 4-253(c) provides as follows:

> If it appears that any party will be prejudiced by the joinder for trial of counts, charging documents, or defendants, the court may, on its own initiative or on motion of any party, order separate trials of counts, charging documents, or defendants, or grant any other relief as justice requires.

[4] Padmore and his partner, Pugh, were tried separately.

Additionally, the test for determining whether joinder is appropriate is as follows:

> (1) is evidence concerning the offenses or defendants mutually admissible; and (2) does the interest in judicial economy outweigh any other arguments favoring severance? If the answer to both questions is yes, then joinder of offenses or defendants is appropriate.

Conyers v. State, 345 Md. 525, 553 (1997). If the mutual admissibility requirement is met, the court then weighs the risk of prejudice to the defendant against "judicial economy and the avoidance of the inconvenience of duplicate trials." *Bussie v. State*, 115 Md. App. 324, 332 (1997). The determination of mutual admissibility is a legal determination which is afforded no deference on appeal, but the weighing of prejudice is reserved to the sound discretion of the trial court and will not be disturbed absent an abuse of the that discretion. *Wieland v. State*, 101 Md. App. 1, 10-11 (1994).

> In the context of joinder/severance … the subject matter of … separate charges against the same defendant is, by definition, "other crimes." To determine mutual admissibility, therefore, the judge has to look to the circumstances under which evidence of "other crimes" would be admitted in the trial of a single defendant on a single charge.

Solomon v. State, 101 Md. App. 331, 341–42 (1994). Turning to the instant case, the court granted the State's motion to join the charges, observing that the similar facts in each incident made the evidence mutually admissible as to each, and that "any potential prejudice d[id] not outweigh the judicial economy."

> Evidence of other crimes, wrongs, or acts … is not admissible to prove the character of a person … to show action in conformity therewith. Such evidence, however, may be admissible for other purposes, such as proof of motive,

> opportunity, intent, preparation, common scheme or plan, knowledge, identity, or absence of mistake or accident.

Md. Rule 5-404(b). One permissible use of this evidence is to prove identification by demonstrating a *modus operandi*. *State v. Faulkner*, 314 Md. 360, 368 (1989). "[T]o establish *modus operandi*, the other crimes must be so nearly identical in method as to earmark them as the handiwork of the accused. … The device used to commit the crime must be so unusual and distinctive as to be like a signature." *Id.* at 638–39 (cleaned up).

We agree with the State that the circuit court correctly joined the charges against Padmore. As the State correctly points out, it is not any one of the details that were common to one or more of the crimes that identified Padmore, it was the combination of various factors occurring four times, in a short period of time, in a small area. We believe that the circuit court correctly found these four crimes to have been carried out in such an unusual and distinctive way to establish *modus operandi*, and therefore were relevant to the identity of the perpetrators.

In support of the finding that the evidence was relevant to identity, the circuit court noted that the suspects tapped on the window of each of the cars, with the exception, perhaps, of one case; all the events occurred within five days; they all occurred within a small geographic location; each victim was alone in his or her car and told to get in the back seat of the car; in the completed robberies, the suspects drove them around; everything involved a presumed drug deal; telephone calls were made to set up drugs; the victims whose cars were driven, were returned to Columbia and told where there car would be, the keys were in the driver's side sun visor. This is sufficient to show mutual admissibility.

After correctly finding the evidence mutually admissible, the circuit court also ruled that the potential for any unfair prejudice did not outweigh the need for judicial economy. As noted above, the weighing of prejudice is reserved to the sound discretion of the trial court and will not be disturbed absent an abuse of that discretion. *Wieland*, 101 Md. App. at 10-11. "[A] decision is an abuse of discretion when it is well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable." *Norwood v. State*, 222 Md. App. 620, 643 (2015) (cleaned up).

> If a judge has determined that the evidence concerning separate offenses … is mutually admissible then the evidence would have been admissible against the defendant even if severance had been granted. Thus … any judicial economy that may be had will usually suffice to permit joinder unless other non-evidentiary factors weigh against joinder.

Conyers, 345 Md. at 556. We perceive no abuse of discretion in finding that the need for judicial economy in the present case outweighed any risk of unfair prejudice to Padmore.

JUDGMENTS OF THE CIRCUIT COURT FOR HOWARD COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.