Circuit Court for Calvert County
Case No. C-04-CR-21-000205

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 2109

September Term, 2022

JOSHUA RYAN GANTT

v.

STATE OF MARYLAND

Graeff,
Ripken,
Meredith, Timothy E.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Graeff, J.

Filed: June 4, 2025

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for persuasive value only if the citation conforms to Md. Rule 1-104(a)(2)(B).

Joshua Gantt, appellant, was convicted in the Circuit Court for Calvert County of sexual abuse of a minor, second-degree rape, third-degree sexual offense, fourth-degree sexual offense, and second-degree assault. Appellant filed a motion to suppress evidence found on his cellular telephone and his social media accounts on Instagram and Facebook. The court denied the motion. After a jury convicted appellant, the court sentenced appellant to 45 years, all but ten years suspended.

On appeal, appellant presents one question for this Court's review, which we have rephrased slightly, as follows:

> Did the motions court err in denying appellant's motion to suppress evidence found on his cell phone and social media accounts because the warrants violated the particularity requirement of the Fourth Amendment?

For the reasons set forth below, we shall affirm the judgments of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

Joshua Gantt, appellant, met R.R. in 2013. Appellant became close friends with R.R. and his wife, S.R., and their five children.[1] The family lived part-time in Calvert County and the rest of the time in Honduras. Appellant began traveling to Honduras with the R. family, where he helped them start a school. While in Honduras, the R. family lived in an apartment attached to a children's home, and appellant lived in a separate apartment on the same property.

[1] We are using initials in this case to protect the minor child, who was the victim of the crimes. *See* Md. Rule 8-125.

In August 2021, the R. family was living in Calvert County in a camper outside a home purchased by R.R. to renovate and resell. On August 23, 2021, appellant visited the R. family. R.R. observed appellant and R.R.'s 13-year-old son, A.R., alone in the camper watching a YouTube drawing tutorial. R.R. left appellant alone with A.R. in the camper and went into his house to practice karate with one of his other children. After approximately 20 minutes, R.R. called for A.R. to practice karate. When A.R. emerged from the camper, R.R. noticed that A.R. had an erection. When R.R. asked A.R. about the erection, A.R. got emotional and repeatedly said that he did not want appellant "to get in trouble." A.R. then told R.R. that appellant "had been touching him inappropriately," and he had been doing so for a few years.

Later that evening, R.R. met with appellant and told appellant what A.R. had said. Appellant did not deny molesting A.R. He "apologized, said he was so sorry, that he didn't want it to happen," but he had gone through some things that led him down the wrong path. R.R. did not ask for any other details at that time because he did not think he could handle it. R.R. told appellant that he was going to report the incident.

The next day, S.R. returned from an out-of-town trip and R.R. told her what happened. R.R. and S.R. then met with appellant and told him that they would need to report the incident. Appellant again apologized and "asked if there was any other way." They "talked for a little while," but the R. family decided that they had to report the incident. They told appellant that they would keep him informed through the process of reporting.

R.R. and S.R. subsequently made a report with Child Protective Services ("CPS") and took A.R. to be interviewed by a CPS social worker. A.R. told the interviewer that he did not remember the first time appellant touched him because he was asleep, but he learned about it when appellant told him about it afterward. A.R. also told the interviewer that appellant had put his mouth on A.R.'s "private part." Appellant had sexually assaulted A.R. since he was ten years old, and did so on multiple occasions.

On September 14, 2021, the police arrested appellant and seized his cell phone. On September 20, 2021, Detective Richard Weems applied for a search warrant for appellant's phone, seeking permission to seize, search, and examine its digital contents. The warrant application included an affidavit that noted that the charges stemmed from allegations of sexual abuse between 2019 and 2021. It stated: "Your Affiant knows from training and experience that subjects engaged in criminal activity often use cell phones and other electronic devices to communicate with their associates and victims before, during, and after the crime. Accordingly, the digital evidence these devices contain may predate and postdate the actual date of the crime."

A judge signed a search and seizure warrant that day, authorizing Detective Weems to:

> A. Seize and examine the aforementioned cellular telephone, for the purpose of retrieving digital evidence contained within said phone and the associated account;
>
> B. Search and examine the aforementioned cellular telephone by persons qualified to conduct such examinations and that persons qualified to make the search and examination are permitted to make/generate copies and photograph any evidence seized and any evidence found therein;

> C. Seize, view, analyze and copy any and all evidence recovered from the aforementioned cellular telephone to include, but not limited to: voice mails, digital photographs, video files, audio files, data files, system files, text messages, subscriber/owner information and media files which pertain to the crimes set forth in the Application.

The inventory report showed that officers conducted a digital download of appellant's cell phone.

On September 20, 2021, Detective Weems applied for a warrant to obtain all records associated with appellant's Facebook account. The next day, he also applied for a warrant to obtain all records associated with appellant's Instagram account. The warrants required Facebook, Inc. to provide "certified copies of any and all records, whether stored digitally or physically, associated with [appellant's user profile]."

On December 4, 2021, defense counsel filed a motion to suppress evidence related to appellant's Facebook and Instagram accounts. Appellant argued that "[t]here was not a substantial basis for the finding of probable cause in the search warrants by the Court," and the warrants failed to specify the property to be seized with sufficient particularity. He asserted that the search warrants authorized "a broad, indeed, almost *limitless*, search of Mr. Gantt's Facebook and Instagram accounts," which was not constrained by any dates or times.

On June 7, 2022, appellant filed a motion to suppress the evidence obtained from his cell phone. Appellant argued that the evidence should be suppressed because the

passcode to his phone was obtained in violation of *Miranda*[2] and the State did not establish that access to the contents was inevitable without that passcode.[3] Although appellant did not challenge the validity of the cell phone warrant in the motion, he raised that issue at the hearing.

On July 11, 2022, the circuit court held a hearing on the motions to suppress. The search warrants for the cell phone and the social media accounts were introduced into evidence by Detective Weems. Detective Weems testified that Judge Rappaport signed the warrant for the cell phone and the Facebook account, and the judge presiding over the suppression hearing signed the warrant for the Instagram account. Defense counsel argued that the warrants lacked particularity and were general warrants, but she acknowledged that the "Maryland courts have not really addressed the issue of particularity." Counsel argued that all evidence from appellant's phone should be suppressed.[4]

The circuit court denied the motions to suppress. It stated that the warrants were specific and alleged specific crimes.

At trial, the State presented evidence obtained from the phone. The evidence included text messages from appellant to another person, where appellant said: "I feel pretty numb right now, but I feel like when I get sentenced or when the door closes, I'm

[2] *Miranda v. Arizona*, 384 U.S. 436 (1966).

[3] That argument is not being raised on appeal.

[4] Counsel stated that, although there were three separate warrants, they all were tied together to the cell phone.

going to feel it"; "I wish [R.R.] could present a beatable case . . . so [A.R.] and I could both get the help and no one had to do time, but I can't ask him that"; and "I told him I wouldn't fight it." The evidence obtained from the phone also included internet searches for pedophilia treatment, duty to report pedophilia, and the legal definition of child abuse in Maryland. The State introduced several photos from appellant's Instagram and Facebook accounts, which showed appellant with A.R., A.R.'s parents, and the children at the school in Honduras.

This appeal followed.

DISCUSSION

Appellant contends that the circuit court erred in denying appellant's "motions to suppress evidence because the warrants authorizing the search of [a]ppellant's phone and social media accounts violated the Fourth Amendment's particularity requirement." He asserts that the warrants "contained broad, catchall terms and did not contain temporal limits or other limits on the types of content to be searched," noting that there was no description of "the search protocols to be used to guide the agents in conducting their search." Appellant additionally argues that the good-faith exception to the exclusionary rule is not applicable because the warrants were so facially deficient that the police could not reasonably rely on them.

The State concedes that the warrants here "run afoul of" *Richardson v. State*, 481 Md. 423 (2022). It notes, however, that the warrants issued prior to this decision, and it argues that the good-faith exception to the exclusionary rule applies.

When reviewing a court's decision on a motion to suppress

> [w]e assess the record "in the light most favorable to the party who prevails on the issue that the defendant raises in the motion to suppress." *Norman v. State*, 452 Md. 373, 386, 156 A.3d 940, *cert. denied*, [583 U.S. 829] (2017). We accept the trial court's factual findings unless they are clearly erroneous, but we review *de novo* the "court's application of the law to its findings of fact." *Id.* When a party raises a constitutional challenge to a search or seizure, this Court renders 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, 15, 141 A.3d 138 (2016) (quoting *State v. Wallace*, 372 Md. 137, 144, 812 A.2d 291 (2002)).

Pacheco v. State, 465 Md. 311, 319-20 (2019). *Accord Richardson*, 481 Md. at 444-45.

The Fourth Amendment to the United States Constitution protects against unreasonable searches and seizures and provides that warrants must be based on probable cause and must "particularly describ[e] the place to be searched, and the persons or things to be seized." U.S. Const. amend IV. "The particularity requirement of the Fourth Amendment protects against general and overbroad warrants that leave the scope of the search to the discretion of law enforcement." *Richardson*, 481 Md. at 450. As the United States Supreme Court has explained:

> The manifest purpose of this particularity requirement was to prevent general searches. By limiting the authorization to search to the specific areas and things for which there is probable cause to search, the requirement ensures that the search will be carefully tailored to its justifications, and will not take on the character of the wide-ranging exploratory searches the Framers intended to prohibit. Thus, the scope of a lawful search is "defined by the object of the search and the places in which there is probable cause to believe that it may be found. Just as probable cause to believe that a stolen

> lawnmower may be found in a garage will not support a warrant to search an upstairs bedroom, probable cause to believe that undocumented aliens are being transported in a van will not justify a warrantless search of a suitcase." *United States v. Ross*, 456 U.S. 798, 824, 102 S.Ct. 2157, 2172, 72 L.Ed.2d 572 (1982).

Maryland v. Garrison, 480 U.S. 79, 84-85 (1987).

With that background in mind, we address appellant's arguments with respect to the warrants for his cell phone and his social media accounts.

I.

Cell Phone Warrant

In *Richardson*, 481 Md. at 462-64, the Supreme Court of Maryland addressed whether a search warrant for a cellphone violated the particularity requirement. The warrant there, as did the one here, authorized the police to search all data in the phone relating to the crime charged. *Id.* at 463. The Court began by noting that cell phones, with their "immense storage capacity," have presented challenges in applying the Fourth Amendment. *Id.* at 451 (quoting *Riley v. California*, 573 U.S. 373, 393 (2014)). As the United States Supreme Court explained in *Riley*:

> Cell phones differ in both a quantitative and a qualitative sense from other objects that might be kept on an arrestee's person. The term "cell phone" is itself misleading shorthand; many of these devices are in fact minicomputers that also happen to have the capacity to be used as a telephone. They could just as easily be called cameras, video players, rolodexes, calendars, tape recorders, libraries, diaries, albums, televisions, maps, or newspapers.
>
> One of the most notable distinguishing features of modern cell phones is their immense storage capacity. Before cell phones, a search of a person was limited by physical realities and tended as a general matter to constitute only a narrow intrusion on privacy. *See* Kerr, *Foreword: Accounting for Technological Change*, 36 Harv. J.L. & Pub. Pol'y 403, 404–405 (2013).

> Most people cannot lug around every piece of mail they have received for the past several months, every picture they have taken, or every book or article they have read—nor would they have any reason to attempt to do so.

573 U.S. at 393-94. As advances in technology increase the ability to invade a person's privacy, courts must ensure that "the 'progress of science' does not erode Fourth Amendment protections." *Richardson*, 481 Md. at 452 (quoting *Carpenter v. United States*, 585 U.S. 296, 320 (2018)).

In *Richardson*, the Court held that, in general, a search warrant that uses "language effectively permitting the searching officers to seize all data on a cell phone" fails to comply with the particularity requirement. *Id.* at 460-61. The Court discussed ways for a warrant to restrict the officers' discretion so as "not to intrude on the phone owner's privacy interests any more than reasonably necessary to locate the evidence for which there is probable cause to search." *Id.* at 462. The restrictions can include temporal restrictions, limits on where the officers may search in the phone, or what specifically they may look for. *Id.* The warrant also could include a search protocol explaining how the police will conduct the search and determine what is permitted to be seized. *Id.* The court recognized, however, that the parameters for a cell phone search "is a fact-intensive inquiry and must be resolved based on the particular facts of each case," *id.* at 460 (quoting *Commonwealth v. Snow*, 160 N.E.3d 277, 288 (Mass. 2021)), and "[w]ith respect to a small subset of cases," broader searches may be appropriate. *Id.* at 461.

The Court explained that, "[u]ltimately, the key point is that a search warrant for a cell phone must be specific enough so that the officers will only search for the items that

are related to the probable cause that justifies the search in the first place." *Id.* at 462. "With respect to most cell phone search warrants . . . the particularity requirement is not satisfied by authorizing officers to search for any and all items that are evidence of a particular crime or crimes." *Id.* at 461.

Here, the warrant for the cell phone authorized officers to "[s]eize, view, analyze and copy **any and all evidence** recovered from the aforementioned cellular telephone to include, but not limited to: voice mails, digital photographs, video files, audio files, data files, system files, text messages, subscriber/owner information and media files which pertain to the crimes set forth in the Application." (Emphasis added). The evidence inventory form lists the items seized as a "digital download" of the phone.

The State concedes that this language, like the language in the warrant in *Richardson*,[5] violates the particularity requirement of the Fourth Amendment. We agree.

The State contends, however, that the circuit court properly denied the motion to suppress. It argues that the good-faith exception to the exclusionary rule applies here.

The exclusionary rule, which bars the use of evidence obtained in violation of the Fourth Amendment, is not an automatic remedy, but rather, it is a remedy to be used only as a "last resort." *Utah v. Strieff*, 579 U.S. 232, 237-38 (2016) (quoting *Hudson v.*

[5] The warrant in *Richardson* authorized officers to search and seize "[*a*]*ll information*, text messages, emails, phone calls (incoming and outgoing), pictures, videos, cellular site locations for phone calls, data and/or applications, geo-tagging metadata, contacts, emails, voicemails, oral and/or written communication *and any other data stored or maintained inside of* [the cellular phone]." *Richardson v. State*, 481 Md. 423, 463 (2022).

Michigan, 547 U.S. 586, 591 (2006)). The exclusionary rule is a judicially-created remedy to deter police misconduct, but suppression generally is not warranted when officers reasonably rely on a search warrant issued by a judge, even if that warrant is later found to have been issued improperly. *United States v. Leon*, 468 U.S. 897, 906, 920-21 (1984); *see also Herbert v. State*, 136 Md. App. 458, 488 (2001) (noting that obtaining a warrant generally insulates a search from exclusion, barring extreme or outrageous circumstances). The good-faith exception applies "if the executing officers acted in objective good faith with reasonable reliance on the warrant." *Whittington v. State*, 474 Md. 1, 18 (2021) (quoting *Whittington v. State*, 246 Md. App. 451, 491 (2020)).

Exclusion of evidence seized pursuant to a warrant is appropriate only "if the law enforcement officer had knowledge, or may properly be charged with knowledge, that the search was unconstitutional under the Fourth Amendment." *Richardson*, 481 Md. at 469 (quoting *Leon*, 468 U.S. at 919).

There are four circumstances in which the good faith exception would not apply:

> (1) the issuing judge was misled by information in an affidavit that the officer knew was false or would have known was false but for the officer's reckless regard for the truth;
>
> (2) the issuing judge wholly abandoned his or her detached and neutral judicial role;
>
> (3) the warrant was based on an affidavit that was so lacking in probable cause as to render official belief in its existence entirely unreasonable; and

> (4) the warrant was so facially deficient, by failing to particularize the place to be searched or the things to be seized, that the executing officers could not reasonably believe it to be valid.

Id. at 470.

Appellant acknowledges that the warrants in this case issued in September 2021, which was before the *Richardson* decision was issued in August 2022, and therefore, the officers here "did not have the benefit of the *Richardson* opinion to guide their understanding of the law." Nevertheless, he argues that the warrant was "so facially deficient that the executing officers acted unreasonably in relying on [them]." (Alteration in original) (quoting *Richardson*, 481 Md. 471).

In *Richardson*, 481 Md. at 471, the Court noted that, until that case, it had "not analyzed whether a cell phone search warrant that allows officers to search an entire phone for evidence of a particular crime satisfies the particularity requirement," and "[c]ourts around the country have answered this question differently." Given that, the Court stated that it could not "fault the officers who executed this search warrant for thinking that the answer was 'yes.'" *Id.* Accordingly, it held that the good-faith exception to the exclusionary rule applied, and the circuit court properly denied the motion to suppress evidence found on the cell phone. *Id.* at 471-72.

The same conclusion applies here. The warrant here issued prior to the *Richardson* decision, and as with the officers there, the officers here reasonably could have thought

that the warrant here satisfied the particularity requirement.[6] The court properly denied appellant's motion to suppress the evidence seized from the cell phone.

II.

Warrants for Social Media Accounts

Appellant contends that the court erred in denying his motion to suppress evidence seized from his social media accounts for the same lack of particularity. Appellant, however, cites no case law governing warrants relating to social media accounts. At least one court has recently stated that this is "a relatively undeveloped area of law." *Young v. State*, 394 So. 3d 1174, 1182 n.2 (Fla. Dist. Ct. App. 2024). Under these circumstances, assuming, arguendo, that the warrants did not satisfy the particularity requirement, suppression was not warranted under the good faith exception to the exclusionary rule.

Moreover, even if the court erred in denying the motion to suppress, any error was harmless. As the Supreme Court of Maryland has explained, the standard for a finding of harmless error is as follows:

> [W]hen an appellant, in a criminal case, establishes error, unless a reviewing court, upon its own independent review of the record, is able to declare a belief, beyond a reasonable doubt, that the error in no way influenced the

[6] We also note that two circuit court judges thought that the warrant was sufficient to satisfy the Fourth Amendment, the issuing judge and the judge who denied the motion to suppress. That also weighs in favor of a finding that the police relied in good faith on the warrant. *Stevenson v. State*, 455 Md. 709, 731 (2017). *Accord Greenstreet v. State*, 392 Md. 652, 679 (2006) ("[W]here 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.") (quoting *Leon*, 468 U.S. at 926); *Agurs v. State*, 415 Md. 62, 81 (2010) (when both "lower courts reviewing the warrant application [have] upheld the warrant," it indicates that "the officers' reliance on the warrant was reasonable").

> verdict, such error cannot be deemed 'harmless' and a reversal is mandated. Such reviewing court must thus be satisfied that there is no reasonable possibility that the evidence complained of – whether erroneously admitted or excluded – may have contributed to the rendition of the guilty verdict.

Belton v. State, 483 Md. 523, 542 (2023) (quoting *Dorsey v. State*, 276 Md. 638, 659 (1976)); *see also Denicolis v. State*, 378 Md. 646, 658-59 (2003) (to show an error was harmless beyond a reasonable doubt, the record must affirmatively show that the error was not prejudicial). "The jury's perspective is the proper focus of harmless error review; therefore, in conducting such a review, an appellate court must not encroach upon the jury's judgment. The reviewing court does not find facts or weigh evidence." *Belton*, 483 Md. at 543 (citations omitted).

The evidence introduced from appellant's social media accounts consisted merely of photos showing that he had a personal relationship with the R. family. These photographs were cumulative to the testimony in the case.[7] *See Dove v. State*, 415 Md. 727, 743-44 (2010) ("In considering whether an error was harmless, we also consider whether the evidence presented in error was cumulative evidence," evidence that "tends to prove the same point as other evidence presented during the trial or sentencing hearing. For example, witness testimony is cumulative when it repeats the testimony of other witnesses."); *Gross v. State*, 481 Md. 233, 265 (2022) (reviewing court can determine that evidence erroneously admitted "did not influence the verdict because the jury heard the

[7] A.R. testified that appellant was a friend of his parents. R.R. testified that he had known appellant since 2013, appellant was his "best friend," and he was like "family."

same information from multiple other sources"). Under these circumstances, any error in denying the motion to suppress was harmless.

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