Circuit Court for Howard County
Case No. 13-K-14-054808

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2448

September Term, 2017

RICARDO O'NEIL BROOKS

v.

STATE OF MARYLAND

Beachley,
Fader,
Thieme, Jr., Raymond G.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Fader, J.

Filed: October 30, 2018

Appellant Ricardo O'Neil Brooks moved to suppress evidence obtained from his cell phone pursuant to a warrant. At the suppression hearing, Mr. Brooks argued that the judge who issued the warrant lacked a substantial basis to conclude that there was a fair probability that evidence of 12 armed robberies of which he was suspected would be found on his phone. The Circuit Court for Howard County, agreeing with the State, held that the affidavit accompanying the warrant application provided a substantial basis for the warrant and so denied the motion to suppress. We affirm.

BACKGROUND

Just before 3:00 a.m. on September 12, 2014, a man with a gun robbed a CVS Pharmacy in Ellicott City. Shortly thereafter, an officer responding to the robbery pulled over a car being driven by Mr. Brooks for an investigative stop.[1] From outside the vehicle, responding officers saw a gun under the front passenger seat and a black drawstring bag on the floor near the driver's seat with U.S. currency inside. The officers arrested Mr. Brooks for armed robbery.

Four days later, the Montgomery County Police Department, which was investigating a string of eight armed robberies in Montgomery County, applied for a warrant to search Mr. Brooks's cell phone. Detective Dawn Cutright, a Montgomery County robbery investigator, filed an affidavit in support of the application in which she stated that the Howard County robbery was "believed to be committed by the same suspect

[1] At trial, Mr. Brooks argued that the stop itself was unconstitutional. This Court upheld the stop and affirmed the trial court's denial of the motion to suppress on that basis. *Brooks v. State*, 2017 WL 2152727, No. 2727, Sept. Term 2017 (Md. App. May 17, 2017).

that has committed eight robberies similar in nature in Montgomery County, Maryland." The affidavit noted that Mr. Brooks had been arrested by the Howard County Police for the Howard County robbery and that "evidence was recovered connecting [him] to all the robberies that occurred in Montgomery County and also the robbery in Howard County." A Montgomery County search warrant for his vehicle had also recovered evidence, including the cell phone they sought to search.

The affidavit went into detail regarding the similarities among the robberies, first in a summary paragraph:

> From August 1, 2014, through September 8, 2014, there have been eight Commercial Armed Robberies in Montgomery County with a similar Modus Operandi (M.O.). During each robbery with a dangerous weapon, a male suspect enters a 7-Eleven or CVS Pharmacies in early morning hours when there are little to no customers. The suspect is completely covering his face either with a mask or bandana and always wears a hooded sweatshirt or jacket with the hood up. He wears black pants and dark shoes/boots and brings a black bag and a handgun. The suspect approaches the lone employee and displays and/or racks his handgun. He then demands money from the registers. The suspect takes bills and coins from the register and sometimes cigarettes from behind the counter. The suspect puts what he obtains into a black bag drawstring bag that he brings in with him. There are two open Carroll County robberies and one open Frederick County robbery that also have the same M.O.

The affidavit then discussed the details of each of the Montgomery County armed robberies, one-by-one in successive paragraphs.

According to the affidavit, Detective Cutright was a six-year veteran of the Department who was then "assigned to the Major Crimes Division, Robbery Section." She explained that her "knowledge of criminal activity and investigations" led her to believe

that evidence of the robberies may be found on the cell phone. Specifically, Detective Cutright described that:

> a suspect's cellular phone is critical during an investigation. It is known that suspects use cellular telephones to communicate and plan with potential co-conspirators; use the internet or access data within a cellular telephone to plan criminal activity; take pictures or video with potential evidence; and use their cellular phone before, during, or after the commission of a crime, providing a time stamped and location based information to the detective.

A judge of the Circuit Court for Montgomery County found probable cause and issued a warrant to search the phone for "evidence of the crime of robbery with a dangerous weapon." The warrant permitted a search of the contents of the phone including, without limitation, user information, call records, "any and all names, contact telephone numbers, direct connect/walkie-talkie numbers, address book contents, text message, picture email, voice messages, any and all images to include still and video files," the phone's SIM card, and "any and all information regarding victim contact and or conspirator information."

In executing the warrant, the Montgomery County police found a cell phone screenshot taken about 90 minutes before the robbery that depicted the Howard County CVS Pharmacy, a map of the surrounding area, and a statement that the pharmacy was open 24 hours a day.

On the first day of trial, Mr. Brooks moved to suppress the evidence recovered from the phone. At the suppression hearing,[2] he argued that the cell phone warrant application

[2] The procedural history of the suppression motion is somewhat confusing and, for the most part, irrelevant to the issue on appeal. Mr. Brooks moved to suppress on the first day of trial. The court, without reaching the merits, denied the motion based on the belief that it was bound by a prior decision of the Circuit Court for Montgomery County that

lacked particularized facts to provide a substantial basis to conclude that evidence of the crime would be found on the phone. The trial court disagreed and denied the motion. This appeal followed.

DISCUSSION

Mr. Brooks asserts that the Circuit Court for Montgomery County did not have a substantial basis for finding probable cause to issue the warrant for four reasons: (1) the affidavit did not contain any evidence that a cell phone was used before, after, or during the crimes; (2) the affidavit was lacking a particularized summary of the affiant's relevant training and experience; (3) the warrant did not restrict the proposed search to data created during the time period between the first and last robbery; and (4) the affidavit contained no evidence that the robbery suspect was working with co-conspirators and/or accomplices. The State argues that the information in the affidavit, including the affiant's relevant training and experience, and the reasonable inferences that could be drawn from it, provided a substantial basis for the judge to find probable cause and that even if that were not so, the good faith exception would apply. We agree with the State.

Our review of a ruling on a motion to suppress evidence under the Fourth Amendment is limited to the record developed at the suppression hearing. *Raynor v. State*,

denied a similar motion in a different case. A jury then convicted Mr. Brooks of armed robbery. On appeal, we held that "neither the law of the case doctrine nor any other rule of law prevented [the trial court] from reaching its own determination" as to the suppression motion. *Brooks*, 2017 WL 2152727, at *6. We therefore remanded the case to the trial court to hold a suppression hearing regarding the cell phone evidence. *Id.* at *7. The circuit court did so, denied the motion on the merits, and it is that second ruling that is now before us.

440 Md. 71, 81 (2014). "We view the evidence and inferences that may be drawn therefrom in the light most favorable to the party who prevails on the motion." *Id.* (quoting *Briscoe v. State*, 422 Md. 384, 396 (2011)). "We accept the suppression court's factual findings unless they are shown to be clearly erroneous." *Raynor*, 440 Md. at 81. "[W]e review legal questions *de novo,* and where, as here, a party has raised a constitutional challenge to a search or seizure, we must make an independent constitutional evaluation by reviewing the relevant law and applying it to the unique facts and circumstances of the case." *Grant v. State*, 449 Md. 1, 14-15 (2016) (quoting *State v. Wallace*, 372 Md. 137, 144 (2002)).

I. WE GIVE GREAT DEFERENCE TO THE ISSUING JUDGE'S DETERMINATION THAT THERE WAS PROBABLE CAUSE TO ISSUE THE WARRANT IF THERE WAS A SUBSTANTIAL BASIS TO CONCLUDE EVIDENCE WOULD BE ON THE PHONE.

The Fourth Amendment to the United States Constitution permits the issuance of a warrant only "upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." Probable cause is "a fluid concept . . . not readily, or even usefully, reduced to a neat set of legal rules." *Illinois v. Gates*, 462 U.S. 213, 232 (1983). For the issuance of a search warrant, probable cause is established where the facts and circumstances set forth in the affidavit, viewed in their totality, provide "a fair probability that contraband or evidence of a crime will be found in a particular place." *Holmes v. State*, 368 Md. 506, 519 (2002) (quoting *Gates*, 462 U.S. at 238). The issuing judge's task is "to make a practical, common-sense decision" about whether the affidavit meets the standard. *Gates*, 462 U.S. at 238. In so deciding, the

judge does not have to find that his or her belief is "correct or more likely true than false. A practical, nontechnical probability that incriminating evidence is involved is all that is required." *Moats v. State*, 455 Md. 682, 699 (2017) (quoting *Texas v. Brown*, 460 U.S. 730, 742 (1983)) (internal quotation marks omitted). The judge may also consider "common-sense conclusions about human behavior" to determine whether probable cause exists. *Moats*, 455 Md. at 699 (quoting *Gates*, 462 U.S. at 231).

Our duty as "a reviewing court is to ensure that the issuing judge had a 'substantial basis for . . . conclud[ing]' that probable cause existed." *Fone v. State*, 233 Md. App. 88, 103 (2017) (quoting *Gates*, 462 U.S. at 239-40). Further, "because '[r]easonable minds frequently may differ on the question whether a particular affidavit establishes probable cause,'" the Supreme Court has "concluded that the preference for warrants is most appropriately effectuated by according 'great deference' to a magistrate's determination." *Moats*, 455 Md. at 699 (quoting *United States v. Leon*, 468 U.S. 897, 914 (1984)). "[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." *Moats*, 455 Md. at 699-700 (quoting *Gates*, 462 U.S. at 236). If "the reviewing court finds a substantial basis for the probable cause determination, that court is required to uphold the warrant." *Moats*, 455 Md. at 700.

When applying for a warrant and averring there is probable cause to search the place requested, a detective "may draw inferences based on his own experience in deciding whether probable cause exists" so long as those inferences are reasonable. *Ornelas v.*

United States, 517 U.S. 690, 700 (1996) (finding an officer's inference that narcotics may be found in loose panel of car armrest reasonable where the officer had considerable experience searching cars for narcotics and knowledge of likely hiding places); *see Holmes*, 368 Md. at 519, 522-23 (determining that "probable cause may be inferred" where the officer "reasonably concluded" that hand-to-hand transactions between "known drug violator[s]" involved a sale of drugs.) Moreover, "probable cause may be inferred from the type of crime, the nature of the items sought, [and] the opportunity for concealment." *Id.* at 522. "[T]he law permits a judge who is presented with an application for a search warrant to defer, within reason, to the expertise and experience of the affiant police officer when deciding whether to draw a reasonable inference that evidence" could be found in the thing to be searched. *Moats*, 455 Md. at 701-02.

Our analysis of Mr. Brooks's appeal is guided by decisions by the Court of Appeals last year in *Moats* and *Stevenson v. State*, 455 Md. 709 (2017). In *Moats*, the Court granted certiorari for the purpose of considering "the scope of information necessary to supply probable cause for a warrant to search a cell phone." 455 Md. at 685. The defendant in that case was accused of distributing drugs, which he admitted, and sexual assault, which he denied. *Id.* at 686-87. The affidavit supporting the warrant application stated that the officer knew through training and experience, which the affidavit discussed in some detail, "that individuals who participate in such crimes communicate via cellular telephones, via text messages, calls, e-mails, etc." and, therefore, that there was probable cause to believe that evidence of those crimes might be on the phone. *Id.* at 688. The judge agreed and

issued a broad warrant, without any temporal limitation, to search "any and all electronic data processing and storage devices" in the phone. *Id.* at 689. In executing the warrant, the officers found sexually explicit photographs and videos of the defendant's 15-year-old girlfriend. *Id.* at 690.

In his subsequent trial on charges related to child pornography, the defendant moved unsuccessfully to suppress the cell phone evidence. *Id.* He argued that the issuing judge lacked a substantial basis to find probable cause because the affidavit supporting the warrant failed to establish a nexus between the crimes of which he was accused and the cell phone. *Id.* at 694. The Court of Appeals rejected that contention out of hand, observing that "such direct evidence has never been required by the Fourth Amendment." *Id.* at 700. Turning to whether the contents of the affidavit supplied a substantial basis for the warrant, the Court noted both the deference the issuing judge was permitted to give to the expertise of law enforcement and the "great deference" appellate courts must give to the decision of the issuing judge. *Id.* at 701-02. In that context, the court accepted that there was a substantial basis for concluding that evidence of both drug offenses and sexual assault might be on a suspect's phone; drug distribution offenses necessarily involve communication between two people and, the Court observed, "[i]t is likewise not unusual that persons committing a sexual assault, or an accomplice witnessing the crime, document the crime on their cell phones." *Id.* at 704. Considering the information contained in the affidavit "in its totality," the Court concluded that it "set[] forth a fair probability that the information w[ould] be found in the cell phone to be searched." *Id.* at 705-06.

In *Stevenson*, which was decided the same day as *Moats*, police suspected the defendant of assault after finding him in possession of the victim's wallet and shoes. 455 Md. at 716-18. The police sought a warrant to search the suspect's phone based on an affidavit in which the officer averred, based on knowledge and experience, "that suspects in robberies and assaults will sometimes take pictures, videos and send messages about their criminal activities on their cellular phones." *Id.* at 717-18. As in *Moats,* the officer provided a fairly extensive description of his background and training. *Id.* at 718. The court issued a warrant to search for "[a]ny and all information, including but not limited to all pictures, movies, [and] electronic communications . . . contained within phone," during the 18-hour timeframe surrounding the assault. *Id.* at 724. Officers conducting the search found six photographs of the assault victim taken just after the assault. *Id.* at 717.

The Court concluded that the issuing judge had a substantial basis for finding probable cause for the search, based on (1) the detailed description of the evidence, (2) the sworn declaration of the officer that suspects "sometimes" store information about a robbery or assault on their phones, (3) the warrant's limitation to the 18-hour period surrounding the assault, and (4) "the Supreme Court's recognition of the prevalence of cell phones in the population and the degree of detail of one's daily life that is often contained in a cell phone." *Id.* at 724. As in *Moats*, the Court rejected the claim that the affidavit was deficient for failing to identify any nexus between the crime being investigated and the phone. *Id.* The Court also rejected the contention that the affiant's statement that evidence is "sometimes" found on cell phones was too speculative. *Id.* at 727. Indeed, the

Court observed, "sometimes" is consistent with the probable cause standard because it indicates that such evidence will be found more often than "rarely" but less than "more often than not." *Id.* The information in the affidavit had to be considered in its totality, with "[n]o single item of information . . . supplying the requisite probable cause . . . ." *Id.* Thus, the limited scope of the warrant was a relevant, but not a dispositive, factor. *Id.* at 728. Moreover, the Court held, even if there had not been a substantial basis for the issuing judge to find probable cause, the good faith exception would have precluded suppression because it was "objectively reasonable" for the officers executing the warrant to have relied on it. *Id.* at 729-30.

It is against this background that we consider Mr. Brooks's challenge to the denial of his motion to suppress.

II. THE AFFIDAVIT PROVIDED A SUBSTANTIAL BASIS FOR THE ISSUING JUDGE TO CONCLUDE THAT THERE WAS A FAIR PROBABILITY THAT EVIDENCE OF THE ROBBERIES COULD BE FOUND ON THE CELL PHONE.

We must determine whether the warrant-issuing judge had a substantial basis for concluding that there was a fair probability that evidence of the robberies could be found on Mr. Brooks's cell phone. We conclude that the totality of the information contained in the affidavit supplied a substantial basis for the judge to find probable cause that evidence of the crimes would be contained on the phone. The affidavit contained a thorough account of the evidence the investigators had obtained, detailing nine armed robberies committed over the course of more than a month that were connected by a very similar modus operandi. It also indicated that similar robberies had been committed in at least two other

jurisdictions, bringing the total to at least 12 armed robberies likely committed by one suspect across four counties over an extended period of time. As in *Moats* and *Stevenson*, the affidavit included a thorough description of the facts uncovered in the investigation, including as to Mr. Brooks's role.

The affidavit also explained the basis for Detective Cutright's conclusion, based on her knowledge and experience, that there was probable cause to believe that evidence would be on the phone. The issuing judge could rely on Detective Cutright's knowledge and experience, as well as on his own common sense and reasonable inferences from the information provided. Indeed, in *Stevenson*, the Court of Appeals allowed the issuing judge to rely on the conclusion of an officer that evidence of a single robbery and assault, with no evident indication of prior planning, might appear on a cell phone. Here, the evidence described a consistent pattern of armed robberies of franchises of two chains of stores, all occurring in the early morning hours, over an extended period of time and an extended geographic area. To that extent, it was even more reasonable for the issuing judge here to infer that there was a fair probability that evidence of the planning and execution of this pattern of conduct would be found on Mr. Brooks's phone than it had been in *Stevenson*.

Mr. Brooks offers four specific reasons for disagreeing with this conclusion. We discuss each in turn. First, he contends that the affidavit did not "establish a substantial nexus between Mr. Brooks's cell phone and the" robberies because the affidavit contained no assertion that he used a cell phone before, during, or after the robbery. As already noted,

the Court of Appeals determined in both *Moats* and *Stevenson* that the Fourth Amendment demands no such nexus. *Moats*, 455 Md. at 700; *Stevenson*, 455 Md. at 724. As in those cases, the issuing judge here could have reasonably inferred from the detailed information provided about the investigation, as well as the officer's basis for expecting to find evidence, that there was a fair probability that evidence of the crimes would be located on the phone even without any evidence of a direct nexus.[3]

Second, Mr. Brooks contends that the affidavit was insufficient "because it did not contain a particularized summary of Detective Cutright's relevant training [and] experience." To support this point, Mr. Brooks compares the experience and training information contained in the officer affidavits provided in *Moats* and *Stevenson* with the relatively sparse information provided by Detective Cutright. Mr. Brooks is correct that the affidavits in those other cases included a more robust recitation of the officers' respective backgrounds to bolster their contentions that there was a fair probability that evidence of the crimes being investigated would be on the seized phones. He is also correct that Detective Cutright's affidavit is relatively sparse on that point and would have been more compelling if it had been more thorough. On balance, however, we do not think that difference sufficient to conclude that the issuing judge lacked a substantial basis to issue the warrant.

[3] Mr. Brooks also complains that the suppression judge erred by considering evidence outside the "four corners" of the warrant application and affidavit when the judge referenced trial testimony by a police officer that he observed Mr. Brooks on his cell phone after the robbery and before his arrest. As our review is focused on the evidence before the issuing judge, not the suppression judge, we do not consider this point in our analysis.

An affiant's training and knowledge are relevant considerations in determining whether there is a substantial basis for finding probable cause. However, there is no threshold requirement for how much detail or level of specificity an affiant must provide. An issuing judge considers an affiant's training and experience as just one element of the totality of circumstances. *See Longshore v. State*, 399 Md. 486, 534 (2007) ("In a probable cause determination, 'the experience and special knowledge of police officers . . . are among the facts which may be considered.'") (quoting *Wood v. State*, 185 Md. 280, 286 (1945)). "No single item of information in the affidavit stands alone in supplying the requisite probable cause for the warrant-issuing judge." *Stevenson*, 455 Md. at 727. In examining the totality of circumstances, an affiant-officer's experience and training may be more significant in some cases and less so in others. Thus, the amount of information about an officer's background expected to be included in an affidavit may have an inverse relationship to the degree of novelty in the contentions the officer makes. That is, we would expect to see more information about the background of an officer whose claim is counterintuitive than one whose assertion reflects common sense. Here, in light of how ubiquitous and capable of capturing vast amounts of information as cell phones now are, *Riley v. California*, 134 S. Ct. 2473, 2493 (2014), it would appear to require relatively little law enforcement expertise to deduce that there was a fair probability that evidence of the planning or execution of a pattern of armed robberies like that identified in Detective Cutright's affidavit would be found on the cell phone seized from Mr. Brooks. While the

level of detail about her background might not be sufficient in other cases, we do not find it deficient when considered as part of the totality of information presented here.

Third, Mr. Brooks argues that the issuing judge lacked a substantial basis because the warrant did not restrict the search to the specific period during which the robberies were taking place—August 1 through September 12, 2014. Mr. Brooks points out that the warrant in *Stevenson* included such a temporal limitation and argues that because the Court of Appeals took that into account in upholding the warrant, a similar limitation was required here "to strike a balance between the police's interest in investigating crime and the Fourth Amendment interests of civilians."

The "pervasiveness" of cell phones and their ability to store a vast amount of personal and sensitive data about their owners means that searches conducted of them have the potential simultaneously to be of tremendous value to police officers as an investigative tool and to severely intrude on the privacy rights of their owners. *Riley*, 134 S. Ct. at 2490, 2493. Recognizing the unique threat of such searches to legitimate privacy interests, the Supreme Court has held that "a warrant is generally required" to search a cell phone "even when [it] is seized incident to arrest." *Id.* at 2493. We agree with the general proposition that, all other things being equal, there must be more support in an affidavit to provide a substantial basis for a broader warrant than for a narrower one. As with the background information on the swearing officer, however, that factor is part of the totality of information that all must be assessed together by the issuing judge. The existence or lack of a temporal limit is not by itself dispositive in finding probable cause to issue a warrant,

but it may be an important consideration in making that determination depending on, among other factors, the type of crime(s) being investigated, the number of incidents comprising the crime(s) and the period of time over which they occurred, the type of evidence likely to be found, whether a direct nexus between the crime(s) and the phone has been identified, and the level of planning involved or suspected. *See Gates*, 462 U.S. at 234 ("[A] totality of the circumstances approach . . . permits a balanced assessment of the relative weights of all the various indicia of reliability (and unreliability) . . . .").

Mr. Brooks places substantial weight on the fact that the Court of Appeals mentioned the temporal limitation in the warrant at issue in *Stevenson* as one of the factors weighing in favor of its conclusion that there was a substantial basis to issue that warrant. 455 Md. at 724. In doing so, however, Mr. Brooks ignores important differences between that case and this one. In *Stevenson*, the crime at issue was a single incident of physical violence that occurred during a narrow window of time. 455 Md. at 716. Here, by contrast, the officers had probable cause to believe that they would find evidence regarding a course of conduct involving at least 12 similar armed robberies occurring over the course of more than a month that might reasonably have involved fairly extensive advance planning and possibly communication with others. The detailed description of criminal activity in Detective Cutright's affidavit thus provided a substantial basis for a broader warrant than would have been reasonable in *Stevenson*.

Moreover, although the Court in *Stevenson* identified the limited scope of that warrant as one of four factors it "[took] into account" in upholding the warrant, 455 Md. at

724, it did not assign that factor any greater value or importance than the others it considered. We also find it notable that in *Moats*, the Court found a substantial basis for the issuance of a warrant that lacked any temporal limitation even though the crimes at issue occurred on only one night. 455 Md. at 686. Although the lack of a temporal limitation was not addressed expressly in the majority opinion, it was a focus of the concurring opinion's conclusion that the affidavit did not provide a substantial basis for the search. *Id.* at 706 ("We should not condone a warrant authorizing police to search the entirety of a cell phone absent any temporal limitation on the information to be searched.") (concurring opinion of Adkins, J.). The majority obviously disagreed, which is even more notable in light of the interrelationship between *Stevenson* and *Moats*, opinions in "companion" cases that "were argued on the same day and generally address the same legal issues and sub-issues." *Stevenson*, 455 Md. at 715. Based on the totality of the information presented, as construed in light of *Moats* and *Stevenson*, we conclude that the absence of a temporal limitation in the warrant did not deprive the issuing judge of a substantial basis for finding probable cause to issue the warrant.

Fourth, Mr. Brooks argues that the issuing judge lacked a substantial basis to issue the warrant because the affidavit lacked any suggestion that the perpetrator of the robberies was working with co-conspirators or accomplices. Even if it were true that the affidavit lacked any such suggestion, it did not reduce the fair probability that other evidence of planning, researching, and documenting the crime would be found on the cell phone and did not deprive the judge of finding a substantial basis to issue the warrant. The

involvement of co-conspirators or accomplices whose communications with the suspect might be preserved on the phone may be sufficient to find probable cause to authorize a search in many cases, but it is not necessary.

We conclude that the warrant-issuing judge had a substantial basis for finding probable cause to issue the warrant to search Mr. Brooks's cell phone and so affirm the suppression court's denial of Mr. Brooks's motion to suppress.

III. EVEN IF THE ISSUING JUDGE LACKED A SUBSTANTIAL BASIS TO ISSUE THE WARRANT, THE GOOD FAITH EXCEPTION TO THE EXCLUSIONARY RULE WOULD PRECLUDE SUPPRESSION.

Although we find that the issuing judge had a substantial basis to issue the warrant, we now address the State's alternative argument that even if the warrant violated the Fourth Amendment, the good faith exception applies and precludes exclusion because the officers executing the warrant acted in objectively reasonable good faith.

The exclusionary rule is not an automatic remedy applied to every case where evidence is seized in violation of the Fourth Amendment. *Utah v. Strieff*, 136 S. Ct. 2056, 2061 (2016). Because it is a remedy designed to "deter police misconduct," it "loses much of its force" when used to exclude evidence obtained by police acting in good faith. *United States v. Leon*, 468 U.S. 897, 916, 919 (1984) (quoting *United States v. Peltier*, 422 U.S. 531, 539 (1975). In *Leon*, the Supreme Court explained that "the marginal or nonexistent benefits produced by suppressing evidence obtained in objectively reasonable reliance on a subsequently invalidated search warrant cannot justify the substantial costs of exclusion." *Id.* at 922. Thus, "suppression of evidence obtained pursuant to a warrant should be ordered

only on a case-by-case basis and only in those unusual cases in which exclusion will further the purposes of the exclusionary rule." *Id.* at 918.

Applying that rule in *Stevenson*, the Court of Appeals held that the admissibility of evidence obtained from a warrant that "falls short of satisfying . . . the 'substantial basis' test" would not be excluded where the police reasonably relied on the warrant in objective good faith. 455 Md. at 729. Notably, "the standard of factual support required" to admit evidence under the good faith exception "is considerably lower than the standard for establishing a substantial basis for a finding of probable cause by a judge issuing a search warrant." *Marshall v. State*, 415 Md. 399, 410 (2010).

In *Leon*, the Supreme Court identified four circumstances in which police cannot reasonably rely on an improperly issued warrant: (1) where the issuing judge "was misled" by the affiant either intentionally or recklessly; (2) where the issuing judge "wholly abandoned his judicial role" and "no reasonably well trained officer could rely on the warrant;" (3) where the warrant is "based on an affidavit so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable"; and (4) where the warrant is "so facially deficient" that the officers cannot reasonably believe it valid. 468 U.S. at 923 (citations omitted). None of those exceptions apply here. There is no hint in the record that the issuing judge was misled or abandoned his judicial role, nor is the warrant itself facially deficient or the affidavit "bare bones" or reliant only on "wholly conclusory statements." *Marshall*, 415 Md. at 409 (quoting *Patterson v. State*, 401 Md. 76, 107-08 (2007)). At the very least, "exercising professional judgment, [Detective

Cutright] could have reasonably believed that the averments of [her] affidavit related to a present and continuing violation of law . . . and that the evidence sought would be likely found" on the cell phone. *Patterson*, 401 Md. at 107. Thus, even if the issuing judge lacked a substantial basis to issue the warrant for Mr. Brooks's cell phone, suppression would not be available under the good faith exception to the exclusionary rule.

JUDGMENT OF THE CIRCUIT COURT FOR HOWARD COUNTY AFFIRMED; COSTS ASSESSED TO APPELLANT.