Rel: December 16, 2020

Alabama Court of Criminal Appeals

OCTOBER TERM, 2020-2021

CR-19-0094

Jody Deville Reynolds

v.

State of Alabama

Appeal from Lee Circuit Court
(CC-18-0263)

COLE, Judge.

Jody Deville Reynolds appeals his convictions for trafficking in cannabis, the unlawful possession of a controlled substance (oxycodone),

and the unlawful possession of drug paraphernalia, violations of §§ 13A-12-231(1), 13A-12-212(a)(1), and 13A-12-260(c), Ala. Code 1975, respectively, and his resulting concurrent sentences of 27 years' imprisonment, 5 years' imprisonment, and 12 months' imprisonment respectively.[1]

Facts and Procedural History

Reynolds's first trial resulted in a mistrial on November 6, 2018. (C. 48.) On November 26, 2018, Reynolds moved to dismiss his indictment, arguing that the evidence against him had been illegally obtained through an invalid search warrant. (C. 54-58.) In January 2019, the trial court held hearings in which it treated Reynolds's motion to dismiss as a motion to suppress the evidence seized as a result of search warrants. (R. 13, 126.)[2]

[1]For his trafficking conviction, Reynolds was sentenced as a habitual felony offender under the Habitual Felony Offender Act, § 13A-5-9, Ala. Code 1975, based on his prior Georgia felony conviction for robbery. (C. 302-13; R. 1014.)

[2]On the first day of his suppression hearing, Reynolds filed an "Amended Motion to Dismiss the Indictment and Motion to Suppress Illegally Obtained Evidence," making the same arguments but asking the court, in the alternative, to suppress the evidence. (C. 80-88.)

Sergeant Lance Deaton,[3] with the Columbus (Georgia) Police Department, testified that, on February 10, 2017, he was working in the homicide unit when he received a call that someone had been shot and killed. Sgt. Deaton was the lead investigator and, along with his "team of investigators," identified Eric Parker as the victim of the shooting. Sgt. Deaton quickly discovered from witnesses on the scene that "there had been a shooting a few weeks prior at ... a trailer park" in Columbus and that Reynolds was one of the individuals shot in that shooting, which occurred in December 2016. (R. 16-17.) "[S]everal witnesses at the scene" of the 2017 homicide, "along with some other witnesses [who] called" law enforcement, reported that the homicide was gang-related and was "a retaliation" for the 2016 shooting. (R. 18, 61.) Sgt. Deaton spoke with the investigator assigned to the 2016 Columbus shooting and with witnesses from both the 2017 homicide and the 2016 shooting, and the information "overlapped." (R. 19.) Because of the retaliation motive and the homicide

[3]Although Deaton had achieved the rank of lieutenant at the time of the hearing, this Court refers to Deaton as sergeant, which is the rank used in the affidavit at issue on this appeal.

target's 911 recording, Sgt. Deaton quickly developed Reynolds and Derrick Shields as suspects. (R. 20.)

Witnesses and social-media research indicated that Reynolds was the leader of the "Lep" gang and "order[ed] the [2017] hit." (R. 20-21, 53-54, 56.) Sgt. Deaton and his investigative team spoke to multiple witnesses who said the 2016 shooting was "gang related between Cedric Davis who was a Gangster Disciple ... and Mr. Reynolds who was a Lep gang member." (R. 53.) Witnesses also told investigators that "they were present during conversations that [Reynolds] was involved [in] and ordered the retaliation hit of Cedric Davis and then they accidentally shot Eric Parker in the process." (R. 64.) Sgt. Deaton's information also indicated that Shields was the actual shooter in the 2017 homicide. (R. 64.)

Sgt. Deaton testified that he knew the identities of the witnesses who helped him identify Reynolds and Shields as suspects in the 2017 homicide. (R. 36.) Sgt. Deaton also clarified that, although he received some anonymous calls, he and his investigative team "also spoke with multiple witnesses [who] were familiar with both inciden[ts] and kind of

gave us the information about the potential motive and the people involved, and we do have those--those individual identities"; they were not confidential informants. (R. 37-38.) Moreover, the information that Sgt. Deaton and his team "obtained through the anonymous callers was certainly corroborated by the other witnesses." (R. 55.)

Sgt. Deaton and his team also developed "a ton of social media information," including photographs of Reynolds and some of the other suspects "together in different places, holding up their gang sign." (R. 21-22.) Sgt. Deaton explained that he "didn't just pull up Facebook" social-media accounts but "literally got ... search warrants for the account information" and determined "those were their accounts" based on "names, e-mail addresses, dates of birth" and "multiple photographs of all of them together ... in the same places." (R. 54-55.) Sgt. Deaton and his team also obtained the phone records, indicating communication between Reynolds and the other suspects. (R. 21, 61.)

Sgt. Deaton determined that Reynolds and his girlfriend Karisma Smith had lived together for "some time" and that Smith had recently begun utilities service at a Lee County address. (R. 24-25.) Sgt. Deaton

also "talked to the Lee County Board of Education" and learned that Smith's child was enrolled in school under the same Lee County address and that Reynolds was listed as the child's stepfather. (C. 182; R. 25.) On February 23, 2017, Sgt. Deaton drove by Smith's Lee County house and observed "a white sports car ... with racing stripes on it, [that was known to belong to Reynolds] ... parked in [Smith's] driveway." (R. 26.) Sgt. Deaton also observed a 2001 Mazda Protégé that he knew belonged to Derrick Shields because it "was the same color, make, model, and the tag matched" the information provided by Shields's father. (R. 26-28.) The same Protégé had also been discovered by law enforcement at the scene of the 2016 shooting at which Reynolds was shot. (R. 28.)

Based on all of this information, Sgt. Deaton asked Investigator Jennifer Bosler with the Lee County Sheriff's Office to "get a search warrant for [Smith's] residence and those vehicles." (R. 29-30, 132.) Sgt. Deaton was in "steady communication" with Inv. Bosler up until the search and, while conducting surveillance, he saw Reynolds and Smith leave the house in Reynolds's vehicle when law enforcement arrived. (R. 30-32.) Sgt. Deaton testified that he provided all the information he had

to Inv. Bosler to establish probable cause for the issuance of a Lee County search warrant. (R. 34-35.) In addition to providing information by telephone, Sgt. Deaton also e-mailed Inv. Bosler his own affidavit. (R. 47, 80.)

Inv. Bosler applied for the first search warrant based on information she had received from Sgt. Deaton, whom she referenced multiple times throughout her supporting affidavit. (C. 181-83; R. 78-80, 131.) Inv. Bosler sought the search warrant for the residence, sheds, and vehicles to locate evidence related to the 2017 homicide that Sgt. Deaton was investigating, including the pistol used in the homicide. (C. 180; R. 83, 86.) Inv. Bosler testified that, although she did not specifically recall the conversation she had with Judge Speakman, who issued the first search warrant, she "would have to think that ... [she] said this is a search warrant based off of information from Columbus Police Department, because he would have asked." (R. 147-48.) The first search warrant, which was issued at 10:45 a.m. on February 23, 2017, expressly authorized law enforcement to search the Lee County residence. (C. 180.) Once Judge Speakman signed the warrant, Inv. Bosler and other officers

entered the residence and saw marijuana "in plain view." (R. 82-84.)

Captain Van Jackson, an investigator with the Lee County Sheriff's Office, testified that the officers executing the search warrant detected "a smell of marijuana" "immediately upon gaining entry into the residence" as they were executing the first search warrant. (R. 203.) "They also saw in plain view there on a coffee table in the living room about ... seven or eight partially burned marijuana cigarettes." (R. 203.) Because of the marijuana in plain view, Cpt. Jackson sought a second search warrant to conduct a "drug search." (R. 204.) Based on Cpt. Jackson's affidavit, Judge Speakman signed the second search warrant at about 2:52 p.m. that same day. (R. 204.) Among the evidence seized was over one kilogram of marijuana, eight marijuana "roaches," large amounts of cash, drug paraphernalia, oxycodone, and various bags and containers. (C. 210; R. 660-66, 736, 744, 781.)

At the conclusion of the suppression hearing and in his supporting brief, Reynolds argued that the information in Inv. Bosler's affidavit was not verified or shown to be reliable. (C. 102-11; R. 225-26.) Reynolds also argued that the affidavit did not apprise the issuing judge that it was

based on facts and information "provided by another law enforcement officer." (C. 102-11; R. 227-28.) The trial court disagreed, reading Inv. Bosler's affidavit and concluding: "I don't see how the court got ... misled about ... where the information was coming from." (R. 237.) The trial court specifically noted that "Deaton's investigation [is referenced] all through [the affidavit]." (R. 235.) On May 2, 2019, the trial court issued its written order, denying Reynolds's motion to suppress. (C. 116-19.)

Reynolds was subsequently tried and convicted of trafficking in cannabis, unlawful possession of a controlled substance (oxycodone), and unlawful possession of drug paraphernalia. (C. 19; 149-51.)[4]

On September 20, 2019, the State filed a motion seeking a sentencing enhancement under the Habitual Felony Offender Act, § 13A-5-9, Ala. Code 1975, (" the HFOA"), based on Reynolds's prior convictions for robbery and two counts of vehicular homicide, all committed in

[4]The jury did not find Reynolds guilty of the offense of certain persons forbidden to possess a firearm under § 13A-11-72, Ala. Code 1975. (C. 19, 23-26.)

Georgia. (C. 154.)[5] Reynolds filed an objection to the State's motion, arguing that none of those convictions constituted felonies under Alabama law. (C. 155-59.) The trial court found that Reynolds had one prior felony conviction and sentenced him to 27 years' imprisonment for his trafficking conviction. (R. 1014.) The trial court also sentenced Reynolds to concurrent sentences of imprisonment for 5 years on his possession-of-a-controlled-substance conviction and for 12 months on his possession-of-paraphernalia conviction. The trial court also ordered Reynolds to pay $26,000 in fines plus court costs. This appeal follows.

Analysis

On appeal, Reynolds argues that the trial court erred by denying his motion to suppress the evidence seized during the execution of the search warrant and by enhancing his trafficking sentence under the HFOA.

I. Suppression of Evidence

Reynolds first argues that the trial court erred by denying his motion to suppress the evidence because, he asserts, the affidavit

[5]The State also made an oral motion following Reynolds's guilty verdict that he be sentenced as a habitual offender. (R. 971.)

supporting the first warrant was "defective" because "numerous critical factual assertions" are "attributed to no one" and the information was provided by "unreliable and unverified" informants. (Reynolds's brief, p. 18.) According to Reynolds, because Inv. Bosler's affidavit was defective, the first search warrant and subsequent search were unconstitutional, which, he argues, invalidates the plain-view findings that formed the basis of the second search warrant, during which the evidence used to convict him was seized.

Before addressing Reynolds's specific arguments regarding suppression, we recognize that " '[a] trial court's ultimate legal conclusion on a motion to suppress based on a given set of facts is a question of law that is reviewed de novo on appeal.' " T.A.P. v. State, 72 So. 3d 707, 709 (Ala. Crim. App. 2010) (quoting State v. Hargett, 935 So. 2d 1200, 1204 (Ala. Crim. App. 2005)). Because the evidence presented at Reynolds's suppression hearing was undisputed, we review the trial court's denial of Reynolds's motion to suppress de novo and apply the following legal principles.

"A search warrant can only be issued on probable cause, supported by an affidavit naming or describing the person and particularly describing the property and the place to be searched." § 15-5-3, Ala. Code 1975. "Probable cause must be determined by an analysis of the 'totality of the circumstances.' " Marks v. State, 575 So. 2d 611, 614 (Ala. Crim. App. 1990) (quoting Illinois v. Gates, 462 U.S. 213, 238 (1983)).

> "In determining whether to issue a search warrant, the issuing magistrate is to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him, including the veracity and basis of knowledge of the person supplying the information, there is a fair probability that contraband or evidence of a crime will be found in a particular place. ...Our duty as a reviewing court is to ensure that the magistrate had a substantial basis for concluding that probable cause existed. ... Probable cause may be based on hearsay from a reliable source if there is a disclosed, reliable basis for the information ... Information from fellow officers may be relied on. ... Courts have constantly held that another law enforcement officer is a reliable source and that consequently no special showing of reliability need be made as a part of the probable cause determination."

Marks, 575 So. 2d at 614-15 (internal citations omitted) (emphasis added). A "neutral and detached magistrate" is permitted to "draw such reasonable inferences as he will from the material supplied to him by applicants for a warrant." Illinois v. Gates, 462 U.S. at 240.

Reynolds first argues that Inv. Bosler's affidavit was unclear about her reliance on Sgt. Deaton and the information he gathered during his investigation of the 2017 homicide. Reynolds is correct that " '[t]o comply with the requirement of particularity and to make an independent probable cause evaluation ... the agent must state in the affidavit that he is relying upon other officers.' " Stubblefield v. State, 645 So. 2d 320, 322 (Ala. Crim. App. 1994) (quoting Marks v. State, 575 So. 2d 611, 614-15 (Ala. Crim. 1990)). However, as this Court noted in Washington v. State, 922 So. 2d 145, 171-72 (Ala. Crim. App. 2005):

> " ' "[T]his requirement should not be viewed 'in a hypertechnical, rather than a common-sense manner. [citation omitted.] It is sufficient if the affidavit recites at the outset, or if it is clear from reading the affidavit as a whole, that it is based in part upon information obtained from other law enforcement officers." ' "

(Quoting Villemez v. State, 555 So. 2d 342, 344 (Ala. Crim. App. 1989) (emphasis added)).

We agree with the trial court that Inv. Bosler "clearly presented the information [in her affidavit] as being from Sgt. Lance Deaton of the

Columbus Police Department." (C. 117.) The affidavit Inv. Bosler presented in application for the first search warrant read as follows:

> "On 2/10/17 at approximately 1242 hours, Police were dispatched to ---- Conner Road, Columbus, Ga in reference to a shooting. Upon the Officers arrival they found a black male identified as Eric Parker had been shot. He was transported to the Midtown Medical Center for treatment. A short time later Mr. Parker died of his wounds. Patrol Supervisors requested assistance from the Homicide Unit.
>
> "I, Sgt. Lance Deaton responded to the scene. The initial walk through revealed five 9mm Perfecta shell casings in the roadway in front of the above listed address. There was one vehicle (Honda, black in color) that was struck with apparent bullets. An orange drink can was located on the steps leading to the apartment complex located at ---- Conner Road. There was blood located on the ground next to Apartment -, which is where the body of Mr. Parker was located by police and EMS. A black cell phone was also located on the front window ledge of Apartment - and would later be identified as the victim's phone.
>
> "Detective Alan Malone, Detective Trainee Detrick Jones, and Sgt. Michael Dahnke conducted a canvas of the area. The conducted field interviews with people from the neighborhood and had a few of them transported to Police Headquarters for formal recorded interviews.
>
> "Detective Stuart Carter and Sgt. Lance Deaton conducted interviews with several witnesses that were identified by the initial responding officers. During the interviews it was said that Cedrick Davis aka Black was purchasing marijuana from the deceased when a silver or gray

car drove by and shot at Davis. It was reported that Davis was the intended target and that Parker was shot as a result. The report was that the vehicle was occupied by three individuals with guns. It was further reported that Davis was shot in the leg but fled the scene prior to police arrival. Davis is currently on parole and was on the scene to purchase marijuana. He would be contacted later in the investigation. The interviews revealed that Davis was the intended target because of a shooting that occurred on 12/27/16 at --- Farr Road, Columbus, Ga. In this incident Jody Reynolds and Jarvis Wilson were shot and they are the leaders of the 'Lep Gang.' It is said that 'Black' was at least one of the shooters in this case. It was also determined that 'Black' (Cedrick Davis) is a member of the Gangster Disciples.

"During the investigation it was verified through social media post that Jody Reynolds and Jarvis Wilson were 'Lep Gang' members and/or associates. It was also determined that Karisma Smith was the girlfriend of Jody Reynolds and that they live together. Mrs. Smith was also interviewed in the December shooting case.

"A computer check on Karisma Smith revealed an new address in Lee County, Alabama as --- Lee Road 238 Phenix City, Alabama. Sgt. Lance Deaton then checked with the Muscogee County School District to see if her kids were registered to the school district and they advised me that they were withdrawn from the Muscogee County School District in October 2016. I then checked with Lee County School District and they advised me that Karisma Smith's kids are registered at West Smith Station Elementary School and the kid's address is listed as --- Lee Road 238 Phenix City, Alabama. On their registration form Karisma Smith is listed as the mother and Jody Reynolds as the step-father. Karisma's

> phone number that was listed was the emergency contact number for the school district.
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> "Derrick Shield has multiple felony warrants in Columbus, Georgia and the vehicle he is known to drive (2001 Mazda Protégé) is in the driveway at the residence. Sgt. Lance Deaton had several anonymous callers state Shields was the driver in the murder of Eric Parker on Conner Road. Shields is a known associate of Jody Reynolds. Derrick Shields was also involved in the initial altercation that occurred on Farr Road on 12-27-16. Social media reveals that both Jody Reynolds and Derrick Shields has some involvement in the 'Lep' gang.
>
> "Based on the multiple statements given by witnesses in reference to this being a retaliation shooting along with a recorded statement of Davis saying that he was a 'Gangster Disciples' it is probable that these individuals are involved in the shooting death of Eric Parker who is also identified as a 'Le[p] Gang' member.
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> "On February 23, 2017, Investigator Jennifer Bosler was contacted by Sgt. Lance Deaton with the Columbus Police Department advising that the 2001 Blue Mazda Protégé, blue in color, registered to Derrick Shields Sr., was at the residence located at --- Lee Road 238 Phenix City, Lee County, Alabama, 36870."

(C. 181-83.) Inv. Bosler's affidavit was sworn and presented the same morning that she stated she was contacted by Sgt. Deaton. In fact, the search warrant was issued to Inv. Bosler at 10:45 a.m. that same morning, February 23, 2017. (C. 180.)

From the beginning of the affidavit, it is clear that Inv. Bosler was conveying information gathered by Columbus Police during a Columbus, Georgia homicide investigation. (C. 181.) The affidavit states that Sgt. Deaton responded to the scene and investigated the shooting along with his team of investigators. (C. 181.) Sgt. Deaton is mentioned repeatedly throughout Inv. Bosler's affidavit. (C. 181-83.) Witness interviews connected the 2017 Columbus homicide with the 2016 Columbus shooting. (C. 182.) In addition, although some pronouns are mistakenly used in the affidavit (along with several typographical errors) by virtue of Inv. Bosler "cutting and pasting" from Lt. Deaton's affidavit (R. 152), it is nonetheless clear that the pronouns refer to Sgt. Deaton, not Inv. Bosler. For example, the affidavit states: "I, Sgt. Lance Deaton responded to the scene." (C. 181.) The "I" clearly refers to Sgt. Deaton, not Inv. Bosler. Moreover, the affidavit concludes with Inv. Bosler's confirmation that "Sgt. Lance Deaton with the Columbus Police Department" contacted her on February 23, 2017 to obtain the Lee County search warrant, which was issued that same morning at 10:45 a.m. (C. 180, 183.) Finally, Inv. Bosler also testified at the pretrial suppression hearing that, although she did

not specifically recall her conversation with the judge who issued the search warrant, she "would have to think that ... I said this is a search warrant based off of information from Columbus Police Department, because he would have asked." (R. 147-48.)

When her affidavit is read "as a whole" and in a "commonsense and realistic fashion," it is apparent that Inv. Bosler, from Lee County, Alabama, communicated her reliance on Sgt. Deaton, from Columbus, Georgia, seeking evidence of a Columbus, Georgia, homicide about which she was contacted the same morning that she applied for the warrant. Thus, we find that Inv. Bosler's reliance on another law-enforcement officer, Sgt. Deaton, in her affidavit was clear to the issuing judge.

We also reject Reynolds's argument that Inv. Bosler's affidavit was based on "numerous" "unreliable," "unidentified," and "unverified" informants. Contrary to Reynolds's assertions, much of the information in the affidavit is attributed to individuals more akin to eyewitnesses than informants. " 'Courts have consistently held that the proof-of-veracity rules applied in informant cases do not apply with respect to other sources of information, such as when an "ordinary citizen" or "citizen-informer"

comes forward and reports to the police that he has seen evidence of a crime located at a certain place or that someone has admitted participation in criminal activity to him.' " T.A.P., 72 So. 3d at 710 (quoting Neal v. State, 731 So. 2d 609, 615 (Ala. Crim. App. 1997)).

The affidavit in support of the search warrant clearly outlined that Detectives Alan Malone and Detrick Jones and Sgt. Michael Dahnke "conducted a canvas of the area" of the 2017 Columbus shooting, "conducted field interviews with people from the neighborhood, and had a few of them transported to Police Headquarters for formal recorded interviews." (C. 181.) Det. Stuart Carter and Sgt. Deaton also "conducted interviews with several witnesses that were identified by the initial responding officers." (C. 181 (emphasis added).) From these witnesses, Sgt. Deaton determined that "Davis was the intended target because of a shooting that occurred on 12/27/16 at --- Farr Road, Columbus, Ga." (C. 182.) Reynolds and another leader of the "Lep Gang" were shot in the 2016 Columbus shooting, and it was also determined that the target of the 2017 Columbus shooting was a member of another gang, the Gangster Disciples. "Based on the multiple statements given by witnesses in

reference to this being a retaliation shooting," the affidavit stated, "it is probable" that Reynolds and Derrick Shields "are involved in the [2017] shooting." (C. 182.) In addition, Sgt. Deaton expressly testified that information provided by "anonymous callers was certainly corroborated by the other witnesses." (R. 55.)

Likewise, although Reynolds argues that his connection with Shields, in particular, was not supported by probable cause, the affidavit stated that "[s]ocial media reveals" that Reynolds and Shields were involved in the Lep Gang, that Reynolds was a leader of that gang based on interviews with witnesses to the 2016 shooting, that Shields was a "known associate" of Reynolds, and that Shields was "involved in the initial" 2016 shooting in which Reynolds was injured. (C. 181-82.) The affidavit further states that Shields's vehicle, confirmed as such by Shields's father (R. 26-28), was located at Smith's Lee County residence where Reynolds was living, which Sgt. Deaton determined from personally checking for the girlfriend's place of residence and also discovering that Reynolds was listed as her child's stepfather in the child's school records. In addition, Sgt. Deaton specifically testified at the suppression hearing

that he knew the witnesses' identities and that they were not confidential informants. (R. 36-38.) Sgt. Deaton also testified that some of the witnesses were "present during conversations" where Reynolds ordered the hit. (R. 64.) The affidavit also noted that "several anonymous callers" corroborated each other, stating that Shields was the driver in the homicide. (C. 182.) Sgt. Deaton also had information that Shields was the shooter. (R. 64.) Because much of the evidence connecting Shields and Reynolds was from witnesses to the shootings or to the ordering of the hit or from several anonymous callers who corroborated one another, this information had sufficient indicia of reliability. See T.A.P., 72 So. 3d at 710 (" '[W]here, as here, an ordinary citizen informs the police that he has seen evidence of a crime or that someone has admitted involvement in a crime to him, he is presumed to be reliable, and an officer is not required [when requesting a search warrant] to supply the magistrate with information explaining why he believes the citizen-informant to be reliable' " (quoting Rutledge v. State, 745 So. 2d 912, 918 (Ala. Crim. App. 1999))).

Moreover, Sgt. Deaton specifically testified about the witnesses' reliability, stating that the information they provided "overlapped" and was further corroborated by the information other investigators had received regarding the 2016 shooting and how both shootings were gang related and involved the same people. (R. 19, 61.) In addition, Sgt. Deaton and his team obtained phone records, indicating communication between Reynolds and the other suspects. Sgt. Deaton also determined the witnesses' accuracy and reliability by checking the information they gave regarding how they would contact Reynolds and checking the accuracy of the cell-phone numbers the witnesses provided. (R. 21, 61.) In addition, as to his reliance on social media, Sgt. Deaton testified that he verified social-media evidence by "literally [obtaining] information and search warrants for the account information" and identifying accounts based on "names, e-mail addresses, dates of birth" and "multiple photographs of all of [the suspects] together ... in the same places." (R. 544-55.)

In sum, there was probable cause to justify the first search warrant at Smith's residence, which led to the seizure of evidence supporting

Reynolds's convictions. The totality of the circumstances known to Sgt. Deaton, as indicated in his testimony, relayed to Inv. Bosler, and, for the most part, included or at least alluded to in Inv. Bosler's affidavit, were sufficient to warrant a person of reasonable caution to conclude that evidence of the 2017 homicide in Columbus would be found at Smith's residence where Reynolds was also shown to be residing. Because the affidavit was sufficient, the first search warrant was proper, and, because the officers lawfully and constitutionally conducted the first search, all items found in plain view during that search were admissible at Reynolds's trial. Furthermore, the evidence seen in plain view pursuant to the first search warrant was properly included in the narrative of the second search warrant that resulted in the seizure of drugs and paraphernalia. Thus, the trial court did not err in denying Reynolds's motion to suppress the drug evidence that supported his convictions at issue in this appeal.

Finally, we also agree with the trial court that, even if we viewed the affidavit as defective, we would not exclude the evidence because the officers' reliance on the first search warrant issued by a neutral and

detached judge was reasonable and in good faith. The Alabama Supreme Court has explained:

> "The good faith exception provides that evidence obtained in violation of the Fourth Amendment by officers acting in objectively reasonable reliance on a warrant issued by a neutral and detached magistrate need not be excluded from the State's case-in-chief even if the warrant is ultimately found to be invalid."

Ex parte Morgan, 641 So. 2d 840, 843 (Ala. 1994) (citing United States v. Leon, 468 U.S. 897 (1984)). Inv. Bosler "swore to the facts of the warrant--based off of what [Sgt.] Deaton had relayed [by telephone and email] ... and that was in good faith." (R. 80-81, 90-91.) The suppression hearing in this case was lengthy, and no evidence was ever presented to show (and Reynolds has made no allegations) that any officers acted in bad faith in either securing or executing the search warrant that Reynolds is contesting, that any information in the affidavit supporting the warrant was false, or that the judge abandoned his detached and neutral role. Likewise, Inv. Bosler's affidavit was not facially deficient such that officers could not reasonably rely upon it.

As this Court stated in State v. Malone, 25 So. 3d 493, 497-98 (Ala. Crim. App. 2009),

> "The record does not indicate that the affidavit contained false information or that the issuing judge did not act in a neutral and detached manner. Also, the affidavit was not so lacking in indicia of probable cause and the warrant was not so facially deficient that officers could not have reasonably relied upon it. Because the officers relied upon the search warrant in good faith, the evidence they seized pursuant to that warrant was admissible even if the search warrant was not valid."

Thus, even if Inv. Bosler's affidavit had been defective, the officer's good-faith reliance on the first search warrant would prevent the suppression of the evidence discovered in plain view during execution of that warrant and ultimately seized under the second search warrant.

II. Sentencing as a Habitual Felony Offender

Reynolds also argues that his sentence should not have been enhanced based on his 2001 robbery conviction in Georgia. He claims that his prior conduct would not constitute a felony offense in Alabama "because the conduct which resulted in [his] robbery conviction in Georgia

is not a felony offense in Alabama when it was committed."[6] (Reynolds's brief, p. 23.) Reynolds further argues that "reaching into the victim, Darrell Bellamy's right pocket and removing the money without the victim's permission ... does not constitute a felony under Alabama law." (Reynolds's brief, pp. 21-22.)

Rule 26.6(b)(3)(iv), Ala. R. Crim. P., provides: "Any conviction in any jurisdiction, including Alabama, shall be considered and determined to be a felony conviction if the conduct made the basis of that conviction constitutes a felony under Act 607, § 130(4), Acts of Alabama, p. 812 (§ 13A-1-2(4), Alabama Criminal Code), or would have constituted a felony under that section had the conduct taken place in Alabama on or after January 1, 1980[.]"

> "When the state seeks to use a defendant's out-of-state felony convictions to enhance his sentence under § 13A-5-9 (Alabama's Habitual Felony Offender Act), the state must prove that the conduct for which the defendant was previously convicted constituted a felony in Alabama when it was

[6]Although the State notified the trial court that Reynolds also had two prior convictions in Georgia for vehicular homicide, the trial court found that those convictions did not qualify as prior felony convictions under the HFOA. (R. 1006.)

> committed. Gwynne v. State, 499 So. 2d 802 (Ala. Crim. App. 1986). The state's burden is satisfied by proving either (1) that the prior out-of-state conviction rests, as a matter of law, on felonious conduct as defined by Alabama law at the time of the prior offense; see, e.g., Gwynne, or (2) that the prior out-of-state conviction rests, in fact, on felonious conduct as defined by Alabama law at the time of the prior offense. Mitchell v. State, 579 So. 2d 45 (Ala. Crim. App. 1991)."

Elston v. State, 687 So. 2d 1239, 1241-42 (Ala. Crim. App. 1996). See also State v. Stallings, 274 So. 3d 317, 322 (Ala. Crim. App. 2018) (applying Alabama law "[a]t the time of Stallings's conduct in Georgia" and holding that his conduct "clearly constituted the offense of second-degree forgery in Alabama ... a Class C felony" and, thus, holding that "the circuit court erred as a matter of law in finding that Stallings's forgery convictions could not be used to enhance Stallings's sentence because his conduct did not constitute a felony in Alabama").

Under Georgia's robbery statute, § 16-8-40, Ga. Code Ann. (1984),

> "[a] person commits the offense of robbery when, with intent to commit theft, he takes property of another from the person or the immediate presence of another:
>
> "(1) by use of force;

> "(2) By intimidation, by use of threat or coercion, or by placing such person in fear of immediate serious bodily injury to himself or to another; or
>
> "(3) By sudden snatching."

"This statute encompasses conduct proscribed by Alabama's robbery statutes, §§ 13A-8-41 through -43, Code of Alabama 1975, as well as certain conduct proscribed only by Alabama's theft statutes, §§ 13A-8-3 through -5, Code of Alabama 1975." Elston, 687 So. 2d at 1242.

At the time of Reynolds committed the offense that served as the basis for his 2001 Georgia robbery conviction, both third-degree robbery and first-degree theft were felonies under Alabama law, as they are currently. Under § 13A-8-43, Ala. Code 1975,

> "[a] person commits the crime of robbery in the third degree if in the course of committing a theft he:
>
> > "(1) Uses force against the person of the owner or any person present with intent to overcome his physical resistance or physical power of resistance; or
> >
> > "(2) Threatens the imminent use of force against the person of the owner or any person present with intent to compel acquiescence to the taking of or escaping with the property.

"(b) Robbery in the third degree is a Class C felony."

(Emphasis added.) Under § 13A-8-3, Ala. Code 1975, "[t]he theft of ... property of any value taken from the person of another, constitutes theft of property in the first degree." (Emphasis added.) First-degree theft of property "is a Class B felony" in Alabama. Id.[7]

At sentencing, the State presented certified copies of Reynolds's prior convictions and indictments. (C. 302-13.) Reynolds's Georgia robbery indictment specifically charged that Reynolds did, with "the intent to commit theft, take lawful currency of the United States of America, from the person of Darrell Bellamy, by use of force, to wit: did reach into the pocket of Darrell Bellamy and take said currency, contrary to the laws of said State, the good order, peace and dignity thereof." (C. 305 (emphasis added).) As the State argued at the sentencing hearing,

[7]Although Alabama's first-degree-theft-of-property statute has been amended twice since Reynolds's Georgia robbery conviction (to increase the property value and to add theft by common plan or scheme), the provision that "any value taken from the person of another, constitutes theft of property in the first degree," as well as its felony classification have remained the same. See Act No. 2003-355 and Act No. 2006-561, Ala. Acts 2003 and 2006, respectively.

Reynolds's conduct that formed the basis of his Georgia robbery guilty-plea conviction constituted a felony in Alabama, whether as a third-degree robbery or a first-degree theft. (R. 987.) The indictment underlying his conviction charged the "use of force," sufficient for a third-degree robbery in Alabama and a Class C felony. The indictment's charge that Reynolds took property "from the person" and, specifically, from the victim's "pocket" sufficiently established a first-degree theft, and first-degree theft is a Class B felony in Alabama.[8] Notably, the "use of force" or "threat of force" (which is contested by Reynolds) is not required to constitute first-degree theft, which is "merely the taking of property from the person of another without the use or the threat of the use of force." Preston v. State, 586 So. 2d 263, 264 (Ala. Crim. App. 1991) (emphasis added).

The record indicates that Reynolds pleaded guilty to the Georgia robbery count as charged in the indictment. (C. 304.) Moreover, although Reynolds argues that he committed no more than a fourth-degree theft in

[8]Reynolds was also sentenced for the Georgia robbery to a "felony sentence"--five years, which sentence was split, and he was ordered to serve two years. (C. 304, 306.)

Alabama, which is a misdemeanor (Reynolds's reply, p. 9), he concedes to the facts as charged in the indictment, that he took "about $12.00 by reaching into the victim, Darrell Bellamy's right pocket and removing the money." (Reynolds's brief, pp. 21-22 (emphasis added).) Reynolds's trial counsel, who is also his appellate counsel, also admitted at the sentencing hearing that the Georgia robbery "was essentially a pickpocket." (R. 988.) Thus, based on his own acknowledgments, fourth-degree theft, which involves a theft of property "not taken from the person of another," is inapplicable. § 13A-8-5, Ala. Code 1975 (emphasis added). Conversely, taking property from a victim's pocket satisfies the taking-property-from-the-person element of first-degree theft and is a felony in Alabama. See § 13A-8-5, Commentary, Ala. Code 1975 ("The Criminal Code also continues to apply a more serious sanction to thefts from the person. This position seems justified because it involves either an element of danger or is committed by professional pickpockets or pursesnatchers. Either situation warrants a relatively serious punishment.") In sum, the trial court committed no error in sentencing Reynolds as a habitual felony offender based on the specific Georgia robbery offense to which Reynolds

pleaded guilty and the facts of which his counsel acknowledged at sentencing and on appeal.

III. Sentencing as to Unlawful Possession of a Controlled Substance

Although Reynolds's 27-year sentence for trafficking is correct, the trial court erred when it sentenced Reynolds to 5 years' imprisonment for his unlawful-possession-of-a-controlled-substance conviction. Although neither party on appeal addresses the propriety of Reynold's five-year sentence, it is well settled that "[m]atters concerning unauthorized sentences are jurisdictional," Hunt v. State, 659 So. 2d 998, 999 (Ala. Crim. App. 1994), and that this Court may take notice of an illegal sentence at any time. See, e.g., Pender v. State, 740 So. 2d 482 (Ala. Crim. App. 1999). See also Jackson v. State, [Ms. CR-18-0454, Feb. 7, 2020] ___ So. 3d ___, ___ (Ala. Crim. App. 2020) (holding that "Jackson's 10-year sentence for his shooting-into-an-unoccupied-dwelling conviction does not comply with § 13A-5-6(a)(3), Ala. Code 1975," even though no party raised that issue on direct appeal).

As noted above, Reynolds was convicted of unlawful possession of a controlled substance, a Class D felony offense. See § 13A-12-212, Ala. Code 1975. Although Class D felony offenses may be enhanced under the HFOA pursuant to § 13A-5-9(d) and (e), Ala. Code 1975 (providing for enhancement of Class D felonies when a "defendant has been previously convicted of any two or more felonies that are Class A of Class B felonies" and when a "defendant has been previously convicted of any three or more felonies"), those provisions are not applicable here. Rather, Reynolds's sentence for his unlawful-possession-of-a-controlled-substance conviction is governed by § 13A-5-6(a)(4), Ala. Code 1975, which provides that, for a Class D felony, the sentence length cannot be "more than 5 years or less than 1 year and 1 day and must be in accordance with subsection (b) of Section 15-18-8." In other words, a sentence for a Class D felony must both fall within the range of punishment set out in § 13A-5-6(a)(4), Ala. Code 1975, and must comply with subsection (b) of the Split Sentence Act. That subsection provides, in relevant part, as follows:

> "Unless a defendant is sentenced to probation, drug court, or a pretrial diversion program, when a defendant is convicted of an offense that constitutes a Class C or D felony

> offense and receives a sentence of not more than 15 years, the judge presiding over the case shall order that the convicted defendant be confined ... in a consenting community corrections program for a Class D felony offense, except as provided in subsection (e),[9] for a period not exceeding two years in cases where the imposed sentence is not more than 15 years, and that the execution of the remainder of the sentence be suspended notwithstanding any provision of the law to the contrary and that the defendant be placed on probation for a period not exceeding three years and upon such terms as the court deems best."

§ 15-18-8(b), Ala. Code 1975.

In short, §§ 13A-5-6(a)(4) and 15-18-8(b) prohibit the imposition of a "straight" sentence for a Class D felony offense. Instead, under § 13A-5-6(a)(4), once the trial court imposes on a defendant a sentence length between one year and one day and five years, it must either:

> (1) Sentence the defendant to "probation, drug court, or a pretrial diversion program"; or
>
> (2) "Split" the confinement portion of the defendant's sentence for a period not exceeding two years, suspend the

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[9]Under 15-18-8(e), Ala. Code 1975, the court may sentence a defendant to "high-intensity probation under the supervision of the Board of Pardons and Paroles in lieu of community corrections" when "no community corrections program exists within a county or jurisdiction and no alternative program options are available under subsection (e) of Section 15-18-172."

> remainder of the sentence, and place the defendant on probation for a period not exceeding three years.

Application of the sentencing provision outlined in § 15A-18-8(b), Ala. Code 1975, is mandatory even in situations, such as these, when the sentence is to run concurrently with a longer custodial sentence.

Here, the trial court imposed on Reynolds a five-year "straight" sentence for his unlawful-possession-of-a-controlled-substance conviction. Although that five-year sentence falls within the range of punishment set out in § 13A-5-6(a)(4), the trial court did not also execute that sentence in accordance with § 15-18-8(b). Thus, we must remand this case to the trial court for that court to impose a sentence for Reynolds's unlawful-possession-of-a-controlled-substance conviction that complies with §§ 13A-5-6(a)(4) and 15-18-8(b).

In so doing, however, we note that Reynold's five-year underlying sentence is valid; thus, the trial court cannot change it. See generally Moore v. State, 871 So. 2d 106, 110 (Ala. Crim. App. 2003) (recognizing that, when the base sentence imposed by the trial court is valid, the trial court cannot alter it on remand).

Conclusion

Based on the foregoing, Reynolds's convictions for trafficking in cannabis, unlawful possession of a controlled substance (oxycodone), and unlawful possession of drug paraphernalia are affirmed. Reynolds's sentences for his trafficking and possession-of-drug-paraphernalia convictions are also affirmed. However, we remand this case to the trial court for that court to resentence Reynolds in accordance with this opinion for his unlawful-possession-of-a-controlled-substance conviction. On remand, the trial court shall take all necessary action to ensure that return be made to this Court within 42 days from the date of this opinion.

AFFIRMED IN PART; REMANDED WITH INSTRUCTIONS.

Windom, P.J., concurs. Minor, J., concurs specially, with opinion, joined by McCool, J. Kellum, J., concurs in the result.

MINOR, Judge, concurring specially.

I concur in the Court's judgment. I write separately to urge the legislature to consider amending § 13A-5-6(a)(4), Ala. Code 1975, to no longer require that a sentence for a Class D felony conviction comply with § 15-18-8(b) if the defendant is to serve the sentence for that conviction concurrently with a lawfully imposed straight sentence. Requiring compliance with § 15-18-8(b) in a case such as this one is futile.

Likewise, the legislature should consider amending § 13A-5-6(a)(3) to no longer require that a sentence for a Class C felony conviction comply with § 15-18-8(b) if the defendant is to serve the sentence for that conviction concurrently with a lawfully imposed straight sentence. Cf. Jackson v. State, [Ms. CR-18-0454, Feb. 7, 2020] ___ So. 3d ___, ___ (Ala. Crim. App. 2020) (remanding a sentence on a Class C felony conviction for compliance with § 15-18-8(b) even though the defendant was to serve that sentence concurrently with a 20-year sentence for attempted murder).

McCool, J., concurs.