FILED
November 5, 2026
C. CASEY FORBES, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

State of West Virginia,
Plaintiff Below, Respondent

v.) No. 23-654 (Monroe County CC-32-2022-F-43)

Curtis Lynn Morgan,
Defendant Below, Petitioner

MEMORANDUM DECISION

Petitioner Curtis Lynn Morgan appeals his convictions for possession with intent to deliver a controlled substance, as reflected in the Circuit Court of Monroe County's October 11, 2023, sentencing order.[1] The petitioner claims that the circuit court erred when it denied his motion to suppress evidence on the basis of a defective search warrant and that the State's failure to preserve body camera footage of that search violated his right to due process. Upon our review, finding no substantial question of law and no prejudicial error, we determine that oral argument is unnecessary and that a memorandum decision affirming the circuit court's order is appropriate. *See* W. Va. R. App. P. 21(c).

In June 2022, police officers executed a search warrant on the petitioner's residence based on information received from a confidential informant that the petitioner was distributing methamphetamine. According to the affidavit attached to the search warrant, an informant reported to Deputy Alan Hunt of the Monroe County Sheriff's Department that he saw the petitioner possess a "large amount" of methamphetamine and that he had been distributing methamphetamine for some time. The affidavit also stated that the informant had previously provided "true and accurate" information during the previous year in a Monroe County death investigation. The affidavit further stated that the affiant and his law enforcement colleagues had "routinely received complaints" over the course of the past several months about the petitioner distributing methamphetamine in the Peterstown, West Virginia area. During the search, the petitioner spoke to Corporal J.K. Weiss of the West Virginia State Police—apparently while the officer's bodycam was recording—and made an inculpatory statement that there was a padlock on the door to the room in which the controlled substances were kept. Officers found methamphetamine and other controlled substances during the search.

[1] The petitioner appears by counsel Jeffrey S. Rodgers. The State appears by Attorney General John B. McCuskey and Assistant Attorney General Holly Mestemacher. Because a new Attorney General took office while this appeal was pending, his name has been substituted as counsel.

Subsequently, the petitioner was indicted on one count of possession with intent to deliver a Schedule II controlled substance and two counts of possession with intent to deliver a Schedule I controlled substance. The petitioner filed a motion to suppress evidence of the controlled substances and drug paraphernalia seized from his residence, arguing that the search warrant was invalid because it was based upon unreliable information from a confidential informant. In support, the petitioner cited the affidavit attached to the search warrant. The circuit court denied the petitioner's motion to suppress in February 2023, finding that the informant's reliability was established by the information he provided in the 2021 death investigation. The court also found that the information provided by the informant was corroborated by the other complaints received about the petitioner distributing methamphetamine in the Peterstown area.

On July 17, 2023, the petitioner filed a motion to produce a bodycam recording of the petitioner's statement to police during the search of the petitioner's residence as well as a motion to suppress the petitioner's statement to police. The circuit court denied these motions, finding that the body camera video was inadvertently deleted from a cloud storage system that is "automatically purged after six months." Although the court ruled that "the State arguably had a duty to preserve the video," it found "no indication that the State deleted the video in bad faith." The court also ruled that the petitioner voluntarily made a statement to police during the search about a "padlock on the door to the room in which the controlled substances were found[.]"

The case proceeded to a jury trial. After the close of the State's case-in-chief, the petitioner renewed his motion to produce the bodycam video and asked the court to dismiss the indictment, arguing that due process and the West Virginia Rules of Criminal Procedure required the State to disclose the video because it contained a statement from the petitioner, and the State watched the video "multiple times" before it was deleted. The court denied this motion, finding that the State did not act in bad faith because the cloud storage service used by the State Police automatically deleted the video footage after six months. At the conclusion of the trial, the jury convicted the petitioner of all charges, and the court imposed an effective sentence of three to twenty-five years of imprisonment. The petitioner appeals.

In the petitioner's first assignment of error, he argues that the circuit court should have suppressed the evidence seized pursuant to the search warrant because the affidavit was insufficient to support a finding of probable cause. Specifically, the petitioner contends that there was no indication that the informant had previously provided any reliable information to police in a drug investigation. The petitioner admits that the informant had provided accurate information in a 2021 death investigation but claims that this is not an indicium of the informant's reliability because that information was "stale given the passage of time[.]" The petitioner further argues that the informant's allegations were based upon "unreliable, uncorroborated hearsay allegations."

On appeal from the denial of a motion to suppress, we review the circuit court's findings of fact for "clear error" and the ultimate determination as to whether the search was reasonable is reviewed "de novo." *See* Syl. Pts. 1 and 2, *State v. Lacy*, 196 W. Va. 104, 468 S.E.2d 719 (1996). We have further held that "a circuit court's denial of a motion to suppress evidence will be affirmed unless it is unsupported by substantial evidence, based on an erroneous interpretation of the law,

or, based on the entire record, it is clear a mistake has been made." *Id.* at 107, 468 S.E.2d at 722, Syl. Pt. 2, in part.

To establish probable cause for the issuance of a search warrant, the totality of circumstances recorded in the supporting affidavit must contain sufficient facts and circumstances "to warrant the belief of a prudent person of reasonable caution that a crime has been committed and that the specific fruits, instrumentalities, or contraband from that crime presently may be found at a specific location." *See* Syl. Pt. 3, in part, *State v. Lilly*, 194 W. Va. 595, 461 S.E.2d 101 (1995). Further,

> the validity of an affidavit for a search warrant is to be judged by the totality of the information contained in it. Under this rule, a conclusory affidavit is not acceptable nor is an affidavit based on hearsay acceptable unless there is a substantial basis for crediting the hearsay set out in the affidavit which can include the corroborative efforts of police officers.

Syl. Pt. 4, in part, *State v. Adkins*, 176 W. Va. 613, 346 S.E.2d 762 (1986). When the affidavit is based upon information provided by an informant, it is important to determine

> whether the information is reliable. An informant may establish the reliability of his information by establishing a track record of providing accurate information. However, where a previously unknown informant provides information, the informant's lack of a track record requires some independent verification to establish the reliability of the information. Independent verification occurs when the information (or aspects of it) is corroborated by independent observations of the police officers.

Lilly, 194 W. Va. at 598, 461 S.E.2d at 104, Syl. Pt. 4, in part.

Here, the search warrant affidavit alleged that the informant saw the petitioner in possession of a large amount of methamphetamine, and the affiant stated that the informant was credible because he provided police with accurate information in a death investigation during the previous year. The allegation that the informant saw the petitioner possess methamphetamine established "the informant's basis of knowledge" and lent credibility to the informant's statements. *See* Syl. Pt. 6, in part, *State v. Hlavacek*, 185 W. Va. 371, 407 S.E.2d 375 (1991) (holding that "[g]enerally, when information received from a confidential informant is relied upon in an affidavit for a search warrant, the affidavit must contain information which sufficiently establishes the informant's basis of knowledge and lends credibility to the informant's statements."). Further, the affidavit stated that police had "routinely received complaints" about the petitioner distributing methamphetamine in the Peterstown area, which imparted "some degree of reliability upon the confidential source of information." *Id.* at 373, 407 S.E.2d at 377, Syl. Pt. 7, in part. Considering the totality of circumstances, we conclude that the court did not err when it denied the petitioner's motion to suppress, as the information provided by the informant as contained in the affidavit was sufficiently reliable to support issuance of a search warrant.

The petitioner also assigns error to the circuit court's denial of his motion to produce the bodycam video of the search. The petitioner claims that the State's failure to preserve the bodycam video violated his right to due process. This Court reviews "the final order and the ultimate disposition under an abuse of discretion standard, and we review the circuit court's underlying factual findings under a clearly erroneous standard. Questions of law are subject to a *de novo* review." Syl. Pt. 1, *State v. Schermerhorn*, 211 W. Va. 376, 566 S.E.2d 263 (2002).

We have previously provided the following instruction on the preservation and disclosure of evidence:

> When the State had or should have had evidence requested by a criminal defendant but the evidence no longer exists when the defendant seeks its production, a trial court must determine (1) whether the requested material, if in the possession of the State at the time of the defendant's request for it, would have been subject to disclosure under either *West Virginia Rule of Criminal Procedure* 16 or case law; (2) whether the State had a duty to preserve the material; and (3) if the State did have a duty to preserve the material, whether the duty was breached and what consequences should flow from the breach. In determining what consequences should flow from the State's breach of its duty to preserve evidence, a trial court should consider (1) the degree of negligence or bad faith involved; (2) the importance of the missing evidence considering the probative value and reliability of secondary or substitute evidence that remains available; and (3) the sufficiency of the other evidence produced at the trial to sustain the conviction.

Syl. Pt. 2, *State v. Osakalumi*, 194 W. Va. 758, 461 S.E.2d 504 (1995). We quickly dispose of the petitioner's assertion that the circuit court's ruling violated his due process rights, constituting reversible error. Although the State may have had a duty to preserve the video after it disclosed discovery to the petitioner in November 2022, it is abundantly clear that the State's inadvertent deletion of the bodycam footage had no impact on the trial's outcome. As noted above, *Osakalumi* requires an evaluation of "the importance of the missing evidence considering the probative value and reliability of secondary or substitute evidence that remains available" as well as "the sufficiency of the other evidence produced at the trial to sustain the conviction." *Id*. Here, the circuit court made no finding of bad faith, noting that the video was inadvertently deleted due to a data retention policy that automatically deletes files from the State's cloud storage system after 180 days. Moreover, the State presented the testimony of four police officers who were present during the search, and the petitioner does not dispute their account of the search, nor does he contend that the evidence presented at trial was insufficient to sustain his convictions. Thus, we conclude that the circuit court did not abuse its discretion when it denied the petitioner's motion to produce the bodycam video, and the State's failure to preserve the recording did not violate his right to due process.

For the foregoing reasons, we affirm.

Affirmed.

ISSUED: November 5, 2026

CONCURRED IN BY:

Chief Justice C. Haley Bunn
Justice William R. Wooton
Justice Charles S. Trump IV
Justice H. L. Kirkpatrick
Justice James W. Flanigan