Circuit Court for Montgomery County
Case No. 135516C

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 0438

September Term, 2023

VAUGHN DARVEL BELLAMY

v.

STATE OF MARYLAND

Nazarian,
Zic,
Harrell, Glenn T., Jr.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Nazarian, J.

Filed: April 16, 2024

Alex Buie was shot and killed in his home in November 2013. Although evidence was collected from the scene, it was insufficient to identify a person of interest right away. A year later, a College Park woman's murder investigation led officers to suspect that the last person to call her, Vaughn Darvel Bellamy, had killed her. The police used a cell-site simulator to track Mr. Bellamy's phone, and that led officers to the apartment where Mr. Bellamy was living. At the apartment, police saw Mr. Bellamy holding a handgun and got a search warrant to seize the gun. After the handgun was analyzed, police determined that it matched the handgun used to kill Mr. Buie.

In 2019, Mr. Bellamy was arrested and charged for Mr. Buie's murder and related crimes. Before trial, Mr. Bellamy filed a motion to suppress the handgun on the ground that there was no valid justification for tracking his phone or seizing the gun. The circuit court denied the motion. Mr. Bellamy was convicted of murder, use of a handgun, and three conspiracies.

On appeal, Mr. Bellamy argues that the circuit court erred in (1) entering judgments of conviction for three conspiracy counts, (2) the way it addressed Mr. Bellamy's dissatisfaction with counsel, (3) admitting a detective's testimony, (4) admitting an answer to a question posed to Mr. Bellamy, and (5) denying the motion to suppress the handgun. We reverse the convictions for conspiracy to commit a first-degree burglary and conspiracy to use a firearm in the commission of a crime of violence and affirm the remainder of his convictions.

I. BACKGROUND

A. The Home Invasion And Shooting.

On the night of November 6, 2013, Aaron Kelly heard a knock at the front door of his home. When he opened the door, he saw three men, each holding a handgun. Mr. Kelly tried immediately to close the door but the men pushed their way through. Amidst the commotion that ensued, Mr. Kelly noticed that one of the intruders went to the room of Alex Buie, one of his five housemates.

After a few moments, an additional intruder entered Mr. Buie's room. This led to a fight between Mr. Buie and the two men. The fight didn't last long: Mr. Buie was shot twice by a man who would be identified later as Mr. Bellamy. Once the men left, one of the roommates headed straight to Mr. Buie to provide first aid. The roommate, Danny Gomez-Bruckner, saw Mr. Buie sitting on the ground in a pool of blood. Mr. Gomez-Bruckner immediately called 9-1-1. Mr. Buie died soon after.

B. The Investigations.

After Mr. Buie was killed, the crime scene was processed by Montgomery County Forensic Services. There were multiple pieces of evidence recovered, including an iPhone, a shell casing, and two projectiles. Even so, Mr. Bellamy was not connected to the crime at that time.

On June 3, 2014, Captain Michael Ebaugh was investigating a separate and then-recent murder. Mr. Bellamy immediately became a person of interest because he was the last person who spoke with the victim. The cell phone used to call the victim was tracked to an apartment in Prince George's County. On June 6, 2014, officers arrived at the

residence and soon after arriving, they saw Mr. Bellamy attempting to exit the apartment's window with a gun in his hand. Mr. Bellamy was instructed to go back inside and he complied. Then, Officer Darin Bush knocked on the front door multiple times before announcing his presence. A woman opened the door fully and stepped back to allow the officers inside. Officers entered the residence with their guns drawn and eventually found Mr. Bellamy in the back of the home. Mr. Bellamy and another person of interest were escorted out of the home. While officers were in the residence, they saw a semiautomatic gun on top of a shelving unit near the bedroom where Mr. Bellamy was hiding. That gun, which turned out to be Mr. Bellamy's .40 caliber Smith & Wesson handgun, was seized eventually pursuant to a search warrant. The handgun was sent for testing and submitted to the National Integrated Ballistic Information Network.

On July 1, 2014, the Montgomery County Police Department was informed that the handgun seized in June matched the ballistic evidence generated from the November 2013 shooting. But it was not until 2019, after years of on-and-off investigation, that officers suspected Mr. Bellamy's involvement in Mr. Buie's murder formally. Officers learned that Mr. Bellamy and another man named Bryan Byrd conspired to rob a man at his workplace. When that failed, Mr. Bellamy and Mr. Byrd went to the home where they believed the man lived. The two also had enlisted the help of Trevon Davis. When the three men arrived at the home, they attacked Mr. Buie instead of their intended target, who no longer lived there.

Once officers gathered this information about Mr. Bellamy, they sought and obtained an arrest warrant on February 26, 2019. Mr. Bellamy was arrested on April 3, 2019. Ultimately, Mr. Bellamy was charged with and convicted of (1) first-degree burglary, (2) attempted armed robbery, (3) first-degree felony murder, (4) use of a firearm in the commission of a felony, (5) conspiracy to commit first-degree burglary, (6) conspiracy to commit armed robbery, and (7) conspiracy to use a firearm in the commission of a crime of violence. Mr. Bellamy appealed. Additional facts will be supplied as necessary below.

II. DISCUSSION

Mr. Bellamy presents five issues,[1] which we rephrase: whether the circuit court

[1] Mr. Bellamy's brief lists his Questions Presented as:

> 1. Is Appellant entitled to reversal of the convictions and/or sentences for two of the three conspiracy counts?
>
> 2. Did the trial court err in failing to comply with Md. Rule 4-215 or otherwise inquire into Appellant's wishes when Mr. Bellamy expressed dissatisfaction with the performance of his counsel?
>
> 3. Did the trial court err in permitting the lead detective to bolster the perceived veracity of another State's witness?
>
> 4. Did the trial court abuse its discretion in admitting evidence that after the shooting, Byrd inquired of Appellant as to why he had shot the victim?
>
> 5. Did the trial court err in denying Appellant's motion to suppress a handgun seized as part of an investigation of a Prince George's County homicide?

Continued . . .

erred in (1) imposing sentences for all three conspiracy counts, (2) the manner it handled Mr. Bellamy's dissatisfaction with counsel, (3) admitting a detective's testimony that mentioned another witness, (4) admitting testimony on a question posed to Mr. Bellamy, and (5) denying a motion to suppress the handgun.

A. The Circuit Court Erred In Entering Three Separate Conspiracy Convictions.

Mr. Bellamy was convicted of separate counts for conspiracy to commit (1) first-degree burglary, (2) armed robbery, and (3) a crime of violence with a firearm. Both parties agree that the circuit court erred in convicting Mr. Bellamy of conspiracy to commit first degree burglary and conspiracy to use a firearm in the commission of a crime of violence. So do we. *First*, the State only established that Mr. Bellamy had conspired to commit an armed robbery. *Second*, even though Mr. Bellamy had committed crimes in addition to the armed robbery, crimes that flow from the original agreement do

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The State's brief lists its Questions Presented Section as:

> 1. Absent proof of separate agreements, should Bellamy's convictions for conspiracy to commit burglary and conspiracy to possess a handgun be vacated?
>
> 2. Did the trial court properly address Bellamy's comments regarding counsel the morning of jury selection?
>
> 3. To the extent preserved, did the trial court soundly exercise its discretion during Detective Dupouy's testimony?
>
> 4. Did the trial court properly permit testimony about a question to Bellamy?
>
> 5. Did the suppression court correctly deny Bellamy's motion to suppress the gun he was seen holding during an investigation into a separate homicide?

not constitute separate and distinct conspiracies. *See McClurkin v. State*, 222 Md. App. 461, 490 (2015) ("'The unit of prosecution,' the [Supreme Court of Maryland] has said, 'is the agreement or combination rather than each of its criminal objectives.'" (*quoting Jordan v. State*, 323 Md. 151, 161 (1991))). We reverse the convictions for conspiracy to commit first-degree burglary and conspiracy to use a firearm in the commission of a crime of violence and leave intact the conviction for conspiracy to commit an armed robbery.

B. The Circuit Court Properly Addressed Mr. Bellamy's Dissatisfaction With Counsel.

At trial, Mr. Bellamy informed the circuit court of various reasons why he was unhappy with his attorney. On appeal, he argues that the circuit court did not address his concerns adequately, as Maryland Rule 4-215(e) requires. We review a circuit court's compliance with Maryland Rule 4-215(e) for abuse of discretion. *Cousins v. State*, 231 Md. App. 417, 438 (2017).

Maryland Rule 4-215(e) allows for a defendant to discharge their attorney if certain requirements are met. The circuit court has ample discretion to determine whether an attorney should be discharged, and the Rule defines the procedure the court must follow once the defendant asks for permission to discharge counsel:

> If a defendant requests permission to discharge an attorney whose appearance has been entered, the court shall permit the defendant to explain the reasons for the request. If the court finds that there is a meritorious reason for the defendant's request, the court shall permit the discharge of counsel; [and] continue the action if necessary . . . . If the court finds no meritorious reason for the defendant's request, the court may

> not permit the discharge of counsel without first informing the defendant that the trial will proceed as scheduled with the defendant unrepresented by counsel if the defendant discharges counsel and does not have new counsel. If the court permits defendant to discharge counsel, it shall comply with subsections (a)(1)-(4) of this Rule . . . .

Md. Rule 4-215(e). The determination of whether there is a meritorious reason to discharge counsel may be implicit and brief. *See Hargett v. State*, 248 Md. App. 492, 510 (2020) (Appellant had claimed counsel was rude and prejudiced, but "[t]he trial court implicitly found that neither reason was meritorious. We perceive no error."). And although the procedure must be followed strictly, the court is not required to advise the defendant of the opportunity to proceed without counsel if the defendant's reasons for wanting to discharge counsel lack merit:

> The plain and unambiguous language of the Rule does not require the trial judge to inform a defendant of the option to proceed *pro se* when the judge determines that the defendant's reasons for requesting discharge of counsel are not meritorious, the judge subsequently denies the defendant's request, and the defendant has not made a statement sufficient to indicate to the trial court a desire to invoke the right to self-representation.

Pinkney v. State, 427 Md. 77, 89–90 (2012).

Mr. Bellamy claims that despite repeated complaints about his counsel's performance, the trial court "did not make a finding whether it was meritorious. Nor did the court pin down whether Appellant wished to fire his lawyer, and the consequences of that decision." But the record reveals no indication that Mr. Bellamy wanted to discharge his attorney or that the circuit court had an obligation to do more:

> [COUNSEL FOR MR. BELLAMY]:—Your Honor, before

we bring the jury panel in, my client has raised some concerns about his—I guess my lack of performance or performance, and so just if he wants to be heard, I would ask brief—quickly that he be heard by the Court on—

THE COURT: Mr. Bellamy, anything you want to tell the Court?

MR. BELLAMY: Yes, sir. I was just discussing a few things with him, right? I said this case has been going on since 2019, and he had communication issues with coming up there, discussing any strategy or defense, and here we is now, starting trial, and I'm unprepared. I don't know what's going on or—he rarely came up to the jail to visit me. I can count on my fingers, probably three times, and here we go, starting trial, and it's like he's not—don't have a strategy or defense to, to argue anything, and like, I'm not understanding.

THE COURT: Okay. Well, right now the strategy—and you don't want to be telling me the strategy, don't—

MR. BELLAMY: Nah.

THE COURT:—definitely don't want to be telling the State—

MR. BELLAMY: Right.

THE COURT:—the strategy or lack thereof, but he has been very prepared on these motions and filed many issues and raised very—

MR. BELLAMY: He filed motions, but I'm—

THE COURT:—clever issues, and so you're going to have a good long weekend, and hopefully, he can have a lot of discussions with you over the weekend, three-day weekend—

MR. BELLAMY: I hope so, because he—

THE COURT:—four-day, and you can discuss it amongst yourselves.

MR. BELLAMY: Because it's been 2019 and he hadn't been at the jail to communicate with me to—

THE COURT: And I know it's difficult with you being in the Department of Corrections as opposed to a local facility, and so just because an attorney isn't seeing the client doesn't mean he's not working on the case, and so—

> MR. BELLAMY: But is that possible to prepare a defense, you know what I'm saying, without him discussing anything with me? He's not telling me right now what's his defense or—
>
> THE COURT: Well, I don't think in the table, when you're sitting three feet from the state's attorney, is a proper time to be discussing that. So I'll give you—all time to be discussing things in private . . . . [T]omorrow you'll have time, Saturday, Sunday, Monday, and you'll have a lot of time to go over things.
>
> [COUNSEL FOR MR. BELLAMY]: And, Your Honor, I'm happy to come up—even if we're not with the jury all day tomorrow, whatever time we're not with the jury, I can be in lockup with Mr. Bellamy.

Although Mr. Bellamy made clear that he had issues with how counsel had handled the case, he doesn't suggest even implicitly that he wanted to discharge his attorney. And once the circuit court assured Mr. Bellamy that there was additional time for him to consult with counsel before trial began, he appeared to be satisfied with the answer and did not bring up the issue again. That distinguishes this case from others where the defendant made clear that they want to or are inclined to fire their attorney. *See Cousins*, 231 Md. App. at 434 (defendant stated that he was discharging his attorney); *State v. Hardy*, 415 Md. 612, 623 (2010) (the defendant's "declaration that he was 'thinking about changing the attorney or something' reasonably should have led a trial judge to conclude that [the defendant] wanted, or at the very least was inclined, to discharge his counsel." This "is all that Maryland law requires . . . for a court to consider his statement a request to discharge counsel and address the matter accordingly."). Maryland Rule 4-215(e) isn't triggered where the defendant simply is unhappy with counsel. *See Wood v. State*, 209 Md. App. 246, 288 (2012) ("Appellant's statement that he had been 'having

problems' with [counsel] . . . did not rise to the level of mandating a Maryland Rule 4-215(e) inquiry because nothing about appellant's statements" indicated the intent to obtain a different attorney.), *aff'd*, 436 Md. 276 (2023). Finally, even if Mr. Bellamy had offered *some* indication that he wanted to discharge his attorney, the court clearly didn't see any issue with counsel's performance. The circuit court stated that defense counsel had made "clever" arguments and was "very prepared" when it came to the motions filed. Thus, the court likely would have found that Mr. Bellamy's concerns were without merit, and thus no need to take any further action. *See Pinkney*, 427 Md. at 89–90. We see no abuse of discretion in the court's response to Mr. Bellamy's concerns about his counsel.

C. Mr. Bellamy's Argument About Detective Dupuoy's Testimony Is Not Preserved.

Mr. Bellamy's *second* argument is that the circuit court erred in admitting a detective's testimony that referenced another witness. Unfortunately, this issue wasn't preserved. Our appellate courts ordinarily will not "decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court." Md. Rule 8-131(a). Moreover, "where a party acquiesces in a court's ruling, there is no basis for appeal from that ruling." *Simms v. State*, 240 Md. App. 606, 617 (2019). Acquiescence, a voluntary act inconsistent with the errors alleged on appeal, usually precludes appellate review. *Id.*

In this case, Mr. Bellamy alleges that the court erred in admitting Detective Allison Dupuoy's testimony that another witness was "a very good witness" even after defense counsel had objected. But the record reveals that Mr. Bellamy acquiesced to the

circuit court's decision not to sustain his objection:

> [DETECTIVE DUPUOY]: We interviewed Aaron Kelly again. He was really our main witness that we interviewed because he kind of had a major role in what happened that night and he was a *very good witness*.
>
> [THE STATE]: Why do you think that he—
>
> [COUNSEL FOR MR. BELLAMY]: Objection, Your Honor. May we approach quickly?
>
> (Bench conference follows:)
>
> [COUNSEL MR. BELLAMY]: Your Honor, I just didn't anticipate—she said that Aaron Kelly was a very good witness. I would just caution—
>
> [THE COURT]: She said main witness, not a good witness.
>
> [COUNSEL FOR MR. BELLAMY]: She said very good.
>
> [CO-DEFENDANT'S COUNSEL]: It's hard for me to hear what was asked.
>
> [THE COURT]: I heard main witness.
>
> [THE STATE]: I heard main witness.
>
> [THE COURT]: Yes.
>
> [COUNSEL FOR MR. BELLAMY]: Well, to the extent if I'm wrong, I just would object to her characterizing the strength of a particular piece of evidence.
>
> [THE COURT]: Okay.
>
> [COUNSEL FOR MR. BELLAMY]: And, I may have heard wrong so, sorry about that.
>
> [THE STATE]: I heard main witness.
>
> [COUNSEL FOR MR. BELLAMY]: Okay.
>
> [THE COURT]: *So, nobody will argue that she said that?*
>
> [COUNSEL FOR MR. BELLAMY]: *That she said—okay.*
>
> [THE COURT]: I do not—
>
> [COUNSEL FOR MR. BELLAMY]: *Okay.*
>
> (Bench conference concluded.).

(Emphasis added). There was confusion in real time about what Detective Dupuoy stated—the transcript reveals that she did in fact say, "very good witness"—but Mr. Bellamy acquiesced to the court's interpretation of the testimony. The circuit court asked explicitly whether anyone had any arguments against the idea that Detective Dupuoy had only said Mr. Kelly was a "main witness," and Mr. Bellamy accepted this by saying "okay." Because the objection was dropped, and never even ruled on, there is nothing for us to review. *See Grandison v. State*, 305 Md. 685, 765 (1986) ("By dropping the subject and never again raising it, [Appellant] waived his right to appellate review of this issue.").

D. The Question Posed To Mr. Bellamy Was Not Hearsay.

Mr. Bellamy asserts *next* that the circuit court erred in allowing a question that, he says, violated both the rule against hearsay and the Confrontation Clause. When it comes to hearsay determinations, "the trial court's legal conclusions are reviewed de novo, but the trial court's factual findings will not be disturbed absent clear error." *Gordon v. State*, 431 Md. 527, 538 (2013) (citations omitted).

Hearsay is an out-of-court statement "offered in evidence to prove the truth of the matter asserted." Md. Rule 5-801(c). "A 'statement' is (1) an oral or written assertion or (2) nonverbal conduct of a person, if it is intended by the person as an assertion." Md. Rule 5-801(a). Although the term "assertion" isn't defined in the Maryland Rules, our cases have established that an assertion depends on the statement's actual contents and the implications or inferences that can be drawn. *McClurkin*, 222 Md. App. at 480. Even

questions may be considered assertions under specific circumstances. *See Stoddard v. State*, 389 Md. 681, 711 (2005) (a witness had stated "'is [Appellant] going to get me?'" and "[u]nder the State's theory of this case, by speaking these words, [the witness] impliedly communicated that she had witnessed [Appellant] assaulting [the victim]. The State offered these words to prove the truth of the factual proposition, *i.e.* to prove that [the witness] had in fact witnessed [Appellant] assaulting [the victim]."). So the State's reason for providing the statement is important in determining whether it's hearsay. *See id.*

Furthermore, hearsay is inadmissible unless it qualifies for one of the exceptions. Md. Rule 5-802. As relevant here, statements made by and offered against the party opponent are admissible. Md. Rule 5-803(a)(1). Also, if a declaration "is not offered for the truth of the matter asserted, it is not hearsay and it will not be excluded under the hearsay rule." *Stoddard*, 389 Md. at 689. Finally, because defendants have the right to confrontation under the United States Constitution, "testimonial statements may not be offered into evidence in a criminal trial unless . . . 1) the declarant/witness is unavailable, and 2) the defendant had a prior opportunity to cross-examine the declarant/witness." *State v. Snowden*, 385 Md. 64, 78–79 (2005). The predicate to Confrontation Clause issues is that the statement offered constitutes hearsay. *See id.* at 75.

At trial, the State questioned Mr. Davis about the night of the shooting, and the questions included a question about what Mr. Byrd asked Mr. Bellamy:

> [THE STATE]: Mr. Davis, we were talking about a—was there any conversation in the car ride, as you got away from

the scene, about what happened in the back bedroom?

[MR. DAVIS]: Yeah.

[THE COURT]: You may lead now, if you need to.

[THE STATE]: Thank you.

[THE STATE]: Specifically, Mr. Davis, did Mr. Byrd ask Mr. Bellamy any questions about what happened? Yes or no?

[MR. DAVIS]: No.

[THE STATE]: He didn't ask anything?

[MR. DAVIS]: Oh, he asked him why did he shoot him.

Although Mr. Bellamy had anticipated this line of questioning, the circuit court ruled that Mr. Byrd's response would be admissible both as a party opponent admission and because the question itself made no assertions.

Mr. Bellamy argues the court erred in proceeding as it did because the question itself contained an "assertion . . . offered for the truth of the matter implicitly asserted—the state could have only wanted the jury to conclude that the statement was evidence that Mr. Bellamy had shot Buie," and that its admission violated his right to confrontation. We disagree for two reasons. *First*, even if we assumed that the question was offered for its truth and was meant as an assertion, it still wouldn't be hearsay because it is an admission by a party-opponent. The State used its main witness, Mr. Davis, to testify on what Mr. Byrd—one of the defendants and opposing parties—had stated previously. This fits squarely under Maryland Rule 5-803(a)(1). *Second*, and finally, because we have established that the question was not hearsay, there can be no Confrontation Clause violation. *See Snowden*, 385 Md. at 78–79.

E. The Circuit Court Did Not Err In Denying Mr. Bellamy's Motion To Suppress.

Mr. Bellamy's *final* argument is that the circuit court erred in denying his motion to suppress. "When reviewing the denial of a motion to suppress evidence, we confine ourselves to what occurred at the suppression hearing. We view the evidence and inferences that may be reasonably drawn therefrom in a light most favorable to the prevailing party on the motion, here, the State." *Madrid v. State*, 247 Md. App. 693, 714 (2020) (cleaned up), *aff'd*, 474 Md. 273 (2021). We defer to the court's fact finding unless clearly erroneous and review any legal conclusions *de novo*. *Id.*

1. The Fourth Amendment and its exceptions.

The Fourth Amendment of the Constitution of the United States guarantees "[t]he right of people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. In general, warrantless actions are presumed unreasonable. *Henderson v. State*, 416 Md. 125, 148 (2010). But warrantless actions may be deemed reasonable if they fall under a "specifically established and well-delineated exception[.]" *Katz v. United States*, 389 U.S. 347, 357 (1967). There are three distinct exceptions that are relevant to this case: (1) consent, (2) exigent circumstances, and (3) good faith.

The *first* relevant exception is consent. Warrantless searches may be conducted pursuant to valid, voluntary consent. *State v. McDonnell*, 484 Md. 56, 81 (2023). But the search must remain within the scope of the consent given and the consent may be revoked or restricted at any time. *Id.*

Second, exigent circumstances may justify a warrantless search or seizure. *Gorman v. State*, 168 Md. App. 412, 422 (2006). This is a narrow exception and "'[a] heavy burden falls on the government to demonstrate exigent circumstances that overcome the presumptive unreasonableness of warrantless home entries.'" *Id.* (*quoting Williams v. State*, 372 Md. 386, 403 (2002)). "'Exigent circumstances exist when a substantial risk of harm to the law enforcement officials involved, to the law enforcement process itself, or to others would arise if the police were to delay until a warrant could be issued.'" *Id.* (*quoting Williams*, 372 Md. at 402). "Exigent circumstances include 'an emergency that requires immediate response; hot pursuit of a fleeing felon; and imminent destruction or removal of evidence.'" *Id.* (*quoting Bellamy v. State*, 111 Md. App. 529, 534 (1996)). Finally, the court must consider specific factors when determining whether exigent circumstances existed: "'the gravity of the underlying offense, the risk of danger to police and the community, the ready destructibility of the evidence, and the reasonable belief that contraband is about to be removed.'" *Id.* (*quoting Williams*, 372 Md. at 403).

Third, "good faith" is an exception to the remedy for a warrantless action, exclusion. "Under the exclusionary rule, evidence obtained in violation of the Fourth Amendment is ordinarily excluded from the criminal trial of a defendant whose rights were violated by an illegal search or seizure." *State v. Copes*, 454 Md. 581, 605 (2017). However, the exclusionary rule will not be applied whenever "law enforcement officials engage in 'objectively reasonable law enforcement activity,' even if that activity is later found to be a violation of the Fourth Amendment." *Id.* at 606 (*quoting United States v.*

Leon, 468 U.S. 897, 919 (1984)). As its name implies, this exception "depends on whether law enforcement officers acted in good faith." *Id.*

2. The suppression hearing.

At the suppression hearing, the circuit court found that a woman named Catina Cortes had been murdered in College Park. After officers investigated her death, they learned that Mr. Bellamy had been the last person to call her and that her phone was never used again after the call with Mr. Bellamy. Once they made this connection, officers used a cell-site simulator to track Mr. Bellamy's phone. After tracking the phone to the Prince George's County apartment, officers witnessed Mr. Bellamy attempting to escape the residence with a gun in his hand. Mr. Bellamy was told to go back inside and he complied. Then Officer Darin Bush knocked on the apartment's front door and was let inside by one of the residents. Given all this information, the circuit court denied the suppression motion because it found that the officers' decision to enter without a warrant was justified by consent and by exigent circumstances. Finally, and though it was unclear whether a warrant was granted to use the cell-site simulator, the court found "good-faith reliance on an order" based on the officers' testimony.

3. Mr. Bellamy's arguments on appeal.

Mr. Bellamy argues here that the circuit court erred in denying his motion to suppress because, he says, (1) the officers did not act in good faith reliance "upon the (alleged) simulator order," (2) no exigent circumstances justified the warrantless entry into the apartment, and (3) the apartment's resident did not consent to the police's entry and search. We disagree.

Mr. Bellamy's first argument regarding the lack of good faith is relatively close. The findings at the suppression hearing never resolved fully whether a warrant/order existed for the cell-site simulator or whether officers were justified in believing that it did. And "the use of a cell site simulator . . . by the government, requires a search warrant based on probable cause and describing with particularity the object and manner of the search." *State v. Andrews*, 227 Md. App. 350, 395 (2016). However, the simulator in this case was used in 2014, *before Andrews*. In general, new principles of law are not applied retroactively. *McGhee v. State*, 482 Md. 48, 68 (2022). That would mean that the possibly warrantless use of the simulator would not yet have been declared illegal. But even if *Andrews* did apply retroactively, that case made clear that established exceptions to the warrant requirement may still be applied to cell-site simulators. *Andrews*, 227 Md. App. at 395. So even if we were to assume that the officers lacked a good faith belief that a warrant or an order existed,[2] there was a sound exigent circumstances argument. Mr. Bellamy was the only person of interest in a then-recent murder and was believed to be armed and dangerous. Indeed, on June 4, 2014—the *day after* Ms. Cortes was found murdered—the police filed an "Exigent Circumstances Request Form" seeking permission to track the phone used to call Ms. Cortes. Under those circumstances, and

[2] The "Exigent Circumstance Request Form" filed by Detective James Boulden and submitted to a cell phone carrier has a section that states the "urgency of the situation . . . renders it unfeasible to obtain a search warrant or probable cause court order." This likely means that officers were not under the impression that they went to the apartment with a warrant or order.

then seeing Mr. Bellamy with a gun trying to leave the premises, it was reasonable for police to believe that swift action was necessary to prevent harm to others and the destruction of evidence. *See Gorman*, 168 Md. App. at 422.

Next, Mr. Bellamy argues that the police's presence created exigent circumstances, meaning that the subsequent entry, search, and seizure were unwarranted. It is true that police may not create exigent circumstances to get around the warrant requirement, *Dunnuck v. State*, 367 Md. 198, 206–07 (2001), but that's not what happened here. Sergeant Skip Hamm, along with other police officers, had been surveilling Mr. Bellamy's apartment. Sergeant Hamm, who had a clear view of the apartment's exterior, saw Mr. Bellamy come out of the window with a gun in his hand. Shortly before this, Officer Bush had approached the front door and begun knocking but did not announce the police's presence. It was not until *after* Sergeant Hamm sent out a radio communication that Officer Bush knew that Mr. Bellamy had tried to escape and was now back inside the apartment. Then, Officer Bush announced the police's presence loudly. The officers then were allowed (by consent, as we'll discuss next) to enter, but at no point before that had the officers entered the apartment. This distinguishes this case from *Dunnuck*, where officers had only seen marijuana, illegal at the time, through the defendant's window, then escalated the situation themselves as if an emergency were occurring. *Id*. In that case, the officers could have left and obtained a search warrant. *Id.* at 213. In this case, officers saw Mr. Bellamy, the prime person of interest in a murder, leave the apartment abruptly with a handgun. Mr. Bellamy's actions created the exigent circumstances. In

light of what the officers knew at the time, it was not unreasonable for the officers to enter the apartment, especially since they never forced themselves inside. *See Gorman*, 168 Md. App. at 422 (explaining that exigent circumstances may exist when there is a substantial risk to law enforcement, to other people, or to the law enforcement process itself). The officers' attempts to prevent further harm were justified.

Finally, Mr. Bellamy asserts that the resident who opened the door for the police didn't actually consent to the search. He argues further that when the resident stepped back to let the officers in, this "was likely a recognition that officers were coming in, not a granting of permission for them to do so." But although we recognize that a knock and announce by the police can be daunting, the mere existence of this act does not preclude a finding of consent. When the resident opened the door, she stepped back immediately. Officer Bush announced the police's presence loudly but didn't push through the resident and never stated that the police *had to be allowed inside*. In addition, the record does not reflect that the resident was mistreated or coerced into allowing the police inside. *See Scott v. State*, 366 Md. 121, 143 (2001) (while the police conducted a knock and announce to enter the hotel room, "[t]he evidence, in a light most favorable to the State, shows no police overbearing, or even impoliteness"). Viewing the evidence in the light most favorable to the State, we agree with the circuit court that the resident consented to the police's entrance and search of the dwelling. And even if there had been no valid consent, the officers were authorized by exigent circumstances to enter the residence without a warrant.

The circuit court did not err in denying Mr. Bellamy's motion to suppress, and we affirm the remainder of Mr. Bellamy's convictions.

JUDGMENTS OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY REVERSED AS TO THE CONVICTIONS FOR CONSPIRACY TO COMMIT A FIRST-DEGREE BURGLARY AND CONSPIRACY TO USE A FIREARM IN THE COMMISSION OF A CRIME OF VIOLENCE AND AFFIRMED IN ALL OTHER RESPECTS. COSTS ASSESSED 75% TO APPELLANT AND 25% TO MONTGOMERY COUNTY.