Circuit Court for Harford County
Case No. C-12-CR-18-000626

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 485

September Term, 2022

NICHOLAS HUNT

v.

STATE OF MARYLAND

Leahy,
Albright,
Harrell, Glenn T., Jr.,
(Senior Judge, Specially Assigned)

JJ.

Opinion by Leahy, J.

Filed: May 8, 2023

*In the November 8, 2022, general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

**This is an unreported opinion and therefore may not be cited either as precedent or as persuasive authority in any paper, brief, motion, or other document filed in this Court or any other Maryland court. Md. Rule 1-104.

Appellant, Nicholas Hunt, ("Hunt"), was indicted in the Circuit Court for Harford County on eleven drug and firearm counts. He moved to suppress evidence seized during a search of the apartment where he was living. Hunt's contention before the suppression court, and now on appeal, is that the search and seizure warrant was based upon information obtained unlawfully by law enforcement after Hunt purportedly revoked his invitation to search his apartment without a warrant earlier that day. The circuit court denied the motion following a hearing. Hunt then pled guilty to one count of possession of a firearm with a nexus to drug trafficking and one count of possession of a regulated firearm by a prohibited person, conditioned upon his right to appeal from the suppression ruling. The court sentenced him to an aggregate term of 35 years, all but ten years suspended, with the executed portion of the sentence to be served without the possibility of parole.

On appeal, Hunt poses a single question: Did the suppression court err by denying the motion to suppress? Discerning no error, we shall affirm the judgments of the circuit court.

Viewing the evidence in the light most favorable to the State, we hold that after Hunt told law enforcement, "[y]ou can search my apartment," he did not revoke his consent to the search unequivocally by his words or by his conduct. We conclude that, under the totality of the circumstances, Hunt did not withdraw his express consent to the search by implication when he briefly led the officers away from the apartment because he then accompanied the officers to his apartment, handed them his key ring, and showed

them which was the key to his apartment. Consequently, we hold that the circuit court did not err in denying the motion to suppress.

BACKGROUND

We present the facts adduced at the May 11, 2022, suppression hearing in the light most favorable to the State, the prevailing party. *Greene v. State*, 469 Md. 156, 165 (2020). The State called Detective James Nolan, Jr. ("Nolan") as its only witness. He testified that at the relevant time, he worked for the Department of Public Safety and Correctional Services ("DPSCS") Warrant Apprehension Unit serving "parole retake warrants." In August 2018, his team was searching for Demond Pettigrew ("Pettigrew"),[1] for whom a warrant had been issued for violation of the conditions of his parole. A source told Nolan that Pettigrew was living in Apartment 301, 1313 Gold Meadow Way, in Edgewood, Maryland (hereinafter "Apartment 301") with his girlfriend and a "white male[.]"

On August 28, Nolan and his team surveilled Apartment 301. They observed a white male, later identified as Hunt, park a white BMW outside the apartment building. Hunt and a woman got out of the vehicle, walked up the external staircase to the third floor of the apartment building, and entered the apartment using Hunt's key. The officers waited to see if Pettigrew would exit the apartment but left after some time had elapsed.

[1] Mr. Pettigrew's name appears as "Demond" and "Damian" in the record. We use the spelling that appears on his parole retake warrant.

Early the next morning, August 29, Nolan returned with at least six or seven other officers. Around 7 a.m., he observed Hunt leave the apartment with the same woman and walk towards the white BMW. Nolan "never saw Mr. Pettigrew come or go . . . into that apartment" but he nevertheless approached Hunt and identified himself. Nolan asked Hunt "if he knew Mr. Pettigrew." Hunt denied knowing Pettigrew. Nolan then showed Hunt a picture of Pettigrew, but Hunt again denied knowing him. Nolan explained to Hunt "that [they] had information that he was living with Pettigrew[,]" but Hunt denied that as well. Hunt then "volunteered" a search, with the words "[y]ou can search my apartment."

Nolan testified that he followed behind as Hunt walked toward the apartment building. However, in an apparent ruse, Hunt "walked past the staircase" that led up to Apartment 301 when they "got to the actual entrance" of the building. Nolan stopped Hunt and told him that the police had observed him entering and exiting Apartment 301 and that "they knew Mr. Pettigrew was in the apartment." Hunt then admitted to Pettigrew's presence in the back bedroom of Apartment 301.

Nolan testified to what happened next:

> [NOLAN]: At that time, the team went up to the third floor. We took Mr. Hunt with us. Mr. Hunt was standing to the side -- well, off to the side actually. We got the key for the Apartment 301 from Mr. Hunt.
>
> [STATE'S ATTORNEY]: How did you go about getting the key from Mr. Hunt?
>
> [NOLAN]: I asked him for it.
>
> [STATE'S ATTORNEY]: And he just handed it over?

[NOLAN]: Yes.

[STATE'S ATTORNEY]: Okay.

[NOLAN]: He actually showed -- there were several keys on the ring. He actually showed me the key. He gave me the key, and we were – as I put the key into the lock, I looked over to Mr. Hunt, and he was waving me over to him.

Nolan explained that he "went over to Mr. Hunt[,]" who "indicated that Mr. Pettigrew would kill [Hunt] if he found out that he had given [Pettigrew] up, that he was inside the apartment Hunt confided that "there's also a little bit of marijuana in the apartment[,]" leading Nolan to "explain[] to Mr. Hunt that I was there to take Mr. Pettigrew into custody and return him to the Department of Corrections, that I wasn't worried about a little bit of marijuana.

Thereupon, Nolan and his team entered Apartment 301 with Hunt's key. Nolan immediately smelled "[t]he odor of spray paint[,]" the "obvious source" of which was a half bath with a "wide open" door to his "immediate right" as he entered the apartment. Nolan testified,"[t]here was a towel on the floor with a dissembled [sic] assault pistol that was obviously freshly spray painted black." There was also a "can of spray paint with a couple of pairs of rubber gloves next to it." Nolan explained that he could see the disassembled firearm after he crossed the threshold of the apartment and walked about three feet inside.

The officers then conducted a search of the apartment for Pettigrew, during which they opened a closed bedroom door adjacent to the half bathroom "to clear it, make sure

there were no suspects or anybody inside the – inside the room." On the floor of that room was another firearm that "looked like it was being disassembled on the floor with a Dremel tool," all of which led Nolan to believe that "they were trying to remove a serial number[.]" These items may also have been "part of that weapon that was found in the bathroom." There was also a "large amount of currency" and "a digital scale out in plain view." Officers walked around the far side of the bed where they observed a large glass container filled with loose marijuana and an intact handgun on the floor.

Nolan testified that after the team cleared the rest of the apartment, he knocked on the door to the back bedroom "where Mr. Hunt said [Pettigrew] would be." Nolan identified himself and Pettigrew unlocked and opened the door. Nolan entered the bedroom and arrested Pettigrew on the latter's open arrest warrants. The officers secured the apartment and contacted the Harford County Sheriff's Office ("HCSO") to advise them of what they had observed. Detective Aaron Sandruck, a police officer of the Havre de Grace Police Department assigned to the Harford County Narcotics Task Force, obtained a search and seizure warrant.

On cross-examination, Nolan clarified the circumstances during the time he first approached Hunt outside of the apartment building. Nolan was on foot with "one or two [officers] near me and Mr. Hunt[,]" and four or five other officers "in the vicinity." Initially, Hunt was "cordial" but not "cooperative." After Hunt "indicated that [the team] could search his apartment[,]" they "escort[ed] him towards the apartment." However, when Hunt "took [them] towards a long hallway on the first floor past the staircase[,]"

Nolan testified that he stopped Hunt and said, "Listen, we observed you come out. We observed you go in and come out of 301. We know Mr. Pettigrew is in 301." Nolan related, "[t]hat's when [Hunt] said [Pettigrew is] in the back bedroom." Thereupon, Hunt "[w]alked up to the third floor with [the team,]" which consisted of "seven or eight" other agents. Nolan explained that after Pettigrew was taken into custody, a member of the HCSO narcotic taskforce came to secure Apartment 301 and Nolan informed the taskforce member of his observations.

Hunt testified to a different version of events. According to Hunt, Nolan and his team arrived in two police cars as Hunt approached his own vehicle in the parking lot. Hunt said Nolan approached him on foot and searched Hunt and his companion while one of the police cars blocked in his vehicle. Hunt denied that he offered to let the team search his apartment and testified that Nolan took him by the arm and ordered him to take the team to the apartment Hunt had just exited. Hunt confirmed that he did not take Nolan directly to Apartment 301, but told Nolan that he lived in another complex beyond. Hunt testified that upon being asked persistently "why are you scared to take us in there?" he admitted to Nolan that he had "weed and stuff" inside the apartment. Nolan laughed and assured him that his team "do[es] not care about that stuff[.]" Hunt claimed that Nolan asked for his car keys, whereupon another detective took Hunt's key ring out of his hands where they were handcuffed behind his back. Hunt testified that officer tried to use them to open a first-floor apartment before leading Hunt upstairs to the third floor. The suppression court did not find Hunt's testimony credible.

The State referenced, in closing argument, Hunt's prior impeachable convictions, and observed that "Detective Nolan testified very clearly about what happened[,]" and "was not impeached whatsoever."[2] Without recapitulating the facts, the State declared that the case "pretty clearly comes down to a credibility distinction that the Court has to make." Defense counsel disputed this conclusion, stating "it's a little bit of a hybrid fact[] and legal issue," that turned on the issue of consent. He argued that Nolan's testimony that Hunt consented to the search was not credible because "it's pretty clear from the testimony [relating Hunt's actions, that] he didn't want Detective Nolan or any of these folks in that apartment." Defense counsel noted that it was undisputed that Hunt tried to avoid taking Nolan to the correct apartment and argued that if the testimony—that Hunt offered Nolan the opportunity to search the apartment—was "believable," then Hunt revoked such consent by walking the detectives away from the apartment and lying about Pettigrew's presence there. Alternatively, Hunt argued that any consent he gave was involuntary because it was induced by Nolan's false statement that the police were only interested in apprehending Pettigrew and were not interested in any other contraband that might be inside. The State responded that, although Nolan told Hunt that he was not concerned about "a little bit of marijuana," Nolan did not say that he would not be

[2] Detective Nolan's earlier testimony included critical facts such as that Mr. Hunt "just handed [the key ring] over" to him, and "actually showed [Detective Nolan] the key" to the apartment.

concerned about *any* contraband; and Nolan never "promised not to arrest [Hunt] for anything."

The court denied Hunt's motion to suppress, noting that it was "convinced" that "the State's version is the correct version of what happened." The court found Nolan's statement that he was "not worried about a little bit of weed" was not inconsistent with his actions, because he found a "whole lot more than a little bit of weed" inside Apartment 301, and, appropriately, turned that over to the narcotics taskforce. The court found that Hunt gave "a valid consent" for the search, adding, "It's no doubt in my mind that that's what happened." "And[,]" the court continued, "based on that valid consent, [Nolan] had an opportunity to observe the marijuana, the guns."

The following day, Hunt entered a conditional guilty plea to guilty to one count of possession of a firearm with a nexus to drug trafficking and one count of possession of a regulated firearm by a prohibited person**.** He was sentenced and noted this timely appeal.

DISCUSSION

Our review of a circuit court's denial of a motion to suppress evidence is limited to the record developed at the suppression hearing. *Trott v. State*, 473 Md. 245, 253-54 (2021). "When we review the denial of a suppression motion that was based upon an alleged constitutional violation, we give deference to the factual findings of the lower court, unless they are clearly erroneous, but we exercise free review over the lower court's determination of the constitutional significance of those facts." *Turner v. State*, 133 Md. App. 192, 202 (2000). We make our own independent constitutional evaluation

of a Fourth Amendment challenge to a search or seizure. *Pacheco v. State*, 465 Md. 311, 319 (2019).

The Fourth Amendment to the United States Constitution, made applicable to the states by the Fourteenth Amendment, prohibits "unreasonable searches and seizures." U.S. Const. amends. IV, XIV. "The person invoking Fourth Amendment protections bears the burden of demonstrating his or her legitimate expectation of privacy in the place searched or items seized." *Williamson v. State*, 413 Md. 521, 534 (2010) (quoting *Smith v. Maryland*, 442 U.S. 735 (1979)). It is long recognized that "searches and seizures inside a home without a warrant are presumptively unreasonable." *Payton v. New York*, 445 U.S. 573, 586 (1980).

The presumption of unreasonableness is "subject only to a few specifically established and well-delineated exceptions[.]" *Grant v. State*, 449 Md. 1, 16-17 (2016) (footnote omitted) (citing *Katz v. United States*, 389 U.S. 347, 356-57 (1967)). "A search conducted pursuant to valid consent, *i.e.*, voluntary and with actual or apparent authority to do so, is a recognized exception to the warrant requirement." *Jones v. State*, 407 Md. 33, 51 (2008) (citing *United States v. Matlock*, 415 U.S. 164, 171 (1974)). "Where the State alleges that consent to a search or seizure was given, the State must prove that such 'consent was freely and voluntarily given[,]' which 'is a question of fact, to be decided based upon a consideration of the totality of the circumstances.'" *E.N. v. T.R.*, 474 Md. 346, 387 (2021) (quoting *Jones v. State*, 407 Md. 33, 52 (2008)).

We recently called attention to the principle that, "'[o]nce voluntary consent is given, it remains valid until it is withdrawn by the defendant.'" *McDonnell v. State*, 256 Md. App. 284, 291 (2022), *cert. granted*, No. 361, Sept. Term 2022, slip op. (Mar. 2, 2023) (quoting *United States v. Ortiz*, 669 F.3d 439, 447 (4th Cir. 2012) (emphasis in *Ortiz* omitted)). "'[I]f a person effectively revokes . . . consent prior to the time the search is completed, then the police may not thereafter search in reliance upon the earlier consent.'" *Id*. (quoting *United States v. Lattimore*, 87 F.3d 647, 651 (4th Cir. 1996)). "Withdrawal of consent need not be effectuated through particular 'magic words,' but an intent to withdraw consent must be made by *unequivocal act* or statement." *United States v. Gray*, 369 F.3d 1024, 1026 (8th Cir. 2004) (quoting *United States v. Ross*, 263 F.3d 844, 846 (8th Cir. 2001)) (emphasis added); *see also United States v. Alfaro*, 935 F.2d 64, 67 (5th Cir. 1991) (holding that a defendant's conduct fell "short of an unequivocal act or statement of withdrawal" and did not revoke prior consent). "If equivocal, a defendant's attempt to withdraw consent is ineffective and police may reasonably continue their search pursuant to the initial grant of authority." *United States v. Sanders*, 424 F.3d 768, 774 (8th Cir. 2005) (citing *Gray*, 369 F.3d at 1026). Here, there is no dispute that Hunt, a resident of Apartment 301, and who possessed keys to that apartment, had actual and apparent authority to consent to a search. The parties disagree,

however, as to whether Hunt revoked his initial verbal consent to a search, and, if so, whether he renewed his consent by implication before the police entered the apartment.[3]

Hunt argues that, assuming the truth of Nolan's testimony that Hunt offered to allow the officers to search his apartment, he "subsequently revoked that consent" by his conduct.[4] Specifically, Hunt contends that he revoked his consent impliedly by "attempting to lead officers away from" Apartment 301 and by "lying to the detective about Pettigrew being in the apartment[.]" Drawing on *Turner v. State*, 133 Md. App. 192 (2000), which Hunt says "illustrates which gestures and other physical conduct grant consent to search[,]"Hunt urges that once he revoked his consent for the police to enter his home, he "thereafter gave no clear or unambiguous indication that officers could enter." Rather, "his subsequent conduct——being taken upstairs by a large team of officers and giving them his keys when they asked for them——was mere acquiescence to their authority rather than unambiguous, affirmative consent." Therefore, Hunt argues, the evidence seized under the search warrant that was issued subsequently was the fruit of

[3] Our decisional law recognizes that consent to search may be either express or implied. *See, e.g., Turner v. State*, 133 Md. App. 192, 207 (2000) ("Maryland and Fourth Circuit cases plainly establish that consent to search not only may be express, by words, but also may be implied, by conduct or gesture."). Express consent is that which is "clearly and unmistakably stated." Implied consent is that which is "inferred from one's conduct rather than from one's direct expression." *Consent*, Black's Law Dictionary (10th ed. 2009).

[4] Mr. Hunt abandons the argument he made before the circuit court, that his consent was induced by a false promise by Nolan that the warrant apprehension team only was interested in arresting Mr. Pettigrew and was not concerned with other contraband.

"an illegal warrantless search" that should have been suppressed. Moreover, quoting *State v. Andrews*, 227 Md. App. 350, 355-56 (2016), Hunt presses that the police cannot "'find shelter in the good faith exception' when the challenged evidence was seized pursuant to a warrant and a 'Fourth Amendment violation by police provided the only information relied upon to establish probable cause in their warrant application.'"

The State counters that the suppression court credited Nolan's testimony that Hunt consented to a search of Apartment 301, and contends that the scope of consent is measured under a standard of "'objective reasonableness'" which is, "'what would the typical reasonable person have understood by the exchange between the officer and the suspect?'" (Quoting *United States v. Jimeno*, 500 U.S. 248, 251 (1991)). This standard, according to the State, also applies to evaluating the duration of consent and to whether consent has been withdrawn entirely.

The State bisects its response to Hunt's implied revocation argument with more precision. *First*, the State maintains that Hunt did not withdraw his verbal consent because that would have required "unequivocal conduct inconsistent with the consent to search." Relying on several federal cases, the State insists that, once valid consent is given, an attempt to withdraw that consent must be unequivocal because, "'police officers do not act unreasonably by failing to halt their search every time a consenting suspect equivocates.'" (Quoting *United States v. $304,980.00 in U.S. Currency*, 732 F.3d. 812, 820 (7th Cir. 2013)). Also, the State contends that Hunt did not withdraw his consent unequivocally when he led officers away from his apartment. "His action could

reasonably have been interpreted as momentary reluctance, an attempt at brief delay, or even a lapse in attention."

Second, the State argues that even if Hunt's post-consent conduct amounted to a revocation of consent, he gave renewed consent when he handed his keys to the officers. The State rebuffs Hunt's reliance on *Turner v. State* for the proposition that Hunt merely acquiesced to a show of authority because, the State asserts, when Hunt showed Nolan his key ring and gave him the apartment key, he "took affirmative steps to facilitate entry into his apartment, manifesting consent to search."

We partition our analysis similarly but arrive at the result advanced by the State without parsing Hunt's actions to conclude that he revoked and then renewed his consent.

Implied Revocation of Consent

We hold that, under the totality of the circumstances, after Hunt gave his verbal consent for officers to search his apartment for Pettigrew, he never revoked that consent unequivocally, by words or by conduct.

We recently instructed in *McDonnell v. State*, that "[a] consent to search is not irrevocable, and thus if a person effectively revokes . . . consent prior to the time the search is completed, then the police may not thereafter search in reliance upon the earlier consent." 256 Md. App. 284, 291 (2022), *cert. granted*, No. 361, Sept. Term 2022, slip op. (Mar. 2, 2023) (quoting *United States v. Lattimore*, 87 F.3d 647, 651 (4th Cir. 1996)). In *McDonnell*, the circuit court denied McDonnell's motion to suppress evidence law enforcement discovered on his laptop's hard drive. *Id.* at 296-97.

At trial, "it was uncontested that [McDonnell] voluntarily gave his written consent to investigators, allowing them to seize and search his laptop's hard drive." *Id.* at 295. However, while McDonnell "agreed to sign a consent to search form, in which he "consent[ed] to the seizure and subsequent search of" the contents of his electronic devices," the form required him to acknowledge: "I understand that I may withdraw my consent at any time." *Id.* at 298. Seven days after the police made a mirror-image copy of the hard drive, and "prior to the forensic examination of the copy, [McDonnell] expressly withdrew his consent" to the search. *Id.* at 296. The evidence collected from the laptop was nevertheless presented at trial, and McDonnell was eventually found guilty of the distribution of child pornography. *Id.* at 287.

On appeal, we held that McDonnell's motion to suppress the evidence should not have been denied and reversed the circuit court's judgment. *Id.* at 297. Unlike the revocation alleged by Hunt, McDonnell's revocation of his consent to search was both verbal and express, "stating, 'any purported consent to the seizure of [McDonnell's] laptop, or examination of its contents, is hereby withdrawn.'" *McDonnell*, 256 Md. App. at 296. We found McDonnell's verbal statement withdrawing consent was "clear and unequivocal." *Id.*

In stark contrast to the express and unequivocal revocation of consent in *McDonnell*, Hunt claims that his conduct——attempting to lead officers away from Apartment 301 and lying to the detective about Pettigrew being in the apartment——impliedly revoked his earlier verbal consent. Hunt told the officers "You can search my

apartment." We cannot say the trial court erred where the "typical reasonable person would have understood" Hunt's evasive actions to have been aimed at forestalling the search, while at the same time *avoiding* a clear and unequivocal statement. *See United States v. Jimeno*, 500 U.S. 248, 251 (1991).

The circumstances surrounding the defendant's alleged revocation of consent at issue in *State v. Watson*, 864 A.2d 1095 (N.H. 2004) bear greater similarity to the case before us. There, a defendant was stopped by police in a hotel parking lot based upon an observation of reckless driving. *Id*. at 1096. The police recovered drugs and drug paraphernalia from the car, which had been rented by the defendant's passenger. *Id*. at 1097. One of the officers asked the defendant about his hotel room and whether anyone was staying with him. *Id*. He denied that anyone was in his hotel room. *Id*. When the officer asked the defendant if he could "go up and check," he replied, "No. I don't mind." *Id*. As the officers walked toward the hotel, the defendant denied having a key to enter the external door, relenting when police reminded him that they had seen his key card in his wallet. *Watson*, 864 A.2d at 1097. Once inside the hotel elevator, the defendant did not answer initially when an officer asked him on what floor he was staying and then denied knowing the floor. *Id*. When asked a second time, he answered honestly. *Id*. He ultimately led police to the hotel room, which they entered, discovering a significant quantity of marijuana. *Id*. at 1097-98.

The defendant moved, unsuccessfully, to suppress the evidence seized, arguing that, among other factors, "his lack of cooperation after he gave consent vitiated his

consent[.]" *Id.* at 1099. On appeal from the denial of the motion to suppress, the Supreme Court of New Hampshire affirmed, explaining that it agreed "with the trial judge that '[w]hile perhaps done unenthusiastically, the consent took place [and the] defendant did not revoke his consent to the search of the hotel room.'" *Watson*, 864 A.2d at 1099 (citation omitted).

As in *Watson*, here, Hunt gave affirmative consent to the search of his apartment. He was mildly uncooperative when he led the police initially away from his apartment, but upon being confronted with the fact that the police had observed him entering Apartment 301, he accompanied them to that location. Hunt appeared "hesitant to have [the officers] go in [the apartment,]" because, as he explained to police, there was "a little bit of marijuana in the apartment[,]" and he was concerned that "Mr. Pettigrew would kill him if he found out that [Hunt] gave him up as to his location." Nonetheless, Hunt gave Det. Nolan his key and permitted police to enter the apartment. This conduct may have signaled, as in *Watson*, some hesitation, but it did not amount to an unequivocal withdrawal of consent.

The cases on which Hunt relies do not persuade us otherwise. In *State v. Reed*, 920 N.W.2d 56 (Wis. 2018), the Supreme Court of Wisconsin held that the defendant never expressly or impliedly consented to the police entering or searching an apartment, but that even if he had consented, he "unequivocally revoked" that consent when he "opened the apartment door just enough to allow himself entry and attempted to shut the door behind him to prohibit the officer from entering the apartment." *Id.* at 60. *See also*

Commonwealth v. Suters, 60 N.E.3d 383, 391 (Mass. App. Ct. 2016) (defendant's consent to the police entry into the home was limited or revoked as to a particular room when he entered that room and closed the door behind him).

In *State v. Ruem*, 313 P.3d 1156 (Wash. 2013) (*en banc*), the Supreme Court of Washington held that a defendant withdrew consent by stopping police officers before they crossed the threshold of his mobile home, saying, "No. This is not a good time." *Id.* at 1164. In *State v. Reagan*, 546 A.2d 839 (Conn. 1988), the Supreme Court of Connecticut held that even if the defendant's wife consented to the police entry into the home, her conduct in standing in the doorway so as to block the police officer from entering the defendant's bedroom created a factual question as to whether she implicitly withdrew or limited her consent to search that part of the house. *Id.* at 845-46. This question was not resolved on appellate review, but remanded, because "the subordinate facts relating to consent were never so definitively established [before the trial court] as to allow a factual finding of consent." *Id.* at 845.

The conduct in the above cases differs markedly from the conduct in the instant case. Nothing in the record suggests that Hunt was not free to leave the scene or that police threatened him in any way. Indeed, Hunt does not argue that his consent was not knowing and voluntary. Hunt did not attempt to block the door to Apartment 301 to prevent police from entering as in *Watson* and *Reed.* In this case, Hunt volunteered to police, "[y]ou can search my apartment." Hunt's verbal consent was direct. It was not implied or in any way equivocal. By contrast, his subsequent non-verbal conduct was

not, when viewed under the objective reasonableness standard, an *unequivocal act* or statement. After leading the officers away from the apartment, Hunt then accompanied them to the third floor. This equivocal conduct did not revoke Hunt's earlier express consent. Indeed, as we next explain, Hunt's subsequent conduct reinforced his earlier consent.

Implied Affirmation of Consent

Even if, viewed in isolation, Hunt's conduct in leading the police away from Apartment 301 could be seen as an attempt to revoke his express consent to the search by implication, the record demonstrates that by his subsequent actions—turning immediately around and accompanying officers to his apartment and then handing them his key ring—Hunt's conduct reinforced his earlier express consent to the search.

Hunt leans heavily on *Turner v. State*, 133 Md. App. 192 (2000) to support his argument that by his conduct he impliedly revoked his consent to the search. In *Turner*, police officers were searching for a man who had "bailed out" of a vehicle with possibly stolen plates. *Id*. at 196. They went to an apartment leased by the registered owner of the vehicle. *Id*. at 197. The defendant answered the door and stepped outside of his apartment to speak to the officers, pulling his apartment door shut behind him. *Id*. The defendant accompanied the officers to the first floor of the apartment building and later agreed to return to his apartment to find a telephone bill to verify his identity. *Id.* at 197-98. He walked back upstairs with two officers following behind him, opened his apartment door, and walked inside. *Id.* at 198. The two officers walked in behind him.

Id. "[T]he officers did not ask permission to enter or tell [the defendant] that they were about to enter, and [the defendant] did not tell them not to enter." *Turner*, 133 Md. App. at 198. Once inside, the officers observed a handgun on the coffee table and crack cocaine on the floor. *Id.* Based upon those observations, they obtained a search warrant and recovered additional contraband. *Id*. at 199. The circuit court denied the defendant's motion to suppress the evidence seized, concluding that he consented to the officers' warrantless entry into his apartment by implication by opening the door, entering, and not objecting when they followed him inside. *Id.*

On appeal, this Court reversed. *Id.* at 215. We reviewed a trilogy of Maryland decisions in which appellate courts found implied consent to a search, including two cases in which implied consent to enter a home was found based upon a resident's conduct in opening a door wide and stepping out of the way of police officers. *Id.* at 203-04 (citing *Chase v. State*, 120 Md. App. 141, 150 (1998); *In re Anthony F*., 293 Md. 146, 147-48 (1982)). The third case involved a defendant who did not respond directly to law enforcement's request to search his house, but "'willingly arranged to leave his house key with a neighbor in order to give the police access to the premises' while he was away" *Turner*, 133 Md. App. at 204 (quoting *Lewis v. State*, 285 Md. 705, 719 (1979)).

We deduced from these cases, and those of other jurisdictions, that "consent to search not only may be express, by words, but also may be implied, by conduct or gesture." *Id*. at 207. We observed that in those cases in which it was determined that the defendant had given implied consent to a search, the police made known their desire to

enter the premises or conduct a search, and the defendant made an "unambiguous gesture of invitation or cooperation or [took] an affirmative act to make the premises accessible for entry." *Id.* We instructed that, by contrast, the police in *Turner* did not request entry; therefore, the defendant's conduct in walking into his apartment without closing the door did not communicate implicit consent to the police entry. *Id*. at 208. We emphasized that the defendant did not make any "gesture of invitation and took no affirmative act to let the officers in." *Id.*

Returning to the underlying case, before Hunt and Nolan reached the third floor of the apartment building, Hunt understood that the police wished to search Apartment 301 for Pettigrew. After initially leading the officers astray, Hunt told them that Pettigrew was present in the back bedroom of Apartment 301, accompanied them upstairs, gave Nolan the key ring, and showed him which key opened the door. Hunt's conduct in following the officers to the apartment and handing over his keys voluntarily was "an unambiguous gesture of invitation" and an "affirmative act to make the premises accessible for entry." *Turner*, 133 Md. App. at 207.

In sum, we conclude that Hunt's argument that he withdrew his express consent to the search by implication when he briefly led the officers away from the apartment has no merit when viewed under the totality of the circumstances. Leading the officers away from the apartment may have signaled some hesitation on Hunt's part. However, by turning around and accompanying the officers to his apartment, and then handing them his key ring and showing them which was the key to his apartment, Hunt's conduct

reinforced his earlier express consent to the search. Therefore, we hold that the circuit court did not err in denying the motion to suppress.

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