Circuit Court for Montgomery County
Case No. 136097C

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 723

September Term, 2020

ANTHONY GREEN

v.

STATE OF MARYLAND

Shaw,
Wells,
Sharer, J. Frederick.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Sharer, J.

Filed: January 21, 2022

In the Circuit Court for Montgomery County, appellant, Anthony Green, entered a plea of not guilty, consented to proceed on an agreed statement of facts and was convicted of possession of a firearm after having been convicted of a crime of violence.[1] In his timely appeal he challenges the trial court's denial of his motion to suppress. We shall affirm.

BACKGROUND

We glean from the record and from appellant's opening brief that the following occurred at an apartment complex at, or near, Treetop Lane in Silver Spring, Montgomery County, on June 1, 2019.[2]

At about 12:50 a.m. on that date a call reporting gunshots was made to Montgomery County Police Department. In response, Sergeant Arsenault and Officer Chirigos[3] were dispatched to the scene where they met an apartment complex security officer, and others, who directed them to the rear of one of the three-story apartment buildings. They were told that shots were fired from one of the three apartments facing the rear, above ground level. They quickly excluded the first floor apartment, as it was vacant.

Sgt. Arsenault directed his flashlight to one of the upper balconies where he observed "a black male sitting down in a chair just staring off." An officer directed the

[1] Appellant was sentenced to 15 years in prison, 12 years and six months of which were suspended. He was given credit for 458 days of time served and placed on supervised probation upon release from incarceration.

[2] The State, in its brief, "accepts the Statement of Facts in [Appellant's] brief."

[3] Sgt. Arsenault is referred to in the transcript as Sgt. "Arsinol." Moreover, the record does not identify the officers other than by their surnames.

man to stand and show his hands, but he did not respond. Ultimately, the man, soon identified as Anthony Green, went into the apartment.

The officers learned, by reference to a "location history,"[4] that there had been numerous domestic violence incidents, and arrests, related to the apartment that was occupied by Anthony Green. A phone call to that apartment was answered by Jevonda Pressley, who advised that "Mr. Green was sleeping."

As the investigation proceeded, the MCPD assembled a SWAT team at the door of the apartment. Ms. Pressley was told to leave the apartment, which she did. She advised that Mr. Green and two young children – ages five and two – remained in the apartment, but she denied the officers' requests for permission to enter the apartment. The police phoned Mr. Green in the apartment and told him to come out and, after initially questioning why, he complied. He was identified by Sgt. Arsenault as the man who was earlier seen on the balcony.

Despite Ms. Pressley's refusal of permission to enter the apartment, several officers, including Sgt. Arsenault, went inside. While in the apartment, Sgt. Arsenault saw ".223 casings" near the balcony and ".223 green tips"[5] on the balcony. Later, presumably after daylight, officers found spent rifle shell casings in a grassy area outside the apartment building. Body camera footage taken while officers were in the apartment depicts officers looking for a rifle. As a result, a search warrant was applied for and granted.

[4] A "location history" is akin to a records check through police department resources.

[5] "Green tips" are a type of ammunition.

After entry into the apartment, but before the search warrant was executed, Officer Chirigos and Officer Haynes were left to secure the apartment until the search warrant was obtained and executed. While seated on a chair, Officer Chirigos "looked down and saw the rifle underneath the treadmill." At the suppression hearing, the following transpired after Officer Chirigos testified to observing the rifle:

[PROSECUTOR]: And did you have to manipulate anything to see the rifle?

[WITNESS]: No.

[PROSECUTOR]: And as a result, what did you do?

[WITNESS]: Pulled the rifle out and made sure it was clear of any rounds.

Appellant was charged in a five-count indictment with:

(1) Illegal possession of a rifle after conviction of a crime of violence; (2) reckless endangerment; (3) possession of a regulated firearm after conviction of a crime of violence; (4) illegal possession of ammunition; and (5) storing a loaded firearm where possibly accessible to children.

By the terms of a plea agreement, the State entered a *nol pros* to Counts 1, 2, 4, and 5 and the case proceeded on Count 3, as we have described.

Motion to Suppress

Appellant moved to suppress evidence gathered from the apartment, arguing that there were no circumstances existing at the time that would justify the police entry into the apartment without a warrant, consent having been withheld by Ms. Pressley. Alternatively, appellant argues that the community caretaking exception to the warrant requirement is

inapplicable and did not justify the initial entry. In his latter argument, appellant relies heavily on *Caniglia v. Strom*, __ U.S. __, 141 S. Ct. 1596 (2021).

The State argues that the entry into the apartment was justified under the community caretaking exception to the warrant requirement and, after making a "protective, caretaking sweep" because one officer observed the butt of a gun protruding from beneath a treadmill, the continued securing of the premises was warranted. The State argues further that the gun would have inevitably been discovered pursuant to the search warrant, which the motions court found to have been issued upon probable cause.

Denying the motion, the motions hearing judge observed:

> I do accept that that was an appropriate action by the police based upon the community caretaking function. It was reasonable on their part and, if anything, I think it would have been reckless on the police officer's part not to go into the apartment and make sure that the kids weren't in a position of obtaining a weapon. It's noteworthy that you can go into the apartment and doing a, basically a cursory look at things, the police officers determined [that], it was appropriate to get a search warrant … for the apartment; and they left, most of them left the apartment, except for Officer Chirigos, Chirigos, who stayed at the apartment and while he was there, and before the search warrant was obtained, he observed a rifle or shotgun underneath a treadmill.
>
> A plain view observation of any suspected evidence is, would be permissible in that apartment under those circumstances because the police officers were properly on site for the caretaking purpose; and once they were there and unable to in a cursory look around find a weapon, there was still the potential risk of danger to the children that there was a weapon in that apartment elsewhere that would be discovered with a search warrant execution; and it was appropriate for the apartment, aside from the kids' safety, to secure the scene from the loss of evidence by somebody else, including at least the female occupant potentially being returned to the apartment at any time.
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> * * *

> So, in this case, the testimony, I find, supports the fact that the officer did not move the treadmill; did not move objects away from the treadmill; bent down, stretched and still visually without breaking the plane of the treadmill, if you will, saw the rifle and, therefore the rifle was appropriately retrievable and that that information was appropriately usable in the search warrant application.
>
> I also want to say that I believe that the search warrant was, would be sufficient as is an alternative finding.
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> * * *
>
> So, I believe even if we were to excise the information about the rifle observed by the officer inside the apartment, … the search warrant application contains sufficient probable cause factually to support the issuance of a warrant; and the warrant was served; the warrant would have been served with or without the finding of the rifle by the other officer; and, inevitably, that rifle would have been found during the course of the execution of the search warrant.

Standard of Review

In our review of the decision of the lower court on a motion to suppress evidence on Fourth Amendment grounds, we consider only the record of the suppression hearing. *Longshore v. State*, 399 Md. 486 (2007). We view the facts in the light most favorable to the prevailing party, here the State. *Conboy v. State*, 155 Md. App. 353 (2004). And, we extend great deference to the motions court's findings of fact, unless clearly erroneous, but review questions of law *de novo*. *Allen v. State*, 197 Md. App. 308 (2011).

DISCUSSION

Community Caretaking Exception

The initial entry by police into the Pressley/Green apartment was warrantless and, unless justified under an exception to the warrant requirement, cannot be sustained. When a search or seizure is sought to be justified under the community caretaking function of

policing the test of justification is one of reasonableness. The standard for assessing reasonableness is whether the police objectively "possessed a reasonable basis for doing what they did" and "whether there is evidence which would lead a prudent and reasonable official to see a need to act." *State v. Alexander*, 124 Md. App. 258, 277 (1998) (quotation marks, citation, and emphasis omitted). We said further in *Alexander*, that "[t]he standard of reasonableness obviously shifts as the reason for the intrusion varies and anti-police wariness in not always the appropriate prism through which to view an officer's conduct." *Id*. at 266.

Montgomery County police officers responded to the apartment complex in response to a report of gunshots. Before entering the apartment, the responding officers learned, through MCPD resources, a "location history" of domestic violence incidents and arrests. From Ms. Pressley, the officers learned that appellant and two young children – ages two and five – were in the apartment. After several requests by the officers, appellant left the apartment. Based on their observation of, and discussion with, appellant they opined that he was "drunk." The children remained inside asleep.

Thereafter, the police entered the apartment, according to Officer Chirigos, because "[w]e had to make sure that there was someone not standing right behind the door with a gun, and also that there wasn't anyone inside that had been shot." Officer Chirigos "cleared" the apartment and, once inside, saw a spent .223 casing and other ammunition. Sgt. Arsenault was instructed to secure the apartment while a search warrant was sought. It was while securing the apartment that Officer Chirigos observed the butt of a rifle under

the treadmill. The subsequent execution of the search warrant revealed the rifle that was seized, which appellant seeks to suppress.

Appellant asserts that the State has built a house of cards, underpinned by its claim that the initial entry was lawful. He argues that the circumstances surrounding the initial entry do not satisfy the *Alexander* reasonableness test. He argues that the facts do not support a finding that the police had probable cause to believe that the gunshots came from the Pressley/Green third-floor apartment, rather than from one of the other apartments. Appellant argues that the mere conclusion that the shots might have been fired from the third-floor apartment did not justify the entry of the apartment under the guise of a community caretaking function. Thus, he adds, the State cannot rely on the plain view exception to the warrant requirement. Finally, appellant argues that the State cannot succeed on the inevitable discovery doctrine, because "evidence obtained after initial unlawful governmental activity will be purged of its taint if it was inevitable that the police would have discovered the evidence." *Peters v. State*, 224 Md. App. 306, 349-50 (2015) (quotation marks and citation omitted).

Appellant has also called to our attention, via his reply brief, the recent opinion of the Supreme Court in *Caniglia v. Strom, supra.* We recite the underlying facts:

> During an argument with his wife, Edward Canaglia placed a handgun on the dining room table and asked his wife to "shoot him and get it over with." His wife instead left the home and spent the night at a hotel. The next morning, she was unable to reach her husband by phone, so she called the police to request a welfare check. The responding officers accompanied Mrs. Caniglia to the home, where they encountered Caniglia on the porch. The officers called an ambulance based on the belief that Caniglia posed a risk to himself or others. Caniglia agreed to go to the hospital for a psychiatric

> evaluation on the condition that the officers not confiscate his firearms. But once Caniglia left, the officers located and seized his weapons. Caniglia sued, claiming that the officers had entered his home and seized him and his firearms without a warrant in violation of the Fourth Amendment. The District Court granted summary judgment to the officers. The First Circuit affirmed, extrapolating from the Court's decision in *Cady v. Dombrowski*, 413 U.S. 433 (1973), a theory that the officers' removal of Caniglia and his firearms from his home was justified by a "community caretaking exception" to the warrant requirement.[6]

The Court first recognized that *Cady* involved a warrantless search of an impounded vehicle, not a home. *Id.* at 1599. Posing the issue before it, the Court then said "[t]he question today is whether *Cady*'s acknowledgment of these 'caretaking' duties creates a standalone doctrine that justifies warrantless searches and seizures in the home. It does not." *Id.* at 1598.

We conclude that appellant's reliance on *Caniglia* is unavailing.

It has been written that

> The police have complex and multiple tasks to perform in addition to identifying and apprehending persons committing serious criminal offenses; by design or default, the police are also expected to reduce the opportunities for the commission of some crimes through preventative patrol and other measures, aid individuals who are in danger of physical harm, assist those who cannot care for themselves, resolve conflict, create and maintain a feeling of security in the community, and provide other services on an emergency basis. An entry and search of premises purportedly undertaken for such reasons as these may sometimes result in the discovery of evidence of crime[.]

Wayne R. LaFave, 3 *Search and Seizure: A Treatise on the Fourth Amendment*, § 6.6, p. 623 (6th ed. 2021) (quotation marks and footnotes omitted). Professor LaFave included in

[6] Recited, as slightly edited, from the syllabus in *Caniglia v. Strom*, 141 S. Ct., 1596, 1597 (2021). We recognize that the syllabus is not a part of the Supreme Court's opinion. We cite it merely for factual context.

his commentary many diverse circumstances that might fall within the community caretaking function, including "to assist unattended small children; to ensure a weapon within does not remain accessible to children there[.]" *Id.* § 6.6(a) at 643-46.

As Judge Moylan noted in *Alexander*:

> In *Stanberry v. State*, 343 Md. 720 (1996) the Court of Appeals placed its seal of approval on the label "community caretaking function" as it recognized the pivotal distinction between assessing police behavior when they are "acting in their criminal investigatory capacity" and assessing police behavior when they are "acting to protect public safety pursuant to their community caretaking function."

124 Md. App. at 267-68 (internal citations omitted). Judge Raker, writing for the Court in *Stanberry*, noted further that "[i]n essence police officers function in one of two roles: (1) apprehension of criminals (investigative function); and (2) protecting the public and rescuing those in distress (caretaking function)." 343 Md. at 743 (quotation marks and citation omitted).

Wilson v. State, 409 Md. 415 (2009) added sustenance to the function, writing that community caretaking is "an umbrella that encompasses at least three … doctrines: (1) the emergency-aid doctrine, (2) the automobile impoundment/inventory doctrine, and (3) the public servant exception." *Id.* at 430 (footnote omitted). As the State argues, we are here presented with an overlap of the emergency aid and public welfare concepts. In contrast with *Coniglia*, what began in this case was police response to a report of probable criminal activity, which at the outset may well have not justified a warrantless entry into the apartment. However, as the circumstances unfolded there arose a community caretaking component – the probability that the reported gunshots were fired from the apartment and

the discovery by police that there were unattended young children in the apartment. We have found no authority, and none has been presented, that precludes a finding that, in a given situation, what began as a criminal investigation cannot take on a community caretaking function as a component of the initial response.

As we have recounted, by the time of the entry into the apartment, the officers had learned of a history of domestic violence and arrests related to that apartment. As Officer Chirigos explained "[w]e had to make sure that there was someone not standing right behind the door with a gun, and also that there wasn't anyone inside that had been shot." On that point, the motions court observed, correctly in our view, that "it would have been reckless on the policer officer's part not to go into the apartment and make sure that the kids weren't in a position of obtaining a weapon." At the least, "[a] danger that children … may obtain access to a gun is one circumstance which may justify the police entering private property in the performance of their community caretaking responsibilities." *State v. Bogan*, 200 N.J. 61, 76-77 (2009) (quotation marks and citation omitted).

On the record before us, we find no error in the motions court's reliance on the community caretaking exception to the warrant requirement of the Fourth Amendment.

Search Warrant/Inevitable Discovery

Appellant argues further that the police lacked probable cause to support the issuance of the search warrant because "it is unclear that the police intended to apply for a search warrant before they entered the apartment and found the .223 casings." Therefore,

appellant posits, because the issuance of the warrant lacked probable cause the State cannot rely on the inevitable discovery doctrine.

In response, the State points out that the decision to seek a search warrant was made before the discovery of the rifle under the treadmill, but after the officers observed the spent shell casing and the "green tips," that were observed once they had made their community caretaking function entry into the apartment.

After its essential finding that police entry into the apartment was justified under the community caretaking exception, the motions court addressed appellant's challenge to the search warrant. The court reasoned:

> So, I believe even if we were to excise the information about the rifle observed by the officer inside the apartment, the search warrant contains sufficient probable cause … factually to support the issuance of a warrant; and the warrant was served; the warrant would have been served with or without the finding of the rifle by the other officer; and, inevitably, that rifle would have been found during the course of the execution of the search warrant.

The record supports that ruling. Thus, we conclude that the motions court correctly denied appellant's motion to suppress.

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