Circuit Court for Baltimore City
Case No.: 120065011

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND

No. 1603

September Term, 2021

DEONTE WITHERSPOON

v.

STATE OF MARYLAND

Berger,
Reed,
Alpert, Paul E.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Alpert, J.

Filed: December 16, 2022

Deonte Witherspoon, appellant, entered a conditional guilty plea in the Circuit Court for Baltimore City to two counts of possessing a regulated firearm after a disqualifying misdemeanor conviction, and one count of possession of cocaine with intent to distribute. The court sentenced appellant to fifteen years of incarceration with all but five years suspended to be followed by three years of supervised probation. On appeal from his convictions, appellant argues that the circuit court erred in denying his motion to suppress evidence seized from his home.

For the reasons that follow, we vacate the judgment and remand the case for further proceedings.

BACKGROUND

The evidence produced at the suppression hearing showed that on February 18, 2020, Detective Taulant Halilaj of the Baltimore City Police Department viewed a music video that had been uploaded to YouTube that day, showing appellant dancing and singing while displaying a two-tone silver and gray handgun. Detective Halilaj confirmed that appellant had two open arrest warrants. At approximately 8:30 p.m., Detective Halilaj observed appellant walking north on the 600 block of North Ellwood Avenue in the direction of Monument Street in Baltimore City. As appellant turned west on Monument Street, however, Detective Halilaj lost sight of him. Detective Halilaj notified Detectives Whittaker, Burgos, Nolan, and Oliver, and Sergeant Jason Hines as to his observations and provided them with appellant's location. Sergeant Hines and the other detectives attempted to locate appellant but were unsuccessful.

At approximately 10:20 p.m., Sergeant Hines and Detectives Halilaj, Whittaker, Burgos, Nolan, and Oliver arrived to arrest appellant at 611 North Ellwood Avenue, the address listed on the arrest warrants.[1] Sergeant Hines observed a man enter the residence at 611 North Ellwood Avenue, though he could not identify the person. Sergeant Hines, along with Detectives Oliver, Burgos, and Whittaker, approached the front door of the residence, while Detectives Halilaj and Nolan went to the rear of the house. Sergeant Hines knocked on the door and identified himself as police. A small child answered the door initially, then Tamyra Griffin, who was later identified as appellant's mother, came to the door.

Sergeant Hines asked Ms. Griffin if she owned or rented the home, and she replied that she rented it. The sergeant asked Ms. Griffin if anyone else was in the house, and she responded that she did not know who was in the house, as she had been sleeping. She stated that she believed that her cousin was downstairs. Ms. Griffin and her cousin informed the sergeant that they believed that the only other people in the house were the child and Ms. Griffin's boyfriend, Mario,[2] who had just arrived at the house. Sergeant Hines asked Ms. Griffin when she had last seen appellant, and she responded that she did not remember. She stated that appellant did not stay at the house.

Mario informed the sergeant and the detectives that he had just arrived at the house, explaining that he was the person the police had seen enter the house prior to them knocking

[1] Though the warrants were not introduced into evidence at the suppression hearing, appellant did not dispute that the warrants listed 611 North Ellwood Avenue as his address.

[2] Mario's surname is not provided in the transcript.

on the door. Sergeant Hines asked again if anyone else was in the house and Ms. Griffin replied, "no." The sergeant informed her that they needed to "come in and check." The sergeant and the detectives entered the house over Mario's objection that they needed a warrant, explaining to Mario that the house was identified as appellant's primary address on the arrest warrant.

Sergeant Hines and the detectives ascended the stairs with their guns drawn, and located appellant and a woman in an upstairs bedroom. The detectives arrested appellant without incident and escorted him outside to be transported to the station. Sergeant Hines and the detectives exited the home and the front door was closed behind them. While waiting outside for a police transport van to arrive, appellant asked for a cigarette. Detective Halilaj knocked on the door of the house and informed the occupant who answered that appellant wanted a cigarette. The occupant gave a cigarette to Detective Halilaj, who remained on the front porch.

Outside the house, Sergeant Hines discussed with Detectives Nolan and Burgos "holding the house" pending a search and seizure warrant. Following that discussion, Sergeant Hines and Detectives Nolan and Burgos re-entered the house to speak to Ms. Griffin. Mario informed them that she was upstairs using the bathroom. The sergeant and detectives went upstairs and waited for Ms. Griffin outside the bathroom. While waiting, Detective Nolan stated, "There's drugs on the floor. It is a gel cap."[3] Sergeant Hines

[3] The parties stipulated that Detective Nolan pointed out the gel cap during the second entry into the house, and there had been no mention of a gel cap during the first entry.

informed Ms. Griffin that "based on what we saw, they're probably going to write a warrant" and "[w]e're going to probably talk to the judge[.]" During this exchange, Detectives Nolan and Burgos and Sergeant Hines were standing within a few feet of Ms. Griffin. Sergeant Hines explained to Ms. Griffin that she could consent to the search:

> [SGT. HINES]: I'm going to be perfectly honest with you. We're here. Yes, your son has a warrant.
>
> [MS. GRIFFIN]: Okay.
>
> [SGT. HINES]:We're here conducting another investigation.
>
> [MS. GRIFFIN]: Okay.
>
> [SGT. HINES]: And then there is obviously drugs in plain sight.
>
> [MS. GRIFFIN]: Okay.
>
> [SGT. HINES]: We're going to search the house.
>
> [MS. GRIFFIN]: Okay.
>
> [SGT. HINES]: Would you consider –
>
> [MS. GRIFFIN]: Okay.
>
> [SGT. HINES]: – giving us consent to search?
>
> [MS. GRIFFIN]: That's fine.

Sergeant Hines completed a consent to search form and presented it to Ms. Griffin, explaining:

> [SGT. HINES]: … So what it is saying is –
>
> [MS. GRIFFIN]: I read it.
>
> [SGT. HINES]: Okay. Yes.

[MS. GRIFFIN]: I read it.

[SGT. HINES]: Then authorize it. I just need you to sign there.

[SGT. HINES]: You understand you don't have to sign this?

[MS. GRIFFIN]: Yeah.

[SGT. HINES]: Okay.

In the bedroom where detectives had located appellant, they discovered two handguns, ammunition, cocaine, heroin, and paraphernalia.

Appellant presented three arguments in support of his motion to suppress. First, he argued that the detectives' initial entry into 611 North Ellwood was illegal because, although it was appellant's address, the police lacked reasonable belief that he was inside when they entered the house. Second, appellant argued that the detectives' second entry into the house after he had been arrested was illegal because they lacked justification for re-entering the house without a warrant. Third, appellant asserted that Ms. Griffin's consent to search the house was not valid because it was not given voluntarily.

The State responded that the detectives had reasonable suspicion that appellant was present in the home, as it was listed on the warrants as his principal residence and they had observed appellant in the vicinity of the house within two hours of entering the house to arrest him. The State argued that the second entry into the house was lawful as a means of holding the house while the detectives obtained a search warrant, as they had only exited the house moments earlier. The State further argued that Ms. Griffin's consent to search the home was given freely and voluntarily.

With respect to the detectives' first entry into the house, the suppression court found that the detectives had an "objectively reasonable belief [that appellant] was present in the home when they entered to execute the arrest warrant." The court further found that the detectives were familiar with appellant, that they had observed appellant walking in the area of the home in the hours before the entry, and that it was reasonable for the detectives to believe that appellant would return to the home. The court also noted that the detectives were not required to accept as true the statements of the occupants that appellant was not inside the house.

As to the second entry into the home, the suppression court found that after appellant had been removed from the home, the detectives were permitted to re-enter the home, and once inside, they were not instructed to remain at the threshold.

The court determined that, under the totality of the circumstances, Ms. Griffin's consent was voluntary, pointing to the absence of evidence of threats, use of weapons, or other force. The court also considered the length of time, circumstances, and location involved, and found no evidence of "implied coercion or threat or any other basis for invalidating the search." The court "glean[ed] from the evidence presented that Ms. Griffin clearly understood that the police intended to seek a search warrant to search the home even if she did not consent." Though there had been some discussion between the sergeant and Ms. Griffin about seeking a warrant as an alternative to consent, the court viewed the sergeant's statement "as simply fact and certainly not any type of threat[.]" The court denied the motion to suppress, concluding that the facts and circumstances of the case did not support a finding that Ms. Griffin's consent was involuntary.

STANDARD OF REVIEW

"Our review of a circuit court's denial of a motion to suppress evidence under the Fourth Amendment is limited to the information contained in the record of the suppression hearing." *Trott v. State*, 473 Md. 245, 253-54 (2021) (citing *Pacheco v. State*, 465 Md. 311, 319 (2019)), *cert. denied*, 142 S. Ct. 240 (2021). We accept "the suppression court's factual findings and credibility determinations, unless clearly erroneous, viewing the evidence in the light most favorable to the prevailing party – here the State." *Portillo Funes v. State*, 469 Md. 438, 462 (2020) (citing *Bost v. State*, 406 Md. 341, 349 (2008)). "We review the court's legal conclusions *de novo*, however, making our own independent constitutional evaluation as to whether the officers' encounter with appellant was lawful." *Daniels v. State*, 172 Md. App. 75, 87 (2006). "When a party raises a constitutional challenge to a search or seizure, we undertake an 'independent constitutional evaluation by reviewing the relevant law and applying it to the unique facts and circumstances of the case.'" *Trott*, 473 Md. at 254 (quoting *Grant v. State*, 449 Md. 1, 14-15 (2016) (in turn, quoting *State v. Wallace*, 372 Md. 137, 144 (2002))).

DISCUSSION

I.

Lawfulness of the Initial Entry Into the House

The Fourth Amendment to the United States Constitution, applicable to the States pursuant to the Fourteenth Amendment, provides that "no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." U.S. CONST. amend. IV. "[P]hysical

entry of the home is the chief evil against which the wording of the Fourth Amendment is directed." *Payton v. New York*, 445 U.S. 573, 585 (1980) (quotation marks and citation omitted); *accord Steagald v. United States*, 451 U.S. 204, 211 (1981) ("[T]he entry into a home to conduct a search or make an arrest is unreasonable under the Fourth Amendment unless done pursuant to a warrant.").

Police entry into a residence for the purpose of executing an arrest warrant, however, is not presumptively unreasonable. *Cunningham v. Baltimore Cnty*., 246 Md. App. 630, 674, *reconsideration denied* (Aug. 26, 2020), *cert. denied*, 471 Md. 268 (2020). "An arrest warrant 'founded on probable cause implicitly carries with it the limited authority to enter a dwelling in which the suspect lives when there is reason to believe the suspect is within.'" *Id*. (quoting *Payton*, 445 U.S. at 603). In order to justify entry into the residence, an officer must: 1) "have reason to believe that 'the location is the defendant's residence[,]'" and 2) "have a reasonable belief that the subject of the warrant is inside the residence." *Id.* (quoting *United States v. Hill*, 649 F.3d 258, 262 (4th Cir. 2011)).

Appellant contends that police did not have an objectively reasonable belief that he was inside the house at the time of his arrest. He argues that "reasonable belief" is the same standard as probable cause and urges this Court to adopt the Fourth Circuit's ruling in *United States v. Brinkley*, 980 F.3d 377, 386 (4th Cir. 2020), that "reasonable belief in the *Payton* context embodies the same standard of reasonableness inherent in probable cause." Appellant points out that there is a circuit split among the federal courts, and disagreement among state courts, regarding whether the "reasonable belief" standard is lower than or equal to probable cause.

In *Cunningham*, this Court considered the split of authority regarding "reasonable belief" and noted that the majority of state courts addressing the reasonable belief standard in the context of warrantless entry for an arrest warrant had determined that the reasonable belief standard is not the equivalent of probable cause. 246 Md. App. at 677. We found instructive the Court of Appeals'[4] analysis in *Taylor v. State*, 448 Md. 242, 250 (2016), *cert. denied*, 137 S. Ct. 1373 (2017), addressing the authority of police to search a car incident to arrest when police have a reasonable belief that '"evidence relevant to the crime of arrest might be found in the vehicle."' *Cunningham*, 246 Md. App. at 676 (quoting *Taylor*, 448 Md. at 248). In *Taylor*, the Court concluded that the reasonable belief standard is equivalent to reasonable articulable suspicion because "[i]f a police officer has a reasonable suspicion that he or she can articulate that something is so, then perforce it is reasonable for the officer to believe that it may be so and *vice versa*." 448 Md. at 250. We concluded in *Cunningham* that the reasonable belief standard does not rise to the level of probable cause in the case of an entry into the home pursuant to an arrest warrant, but rather, reasonable belief, "in the context of the execution of an arrest warrant is akin to reasonable suspicion[,]" requiring "more than a hunch as to presence, but less than a probability." 246 Md. App. at 677 (quotation marks and citation omitted).

We find unpersuasive appellant's invitation to adopt the Fourth Circuit's position that the reasonable belief standard is the equivalent of probable cause. Rather, we agree with this Court's analysis in *Cunningham* that in the context of police entry into a home

[4] On December 14, 2022, the name of the Court of Appeals was changed to the Supreme Court of Maryland.

for purposes of an arrest warrant, the reasonable belief standard is equivalent to reasonable suspicion. *See id*.

Here, the arrest warrants identified 611 North Ellwood Avenue as appellant's address, and appellant acknowledged at the suppression hearing that the location was his residence. Sergeant Hines further testified that the 611 North Ellwood address was also listed as appellant's address on "numerous arrests[.]" Detective Halilaj had observed appellant in the vicinity of the house approximately two hours before his arrest and it was reasonable for the detectives to infer that he would return to the house. Prior to approaching the house to execute the arrest warrant, Sergeant Hines observed an unidentified man enter the house. Detectives were not required to credit Ms. Griffin's belief that appellant was not inside the home in light of the fact that she had just awoken and indicated that she did not actually know who was inside the house at the time.

Based on the totality of the circumstances, we conclude that the detectives had an objectively reasonable basis for believing that appellant was inside the house at the time they executed the arrest warrant.

II.

Unlawfulness of the Second Entry Into the House

Appellant argues that the detectives unlawfully re-entered his residence after he had been arrested and removed. He contends that the trial court erred in finding that the detectives were consensually allowed to re-enter the house because there was no evidence in the record to support a finding that an occupant of the house voluntarily consented to the

detectives' re-entry into the house, or that anyone, other than Ms. Griffin, had authority to give consent.

At the suppression hearing, the State did not argue consent as a basis for justifying the re-entry, and neither Sergeant Hines nor Detective Halilaj testified to obtaining consent. The State asserts that evidence of consent for the re-entry was introduced in the body camera footage of Detective Burgos in State's Exhibit 2. Appellant responds that evidence of the re-entry encounter was not introduced into evidence during the suppression hearing, as the State did not play any video footage showing the re-entry encounter. Assuming without deciding that the suppression court viewed video evidence of the encounter in making its ruling, we must determine whether the evidence supported the court's finding that the re-entry was lawful.[5]

The suppression court ruled that the detectives decided to go back into the house to "try to talk to mom about the potential for consent." With respect to the circumstances of the re-entry, the court found:

> [The detectives] went back into the home, were allowed into the home. They were told mom was upstairs. No one told them not to go beyond the threshold. And everything from there seemed to be, you know, for lack of a better term, peaceful and amicable as was the initial exchange with [appellant].

"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); *see also Varriale v. State*, 218 Md. App. 47, 53 (2014)

[5] We note that footage of the re-entry encounter may have been played for the court as part of Defense Exhibit 1. (*See* transcript pages 118-19.)

(recognizing that a search conducted without a warrant "does not violate the Fourth Amendment if a person consents to it"). A consent to search is only voluntary if, based on the totality of the circumstances, it was not the product of duress or coercion, express or implied. *Schneckloth v. Bustamonte*, 412 U.S. 218, 219 (1973). "The 'knowledge of a right to refuse is a factor to be taken into account,' but the lack of such knowledge does not make any consent given *per se* involuntary." *Redmond v. State*, 213 Md. App. 163, 177 (2013) (quoting *Schneckloth*, 412 U.S. at 249). The burden of proving that consent was valid requires the State "to prove that the consent was freely and voluntarily given." *Jones*, 407 Md. at 51 (citing *United States v. Mendenhall*, 446 U.S. 544, 557 (1980)); *Turner v. State*, 133 Md. App. 192, 202 (2000). "This burden cannot be satisfied by showing nothing more than acquiescence to a claim of lawful authority." *Turner*, 133 Md. App. at 202 (citing *Bumper v. North Carolina*, 391 U.S. 543, 548-50 (1968)).

In deciding the issue of voluntariness of consent, "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." *Id.* (citing *Cartnail v. State*, 359 Md. 272, 282 (2000)); *Cartnail*, 359 Md. at 282-83 ("If the Fourth Amendment is implicated by State action, [the appellate court] makes an independent determination of whether the State has violated an individual's constitutional rights by applying the law to the facts."). Specifically, we must "exercise our independent judgment" in resolving the ultimate, second-level findings of fact:

> "[W]hen we say that we have the obligation to make an independent, reflective constitutional judgment on the facts whenever a claim of a constitutionally-protected right is involved [we mean] that, although we give

> great weight to the findings of the hearing judge as to specific, first-level facts (such as the time an interrogation began, whether a meal was or was not served, whether a telephone call was requested, etc.) we must make our own independent judgment as to what to make of those facts; we must, in making that independent judgment, resolve for ourselves the ultimate, second-level fact – the existence or non-existence of voluntariness."

Turner, 133 Md. App. 202-03 (quoting *Walker v. State*, 12 Md. App. 684, 695 (1971)); *accord Perkins v. State*, 83 Md. App. 341, 346 (1990) (discussing the "independent constitutional appraisal" required in determining whether police entry into the defendant's room was consensual).

Consent may be express or implied, based upon conduct or gestures. *Turner*, 133 Md. App. at 207. Implied consent may be inferred from some affirmative act showing that the person "freely and voluntarily" consents to allowing police to access the home. *See, e.g., Lewis v. State*, 285 Md. 705, 719 (1979) (holding that defendant's act of leaving police a key to the house constituted implied consent). In *Turner*, police suspecting Turner's involvement in a police chase traced him to his apartment. 133 Md. App. at 197. Police knocked on the door to the apartment and Turner answered, closing the door behind him. *Id*. Police asked him for some identification, and he replied that he had a telephone bill in his name inside his apartment. *Id*. at 198. When Turner opened the door to his apartment and entered, the police officers followed him inside the apartment, where the officers observed a gun and crack cocaine in plain sight. *Id*. Finding implied consent on the part of Turner, the circuit court denied the motion to suppress. *Id*. at 199.

This Court determined that the motion to suppress should have been granted because Turner did not consent to the police officers' entry into the apartment. *Id*. at 208. We

noted that the police did not ask Turner for permission, but rather, they simply followed behind him and entered the apartment. *Id*. In that context, we determined that Turner's failure to object to the officers' entry was insufficient to imply consent. *Id*. We explained that "the failure to tell the police to stay put or to close the door in their faces cannot be likened to a positive gesture of assent to invitation, or to an affirmative act taken to facilitate their entry." *Id*.

We noted that courts in other jurisdictions had held that "consent to enter may not be found in the mere act of walking through a door and leaving it open, and cannot be inferred from the absence of measures to bar police entry." *Id*. at 209 (citing *United States v. Gwinn*, 46 F. Supp. 2d 479, 484 (S.D.W.V.1999) (observing that Fourth Circuit cases finding implied consent are those "in which there was a specific request by police officers and a nonverbal affirmative response by an individual ... in which an individual took some affirmative act that directly exposed his or her property to inspection[,]" or "in which there was a working relationship between police officers and a cooperating individual[.]")); *United States v. Shaibu*, 920 F.2d 1423, 1428 (9th Cir.1990) (holding that "in the absence of a specific request by police for permission to enter a home, a defendant's failure to object to such entry is not sufficient to establish free and voluntary consent" and "[w]e will not infer both the request and the consent"); *United States v. Jaras*, 86 F.3d 383, 390 (5th Cir.1996) (holding that defendant had not impliedly consented to a search of his luggage, and though he did not object to the search, the police had not requested permission to search); *United States v. Most*, 876 F.2d 191, 199 (D.C. Cir. 1989) (in the absence of proof

that police requested permission to search the defendant's bag, the cooperation of the store employees could not constitute implied consent to search the bag).

There are several Maryland cases finding implied consent in the context of warrantless police entries. In these cases, however, implied consent has been inferred from a police request to enter the home and some affirmative act showing that the person freely consented to allowing police to access the home. *See, e.g., Chase v. State*, 120 Md. App. 141 (1998). In *Chase*, police knocked on the door to the defendant's home and his wife answered. 120 Md. App. at 150. Police asked if the defendant was home and told the wife that they needed to speak with him. *Id.* In response, the wife "opened the door wider and stepped out of the doorway[,]" allowing police to enter the home. *Id.* The wife testified that the officers entered the house as soon as she opened the door without introducing themselves or explaining their purpose. *Id.* In resolving the factual dispute as to the circumstances of the police entry, the circuit court credited the police officers' version of events. *Id.*

We affirmed the suppression court's denial of defendant's motion to suppress, concluding that the wife's action of opening the door to the home wider and stepping aside once the officers announced their intentions, constituted implied consent to enter the home. *Id.* In reaching our conclusion, we considered the facts in *In re Anthony F.*, 293 Md. 146, 147-48 (1982). There, two police officers specifically requested permission from the defendant's sister to enter the home and talk to her brother, and she "responded by stepping back and opening the door wide so they could enter." 293 Md. at 148. The Court of

Appeals determined that the trial court did not err in concluding that the sister had "freely invited the police into her home." *Id*. at 153.

Here, the suppression court did not make an express finding as to whether the detectives requested permission to re-enter the house or what actions demonstrated that they obtained voluntary consent to enter. The court's only finding was that the detectives "were allowed into the home." The State contends that Detective Burgos' body camera footage showing that Ms. Griffin's boyfriend, Mario, opened the door and left it open for the detectives, supported the suppression court's finding that the detectives were consensually allowed into the house.

In the present case, as in *Turner*, the police trailed the person opening the door and entered the house once the door was opened. There was no evidence that the detectives requested permission to enter the house or that Mario expressly or impliedly consented to allowing them to enter the house. As we noted in *Turner*, the fact that no one objected to the police officers' presence did not amount to implied consent. 133 Md. App. at 215 ("[T]he fact that appellant did not direct the officers to leave his apartment once they were inside did not make the illegal entry legal.").

Here, Mario's lack of protest was not tantamount to implied consent. The evidence showed, at most, acquiescence to the police action of entering the house. "[E]ven ostensible consent is not voluntary when it is 'no more than acquiescence to a claim of lawful authority.'" *Perkins*, 83 Md. App. at 349 (further quotation marks omitted) (quoting *Titow v. State*, 75 Md. App. 555, 558 (1988)).

We conclude that the State failed to satisfy its burden of proving voluntary consent to justify the warrantless entry into the house. Accordingly, the police re-entry into the house was in violation of the Fourth Amendment.

III.

Voluntariness of Consent to Search

Appellant argues that the items seized as a result of Ms. Griffin's consent were fruit of the poisonous tree – the unlawful second entry, and as such, should have been suppressed. He further contends that the circumstances surrounding Ms. Griffin's consent demonstrate a lack of voluntariness, as they "surrounded her in a doorway with her back against the wall, told her they were going to search her house, and then asked for her consent" and did not tell her that she could refuse to consent until after she had begun signing the form.

The State counters that the record supports the suppression court's finding that Ms. Griffin's consent was voluntary. The State requests that, in light of our ruling that police illegally re-entered Ms. Griffin's residence, we remand the case to the circuit court to make factual findings as to the voluntariness of Ms. Griffin's consent, pursuant to *McMillian v. State*, 325 Md. 272, 285 (1992).

Appellant argues that remand is not warranted because the State failed at the suppression hearing to sustain its burden of proof as to Ms. Griffin's voluntary consent. Appellant argues that the appropriate remedy is reversal of the judgment with instructions that the circuit court grant the motion to suppress.

"Whether the consent was voluntary 'is to be decided in light of the totality of all the circumstances.'" *McMillian*, 325 Md. at 285 (quoting *Schneckloth*, 412 U.S. at 227). In *McMillian*, police conducted surveillance of a nightclub following multiple reports that drugs were being sold out of the club. *Id.* at 276. Surveillance revealed suspected drug transactions, and police recovered cocaine from individuals stopped leaving the club. *Id.* at 277. Police decided that rather than attempt to get a search warrant, they would secure the club and attempt to obtain consent to search. *Id.* at 278. Police gained access to the club by following a patron entering through the front door. *Id*. Once inside the club, police detained the patrons while they obtained the manager's consent to search the club. *Id.* at 278-79. The search resulted in the seizure of a large amount of cocaine. *Id*. at 279. The trial court denied the defendant's motion to suppress evidence, finding that the police's warrantless entry into the defendant's nightclub was justified by exigent circumstances, and the defendant's consent to search was voluntary. *Id*. at 279-80. This Court determined that no exigency existed to justify the warrantless entry, but because the defendant's consent to search was voluntary, the defendant was not entitled to suppression. *Id*. at 280.

The Court of Appeals determined that the State had failed to demonstrate exigent circumstances supporting the officers' warrantless entry into the club. *Id*. at 284. Though police had observed suspected drug activity earlier in the day, the Court noted that police had failed to confirm that the drug activity they had observed earlier in the day was ongoing at the time they entered the club, as surveillance had ceased approximately one hour prior to the police entering the club. *Id*. at 283. As a result, "the police could not have believed

that evidence was likely to be destroyed or removed because at that point in time they did not know that there was any evidence." *Id*. at 284 (quotation marks and citation omitted).

With respect to the search and seizure, the Court considered the effect that the unlawful entry of the club had on the defendant's consent to search. *Id*. at 284. The court noted that "[b]ecause [the trial judge] erroneously concluded that the entry of the [c]lub by the police was justified by exigent circumstances, he did not weigh that illegal entry along with the other evidence in reaching his conclusion [as to the voluntariness of the consent]." *Id*. at 288. The Court determined that remand was appropriate to allow to the trial judge to "review the evidence that was offered at the suppression hearing in light of the additional fact that the police entered the [c]lub unlawfully." *Id*. The Court further ordered that the trial court "decide the related issue of whether [the defendant's] consent 'was sufficiently an act of free will to purge the primary taint of the unlawful invasion.'" *Id*. (quoting *Wong Sun v. United States*, 371 U.S. 471, 486 (1963) (footnote omitted)).

Sergeant Hines testified that he spoke to Ms. Griffin and indicated to her that his intention was to obtain a search warrant for the house. When asked on cross-examination about Ms. Griffin's behavior in response to the police getting a search warrant, he stated that she was "calm the whole time we were there." When Sergeant Hines asked Ms. Griffin if she would consent to a search of the house, she verbally consented to a search before signing a consent form. Sergeant Hines believed that Ms. Griffin "fully understood everything we were saying to her." Sergeant Hines' body camera footage of his discussion with Ms. Griffin was played for the court and introduced into evidence.

Based on the evidence presented during the suppression hearing, the court found that there was "no evidence of threats[,] use of weapons or other force. Neither was there anything sneaky going on. Everything was out in the open and clearly explained to Ms. Griffin." With respect to the length, circumstances, and location of the consent discussion, the court found no evidence of any "implied coercion or threat or any other basis for invalidating the search." The court found that Ms. Griffin verbally gave her consent, and then she signed the consent form after being told that she did not have to sign it. The court determined that, based upon the facts and circumstances of the case, there was no basis to conclude that Ms. Griffin's consent was involuntary.

Under Maryland Rule 8-604(d)(1), a limited remand is appropriate where "the substantial merits of a case will not be determined by affirming, reversing or modifying the judgment, or that justice will be served by permitting further proceedings[.]" The limited remand, however, "is neither an 'antidote' for the errors of the State or of counsel nor a method to correct errors committed during the trial itself." *Southern v. State*, 371 Md. 93, 104 (2002).

In *Southern*, the Court of Appeals reversed this Court's ruling that a remand was appropriate to allow the suppression court to hear additional evidence, where the suppression court had focused on the voluntariness of the defendant's statement without addressing the initial stop. *Id.* at 101-02. The Court of Appeals determined that, because the State had failed at the suppression hearing to meet its burden of proof that the initial stop was constitutional, the State should not be allowed a second opportunity to present evidence it had failed to present initially. *Id.* at 106. The Court explained that "Rule 8-

604 does not afford parties who fail to meet their burdens on issues raised in a completed suppression hearing an opportunity to reopen the suppression proceeding for the taking of additional evidence after the appellate court has held the party has failed to meet its evidentiary burden." *Id*. at 105. The Court distinguished the facts of the case from other cases where limited remand was appropriate, including *McMillian*, 325 Md. 272, explaining that in *McMillian*, "remand was proper where a question was not previously addressed to the trial court because of an error of law[.]" *Southern*, 371 Md. at 104.

In the present case, the suppression court's determination as to the voluntariness of Ms. Griffin's consent was based on its erroneous finding that the police entry into the premises was lawful. The suppression court did not, therefore, consider the illegal re-entry as a factor in its analysis of the totality of the circumstances surrounding the voluntariness of Ms. Griffin's consent to search. Here, as in *McMillian*, because the illegality of the entry was not before the suppression court, the court did not consider the question of whether Ms. Griffin's consent was sufficiently attenuated so as to dissipate the taint of the unlawful entry. *See Myers v. State*, 395 Md. 261, 291 (2006) ("[T]he fruit of the poisonous tree doctrine excludes direct and indirect evidence that is a product of police conduct in violation of the Fourth Amendment."); *Sizer v. State*, 456 Md. 350, 376 (2017) (explaining that "[t]he application of the attenuation doctrine is a fact-specific analysis that focuses on when and the manner in which the evidence seized was obtained in relation to the unlawful conduct").

Pursuant to Rule 8-604(d), we shall remand this case to the suppression court for reconsideration of the voluntariness of Ms. Griffin's consent in light of our holding that

the detectives' re-entry into the house was unlawful and a determination of whether her consent was sufficiently attenuated from the illegal re-entry of the house.

JUDGMENT VACATED AND CASE REMANDED TO THE CIRCUIT COURT FOR BALTIMORE CITY FOR FURTHER PROCEEDINGS NOT INCONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY THE MAYOR AND CITY COUNCIL OF BALTIMORE.