Circuit Court for St. Mary's County
Case No.: 18-K-15-000093

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1755

September Term, 2017

WILLIAM CHINEDU OZAH

v.

STATE OF MARYLAND

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

JJ.

Opinion by Alpert, J.

Filed: November 30, 2018

Appellant, William Chinedu Ozah, was indicted in the Circuit Court for St. Mary's County and charged with theft of property between $1,000 and $10,000, as well as a related conspiracy count. Prior to jury selection, appellant moved to suppress evidence seized from a residence located in Fort Lauderdale, Florida, pursuant to search warrants issued in Broward County, Florida. After that motion was denied, appellant was tried by a jury and convicted of theft of property between $1,000 and $10,000. Appellant was sentenced to ten years, with all but five years suspended, to be followed by five years' supervised probation. He was granted a belated appeal following postconviction proceedings, and now asks:

Did the trial court err in denying the motion to suppress evidence?

For the following reasons, we shall affirm.

BACKGROUND

On April 15, 2014, Eric Faughnan had his Louis Vuitton designer briefcase, worth approximately $3,000, stolen from him while he was watching a movie at the AMC Theaters in Lexington Park, Maryland. Faughnan, the owner of a restaurant on nearby Solomons Island, testified that the briefcase contained his tax information, as well as a payroll report for his business, his passport, checkbook, wallet, driver's license, keys, and approximately $550 in petty cash. Faughnan explained that he saw a person, who he was unable to identify, grab his briefcase towards the end of the movie and then run out an emergency exit. Faughnan reported the theft to the police, as well as the office at the theater, where he encountered two employees on duty, one of whom was appellant.

Approximately seven weeks later, on or around June 7, 2014, Faughnan's briefcase and other effects were recovered following the execution of Florida search warrants for a residence in Dania Beach, Florida. Appellant was present in the residence when the briefcase was recovered. At the time of the search, the briefcase also contained prescription medications in appellant's name.

The issue presented concerns the legality of those search warrants under the Fourth Amendment. The first search warrant sets forth the following assertion of probable cause:

> On 06/07/2014 at approximately 1943 Hrs, The Broward Sheriff's Office received several calls advising that four gunshots had been heard coming from the rear of 214 SW 1 Ave, Dania Beach, Fl. Contact was made with the neighbor on the North side of the property who confirmed that four gunshots had been heard from the rear of 214 SW 1 Ave. The neighbor further advised that she observed a black male with dreads locks in the back yard of the residence where the gunshots were heard.
>
> Shortly after road patrol deputies arrived at the location and a perimeter was established around 214 SW 1 Ave. 214 SW l Ave which is a single story residence which has been divided into two separate apartments. Entry into the first apartment is made on the East side of the residence and entry into the target apartment is made from the West side of the residence which would be facing the backyard.
>
> Dep Robertson was able to sec a black male with dread locks, no shirt and red shorts walk out of the target apartment briefly before entering back in. Dep Robertson also observed several subjects walking around within the apartment through the Northwest window. The residents of the apartment were called out through the loud speaker but no one exited the apartment. After approximately 20 minutes the subjects began to exit the apartment and were taken into custody. The three subjects were identified as William C Ozah 08/04/93, Reginald M Ozah 11/21/90, and Kadeja Gunther 03/01/94.
>
> Members of the SWAT team arrived on scene and cleared the residence for safety. No one else was found within the apartment.
>
> In plain view within the apartment a make shift bong with suspect Cannabis residue was found in the south bedroom of the target apartment.

An ammunition box was also in plain view in the living room. There was also an odor of Cannabis through out the apartment.

While canvassing the back yard of the residence, one casing from a 9 MM was found outside of the front door to the target apartment in the backyard. There was a 5 gallon plastic container on top of a garbage container in the backyard. The 5 gallon plastic container had what appeared to be three bullet entry and exit holes. The garbage container also had one entry and exit hole. The holes found on the containers were consistent with gun fire.

One of the projectiles appeared to have traveled through one of the containers and exited before hitting a residence located at 238 SW 1 Ave, Dania Beach, Fl. The trajectory of the projectile is consistent with the location of the plastic container leading in the direction of where the house was struck. Contact was made with home owner who stated the damage of the residence was not there previously. It should be noted that there is a park between the two properties and it appeared that the bullet traveled through the park before hitting the property located at 238 SW 1 Ave.

Contact was also made with Brandon J Richard 09/13/93 who showed up on scene shortly after. Richard gave consent to search the apartment and advised that Reginald Ozah also resides at the residence and they are roommates. Richard further advised that William Ozah and his girlfriend Kadeja Gunther have been also residing in the apartment for approximately one month. Richard stated that he does not own a handgun and that Reginald Ozah has been his roommate for approximately five months and he has never seen him with a handgun or ammunition.

A teletype check of William Ozah revealed he is a convicted felon. He was arrested for Grand Larceny out of Virginia (Case # 784581, 760CR13F0035100) and convicted on 09/17/2013.

This affiant is a duly appointed Deputy Sheriff for Broward County Florida. This affiant has served in such a capacity since June 22, 2007. This affiant is currently assigned to the District 2 Dania Beach, Crime Suppression Team. All of this time this affiant has been responsible for road patrol duties, and street level drug enforcement.

Based on the aforementioned facts your affiant has probable cause to believe that the laws of the Slate of Florida (FSS. 893.13, 790.) are being violated within the structure to be searched.

The search warrant was signed by a judge of the Broward County Circuit Court. The return for this warrant indicates that police seized: cannabis, drug paraphernalia, computers, cellphones, iPads, thumb drives, cameras, several state issued ID's, one passport, counterfeit money and money. Following this, the police prepared a second search warrant, which, in addition to the aforementioned description of probable cause, added the following:

> On 06/08/2014 the search warrant was approved for the target residency by Honorable Judge Levenson for narcotics and a firearm related investigation. The search warrant was executed at approximately 0400 Hrs. While conducting a search of the residence numerous cut and uncut counterfeit bills printed on business style paper where [sic] observed along with several state issued identification cards from different states, one passport, one credit card reader, a magnetic strip in-ender, several computers, several cellular telephones and I-pads. The items listed above appear to be used in relation to identity theft and the making of counterfeit bills. Further permission from the court to continue our search of the target residence in order to obtain further evidence relating to counterfeiting and identify theft relation to fraudulent practices. The Secret Service has been notified and will participate in the search.
>
> Based on the aforementioned facts your affiant has probable cause to believe that the laws of the State of Florida (FSS. 817.) are being violated within the structure to be searched.

The warrants were the sole evidence presented at the suppression hearing in St. Mary's County Circuit Court. At that hearing, appellant argued that fruits of the search needed to be suppressed because the Florida police first made a warrantless entry into the apartment in question, observed contraband in plain view, and then, used that information to apply for a search warrant. Appellant argued there was no exigency to authorize the initial entry prior to obtaining the search warrant, and that, absent the observations of

contraband inside the residence, there was no probable cause authorizing the search warrant.

In an ongoing discussion with the motions court, the State responded that there was a substantial basis to uphold the search warrant. The court replied, "But you have gone to step two, and you must address step one: that they had no business being in there gathering the information for the warrant. If they went in illegally and saw things where they didn't have a right to be, doesn't that put the warrant in jeopardy?" The State answered that there were exigent circumstances, including that there were reports of shots fired at the residence, there was a delay before some individuals left the residence, "and not knowing whether there were any victims or additional suspects in the home led to a need to cursory search the home for other individuals before securing the premises." Upon further questioning by the motions court, the State also asserted that another reason justifying the entry was seeing someone matching the description of the shooter in the subject apartment.[1]

The State continued that, after the police entered the residence and cleared it for safety, they also obtained consent of another resident. This information was included in the first search warrant. And, after that first search revealed other items of interest that were "outside the scope" of the first warrant, the police then went and obtained a second search warrant.

[1] As the parties and the court recognized, the building was described as a "single story residence which has been divided into two separate apartments" with two separate entrances.

Appellant responded that, once the three subjects came out of the residence, as provided in the four corners of the warrant, there was no further exigency authorizing the police to enter the residence. Appellant also contended that the description of the shooter as a black male with dreadlocks was "thin" and there was not a sufficient connection between that description and the man seen in the residence. The court noted that there were several subjects observed inside the residence when the police arrived and that it took twenty minutes before these individuals left the residence. Defense counsel replied that "there's no indication that there was anyone else." Counsel also asserted that "20 minutes I don't think is too long -- come out, I think that the Court has before it some indication that there was an agreement to surrender, and that the occupants of the house were in concert in that agreement, and they came out."

After further discussion with appellant's counsel, the court asked:

> You want me to conclude that the SWAT team, without going in, and the officers on the scene had to determine or conclude there were no others in there? And you want me to conclude that because they say there were several people walking around in there; and when three came out, they should have been satisfied and not entered the apartment? Isn't that what you're asking me to conclude?

Appellant maintained that there was no indication that anyone else was inside the residence or that a firearm was located therein, and that, therefore, there was no exigency. Asked by the court if she had anything to add, appellant's counsel added that the witness who called the police reported hearing shots fired and then saw a black male with dreadlocks in the backyard of the subject residence, but she did not say that that person had

a gun. On the specific question concerning why the police needed to enter the residence after three subjects emerged, the State argued:

> In order to look for additional suspects in the shooting and to check for victims, they clear the home. Judge, that's exactly what we would want them to do. I can't imagine a situation in which we would say, Okay, some people came out, so we're all going to stand around and hang out and wait for a warrant. What happens then?
>
> What happens then is that the other shooter could come out, or the victim is laying on the floor bleeding out. You just don't know. And that's the purpose of the concept of exigent circumstances.
>
> You don't know who else may be in there, and you don't know if they're hurt or if they're the perpetrator. So you go in to secure the safety of the premises for everyone involved. And that's exactly what they did.
>
> And once they said, "No bad guys and no good guys in this house, we're backing out, and we're doing the next step of exactly what the laws in the United States want us to do. They prefer us to get a search warrant, so we're going to go get one." And they went and got a search warrant. They also got consent to search, and they got a second search warrant.

The court then allowed appellant's counsel to make a final argument, and counsel stated that there was no allegation of victims in the residence, and that "this isn't a situation in which there was a call of an injured person or there's any indication whatsoever that there was a victim to the crime." Instead:

> For safety is the only thing the Court -- if the Court finds that that entry was valid and legal, the Court is, I would argue, relying on two words: for safety. And there is really not a sufficient indicia for the Court to flesh out what that means.
>
> What were the officers afraid of? What was the evidence to support a fear for safety? Was it officer safety? Was it victim safety? Was it community safety? We don't know, because it's not in there. And it's not in there because it didn't exist. And we know that when we look at the totality of the affidavit.

The court then denied the motion to suppress. After recounting the facts as provided in the four corners of the affidavit, and summarizing the pertinent law concerning exigent circumstances, the court found, in pertinent part:

> And when you consider four shots fired from this two -- apartment building in a single residence, there's an identification associated with those shots and a person seen through the window of this apartment matches that identification.
>
> They have an address, the address is tied into the backyard where the shots were fired. There is no way the police can know how many people are in that house.
>
> If Mr. Richard, the landlord[2], showed up, or another resident had said, "Well, here is who is there" before they go in at some point, then that might give them an indicia of the number of folks. I believe we all agree, because [Defense Counsel] said "I believe they are in order," that Richard is after the entry when he consented to the search.
>
> So they don't know the number. They haven't talked to Mr. Richard before that. There's a 20-minute delay during which they're being ordered to exit.
>
> That is relevant, because that is a time period in an apartment from which shots -- someone may have fired shots in the backyard exists with a firearm. That's what the police were facing that day.
>
> When they go in, they smell cannabis, and they see contraband. And they get warrants in 63 for cannabis and the bong that is in plain view, and in 64 for other things affecting the defendant.

The court then continued:

> [T]he fact of the matter is, there is a substantial basis for these warrants. [Defense Counsel] is right as to the premise. She talked about castles. She talked about police not coming in or not going into bedrooms.
>
> This SWAT team cleared an area where someone who had been --who was tied in to shots fired. The totality of the circumstances, the delay, the

[2] The search warrant only refers to Richard as a roommate.

> multiplicity of people, the number unknown, the identification -- the strongest case the defense has is, there are two apartments.
>
> If they had burst into an apartment and it was the wrong one because they hadn't made observations, then the odds are the evidence seized in that wrong apartment would be suppressed.
>
> They waited, they demanded that the residents exit. They then cleared the area for their safety and public safety. This is not a firecracker. This is not a knife. This is not drugs. It's a firearm. They have a right to go in and clear the scene.
>
> They then got warrants, which makes a presumption that it is valid. The State and Defense have argued well whether there is a substantial basis. If it were a higher burden, it might be a different ruling.
>
> The basis is substantial for these warrants, and they are valid and admitted. And the searches pursuant thereto are not going to be suppressed because of the warrants. . . .

DISCUSSION

Appellant maintains that the motion should have been granted because the search warrant was issued based on an illegal warrantless entry. The State responds that the entry was justified under the exigent circumstances of the situation and that the court properly denied the motion to suppress. We agree with the State.[3]

[3] We decline to consider the State's argument, made for the first time on appeal, that the warrantless entry was justified under the community caretaking function. *See Hartman v. State*, 452 Md. 279, 299 (2017) ("We made clear in *State v. Bell*, 334 Md. 178, 638 A.2d 107 (1994) that our review of arguments not raised at the trial level is discretionary, not mandatory").

We further note that both parties, as well as the motions court, considered this case under federal constitutional principles as explained in Maryland law. The Maryland Court of Appeals has stated that "[t]he legality of [an] arrest and, therefore, the reasonableness of the search and seizure incident to the arrest, turns on the law of the State in which the arrest was made, absent a controlling federal statute." *Myers v. State*, 395 Md. 261, 275 (2006) (continued)

"The Fourth Amendment to the United States Constitution protects '[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.'" *State v. Johnson*, 458 Md. 519, 533 (2018) (quoting U.S. Const. amend. IV). "Reasonableness within the meaning of the Fourth Amendment 'generally requires the obtaining of a judicial warrant.'" *State v. Johnson*, 458 Md. at 533 (quoting *Riley v. California*, __U.S. __, 134 S.Ct. 2473, 2482, 189 L.Ed.2d 430 (2014)). And, the Fourth Amendment prohibits the issuance of any warrant except "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, cl. 2. To demonstrate probable cause, the affidavit that accompanies a request for a search warrant must show that "the

(quoting *Stanley v. State*, 230 Md. 188, 191 (1962), in turn citing *United States v. Di Re*, 332 U.S. 581, 589 (1948) (cases cited therein)). The Court continued:

> [T]he word "law" must refer to the particular statutes and constitutional provisions of that jurisdiction. Where those statutory and constitutional provisions are not in contravention of the United States Constitution, and to the extent that they expand an arrestee's rights, clearly those provisions control any decision concerning the validity of an arrest. If the word "law" [means] case law interpreting federal constitutional law, under the principles of federalism, a sister state's constitutional interpretation would not necessarily be binding in this State. Where, however, that sister state's interpretation is persuasive, . . . a Maryland court may adopt that jurisdiction's analysis.

Myers, 395 Md. at 277 (quoting *Moore v. State*, 71 Md. App. 317, 322–23 (1987), in turn citing *Berigan v. State*, 2 Md. App. 666 (1968)).

Florida's constitution mandates that its search and seizure law "shall be construed in conformity with the 4th Amendment to the United States Constitution, as interpreted by the United States Supreme Court." Fla. Const. art. I, § 12. Accordingly, we shall consider this case in accordance with Supreme Court precedent, as explained by this State's appellate courts, and shall consider Florida cases to the extent that they may be persuasive in our analysis.

known facts and circumstances are sufficient to warrant a man of reasonable prudence in the belief that contraband or evidence of a crime will be found" in a particular place. *Ornelas v. United States*, 517 U.S. 690, 696 (1996) (citations omitted); *see also Maryland v. Pringle*, 540 U.S. 366, 370 (2003) (stating that the probable-cause standard is a "'practical, nontechnical conception'" that deals with "'the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.'") (quoting *Illinois v. Gates*, 462 U.S. 213, 231 (1983)).

"When the State seeks to introduce evidence obtained pursuant to a warrant, 'there is a presumption that the warrant is valid[,]' and 'the burden of proof is allocated to the defendant to rebut that presumption by proving otherwise.'" *Volkomer v. State*, 168 Md. App. 470, 486 (2006) (quoting *Fitzgerald v. State*, 153 Md. App. 601, 625 (2003)). Our standard of review of a magistrate's decision to issue a warrant is not *de novo*, but is a deferential standard:

> We determine first whether the issuing judge had a substantial basis to conclude that the warrant was supported by probable cause. *State v. Amerman*, 84 Md. App. 461, 463-64 (1990). We do so not by applying a *de novo* standard of review, but rather a deferential one. The task of the issuing judge is to reach a practical and common-sense decision, given all of the circumstances set forth in the affidavit, as to whether there exists a fair probability that contraband or evidence of a crime will be found in a particular search. The duty of a reviewing court is to ensure that the issuing judge had a "substantial basis for . . . conclud[ing] that probable cause existed." The U.S. Supreme Court explained in [*Illinois v. Gates*, 462 U.S. 213 (1983)] that the purpose of this standard of review is to encourage the police to submit to the warrant process.

Greenstreet v. State, 392 Md. 652, 667-68 (2006) (citations omitted).

"The evidence necessary to demonstrate a 'substantial basis' is less than that which is required to prove 'probable cause.'" *Moats v. State*, 230 Md. App. 374, 391 (2016), *aff'd*, 455 Md. 682 (2017). Recognizing that "[r]easonable minds frequently may differ on the question whether a particular affidavit establishes probable cause," judicial deference requires that, "in a doubtful or marginal case a search under a warrant may be sustainable where without one it would fall." *Stevenson v. State*, 455 Md. 709, 723 (2017) (quoting *United States v. Leon*, 468 U.S. 897, 914 (1984)), *cert. denied*, 138 S.Ct. 705 (2018). "If that 'substantial basis' standard is met, then any court called upon thereafter to review the warrant is required to uphold it." *Stevenson*, 455 Md. at 724 (quoting *Illinois v. Gates*, 462 U.S. at 238-39).[4]

Our standard of review requires us to determine whether the magistrate had a substantial basis to find probable cause to sign the search warrants in this case. The first search warrant was prepared following the discovery of cannabis in plain view after the officers entered the residence without a warrant.[5] That entry, in turn, was based on a report of shots fired at the residence, as well as other circumstances that will be discussed below. The parties and the court focused on whether there were exigent circumstances to support the warrantless entry.

[4] Florida follows the "substantial basis" test. *See Jardines v. State*, 73 So. 3d 34, 54 (Fla. 2011), *aff'd sub nom. Fla. v. Jardines*, 569 U.S. 1 (2013).

[5] The effects belonging to the St. Mary's County victim, Faughnan, were discovered during the execution of the first search warrant. The second search warrant issued because some of these recovered items suggested identity theft crimes were occurring in the residence.

There are "several exceptions to the warrant requirement, including: (1) hot pursuit; (2) the plain view doctrine; (3) the *Carroll* doctrine; (4) stop and frisk; (5) consent; (6) exigent circumstances; and (7) search incident to arrest." *Barrett v. State*, 234 Md. App. 653, 662 (2017) (citing *Grant v. State*, 449 Md. 1, 17 n. 3 (2016)), *cert. denied*, 457 Md. 401 (2018). The exigent circumstances exception occurs when "'the exigencies of the situation' make the needs of law enforcement so compelling that [a] warrantless search is objectively reasonable under the Fourth Amendment." *Kentucky v. King*, 563 U.S. 452, 460 (2011) (quoting *Mincey v. Arizona*, 437 U.S. 385, 394 (1978)). As our Court of Appeals has explained:

> Exigent circumstances are "those in which a substantial risk of harm to the persons involved or to the law enforcement process would arise if the police were to delay a search until a warrant could be obtained." *United States v. Robertson*, 606 F.2d 853, 859 (9th Cir.1979). We have noted that "[t]he meaning of exigency implies urgency, immediacy, and compelling need." *Stackhouse v. State*, 298 Md. 203, 212, 468 A.2d 333, 338 (1983). The burden is on the State to establish exigent circumstances that overcome the presumptive unreasonableness that attaches to all warrantless entries of the home. *See Welsh v. Wisconsin*, 466 U.S. 740, 750, 104 S.Ct. 2091, 2098, 80 L.Ed.2d 732 (1984); [*McMillian v. State*, 325 Md. 272, 281 (1992)].

Wengert v. State, 364 Md. 76, 85 (2001).

The observation by the police of a perpetrator "actively engaged" in the commission of a crime contributes to a finding of exigency, but "the nature of the offense, its seriousness and the ease with which the evidence can be disposed of" are also factors to be weighed. *Dunnuck v. State*, 367 Md. 198, 217 (2001). Indeed:

> Certain factors must be considered in the determination of whether exigent circumstances are present: "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." Also

> "relevant to the determination ... is the opportunity of the police to have obtained a warrant."

McGurk v. State, 201 Md. App. 23, 48 (2011) (quoting *Gorman v. State*, 168 Md. App. 412, 422 (2006) (citations omitted)).

In this case, the police were responding to a report that four shots were fired from the rear of the residence in question. Notably, a Florida statute makes it a misdemeanor to discharge a firearm in public. *See* Fla. Stat. § 790.15 (providing, in part, that "any person who knowingly discharges a firearm in any public place or on the right-of-way of any paved public road, highway, or street, who knowingly discharges any firearm over the right-of-way of any paved public road, highway, or street or over any occupied premises, or who recklessly or negligently discharges a firearm outdoors on any property used primarily as the site of a dwelling as defined in s. 776.013 or zoned exclusively for residential use commits a misdemeanor of the first degree,"); *see also Light v. State*, 796 So. 2d 610, 613 (Fla. Dist. Ct. App. 2001) (observing that the police had probable cause to arrest for public discharge of a firearm where defendant fired all six rounds in his revolver on a public street); *State v. Hall*, 652 So. 2d 484, 485 (Fla. Dist. Ct. App. 1995) (concluding that officer had reasonable suspicion that defendant or his companion had discharged a firearm in a public place after hearing shots fired within a block of a car dealership).

The neighbor who made the report indicated that she saw "a black male with dread locks in the back yard" at around the same time. When the police arrived on the scene, they found that the residence was a single-story structure with two separate apartments. In addition to a number of other individuals, the police saw a person matching the description

briefly emerge from the residence, and then retreat into one of the apartments. After an approximately twenty-minute delay after the police ordered the occupants to come out, three individuals emerged from the apartment in question, one of whom was appellant. We are persuaded that, at this point in time, there was a reasonable possibility that other people, either perpetrators and/or victims, could still be in the residence. And, there remained a substantial risk to the police and these other individuals that provided an exigency justifying a limited search to secure the premises.

Both parties discuss *Mestral v. State*, 16 So.3d 1015 (Dist. Ct. Fla., 3d Dist. 2009). In that case, the defendant's neighbor "called the police during the daytime to report a possible burglary in progress at the defendant's home. The neighbor said there were two white males who appeared to be carrying objects out of the house, possibly drugs, and placing them in a vehicle in front of the house." *Mestral*, 16 So.3d at 1016. When the police arrived, they found Mestral, his wife and child, and a male friend in the front yard. *Id*. The police also saw that one of these two white males was holding an object in his hand. *Id*. Further, a car was backed up in the driveway and there were "pry marks" on the front door. *Id.*

Concluding that this information corresponded with the tip, the police put Mestral and his friend into police cars, told his wife and child to step aside, and then entered the home, purportedly to "to see if any more perpetrators or victims are inside." *Mestral*, 16 So.3d at 1016. During the course of the protective sweep, the police found a concealed "marijuana grow room." *Id.* After the narcotics squad was called to the scene, consent

was obtained from Mestral, and the police reentered the residence and seized growing equipment and ninety-one marijuana plants. *Id*.

The District Court of Appeal for Florida concluded that the warrantless entry could not be justified either under the exigent circumstances doctrine or as a protective sweep. *Mestral*, 16 So.3d at 1017-18. Observing that Mestral was already detained and the whereabouts of his wife were known, the Court stated:

> [T]he officers entered the residence as part of a routine practice and not on the basis of any articulable facts which would warrant a reasonable belief that there was any dangerous individual inside who posed a threat to those on the arrest scene. Because the protective sweep was impermissible, the motion to suppress evidence should have been granted, and the evidence should not have been admitted at the defendant's trial.

Mestral, 16 So. 3d at 1018.

Unlike *Mestral*, this case involved an unlawful discharge of a firearm in a residential area. It is certainly arguable that the shooter was engaging in some form of target practice based on the bullet holes found in the 5-gallon container in the backyard. However, although the chronology is not entirely clear, the affidavit also includes information that the shots were fired in the direction of a nearby park, and the bullets may have struck the side of a neighbor's home. Further, although the neighbor who reported the shots indicated that a black male with dreadlocks was seen in the backyard, there was no definitive description of the shooter(s). While any of the three individuals who eventually emerged from the apartment may have been the shooter, it was not entirely clear whether other individuals may have been involved.

Ultimately, we need not decide whether there was probable cause for the warrantless entry based on an exigency. That decision was made by the magistrate. The standard of appellate review simply requires us to decide whether the magistrate had a substantial basis for making that probable cause determination. *See Ramia v. State*, 57 Md. App 654, 660 ([*Illinois v. Gates*, 462 U.S. 213 (1983)] leaves no room for doubt that reviewing courts "have no business second-guessing the probable cause determinations of warrant-issuing magistrates by way of *de novo* determinations of their own"), *cert. denied*, 300 Md. 154 (1984). Accordingly, we are persuaded that there was a substantial basis to uphold the search warrant and the motions court properly denied the motion to suppress.[6]

JUDGMENT AFFIRMED.

COSTS TO BE PAID BY APPELLANT.

[6] Our resolution of this case makes it unnecessary to consider the State's alternative argument that there was an independent basis for the recovery of Faughnan's belongings because "Brandon Richard, who resided there, gave his consent to search the apartment on June 7, 2014, a day before the warrants were obtained and executed on June 8, 2014." *See Pemberton v. Montgomery Cty*., 275 Md. 363, 367 n. 5 (1975) (declining to address, *inter alia*, a claim that the appeal is moot because determination of that specific question was unnecessary in light of the court's resolution of the case); *State v. Karmand*, 183 Md. App. 480, 495 (2008) (declining to address additional arguments where Court determines that a motion in the circuit court was untimely); *see generally McMillian v. State*, 325 Md. 272, 288-89 (1992) (recognizing that consent may be "sufficiently an act of free will to purge the primary taint of the unlawful invasion") (quoting *Wong Sun v. United States*, 371 U.S. 471, 486 (1963)). We also note that, although the motions court referred to Richard as "the landlord," the search warrant only identifies Richard as the roommate of Reginald Ozah, not appellant. Thus, the record is not entirely clear as to the extent of Richard's actual or apparent authority to consent.