UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1666

September Term, 2015

JAVON D. JOHNSON

v.

STATE OF MARYLAND

Arthur,
Leahy,
Salmon, James P.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Salmon, J.

Filed: September 13, 2016

Javon D. Johnson ("Johnson") was charged in the Circuit Court for Montgomery County with manufacturing a controlled dangerous substance, possession of a controlled dangerous substance with intent to distribute, and possession of equipment to produce a controlled dangerous substance. Before trial, Johnson filed a motion to suppress evidence acquired from the warrantless search of his apartment, which was considered and denied. Subsequently, Johnson entered a not guilty plea on an agreed statement of facts and was convicted by the court on all counts. After he was sentenced to 10 years, Johnson filed a timely notice of appeal asking us to address the following question:

> Did the trial court err in denying the motion to suppress evidence seized from [a]ppellant's apartment?

For the following reasons, we hold that the motion to suppress should have been granted and shall reverse and remand this case for further proceedings.

I.

Evidence Introduced at the Suppression Hearing

At 3:20 a.m. on May 15, 2014, a resident of an apartment building in Silver Spring, Maryland called the police to report that an unknown man was "knocking at her back door, trying to get into the building." Officer Solomono,[1] of the Montgomery County Police Department, and two other officers responded to the call, and found appellant standing outside the building smoking a cigarette. The apartment building resident who called the

[1] Officer Solomono's first name is not in the record.

police identified Johnson as the person who was banging on her door and told the officers that she had never seen Johnson before. A police officer then asked Johnson what he was doing there. Johnson said that he lived in the building, but was locked out without his key. Johnson further explained that the lobby was locked, so he was trying to get into the building by knocking on a neighbor's door. Johnson was not carrying any identification. When a police officer asked his name, Johnson said that he was Xavier Harrison. Johnson also hesitated "longer than would be normally expected" when asked his birthday. The police officers then called a police dispatcher to try to obtain information about "Xavier Harrison" but the dispatcher found no records to match the identification provided by appellant.

At that point, the front door to the apartment building was opened by the person who called the police. Johnson "started to walk away and closed the door, [apparently] thinking that he had been let in and then that was it." The police officers told appellant that he could not lock them out of the building. Appellant then said that he was going to his apartment, number 204, on the second floor. He explained that his girlfriend was out of the building and no one else was home. He also said that the apartment door was unlocked so he could reenter without a key.

Officer Solomono decided not to let appellant leave, and told him he "could not let him go" because he had not proven that he lived in the apartment. In his testimony, Officer

Solomono explained that he "did not want to let [appellant] into some random apartment, not knowing if he actually lived there or not." Officer Solomono also said that he [appellant] could only enter the apartment if appellant provided evidence that he lived in the apartment. What was said next is set forth in the following colloquy:

> Q. [Prosecutor]: What did you indicate to him? What did you tell him?
>
> A. [Officer Solomono]: I told him I could not let him go up there unless he proved to me, so he needed to take me up there and prove to me somehow, give me a piece of mail, give me something that he lived there.
>
> Q. [Prosecutor]: And what was his response to that?
>
> A. [Officer Solomono]: He said okay.
>
> Q. [Prosecutor]: Did you and him then walk upstairs?
>
> A. [Officer Solomono] Yes.
>
> Q. [Prosecutor]: Was anyone else with you?
>
> A. [Officer Solomono]: Officer King was, yes.
>
> Q. [Prosecutor]: It was the two of you and the defendant?
>
> A. [Officer Solomono]: Yes.
>
> Q. [Prosecutor]: As you walked up the stairs were you guys talking or were you just walking?
>
> A. [Officer Solomono]: No, we just walked.
>
> Q. [Prosecutor]: What happened as you reached the top of the stairs?

> A. [Officer Solomono]: Mr. Johnson was first. He opened the door, and I immediately followed him in.
>
> Q. [Prosecutor]: How far behind him were you when you were walking up the stairs?
>
> A. [Officer Solomono]: Up the stairs, not as close, but as soon as he went to open the door, I was very close behind him because I wanted to make sure, in case there were any weapons or anything like that, if he were to go in to grab them, I would be close enough at least to react.
>
> Q. [Prosecutor]: Had you made it clear to Mr. Johnson in the lobby that it was your intention to go with him into that apartment?
>
> A. [Officer Solomono]: I made it very clear to him that I could not let him in, unless he proved to me, but I cannot recall if I specifically asked if I could go into the apartment.
>
> Q. [Prosecutor]: But you made it clear to him that you needed to go in?
>
> A. [Officer Solomono]: Yes, I made it very clear to him that he could not lock us out at the main door. He needed to prove to me that he lived there.

(Emphasis added.)

When appellant opened the door to Apartment 204, Officer Solomono and Officer King followed. Officer Solomono testified he did so because he was concerned that someone might be injured or dead inside.

As mentioned, once appellant entered the apartment, Officers Solomono and King followed him inside. The officers never told appellant to stop at the doorway or said that they would be following him. Further, Officer Solomono could not recall if he asked appellant for permission to enter the apartment and, in any event, appellant did not give

express permission nor did he make any physical gestures indicating the officers could enter the apartment.

As soon as Officer Solomono entered the apartment, he saw large bottles of prescription medicine containing codeine and a "very large bag of white powder," which he suspected was cocaine, sitting on a scale. He also saw "other small items of paraphernalia with marijuana."

Once inside the apartment, Officer Solomono continued to demand proof that appellant lived in the apartment. He told appellant that "[w]e can't just leave until you do." Appellant responded that there were photographs of him in the kitchen. Solomono walked into the kitchen and saw photographs of appellant and a female. He also saw, in plain view, marijuana, a scale, and powder cocaine cooking on the stove. After appellant was arrested, the police searched the apartment pursuant to a search warrant.

Before trial, appellant moved to suppress the evidence recovered from the apartment on the grounds that he "had not consented to the warrantless search of his apartment, and that the search was not justified by exigent circumstances." The State responded that there was consent and that, alternatively, the search was "justified by exigent circumstances." The court denied the motion, finding in relevant part as follows:

> And so, they go into the front door and the complainant lets . . . both of them in. The defendant is asked is there any mail, or bills, or anything, and the defendant walked away and closed the door. This would be the outside entrance to the building. The officer said he could not let the defendant go to

> the apartment without identification so that the officer could match up the defendant as living in that apartment. So, the defendant walks up the stairs police officers right behind him at the top of the stairs. The defendant was first. The defendant opened the doors, and the officer immediately followed him and was very close behind. The officer tells us that was due to concerns over possible weapons or safety to himself or others. The officer testified he made it very clear he could not let him in the building unless he proved that the defendant lived there. The defendant had no ID on him and no proof that he actually lived there. No permission was asked of the defendant and on redirect, the police officer testified that the defendant could [not] leave the police officer encounter, unless the defendant could prove he lived there. The defendant says okay. The defendant never said stop, never barred the officers from entering. So, the question is, is this consent, implied consent, such as the officer could follow him in?

The court denied the motion to suppress, concluding that there was implied consent when appellant said "okay," and later did not attempt to stop the officers from entering. The court also found that, given the "suspicious" activity at 3 a.m., the officers had reason to believe that "criminal activity was afoot," therefore, exigent circumstances also justified the warrantless entry.

DISCUSSION

Appellant contends that the court erred in denying his motion because (1) he did not consent to the entry by the police into Apartment 204, and (2) there were no exigent circumstances to justify the warrantless entry. On appeal, the State does not address exigent

circumstances, but maintains that, under the circumstances, using an objective standard, appellant gave his consent for the police to enter his apartment.[2]

The Court of Appeals has described the standard of review to be applied in considering motions to suppress:

> When we review a trial court's grant or denial of a motion to suppress evidence alleged to have been seized in contravention of the Fourth Amendment, we view the evidence adduced at the suppression hearing, and the inferences fairly deducible therefrom, in the light most favorable to the party that prevailed on the motion. We defer to the trial court's fact-finding at the suppression hearing, unless the trial court's findings were clearly erroneous. Nevertheless, we review the ultimate question of constitutionality *de novo* and must make our own independent constitutional appraisal by reviewing the law and applying it to the facts of the case.

Corbin v. State, 428 Md. 488, 497-98 (2012) (citation and internal quotations omitted).

[2] The State does argue in a footnote that the police entry can be justified under the community caretaking exception to the warrant requirement. The community caretaking exception recognizes that police may act to protect public safety and "does not have a single meaning, but is rather an umbrella that encompasses at least three other doctrines: (1) the emergency-aid doctrine, (2) the automobile impoundment/inventory doctrine, and (3) the public servant exception." *Wilson v. State*, 409 Md. 415, 430 (2009) (footnote omitted). We have previously held that, when considering the exceptions to the warrant requirement, our review is ordinarily limited to the grounds addressed by both parties in the motions court. *See Epps v. State*, 193 Md. App. 687, 705 (2010) ("It is not enough that some of the evidence might arguably have alluded to a variety of Fourth Amendment theories. In justifying a presumptively invalid warrantless search, it is for the State to 'call the suit.' It could have advanced, in the alternative, more than one theory, but did not"). Accordingly, because this alternative rationale was not raised in the motions court, we decline to consider it on appeal. *See* Md. Rule 8-131(a) ("Ordinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court . . . ."); *State v. Bell*, 334 Md. 178, 187-91 (1994) (discussing waiver of claim at suppression hearing based on failure to argue ground below).

The Fourth Amendment to the Constitution of the United States, made applicable to the States through the Fourteenth Amendment, *see Mapp v. Ohio*, 367 U.S. 643, 655 (1961), guarantees, *inter alia*, "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures[.]" "The Fourth Amendment does not proscribe all state-initiated searches and seizures; it merely proscribes those which are unreasonable." *Florida v. Jimeno*, 500 U.S. 248, 250 (1991). Further:

> As the text indicates and we have repeatedly affirmed, "the ultimate touchstone of the Fourth Amendment is 'reasonableness.'" *Riley v. California*, 573 U.S. – , – , 134 S.Ct. 2473, 2482, 189 L.Ed.2d 430 (2014) (some internal quotation marks omitted). To be reasonable is not to be perfect, and so the Fourth Amendment allows for some mistakes on the part of government officials, giving them "fair leeway for enforcing the law in the community's protection." *Brinegar v. United States*, 338 U.S. 160, 176, 69 S.Ct. 1302, 93 L.Ed. 1879 (1949).

Heien v. N. Carolina, 135 S.Ct. 530, 536 (2014).

This case concerns the warrantless entry of a home. "[P]hysical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed[.]" *United States v. United States Dist. Court*, 407 U.S. 297, 313 (1972). Thus, "searches and seizures inside a home without a warrant are presumptively unreasonable." *Payton v. New York*, 445 U.S. 573, 586 (1980) (footnote omitted); *accord Redmond v. State*, 213 Md. App. 163, 177 (2013). As the Court of Appeals has explained, "[t]he threshold rule, long accepted by the United States Supreme Court, is that, except when pursuant to valid consent or exigent circumstances (neither of which is present here), 'the entry into a home to conduct a search

or make an arrest is unreasonable under the Fourth Amendment unless done pursuant to a warrant.'" *Jones v. State*, 425 Md. 1, 28-29 (2012) (quoting *Steagald v. United States*, 451 U.S. 204, 211 (1981)) (other citations omitted). And, this Court has relied on the following from Professor LaFave:

> The home "is accorded the full range of Fourth Amendment protections," for it is quite clearly a place as to which there exists a justified expectation of privacy against unreasonable intrusion. It is beyond question, therefore, that an uncontested entry into a residential unit, be it a house or an apartment or a hotel or motel room, constitutes a search within the meaning of *Katz v. United States*[, 389 U.S. 347 (1967)].

McGurk v. State, 201 Md. App. 23, 36-37 (2011) (quoting 1 LaFave, *Search and Seizure*, § 2.3(b) at 565 (4th ed.2004) (footnotes omitted)).

Consent

It is well settled that a search committed without a warrant "does not violate the Fourth Amendment if a person consents to it." *Varriale v. State*, 218 Md. App. 47, 53 (2014), *aff'd*, 444 Md. 400 (2015), *cert. denied*, 136 S.Ct. 898 (2016); *Schneckloth v. Bustamonte*, 412 U.S. 218, 219 (1973) (explaining that to be valid, consent to search must be voluntary, based on the totality of the circumstances); *Redmond*, 213 Md. App. at 177 (voluntariness of search is based upon standards set forth in *Schneckloth*, *supra*); *Jones v. State*, 407 Md. 33, 51 (2008) ("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"). Whether a person consents to a search is a question of fact, for which the

State has the burden of proof, based upon a totality of the evidence. *McMillian v. State*, 325 Md. 272, 284-85 (1992); *see also United States v. Jeffers*, 342 U.S. 48, 51 (1951) ("[T]he burden is on those seeking the exemption to show the need for it"). Consent may be given expressly, impliedly, or by gesture. *Turner v. State*, 133 Md. App. 192, 207 (2000). Because a court's determination on consent is a question of fact based upon the totality of the circumstances, we may not reverse the court's decision unless it is clearly erroneous. *McMillian*, 325 Md. at 285.

The parties agree that the outcome of this case depends on whether appellant gave implied consent to Officer Solomono to enter his apartment. Implied consent has been found where the police tell an individual that they wish to enter, and the person does not object, but has done some affirmative act from which implied consent can be inferred. *See, e.g.*, *Lewis v. State*, 285 Md. 705, 719 (1979). In *Lewis*, the defendant was cooperating with the police investigation of the murder of his wife and child. When he was preparing to leave the state to attend the victims' funerals, the police informed him that they would need to search his house while he was away. Lewis made arrangements to leave the key to his house with a neighbor so the police could enter. The court found implied consent in this situation. *Id.* at 719.

Implied consent has also been found when the police request entry, and the defendant opens the door wide and steps back. *See, e.g.*, *Chase v. State*, 120 Md. App. 141 (1998).

In *Chase*, the police told defendant's wife that they needed to speak with her husband. The defendant's wife opened the door and stepped out of the way to allow police officers to enter. This Court denied the suppression of evidence collected as a result of entering the house. *Id.* at 150-51; *see also In re Anthony F.*, 293 Md. 146, 147, 152-54 (1982)) (finding implied consent when the sister of the defendant opened the door wide and stepped aside in response to the police's request for permission to enter).

In this case, both the parties and the circuit court relied on *Turner*, *supra*, in discussing whether appellant impliedly consented to the entry into his residence. In *Turner*, Officer Stephen Gillespie, of the Baltimore County Police Department attempted to make a traffic stop of an older model Chevrolet Caprice because the tag number did not match the one on file with the Department of Motor Vehicles. *Turner*, 133 Md. App. at 196-97. After the officer activated his emergency equipment, the Caprice sped off and a chase ensued. The vehicle was stopped, the driver fled the scene on foot and was not apprehended. *Id.*

Meanwhile, Officer Gillespie, who did not engage in the foot pursuit, gathered more information about the Caprice and learned that it was registered to Turner, who lived near the place where the car was abandoned. *Turner*, 133 Md. App. at 197. Officer Gillespie conveyed this information to Officer Stephen C. Price, who then went to Turner's apartment complex. *Id.* Turner's name was on a sign outside his third floor apartment door, and Officer Price knocked. Turner opened the door, stepped outside, and closed the door behind

him. *Id.* Officer Price noticed that Turner's breathing was "labored." *Id.* The officer told Turner the reason for his inquiry and asked Turner for identification and whether he knew where his car was located. Turner said he did not know where his car or his identification was at that time. *Id.*

Turner and Officer Price then went down to the first floor of the complex where they were met by Price's superior, Corporal Joseph Yeater. *Turner*, 133 Md. App. at 197. While they were awaiting the arrival of Officer Gillespie, to see if Gillespie could identify Turner as the driver, the subject of Turner's identification again arose. *Id.* at 198. The officers asked Turner if he had something in his apartment to confirm his identity. Turner responded that he had a telephone bill with his name on it in his residence. *Id.* Appellant then started up the stairs with the two officers following close behind. *Id.* The following then transpired:

> Appellant approached his apartment, opened the door, and entered. Officer Price followed behind him, and Corporal Yeater followed Officer Price. Nothing was said – the officers did not ask permission to enter or tell appellant that they were about to enter, and appellant did not tell them not to enter. Officer Price testified that because he was responding to a call for "fleeing and eluding a police officer," he would not have let appellant out of his sight. He stated, however, that if appellant had told him not to enter the apartment, he would have complied. He further testified that when he and Corporal Yeater entered the apartment, appellant did not say or do anything to indicate that he objected to their presence.

Turner, 133 Md. App. at 198.

The officers then immediately saw, in plain view, a gun and suspected crack cocaine. *Turner*, 133 Md. App. at 198. Turner declined to provide consent to search the rest of the apartment, so the officers obtained a search warrant and subsequently found other contraband. *Id.* at 199. The motions court denied a motion to suppress on the grounds that Turner consented to the entry. *Id.* This Court reversed. *Id.* at 215. Analyzing the pertinent cases and recognizing the variety of ways consent may be manifested, we explained:

> To be sure, the 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. Yet, in all of these cases, the police made it known, either expressly or impliedly, that they wished to enter the defendant's house, or to conduct a search, and within that context, the conduct from which consent was inferred gained meaning as an unambiguous gesture of invitation or cooperation or as an affirmative act to make the premises accessible for entry. By contrast, in those Fourth Circuit cases in which the court concluded that the facts could not support a finding of implied consent, the law enforcement officers either did not ask for permission to enter or search, and thus did not make known their objective, or, if they did, their request was met with no response or one that was nonspecific and ambiguous.

Turner, 133 Md. App. at 207-08 (internal citation omitted); *see United States v. Smith*, 30 F.3d 568, 571 (4th Cir. 1994) ("The circumstances show that Smith allowed [Officer] Hutchinson to search his bag and that when [Officer] Hutchinson asked whether he could search the car, by unlocking the car door, Smith consented"), *cert. denied*, 513 U.S. 1028, (1994); *United States v. Wilson*, 895 F.2d 168, 170 (4th Cir. 1990) ("Wilson raised his arms in response to [Agent] Becerra's request for permission to pat him down, a request made

without threats, force, or physical intimidation. It was not 'clearly erroneous' for the district court to find that the search was consensual").[3]

In *Turner*, the police did not request consent and appellant did not expressly give consent. And, "[Turner's] act of walking up the steps and entering his apartment was not taken in response to a police request to enter, and therefore cannot be interpreted in that context." *Turner*, 133 Md. App. at 208. Further, Turner did not consent by informing the officers that he had a telephone bill with his name on it inside his apartment because those "words did not constitute an invitation." *Id.* at n.3. Therefore,"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.* at 208. Under those circumstances, the Turner Court was persuaded that the motion to suppress should have been granted because Turner did not consent to the police entry. We explained:

> [I]n the absence of a request by the police to enter, appellant's act of opening the door to his apartment and walking through it cannot give rise to a reasonable inference that he was giving the police permission to follow him.

[3] Although officers must request consent, they are not required to inform an individual that he or she need not consent. *See State v. Clowney*, 87 Md. App. 48, 55 (1991) (citing *Schneckloth*, 412 U.S. at 231-32); *see also Scott v. State*, 366 Md. 121, 142 (2001) ("We therefore reject Scott's argument that a consent to search one's dwelling may not be held valid under the Fourth Amendment unless the person is advised, in advance, that he/she has a right to refuse or limit the consent. That is clearly not the law"), *cert. denied*, 535 U.S. 940 (2002); *Redmond*, 213 Md. App. at 177 ("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") (citation omitted).

> The police had asked appellant to produce an item that would help establish his identity, and in order to obtain it, he had to enter his apartment. It was for that reason that he opened the door to the apartment and walked inside. There was no evidence that in doing so he took any positive step or made any gesture that could be understood as an invitation to enter; the evidence showed only that he took the actions that were necessary to gain entry to the apartment himself. Indeed, Officer Price's acknowledgment that, up to the moment that he entered the apartment, he would have abided by a directive from appellant to remain outside, betrays any understanding on his part that appellant was implicitly consenting to entry. We find it telling that, knowing that there was no consensual subtext to appellant's actions, Officer Price chose not to ask permission to enter, and instead slipped in behind him.

Turner, 133 Md. App. at 214-15.

In both *Turner* and this case, the police did not ask, and the individual did not expressly agree, to allow police to enter the residence. Here, Officer Solomono told the appellant that "he needed to take [the officer] up there and prove to [the officer]…that he lived there." In response, appellant simply said, "Okay." We are not persuaded that the State met the burden of proving implied consent to enter the apartment by those words.[4]

Even if, hypothetically, implied consent in this case could be said to have been proven, the State's proof did not come close to showing that the consent was voluntary. Consent is considered voluntary if a "'reasonable person would feel free to decline the officer's requests or otherwise terminate the encounter.'" *State v. Green*, 375 Md. 595, 610

[4] We also noted that "the fact that appellant did not direct the officers to leave his apartment once they were inside did not make the illegal entry legal." *Turner*, 133 Md. App. at 215.

(2003) (quoting *United States v. Drayton*, 536 U.S. 194, 202 (2002)). The burden is on the State to prove an exception to the warrant requirement, such as consent. *See Redmond*, 213 Md. App. at 177 (citing *Schneckloth*, *supra*, and observing that it is the State's burden to prove a valid consent).

Here, the fact that three officers responded to the incident, that [a]ppellant was specifically told he could not leave until he offered proof that he lived there, that it could be implied by the officer's conduct that they suspected "criminal activity was afoot," and that the police officers followed closely behind as he walked up the stairs, all indicate that appellant did not voluntarily consent to the entry by the officers into the apartment. Officer Solomono's testimony itself, that he told appellant "he could not leave until he proved to us he lived there," demonstrates that a reasonable person in appellant's position would not reasonably believe that he was free to leave. Therefore, the ambiguous response, "okay," even if it could be interpreted as consent to the officers entering the apartment, was not voluntary under these circumstances.

Exigent Circumstances

As mentioned, the circuit court also held that the officers were entitled to enter appellant's apartment due to exigent circumstances. In its brief, the State does not attempt to contradict appellant's contention that the circuit court erred in justifying the entry into the apartment on this ground. In fact, the State does not even mention the issue in its brief.

Under such circumstances, we hold that the State has abandoned this theory and therefore it is not presented for our review. *See McCracken v. State*, 429 Md. 507, 515-16 n.6 (2012) (declining to address a separate argument that evidence was properly seized under the Fourth Amendment where that argument was abandoned by the State at oral argument).

Further, even if properly presented, we would conclude that exigent circumstances did not justify the warrantless entry in this case. This Court has recently stated:

> The exigent circumstances exception to the warrant requirement "is a narrow one[,]" *Williams v. State*, 372 Md. 386, 402, 813 A.2d 231 (2002) (citations omitted), and the State bears a "'heavy burden,'" *id.* at 407, 813 A.2d 231 (citation omitted), of proving "'specific and articulable facts to justify the finding of exigent circumstances.'" *Id.* (quoting *United States v. Shephard*, 21 F.3d 933, 938 (9th Cir. 1994)). Its burden "may not be satisfied 'by leading a court to speculate about what may or might have been the circumstances.'" *Id.* (quoting *United States v. Driver*, 776 F.2d 807, 810 (9th Cir.1985)). The facts are to be considered as they appeared to the police officers at the time of the warrantless entry. *Id.* at 403, 813 A.2d 231. The extent of the warrantless entry is "'strictly circumscribed by the exigencies which justify its initiation.'" *Mincey* [*v. Arizona*], 437 U.S. [385,] 393, 98 S.Ct. 2408 [(1978)] (quoting *Terry v. Ohio*, 392 U.S. 1, 25-26, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968)).
>
> The two most common exigent circumstances are hot pursuit of a fleeing felon, *see, e.g.*, *United States v. Santana*, 427 U.S. 38, 42–43, 96 S.Ct. 2406, 49 L.Ed.2d 300 (1976), and imminent destruction of evidence, *see, e.g.*, *Schmerber v. California*, 384 U.S. 757, 770-71, 86 S.Ct. 1826, 16 L.Ed.2d 908 (1966).

Peters v. State, 224 Md. App. 306, 325-26, *cert. denied*, 445 Md. 127 (2015).

The motions court found exigent circumstances because the "circumstances were very suspicious, particularly at 3 o'clock in the morning," and "the caller, not being able to identify the defendant, the defendant is knocking on her door at 3:20 in the morning."

We recognize that these circumstances were sufficient to justify investigation. *See Terry v. Ohio*, 392 U.S. at 30 (holding that police may stop and briefly detain a person for purposes of investigation if the officer has a reasonable suspicion supported by articulable facts that criminal activity may be afoot). But the right to stop and question a suspect does not carry with it the right to enter a suspect's home. And, there was no exigency that allowed the police to enter appellant's home without a warrant because the police had no reason to believe that any crime had been or was about to be committed in the apartment.

We hold that the court erred in denying the motion to suppress the evidence found in Apartment 204. All evidence, including the items seized after a search warrant was signed, should have been suppressed. *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").

JUDGMENT VACATED AND CASE REMANDED TO THE CIRCUIT COURT FOR MONTGOMERY COUNTY FOR FURTHER PROCEEDINGS IN ACCORDANCE WITH THE VIEWS EXPRESSED IN THIS OPINION. COSTS TO BE PAID BY MONTGOMERY COUNTY.