UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2115

September Term, 2015

STATE OF MARYLAND

v.

JEROME GRAHAM

Woodward,
Kehoe,
Nazarian,

JJ.

Opinion by Nazarian, J.

Filed: May 12, 2016

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Jerome Graham was indicted by the grand jury of Baltimore City after allegedly brandishing a gun at his wife, Julia Butler, and threatening to kill her. When police responded to Ms. Butler's call, she consented to a search of the couple's home, and the police uncovered two firearms. At a motions hearing on November 19, 2015, defense counsel moved to suppress the firearms, alleging a violation of Mr. Graham's Fourth Amendment rights. The court granted the motion, and the State appealed. We reverse.

I. BACKGROUND

Mr. Graham, Ms. Butler, and their children live in a Baltimore City row home that contains two stories and a basement. They rent the home from a landlord, and both Ms. Butler and Mr. Graham contribute to the rent. Mr. Graham is a paraplegic and spends most of his time in the home's basement in order to take advantage of its handicapped-accessible rear door. He sleeps in the basement while Ms. Butler sleeps on the second floor, and he keeps most of his belongings in the basement. Based on these facts, the motions court found that the basement was "exclusively utilized" by Mr. Graham, and went on to explain that:

> He has his own isolated area in the basement. He sleeps there. He remains there and . . . only on a few occasions does he even leave that area.
>
> He has his own entrance and exit. He has his own bathroom. He has his own belongings and sleeps in the basement. He comes up for meals on occasion, but in all other ways, that's his personal space.

On the afternoon of March 24, 2014, while the two were in the basement, Mr. Graham allegedly threatened to kill Ms. Butler and brandished a gun at her. Ms. Butler ran

to a neighbor's house, where she called the police to report the incident. When the police arrived, Ms. Butler explained what had happened, and the officers asked for permission to enter her home. Ms. Butler responded, "Yes," and said the door was unlocked.

Three officers entered the home and found Mr. Graham sitting on the floor of the second story. The officers asked him what was going on, but he didn't respond. Two officers remained in the house with Mr. Graham while another, Officer Ira Bonner, left to speak with Ms. Butler. He obtained her consent to search the house for weapons, asked her where to look, and asked her to sign a consent-to-search form. She complied, and Officer Bonner re-entered the home, uncovering a semi-automatic handgun in a drawer of a TV stand in the basement. He was unable, however, to locate the second weapon—a silver revolver—with which Mr. Graham had actually threatened Ms. Butler. So he went back to the neighbor's house to consult again with Ms. Butler, and when he returned, went straight to the second floor and approached Mr. Graham, still sitting on the floor of the second story bedroom. He asked Mr. Graham if he had a second weapon in the house. Once again, Mr. Graham didn't respond, and Officer Bonner saw the gun peeking out from under a pile of clothes next to where Mr. Graham was sitting. He recovered the gun and placed Mr. Graham under arrest. Mr. Graham stayed silent throughout the entire encounter.

Mr. Graham was indicted on charges of first-degree assault, second-degree assault, and use of a firearm in a crime of violence, among others. A motions hearing was scheduled for November 18, 2014, at which defense counsel orally moved to suppress both weapons on Fourth Amendment grounds. The court engaged the State and defense counsel

in an extended discussion on the applicability of *Georgia v. Randolph*, 547 U.S. 103 (2006), and granted the motion. The State filed a timely appeal.

II. DISCUSSION

The sole issue before us today, which the State frames correctly, is whether the circuit court erred by granting Mr. Graham's motion to suppress the firearms found in his home after Ms. Butler gave consent for police to enter, while Mr. Graham watched mutely as they conducted the search. In reviewing the circuit court's grant of a motion to suppress, we are limited to the record of the suppression hearing, and we review that record in the light most favorable to Mr. Graham, the prevailing party. *State v. Collins*, 367 Md. 700, 706-07 (2002); *Riddick v. State*, 83 Md. 180, 183 (1990); *Frobouck v. State*, 212 Md. App. 262, 272 (2013). We accept the findings of fact made by the court, unless they are clearly erroneous. *State v. Rowlett*, 159 Md. App. 386, 394 (2004) (citing *Riddick,* 83 Md. at 183). We review all legal conclusions *de novo*, and "make our own independent constitutional determination of whether the search at issue was lawful." *Rowlett*, 159 Md. App. at 395.

The Fourth Amendment to the United States Constitution, made applicable to the states by the Fourteenth Amendment in *Mapp v. Ohio*, 367 U.S. 643, 655 (1961), prohibits unreasonable searches and seizures, and warrantless searches and seizures are *per se* unreasonable. *Fernandez v. California*, 134 S. Ct. 1126, 1131 (2014); *Georgia v. Randolph*, 547 U.S. 103, 109 (2006); *Spence v. State*, 444 Md. 1, 6 (2015). However, "one jealously and carefully drawn exception recognizes the validity of searches with the voluntary consent of an individual possessing authority" over the premises. *Randolph*, 547

U.S. at 109 (internal quotations and citations omitted); *see also Rowlett*, 159 Md. App. at 395. Authority to consent "is not synonymous with a technical property interest," *Randolph,* 547 U.S. at 110, but rests "on mutual use of the property by persons generally having joint access or control for most purposes." *United States v. Matlock*, 415 U.S. 164, 171 n.7 (1974). "[I]f a person with common authority over the premises consents to a search of the premises, that consent is generally 'sufficient to validate the search.'" *Rowlett*, 159 Md. App. at 396 (quoting *Waddel v. State*, 65 Md. App. 606, 617 (1985)). As such, our Fourth Amendment analysis breaks down into two parts: *first*, whether Ms. Butler had the authority over the premises to give valid consent, and *second*, whether Mr. Graham withdrew that consent at any point during his exchange with police.

The State contends that Ms. Butler had actual authority to permit police to search the home, which was hers, and cites *Jones v. State* for the proposition that when a married couple jointly occupies a home, either spouse may consent to its search. 407 Md. 33, 51 (2008). Mr. Graham responds that Ms. Butler did not have authority to consent to the search because she was not inside the house at the time she signed the consent form,[1] and because she could not consent to a search of the basement, an area reserved for Mr.

[1] We can dispose easily of this argument because there is no law to support it. Mr. Graham points us to both *Randolph* and *Rowlett*, where the parties consenting to the search were present in the home, and argues that the facts in his case are distinguishable because Ms. Butler was at her neighbor's house when she signed the consent form with Officer Bonner. While that is true, neither case suggests, let alone holds, that the authority of the party consenting to the search depends on his or her physical location at the time of consent. To the contrary, the cases make clear that authority to consent rests on mutual use, joint access, and control. *Randolph*, 547 U.S. at 110; *Matlock*, 415 U.S. at 171; *Rowlett*, 159 Md. App. at 308-09.

Graham's personal and exclusive use. The State counters that even if Ms. Butler did not have actual authority to consent to the search of the basement, she had apparent authority, which is sufficient for Fourth Amendment purposes.

We agree with the State that Ms. Butler had actual authority to consent to a search of her home, including the basement, because she lived there with Mr. Graham and her children and exercised control over the premises. *See Fernandez*, 134 S. Ct. at 1133 (reiterating that "consent by one resident of [a] jointly occupied premises is generally sufficient to justify a warrantless search" (citing *Randolph*, 547 U.S. at 103)); *Matlock*, 415 U.S. at 169 ("[T]he voluntary consent of any joint occupant of a residence to search the premises jointly occupied is valid against the co-occupant."). In ruling to suppress the firearms found in Mr. Graham's home, the circuit court reasoned that Ms. Butler's consent did not authorize police to search the basement, an area reserved for Mr. Graham's exclusive use. The court paid special attention to Justice Scalia's dissent in *Randolph,* which it seemed to cite for the proposition that by remaining silent, Mr. Graham had not given his consent either. And without consent or exigent circumstances, the circuit court reasoned, a warrant was necessary.[2]

[2] The circuit court explained:

> [E]xigency is the issue in my view because consent does not obviate the Defendant's Fourth Amendment rights in all circumstance[s]. Public policy would dictate that the initial trespass at the scene of a domestic disturbance is allowable.
>
> Public policy and exigency would dictate that upon a report of a gun being at a place and time in the furtherance of what alleges to be a felony, a pointing, an assaultive behavior, would

We disagree. While we accept as true the circuit court's findings that the basement was Mr. Graham's living space and reserved for his exclusive use, Ms. Butler's authority to consent to the search was grounded in her "joint access [and] control" over the house in its entirety. *Matlock*, 415 U.S. at 171 n.7. Ms. Butler and Mr. Graham lived in the house as a married couple with their children, and both contributed to the rent. Mr. Graham may not have occupied the upper floors of the house often (apparently he did so just for holidays), but the record reveals that Ms. Butler spent time in the basement with Mr. Graham almost every day, and indeed that she was in the basement when the alleged attack occurred. The parties' mutual use and joint access gave Ms. Butler common authority over the premises, and gave her authority to search the entire house. And with actual authority to consent, we need not reach the issue of Ms. Butler's apparent authority.

Nor did Mr. Graham revoke Ms. Butler's valid consent, which he could have done had he spoken up at any time. The Supreme Court in *Randolph* recognized that while consent by one resident of a jointly occupied premises is generally sufficient to justify a warrantless search, "if a potential defendant with self-interest in objecting is in fact at the

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> require the officers to act swiftly to ensure that there is no possible threat to life. Ms. Butler is safe. The children are not at home. No gun is visible upon the entry by the officers of Mr. Graham's residence. He answers no questions. He's present on the scene. He does not give consent . . . The house is secured. There is no exigency.
>
> There is no reason and it is, per se, unreasonable that the officers would come and go from that residence on . . . multiple occasions in search of a weapon without a warrant. They had plenty of time to get one.

door and objects, the co-tenant's permission does not suffice . . ." 547 U.S. at 121. But this narrow exception "applies only when the objector is standing in the door saying 'stay out' when officers propose a consent search." *Fernandez*, 134 S. Ct. at 1136. Indeed, our case law has interpreted *Randolph* to require not only presence, but an explicit objection in order to revoke a co-tenant's consent. In *Rowlett*, for example, we found that the defendant's visible anger and agitation at the police's presence, without any statement of explicit objection, did not invalidate his mother's consent to the search of a bedroom he shared with another family member, and "cannot be considered . . . an objection to it." 159 Md. App. at 400. Here, Mr. Graham failed to utter a single word, much less an objection, when officers asked him questions, conducted the search, and ultimately placed him under arrest. And although we recognize that Mr. Graham would not have been able literally to "stand at the door" to tell police to stay out, as the *Fernandez* Court envisioned, it would have sufficed for him to make his objections known to police when they encountered him on the second floor. He didn't, so the search was lawful, and the evidence should not have been suppressed.

CIRCUIT COURT'S RULING ON APPELLEE'S MOTION TO SUPPRESS REVERSED. CASE REMANDED TO THE CIRCUIT COURT FOR BALTIMORE CITY FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY APPELLEE.