Circuit Court for Prince George's County
Case No. CJ162899

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 344

September Term, 2017

DALE STEVENS

v.

STATE OF MARYLAND

Woodward C.J.,
Kehoe,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned)

JJ.

PER CURIAM

Filed: December 28, 2017

On January 10, 2017, a jury sitting in the Circuit Court for Prince George's County convicted appellant, Dale Stevens, of second-degree assault and reckless endangerment. The court sentenced appellant to ten years of confinement for the second-degree assault count, all but two years of which was suspended. The court sentenced appellant to five years of confinement for the reckless endangerment count, all but two years of which was suspended and ordered to be served concurrently with appellant's sentence for the second-degree assault. Appellant was ordered to complete five years of supervised probation upon release. Appellant appeals and argues that the court erred by denying his motion to suppress the knife which was obtained from his apartment without a search warrant. He further argues that the court "erred by failing to merge [his] conviction for reckless endangerment with his conviction for second degree assault."

BACKGROUND

On May 11, 2016 Clarence Lorenzo Morris was in his apartment at 2130 Alice Avenue in Oxon Hill. As he sat at home, his wife, Demetria Holloway, returned to the apartment complex from grocery shopping and called him asking that he come down to the parking lot to help her with the groceries. Morris agreed and exited their apartment to help Holloway. As he entered the parking lot, he saw appellant sitting inside a car drinking beer and liquor with another person. Morris and appellant knew each other from the apartment complex and exchanged greetings. Appellant then asked Morris if he had any cigarettes. Morris responded that he had cigarettes in his apartment and would bring him some when he returned from taking the first load of groceries up to his apartment. Morris then went to his apartment to drop off a load of groceries. When he returned to the parking lot to get

another load of groceries, he again passed appellant and this time handed him two cigarettes. Appellant took the cigarettes from Morris, and Morris returned to Holloway's car to retrieve more groceries.

After taking the second load of groceries to his apartment, Morris again returned to Holloway's car to retrieve more groceries. He again passed appellant who told him "you a bitch, I should spit on you . . . you shouldn't be doing that." As Morris attempted to enter the apartment building with a third load of groceries, appellant blocked his path and attempted to prevent him from entering the building. Morris was able to walk around appellant and entered the building. Morris testified that he believed appellant to be "twisted" or drunk. Holloway observed the interaction between appellant and Morris and believed appellant to be "highly intoxicated" and at trial described his behavior as combative and irate. Holloway then called the apartment complex's security and the police.

As Morris exited the apartment building to retrieve yet another load of groceries, he observed appellant standing outside of the building with his shirt off and in a "fighting stance." Security personnel then arrived and poured out appellant's beer and escorted him to his apartment. They then told Morris and Holloway to wait ten minutes before returning to their apartment which was across the hall from appellant's so that appellant would have time to calm down. When Morris and Holloway returned to their apartment, appellant exited his apartment with a black handled kitchen knife in his hand and swung it at Morris. Morris raised one of his hands and appellant "poked" Morris's hand two times with the knife, causing what responding officer Chenei Terrell of the Prince George's County Police

Department described as a "slicing wound." Morris testified that he was fearful for his life and in an attempt to defend himself and Holloway, he hit appellant three times. Appellant fell and his head hit on a nearby wall, causing him to pass out. Holloway, who witnessed the stabbing, testified at trial that she was fearful for her life and Morris's life. She then called 911. Police officers from the Prince George's County Police Department arrived shortly thereafter.

Officer Terrell spoke to Morris and observed the injury to his hand. After speaking with Morris, Officer Terrell went to appellant's apartment in an attempt to locate the knife and saw blood against the walls and on the door of appellant's apartment. Officer Terrell opened the unlocked door to the apartment and located a knife with a black handle just within the doorjamb of the apartment.

DISCUSSION

I. Warrantless Search

Appellant argues that the warrantless entry into appellant's apartment was not justified by exigent circumstances or any other exception to the warrant requirement. We disagree.

When reviewing a lower court's denial of a motion to suppress, "we accept the suppression court's first-level factual findings unless clearly erroneous," and "make our own constitutional appraisal as to whether an action taken was proper, by reviewing the law and applying it to the facts of the case." *Faulkner v. State*, 156 Md. App. 615, 640, *cert. denied*, 382 Md. 685 (2004) (citations omitted). The Fourth Amendment to the Constitution requires all searches and seizures be reasonable and draws "a firm line at the

entrance to the house." "Absent exigent circumstances, that threshold may not reasonably be crossed without a warrant." *Id.* The exigent circumstances exception to the warrant requirement is narrow, and only exists "'when a substantial risk of harm to the law enforcement officials involved, to the law enforcement process itself, or to others would arise if the police were to delay until a warrant could be issued.'" *Gorman v. State*, 168 Md. App. 412 (2006) (quoting *Williams v. State*, 372 Md. 386, 402 (2002)).

Here, Officer Terrell's entry into the apartment was justified under the exigent circumstances exception to the warrant requirement. In her 911 call, Holloway complained that a man was "creating stuff with people that come in the building," and that he "went in the house and got a knife and stabbed [her] husband." Officer Terrell testified that after arriving on scene, she "tried to control the scene, gather as much information from both parties, witnesses, fellow officers as to what took place before she got there." She interviewed Morris who she observed to have a wound on his hand. She testified that, when she went to appellant's apartment, she did not know if there was anyone else in the apartment and that she wanted to "collect the evidence to prevent any other tenants possibly, you know, either tampering with evidence or also being hurt." The knife had not been recovered at that time, and she believed that it was in appellant's apartment. She further testified that at the time she did not know how many people had been involved in the altercation. Given the foregoing, it was reasonable for Officer Terrell to conclude that there may be others in the apartment who needed medical attention, or who were involved, and were still in possession of the knife, and were thus a danger to others or in danger themselves. Officer Terrell opened the unlocked door and immediately found the knife in

plain view at the threshold of the apartment. Officer Terrell did not search the apartment further. Officer Terrell's limited search was reasonable to ensure the safety of others that may have been in danger, and to secure the weapon.

II. Sentencing

Appellant's second contention, to which the State concedes, is that the "trial court should have merged [appellant's] sentence for reckless endangerment into his sentence for second-degree assault." Here there was one criminal act, and as such, pursuant to the rule of lenity, appellant's concurrent sentences for second-degree assault and reckless endangerment should have merged for sentencing purposes. We will vacate the sentence for reckless endangerment.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY ON CONVICTION FOR SECOND-DEGREE ASSAULT AFFIRMED. SENTENCE ON CONVICTION FOR RECKLESS ENDANGERMENT VACATED. ONE-HALF COSTS TO BE PAID BY APPELLANT, ONE-HALF COSTS TO BE PAID BY PRINCE GEORGE'S COUNTY.